

**EXPLANATORY MEMORANDUM TO
THE RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER
2013**

2013 No. 816

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument gives effect to aspects of Directive 98/70/EC (“the Fuel Quality Directive” / “FQD”) as amended by Directive 2009/30/EC, by amending the Renewable Transport Fuel Obligations Order 2007 (SI 2007/3072 - “the 2007 Order”) so that suppliers of fuel for use in various forms of mobile machinery are subject to the Renewable Transport Fuel Obligation (“the RTF obligation”).

2.2 To facilitate the effective administration of the Renewable Transport Fuel Obligation scheme (“the RTFO”), this instrument amends the 2007 Order to add a presumption that certain types of fuel are assumed to be relevant hydrocarbon oil for the purposes of certain calculations under the 2007 Order (unless the Administrator is satisfied to the contrary). It also makes express provision that monies owed in respect of unpaid civil penalties and interest imposed under that Order are recoverable as civil debts.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Section 2(2) of the European Communities Act 1972 is being relied on for the purpose of making the provisions contained in article 12 of the Order, so as to supplement powers contained in the Energy Act 2004. Section 2(2) is relevant because the RTFO scheme is one of the mechanisms relied on by the United Kingdom to ensure that it meets its obligations under EU law in relation to greenhouse gas emissions from fuel.

4. Legislative Context

Non-Road Mobile Machinery

4.1 Articles 1 and 7a(2) of the FQD require fuel suppliers to reduce as gradually as possible the greenhouse gas emissions of fuel supplied for use in road vehicles, non-road mobile machinery (including inland waterway vessels when not at sea), agricultural and forestry tractors, and recreational craft when not at sea. (All of these uses, save for use in road vehicles, are referred to below collectively as use in “non-road mobile machinery”.)

- 4.2 The Department is transposing this requirement of the FQD in part through bringing suppliers of fuel used in non-road mobile machinery within the scope of the RTFO. Articles 3 to 11 of this instrument make provision for this, and come into force on 15 April 2013.

Fuel Quality Directive Scrutiny History

- 4.3 The proposal to amend the FQD, which ultimately resulted in the adoption of Directive 2009/30/EC, was the subject of Explanatory Memorandum 6145/07 which was considered by the House of Commons European Scrutiny Committee on 14 March 2007 (14th Report, Session 2006/2007, reference 28351). The Committee recommended that the document was of political importance and did not clear it, pending receipt of an Impact Assessment. The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B following the 1278th sif on 27 February 2007. The Chairman wrote to the Minister on 7 March 2007 requesting further information following the Government's further consideration of the proposal.
- 4.4 A Supplementary EM ("SEM") was submitted to Parliament on 2 August 2007. The SEM was considered by the House of Commons European Scrutiny Committee on 10 October 2007. The Committee recommended that the document was politically important and should be debated in Standing Committee (REPORT 36, SESSION 06/07). The debate took place on 20 November 2007, and cleared the proposal. The House of Lords Select Committee on the European Union referred the SEM to Sub-Committee B at the 1297th sif of 11 September 2007. The Chairman wrote to the Minister on 9 October 2007 requesting further information. Ministerial letters were sent to the Committee Chairmen on 5 February 2008, 19 November 2008 and 5 January 2009 to keep them informed of developments. The House of Lords Select Committee on the European Union cleared the proposal on 20 January 2009.

Civil Penalties

- 4.5 Article 12 of this instrument amends article 23 of the 2007 Order so as to expressly provide that monies owed in respect of unpaid civil penalties and interest imposed under that Order are recoverable as civil debts.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 Norman Baker, Parliamentary Under Secretary of State at the Department for Transport, has made the following statement regarding Human Rights:

"In my view the provisions of the Renewable Transport Fuel Obligations (Amendment) Order 2013 are compatible with the Convention rights."

7. Policy background

Non-Road Mobile Machinery

- 7.1 The 2007 Order places the RTF obligation on suppliers who own “relevant hydrocarbon oil” at the fuel excise duty point, and who supply this at or for delivery to places in the United Kingdom. It applies to entities which supply more than 450,000 litres of relevant hydrocarbon oil per annum - which currently means petrol, diesel or renewable transport fuel that is subject to fuel excise duty and is for use in road vehicles.
- 7.2 Articles 4 to 6 insert or amend definitions which have the effect of expanding the scope of the 2007 Order to cover fuel used for additional end uses (namely for use in non-road mobile machinery).
- 7.3 Article 4 of this Order inserts a definition of “gas oil” into article 3 of the 2007 Order. This definition is deployed to ensure that any gas oil which is not compliant with the Motor Fuel (Composition and Content) Regulations 1999 (SI 1999/3107), but which is nevertheless supplied for RTFO purposes, will be caught by the 2007 Order.
- 7.4 Article 5 of this Order inserts a definition of “low sulphur gas oil” into article 3 of the 2007 Order. This is for the purpose of the new presumption being added to article 5(1) of the 2007 Order by article 9 of this Order.
- 7.5 Article 6 of this Order amends the definition of “relevant hydrocarbon oil” in article 3 of the 2007 Order to cover fuel for additional end uses (namely non-road mobile machinery) and an additional category of fuel (namely gas oil).

