

## EXPLANATORY MEMORANDUM TO

### THE RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER 2021

2021 No. XXXX

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of this instrument

- 2.1 The Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) (“the RTFO Order”) delivers greenhouse gas reductions in transport fuels by setting annual obligations on fuel suppliers to ensure the supply of renewable transport fuel, which fuel suppliers can discharge through acquiring Renewable Transport Fuel Certificates (“RTFCs”). The trading of RTFCs provides a financial incentive to suppliers of renewable fuels, and this instrument seeks to extend this financial incentive to suppliers of renewable hydrogen used in fuel cell rail and non-road transports and to renewable fuels of non-biological origin used in maritime.
- 2.2 This instrument also increases the RTFO obligation level in article 4 of the RTFO Order by a total of 5 percentage points in the period up to 2032, and updates the sustainability and greenhouse gas emissions criteria that renewable fuels must meet to receive RTFCs.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The RTFO Order, which this instrument amends, contains provisions made under section 2(2) of the European Communities Act 1972 (1972 c. 68). Paragraph 13 of Schedule 8 of the European Union (Withdrawal) Act 2018 does not apply to this instrument since sections 124(5) and 192(3) of the Energy Act 2004 (2004 c. 20) require a draft of this instrument to be approved by resolution of each House of Parliament. Paragraph 14 of Schedule 8 of the European Union (Withdrawal) Act 2018 does apply to this instrument, and drafts of this instrument and the Explanatory Memorandum have accordingly been published 28 days prior to laying in accordance with paragraph 14(2) of Schedule 8.
- 3.2 It is convention that there is a period of not less than 21 days between the making of a negative instrument and its coming into force. It is noted that the Joint Committee on Statutory Instruments (“JCSI”) have previously reported affirmative instruments for not observing this convention. As it is imperative that this affirmative instrument comes into force on 1st January 2022 to coincide with the commencement of the next annual obligation period, there is unlikely to be a period 21 days between making (following approval of the draft instrument by a resolution of each House) and its coming into force date.

- 3.3 If this instrument is not in force by 1st January 2022 there will be reduced greenhouse gas savings from transport fuels from 2022. As the change with the most significant impact is the increase to targets, they would not be able to come into force with a mid-year change because the scheme runs on a calendar year basis. Therefore, the Department would not be able to increase targets until 1st January 2023. This risks loss of renewable fuel supply and greenhouse gas savings of around 1 million tonnes leaving a hole in carbon budgets. Nevertheless, in this case it is reasonable to allow for a period of less than 21 days on the basis that this instrument does not significantly diminish the legal rights of the persons affected, does not impose new duties on such persons which are significantly more onerous than the duties which currently apply under the RTFO Order (and which would require them to adopt different patterns of behaviour), nor does it create criminal sanctions for a failure to comply with any obligation.

#### **4. Extent and Territorial Application**

- 4.1 The extent of this instrument is the United Kingdom.  
4.2 The territorial application of this instrument is the United Kingdom.

#### **5. European Convention on Human Rights**

- 5.1 The Parliamentary Under Secretary of State Trudy Harrison MP has made the following statement regarding Human Rights:

“In my view the provisions of the Renewable Transport Fuel Obligations (Amendment) Order 2021 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 The Department is publishing this instrument in draft in compliance with Schedule 8 of the European Union (Withdrawal) Act 2018 (c. 16).  
6.2 This instrument amends the RTFO Order to increase targets driving the supply of renewable fuel in transport, these targets being set through the main obligation, as defined in article 4(6) of the RTFO Order. It amends article 4 of the RTFO Order so that the main obligation increases by a total of 5 percentage points between 2022 and 2032.  
6.3 Renewable hydrogen, which is currently eligible for RTFCs under the RTFO Order, is a potential renewable fuel source for non-road mobile machinery (“NRMM”), a category which includes rail, non-road vehicles and machinery such as loading and construction equipment. The definition of NRMM used in the RTFO Order is set out in section 132(4) of the Energy Act 2004 (as amended by S.I. 2018/374), which incorporates the meaning given by Article 3(1) of Regulation (EU) 2016/1628<sup>1</sup>, but only insofar as an internal combustion engine of a category specified in Article 4(1) of that regulation is fitted. Since renewable hydrogen is not usually used in internal combustion engines, its supply for use as a renewable fuel in non-road vehicles is currently ineligible for RTFCs. As fuel cells using hydrogen as a fuel are an important

