Department for Transport

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

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Contents

1. Foreword

Transport is currently responsible for about 20 % of global greenhouse gas emissions, and these are rising faster than in other sectors. In the UK, carbon emissions from transport are responsible for around a quarter of our total annual emissions.

The coalition Government is committed to low-carbon growth, tackling climate change and making the UK energy supply more secure.

This consultation seeks views on the Government's proposals to introduce new regulations transposing the greenhouse gas intensity reduction requirements of European Directive 2009/30/EC (which amends Directive 98/70/EC, commonly known as the Fuel Quality Directive).

Consultees may also wish to be aware of the Department's consultation on the implementation of the transport elements of the Renewable Energy Directive (RED) (Directive 2009/28/EC), which was published in parallel to this consultation and can be found on the Department's website: http://www.dft.gov.uk/consultations/

2. Executive summary

Directive 2009/30/EC was adopted on 23rd April 2009 and amends the Fuel Quality Directive (FQD) (Directive 98/70/EC) on the quality of petrol, diesel and gas oil.

Article 7a of the FQD introduces the requirement for fuel and energy suppliers (principally those providing fuel and energy for land-based transport, and other non-road mobile machinery)[1] to reduce the lifecycle greenhouse gas (GHG) intensity of the fuel/energy that they supply by 6 % per unit of energy by 2020.

This reduction obligation is set relative to the EU average lifecycle GHG emissions from fossil fuels in 2010 (which will be determined by the institutions of the European Union).

Suppliers must report on their performance (the total volume of each type of fuel or energy supplied and the associated lifecycle GHG intensity) annually.

This consultation seeks views on outline proposals for new Regulations to implement the GHG saving elements of the Directive. The options presented are intended to stimulate discussion about the proposals, and our objective is to obtain consultees' views to help us fully understand the impacts of the proposals, particularly on obligated suppliers.

An Impact Assessment containing an analysis of the impacts of the proposals in this consultation paper is attached at Annex C; views are also sought on the assumptions and results of this assessment.

[1] This requirement covers inland waterway vessels and recreational craft when not at sea

3. Draft Motor Fuel (Composition and Content) Regulations

This consultation only covers proposals to implement Articles 7a to Article 7e of the FQD. The Motor Fuel (Composition and Content) and Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2010 (SI 2010, No. 3035), which came into force on 14 January 2011, transpose the remaining Articles of the Directive. Details of the consultation process related to these Regulations can be found at:

http://www.dft.gov.uk/consultations/closed/2010-26/

and a copy of the statutory instrument can be found at:

http://www.legislation.gov.uk/uksi/2010/3035/introduction/made

4. Geographical coverage

Some powers to regulate GHG emissions have been devolved. However, given the commonality between the requirements of the FQD and RED, as well as the fact that fuel/energy is supplied right across the UK, we believe that the FQD GHG requirements would be best met through regulations applying to the UK as a whole. The proposals in this consultation therefore cover the whole of the UK. We have agreed this approach with the devolved administrations.

5. RED Stakeholder Advisory Group

The Department for Transport set up a Stakeholder Advisory Group in 2009. The Group's main role was to help inform the Department on how best to implement the RED and FQD. This group was made up of representatives from the fossil fuel and biofuel industries, environmental bodies and other interested parties. 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/

6. Who should read this consultation?

This consultation will be of particular interest if you are:

- a producer or supplier of fossil fuel/energy for use in road transport and non-road mobile machinery;
- a supplier of biofuel;
- involved in growing or producing feedstocks for biofuels;
- a provider of electricity for use in transport;
- involved in environmental standards for fossil fuels and/or biofuels;
- an environmental body with an interest in fuel quality and/or biofuels and climate change.

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

6.1. 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 the closing date. 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.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions, when they respond.

A list of those specifically 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.

6.2. 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 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.

7. Overview of the Fuel Quality Directive

This section provides a summary of the GHG intensity reduction and reporting measures required by the FQD.

The GHG saving obligation

The main requirement is set out in Article 7a of the Directive. This article introduces the requirement for suppliers of fuel/energy for use in land-based transport, other non-road mobile machinery and recreational craft when not at sea, to reduce the lifecycle GHG intensity of the fuels/energy they supply by 6 % per unit of energy by 2020, relative to the EU average lifecycle GHG emissions from fossil fuels in 2010. To note, the EU-wide 2010 fossil fuel baseline is referred to in this document as “the baseline”.

