

**Consultation on the implementation of the
transport elements of the Renewable Energy
Directive**

March 2011
DfT-2011-05

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1. Foreword

Directive 2009/28/EC on the promotion of 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 UK already has a scheme in place that requires fossil fuel suppliers to supply specified volumes of biofuel: the Renewable Transport Fuel Obligation (RTFO)². Under that scheme, suppliers may be required to submit information on the environmental performance of the biofuels they supply. The most expedient way of transposing the RED is through amendment of the RTFO. This consultation seeks views on proposed amendments to the scheme in order to implement the RED and changes that aim to improve administration of the scheme.

Consultees may also wish to be aware of a consultation on the greenhouse gas saving (GHG) requirements of the Fuel Quality Directive³, which was published in parallel to this consultation and can be found on the Department's website:

<http://www.dft.gov.uk/consultations/>

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

² 'The Renewable Transport Fuel Obligation' refers to the scheme established by the Renewable Transport Fuel Obligations Order 2007 (SI no 2007/3072) as amended by the Finance Act 2008 and the Renewable Transport Fuel Obligations (Amendment) Order 2009 (SI no 2009/843)

³ Directive 98/70/EC as most recently amended by Directive 2009/30/EC:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0088:0113:EN:PDF>

2. Executive summary

The RED requires the UK to ensure that 15% of the energy used in electricity, transport, heating and cooling is from renewable sources in 2020. The RED also requires all Member States to ensure that the share of energy from renewable sources in all forms of transport is at least 10% in 2020.

Although the RED does not require Member States to place renewable energy obligations (such as the current RTFO) on individual suppliers, Member States are required to introduce measures to meet the indicative trajectories set in the RED for all renewable energy up to 2020. The Government wishes to ensure that the transport target is met by continuing to obligate fuel suppliers to supply renewable energy for transport through the RTFO. The UK's National Action Plan⁴ set out a central scenario for meeting the RED renewable energy targets and showed that for transport the majority of the target is expected to be met through the increased supply of biofuels with some contribution from renewable electricity.

In addition to the transport renewable energy target there are two other key requirements in the RED that apply if biofuels are to be counted towards meeting the RED target and/or a national renewable energy obligation (such as the RTFO):

- Biofuels are required to meet certain sustainability criteria. These criteria address issues such as minimum greenhouse gas savings and ensure that biofuels are not produced from areas of high carbon stock or high biodiversity.
- Member States must count the contribution made by biofuels produced from wastes, residues, non-food cellulosic material and ligno-cellulosic material as double the contribution of biofuels from other sources.

⁴ The UK's National Action Plan was published in response to the requirement of Article 4 of the RED. The Plan is available at: http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/renewable/ored/uk_action_plan/uk_action_plan.aspx

This consultation also proposes a number of changes to the current RTFO to align the scheme with other requirements of the RED and our proposed implementation of the sister Fuel Quality Directive, as well as a number of changes not required by the RED that will simplify the administration of the RTFO.

3. The Fuel Quality Directive

The Fuel Quality Directive (FQD) introduces a requirement for fuel and energy suppliers (principally those providing fuel and energy in land-based transport, and inland water vessels and recreational craft when not at sea) to reduce the lifecycle GHG intensity of the fuel/energy they supply by 6% per unit of energy by 2020. This reduction target is relative to the EU average lifecycle GHG emissions from fossil fuels in 2010 (to be determined by the European Commission).

Suppliers must report on their performance (the total volume of each type of fuel/energy supplied and the associated lifecycle GHG intensity) on an annual basis.

We expect the requirements of the FQD to be predominantly delivered through the supply of the same sustainable biofuel that will simultaneously make up the majority of the renewable energy required to meet the transport target imposed by the RED.

We propose to implement the FQD, in part, through the amended RTFO. Full details of the requirements of the FQD and proposals to implement it can be found in the separate 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 sustainability criteria for biofuels.

4. RED Stakeholder Advisory Group

The Department established a Stakeholder Advisory Group in 2009 to assist in the implementation of the RED. This group was made up of representatives from the fossil and biofuel industries, environmental bodies and other interested parties. The main purpose of the Group was to consider how best the RED might be

implemented and the suitability of modifying the RTFO scheme. A number of proposals were discussed and the views expressed have been taken into consideration as part of the process of formulating this consultation. The papers and minutes from the group are available at:

<http://www.dft.gov.uk/pgr/roads/environment/renewable-fuels/red/>

5. Geographical coverage

This consultation, and the proposed amendments to the RTFO Order 2007 (“the RTFO Order”), applies across the whole of the United Kingdom.

6. Who should read this consultation?

This consultation will be of particular interest if you are:

- a supplier of fossil fuel, including those who supply fuels not currently covered by the RTFO, or who currently fall below the minimum threshold in the RTFO;
- a supplier of biofuel, including both non-obligated account holders under the existing RTFO and those entities that don't participate in the current RTFO;
- involved in growing or producing feedstocks for biofuels;
- involved in converting feedstocks into biofuels;
- involved in environmental or social standards for biofuels;
- a body or individual with an interest in biofuels;
- a body or individual with an interest in environmental and social concerns related to use and production of biofuels.

This consultation may be of interest to other parties and all are welcome to comment on our proposals.

7. How to respond

The consultation period began on 10 March 2011 and will run until 2 June 2011. Please ensure that your response reaches us by 2 June 2011. If you would like further copies of this consultation document it can be found at:

<http://www.dft.gov.uk/consultations/open/>

Alternatively, you can contact Michael Wright 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 larger 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 A. If you have any suggestions of others who may wish to be involved in this process please contact us.

7.1. Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and 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 Code of Practice, 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 DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

8. Biofuel labelling

Article 21(1) of the RED requires Member States to ensure that information is provided at the point of sale of biofuel blends (i.e., petrol/diesel containing biofuel) when the proportion of biofuel exceeds 10% by volume.

Biofuel labelling requirements are set out in the Biofuels (Labelling) Regulations 2004 (as amended)⁵. It is anticipated that Article 21(1) will be implemented through amendment of these regulations. A separate consultation regarding implementation of Article 21(1) will be launched shortly.

⁵ The Biofuel (Labelling) Regulations 2004, as amended by the Biofuel (Labelling) (Amendment) Regulations 2009.

9. Biofuels going forward

For biofuels to be beneficial in contributing towards reducing climate change and improving energy security, they must provide a sustainable alternative to fossil fuels.

We recognise that there are legitimate concerns about the sustainability of some biofuels. The environmental benefits of biofuels can only be realised if they are produced in a sustainable way, i.e. that they meet minimum economic, social and environmental criteria including that they deliver real GHG savings. Biofuels are a continually developing technology; there is still scientific uncertainty about the sustainability of biofuels and their wider socio-economic impacts and we are aware that there are some unsustainable biofuels that deliver no environmental benefit.

While both the RED and FQD include sustainability criteria that must be met for most⁶ biofuels, these criteria only refer to direct impacts such as emissions from fertilizers used in the production of the biofuel, and some immediate biodiversity impacts. They do not reflect indirect land use change (ILUC) concerns, which can arise when the cultivation of biofuel feedstocks on existing agricultural land results in the displacement of production on to previously uncultivated land. ILUC is a particular problem if the previously uncultivated land has high carbon stocks such as rainforest or is of high biodiversity value. These indirect effects, which are not yet fully understood, may result in the carbon saving from some biofuels being less than originally thought (or even, in some cases, having a greater carbon footprint than the fossil fuel they are replacing), once accounted for in a full lifecycle GHG analysis.

Work is ongoing, in the UK, the EU and more widely, to better understand indirect sustainability effects. It is important that we establish strong sustainability criteria and robust lifecycle carbon analysis to ensure first that biofuels deliver real greenhouse gas reductions and second, do not cause unacceptable environmental side effects in the process. The European Commission reported on the issue of ILUC in December 2010⁷ and is now undertaking

⁶ Biofuels produced from waste and residues (other than agricultural, aquaculture, fisheries and forestry residues) need only fulfil the criteria that the GHG savings shall be at least 35 % as they are already considered to be sustainable by virtue of the fact that they are not derived from crops.

⁷ http://ec.europa.eu/energy/renewables/biofuels/land_use_change_en.htm

further assessment of whether and how to address ILUC through European legislation. The UK Government will continue to work with the European Commission on this issue.

In addition to concerns regarding the sustainability of biofuels, we must also consider where biofuels would be best deployed across the transport sector. We are clear that sustainable biofuels do have a role in our efforts to tackle climate change, particularly where there is no clear viable alternative fuel, as with aviation and heavy goods vehicles. However, as we implement the RED and FQD, we need to make sure that both the fuel distribution chain and the transport fleet are ready for the volume of biofuel use anticipated, taking into account the potential use in aviation and HGVs, and also that systems or measures are in place to ensure that they can be delivered at the least cost.

In April 2010, the Department commissioned work to determine how best biofuels should be deployed across all transport modes. In addition, the Government tasked the Committee on Climate Change to review current targets for renewable energy. These pieces of work are due to conclude over the coming months. As we are still gathering evidence about the best use across modes, it would not be sensible to assume any particular level of uptake in vehicle fleets.

Given the continuing uncertainties regarding the sustainability of biofuels and the need to ensure that we put in place a framework for biofuel policy that can take into account on-going work regarding the best deployment of biofuels across transport sectors, we do not propose to make any changes to the current biofuel supply trajectory that is set out in the RTFO. However, there will be a legal obligation on the Secretary of State for Transport to keep this issue under review and to consider what additional measures will be required to ensure that the UK delivers the requirements of the RED and FQD in the period 2014 to 2020. This approach should enable us to establish a stable biofuel policy that will allow industry to robustly plan for the period 2014 to 2020.

10. Proposed approach

We propose to amend the current RTFO to meet the transport related requirements of the RED. Most notably, we will introduce the mandatory sustainability criteria specified in the RED and introduce double rewards for biofuels made from wastes, residues, non-food cellulosic material and ligno-cellulosic material.

For biofuels to be beneficial in contributing towards reducing climate change and improving energy security, they must provide a sustainable alternative to fossil fuels.

We do not propose, at this stage, to amend the current RTFO biofuel supply targets. Instead we propose to place an obligation on the Secretary of State for Transport to come forward with proposals for measures to ensure delivery of the transport requirements of the RED for the period 2014 to 2020 at a later date. This will enable decisions about those measures to be made once there is a greater evidence base regarding biofuel sustainability and deployment issues.