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<sup>1</sup> Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, which has been retained in domestic law under section 3 of the European Union (Withdrawal) Act 2018.

option for decarbonising heavy non-road vehicles, we wish to extend the current definition of non-road transports in article 2(1) of the RTFO Order so that it includes non-road vehicles which do not have internal combustion engines. This will ensure that fuel suppliers can claim RTFCs for supplying renewable fuels for use in these transport modes. A similar change is also being made to the definition of non-road transports in respect of fuels supplied to any trains not currently falling under the definition of NRMM.

- 6.4 Similarly, renewable fuels of non-biological origin used in ships operating at sea are not eligible for RTFCs as the definition of non-road transports is currently limited to inland waterway vessels and other craft that do not normally operate at sea. We have therefore made changes to the relevant provisions of the RTFO Order to ensure that renewable fuels of non-biological origin (“RFNBOs”) supplied for use in ships are eligible for RTFCs.
- 6.5 This instrument also amends the RTFO Order to ensure that as targets for the supply of renewable fuels increase, such fuels continue to deliver significant reductions in greenhouse gas emissions and meet robust sustainability criteria. It amends the Schedule to update sustainability and greenhouse gas emissions savings criteria applicable to renewable fuels and inserts new Schedules 2 and 3 setting out land use and forestry criteria which feedstocks used to produce renewable fuels must meet. The amendments in this instrument to these sustainability criteria have no effect in relation to renewable transport fuel supplied before 1st January 2022. A consequential amendment is also being made to the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (S.I. 2012/3030) to ensure reporting under that regulation is aligned with the amendments to the RTFO Order and to ensure fuel suppliers need only adhere to one set of reporting requirements under both schemes.
- 6.6 This instrument also makes provision in relation to the United Kingdom’s exit from the European Union. Relevant to amendments which strengthen the sustainability and greenhouse gas emissions criteria under the RTFO Order, this instrument replaces references to various EU enactments with equivalent criteria in the RTFO Order itself or in guidance issued by the Administrator under its powers in the RTFO Order. Specifically this instrument incorporates text previously included in the RTFO Order by reference to parts of the Renewable Energy Directive<sup>2</sup>, the Fuel Quality Directive<sup>3</sup> and Commission Regulation (EU) No 1307/2014<sup>4</sup>.

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<sup>2</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

<sup>3</sup> Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC.

<sup>4</sup> Commission Regulation (EU) No 1307/2014 of 8 December 2014 on defining the criteria and geographic ranges of highly biodiverse grassland for the purposes of Article 7b(3)(c) of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels and Article 17(3)(c) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources.