The FQD envisages that the reduction in GHG intensity of fuels is to be achieved through:

- the increased supply of biofuels and alternative fuels/energy with lower GHG intensity; and
- reductions in the emissions associated with the extraction and refining of fossil fuels.

Examples of alternative fuels/energy include:

- compressed natural gas;
- liquefied petroleum gas;
- hydrogen.

Reductions in the emissions associated with extraction and refining of conventional fossil fuels could be achieved through improvements such as reduced flaring of natural gas at extraction sites, or efficiency savings during the refining of crude oils that lead to reductions in GHG intensity of the final product.

Obligated Suppliers

Article 2 of the Directive defines a "supplier" as being the entity responsible for passing the fuel or energy through an excise duty point. However, the Directive also envisages that Member States will designate another relevant entity as a supplier where no excise duty is payable.

Therefore, the FQD applies to all suppliers of fuel/energy for use in:

- Road vehicles;
- Non-road mobile machinery (including inland waterway vessels when not at sea);
- Agricultural and forestry tractors;
- Recreational craft when not at sea.

Annual Reporting

Article 7a(1) requires obligated suppliers to report, on an annual basis, the total volume of each type of fuel/energy supplied and the associated lifecycle GHG intensity. It also requires Member States to ensure that these reports are subject to verification.

Electricity suppliers

Furthermore, Article 7a(1) requires Member States to ensure that providers of electricity for use in road vehicles can choose to contribute to the GHG reduction obligation if they can demonstrate that the electricity they provided was used in electric vehicles.

Rate of GHG reductions

Article 7a(2) of the FQD requires Member States to ensure that obligated suppliers reduce lifecycle GHG emissions as gradually as possible.

Supplier Grouping

Article 7a(4) requires Member States to allow suppliers to meet the reduction obligations jointly, if they so choose — i.e., suppliers can group with other suppliers to share their obligation.

In such cases, the group of suppliers will be considered as a single entity for the purposes of meeting the obligations.

Biofuel sustainability

Articles 7b to Article 7e introduce mandatory sustainability criteria and minimum GHG savings for biofuels that are used to contribute towards the FQD GHG intensity reduction obligation.

In addition, these articles impose requirements for the calculation of the associated GHG emissions, and for verification that the mandatory sustainability criteria have been met.

8. Links to the Renewable Energy Directive

The RED requires Member States to ensure that 10 % of the energy used in transport is from renewable sources in 2020, sets out an indicative trajectory, and requires the introduction of mandatory sustainability criteria for biofuels contributing to these targets.

Our analysis suggests that, given the practical constraints on the contribution of other sources of GHG reduction in the timeframe to 2020, the reduction in GHG intensity of fuels required by the FQD will come largely from the increased supply of biofuels, which will simultaneously make up the majority of the renewable energy required to meet the transport target imposed by the RED. Therefore, it is our intention that implementation measures for the FQD mirror those for the RED as far as possible.

The sustainability criteria set out in Article 7b to Article 7e of the FQD are, for all relevant purposes, identical to those required by the RED. Obligated suppliers could, therefore, supply the same sustainable biofuel to meet both the FQD and RED targets.

Proposals for transposition of the RED are the subject of a separate consultation. That consultation proposes that the RED is implemented into UK legislation through amendments to the Renewable Transport Fuel Obligations (RTFO) Order[2], which regulates the supply of biofuels in the UK.

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.

[2]The Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072), as amended; available at: http://www.renewablefuelsagency.gov.uk/sites/rfa/files/_documents/RTFO_Order_as_amended_April_2009.pdf

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 most[3] 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 2010[4] and is now undertaking 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

[3] 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.
[4] http://ec.europa.eu/energy/renewables/biofuels/land_use_change_en.htm

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 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. Options for implementation

10.1. Overview of approaches

We have identified and assessed three approaches for implementing the FQD. These are summarised here and then explored in more detail in section 10.2:

- Approach A: do nothing;
- Approach B: set a trajectory of GHG savings up to 2020;
- Approach C: put in place a 6 % 2020 GHG savings obligation but delay setting trajectory/intermediate mandatory targets.

