

**Targeted Consultation on Proposed
Amendments to the Biofuel (Labelling)
Regulations 2004**

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1. Foreword

Your comments are invited on the attached proposed amendments to the Biofuel (Labelling) Regulations 2004. These regulations will transpose Article 21(1) of Directive 2009/28/EC, the “Renewable Energy Directive” (RED).

This article requires that where transport fuels (for all modes) contain more than 10% biofuel by volume, this should be indicated at sales points. Your comments are also invited on the accompanying Impact Assessment.

2. Executive Summary

Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC¹, commonly known as the Renewable Energy Directive (RED), was adopted on 23 April 2009. The RED requires Member States to ensure that 10% of the energy used in transport is from renewable sources in 2020, as well as requiring the introduction of mandatory sustainability criteria for biofuels. Member States were required to transpose the RED by 5 December 2010.

The attached draft Regulations further amend the Biofuel (Labelling) Regulations 2004 (S.I. 2004/3349 as amended by SIs 2005/3355 and 2009/3277), so as to implement Article 21(1) of the Renewable Energy Directive 2009/28/EC (RED). This requires Member States to ensure that where transport fuels contain greater than 10% biofuel by volume this must be indicated at the sales point.

As part of the Government’s desire to ensure legislation is accessible and easy to understand the Biofuels (Labelling) Regulations 2004, its past amending Regulations (SI 2005/3355 and 2009/3277) and the proposed draft Regulations (attached at Annex D) could be consolidated into one piece of legislation. Please see question 15 below if you have any comments on this.

Use of biofuels is expected to increase in future years as suppliers of transport fuels respond to European and domestic measures

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:en:PDF>

aimed at increasing the use of renewable fuels and reducing greenhouse gas emissions.

Implementation of Article 21(1) of the Directive will help to inform consumers whose vehicles may not be suited for higher levels of biofuel. Furthermore, it will allow consumers with compatible vehicles to identify fuels with high biofuel content more easily.

The draft Regulations require that for any transport fuel containing more than 10% by volume of biofuel, the words: "This fuel contains more than 10% biofuel" must be either prominently displayed on any dispensing apparatus from which such fuel is sold, or printed on any delivery note relating to such fuel where the fuel is delivered in bulk.

These regulations will be in addition to any guidelines and definitions from HM Revenue and Customs, which will also need to be complied with when selling fuel over the duty point.

3. How to Respond

The consultation period began on 12th September 2011 and will run until 10th October 2011, please ensure that your response reaches us by that date. If you would like further copies of this consultation document it can be found at on the Department for Transport website or you can contact Marina Skrinar (contact details below) if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a representative organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex C. If you have any suggestions of others who may wish to be involved in this process please contact us.

4. Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

5. The Proposal

The draft Regulations transpose Article 21(1) of the Renewable Energy Directive 2009/28/EC (RED) which requires Member States to ensure that where transport fuels contain more than 10% by volume of biofuel, this should be indicated at the sales point.

The drafting of the Directive refers only to mineral-derived fuel blends. In practice, this means that the labelling is strictly only required under EU law when biofuel is blended with mineral-derived fuel and would not, therefore, apply to sales of pure biofuel. Not applying the label to pure biofuel would seem illogical. We propose to extend the regulation slightly so that it would also apply to pure biofuel. As demonstrated in the Impact Assessment we predict that making this modest extension will not cause any additional costs to be incurred.

- Question 1: Do you agree that the labelling requirement should extend to pure biofuel? Will this impose additional cost on your business?

5.1. Increasing volume of biofuels

Fuel suppliers are increasing the proportion of biofuel in petrol and diesel in response to a number of statutory requirements aimed at increasing renewable energy use and reducing greenhouse gas emissions. In the UK the Renewable Transport Fuel Obligation already requires suppliers to provide 5% of road transport fuels from renewable sources by 2013/14. The Renewable Energy Directive requires Member States to ensure a 10% uptake of renewable energy in transport by 2020 and the Fuel Quality Directive (2009/30/EC) requires fuel suppliers to deliver a 6% reduction in the life cycle greenhouse gas emissions of their fuels by 2020. All of these requirements are expected to be mainly met through increased use of biofuels.

Because the properties of the main biofuels – bioethanol and biodiesel - differ from petrol and diesel, there is a limit on the amount of biofuel that can be added to these fuels if they are to remain compatible with most existing vehicles. Thus industry fuel standards for petrol and diesel, coded as EN 228 and EN 590 respectively, currently permit up to 5% bioethanol in petrol and up to 7% biodiesel in diesel. Accordingly, the Biofuel (Labelling) Regulations 2004, as amended to date, require that where fuel with more than 5% bioethanol or 7% biodiesel content is sold or offered for sale at a filling station, the dispenser must be labelled “Not suitable for all vehicles: consult vehicle manufacturer before use”.