## 7. Policy background

### *What is being done and why?*

- 7.1 The sixth carbon budget requires reductions in emissions of 78% by 2035 compared to 1990 levels. This will require rapid and unprecedented action across the UK economy, supported by technological innovation. Renewable fuels can deliver emissions reductions quickly.
- 7.2 In July 2021 the government published the Transport Decarbonisation Plan which will set the transport sector on the path to net zero by 2050. Further to this the Net Zero Strategy: Build Back Greener was published in October 2021 to keep the UK on track for carbon budgets. In both publications low carbon fuels will play a key role in reducing emissions from the existing road fleet. In the longer term renewable fuels will be important in transport modes where options to decarbonise are more limited, such as in aviation and maritime. This instrument is being made further to commitments made by the government in those strategies.
- 7.3 In 2019, the use of renewable fuel supplied under the RTFO Order saved approximately 5.5 million tonnes of carbon dioxide emissions, or the equivalent to taking 2.5 million combustion engine-powered cars off the road. The amendments in this instrument will reduce greenhouse gas emissions by a further 19.9 to 24.7 million tonnes in the period 2022 to 2032. The annual greenhouse gas emission savings increase over time and are equivalent to the removal of an additional 1.5 million cars from the road by 2032. The primary aim of this instrument is to ensure that the supply of renewable fuels continues to contribute to reductions in emissions required by UK carbon budgets. In September 2021 the government increased the proportion of bioethanol in petrol at filling stations in Great Britain from E5 (petrol containing up to 5% bioethanol) to E10 (petrol containing up to 10% bioethanol). An increase to the RTFO obligations needs to be in force for January 2022 because as explained in the Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) (No. 2) Regulations 2021 (SI 2021/894) Impact Assessment, a 1.5% RTFO increase is needed to ensure that the introduction of E10 delivers overall greenhouse gas savings. We are increasing the supply of renewable fuel by a total of 5%. There is an initial increase of 1.5% in 2022 to accommodate for E10, and the remaining 3.5% is spread over the period 2023 to 2032. The target will then remain at the 2032 level in future years unless the targets levels are revised again before then.
- 7.4 Renewable fuels are typically more expensive to supply per litre than fossil fuels, particularly where using new advanced technologies which are needed to deliver higher greenhouse gas reductions and reach harder to decarbonise transport sectors. Without increasing targets for the supply of renewable fuels and expanding the scheme to reward suppliers of fuels capable of being deployed in transport modes where decarbonisation options are fewer, the renewable fuels the UK needs are very unlikely to be supplied.
- 7.5 Article 7 of this instrument amends article 4 of the RTFO Order to increase the main obligation level by 5 percentage points over the period 2022 to 2032. These increases in the targets to supply renewable fuels are estimated to deliver reductions in greenhouse gas emissions equivalent to the removal of an additional 1.5 million cars from the road by 2032.
- 7.6 The RTFO Order also includes a target for the supply of development fuels, such as advanced renewable fuels made from wastes, hydrogen, substitute natural gas,

aviation fuels and renewable fuels that can be blended above a certain limit whilst still meeting the technical standards for petrol and diesel. The targets for development fuels are not being increased by this instrument, however a consequential change is required. In the RTFO Order, the target for development fuels is expressed as a percentage of the ‘obligated amount’, which is in effect the amount of fossil fuel supplied. Since the amendment to the main obligation will result in more renewable fuel being supplied relative to fossil fuel, a change is needed to the development fuel obligation to ensure that obligation does not diminish in absolute terms.

- 7.7 Currently the RTFO Order supports the use of renewable hydrogen in road vehicles of all types, as well as non-road transports (including inland waterways vessels) and aviation. Definitions of NRMM in the RTFO Order, which includes rail, limit the scope of renewable hydrogen eligible for RTFCs to where it is used in internal combustion engines. Suppliers of RFNBOs used in maritime vessels other than inland waterway vessels are similarly not eligible to receive RTFCs.
- 7.8 This instrument supports the initial decarbonisation of maritime industries by making RFNBOs used in ships eligible for support under the RTFO Order. It also expands the scope of the RTFO Order to further support RFNBOs such as renewable hydrogen, including where used in fuel cell trains and other fuel cells used in non-road transports. Articles 5, 6, 7, and 8 of this instrument amend relevant definitions and other provisions in the RTFO Order in order to provide for the eligibility of RFNBOs used in maritime for RTFCs, including by updating the definition of “assessment time” which governs how ownership of these fuels would be determined.
- 7.9 The RTFO Order includes sustainability criteria for renewable fuels. These provide a safeguard to ensure that only renewable fuels produced from sustainable sources are supported. Where renewable fuels fail to meet sustainability criteria in the RTFO Order, the supplier of the fuel supplied is not eligible to receive RTFCs, and instead the fuel supplied counts towards the supplier’s obligation.
- 7.10 These sustainability safeguards are being strengthened through this instrument. Articles 13 and 14 in this instrument amends the RTFO Order to update sustainability criteria applicable to renewable fuels, in Schedule 1 and new Schedules 2 and 3. These changes will enhance environmental protection whilst maintaining compatibility with international standards including those introduced across the EU under the recast Renewable Energy Directive<sup>5</sup>. They include increases to the minimum greenhouse gas saving that fuels must meet, and extending the sustainability criteria to cover highly biodiverse wooded land and prevent this land from being degraded because of biofuel production. Article 13 of this instrument also establishes specific criteria to be met to address the impacts of biofuels made from forest biomass and to manage the soil carbon impacts associated with the use of agricultural residues in biofuel production, both of these will help facilitate the trade of biofuels made from these feedstocks, in what is a global market.
- 7.11 Renewable fuels and feedstocks originate from all over the world and are traded between countries. Governments support the production of renewable fuels through different schemes and across many sectors of the economy. It is therefore possible that renewable fuels and feedstocks could be eligible to receive incentives in more than