10.1. Overview of the current RTFO

The current RTFO was introduced in 2008 and places an obligation on owners, at the duty point (the point when a fuel becomes chargeable for duty), of liquid fossil fuel intended for road transport use to ensure that either a certain amount of biofuel is supplied or that a substitute amount of money is paid. The amount of biofuel that must be supplied increases annually until April 2013 when it reaches 5% (of total road transport fuel supplied) by volume and then remains at that level for subsequent years.

Owners of biofuel at the duty point are awarded one Renewable Transport Fuel Certificate (RTFC) per litre of biofuel, or kilogram of biomethane, supplied. RTFCs may be traded between participants in the scheme.

At the end of the year, suppliers of fossil road transport fuel demonstrate compliance with the RTFO by redeeming the appropriate number of RTFCs to demonstrate the required volume of biofuel was supplied.

Alternatively, obligated fossil fuel suppliers can pay a buy-out price per litre of obligation, the buy-out price being set in the RTFO Order.

Suppliers are allowed to carry over RTFCs from one year to the next, provided that no more than 25% of the supplier's obligation to supply biofuel for the later year is met by carrying over RTFCs. This enables suppliers to 'bank' certificates against unforeseen circumstances.

Under the current scheme, biofuel suppliers must provide information on the GHG savings, and environmental and social impacts of their fuels in order to earn a certificate. The content of the information does not affect whether an RTFC is issued.

10.2. The role of the Renewable Fuels Agency and the Department

The RTFO is currently administered by the Renewable Fuels Agency⁸ (RFA). On 14th October 2010, the Government announced its intention to abolish the RFA and transfer its functions to the Department for Transport.

A separate legislative measure will be used to abolish the RFA and transfer its functions to the Department for Transport. The draft order that amends the RTFO to introduce the RED requirements has been prepared on the assumption that the RFA remains the administrator; it is hoped that this approach will assist consultees in understanding the changes we are proposing. In taking this approach, it is also acknowledged that we will need to make a few minor amendments to the draft order assuming that the legislation abolishing the RFA comes into force before the draft order that amends the RTFO.

In order to minimise the administrative burden on industry in respect of reporting, we propose to appoint a common administrator to administer the RTFO and the scheme

⁸ The Office of the Renewable Fuels Agency was set up by the original RTFO Order in 2008 and performs the function of administering all aspects of the RTFO. It is a non-departmental public body sponsored by the Department for Transport; for further information, see: <http://www.renewablefuelsagency.gov.uk/>

implementing the FQD. In practice, this administrative role is likely to be carried out by officials at the Department for Transport (assuming that the order abolishing the RFA comes into force before the order amending the RTFO to introduce the RED).

There are a number of aspects of the RED that are still to be decided through discussion and agreement between the European Commission and Member States, for example the exact nature of the sustainability criteria related to the protection of highly biodiverse grasslands. In addition, we wish to align, as best as possible, our implementation of the RED with that of other Member States.

We have structured the proposed amendments to the RTFO to incorporate the framework provided by the RED; however, the finer detail needed to comply with the requirements in practice will be contained within the RTFO technical guidance.

There will be many aspects of the detail that will significantly impact on the way in which the biofuel and fossil fuel industries operate, and as such decisions on these aspects may involve policy issues that the Department should decide.

The Department will work with the RFA to develop the revised technical guidance up until the point at which the RFA is abolished. After this time, the Department will take over as RTFO administrator and continue to develop the technical guidance.

Question 1: Do you agree to the proposed approach to developing the RTFO technical guidance? If not, please can you explain why?

11. Detailed proposals

This section sets out the detailed proposals for implementing the RED through amendment to the RTFO Order and a number of proposals to simplify the administration of the RTFO.

11.1. Changes to the RTFO scheme

The main changes that the Department proposes to make are summarised here (and set out in detail later):

- Introduction of sustainability criteria;
- Introduction of new reporting requirements related to sustainability;
- Double reward of biofuels derived from wastes and residues;
- Changes to who, and what fuel, is obligated;
- Allowing all renewable transport fuels to count towards the targets;
- Changes to rules for carry over of RTFCs;
- Introduction of new civil penalties;
- Changes to the timings of certain actions under the RTFO;
- Changes to the allocation of the buy-out fund;
- Removal of the requirement for the RTFO administrator to report to Parliament.

11.2. Aspects of the RTFO scheme that will not change

For clarity, we have summarised here those aspects of the current RTFO that we do not propose to change:

- The RTFO will be a volume based scheme;

- Fuel will be counted towards the scheme as it crosses the fuel excise duty point;
- The obligation or reward for the supply of fuels will be on the owner of the fuel, rather than the entity that pays any duty that is due on it;
- RTFCs will be issued for the supply of biofuel (once compliance with the sustainability criteria has been verified) and can be traded between suppliers;
- The obligation and the issuing of RTFCs will continue to be per litre or kg of relevant fuel;
- Obligated suppliers will be able to meet 25% of their obligation with certificates from the previous year (subject to special provisions affecting carry over from the current pre RED RTFO to the amended RTFO that is RED compliant);
- Suppliers will be able to meet their obligation by making a buy-out payment.

11.3. Sustainability

Article 13 of the current RTFO Order allows the RTFO administrator to request information related to the sustainability of biofuels supplied under the RTFO. During the development of the RTFO, the Department developed the concept of the 'RTFO Meta-Standard'⁹ which measures the sustainability of a biofuel against 7 principles with 23 underlying criteria. The information that is collected by the RTFO administrator is used by the Department to monitor the sustainability of biofuel supplied in the UK and was fed into the development of the sustainability criteria that are found in the RED.

In order to facilitate the supply of fuel that meets the 'Meta-Standard', existing feedstock production sustainability assurance schemes have been assessed to determine which, if any, of the principles they ensure the feedstock meets. Those that fully meet all of the principles are termed as meeting the 'RTFO Meta-Standard', whilst those that fall slightly short of full compliance with

⁹<http://www.dft.gov.uk/pgr/roads/environment/renewable-fuels/govrecrfa.pdf>

all of the principles are termed as meeting the ‘Qualifying Standards’. Currently, the RFA uses this approach to require suppliers to provide information as to whether the feedstock for a fuel has been grown to a particular standard and a number of other related issues, such as the previous land use of the area that the feedstock used to produce the biofuel was grown on and the greenhouse gas intensity of the fuel. This information is submitted at least annually, together with information on a company’s general approach to the supply of sustainable biofuel and related (non feedstock specific) issues, and an independent verifier’s statement as to the accuracy of this information.

Article 17 of the RED sets out a number of sustainability criteria; any biofuel that is to be counted towards a Member State’s renewable energy target, or a national renewable energy obligation, must meet these criteria.

Article 18 of the RED requires that additional sustainability information, termed “appropriate and relevant” information is provided on a number of other sustainability issues, including measures taken for the protection of soil, water and air and the social impacts of biofuel production. Article 18 of the RED also requires that the information reported (and the systems used to generate that information) must be subject to an adequate standard of independent auditing.

We propose to amend the RTFO to:

- transpose the RED sustainability criteria into UK legislation;
- ensure that an RTFC is only issued after evidence has been provided that the sustainability criteria have been met;
- require suppliers to provide the additional sustainability information (the “appropriate and relevant” information);
- ensure that any information related to the sustainability criteria and additional sustainability information (“appropriate and relevant information” as required by the RED) is verified to an adequate standard.

The following subsections provide further information on these issues.

11.3.1. Sustainability criteria

Article 17 of the RED details the sustainability criteria that we propose to transpose into the RTFO Order. These are summarised in the sub-sections below.

The sustainability criteria are set out in Article 25 of the draft amending Order.

Question 2: Do you agree that we have correctly transposed the RED sustainability criteria in Article 25 of the draft amendment Order?

Question 3: Do you have any comments you wish to make regarding how we have transposed the RED sustainability criteria?

Question 4: Do you have any views on alternative approaches to implementing the sustainability monitoring and verification in a least burdensome manner?

11.3.1.1. Minimum GHG saving thresholds

Table 1 details the minimum GHG savings that biofuels must deliver. These increase during the lifetime of the RED and are subject to grandfathering clauses.

Table 1. Minimum GHG saving thresholds and grandfathering periods for biofuel installations

Period	Date production started at an installation		
	Pre 23/01/2008	Post 23/01/2008	Post 01/01/2017
05/12/2010 to 31/03/2013	No criteria	35%	N/A
01/04/2013 to 31/12/2016	35%	35%	N/A
01/01/2017 to 31/12/2017	50%	50%	50%
01/01/2018 to 31/12/2020	50%	50%	60%

The term “installation” is not defined in the RED and we do not propose to define this term in the amended RTFO Order; however, we anticipate that the meaning of this term will be addressed in the RTFO administrator’s Technical Guidance, (see section 10.2).

11.3.1.2. Areas of high biodiversity

The RED requires that biofuels must not be made from feedstocks that have been grown on areas of high biodiversity, specifically: primary forest and other wooded land, areas designated for nature protection purposes and highly biodiverse grassland.

However, feedstocks grown in areas designated for nature protection purposes can be used where it can be shown that the production of the feedstock did not interfere with the nature protection purposes.

The criteria and geographic ranges that determine what land counts as highly biodiverse grassland will be defined by the European Commission¹⁰. Until this has occurred, we will not be able to include criteria related to highly biodiverse grassland in the amending Order. If the European Commission does not publish the criteria and geographic ranges before the draft Order is laid before Parliament, we will need to make a further amendment to the RTFO Order at a later date to introduce this provision.

11.3.1.3. Peatland and areas of high carbon stock

The RED requires that biofuels must not be made from feedstocks that have been grown on peatland, unless the supplier can demonstrate that cultivation and harvesting of the feedstock did not involve drainage of previously undrained soil. The RED provides a reference date of January 2008 for determining whether land has “peatland” status.

The RED also requires that biofuels must not be made from feedstocks that have been grown on land that has high carbon stock, which is defined as wetland or a continuously forested area.

¹⁰ Article 17(3) second subparagraph places a requirement on the Commission to establish criteria and geographic ranges. Member States are involved via the regulatory procedure.

The RED provides a reference date of January 2008 for determining whether an area of land has either of these statuses.

