EXPLANATORY MEMORANDUM TO

THE RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER 2020

2020 No. 1541

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.

2. Purpose of the instrument

2.1 The Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) ("the RTFO Order") sets annual obligations on fuel suppliers which can be met by supplying renewable fuel, by purchasing renewable transport fuel certificates ("RTFCs")[1] from other suppliers, or by paying a sum to the Administrator (i.e. the Secretary of State for Transport). The sum paid to the Administrator is calculated in accordance with the provisions of the RTFO Order ("the buy-out amount"). This instrument increases a multiplier used in a step of that calculation and will make it more expensive for suppliers to buy out of their obligations in the future, should they choose to do so.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 198(3) of the Energy Act 2004) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 Rachel Maclean MP, Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Renewable Transport Fuel Obligations (Amendment) Order 2020 are compatible with the Convention rights."

[1] RTFCs are issued to suppliers of sustainable renewable transport fuel

6. Legislative Context

6.1 The RTFO Order commenced on 15th April 2008 and delivers reductions in greenhouse gas ("GHG") emissions from fuel used for transport purposes by obligating the supply of renewable fuels. The scheme works by setting annual obligations on suppliers, which can be met by supplying renewable fuel, by purchasing RTFCs from other suppliers, or by paying a sum to the Administrator (i.e. the Secretary of State for Transport), which is referred to as the buy-out amount.

6.2 Since 2019 obligated fuel suppliers have had to meet two obligations to supply renewable fuel under the RTFO Order in each annual 'obligation period': the 'main obligation' (defined in article 4(6)) and the 'development fuel target' (defined in article 4(5)). Suppliers can discharge either of these obligations by paying the buy-out amount in accordance with the calculation in article 21(7) of the RTFO Order.

6.3 This instrument amends "Step 4" of that calculation which applies a multiplier (or "buy-out price") to any shortfall in a supplier's main obligation for a given obligation period. It increases that multiplier from £0.30 (per litre) to £0.50 (per litre) for obligation periods beginning on or after 1st January 2021.

6.4 No amendments are being made to the other steps of the calculation in article 21(7).

6.5 Prior to the laying of this instrument, this change to the RTFO Order was consulted on in accordance with section 124(4) of the 2004 Act.

6.6 This instrument also makes a consequential amendment to the civil penalty provisions in article 23 of the RTFO Order. This is to ensure the amount of any civil penalty payable in accordance with that article is not affected by the above change to the buy-out amount.

7. Policy background

What is being done and why?

7.1 Renewable fuels supported under the RTFO Order have successfully reduced GHG emissions from transport over the last 12 years and are contributing a third of the GHG savings required for the UK's current transport carbon budget. A carbon budget places a restriction on the total amount of greenhouse gases the UK can emit over a 5-year period. Where GHG emissions rise in one sector, the UK will have to achieve corresponding falls in another. In 2018, renewable fuels reduced GHG emissions from transport by over 3.5 million tonnes of carbon dioxide equivalent[2] (CO_2e).

7.2 The cost of renewable fuels, whilst volatile, has been generally increasing in recent years, primarily due to increasing demand for these fuels across the EU. Although 2020 data is somewhat unclear due to the impact of the Covid-19 lockdown, emerging evidence indicates that the trends seen prior to the lockdown are now being resumed. In Autumn 2019, the cost differential between renewable fuels and the fossil fuels they replace was approaching a level at which it would cost less to buy-out an obligation under the RTFO rather than continuing to supply renewable fuels. In practice this decision is not a simple one and will depend on contracts each fuel supplier has in place, the strategic decisions they make, and the impact of other legislation. In particular the Motor Fuel (Road Vehicle and Non-Road Mobile

[2] Common scale for measuring the climate effects of different gases

Machinery) Greenhouse Gas Emissions Regulations 2012 (“the GHG Regulations”) provide additional incentives for suppliers to reduce the GHG impact of transport fuels by supplying renewable alternatives, but these incentives will cease to have effect after 31st December 2020. This is will increase the likelihood of buy-out in the near future.

7.3 Should fuel suppliers choose to buy-out of their main obligations under the RTFO Order, this would result in lost GHG emissions savings and a gap in UK carbon budgets as well as undermining support for the UK biofuels industry. If UK demand for renewable fuels drops significantly due to buy-out by suppliers, these fuel producers will risk losing a significant market for their products. Reduced certainty of a market will also risk future investments in this sector.