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<sup>5</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

one country or sector, and potentially be counted twice towards environmental targets. This risks giving a false indication of progress towards addressing climate change. Article 10 of this instrument clarifies the rules so that certain types of support can receive additional support as well as being supported under the RTFO.

- 7.12 Suppliers can discharge their RTFO obligations under the RTFO Order by acquiring RTFCs through the supply of renewable fuels, or purchasing RTFCs from other suppliers, or they can discharge their obligation by making a buy-out payment. In 2020 the RTFO Order was amended to increase the buy-out price from 30 pence per litre to 50 pence per litre. The buy-out price is also used as a proxy for the value of RTFCs where the Administrator determines civil penalty amounts that might be applied. Specifically, where a supplier has contravened the RTFO Order in gaining or attempted to gain an RTFC. Article 12 of this instrument amends article 23 of the RTFO Order so the values used to calculate certain civil penalties realign with changes made to the buy-out price in 2020, where relevant to RTFCs applied for on or after 1 January 2022.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 Section 2(2) of the European Communities Act 1972 has previously been used to amend the RTFO Order, particularly in relation to the transposition of the UK's transport obligations under the Renewable Energy Directive. In particular to transpose Articles 3, 17 to 19 and 21(2), and Annexes I and V, of that directive which, in so far as they relate to transport, required the setting of renewable energy in transport targets and mandatory sustainability criteria for biofuels. The RTFO Order has similarly been amended to give effect to Article 7(a) to (e) of the Fuel Quality Directive insofar as those provisions required suppliers of fuel for use in various forms of mobile machinery to reduce greenhouse gas emissions. The remainder of Article 7(a) to (e) related to the reporting of greenhouse gas emission reductions and were transposed by the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (S.I. 2012/3030), the "GHG Reporting Regulations".) Subsequent amendments<sup>6</sup> to the Fuel Quality Directive and Renewable Energy Directive were transposed by S.I. 2018/374 which made amendments to the RTFO Order and GHG Reporting Regulations. Section 2(2) of the 1972 Act was also used for this purpose, in conjunction with other powers.
- 8.2 This instrument is not being made under powers in the European Union (Withdrawal) Act 2018. It is being made entirely through powers provided by the Energy Act 2004. It does though relate to the withdrawal of the United Kingdom from the European Union insofar as it removes references to EU enactments from the RTFO Order.
- 8.3 Following the UK's withdrawal from the EU, it is appropriate for the sustainability and greenhouse gas emissions savings criteria relevant to the supply of renewable fuels in the UK to be defined in domestic legislation or in guidance issued by the Administrator under its powers. Where necessary and practicable this instrument

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<sup>6</sup> Namely, the amendments in Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources and in Council Directive (EU) 2015/652 of 20 April 2015 laying down calculation methods and reporting requirements pursuant to Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels.

amends the RTFO Order to include sustainability and greenhouse gas emissions savings criteria relevant to the supply of renewable fuels, which were previously included by reference to EU legislation. This instrument also removes article 1A(4) of the RTFO Order pursuant to amendments made to section 30(3) of the Small Business, Enterprise and Employment Act 2015 (2015 c. 26) by the 2018 Act.