The renewable transport fuel obligation

- 7.6 The effect of article 7 of this instrument, which amends article 4 of the 2007 Order (the renewable transport fuel obligation), is to ensure that the total volume of fuel supplied in the United Kingdom which must come from a renewable source is not increased by fuel for use in non-road mobile machinery being brought within the scope of the RTFO.
- 7.7 The effect of article 8 of this instrument, which also amends article 4 of the 2007 Order, is to bring fuel for use in non-road mobile machinery within the meaning of “eligible oil”. This is relevant to calculations carried out under article 4 of the 2007 Order in relation to suppliers meeting the RTF obligation.

Determinations of amounts of transport fuel

- 7.8 Articles 9 and 10 of this instrument amend article 5 of the 2007 Order (determinations of amounts of transport fuel). Article 5(1) of the 2007 Order already provides that, where it is shown that a supplier owns an amount of transport fuel at the duty point, the fuel is to be presumed to be for use in the UK. Article 9 of this instrument extends article 5(1) of the 2007 Order so that it is to be further presumed, in relation to transport fuel that passes the duty point on or after 15 April 2013, that certain types of fuel constitute relevant

hydrocarbon oil. One of these types of fuel is “low sulphur gas oil” – the intention being that only “low sulphur gas oil”, and not “gas oil” more generally, should benefit from the presumption. Each of the presumptions in article 5(1) of the 2007 Order can be displaced if the Administrator is satisfied to the contrary. The purpose of the presumptions is to reduce the administrative burden on the RTFO Administrator, by allowing the Administrator to assume that certain fuel is covered by the RTF obligation unless this is shown not to be the case.

- 7.9 Article 10 of this instrument amends article 5(2) of the 2007 Order so that fuel for additional end uses counts towards discharging a supplier’s RTF obligation (subject to certain conditions being met). It is worded so as to ensure that calculations which take place on or after 15 April 2013, relating to fuel supplied before that date, will not be affected by the changes.

Civil Penalties

- 7.10 The RTFO scheme is underpinned by an enforcement regime based on civil penalties. The Administrator has the power to impose civil penalties on suppliers for non-compliance with the requirements of the RTFO. Examples of such non-compliance include failing to register under the RTFO, failing to provide accurate information and evidence to the Administrator, or knowingly making a false declaration in an application for RTF certificates.
- 7.11 Article 12 of this instrument, which amends article 23 of the 2007 Order, makes express provision (i) that any civil penalty that is imposed by way of a civil penalty notice issued by the Administrator (together with any interest which accrues on this) is enforceable as a civil debt, and (ii) for the basis for calculating the interest on outstanding civil penalty payments. It provides that interest would accrue on an unpaid civil penalty from the date before which the penalty must be paid to the Administrator. This date would be set out in the civil penalty notice, and the Bank of England base rate for this date would be used for calculating interest (the rate of interest being 5% above the base rate). This will further ensure that the RTFO enforcement regime is robust, will encourage compliance, and will maintain a level playing field for suppliers.

Consolidation

- 7.12 There is no intention to consolidate the 2007 Order at this time.

8. Consultation outcome

- 8.1 The Department carried out parallel consultations on implementing the FQD and the closely related Renewable Energy Directive (Directive 2009/28/EC, “the RED”) in March 2011¹. The RED mandates levels of renewable energy use within the EU. The measures in articles 3 to 11 of this instrument formed part of the consultation on the RED, which concerned amendments to the 2007 Order (although it is the FQD which contains requirements in relation to non-road mobile machinery). During the consultations on both

¹ <http://www.dft.gov.uk/consultations/dft-2011-04>

the FQD and the RED, concerns were raised about the risks associated with the use of renewable transport fuel in non-road mobile machinery - particularly in respect of engine compatibility and storage, and the need to have sufficient time for oil suppliers and end users to address these issues. To take account of these concerns and allow suppliers time to prepare for the change, the Department made clear in July 2012 that, subject to parliamentary approval, provisions to expand the scope of the RTFO to include non-road mobile machinery would not come into force until 15 April 2013 (which is the beginning of the next RTF obligation reporting year).

