

EXPLANATORY MEMORANDUM TO
THE RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER
2015

2015 No. 534

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 The Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072 – “the 2007 Order”) requires suppliers of fuel for use in road transport and certain other mobile machinery¹ to ensure that a proportion of the fuel they supply comes from renewable sources.

2.2 This instrument:

- a. increases the rate of reward for certain renewable gaseous fuels to reflect their higher energy content relative to an equivalent volume of liquid fuels;
- b. aligns the treatment of a particular type of biodiesel, namely hydrotreated vegetable oil (“HVO”);
- c. updates the powers of the Renewable Transport Fuel Obligations (“RTFO”) Administrator (the Secretary of State) to require information from fuel suppliers; and
- d. provides that the RTFO Administrator can apply rounding when issuing renewable transport fuel certificates (“RTFCs”).

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

None.

4. Legislative Context

4.1 The 2007 Order, as amended by S.I. 2011/2937, transposed the transport elements of the Renewable Energy Directive² (“RED”). It also transposed, in part, the requirements of the Fuel Quality Directive.³ This amending instrument is not part of the transposition of the Directives, but its effect is consistent with their requirements.

¹ Including non-road mobile machinery (including inland waterway vessels when not at sea), agricultural and forestry tractors, and recreational craft when not at sea.

² 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. The 2007 Order was also amended by S.I. 2009/843, S.I. 2011/493 and S.I. 2013/816.

³ Certain provisions in Directive 98/70/EC, relating to the quality of petrol and diesel fuels, as amended by Directive 2009/30/EC, were transposed by the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012, S.I. 2012/3030.

4.2 The effect of the instrument is to increase the number of RTFCs which may be issued in respect of certain renewable gaseous fuels. The 2007 Order currently provides for one certificate to be issued for each kilogram of gaseous renewable fuel or litre of liquid renewable transport fuel. This instrument amends articles 4 and 5 of the 2007 Order so that the number of RTFCs issued reflects the higher energy content of specified renewable gaseous fuels eligible for reward relative to renewable liquid fuels.

4.3 The effect of these amendments is to deem that every kilogram of biomethane and every kilogram of biopropane or biobutane supplied is to be the equivalent of 1.90 litres and 1.75 litres worth of liquid fuel respectively. This ratio is applied to determinations of the amount of relevant hydrocarbon oil and renewable transport fuel respectively. The effect of these amendments to articles 4 and 5 is to increase the reward given in respect of these gaseous renewable transport fuels and also to provide that, should such fuels not meet the mandatory sustainability requirements in the 2007 Order, a supplier's potential obligation would accrue at the same rate as would the amount of fuel potentially eligible for reward.

4.4 This instrument further amends articles 4 and 5 of the 2007 Order to deem HVO, a form of biodiesel, as wholly renewable providing certain sustainability and other criteria are met.

4.5 This instrument amends article 13 of the 2007 Order to update the powers of the Administrator to require information and to remove those no longer required. It also makes express provision enabling the Administrator to apply conventional rounding in issuing RTFCs, to ensure that RTFCs can be issued in whole numbers.

4.6 The provision to support renewable gaseous fuels in a way which reflects their energy content, rather than their mass, is consistent with meeting the UK's renewable energy targets under the RED.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Baroness Kramer, Minister of State for Transport, has made the following statement regarding Human Rights:

“In my view the provisions of the Renewable Transport Fuel Obligations (Amendment) Order 2015 are compatible with the Convention rights.”

7. Policy background

7.1 The 2007 Order places an obligation on suppliers who own “relevant hydrocarbon oil”, and who supply more than a specified minimum amount of the fuel at, or for delivery to, places in the United Kingdom, to show that a percentage of the fuel they supply comes from renewable and sustainable sources. The RTFO operates as a certificate trading scheme allowing suppliers to meet the obligation through the redemption of RTFCs, the price of which is determined by the market. This provides a financial incentive to supply renewable fuels.

7.2 Currently the RTFO rewards renewable gaseous fuels on the basis of the weight of the fuel; at the rate of one RTFC per kilogram. This means that the reward for one kilogram of gaseous fuel is equivalent to that for one litre of liquid biofuel. However, the energy contained in a kilogram of gaseous fuel is generally higher than the energy contained in a litre of liquid fuel. The Government has therefore decided to amend the 2007 Order so that the number of RTFCs issued more closely reflects the higher energy content of renewable gaseous fuels eligible for reward. The amendments to the 2007 Order deliver that policy by providing that biomethane supplied may benefit from 1.9 RTFCs per kilogram, and biopropane or biobutane 1.75 RTFCs per kilogram.

7.3 The Government has decided to amend the 2007 Order to treat HVO as wholly renewable where the fuel supplied meets the sustainability requirements in the 2007 Order. This is in line with the Government’s understanding of the treatment of HVO under the RED and is consistent with the treatment of HVO in other EU Member States.