Approach A: Do nothing

Under this approach we would not transpose any of the FQD requirements.

Approach B: Set a trajectory of GHG savings up to 2020

Under this approach we would transpose the requirements of the FQD and put in place a trajectory of GHG reduction targets up to 2020.

We would:

- Set a 6 % GHG reduction obligation for 2020 and a trajectory of intermediate annual GHG reduction targets;
- Require suppliers to report on the GHG performance of their fuels (on an annual basis);
- Establish rules for grouping and the participation of electricity providers for electric vehicles;
- Appoint an administrator to administer the scheme[5].

[5] We propose that a common administrator would administer both the scheme implementing the RED and FQD (expected to be through amendment to the current RTFO). Further discussion regarding this issue is presented at section 11.8.

- Introduce a suite of civil penalties for failure to comply with the new regulations (aligned with those in the current RFTO).

Approach C: Put in place a 6 % 2020 GHG savings obligation but delay setting trajectory/intermediate mandatory targets

Under this approach we would:

- Set a 6 % GHG reduction obligation for 2020;
- Require suppliers to report on the GHG performance of their fuels (on an annual basis);
- Establish rules for grouping and the participation of electricity providers for electric vehicles;
- Appoint an administrator to administer the scheme;
- Introduce a suite of civil penalties for failure to comply with the new regulations (aligned with those in the current RFTO).

In addition, we would:

- Rely on the amended RTFO biofuel supply targets, in combination with the minimum GHG savings required by the common sustainability criteria, to deliver GHG savings until 2014;
- Put an obligation on the Secretary of State for Transport to propose, at a later date, measures necessary to ensure delivery of the FQD for the period 2014 to 2019, once there is a greater evidence base regarding biofuel sustainability and deployment issues.

10.2. Consideration of the options

We have undertaken a detailed analysis to understand the impacts of the three approaches presented above. The full Impact Assessment can be found at Annex C. A summary assessment of the likely impacts is presented here.

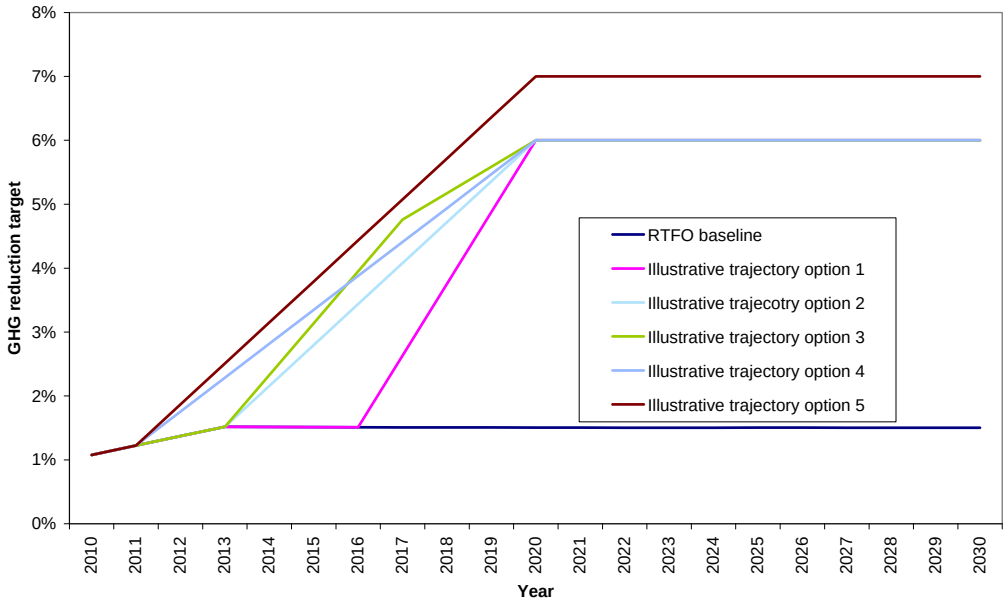
The FQD requires that the 6 % GHG savings target in 2020 is met in as gradual a manner as possible. This requirement might be taken to imply putting in place a trajectory of annual GHG savings targets leading up to 2020, in line with Approach B. An illustrative

range of five annual GHG reduction target trajectory options have been modelled; these illustrative trajectories are numbered 1 – 5 and have been used to assess the likely impacts of Approach B and C. Illustrative trajectories 1 – 3 delay the introduction of annual GHG reduction targets until 2014; illustrative trajectories 4 and 5 introduce annual GHG reduction targets immediately. These trajectories are summarised in Table 1 and Figure 1.