- 8.4 Article 15(2)(b) of the RTFO Order provides powers enabling the Administrator to issue and update guidance documents. Article 9 of this instrument moves this power to article 15(1)(m) of the RTFO Order and specifies certain matters the Administrator must publish guidance on. Such technical guidance is regularly consulted on by the Administrator of the scheme and published. Improvements to methodologies and reference values used to calculate greenhouse gas emissions can develop relatively quickly. In our recent consultation on the amendments in this instrument respondents stressed the importance of ensuring the methodology for calculating greenhouse gas emissions keeps pace with the best available evidence and international standards. Using technical guidance to update the methodology and reference values will allow the Administrator to meet respondents' concerns in this regard, and also aligns with current practices in measuring the greenhouse gas emissions savings of RFNBOs.

## **9. Consolidation**

- 9.1 There is no intention to consolidate the RTFO Order at this time.

## **10. Consultation outcome**

- 10.1 The Department carried out a public consultation on the policy changes introduced by this instrument between 25th March and 23rd April 2021. Across questions on all measures, 120 responses were received. These were from a range of organisations, including fossil and renewable fuel suppliers, non-government organisations, academic researchers, industry representative bodies and energy providers.
- 10.2 The key change resulting from the consultation is in article 7 of this instrument which includes measures to increase the renewable fuel supply targets by increasing the main obligation. The Department consulted on three options. These were increasing the obligation by 1.5, 2.5 or 5 percentage points. All increases being incremental between 2022 and 2032. The Department's proposed option was a 2.5 percentage point increase. Most respondents, 81 out of 84, agreed that the main obligation should increase.
- 10.3 Of the 77 respondents that expressed a preference on the amount by which this target should increase, 61 supported an increase to the RTFO main obligation of 5 percentage points or more. These respondents included suppliers of renewable fuel who benefit from support under the certificate trading scheme, and suppliers of fossil fuel who must meet the targets. Those in support of an increase of 5 percentage points or more suggested this could provide long term certainty to industry and would provide a further contribution to the government's commitment to net zero greenhouse gas emissions by 2050. Accordingly, the government has decided to increase the RTFO main obligation by a further 5 percentage points between 2022 and 2032.
- 10.4 The consultation also proposed to expand the RTFO to support RFNBOs used in maritime, and renewable fuels used in NRMM with alternative propulsion systems e.g. renewable hydrogen in fuel cell powered trains and other alternatively powered non-road vehicles. These proposals received wide support on the basis that whilst take

up in maritime could initially be low it was important to send a signal now as vessel purchases are long term investments. This instrument amends the RTFO Order so that RFNBOs used in ships and RFNBOs used in non-road transport modes incorporating new powertrains, such as renewable hydrogen used in fuel cell trains and other non-road vehicles, will be eligible for RTFCs.