However, there are two exceptions to the above requirement. Biofuel feedstocks can be grown on wetlands and continuously forested areas if the supplier can demonstrate that at the time that the feedstock was obtained, the land had the status it had in January 2008. Biofuel feedstocks can also be grown on continuously forested areas with canopy cover of between 10% and 30% if the supplier can demonstrate that the carbon stock of the area before and after it was converted for the production of biofuels was such that there is no breach of the GHG emission saving thresholds mentioned at paragraph 11.3.1.1 above.

11.3.1.4. Exemption from the high biodiversity and high carbon stock criteria for biofuels produced from wastes and residues

The RED aims to incentivise the use of biofuels made from wastes and residues. As such, Article 17(1) introduces a specific exemption from the high biodiversity and high carbon stock criteria for biofuels made from wastes and residues (except for those made from agricultural, aquaculture, fisheries and forestry residues): these biofuels only need to meet the minimum GHG saving requirements.

11.3.1.5. Provision of evidence on meeting the sustainability criteria before the issuing of RTFCs

Article 17(1) of the RED requires that Member States only allow a biofuel to count towards meeting a national renewable energy obligation if it fulfils the sustainability criteria.

We propose to amend the RTFO to require that before an RTFC is issued, suppliers must provide a verifier's opinion that the feedstock used to produce the biofuel has met the land based criteria (high biodiversity and high carbon stock) and that the biofuel has met the minimum GHG savings, or that an exemption has been appropriately applied. The verification process is discussed further in section 11.3.3.

We propose that suppliers will have to provide the verifier's opinion before 120 days after the end of the relevant obligation period (referred to as the "cut off date"), if they wish to apply for an RTFC. The RTFO administrator will have discretion as to whether to accept a verifier's opinion for after the cut off date. Suppliers will be able to provide the RTFO administrator with a verifier's opinion at any time during the obligation period and hence apply for an RTFC during that period. See section 11.3.3 for further discussion on verification.

Failure to provide a verifier's opinion will mean that no RTFC is issued, and the fuel in question will be counted as if it were a fossil fuel. See section 11.5.4 for further discussion on the treatment of non-sustainable renewable fuel.

There will be no liability for a civil penalty for failing to provide a verifier's opinion on this information; however, obtaining or attempting to obtain an RTFC through the provision of inaccurate information will continue to result in liability for a civil penalty (see section 11.9 for further discussion).

11.3.1.6. Cross compliance

Article 17(6) of the RED requires that feedstocks cultivated in the European Union have to be grown to certain environmental criteria¹¹ contained within the cross compliance regime¹² before they can be rewarded under a national renewable energy obligation.

The RED does not specifically require suppliers to report data related to the cross compliance regime.

We have identified three approaches for implementing Article 17(6):

¹¹ Specifically: Statutory Management Requirements 1 to 5 and 9 set out in Annex II to Regulation (EC) No 37/2009 and the standards of Good Agricultural and Environmental Conditions 1 to 18 set out in Schedule 1 to the Agriculture (Cross Compliance) (No. 2) Regulations 2009 (SI No 2009/3365).

¹² Cross compliance is the range of obligations that claimants of payments under the Common Agricultural Policy (direct payments such as Single Payment Scheme (SPS) and certain Rural Development schemes) must meet to avoid reductions to their payment — see <http://www.crosscompliance.org.uk/>

- a. require suppliers to provide a verifier's opinion that the relevant feedstocks have met the cross compliance requirements before an RTFC is issued;
- b. require suppliers to provide verified information related to cross compliance on an annual basis (by the cut off date after an obligation period), and enable the RTFO administrator to revoke RTFCs if that information does not confirm that the cross compliance requirements have been met (this option assumes that RTFCs would be issued before cross compliance data is reported);
- c. place a duty of the Secretary of State for Transport to keep the issue of cross compliance under review. The duty would require the Secretary of State to keep under review the extent to which UK grown feedstocks are cultivated in accordance with the cross compliance regime and, if necessary, take measures to address any issues that arise. In practice the RTFO administrator would gather available evidence on the amount of feedstock failing the cross compliance requirements (for example from schemes that assess compliance with the cross compliance requirements and data published by the administrative bodies) and the Department would then use this information to determine whether any legislative changes are necessary and to adjust the UK's report to the European Commission on the amount of renewable energy used as appropriate.

Approach (a) would seem disproportionate — the RED does not require suppliers to provide verified data related to the cross compliance regime. In addition, placing such a requirement on the supplier may have unintended consequences for the UK agricultural production industry. This is due to the time lag between a feedstock being harvested and the data being available on whether a farm has failed one of the cross compliance requirements (we understand this time lag to be around 8 months in the UK). This means that during this time, it would not be possible to state whether UK feedstocks had passed the cross compliance requirements and thus suppliers would not be able to apply for RTFCs from these feedstocks.

Approach (b) again requires suppliers to provide verified data and would result in the RTFO administrator seeking satisfaction that

the cross compliance regime had been adhered to after the RTFC had been issued.

Approach (c) would place a burden on the Department to monitor compliance with the cross compliance requirements. The Secretary of State for Transport would be able to intervene in order to revise the approach to cross compliance reporting if deemed necessary; and, if needed, adjust the UK's report on the amount of renewable energy used in transport accordingly if significant amounts of EU feedstock were shown to be non-compliant with the cross compliance scheme.

We therefore prefer approach (c) as this would minimise additional burden on suppliers.

Proposal (c) is provided for in Article 7 of the draft amending Order.

Question 5: Do you have information on the likely impacts to suppliers of approaches (a) and (b)?

Question 6: Does approach (c) represent the best approach for implementing Article 17(6)?

11.3.2. Additional sustainability information

Article 18(3) of the RED requires that suppliers provide additional sustainability information termed “appropriate and relevant” information on:

- measures taken for soil, water and air protection;
- the restoration of degraded land;
- the avoidance of excessive water consumption in areas where water is scarce; and

- measures taken in order to take into account a range of social issues¹³.

The RED does not impose any minimum requirements related to these issues.

On 12 January 2011, the European Commission issued Commission Decision 2011/13/EU on certain types of information about biofuels and bioliquids to be submitted by economic operators to Member States¹⁴. Article 1 of this Decision requires that the following information is reported:

- whether the biofuel has been certified or accepted as fulfilling the requirements of a voluntary scheme;
- if the biofuel has been certified for accepted as fulfilling the requirements of a voluntary scheme, the name of that scheme;
- certain information related to the GHG saving of the biofuel (use of carbon bonuses and emissions savings factors).

Through Commission Decision 2011/13/EU, it appears that the European Commission has decided to link the reporting of additional sustainability information to voluntary certification schemes. Voluntary schemes for the production of biomass products may require the collection of sufficient data to demonstrate that consignments of biofuel comply with the sustainability criteria and any additional sustainability reporting requirements. The European Commission has the power to approve voluntary schemes on an EU-wide basis. Once these schemes are approved, Member States must recognise that biomass products cultivated and produced in accordance with those schemes are deemed as meeting the RED sustainability criteria.

The RED requires that the “appropriate and relevant” information (i.e., the information set out in the bullet points above) is subject to

¹³ These are detailed in the second paragraph of Article 17(7) of the RED and cover (among other things) the impact on social sustainability, availability of foodstuffs at affordable prices (in particular for people living in developing nations), and land-use rights.

¹⁴ Commission Decision 2011/13/EU: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:009:0011:0012:EN:PDF>

the same verification as the sustainability criteria. However, there is no requirement that the information is verified before a Member State can take the relevant biofuel into account for measuring compliance with a national renewable energy obligation.

Therefore, we propose that the verification of this information is not linked to the issuing of an RTFC. Instead we propose that suppliers are required to provide a verified report regarding the additional sustainability information by the cut-off date (12th August) and that the RTFO administrator will have discretion as to whether to accept any such reports after the cut off date. See section 11.10.

Failure to provide a verified report on the additional sustainability information would leave a supplier liable to a civil penalty of up to the lesser of £50,000 or 10% of turnover.

Article 4(1) of the draft amending Order sets out the definition of “additional sustainability information”.

Article 10(1) of the draft amending Order places the RTFO administrator under a duty to require the “additional sustainability information” from suppliers.

Question 7: Do you agree our proposed approach for requiring information on the “appropriate and relevant information”?

Question 8: Are there any other approaches that might be more appropriate?

11.3.3. Verification of reported information

Article 18(3) of the RED requires an adequate standard of independent auditing of the information submitted. This audit is required to ensure that data is reliable, that a supplier’s systems are protected against fraud and that there has been a sufficiently robust frequency of data sampling. We propose that verification of

sustainability information should be carried out to at least the International Standard on Assurance Engagements 3000¹⁵.

In addition we also propose that the information relating to claims that feedstock was derived from a waste, residue, non-food cellulosic or ligno-cellulosic material for the purposes of claiming double reward is also verified to at least the ISAE3000 limited assurance standard. See section 11.4 for details regarding the double reward of wastes, residues, non-food cellulosic or ligno-cellulosic material.

We will continue to require that the RTFO administrator verifies other information such as the volumes of fuel that are supplied.

This proposal is contained in Article 16 of the draft amending Order.

Question 9: Do you agree that we should require verification to at least the ISAE 3000 standard of limited assurance?

Question 10: Are there any other suitable, or more appropriate, standards that we should consider?

11.3.4. Summary of sustainability information, verification, RTFC issuing and civil penalties

Sections 11.3.1 and 11.3.2 discuss the information that we propose will be required under the revised RTFO and section 11.3.3 discusses the level of verification to which this information will be subject.

Table 2 summarises the reporting and verification requirements and the consequences of non compliance.

¹⁵ <http://web.ifac.org/download/b012-2010-iaasb-handbook-isa-3000.pdf>

Table 2. Summary of sustainability information, verification, RTFC issuing and associated civil penalties

	Information related to the sustainability criteria ^a	Additional sustainability information
Is a verifier's opinion required before an RTFC is issued?	Yes	No
Is a verifier's opinion required before the cut off date?	No	Yes (where RTFCs have been applied for)
Is there liability for a civil penalty for failing to provide this information?	No	Yes
Is there liability for failing to provide a verifier's opinion on the required data?	No	Yes
Additional comments	Biofuel for which no verifier's opinion, or an inadequate verifier's opinion is received will be treated as if it were a fossil fuel and no RTFCs will be issued for that fuel	

^a This information would include whether a renewable fuel was made from waste/residues, non-food cellulosic or ligno-cellulosic material for the purposes of claiming double reward.