- 8.2 The Government's response to the "Consultation on the implementation of the transport elements of the RED – non-road mobile machinery" was published on 16 July 2012². In addition to setting a timeline for implementation, this response also explained the Government's decisions to expand the scope of the 2007 Order to include suppliers of fuel for use in non-road mobile machinery - thereby aligning the scope of the RTFO with that of the FQD - and to allow any type of renewable fuel for these end uses to be eligible for RTF certificates.
- 8.3 Relevant to article 12 of this instrument the Department ran a consultation, the "Targeted consultation on a proposed amendment to the Renewable Transport Fuel Obligations Order 2007 (as amended) - civil penalties", between June and September 2012. A Government response was published on 21 November 2012³. Responses to that consultation were unanimously in support of making express provision that civil penalties are recoverable as civil debts in order to ensure effective enforcement of the RTFO.

9. Guidance

- 9.1 The Department for Transport intends to revise the guidance covering the RTFO to take account of the changes made by this instrument. This will take place at the next general update of the guidance, which is likely to be in April 2013 or soon afterwards. The provisions regarding recovery of civil penalties are the only provisions in the Order that can come into force before 15 April 2013, and these are simply to make express provision rather than to change the law.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies of provisions in this instrument expanding the scope of the RTFO to cover suppliers of fuels used in non-road mobile machinery is estimated to be a net cost of £0.01m per annum. This proposal, accompanied by an Impact Assessment, was the subject of a public consultation in March 2011. A final

² <https://www.gov.uk/government/consultations/consultation-on-proposals-to-implement-articles-7a-to-7e-of-the-eu-fuel-quality-directive-fqd-directive-98-70-ec-as-amended-by-2009-30-ec-requiring-suppliers-to-reduce-the-lifecycle-greenshouse-gas-intensity-of-transport-fuels-and-introducing-sustaina>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14930/response-civil-penalties-consultation.pdf

impact assessment following that consultation and a Government response were published on 16 July 2012⁴.

- 10.2 The Government response following the “Targeted consultation on a proposed amendment to the Renewable Transport Fuel Obligations Order 2007 (as amended) - civil penalties” published on 21 November 2012⁵ includes a cost-benefit analysis. The impact on business, charities or voluntary bodies and public sector bodies of the amended civil penalty provisions is nil. An Impact Assessment has not been prepared for this aspect of the instrument.

11. Regulating small business

- 11.1 The 2007 Order applies to small businesses. To minimise the impact of the requirements on firms employing up to 20 people, the 2007 Order exempts from the RTF obligation transport fuel suppliers who supply less than 450,000 litres of relevant hydrocarbon oil in an obligation year.

12. Monitoring & review

- 12.1 The Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (SI 2012/3030) will impose a duty on the Secretary of State to keep under review whether further steps need to be taken in order to meet the requirements of the FQD in respect of transport. Furthermore, review of these measures will take place as part of ongoing policy development and stakeholder consultation.
- 12.2 The instrument does not include the standard form review clause because it is a tax and spend measure and so falls outside the scope of the Government’s policy on sunseting and review of regulations.

13. Contact

- 13.1 Michael Wright at the Department for Transport Tel: 0207 944 4378 or email: Michael.Wright@dft.gsi.gov.uk can answer any queries regarding the instrument.

⁴ <https://www.gov.uk/government/consultations/consultation-on-proposals-to-implement-articles-7a-to-7e-of-the-eu-fuel-quality-directive-fqd-directive-98-70-ec-as-amended-by-2009-30-ec-requiring-suppliers-to-reduce-the-lifecycle-greenhouse-gas-intensity-of-transport-fuels-and-introducing-sustaina>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14930/response-civil-penalties-consultation.pdf

Transposition note for

Articles 7a to 7e and Annex IV of Directive 98/70/EC (as amended by Directive 2009/30/EC)

as transposed by

The Renewable Transport Fuel Obligations (Amendment) Order 2013

1. For the purposes of this note:

“The FQD” means Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels, as amended (including changes made by Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009);

“GHG” means “greenhouse gas”;

“GHG intensity” means the GHG emissions per unit of energy;

“The RED” means 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;

“relevant end uses” means use in road vehicles, non-road mobile machinery (including inland waterway vessels when not at sea), agricultural and forestry tractors, and recreational craft when not at sea;

“The RTF obligation” means the Renewable Transport Fuel Obligation imposed upon transport fuel suppliers by the RTFO Order 2007; and

“The RTFO Order 2007” means the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) as amended prior to this Order.

