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STATUTORY INSTRUMENTS

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**2012 No. 2723**

**TRANSPORT  
ENERGY**

**SUSTAINABLE AND RENEWABLE FUELS**

**The Energy Act 2004 (Amendment) Regulations 2012**

*Made* - - - - *29th October 2012*  
*Laid before Parliament* *1st November 2012*  
*Coming into force* - - *4th December 2012*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) (“the 1972 Act”).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the 1972 Act in relation to energy and energy sources(2).

**Citation and commencement**

1. These Regulations may be cited as the Energy Act 2004 (Amendment) Regulations 2012 and come into force on 4th December 2012.

**Amendment of section 132 of the Energy Act 2004**

2. In Chapter 5 of Part 2 of the Energy Act 2004(3) (renewable transport fuel obligations), section 132 (interpretation) is amended as follows.

3. For subsection (3) substitute—

“(3) For the purposes of this section fuel is used for transport purposes if—

(a) it is used as fuel for one or more of the following—

- (i) any mode of transport, including vehicles, vessels, aircraft and trains;
- (ii) recreational craft which do not normally operate at sea;

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(1) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).  
(2) S.I. 2010/761.  
(3) 2004 c.20; section 132 was amended by section 78 of, and paragraphs 1 and 7 of Schedule 7 to, the Climate Change Act 2008 (c.27) and by section 107 of, and paragraph 19 of Schedule 5 to, the Energy Act 2008 (c.32).

- (iii) agricultural or forestry tractors;
- (iv) non-road mobile machinery, including inland waterway vessels which do not normally operate at sea; or
- (b) it is used for producing fuel that is intended to be so used.”

4. After subsection (3) insert—

“(3A) For the purposes of subsection (3) “sea”—

- (a) includes tidal rivers and estuaries;
- (b) does not include—
  - (i) non-tidal rivers and canals where the significant wave height could not be expected to exceed 0.6 metres at any time; and
  - (ii) lakes and lochs where the significant wave height could not be expected to exceed 1.2 metres at any time.”

5. In subsection (4), insert the following definitions at the appropriate place in alphabetical order—

““agricultural or forestry tractor” has the meaning given by Article 1 of Directive [2000/25/EC](#) of the European Parliament and of the Council of 22 May 2000 on action to be taken against the emission of gaseous and particulate pollutants by engines intended to power agricultural or forestry tractors<sup>(4)</sup>,”

““inland waterway vessel” has the meaning given by Article 2 of Directive [97/68/EC](#) of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery<sup>(5)</sup> (“Directive 97/68”);”

““non-road mobile machinery” has the meaning given by Article 2 of Directive [97/68](#),”

““recreational craft” has the meaning given by Article 1(3) of Directive [94/25/EC](#) of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft<sup>(6)</sup>.”

Signed by authority of the secretary of State for Transport

29th October 2012

*Norman Baker*  
Parliamentary Under Secretary of State  
Department for Transport

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(4) OJ No L 173, 12.7.00, p. 1.

(5) OJ No L 59, 27.2.98, p. 1 as amended by Article 1.1 of Directive [2004/26/EC](#) of the European Parliament and of the Council of 21 April 2004 (OJ No L 146, 21.4.2004, p.1).

(6) OJ No L 164, 30.6.94, p. 15 as amended by Article 1.3 of Directive [2003/44/EC](#) of the European Parliament and of the Council of 16 June 2003 (OJ No L 214, 26.8.2003, p. 18).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 132 of the Energy Act 2004 (c.20) defines words and phrases which are used in Chapter 5 of Part 2 (sections 124 to 132) of that Act. These Regulations amend section 132 as follows.

Section 132(3) defines when fuel will be regarded as used for “transport purposes” for the purposes of section 132. Regulation 3 restates section 132(3)(a) so as to put it beyond doubt that vehicles, vessels, aircraft and trains are included only in so far as they are used mainly to transport people or things from one place to another. It also adds three new subparagraphs which provide that the use of fuel in recreational craft which do not normally operate at sea, agricultural or forestry tractors, and non road mobile machinery (including inland waterway vessels which do not normally operate at sea) is also to be regarded as use for “transport purposes”.

The term “transport purposes” is used within the definition of “supply” in section 132(1), which in turn is used in other provisions of Chapter 5 of Part 2 of the Energy Act 2004 relating to renewable transport fuel obligations.

Regulation 4 inserts a new section 132(3A) in the Energy Act 2004, which makes provision for what is meant by “sea” for the purposes of section 132(3).

Regulation 5 makes provision for new definitions to be included in section 132(4).

The effect of the amendments is to enlarge the powers under which an order can be made relating to renewable transport fuel obligations. This will enable effect to be given to certain requirements contained in Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 (OJ No L 350, 28.12.98, p. 58).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. An Explanatory Memorandum is available alongside the instrument on the UK legislation website, [www.legislation.gov.uk](http://www.legislation.gov.uk).

A copy of the Directive referred to in this Explanatory Note may be viewed in the Official Journal of the European Union via the EUR-lex website at <http://eur-lex.europa.eu/>.