Table 1. Illustrative GHG reduction target trajectories

Approach	Illustrative trajectory option
A	N/A
B	1 2 3 4 5
C	1 2 3

Figure 1. Illustrative GHG reduction target trajectory options



Approach A: Do nothing

Hypothetically this is an option, and one that would not impose any additional costs on suppliers over and above those to be incurred under our proposed transposition of the RED. However, pursuing this option would inevitably result in infraction proceedings by the European Commission for failure to transpose the Directive.

Nevertheless, we have used this approach as a baseline against which to assess the impact of the other approaches.

Under this approach we would not directly transpose any of the requirements of the FQD. This approach assumes that the RTFO would continue unamended, i.e. biofuel supply targets would rise annually to 2013/2014, when they would reach 5 % by volume and remain at this level. Pursuing this approach would not deliver any additional GHG savings above those expected to be delivered indirectly through implementation of the RED. It would also fail to impose the reporting obligations set out at Article 7a(1) of the FQD.

Approach B: Set a trajectory of GHG savings up to 2020

This approach would allow the full transposition of the requirements of the FQD. In order to assess the potential impacts of this approach, we have considered five illustrative GHG reduction trajectories (represented as Options 1 to 5 in the accompanying Impact Assessment).

The analysis presented in our Impact Assessment suggests that if annual GHG reduction targets are put in place, the requirement to meet the targets would be met through a combination of supply of first generation crop-derived biofuels with some increase in the supply of biofuels produced from waste. It is likely that a large proportion of the biofuel supplied would be biodiesel produced from soy/palm feedstocks, which raises concerns regarding indirect carbon emission effects as these feedstocks are generally considered most susceptible to indirect land use change effects.

In addition, increasing the GHG reduction trajectory such that higher GHG savings are required (e.g. Option 5) would not necessarily deliver "better" (high GHG saving) biofuel because the targets could be met through either biofuels with high GHG savings or through the supply of increased volumes of lower GHG saving biofuel that meets the minimum requirements. Article 7b(8) of the Directive prevents Member States from augmenting the sustainability criteria and thus increasing the minimum GHG saving threshold of biofuels.

The amount of biofuel that can be blended with fossil petrol and diesel is currently limited by a combination of EU legislation and industry fuel standards. The current limit is 10 % by volume for bioethanol[6] in petrol and 7 % by volume for biodiesel in diesel[7].

These limits exist because current vehicles are not compatible with, or warranted for use with, higher percentages of biofuel than these levels. The effect of these limits results in a "blend wall", which is the point at which the vehicle fleet cannot take higher levels of biofuel without encountering warranty or vehicle performance issues. The assessed illustrative trajectories (options 1 to 5) suggest that the "blend wall" would be reached between 2014 and 2018. There is considerable uncertainty concerning how best to deploy biofuels and at present there is not a clear EU-wide strategy for overcoming the "blend wall".

The illustrative trajectories that have been explored under this approach suggest that implementation of the FQD 2020 6% GHG reduction obligation, and an associated trajectory of annual reduction targets, would be likely to impose a significant net cost on society with the Net Present Values of potential options ranging from −£2.9bn to −£4.0bn over the period 2010 to 2030 depending on the trajectory of annual GHG reduction targets that is chosen.

[6] Annex I of Directive 98/70/EC as amended by 2009/30/EC
[7] Industry standard EN 590:2009

The Net Present Value estimate consists of increased fuel supply costs which range from £8.6bn to £11.1bn, infrastructure costs which are estimated to be £285m, administrative costs which range from £4.6m to £7.0m, monetised GHG saving benefits which range from £4.1bn to £5.0bn and ancillary benefits (owing to lower levels of driving caused by higher driving costs and the "rebound effect") which range from £1.9bn to £2.4bn.