- 10.5 The RTFO Order includes sustainability criteria. These provide a safeguard to ensure that renewable fuels are only eligible for RTFCs when produced from sustainable sources, and if they achieve a minimum greenhouse gas savings threshold. These sustainability criteria are necessary to ensure that the RTFO Order only supports fuels which deliver meaningful savings.
- 10.6 The consultation proposed to increase the minimum greenhouse gas savings which renewable fuels must achieve to be eligible for RTFCs. It also proposed several other additions to ensure land used to produce biofuels is sustainable. One proposal was to extend the sustainability criteria to cover highly biodiverse wooded land and prevent this land from being degraded because of biofuel production. Others were to address the impacts of biofuels made from forest biomass and manage the soil carbon impacts associated with the use of agricultural residues in biofuel production. These measures will enhance environmental protection and retain compatibility with international standards including those introduced across the EU under the recast Renewable Energy Directive. Articles 13 and 14 of this instrument amends the RTFO Order to update sustainability criteria applicable to renewable fuels, in new Schedules 1, 2 and 3. These measures were very widely supported by respondents to the consultation on the basis that they are consistent with wider international standards and so could help UK biofuel exports.
- 10.7 Currently, fuel suppliers must utilise the values and methodology set out in the Annex V of the Renewable Energy Directive to demonstrate that a consignment of fuel meets the greenhouse gas savings criteria. The values are now over ten years old. The Department proposed to improve the accuracy of reported greenhouse gas emission values by providing updated emissions values and changes to the greenhouse gas methodology which better reflect real world emissions. These new values will also help to facilitate trade since they maintain compatibility with international standards including those in place across the EU under the recast Renewable Energy Directive. These changes will be implemented through changes to technical guidance published by the Administrator of RTFO Order.
- 10.8 One minor amendment to the RTFO Order in this instrument was also included in the consultation. This would update the method used to calculate civil penalties, so that it realigns with changes made to the buy-out price by S.I. 2020/1541. This policy was strongly supported by respondents to the consultation.
- 10.9 The formal government response to the consultation has been published at: <https://www.gov.uk/government/consultations/amending-the-renewable-transport-fuels-obligation-rtfo-to-increase-carbon-savings-on-land-air-and-at-sea> and includes a more detailed summary of the consultation questions, responses received and government decisions.

## **11. Guidance**

- 11.1 Technical guidance is published by the Administrator in support of its operation of the RTFO Order. This guidance covers details of the processes which fuel suppliers must follow to fulfil their obligations and claim RTFCs. A full draft of the technical

guidance related to the RTFO Order accompanies the laying of this instrument before Parliament.

- 11.2 This explanatory memorandum relates to a draft statutory instrument published in advance of being laid in Parliament in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies will depend upon the extent to which such organisations are consumers of road fuel. The cost of the measures in this instrument are likely to be passed through to fuel consumers. The costs are driven by the increase in the main obligation which sets the target for supplying renewable fuels. The 5 percentage point RTFO target increase is expected to result in an initial 0.5 pence per litre (including VAT) increase in 2022, rising to an increase of approximately 1.6 pence per litre by 2032, which is a little over 1% of current petrol and diesel prices.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A cost benefit analysis is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to exempt suppliers who supply less than 450,000 litres of relevant fuel in an obligation year from obligations in the RTFO Order. The exception to this is those obligations related to claiming financial support for the supply of renewable fuels in the form of RTFCs. To date this has successfully minimised the impacts on small businesses.

## **14. Monitoring & review**

- 14.1 In accordance with article 1A of the RTFO Order, the Secretary of State is under an existing duty to review the regulatory provisions contained in the RTFO Order and publish a report setting out the conclusions of the review. The first report must be published before 15th April 2023. Accordingly, no further provision for review of the RTFO Order has been included in this instrument.
- 14.2 The measures in this instrument will be successful if they, alongside the other provisions in the RTFO Order and measures to support renewable fuels, enable such fuels to cost effectively contribute to the UK's future Carbon Budgets. The RTFO Order further aims to promote investment in the supply of sustainable renewable fuels in the UK.

## **15. Contact**

- 15.1 Charlotte Stead at the Department for Transport: 07971 145177, charlotte.stead@dft.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Rachel Solomon Williams, Deputy Director for Low Carbon Fuels, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Trudy Harrison MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

### Part 1A

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

## Part 1B

### Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

## Part 2

### Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

#### 1. Scrutiny

- 1.1 The Parliamentary Under Secretary of State Trudy Harrison MP has made the following scrutiny statement in accordance with paragraph 14(4) of Schedule 8 to the European Union (Withdrawal) Act 2018:

“In accordance with the requirements of paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018, a draft of the Renewable Transport Fuel Obligations (Amendment) Order 2021 was published on the gov.uk website on 7th September 2021. Copies of the draft instrument were also deposited in the libraries of both Houses of Parliament on 7th September 2021 for comment and for any recommendations.