11.4. Double reward

The RED incentivises the use of certain feedstocks that don't compete with food production or contribute to indirect land use change. Article 21(2) requires that biofuels made from wastes, residues, non-food cellulosic material, and ligno-cellulosic material are counted twice towards meeting the 10% renewable energy in transport target and national renewable energy obligations.

We propose to allow any biofuel that is produced wholly from such feedstocks to be eligible for two RTFCs per litre of renewable fuel (or kg of renewable gas). Where it is made partially from such materials, the reward will reflect this (see section 11.4.1).

This proposal is contained Article 8(2) of the draft amending Order.

11.4.1. Double rewarding biofuels made from mixed feedstocks

Where a fuel is made from a mixture of waste¹⁶ and non-waste material, only the part that is produced from renewable wastes will receive the double reward.

Some examples are provided here to demonstrate how the relevant biofuels will be double rewarded. Section 11.6.2 provides information on proposals for accounting for partially renewable fuels.

Example 1

Fuel A — 100% used cooking oil

This fuel is made entirely from renewable waste, therefore for each litre of fuel supplied 2 RTFCs will be issued.

Example 2

Fuel B — 100 litres of pure bioethanol, 50% energy content by volume is derived from crop-based feedstock (e.g., wheat) and 50% energy content by volume is derived from waste (e.g., acid sulphite processing of waste paper)

- Fifty litres of this fuel is derived from a crop-based feedstock, therefore 50 RTFCs will be issued.
- The remaining 50 litres of this fuel are derived from waste and will therefore be double rewarded, meaning that for each of these litres two RTFCs would be issued; i.e., 100 RTFCs would be issued.

¹⁶ For the sake of brevity, we use the word 'waste' in this section to refer to wastes, residues, non-food cellulosic material and ligno-cellulosic material.

- Therefore, in total, 150 RTFCs would be issued for the supply of fuel B.

11.5. Determining the obligation

We propose to make a number of amendments to the RTFO Order related to who is required to report and who is obligated to supply renewable fuel. The following sections provide a detailed description of the proposals. Section 11.6 discusses proposed changes to which fuels are eligible to be counted towards the obligation to supply renewable fuel.

11.5.1. Who is obligated

The current RTFO places an obligation on entities that supply a volume of fossil road transport fuel above a minimum threshold (currently set at 450,000 litres). In practice, this means that whilst these obligated fossil road transport suppliers must report on any biofuels they supply, other suppliers that only supply biofuels are not required to register with the RTFO administrator and report on the volume of biofuel they supply.

In order to ensure that we are aware of all biofuels supplied (above the minimum threshold) we propose to amend the RTFO such that all transport fuel suppliers, irrespective of the type of fuels they supply (i.e., whether they supply fossil fuels, biofuels, or both), to be required to register for an account and report on the volume of fuel supplied. This amendment is required to align with proposals for implementing the FQD, which require that all transport fuel suppliers (irrespective of the type of fuel they supply) report the volume of fuel supplied and the GHG intensity of that fuel.

In practice we do not expect this amendment to add any significant additional burden on industry; however, this will be dependent on any change that may be made to the level of the minimum threshold (see section 11.5.3). The current RTFO administrator believes that all biofuel only suppliers above the current threshold already report to the administrator (albeit on a voluntary basis) in order to gain RTFCs. In addition, given the incentives to supply biofuel that passes the mandatory sustainability criteria, it is highly unlikely that any biofuel that is supplied would not meet the sustainability criteria.

Article 5(2) of the draft amending Order redefines the term relevant hydrocarbon oil, such that all relevant transport fuel suppliers are required to report to the RTFO administrator.

Article 6 of the draft amending Order sets out how a suppliers specified amount (i.e. the amount of renewable fuel they are obliged to supply) is calculated.

Question 11: Do you agree with our assessment that amending the RTFO such that all fuel suppliers are obliged to register with the RTFO administrator and report on the fuel they supply will not result in any significant impact? If not, please can you explain why?

11.5.2. Which end uses of fuel and which fuels are within the scope of the RTFO

The RTFO currently places its obligation on suppliers of petrol and diesel used for road transport purposes. These suppliers are obliged to supply a certain proportion of the total volume of fuel they supply as renewable transport fuel.

Article 3(4) the RED defines the scope of the renewable transport target as 10% of petrol, diesel and electricity used in all forms of transport and biofuel used in road and rail transport. The RED allows all forms of renewable energy in all forms of transport to count towards meeting the 10% target.

Articles 1 and 7a(2) of the related FQD require fuel suppliers to reduce the GHG 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. For ease of clarity, these end uses are commonly referred to as “NRMM” throughout the remainder of this consultation document.

We propose to implement the FQD in part through amendment of the RTFO. This approach will require us to expand the scope of the RTFO to include those fuels obligated by the FQD, i.e. to

include fuel used for NRMM (low sulphur gas oil), in order that we properly implement the FQD.

In addition to the RED requirements on renewable energy and the FQD requirements on GHG savings from transport fuels, the FQD also requires that from 2011 gas oil supplied for use in NRMM is sulphur free¹⁷. It is understood that, due to practical constraints, a significant proportion of the fuels supplied for use in NRMM will be road-grade diesel that is downgraded for off-road use. As such, this down-graded diesel is highly likely to already have biofuel blended into it. Any biofuel supplied in fuels for use in NRMM is not currently eligible to be counted towards the existing RTFO targets, thus downgrading of road-grade diesel may represent a loss in potential revenue to those suppliers unless we allow that biofuel to be counted towards discharging a supplier's obligation to supply renewable fuel under the RTFO.

We propose to expand the RTFO to obligate all petrol, diesel and low sulphur gas oil that is intended for use in the end uses covered by the FQD. We also intend to allow any type of renewable fuel for use in these end uses to be eligible for RTFCs (see section 11.6).

We have identified three possible options for expanding the current RTFO:

Option A: Expand certification and obligation to cover fuel supplied for NRMM — keep RTFO obligation levels the same

Under this option biofuel supplied in NRMM fuel would be eligible to be counted towards an unchanged obligation level (percentage target). In practice, pursuing this option would lead to an increase in the absolute volume of biofuel supplied owing the same obligation level now applying to a larger volume of fossil fuel (via the inclusion of low sulphur gas oil).

Option B: Expand certification and obligation to cover fuel supplied for NRMM — adjust RTFO obligation levels to ensure the same absolute volume of biofuel is supplied

Under this option biofuel supplied in low sulphur gas oil for use in NRMM would be eligible to be counted towards an adjusted percentage target. The RTFO obligation levels would be adjusted downwards so that the absolute volume of biofuel supplied is the

¹⁷ Article 4(2) of the Fuel Quality Directive (Directive 2009/30/EC)

same as that which would have been supplied had the obligation not been expanded to include low sulphur gas oil used in NRMM.

Option C: Expand only certification to cover NRMM fuel — keep RTFO targets the same and keep obligation on road fuel only

Under this option biofuel supplied in low sulphur gas oil for use in NRMM would be eligible to be counted towards an unchanged RTFO target. In practice, this option would not increase a supplier's obligation to supply biofuel but would reward any biofuel blended with low sulphur gas oil. Consequently, while the volume of biofuel required by the RTFO would remain unchanged, suppliers might choose to supply biofuel blended with low sulphur gas oil which may lead to an overall increase in the absolute volume of biofuel supplied.

These options are fully explored in the accompanying impact assessment.

Option C would effectively allow suppliers to supply biofuel in fuel for NRMM on a voluntary basis and for those suppliers to be rewarded with RTFCs. However, because Option C would be a voluntary measure, there may be a risk that it would not deliver the GHG emissions reductions required by the FQD — the FQD requires suppliers of all fuels (including those for NRMM) to reduce the GHG intensity of their fuels.

Options A and B would clearly deliver the GHG emissions reductions required by the FQD. However, Option A would result in an increase to the total volume of biofuel supplied in the UK.

Given our concerns regarding the sustainability of biofuel, at this stage we do not wish to see any additional increases in the volume of biofuel supplied in the UK above those already set out in the current RTFO. We therefore propose to pursue Option B.

We expect approximately 3 billion litres of low sulphur gas oil for use in NRMM to be supplied annually (see the accompanying impact assessment for further details of this assessment). Accordingly, we propose to adjust the obligation levels (percentage targets) as set out in Table 3. For illustrative purposes, Table 3 shows the adjusted obligation levels for all obligation periods. The amending Order will only change those obligations levels for future

periods (including the current obligation period — see section 11.12 on transitional arrangements).

Table 3. Comparison of current and revised RTFO obligation levels

Obligation period	Current RTFO		Revised RTFO	
	% Target	% Target (as appears in Order)	% Target	% Target (as appears in Order)
2008/2009	2.5	2.5641	2.35	2.4101
2009/2010	3.25	3.3592	3.06	3.1559
2010/2011	3.5	3.6269	3.29	3.4070
2011/2012	4	4.1667	3.77	3.9128
2012/2013	4.5	4.712	4.24	4.4237
2013/2014	5	5.2632	4.71	4.9375

Article 2 of the draft amending Order amends section 132 of the Energy Act 2004 to enable fuel used in NRMM to become obligated fuel under the RTFO.

Article 6(3) of the draft amending Order sets out the new obligation levels that are summarised in Table 3.

Question 12: Do you agree with our proposal to pursue Option B, to expand the scope of the RTFO to include fuels intended for use in NRMM but to revise the obligation levels?

Question 13: Do you agree with the assumptions made in our impact assessment that accompanies the proposal to expand the scope of the RTFO? If not, are you able to provide additional evidence?

Question 14: What impacts (both desirable and perverse) does our proposal present?

11.5.3. Altering the minimum threshold

Under the current RTFO, suppliers of less than 450,000 litres of fossil fuel for road transport purposes per annum are exempt from the obligation to supply renewable fuels. In addition, suppliers that supply less than 10 million litres are not obligated for the first 450,000 litres of fossil fuel that they supply. This minimum threshold was introduced to reduce the burden on small/medium sized suppliers.