7.4 Further detail on the GHG and cost impacts of this change, and the effects of inflation and the GHG Regulations on the incentives under the RTFO Order is set out in the accompanying cost benefit analysis https://www.gov.uk/government/consultations/increasing-the-renewable-transport-fuel-obligation-buy-out-price-for-biofuels-suppliers/outcome/increasing-the-rtfo-buy-out-price-to-ensure-continued-greenhouse-gas-savings-outcome-summary-of-responses-and-cost-benefit-analysis#annex

7.5 By increasing the main obligation buy-out price in the RTFO Order, the maximum incentive offered by the scheme is increased, and the risk of fuel suppliers choosing to buy-out of the obligations is decreased. This helps to ensure the continued supply of biofuels and other renewable fuels, and the GHG savings they deliver. This change will only apply to main obligation shortfalls arising in respect of obligation periods beginning on or after 1st January 2021.

7.6 Article 23 of the RTFO sets out how civil penalties will be applied and calculated for various contraventions of the RTFO Order, in accordance with section 129 of the Energy Act 2004. Paragraphs (7) and (8) of that article provide that in certain circumstances, the buy-out calculation in article 21(7) will be relevant to the determination of the maximum amount of any penalty under section 129(3) of the Energy Act 2004. The civil penalty provisions are rarely invoked so no change to the calculation of the maximum penalty is intended at this time. It is planned to consider this matter as part of other changes to the RTFO Order that will be consulted on in due course. A consequential change has therefore been made to article 23, which ensures amounts payable under the civil penalty provisions in article 23 of the RTFO Order are unaffected by the amendments made by this SI.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

10.1 A public consultation on increasing the buy-out price to the main obligation was held for two weeks from 28th July 2020 to 11th August 2020[3]. The consultation length was influenced by the urgency of making this amendment in time for the commencement of the next obligation period on 1st January 2021. The potential for the change had already been discussed informally with fuel producers and suppliers, who were the only stakeholders with a significant interest in the proposal. No stakeholders raised concerns that the consultation length would hinder their ability to respond effectively.

10.2 The Department for Transport engaged with officials in the Devolved Administrations before the launch of the consultation.

10.3 The consultation set out two options: to increase the buy-out price for the main obligation from £0.30 per litre to either £0.40 per litre or to £0.50 per litre (the Government's preferred option).

10.4 The consultation was open to all. In total, the Government received 61 responses to the consultation. Of these responses the majority (45) agreed with the Government's preferred option to increase the buy-out price to the main obligation from £0.30 per litre to £0.50 per litre. Four of the five obligated suppliers, including some members of trade associations, who responded to this consultation agreed that the buy-out price to the main obligation should be increased to £0.50 per litre.

10.5 By increasing the potential level of support to £0.50 per litre it allows for future fuel market cost fluctuations in the scheme and provides greater certainty of delivering continued GHG savings in transport. It also provides certainty to industry that investments in UK biofuel facilities will have a market. This will be necessary for continued decarbonisation as we progress on the path to net zero.

10.6 The Department's response to the consultation is available https://www.gov.uk/government/consultations/increasing-the-renewable-transport-fuel-obligation-buy-out-price-for-biofuels-suppliers/outcome/increasing-the-rtfo-buy-out-price-to-ensure-continued-greenhouse-gas-savings-outcome-summary-of-responses-and-cost-benefit-analysis.

11. Guidance

11.1 As the Administrator, the Department for Transport will publish an updated version of its guidance on the RTFO Order for suppliers to include guidance on the buy-out price provisions as amended by this instrument.

12. Impact

12.1 The impact on business of complying with the above amendment to the RTFO Order is estimated to be up to £20,948m in the period 2021-2030. This is the maximum cost which would be incurred if all suppliers opted to buy-out of the main obligation in each obligation period from 2021 to 2030. It is important to note that this cost is likely to be passed through to fuel consumers with a maximum potential pump price impact estimated at £0.02 per litre.

12.2 However, costs could be as low as zero if suppliers do not choose to buy-out of their main obligation and the cost of biofuels does not exceed the original buy-out price for

[3] Consultation and cost benefit analysis

the main obligation of £0.30 per litre. The market volatility of fuel prices creates substantial uncertainty; this is reflected in the range of scenarios presented within the cost benefit analysis.

12.3 There is no, or no significant, impact on the public sector.

12.4 A cost benefit analysis ("CBA") 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 firms employing up to 50 people, article 4(2) of the RTFO Order exempts transport fuel suppliers who supply less than 450,000 litres of fuel for road transport and non-road mobile machinery ("NRMM") in an obligation year from the obligation to supply renewable fuels. The renewable fuel obligation is also reduced for suppliers of less than 10 million litres of road and NRMM fuel (see article 4(6B)(b) of the RTFO Order).

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 provision 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 regulatory provision made by this instrument will be successful if it, alongside the other provisions in the RTFO order, enables renewable fuels to contribute to the UK's future Carbon Budgets and builds a platform for continued investment to develop sustainable fuels for the transport sector.

15. Contact

15.1 Charlotte Stead at the Department for Transport: 07971 145 177, charlotte.stead@dft.gov.uk can answer any queries regarding the 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.

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