We expect these costs to be passed through to the consumer though increase in the pump price of fuels. Our analysis suggests that putting in place a 6% GHG reduction target in 2020 will lead to a 0.5 pence per litre increase in the cost of petrol, 2.5 pence per litre increase in the cost of diesel and a 4.1 pence per litre increase in the cost of low sulphur gas oil for use in NRMM[8].

Owing to the lower energy density of biofuels a greater volume of blended fuel will be required to drive the same distance; therefore, when evaluating the net cost to society it is useful to assess the costs net of energy density and taxation impacts. The following analysis takes into account the effects of energy density and taxation. Driving costs in 2020 are estimated to increase by 4.3% (petrol), 5.4% (road diesel) and 9.0% (low sulphur gas oil for use in NRMM) across trajectories (relative to the current RTFO trajectory). The analysis concludes that the significant challenge of meeting a 6% GHG savings target in 2020 is more likely with a target trajectory which starts earlier given the significant infrastructural requirements of overcoming the "blend wall".

In our analysis we have also considered the impact of putting in place a more ambitious 7% GHG saving target in 2020. This approach would lead to higher overall net costs. Full details of the analysis of putting in place a stretching target is provided in the accompanying Impact Assessment (Annex D).

Approach C: put in place a 6 % 2020 GHG savings obligation but delay setting trajectory/intermediate mandatory targets

This approach assumes that the RTFO is amended to introduce the sustainability requirements of the RED. We would rely on the amended RTFO to deliver the required GHG savings in the period 2011 to 2014. Other measures would then be brought forward to deliver the FQD requirements for the period 2014 to 2019.

[8] These are expressed in 2010 prices.

At this stage, it is not possible to determine what trajectory of annual GHG savings targets should be put in place for the period 2014 to 2019; however, it is possible to provide an illustrative consideration of the likely impact by considering illustrative trajectory options 1, 2 and 3. This approach is represented as approach C (option 6) in the accompanying Impact Assessment.

Putting a 6 % GHG reduction obligation in place for 2020 would be expected to impose costs on fuel suppliers which are likely to be passed to consumers through the price of fuel, i.e., through increased pump prices. The costs and benefits associated with this option will fall in within the range of those presented for illustrative trajectory options 1, 2 and 3. Pursuing this option may lead to central estimated increases in pump prices of around 0.5 pence per litre in 2020 for petrol (4.3% increase in driving costs net of energy and taxation effects — see discussion of this issue under the analysis of Option B). Similar estimates have been generated for road-grade diesel and low sulphur gas oil, 2.5 and 4.1 pence per litre, respectively (5.4% and 9.0%, respectively). These estimates are uncertain, particularly over the costs of supplying sustainable biofuels, so they should be interpreted as being indicative of the expected order of magnitude only.

In the absence of a mandated trajectory of GHG savings from 2014 to 2019, it is difficult to asses what intermediate GHG savings suppliers will deliver during the period 2011 to 2019 until we have determined what trajectory of GHG savings to require in the period 2014 to 2019. Approach C would be likely to impose a significant net cost on society — the Net Present Values of potential of the illustrative options ranges from −£2.9 bn to −£3.8 bn over the period 2010 to 2030.

The absence of interim GHG reduction targets in the early years of the scheme (2011 to 2014) is not likely to incentivise growth in higher GHG saving biofuels and may provide an incentive for biofuels with GHG savings much greater than the minimum required by the mandatory sustainability criteria to be exported to markets where they would have a higher economic value. However, this effect may be offset to some extent through the double reward of highly sustainable waste-derived biofuels under the proposed implementation of the RED.

However, under this approach we would not expect to see any increase in unsustainable biofuels, owing to the adoption of the

mandatory sustainability criteria concerning direct effects required by the RED and FQD.

Our analysis suggests that pursuing Approach C could delay the blend wall until 2016 to 2018 (assuming that no agreement is reached at European level to make changes to fuel specification standards), which would allow more time to determine the most cost effective and appropriate way of overcoming this issue.

Such an approach provides the most flexibility to take into account future discussions, and the outputs of on-going research/studies, concerning the sustainability of biofuels and their deployment. Pursuing this approach will enable any targets set in the future to be set by reference to an improved evidence base.

Question 1: Do you have any comments on our analysis of the three proposed approaches?

Question 2: Do you have any additional evidence you would like to share with the Department?