This instrument was discussed at the House of Lords Secondary Legislation Scrutiny Committee meeting on 12th October 2021. There were no recommendations or comments.

We have made some small amendments to the published instrument to improve the drafting. These were based on feedback from the JCSI as part of their pre-laying scrutiny of the draft instrument, and do not alter the policy objectives.

As part of the scrutiny process we were informed by stakeholders of potential unforeseen consequences of our proposal to limit support for renewable fuels receiving multiple incentives under the RTFO. Expanding the current restriction, focussed on support schemes adopted by EEA States and the UK to support schemes adopted anywhere in the world could have had implications for international trade remedies adopted by the EU prior to the UK’s withdrawal and now applied by the UK in its own right. It was decided that these issues needed to be better understood before any amendments are made to article 16. Accordingly, the amendments to articles 16(2)(a)(ii) and 3(ea) of the RTFO Order have been redrafted to remove this change. We will continue to engage with relevant stakeholders on these points.

For the reasons given in section 6 of this Explanatory Memorandum, the consequential amendment to the GHG Reporting Regulations has also been amended since the draft instrument was published. The published instrument would have required fuel suppliers to adhere to two different reporting requirements under the GHG Reporting Regulations and the RTFO. It has since been established it would not be appropriate to burden suppliers with unnecessary additional reporting requirements. The reporting methodology under the GHG Reporting Regulations has now been aligned with the changes to the RTFO Order to reduce this to a single set of requirements used by both schemes. This is a minor change in the context of the overall policy.”

## **2. Explanatory Statement**

- 2.1 The Parliamentary Under Secretary of State Trudy Harrison MP has made the following statement in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) Act:

“Paragraph 15(3)(a): Law which is relevant to the amendment:

Requirements relating to the supply of renewable fuels and associated sustainability criteria are prescribed by the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072), “the RTFO Order”. Amendments to these requirements were partly made under section 2(2) of the European Communities Act 1972, and therefore constitute EU-derived domestic legislation (which is retained EU law) within the meaning of the European Union (Withdrawal) Act 2018. The RTFO Order implemented into domestic law Articles 3, 17 to 19 and 21(2), and Annexes I and V, of the Renewable Energy Directive (Directive 2009/28/EC) including in so far as they relate to standardised sustainability criteria for renewable fuels supplied in transport, and article 7(a) to (e) of the Fuel Quality Directive (Directive 98/70/EC), insofar as it required suppliers of fuel to reduce greenhouse gas emissions and report those reductions.”

“Paragraph 15(3)(b): Effect of the amendment or revocation on retained EU law:

The effects of the amendments on retained EU law, as set out in the RTFO Order and introduced by this instrument, are to ensure that sustainability and greenhouse gas emissions savings criteria for renewable transport fuels are defined within domestic legislation rather than the Renewable Energy Directive. In so far as sustainability criteria apply to land use definitions in the Fuel Quality Directive (Directive 98/70/EC) and Commission Regulation (EU) No 1307/2014 these amendments would set these out in the RTFO Order.

This instrument does not diminish standards in the above directives. Indeed, this instrument sets stronger greenhouse gas emissions savings thresholds than currently required in the EU. The statutory instrument increases the supply of low carbon fuels and extends eligibility for RTFO support to a wider range of fuels, and end uses. It also updates and strengthens the sustainability criteria in line with international standards. Without these changes the renewable fuels the UK needs are very unlikely to be supplied.”

## **3. Good reasons**

- 3.1 The Parliamentary Under Secretary of State Trudy Harrison has made the following statement in accordance with paragraph 15(2) of Schedule 8 to the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.

These are: because of the on-going need to decarbonise transport via the increased use of renewable fuels, in line with UK carbon budgets. It is also important that sustainability and greenhouse gas emissions criteria associated with renewable fuel supply are brought into domestic legislation, alongside associated technical guidance specifying how such information should be reported. This will enable us to meet UK climate change commitments, whilst ensuring UK standards are in line with international standards and based the best available evidence.”