2. This Order transposes, in part, articles 7a to 7e and Annex IV of the FQD. Specifically this Order expands the scope of the RTFO Order 2007, such that suppliers of fuel for use in non-road mobile machinery (including inland waterway vessels when not at sea), agricultural and forestry tractors, and recreational craft when not at sea (referred to below collectively as “non-road mobile machinery”) are required to demonstrate that a certain proportion of the fuel they supply is both sourced from renewable sources and meets certain sustainability criteria. Those sustainability criteria include a requirement that the renewable transport fuel delivers certain GHG savings. This gives effect to the requirement in Article 7a(2) of the FQD that suppliers reduce the GHG intensity of the fuels they supply for relevant end uses as gradually as possible.
3. Separate legislation, namely the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (2012/3030), has been produced to give effect to those requirements of Articles 7a to 7e and Annex IV of the FQD that are not transposed via this Order.

| FQD Article | FQD Objective | Transposition |
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| Article 7a(1) | <p>Article 7a(1) requires Member States to impose requirements on suppliers of fuel/energy for use in relevant end uses to report on the total amount of fuel/energy supplied, where that fuel/energy was purchased and its origin, and the GHG intensity of the fuel/energy supplied. Member States are required to ensure that information reported under these requirements is subject to verification.</p> | <p>The relevant reporting requirements are provided for through separate legislation - namely the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (SI 2012/3030).</p> |
| Article 7a(2) | <p>Article 7a(2) obliges Member States to require suppliers of fuel/energy for use in relevant end uses to reduce as gradually as possible the GHG intensity of the fuel/energy they supply towards a reduction of 6% by 31 December 2020.</p> <p>Article 7a(2)(b) and (c) provide that member states may set intermediate targets to reach the 6% 2020 GHG intensity reduction target.</p> | <p>The RTFO Order 2007 places an obligation on certain suppliers of relevant hydrocarbon oil to meet the RTF obligation either through the redemption of Renewable Transport Fuel Certificates (RTFCs) or by buying out of their obligation.</p> <p>Under the RTFO Order 2007 owners of relevant hydrocarbon oil at the duty point are subject to the RTF obligation if they supply 450,000 litres of such fuel per annum. They can fulfil their obligation by redeeming RTFCs or buying out.</p> <p>The issue of tradeable RTFCs to suppliers of renewable transport fuel is dependent upon the fuel supplied meeting mandatory sustainability criteria and independent verification.</p> <p>These mandatory sustainability criteria, which are common to both the RED and FQD, include that renewable fuels (with some exceptions) must deliver</p> |

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| | | <p>minimum GHG savings and must not be sourced from areas of high biodiversity, or from high carbon soils (e.g. rainforests or wetlands).</p> <p>Article 7a(2)(b)(i) of the FQD requires that the GHG emissions of fuel used in road vehicles and non-road mobile machinery be accounted for.</p> <p>Articles 3 to 6 of this Order insert or amend definitions which are necessary for the purpose of transposing the requirements in 7a(2)(b)(i) of the FQD. The effect is to expand the scope of the RTFO Order 2007 so that suppliers of fuel for additional end uses are subject to the RTF obligation.</p> <p>Article 8 of this Order expands the definition of “eligible fuel” which may benefit from RTFCs to include renewable transport fuel used for the purposes set out in article 7a(2)(b)(i) of the FQD, where such fuel meets mandatory sustainability criteria including delivering minimum GHG savings.</p> <p>The practical effect of these changes to the RTFO Order 2007 is to require suppliers of fuels used for the purposes set out in article 7a(2)(b)(i) of the FQD to reduce the GHG intensity of the fuels they supply by virtue of the requirement for those suppliers to support the supply of renewable transport fuel that delivers minimum GHG savings.</p> <p>Neither Article 7a(2)(b) or 7a(2)(c) lay down a mandatory requirement that member states must set intermediate targets. Therefore intermediate targets have not been set. We will in part rely on the minimum GHG emission savings for biofuels set in paragraph 4 of the Schedule to the RTFO Order 2007, which are common to both the RED</p> |
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| | | <p>and FQD.</p> <p>The relevant European institutions have yet to define “where purchased” and “origin”. As such, it has not been possible to transpose these requirements at this time. Similarly, the relevant European Institutions have yet to establish an agreed methodology to calculate the contribution of electricity used in electric road vehicles or how to account for carbon capture technology. As such, it has not been possible to transpose these requirements at this time.</p> |
| Article 7a(3) | <p>Article 7a(3) requires that the GHG intensity of biofuels must be accounted for in accordance with the methodology at Article 7d. Article 7d of the FQD sets out the accounting methodology for GHG intensity.</p> <p>In addition, the GHG intensity of other fuels/energy must be accounted for in accordance with the methodology laid down pursuant to article 7a(5); this methodology has yet to be agreed by the relevant European institutions.</p> | <p>The GHG intensity of biofuels are in part accounted for through the RTFO Order 2007, which requires that, in order to count towards meeting a supplier’s RTF obligation, biofuels must meet mandatory sustainability criteria including minimum GHG savings – which are common to both the RED and FQD.</p> <p>The relevant European institutions have yet to agree a GHG accounting methodology for other types of fuel/energy. Further legislation will be brought forward to transpose any agreed accounting methodology in due course.</p> |
| Article 7a(4) | <p>Article 7a(4) provides that Member States may allow suppliers to meet the reduction obligations jointly if they wish.</p> | <p>The RTFO Order 2007 already allows suppliers to group together in meeting their obligation to supply renewable transport fuel through the certificate trading mechanism. This mechanism fulfils the requirement that the UK allows suppliers to meet the intermediate obligation to reduce GHG intensity jointly.</p> |