10.3. Proposed approach

Having considered the analysis of the options, and looking for a holistic approach to the implementation of both the FQD and the RED, we propose Approach C: to set a 6 % GHG reduction obligation for 2020, but without intermediate mandatory targets.

This will enable us to continue to build an evidence base regarding biofuel sustainability and deployment issues. Once we have built up this evidence base, and have also reviewed the outputs of the Climate Change Committee's report on whether targets for energy from renewable sources should be increased, we will be in a better position to consider the introduction of intermediate GHG reduction targets for the period 2014 to 2019.

Question 3: Do you agree with our proposal to do the minimum necessary to implement the FQD now whilst continuing to improve our evidence base?

Question 4: What are the potential impacts of pursuing approach C on the resilience and security of supply of the UK market?

11. Detail of proposed approach

To transpose Approach C into legislation, we propose to introduce new Regulations that will specifically require relevant fuel/energy suppliers to reduce the GHG intensity of the fuel/energy they supply in 2020. This section gives an overview of what we propose the Regulations to cover.

11.1. Who will be obligated?

We propose to obligate suppliers of fuel/energy for the following specified end uses:

- Road vehicles;
- Non-road mobile machinery (including inland waterway vessels when not at sea);
- Agricultural and forestry tractors;
- Recreational craft when not at sea.

The recently made Motor Fuel (Composition and Content) and Merchant Shipping (Prevention of Air Pollution form Ships) (Amendment) Regulations 2010 provide definitions of the above end uses, including definitions of inland waterway vessels and recreational craft that do not normally operate at sea. We propose to use these same definitions in the regulations transposing the FQD (and indeed the RED).

Table 2 provides an overview of those liquid fossil fuels that will be obligated under our implementation of the FQD. It should be noted that biofuels and energy carriers such as hydrogen intended for use in the above end uses would also be considered as obligated fuels/energy.

Table 2. Liquid fossil fuels

Fuel	CN code
Petrol	2710 1141 2710 1145 2710 1149 2710 1151 2710 1159
Diesel	2710 1941
Gas oil	2710 1941 2710 1945
Liquid petroleum gas (LPG)	2711 12 2711 13 2711 1900 2711 2900
Compressed or liquefied natural gas	2711 1100 2711 2100

The FQD places the GHG reduction obligation on fuel/energy suppliers, and we propose to obligate those entities that own the fuel/energy at the point at which excise duties become payable. This is what the FQD requires; it will mirror the requirements under the RTFO and reflect our proposal to align the FQD implementing measures with those of the RED.

In practice the obligation will fall on oil refiners, importers, biofuel producers and any others that supply fuel/energy for the specified end uses at the point at which excise duties become payable.

A supplier who buys fuel from a UK refiner to resell it within the UK would not be obligated in respect of that fuel. This situation frequently arises as a result of the duty deferred lifting arrangements that exist between the UK's major fuel suppliers.

If, for example, a batch of fossil fuel leaves the Shell refinery at Stanlow in Cheshire *en route* to a Shell forecourt in the North West of England, it will be Shell that pays the duty on that fuel, and Shell which acquires the obligation in respect of it. However, if a similar batch of fuel is "lifted" by BP from the Shell Stanlow refinery *en route* to a BP forecourt, it will be BP that pays the duty on that fuel (because Shell will have deferred the payment of duty), but it will be Shell, as the supplier, which acquires the obligation in respect of it.

Question 5: Do you agree with our proposal to mirror the RTFO approach in determining who is an obligated supplier?

11.2. Minimum threshold

Under the current RTFO, suppliers of less than 450,000 litres of fossil fuel (per annum) are exempt from the obligation. In addition, suppliers that supply less than 10,000,000 litres (per annum) are not obligated for the first 450,000 litres of fossil fuel that they supply.

This minimum threshold was introduced to reduce burden on small to medium sized suppliers.

The FQD obliges Member States to require all relevant suppliers to reduce the GHG emissions associated with the fuels they supply and as such makes no allowance for a minimum threshold to be introduced.

However, recognising that the current RTFO has a minimum threshold and that this was introduced to reduce burden on small to medium sized suppliers we would like to understand the possible impact of introducing a minimum threshold to any regulations transposing the FQD.