The current RTFO administrator has advised the Department that under the current RTFO (i.e., before any expansion to bring fuels for NRMM into scope, see section 11.5.2) there are approximately 5 suppliers that are exempt from the RTFO as a result of the minimum threshold; these 5 suppliers supply around 0.001% of the total volume of road fossil fuel. Taking into account the proposal to expand the scope of the RTFO (as detailed in sections 11.5.1 and 11.5.2), raising the threshold to 10 million litres would result in approximately an additional 7 UK suppliers not being obligated — this new threshold would exclude less than 0.03% of the total fossil fuel supplied in the UK for road and NRMM. Raising the minimum threshold (in addition to expanding the scope of the RTFO, as described) could be expected to result in 10 million litres fewer of renewable fuel being supplied over the period 2011 to 2030 and approximately 0.01 M tonnes less of CO₂ being saved over the same period.

Raising the threshold would reduce the burden on small/medium sized suppliers and would also reduce the burden on the RTFO administrator which is required to verify the volumes of obligated fuel supplied.

The FQD requires all relevant fuel/energy suppliers to report on the fuel/energy they supply and to reduce the GHG emissions of that fuel. The Directive does specify a minimum threshold below which suppliers would not have to report or deliver GHG savings. As mentioned in section 3, we propose to use an amended RTFO to implement some of the requirements of the FQD in the period up to 2014. Therefore, we would like to understand the possible impacts of changing the minimum threshold.

At this stage we do not have a preferred option regarding any changes to the minimum threshold and seek consultees view on our impact assessment and the likely opportunities and impacts of the above options.

Question 15: What would the impact be of removing the minimum threshold?

Question 16: Would there be any significant advantages to raising the minimum threshold to the RTFO?

Question 17: Would there be any perverse impacts of raising the current minimum threshold?

Question 18: Do you have any comments on the accompanying impact assessment?

Question 19: Do you have any further evidence you would like us to consider?

11.5.4. Determining how much renewable fuel a supplier is obliged to supply

Article 4 of the current RTFO Order sets out how a supplier's specified amount (i.e., the total volume of renewable transport fuel a supplier is obliged to supply) is calculated.

We propose several amendments to the drafting of the RTFO Order to give effect to the changes described in the above sections.

We propose that any biofuel that has been supplied and is not demonstrated to meet the sustainability criteria will be treated as fossil fuel — as such, this non-sustainable biofuel will count towards the total volume of fossil fuel that is used to determine a supplier's specified amount (i.e., the total volume of renewable fuel that a supplier is obliged to supply).

A supplier's specified amount in any obligation period will be calculated by multiplying the sum of the total volume of fossil fuel supplied and the total volume of any non-sustainable biofuel supplied by the obligation level for that obligation period (taking into account the effect of any minimum threshold).

The obligation levels are the percentages set out in Article 4(4)(c) of the RTFO Order (note that the amending Order changes these percentages, see section 11.5.2).

The amended Order makes use of equations to detail how the specified amount will be calculated. A brief description of these equations and some examples of how the specified amount would be calculated for different supply scenarios is also provided.

Notional amount of fossil fuel

We proposed that the specified amount is calculated with reference to the notional amount of fossil fuel (F_N). The notional volume of fossil fuel takes into account any non-sustainable biofuel that has been supplied and is calculated using the following formula:

$$F_N = H_A - (E \times S)$$

Equation 1

where

H_A = actual amount of relevant hydrocarbon oil supplied (includes both fossil and wholly and partially renewable fuels)

E = actual amount of eligible fuel (i.e., the actual volume of wholly or partially renewable transport fuel that meets the sustainability criteria)

S = percentage energy content of the renewable transport fuel supplied that is attributable to sustainable feedstocks the sustainability criteria

In understanding this equation, it is necessary to understand some of the terminology and concepts introduced through the amending Order.

Schedule 2, paragraph 2 states that a renewable transport fuel meets the sustainability criteria if it meets the relevant minimum GHG saving threshold and it is produced wholly or partially from a relevant feedstock that meets the land-based sustainability criteria.

The definition of relevant feedstock is provided in Article 4 of the amending Order:

“relevant feedstock” means —

- (a) *products, wastes or residues or biological origin from —*
 - i. *agriculture (including both vegetal and animal substances);*
 - ii. *forestry;*
 - iii. *related industries including fisheries and aquaculture;*
- (b) *industrial or municipal waste of biological origin*

Article 5 of the amending Order redefines the term *“relevant hydrocarbon oil”*. This term is now expanded to include gas oil and renewable transport fuel.

Calculating the specified amount

Once the notional amount of fossil fuel has been calculated, it is possible to calculate the specified amount according to Article 4(4) to (8) of the amended RTFO Order (inserted by Article 6(3) of the draft amending Order).

First, as per Article 4(4)(b), one must take into account the minimum threshold. Assuming no change to the minimum threshold and that the RTFO scope is expanded, suppliers of less than 450,000 litres of fuel are exempt from the obligation. Those suppliers that supply less than 10 million litres of fuel are not obligated on the first 450,000 litres they supply. This adjustment would be made by deducting 450,000 notional litres of fossil fuel from the notional amount of fossil fuel calculated according to Equation 1.

The adjusted notional amount of fossil fuel is then multiplied by the appropriate obligation level. For example, in the obligation period running from 15 April 2012 to 14 April 2013 the adjusted notional amount of fossil fuel would be multiplied by 4.4237%, as set out in Article 6(1) of the draft amending Order.

Example 1

Company A supplies 300,000 litres of fossil road transport fuel. It is not an obligated supplier (because it supplies less than the minimum threshold) and is not required to register with the RFA.

Example 2

Company B supplies 5 million litres of fossil fuel and 3 million litres of wholly renewable biofuel that is wholly sustainable (i.e. biofuel that meets the sustainability criteria) for use in transport. The total volume of relevant hydrocarbon oil supplied is 8 million litres. The total amount of relevant hydrocarbon oil supplied is greater than the minimum threshold, thus the company is an obligated supplier.

First, calculate the notional amount of fossil fuel supplied:

$$\begin{aligned} F_N &= H_A - (E \times S) \\ &= 8,000,000 - (3,000,000 \times 100\%) \\ &= 8,000,000 - 3,000,000 \\ &= 5,000,000 \text{ litres} \end{aligned}$$

Company B supplies less than 10 million litres; therefore, the first 450,000 litres of fuel is exempt. The next step is to calculate the adjusted notional amount of fossil fuel, F'_N :

$$\begin{aligned} F'_N &= F_N - 450,000 \\ &= 5,000,000 - 450,000 \\ &= 4,550,000 \text{ litres} \end{aligned}$$

The final step is to calculate the specified amount (i.e. the amount of renewable fuel that should be supplied):

$$\begin{aligned} &= F'_N \times \text{obligation level} \\ &= 4,550,000 \times 4.4237\% \\ &= 201,278 \text{ litres} \end{aligned}$$

Example 3

Company C supplies 40 million litres of fossil road transport fuel and 800,000 litres of wholly renewable biofuel (however, only 700,000 of this biofuel met the sustainability criteria). The total amount of relevant hydrocarbon oil supplied is 40.8 million litres, which is greater than the minimum threshold, thus the company is an obligated supplier.

First calculate the notional amount of fossil fuel supplied:

$$\begin{aligned} F_N &= H_A - (E \times S) \\ &= 40,800,000 - (700,000 \times 100\%) \\ &= 40,800,000 - 700,000 \\ &= 49,300,000 \text{ litres} \end{aligned}$$

Company C supplies more than 10 million litres of fuel and thus does not benefit from the minimum threshold, there is no need to adjust the notional amount of fossil fuel supplied.

The specified amount is then calculated:

$$\begin{aligned} &= F_N \times \text{obligation level} \\ &= 49,300,000 \times 4.4327\% \\ &= 2,133,211 \text{ litres} \end{aligned}$$

Example 4

Company D supplies 20 million litres of fossil road transport fuel. In addition, the company supplies 1 million litres of renewable fuel; of this renewable fuel, 700,000 litres are wholly renewable and wholly sustainable, and 300,000 litres are partially renewable (50% of the energy content of the partially renewable fuel is derived from renewable feedstock that is wholly sustainable). The total amount of relevant hydrocarbon oil is 21 million litres.

First, calculate the notional amount of fossil fuel supplied:

$$\begin{aligned} F_N &= H_A - (E \times S) \\ &= 21,000,000 - ((700,000 \times 100\%) + (300,000 \times 50\%)) \\ &= 20,000,000 - 850,000 \\ &= 19,150,000 \text{ litres} \end{aligned}$$

Company D supplies more than 10 million litres of fuel and thus does not benefit from the minimum threshold, there is no need to adjust the notional amount of fossil fuel supplied.

The specified amount is then calculated:

$$\begin{aligned} &= F_N \times \text{obligation level} \\ &= 19,150,000 \times 4.4327\% \\ &= 848,886 \text{ litres} \end{aligned}$$

The methodology for calculating the specified amount is set out in Article 6(3) of the draft amending Order.

11.6. Amending which fuels count towards the RTFO, and how they count

Article 3 of the RED allows all forms of renewable energy used in transport to count towards the 10% renewable energy in transport target.

The current RTFO restricts which fuels can count towards discharging the obligation to supply renewable fuel.

Recognising that there are a number of different renewable fuels available on the market, and the need to have a scheme in place that encourages development of new renewable fuels in a technology neutral manner, we propose to amend the current RTFO such that all renewable fuels can be counted towards discharging the obligation to supply.

The following sections outline our proposals.

11.6.1. Allowing all renewable fuels to receive RTFCs

We propose to remove the specific list of renewable fuels which may count towards a supplier's obligation to supply renewable transport fuel in article 5(3) of the RTFO Order. Instead the Order will allow the renewable part of any transport fuel to be eligible for an appropriate number of RTFCs.

We believe our proposal will reduce the burden on industry by enabling any newly developed fuels to automatically count towards the RTFO.

The RED permits all forms of renewable energy to be used to count towards the 10% transport target. While the Directive does allow for the use of renewable hydrogen to meet this target, there is not currently a methodology in place for calculating the contribution of hydrogen from renewable sources. However, the Directive does require the European Commission to come forward with a proposal for such a method by 31st December 2011. We do not propose any amendment to the RTFO to allow renewable hydrogen to be eligible for RTFCs at this time but we will keep this issue under review.

Similarly, we do not propose to allow renewably generated electricity for transport to be eligible for RTFCs at this time. Again, we will keep this issue under review.