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| Article 7a(5) | | Transposition is not required, as these paragraphs impose obligations on the European Commission rather than on Member States. |
| Article 7b | Article 7b establishes certain minimum sustainability criteria for biofuels that are used to deliver GHG intensity reductions. | Article 8 of this Order expands the definition of “eligible oil” which may benefit from RTFCs to include renewable transport fuel used for the purposes described in 7a(2)(b)(i) of the FQD. To qualify as “eligible oil” such fuel must meet mandatory sustainability criteria common to both the RED and FQD which include the minimum GHG savings defined in paragraph 4 of the Schedule to the RTFO Order 2007. |
| Article 7c | <p>Article 7c requires Member States to ensure that biofuel suppliers report reliable information related to the sustainability of their biofuels and that those suppliers arrange for an adequate standard of independent audit of the information they report.</p> <p>Article 7c(3) also requires biofuel suppliers to report on additional sustainability information related to measures taken to protect soil, water and air, to restore degraded land and to avoid excessive use of water consumption in areas where water is scarce. The Commission established a list of the required information by issuing Decision 2011/13/EU (OJ No L 9, 13.1.2011, p11).</p> | <p>Article 8 of this Order expands the definition of “eligible oil” which may benefit from RTFCs to include renewable transport fuel used for the purposes described in 7a(2)(b)(i) of the FQD. To qualify as eligible oil such fuel must meet the mandatory sustainability criteria common to both the RED and FQD.</p> <p>Article 13A of the RTFO Order 2007 provides that obligated suppliers and those applying for RTFCs must use a mass balance system in producing information and reporting the sustainability characteristics of biofuels supplied. Further the RTFO Order 2007 places a duty on those applying for RTFCs to provide independent verification in the form of a verifier’s report to ISAE 3000 or equivalent audit standard. This provides assurance of the accuracy of information reported to support the claim that renewable transport fuel supplied meets the mandatory sustainability criteria. Where “additional sustainability information” related to measures taken to protect soil, water and air, to restore degraded land and to avoid excessive use of water consumption in areas</p> |

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| | Suppliers must provide independent audit of the information they report in this respect. | where water is scarce is necessary, an annual verifier's report is required under the RTFO Order 2007. Article 8 of this Order applies these requirements to renewable transport fuel that is used for the purposes described in Article 7a(2)(b)(i) of the FQD. |
| Article 7d | Article 7d and Annex IV set out how the GHG intensity of biofuels must be calculated. | Article 8 of this Order expands the definition of "eligible oil" which may benefit from RTFCs to include renewable transport fuel used for the purposes described in 7a(2)(b)(i) of the FQD. To qualify as eligible oil such fuel must meet the mandatory sustainability criteria common to both the RED and FQD which include the minimum GHG savings defined in paragraph 4 of the Schedule to the RTFO Order 2007. |
| Article 7e(1) | Article 7e(1) provides that the various implementing measures allowed for at various points throughout the FQD shall take full account of the purposes of the Renewable Energy Directive (Directive 2009/28/EC). | This obligation does not require transposing into UK law as it imposes obligations to take full account of certain matters solely for the purpose of legislative processes at an EU level. |
| Article 7e(2) | Article 7e(2) | This paragraph imposes obligations on the Commission rather than on Member States. |