The RED consultation discusses the possibility of raising the RTFO minimum threshold to 10 million litres (per annum). Applying this minimum threshold to the FQD could reduce burden on small to medium sized suppliers and would also make implementation of the FQD consistent with that of the RED.

Question 6: Would the application of the same minimum threshold to both the RED and FQD significantly reduce the burden on the industry?

Question 7: Would the introduction of a minimum threshold set at 450,000 litres introduce any significant perverse impacts?

Question 8: Would the introduction of a minimum threshold set at 10,000,000 litres introduce any significant perverse impacts?

11.3. Fuels used to power non-road mobile machinery

The FQD obligates suppliers of gas oil for use in non-road mobile machinery to reduce the GHG intensity of their fuels. In the UK, there are currently two grades of gas oil:

- road-grade automotive diesel and
- gas oil (up to 1000 mg/kg sulphur) that is used in off-road applications, including non-road mobile machinery.

Article 4(2) of the Directive requires that, from January 2011, all gas oil for use in non-road mobile machinery must contain no more than 10 mg/kg of sulphur. However, the Directive does permit the continued sale of gas oil containing up to 1000 mg/kg of sulphur for rail vehicles and agricultural and forestry tractors until the end of 2011, provided that Member States can ensure that the proper functioning of emissions control systems is not compromised.

The application of this derogation was discussed in the consultation[9] on proposed amendments to the Motor Fuel (Composition & Content) Regulations and from 14 January 2011 this derogation has been applied for UK rail vehicles.

Compliance with the Directive would therefore appear to require three grades of gas oil from January 2011:

- low sulphur road-grade automotive diesel;
- low sulphur gas oil for use in non-road mobile machinery (marked for off-road use) and;
- gas oil (with sulphur content up to 1000 mg/kg) for use in rail vehicles until January 2012, and use in applications other than non-road mobile machinery such as stationary power generation, and industrial heating.

The FQD imposes obligations in respect of all fuel/energy used for a number of specific purposes:

- road vehicles;
- non-road mobile machinery (including inland waterway vessels when not at sea);

[9]Consultation available at: http://www.dft.gov.uk/consultations/open/2010-26/

- agricultural and forestry tractors and;
- recreational craft when not at sea.

There will be a number of instances where the final use of the fuel/energy is not known at the time that excise duty is paid (specifically, the end use of low sulphur gas oil for off-road applications) and, as such, it is possible that some low sulphur gas oil will be used in some stationary/heating applications that are clearly out of scope of the FQD obligation.

We expect the volumes of low sulphur gas oil used for purposes beyond the scope of the FQD to be small. Therefore, we propose that the reporting requirements and obligation are applied to the supply of all road-grade automotive petrol, diesel, low sulphur gas oil (irrespective of its end use), compressed natural gas (CNG), liquefied petroleum gas (LPG) and biofuel unless the supplier can prove that the fuel was supplied for uses other than use in road vehicles, non-road mobile machinery, tractors or recreational craft when not at sea (i.e., that the fuel was solely supplied for use in heating or stationary equipment, etc).

It is our intention that fuel supplied for use in rail vehicles be included in the obligation to report on GHG performance.

Question 9: Do you agree with our proposal to obligate GHG reductions for all road-grade diesels and all low-sulphur gas oil?

11.4. Renewable and partially renewable fuels

Under the requirements of the FQD, renewable fuels are defined as being liquid or gaseous fuels for use in transport made from the biodegradable fraction of products, wastes and residues that originate from biological sources. We believe that as a consequence of these definitions, non-biodegradable renewable material[10] should not be regarded as an eligible feedstock for a biofuel for purposes of the FQD (and indeed for the related RED).

[10] An example of a non-biodegradable renewable material would be a crop-derived plastic which is made from renewable feedstock but is not biodegradable.

There are a number of partially renewable fuels on the market, for example bio-methyl-tertiary-butyl-ether (bio-MTBE). These fuels are made partly from fossil feedstocks and partly from renewable feedstocks. We propose to recognise these fuels under the regulations transposing the FQD and will require that only the renewable portion of these fuels meets the biofuel sustainability criteria. Under the FQD what is important is the GHG intensity of the fuel and that any renewable portion meets the sustainability criteria.