Article 21(1) of the Renewable Energy Directive anticipates the supply of higher volume blends of biofuels, requiring that where

the biofuel content exceeds 10% by volume this must be indicated at the sales point. This is to alert consumers to the proportion of biofuel in the fuel in case they either wish to seek out such higher biofuel blends or in case their vehicles are not compatible with this level of biofuel and its use would be likely to jeopardise their manufacturer's warranty.

- Question 2: How many companies do you estimate are supplying fuels containing more than 10% biofuel? How is this supplied – at filling stations or in bulk?
- Question 3: How many companies do you estimate are supplying fuels which are 100% biofuel (e.g. B100 or E100)? How is this supplied – at filling stations or in bulk?
- Question 4: How do you see future demand / supply for fuels containing more than 10% biofuel developing?

5.2. Proposed Wording

The Department understands that transport fuel is sold either through dispensers located at filling stations or elsewhere by bulk supplies which are accompanied by a "delivery note". Accordingly, the draft Regulations amend the existing Biofuel (Labelling) Regulations 2004, as amended, by requiring that for any transport fuel containing more than 10% by volume of biofuel, the words:

"This fuel contains more than 10% biofuel"

must be either:

- a) prominently displayed on any dispensing apparatus from which such fuel is sold or offered for sale, or
- b) prominently printed on any delivery note relating to such fuel where the fuel is delivered in bulk.

The first requirement will thus apply where such fuel is sold from any dispenser including those which are not located at filling stations. This would include, for instance, dispensers at factories or farm sites if that is the point of sale. In the case of fuel sold through dispensers at filling stations the first requirement will be additional to the existing labelling requirement which will remain in place.

The second requirement may apply for example to bulk supplies for use by construction and agricultural vehicles, boats and railway engines where the fuel is not sold via a dispenser.

In the case of fuel sold through dispensers not located at filling stations and in the case of bulk supplies made using solely a delivery note there is no current requirement for use of the existing label “Not suitable for all vehicles; consult vehicle manufacturer before use”. The draft Regulations do not change this position.

- Question 5: Will the wording be easily understood by all groups of consumers? If not, do you have any evidence on what its impact will be and possible mitigation measures?
- Question 6: Are there any forms of “sales point” for transport fuels not covered by the Regulations?
- Question 7: The existing requirement for the wording “Not suitable for all vehicles: consult vehicle manufacturer before use” to be displayed on dispensers at filling stations where more than 5% bioethanol in petrol or 7% biodiesel is sold, will remain. Do you think this wording should also be required on dispensers not located at filling stations and/or on delivery notes (i.e. in addition to the advice required where biofuels exceed 10% by volume)?
- Question 8: Will the requirements as to the positioning and prominence of the text disadvantage any groups of consumers? If so, do you have any evidence on what its impact will be?
- Question 9: **For suppliers of fuels containing more than 10% biofuel:** What changes will be necessary to your company’s processes (e.g. to the wording on delivery notes and/or dispensers) as a result of the Regulations? We have tried to estimate the costs of these changes in the Impact Assessment, do you think our estimates are correct?

5.3. [Overview of likely impact](#)

It is not anticipated that the impact on fuel suppliers will be significant though further information from suppliers on the likely logistical and financial impacts on their operations would be

welcomed. Benefits are likely to arise mainly through the possibilities for avoidance of engine damage through use of unsuitable fuels, and subsequent litigation. Available information is included in the Impact Assessment at Annex B.

- Question 10: Do you think that the assumptions and the cost and benefit estimates in the Impact Assessment appear realistic?
- Question 11: Do you think the assessment of the effect of the Regulations on competition and small businesses looks reasonable?
- Question 12: Will our proposals lead to differential impacts on people with protected characteristics²? Do you have any information or evidence to provide on this?

5.4. General Questions

- Question 13: Do you foresee any unintended consequences of adopting this element of the Directive?
- Question 14: Do you have any other comments on the Regulations?
- Question 15: Are there any other topics on which you would wish to see further guidance?
- Question 16: As part of the Government's desire to ensure legislation is accessible and easy to understand the Biofuels (Labelling) Regulations 2004, its past amending Regulations (SI 2005/3355 and 2009/3277) and the proposed draft Regulations (attached at Annex D) could be consolidated into one piece of legislation. Do you support this proposal? If not, could you say why?

In accordance with government policy on better regulation, this requirement will undergo a review within no more than five years of implementation.

² Protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

6. Consultation Questions

The Proposal

1. Do you agree that the labelling requirement should extend to pure biofuel? Will this impose additional cost on your business?

Increasing volume of biofuels

2. How many companies do you estimate are supplying fuels containing more than 10% biofuel? How is this supplied – at filling stations or in bulk?
3. How many companies do you estimate are supplying fuels which are 100% biofuel (e.g. B100 or E100)? How is this supplied – at filling stations or in bulk?
4. How do you see future demand / supply for fuels containing more than 10% biofuel developing?