7.4 As part of the Red Tape Challenge, the Government has considered the powers of the RTFO Administrator to obtain information. Article 13 of the 2007 Order enables the Administrator to require a transport fuel supplier to provide information. It also provided an indicative list in paragraph (4) as to the types of information that might be requested. This indicative list was superseded by amendments made to the 2007 Order in 2011⁴. This instrument amends the 2007 Order to remove the powers which are no longer required.

7.5 RTFCs are issued for each whole litre of renewable fuel. The amendment to the definition of ‘notional volume’ clarifies that the volume is rounded up or down to the appropriate litre in calculating the number of certificates to be issued.

Consolidation

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

8. Consultation outcome

8.1 The core proposals covering incentives for gaseous fuels and the treatment of HVO were considered in a consultation and Call for Evidence on advanced fuels which ran between 12th December 2013 and 21st February 2014⁵, and discussed in stakeholder

⁴ By the Renewable Transport Fuel Obligations (Amendment) Order 2011, S.I. 2011/2937.

⁵ A Post-Implementation Review of the Renewable Transport Fuels Obligation also ran concurrently from 16th December 2013 to 7th February 2014.

workshops. In responding to the Advanced Fuels Call for Evidence and consultation on the Post-Implementation Review of the Renewable Transport Fuels Obligation⁶ in April 2014, the Government explained that it would consult on amendments to the 2007 Order to reward renewable gaseous fuels in a way which reflects their higher energy content when compared to liquid biofuels, and to align the treatment of HVO and fatty-acid-methyl-ester, another type of biodiesel, under the RTFO.

8.2 A targeted follow up consultation on the proposed amendments to the 2007 Order ran between 23rd July and 27th August 2014, and was made available on the Government's website⁷. Twenty eight organisations including industry and representative bodies and others responded to the targeted consultation in the summer of 2014. The majority of respondents agreed with the proposals to amend the 2007 Order.

8.3 The prevailing view from respondents to the consultation was that the proposed methodology for calculating the number of RTFCs awarded to renewable gaseous fuels needed further consideration to ensure that it would be consistent, robust and would not lead to errors in the future. Respondents proposed several options for amending the methodology. Following analysis of these options the baseline has been adjusted with reference to a more recent data set, which better reflects the current fuel mix. This remains consistent with the required policy objectives in amending the 2007 Order. Further this option was supported by a number of key stakeholders.

9. Guidance

Further to a consultation on amendments to its guidance the Department for Transport has revised the guidance covering the RTFO to take account of the changes made by this instrument. This revised guidance will be published on the Government's website⁸ in advance of the Order coming into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies and public sector bodies of the provisions related to the deeming of HVO and to facilitate the effective administration of the RTFO is expected to be nil. These changes do not affect the amount or the mix of fuels supplied under the RTFO. Nor do they affect significantly how suppliers interact with the scheme.

10.2 The Government response following the consultation on "Renewable Transport Fuel Obligation: proposed changes for 2015" published on 10th November 2014⁹ includes a revised cost benefit analysis.

⁶ Response published at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307129/joint-government-response.pdf.

⁷ Consultation published at <https://www.gov.uk/government/consultations/renewable-transport-fuel-obligation-proposed-changes-for-2015>.

⁸ <https://www.gov.uk/government/publications/rtfo-guidance>.

⁹ Response published at <https://www.gov.uk/government/consultations/renewable-transport-fuel-obligation-proposed-changes-for-2015>.

10.3 No impact assessment has been prepared for this instrument because it is a tax measure¹⁰. A cost benefit analysis has been prepared which assessed the impact of the proposal to support renewable gaseous fuels in a way which reflects their energy content. In the central scenario, the Department expects this will lead to a small reduction in greenhouse gas emissions, estimated to be worth around £2.65m in the period 2015-20. However, there is significant uncertainty around the uptake of renewable gaseous fuels and also around which fuels they will replace, so that the actual benefits could be much higher, but could also be negative, as is illustrated in the sensitivity tests in the cost benefit analysis.

11. Regulating small business

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 RTFO transport fuel suppliers who supply less than 450,000 litres of relevant hydrocarbon oil in an obligation year.

12. Monitoring & review

12.1 The 2007 Order and this instrument do not include the standard form review clause because it is a tax measure and so falls outside the scope of the Government's policy on sunseting and review of regulations.

12.2 A review clause specific to the implementation of the Renewable Energy Directive has been included in article 4A of the 2007 Order¹¹.

12.3 Further changes to the 2007 Order will be needed to meet the UK's transport target, which requires that ten per cent of transport energy is derived from renewable sources by 2020. The Department is continuing to consult with a wide range of experts from industry and environmental non-government organisations on how the UK can best to do this, and what support is needed to encourage low carbon fuels beyond 2020. The Department will be carrying out a further full public consultation on possible options, once negotiations on measures to address indirect land use change have been agreed at EU level.

12.4 Review of the measures in this instrument will in due course take place as part of ongoing policy development and stakeholder consultation.

13. Contact

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.

¹⁰ See paragraph 1.1.6 of the Better Regulation Framework Manual.

¹¹ Inserted by the Renewable Transport Fuel Obligations (Amendment) Order 2011, S.I. 2011/2937.