Articles 5(5) and 8(1) of the draft amending Order expand the scope of the current RTFO such that all renewable fuels of biological origin are eligible to be counted towards discharging the obligation.

Question 20: Do you agree with our proposal to allow the renewable part of any transport fuel to be eligible for RTFCs?

Question 21: Do you have information you would like to share regarding how renewable hydrogen should be counted towards RED targets in the future?

11.6.2. How partially renewable fuels will be rewarded

There are a number of partially renewable fuels currently available, such as bio-methyl-tertiary-butyl-ether (bio-MTBE). These fuels are produced in part from renewable feedstocks and in part from mineral/fossil feedstocks. We wish to allow the renewable portion of these partially renewable fuels to be eligible for reward under the amended RTFO.

In determining how much of a partially renewable fuel is eligible for RTFCs (and thus can be counted towards discharging a suppliers obligation to supply renewable fuel), we propose that the size of the renewable fraction of a partially renewable fuel is determined by reference to the energy content of that fuel which is derived from renewable feedstocks.

The number of RTFCs awarded for a partially renewable fuel will be determined by the proportion of that fuel that comes from renewable sources; i.e., the number of RTFCs awarded will be equivalent to the number of litres of renewable fuel.

The non renewable element of a partially renewable fuel will be treated as if it were a fossil fuel and count towards the accruing of the obligation to supply renewable fuel.

11.6.2.1. Proposed methodology to determine the renewable fraction of a partially renewable fuel

Annex III to the RED provides standard values for the renewable fractions of certain partially renewable fuels. That is, it provides details of what percentage of the total standard energy content of those fuels originates from renewable sources.

For those partially renewable fuels that appear in Annex III to the RED, we propose to require that the renewable fractions listed in Annex III are used when calculating how much of those partially renewable fuels is eligible to be counted towards discharging the obligation to supply renewable energy and thus eligible for RTFCs. For example, the fraction of Bio-TAEE (bio-tertiary-amyl-ethyl-ether) that would be eligible for RTFCs would be 29% and that for Bio-ETBE (bio-ethyl-tertiary-butyl-ether) would be 37%. We propose that the amended RTFO Order will cross refer to Annex III to the RED; if the Annex is updated to include any new fuels, the amended RTFO Order will automatically include these changes.

Of course, there are a number of other partially renewable fuels that aren't currently listed in Annex III. For these fuels suppliers will be required to determine the fraction attributable to renewable feedstocks.

We can envisage two possible methods for determining the size of the renewable fraction:

- a physical testing methodology; or
- a calculation based on the ratio of renewable to non-renewable inputs.

A physical test would be appropriate to determine the renewable portion of partially renewable fuels such as synthetic diesel synthesised from the gasification of municipal waste. The feedstock stream of such fuels will have an unknown and variable renewable content; therefore, performing a physical test (such as measuring the ratio of carbon-12 to carbon-14) is likely to be the simplest and most accurate way of determining the renewable content.

Conversely, it may be more appropriate to make use of a calculation of energy ratios when the fuel feedstocks have different characteristics, for example fatty acid ethyl ester (FAEE) made from rape seed oil and mineral ethanol. In these cases, we believe that the methodology employed by the European Commission to generate the data in Annex III to the RED may be more appropriate and proportionate (the European Commission suggested that this approach is appropriate in their recently published guidelines¹⁸). Using this methodology, the percentage of renewable material is calculated by dividing the energy content for the renewable element present in each litre of the final fuel by the energy content of the final fuel¹⁹.

We do not propose that the amended Order will be prescriptive as to which methodology should be applied and would expect this to be determined in any technical guidance issued by the RTFO administrator.

¹⁸ “Accounting for fuels that come partly from non-renewable sources”, section 5.1 of “ the Communication from the Commission on the practical implementation of the EU biofuels and bioliquids sustainability scheme and on counting rules for biofuels” – see http://ec.europa.eu/energy/renewables/biofuels/sustainability_criteria_en.htm

¹⁹ The European Commission have stated that this is the methodology used in direct communication with the UK.

Article 5(1) of the draft amending Order sets out the definition of a partially renewable fuel.

Article 8(2) of the draft amending Order sets out that where the fuel is a partially renewable fuel that is listed in Annex III of the RED, the percentage energy content by volume listed in Annex III of the RED must be used in calculating how much of those partially renewable fuels is eligible to be counted towards discharging the obligation to supply renewable energy.

Question 22: Is the proposed approach to determining the renewable fraction of a partially renewable fuel suitable?

Question 23: Are there any other approaches that we should consider?

11.6.2.2. Fatty acid methyl ester

In 2009/2010 the majority of biofuel supplied into the UK was fatty acid methyl ester (FAME). The composition of this FAME was approximately 90% from biomass and approximately 10% from fossil/mineral methanol.

However, the current RTFO treats FAME as being wholly renewable, i.e., 1 litre of FAME is eligible for 1 RTFC. Our understanding is that this is consistent with the requirements of the RED and in addition we also believe that other Member States intend to treat FAME in this way. As a consequence of this, treating FAME as only partially renewable (in line with its physical characteristics) could lead to market distortions.

Therefore, we do not propose any substantive changes to the current RTFO in respect of FAME.

This proposal is contained in Article 8(2) of the draft amending Order.

Question 24: Do you agree with the proposed approach that FAME should continue to be treated as a wholly renewable fuel? If you do not agree with this proposal, please can you explain why?

Question 25: Do you agree that our proposal is consistent with the approaches of other Member States and will reduce the potential for market distortions?

11.6.2.3. Non-biodegradable renewable feedstocks

Article 2(e) of the RED defines biomass as being the biodegradable fraction of products, wastes and residues that originate from biological sources, as well as the biodegradable fraction of industrial or municipal waste. Article 2(i) defines biofuels as being a liquid or gaseous fuel for transport produced from biomass.

We believe that as a consequence of these definitions, fuel produced from non-biodegradable renewable material²⁰ should not be regarded as renewable fuel for the purposes of the RED.

However, we believe that as the use of crop-derived plastics (which may not be biodegradable) increases, companies using the physical testing methodology referred to in section 11.6.2.1 could be uncertain as to whether the renewable element of their fuel was in fact derived from biodegradable sources. For example, a biofuel producer that gasifies municipal waste that contains non-biodegradable crop-derived plastic would be able to determine the renewable content of the final biofuel produced (through use of carbon-14 dating techniques) but would have difficulty determining how much of that renewable content originated from non-biodegradable feedstock (i.e. the crop-derived plastic).

As the primary criteria for whether a fuel should be rewarded under the RTFO should be its renewability and sustainability and in order to reduce the burden on industry (by ensuring that suppliers do not have to determine the biodegradability of their feedstocks) we propose to allow non-biodegradable, renewable feedstocks to be eligible for reward. As a matter of course, any such feedstock

²⁰ An example of a non-biodegradable renewable material would be a crop-derived plastic that is not biodegradable.

would be subject to the sustainability criteria (as set out in section 11.3).

This proposal is somewhat in contrast to proposals for implementation of the FQD. Under the FQD, it is the GHG intensity of the fuel that is important and in the measures transposing the FQD we propose that only the renewable portion of fuels meets the biofuel sustainability criteria.

Because our proposal to allow renewable fuel produced from non-biodegradable feedstock to be eligible for RTFCs (and the requirement that these feedstocks meet the RED sustainability criteria) goes beyond the requirements of the RED, we will need to notify the European Commission and other Member States of our intent. Should any parties object we may need to withdraw this proposal.

This proposal is contained in Article 4(1) of the draft amending Order, through virtue of the definition of “relevant feedstock” not requiring that the relevant feedstock is biodegradable.

Question 26: Do you have any evidence/comments to make regarding the benefits of allowing non-biodegradable feedstocks to count towards meeting the RTFO targets?

Question 27: Do you agree with our proposed approach? If not, why?

11.6.3. Determining the number of RTFCs a supplier is eligible for

Section 11.4 discussed proposals to award two RTFCs for each litre of renewable fuel supplied that is produced from wastes, residues, non-food cellulosic material and ligno-cellulosic material. In addition, section 11.6.2 discussed proposals to allow the renewable part of partially renewable fuels to be eligible for award of RTFCs.

These proposals require us to make significant changes to the way in which the number of RTFCs to be awarded is determined.

We do not propose to amend the number of RTFCs issued for each kilogram of renewably sourced natural road fuel gas (biomethane). Article 8(4) of the amending Order amends Article 5(5) of the current RTFO Order such that each kilogram of renewably sourced gaseous fuel is eligible for award of one RTFC, ensuring that other renewable gaseous fuels are recognised under the amended RTFO.

In order to determine the number of RTFCs to award, we have developed the concept of the “notional volume” of sustainable renewable transport fuel. The notional volume takes into account any double reward for the supply of wastes, residues, non-food cellulosic material and ligno-cellulosic material as well as the proportion of partially renewable fuels that are produced from sustainable feedstocks.

One RTFC will be awarded for each litre of notional volume of sustainable renewable transport fuel.

11.6.3.1. Calculating the notional volume of sustainable renewable transport fuel

The notional volume of sustainable renewable transport fuel will be calculated using the following formula:

$$R_N = R_A \times (S + W)$$

Equation 2

where

R_N = the notional volume of sustainable renewable transport fuel (this volume, in litres, is equivalent to the number of RTFCs that will be issued)

R_A = the actual volume of sustainable renewable transport fuel

S = the percentage of the energy content of the renewable transport fuel supplied that is attributable to sustainable feedstocks the sustainability criteria

W = the percentage of the energy content of the renewable transport fuel supplied that is attributable to sustainable wastes, residues, non-food cellulosic materials or ligno-cellulosic materials

In understanding the use of Equation 2, it is helpful to refer back to section 11.5.4, which sets out some definitions of terminology used in the amending Order.

11.6.3.2. Examples of how the number of RTFCs to be awarded will be calculated

Example 1

Supplier A supplies 8 million litres of renewable transport fuel. Of this, 2 million litres are bioethanol, 2 million litres are biodiesel (produced wholly from used cooking oil) and 4 million litres are bio-TAEE (bio-tertiary-amyl-ethyl-ether). All of the renewable transport fuel was demonstrated to meet the sustainability criteria.