Proposed Wording

5. Will the wording be easily understood by all groups of consumers? If not, do you have any evidence on what its impact will be and possible mitigation measures?
6. Are there any forms of “sales point” for transport fuels not covered by the Regulations?
7. The existing requirement for the wording “Not suitable for all vehicles: consult vehicle manufacturer before use” to be displayed on dispensers at filling stations where more than 5% bioethanol in petrol or 7% biodiesel is sold, will remain. Do you think this wording should also be required on dispensers not located at filling stations and/or on delivery notes (i.e. in addition to the advice required where biofuels exceed 10% by volume)?
8. Will the requirements as to the positioning and prominence of the text disadvantage any groups of consumers? If so, do you have any evidence on what its impact will be?
9. **For suppliers of fuels containing more than 10% biofuel:** What changes will be necessary to your company’s processes (e.g. to the wording on delivery notes and/or dispensers) as a result of the Regulations? We have tried to estimate the costs of these changes in the Impact Assessment do you think our estimates are correct?

Burdens

10. Do you think that the assumptions and the cost and benefit estimates in the Impact Assessment appear realistic?
11. Do you think the assessment of the effect of the Regulations on competition and small businesses looks reasonable?
12. Will our proposals lead to differential impacts on people with protected characteristics³? Do you have any information or evidence to provide on this?

General Questions

13. Do you foresee any unintended consequences of adopting this element of the directive?
14. Do you have any other comments on the Regulations?
15. Are there any other topics on which you would wish to see further guidance?
16. As part of the Government's desire to ensure legislation is accessible and easy to understand the Biofuels (Labelling) Regulations 2004, its past amending Regulations (SI 2005/3355 and 2009/3277) and the proposed draft Regulations (attached at Annex D) could be consolidated into one piece of legislation. Do you support this proposal? If not, could you say why?

7. What will happen next

A summary of responses, including the next steps will be published on the Department's website.

We expect the legislation will come into force on 24th February 2012 though this is subject to Parliamentary process.

8. Question and Answer Brief

Below is a list of frequently asked questions about these proposals. If you still have questions after you have read this section please contact:

³ Protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation

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Q1: What is the purpose of the proposal?

A1: Against a background of increases in the use of biofuels in transport, the Regulations will require suppliers to inform users where higher volumes of biofuels are present in transport fuels.

Q2: Will this information need to appear on filling station dispensers?

A2: Yes, if relevant. However, industry standards for road diesel currently recommend a maximum of 7% biodiesel and a maximum of 5% bioethanol in petrol and so dispensers for such products will not need to carry this information. It will need to appear on filling station dispensers where suppliers provide high volume biofuel products (e.g. E85).

Q3: What about the existing requirement for labelling filling station dispensers “Not suitable for all vehicles: consult vehicle manufacturer before use”?

A3: This requirement will continue to apply in addition to the new label.

Q4: Which fuel suppliers will be affected?

A4: Any supplier selling fuel with greater than 10% biofuel content for transport use. This might include roadside filling stations, supermarkets, factories, construction sites, farms or transport depots.

Q5: Will road vehicles be compatible with these levels of biofuels?

A5: Some vehicles are compatible with high levels of biofuels while others are not. However, fuel for road vehicles is the subject of industry fuel standards which are agreed by the motor and fuel supply industries. These currently restrict diesel to 7% biodiesel content and petrol to 5% bioethanol content.

Q6: What are the costs of the Regulations?

A6: Costs will be incurred by suppliers for printing and/or reprinting and supply of labels and delivery notes to comply with the wording in the Regulations. The Department is seeking information from consultees on the extent of the change and the associated costs necessary to comply with the Regulations. It is not anticipated, however, that costs will exceed a few thousand pounds across the UK as a whole.

Q7: What are the benefits of the proposal?

A7: The benefits are twofold. Firstly to inform users of the presence of higher volumes of biofuels which may not be compatible with their vehicles/transport modes. Secondly, to advise users whose vehicles are compatible with high levels of biofuels of the availability of the product.

Q8: What is a delivery note?

A8: This is likely to be the sales invoice which is provided where fuels are delivered in bulk. The delivery note would need to carry the required information in all cases where the fuel supplied contains more than 10% biofuel.

Further background information can be found in the Impact Assessment (Annex B).

9. Impact Assessment

The Impact Assessment can be found at Annex B. When responding to the consultation, please comment on the analysis of costs and benefits, giving supporting evidence wherever possible.

Please also suggest any alternative methods for reaching the objective and highlight any possible unintended consequences of the policy, and practical enforcement or implementation issues.

Suppliers of fuels containing greater than 10% biofuel are specifically requested to provide information on the logistical and cost implications they foresee.

10. The Consultation criteria

This is a targeted consultation rather than a formal written consultation subject to the Government's Code of Practice on

Consultation. However, this consultation is being run in line with the principles set out in this Code of Practice which can be found at:

<http://www.bis.gov.uk/files/file47158.pdf>

If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

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