The notional volume of each type of sustainable renewable transport fuel is calculated:

Bioethanol:

$$\begin{aligned} R_N &= R_A \times (S + W) \\ &= 2,000,000 \times (100\% + 0\%) \\ &= 2,000,000 \text{ litres} \end{aligned}$$

Biodiesel (produced wholly from used cooking oil):

$$\begin{aligned} R_N &= R_A \times (S + W) \\ &= 2,000,000 \times (100\% + 100\%) \\ &= 4,000,000 \text{ litres} \end{aligned}$$

Bio-TAEE:

$$\begin{aligned} R_N &= R_A \times (S + W) \\ &= 4,000,000 \times (29\% + 0\%) \\ &= 1,160,000 \text{ litres} \end{aligned}$$

The total nominal volume of sustainable renewable transport fuel is:

$$\begin{aligned} &= 2,000,000 + 4,000,000 + 1,160,000 \\ &= 7,160,000 \text{ litres} \end{aligned}$$

The number of RTFCs to be awarded is equal to the notional volume of sustainable renewable transport fuel, i.e. 7,160,000 RTFCs will be issued to Supplier A.

Example 2

Supplier B supplies 3 million litres of biodiesel (produced from sustainable rape seed oil) and 1 million litres of a partially renewable fuel. The partially renewable fuel is produced in part from a renewable feedstock and in part from an eligible waste. For illustrative purposes the 70% of the energy content by volume of the partially renewable fuel is derived from sustainable feedstock, of which 50% of the energy content was derived from waste (this corresponds to 35% of the total energy content of the partially renewable fuel, by volume, being derived from a waste).

The notional volume of each type of sustainable renewable transport fuel is calculated:

Biodiesel:

$$\begin{aligned} R_N &= R_A \times (S + W) \\ &= 3,000,000 \times (100\% + 0\%) \\ &= 3,000,000 \text{ litres} \end{aligned}$$

Partially renewable fuel

$$\begin{aligned} R_N &= R_A \times (S + W) \\ &= 1,000,000 \times (70\% + 35\%) \\ &= 1,050,000 \text{ litres} \end{aligned}$$

The total nominal volume of sustainable renewable transport fuel is:

$$\begin{aligned} &= 3,000,000 + 1,050,000 \\ &= 4,050,000 \text{ litres} \end{aligned}$$

The number of RTFCs to be awarded is equal to the notional volume of sustainable renewable transport fuel, i.e. 4,050,000 RTFCs will be issued to Supplier B.

Article 8(2) of the draft amending Order sets out the methodology for calculating the number of RTFCs to be issued to a supplier (see also Article 17(2)).

11.7. Proposed administrative changes

During the administration of the current RTFO, the Department and the RFA have become aware of a number of improvements that could be made to ease the administration of the RTFO. This section sets out a number of proposals for administrative changes that we wish to make.

11.7.1. Removing the recycling of the buy-out fund

The RTFO allows suppliers to buy out of their obligation to supply biofuel. This provision is intended to act as a consumer protection mechanism. The money that suppliers pay to buy out of their obligation to supply biofuel is collected in a 'buy-out fund'.

At the end of an RTFO obligation period suppliers demonstrate that they have discharged their obligations through the redemption of RTFCs (which are awarded in return for supply of biofuel) or through payment of the appropriate buy-out (which is currently set at a level of 30 pence per litre of biofuel). Those suppliers that redeem RTFCs and those that surrender any surplus RTFCs are entitled to a share of the buy-out fund. Suppliers' share of the buy-out fund is proportional to the number of RTFCs they redeemed/surrendered. This sharing of the buy-out fund is commonly known as "recycling".

We propose to end the recycling of the buy-out fund. Instead we propose that any buy-out fund will be sent to HM Treasury. As a consequence we will remove the facility to surrender certificates.

The recycling mechanism has the potential to increase obligated suppliers' willingness to pay for biofuel during times of high food prices. Therefore, it could diminish the potential for the buy-out price to relieve pressure on food markets during times of high prices and tight supply and would have no effect on the overall cost to consumers. In order to improve the ability of the buy-out price to relieve pressure in food markets when prices are high, it is proposed that the recycling of the buy-out fund is removed.

We believe that this change will have a minimal impact on the UK biofuel production industry as we have been advised that businesses in the industry have not accounted for income from the buy-out fund in their business models.

This proposal is contained in Article 21 of the draft amending Order.

Question 28: Do you agree with our proposal to end the recycling of the buy-out fund? If not, please can you explain why?

11.7.2. Preventing the use under the RTFO of renewable fuel that has already been used under another obligation

As discussed earlier, the RED has two targets for the supply of renewable fuel. In order to ensure that renewable fuel is not counted twice towards the different targets, we propose to require that suppliers submit a declaration stating that the renewable transport fuel for which they are claiming an RTFC has not been used to discharge any other renewable energy obligation (for example the Renewables Obligation).

This proposal is contained in Article 15(1) and (6) of the draft amending Order.

11.8. Carry over of RTFCs between the current and amended RTFO

The current RTFO allows an obligated supplier to meet 25% of its obligation in any given period with RTFCs issued in the preceding period and we are not proposing to change this.

As we move from the current RTFO to the amended RTFO there will be some transitional issues related to the carry over of RTFCs from the 2011/2012 obligation year into the 2012/2013 obligation year. The situation will be compounded by the move from our current RTFO to an amended RTFO with mandatory RED sustainability criteria partway through the 2011/2012 obligation year.

Similar situations will arise as the minimum GHG saving threshold contained in the sustainability criteria changes in April 2013 and again in January 2017/2018.

We propose to restrict carry over of RTFCs from the current RTFO scheme into the amended RTFO scheme, such that only those RTFCs awarded for fuels that can be demonstrated to meet the RED sustainability criteria can be carried over (i.e. a verifier's opinion must be provided to demonstrate compliance with the RED sustainability criteria and in respect of the additional sustainability information). We also propose to restrict carry over of RTFCs when the minimum GHG saving thresholds change in April 2013 and January 2017/2018 such that suppliers will need to demonstrate that any RTFCs carried through to a later obligation period were awarded for the supply of fuels that meet the higher GHG minimum threshold.

However, these restrictions will not apply for RTFCs that are awarded for fuel supplied in the 2010/2011 obligation period. There will be no restrictions to carry over of these RTFCs in respect of sustainability, i.e., it will be possible to carry over RTFCs issued in the 2010/2011 period for use in discharging a suppliers 2011/2012 obligation (subject to the current restrictions on carry over related to the number of RTFCs that may be carried over).

This approach to carry over will probably apply should any future changes be made to the sustainability criteria. For example, any changes to the definition of highly biodiverse grasslands, or introduction of new sustainability criteria through amendment of the RED. In these cases, it is likely that we would restrict carry over of RTFCs such that only those RTFCs that meet the proceeding period's sustainability criteria can be carried over for use in the proceeding obligation period. Note that rules governing carry over in relation to changes in aspects of the sustainability criteria other than minimum GHG threshold changes will be legislated for as and when those new sustainability criteria are adopted across Europe.

In practice, these proposals would mean that any RTFC awarded after the amended RTFO comes into force can be carried over from the 2011/2012 obligation period into the 2012/2013 obligation period. Suppliers wishing to carry over any RTFC awarded between 15th April 2011 and the date that the amended RTFO comes into force must provide evidence (including a verifier's opinion) that the RTFC was awarded for biofuel that met the sustainability criteria.

In line with the carry over of RTFCs from the current RTFO to the amended RTFO, suppliers wishing to carry over RTFCs awarded in the obligation period 2012/2013 to the 2013/2014 obligation period would need to demonstrate that the RTFCs they wish to carry over meet the more stringent GHG minimum saving threshold that would come into force in April 2013.

This proposal is set out in Article 18 of the draft amending Order.

Question 29: Will the proposed approach to the carry through of RTFCs from current RTFO to the amended RTFO cause any unintended consequences?

Question 30: Does our proposed approach to carry over retain sufficient flexibility whilst ensuring compliance with the sustainability criteria?

Question 31: What would be the impact of not allowing any carry over from the current RTFO to the amended RTFO?

11.9. Enforcement and civil penalties

We wish to make a number of changes to the current enforcement regime. These are detailed in the following subsections.

11.9.1. Altering the basis for a supplier being liable for a civil penalty

We propose to alter the basis under which a supplier must provide information such that suppliers will be required to provide information that is ‘accurate’ rather than ‘accurate to the best of the supplier’s knowledge and belief’ (as at present). We believe that this change is appropriate as we move from a voluntary to a mandatory sustainability criteria regime. Consequently, suppliers may be liable for a civil penalty if they provide information that is inaccurate, and will not be able to rely on the defence that it was accurate to the best of their knowledge and belief.

Suppliers will however have a defence if they can show that they took reasonable steps to ensure that the information they provided was accurate.

This proposal is contained in Articles 11(2), 15(9), 19(8) and 22 of the draft amending Order.

Question 32: Do you have any comments on our proposed changes?

11.9.2. Imposing a civil penalty for failure to supply a verifier’s opinion on the additional sustainability information

We propose to introduce a liability for a penalty for suppliers failing to submit a verifier’s opinion on the additional sustainability information (as set out in section 11.3.2, there is a requirement that this information is verified by the supplier).

However, we do not feel it is appropriate to impose liability for civil penalties in relation to a supplier who fails to provide a verifier's opinion on whether a fuel has met the sustainability criteria. In such a case no RTFCs would be issued and the fuel will be counted as if it were fossil fuel.

This civil penalty in respect of failure to supply a verifiers report on the additional sustainability information will not exceed the lesser of £50,000 or 10% of turnover.

This proposal is contained in Article 22(2) of the draft amending Order.

11.9.3. Extending the time that a supplier has to inform the RFA of inaccurate information

Based on the experience of the RFA in administering the RTFO, we propose to extend the period which a supplier has to notify the RFA on becoming aware that data that has been submitted isn't accurate from the current 5 days to 20 days; we believe this increase will reduce the administrative burden of the RTFO on companies.

This proposal is contained in Article 22(4) of the draft amending Order.

Question 33: Do you have any comments on these proposed changes?

11.9.4. Removing the duty of the RTFO administrator to report to Parliament

Article 14 of the RTFO Order places a duty on the RTFO Administrator to report to Parliament on the compliance of obligated suppliers with their renewable transport fuel obligation and the effects of the RTFO.

We propose to remove this duty. Article 22 of the RED requires Member States to report in similar terms to the European Commission on a biennial basis. This report will replace the annual RTFO report that is produced by the RTFO administrator.

The duty to report to Parliament was placed on the RFA in order that Parliament could scrutinise the work of the RFA as an independent body at arms length from Government. We intend that the Secretary of State will assume the role of RTFO administrator before the order amending the RTFO comes into force. This being the case, the Secretary of State is already directly accountable to Parliament and therefore in our view there is no need for the Secretary of State to be required to produce a separate report to Parliament on the RTFO.

This proposal is contained in Article 13 of the draft amending Order.

11.10. Changes to key dates in the administrative process

The current RTFO does not require the provision of a verifier's opinion before the award of RTFCs. As we move to a mandatory system where RTFCs are not awarded until a verifier's opinion regarding the sustainability information is submitted we will need to amend some of the key dates in the administration of the RTFO.

We propose to introduce a final date for application of RTFCs (and the submission of verified information related to the additional sustainability information). We propose that this final date for application is 120 days after the end of an obligation period, i.e., the 12th August immediately following the obligation period.

In addition, the deadlines for revocation of RTFCs need amending. We propose to change the last date on which the RTFO administrator can revoke an RTFC to the 16th October immediately following the obligation period during which the RTFC was issued. This change will enable the RTFO administrator time to consider the verification reports before deciding whether to revoke an RTFC.

This proposal has a knock-on effect on other key dates — the proposed changes are detailed in Table 4.

Table 4. Key dates in the RTFO; a comparison of the current and future RTFO obligation periods

Date in RTFO Order	RTFO Order reference	Current dates (2010/11 year as an example)	Dates after amendment (2011/12 year as an example)
Beginning of obligation period	Art.4 (3) (a)	15/04/2010	15/04/2011
End of obligation period	Art.4 (3) (a)	14/04/2011	14/04//2012
Deadline for application for an RTFC (and hence last date to submit a verifiers opinion)	New article	Not in the order	12/08/2012* (Administrator will have discretion to accept application past this date)
Deadline for RFA to notify supplier of intent to revoke an RTFC	Calculated from as 28 days before the date in Art 20 (4) (c) (ii)	31/07/2011	11/09/2012
Deadline for RFA to revoke an RTFC	Art 20 (4) (c) (ii)	28/08/2011	16/10/2012
Deadline for RFA to reconsider a revocation	Art 20 (8) (b)	28/09/2011	15/11/2012
Date after which failing to inform administrator that data is incorrect stops giving rise to liability for a civil penalty	Art 23 (5)	28/09/2011	16/10/2012
Specified date for suppliers (redemption of certificates deadline)	Art 4(3) (b) & Art 21 (4)	05/10/2011*	29/11/2012*
Deadline for supplier to make a buy out payment	Art 21 (8)	05/11/2011	10/01/2013
Deadline for supplier to surrender a certificate for a share of the buy out fund	Art 22 (2) (b)	*05/11/2011	Deleted
Deadline for RFA to calculate total sum of buy out fund	Art 22 (2) (d)	*05/12/2011	Deleted
RFA able to include late payments into buy out fund after deadline for calculating total	Art 22 (2) (e)	*05/12/2011	Deleted
Deadline for RFA to publish annual Report	Art.14 (1) (b)	31/01/2012	Deleted

* or next working day (as defined in the order)

The effect of these proposed changes would be to move the specified date (commonly known as the “redemption deadline”), by which suppliers must demonstrate to the RTFO administrator that they have discharged their obligation to supply renewable fuel, to late November.

Question 34: Do you agree that 120 days after last day of an obligation period is sufficient for a supplier to provide a verifier’s opinion on any remaining data for that year (and apply for RTFCs)?

Question 35: Do you have any other comments on the proposed changes to key administrative dates?

11.11. Coming into force date

The provisions contained in the draft amendment Order and discussed in this document may be amended post this consultation.

We expect that, subject to Parliamentary approval, they will come into force from 15th December 2011. Should Parliamentary approval be delayed for any reason, the provision will be implemented from the next 15th of the month, in order to fit with the cycle of fuel duty payment for the majority of fuel supplied into the UK.

The provisions will apply to all fuel supplied on or after the date on which the amending Order comes into force.

11.12. Transitional arrangements

A number of transitional arrangements have been incorporated into the draft amending Order owing to our proposal to introduce amendments part way through an obligation period. These arrangements include transitional provisions related to:

- calculation of the specified amount (i.e. the total volume of renewable transport fuel a supplier is obliged to supply);

- calculation of the number of RTFCs to be issued;
- expansion of the scope of the RTFO to include fuels used in NRMM;
- introduction of the revised obligation levels.

In short, the changes made by the amending Order will apply from the coming into force date. We do not intend changes to be retrospective; however, as discussed in section 11.8, we propose to introduce new rules regarding the carry over of RTFCs that will result in the need to verify that RTFCs issued between April 2011 and the date of the amending Order coming into force meet the RED sustainability criteria should suppliers wish to carry over those RTFCs for use in the 2012/2013 obligation period.

Transitional provisions can be found in the following Articles of the draft amending Order: Article 6(3), 18, and 23.

12. Impact assessment

The Impact Assessment can be found at Annex D. 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.

Question 36: Do you agree the Impact Assessment correctly identifies the economic impacts?

13. Consultation questions

The Government is keen to hear consultees' views on any of the issues covered in the consultation paper. We would be particularly grateful for responses to the 37 questions which appear at various points in the text, and which are summarised below.

- Question 1** Do you agree to the proposed approach to developing the RTFO technical guidance? If not, please can you explain why?
- Question 2** Do you agree that we have correctly transposed the RED sustainability criteria in Article 25 of the draft amendment Order?
- Question 3** Do you have any comments you wish to make regarding how we have transposed the RED sustainability criteria?
- Question 4** Do you have any views on alternative approaches to implementing the sustainability monitoring and verification in a least burdensome manner?
- Question 5** Do you have information on the likely impacts to suppliers of approaches (a) and (b)?
- Question 6** Does approach (c) represent the best approach for implementing Article 17(6)?
- Question 7** Do you agree our propose approach for requiring information on the “appropriate and relevant information”?
- Question 8** Are there any other approaches that might be more appropriate?
- Question 9** Do you agree that we should require verification to at least the ISAE 3000 standard of limited assurance?
- Question 10** Are there any other suitable, or more appropriate, standards that we should consider?
- Question 11** Do you agree with our assessment that amending the RTFO such that all fuel suppliers are obliged to

register with the RTFO administrator and report on the fuel they supply will not result in any significant impact? If not, please can you explain why?

- Question 12** Do you agree with our proposal to pursue Option B, to expand the scope of the RTFO to include fuels intended for use in NRMM but to revise the obligation levels?
- Question 13** Do you agree with the assumptions made in our impact assessment that accompanies the proposal to expand the scope of the RTFO? If not, are you able to provide additional evidence?
- Question 14** What impacts (both desirable and perverse) does our proposal present?
- Question 15** What would the impact be of removing the minimum threshold?
- Question 16** Would there be any significant advantages to raising the minimum threshold to the RTFO?
- Question 17** Would there be any perverse impacts of raising the current minimum threshold?
- Question 18** Do you have any comments on the accompanying impact assessment?
- Question 19** Do you have any further evidence you would like us to consider?
- Question 20** Do you agree with our proposal to allow the renewable part of any transport fuel to be eligible for RTFCs?
- Question 21** Do you have information you would like to share regarding how renewable hydrogen should be counted towards RED targets in the future?
- Question 22** Is the proposed approach to determining the renewable fraction of a partially renewable fuel suitable?
- Question 23** Are there any other approaches that we should consider?

- Question 24** Do you agree with the proposed approach that FAME should continue to be treated as a wholly renewable fuel? If you do not agree with this proposal, please can you explain why?
- Question 25** Do you agree that our proposal is consistent with the approaches of other Member States and will reduce the potential for market distortions?
- Question 26** Do you have any evidence/comments to make regarding the benefits of allowing non-biodegradable feedstocks to count towards meeting the RTFO targets?
- Question 27** Do you agree with our proposed approach? If not, why?
- Question 28** Do you agree with our proposal to end the recycling of the buy-out fund? If not, please can you explain why?
- Question 29** Will the proposed approach to the carry through of RTFCs from current RTFO to the amended RTFO cause any unintended consequences?
- Question 30** Does our proposed approach to carry over retain sufficient flexibility whilst ensuring compliance with the sustainability criteria?
- Question 31** What would be the impact of not allowing any carry over from the current RTFO to the amended RTFO?
- Question 32** Do you have any comments on our proposed changes?
- Question 33** Do you have any comments on these proposed changes?
- Question 34** Do you agree that 120 days after last day of an obligation period is sufficient for a supplier to provide a verifier's opinion on any remaining data for that year (and apply for RTFCs)?
- Question 35** Do you have any other comments on the proposed

changes to key administrative dates?

Question 36 Do you agree the Impact Assessment correctly identifies the economic impacts?

14. What will happen next?

The Department for Transport will analyse the responses received and will lay a draft of the Renewable Transport Fuel Obligations (Amendment) Order before Parliament in autumn 2011 accompanied by an Explanatory Memorandum and final Impact Assessment.

The draft order will be subject to the affirmative resolution procedure, which in this case means that it needs to be laid in draft while Parliament is sitting and approved by both Houses. It will be made and come into force as soon as it has completed the Parliamentary process (although the provision will be implemented from the first 15th of a month — see section 11.11).

We will aim to publish a summary of responses, including the next steps, by 18 July 2011 on the Department's website. Paper copies will be available on request.

In line with Government policy on better regulation, a review clause will be added to regulations transposing the RED.

15. Code of practice on consultation

The Government has adopted a Code of Practice on consultations. The Code sets out the approach Government will take to running a formal, written public consultation exercise. This consultation is being conducted in line with the Code of Practice.

While most UK Departments and Agencies have adopted the Code, it does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Union Law).

The Code contains seven criteria. They should be reproduced in all consultation documents. Deviation from the code will at times

be unavoidable, but the Government aims to explain the reasons for deviations and what measures will be used to make the exercise as effective as possible in the circumstances.

The seven consultation criteria

1. **When to consult:** Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. **Duration of consultation exercises:** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact:** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises:** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation:** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises:** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult:** Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A full version of the Code of Practice on Consultation is available on the Better Regulation Executive web site at:

<http://www.berr.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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