Some renewable and partially renewable fuels are made from non-biodegradable feedstocks, for example biofuel produced from the gasificaiton of municipal waste that contains non-biodegrable crop-derived plastics. Under proposals to implement the RED, we propose to allow biofuels produced from non-biodegradable renewable feedstocks to be eligible for award under the RTFO providing those non-biodegradable renewable feedstocks meet the sustainability criteria; however, the UK will not be able to count such biofuel towards meeting its renewable energy targets. In implementing the FQD we propose a slightly different approach in that only biofuels produced from biodegradable renewable feedstocks will be required to meet the sustainability criteria. The GHG intensity of those fuels made from non-biodegradable renewable feedstocks will still be accounted for, but there will be no requirement those fuels to meet sustainability criteria.

Question 10: Do you agree with our proposals regarding partially renewable fuels?

Question 11: Does our proposed approach to biofuels produced from non-biodegradable feedstocks present any significant difficulties?

11.5. Lifecycle GHG reduction targets

Under our preferred approach we propose to introduce a 6 % GHG reduction obligation for 2020. We do not propose to set any intermediate targets at this stage and propose to rely on the current RTFO biofuel supply targets, in combination with the minimum GHG savings required by the common sustainability

criteria, (which will be introduced through proposed amendments to the RTFO) to deliver GHG savings until 2014.

These sustainability criteria contain a series of minimum GHG saving thresholds that are subject to certain "grandfathering" clauses that delay the imposition and uplift of the thresholds for 'installations'[11] that were in use at certain points. These are set out in Table 3.

Table 3. Minimum GHG savings and grandfathering periods

Minimum GHG and grandfathering periods for biofuel installations			
Period	Date production started at an installation		
	Before 23/01/08	From 23/01/08	From 01/01/17
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 %

In addition to the above proposals, we also propose to place an obligation on the Secretary of State for Transport to come forward with proposals for measures necessary to ensure delivery of the FQD for the period 2014 to 2019 at a later date.

11.6. Biofuel sustainability

The RED and FQD contain common sustainability criteria for biofuels. These criteria must be met in order for biofuels to be counted towards the GHG lifecycle emissions reduction obligation.

[11] The RED does not define 'installation' and we do not propose to do so in the RTFO. The RTFO administrator will need to issue guidance as to how this provision should be interpreted by suppliers. This issue is discussed further in our consultation on the RED.

The RTFO will be amended to introduce the mandatory sustainability criteria as part of the RED transposition. In order to transpose the sustainability criteria contained in the FQD, and to avoid any unintentional conflict, we propose that FQD regulations will reference the amended RTFO in this respect.

11.7. Accounting of biofuel that does not meet the sustainability criteria

In order to account for any potential supply of biofuel that does not meet the sustainability criteria we propose to treat those unsustainable biofuels as fossil fuel, except where the GHG performance of those biofuel is shown to be worse than the EU-wide 2010 fossil fuel baseline ('the baseline').

As such, we propose that any biofuel that does not fulfil the requirements of the sustainability criteria, but is demonstrated to have a GHG intensity less than the baseline, would be assigned a GHG intensity equivalent to the baseline. Any biofuels that do not fulfil the requirements of the sustainability criteria and are demonstrated to have a GHG intensity greater than the baseline would be assigned the actual GHG intensity, thus requiring the supplier of that unsustainable biofuel to account for any increases in GHG emissions above the baseline.

Articles 7a(3) and 7d of the FQD require suppliers to calculate the lifecycle GHG emissions from biofuels using either default values, or via a prescribed methodology as set out in Annex IV of the Directive.

The following examples illustrate our proposal. In order to provide quantitative examples we have assumed a baseline of 86.4 gCO_2e/MJ[12] and a fossil fuel comparator of 83.8 gCO_2e/MJ (as currently set out in Annex IV of the FQD).

Example 1

A supplier supplies 10,000 litres of biofuel that fails to meet the biodiversity criteria of the sustainability criteria. The GHG intensity

[12] This baseline value was suggested in the European Commission's "Consultation paper on the measures necessary for the implementation of Article 7a(5)"; available at: http://ec.europa.eu/environment/air/transport/pdf/art7a.pdf

is reported as 50 gCO_2e/MJ (which is equivalent to a GHG saving of 40% as measured against the fossil fuel comparator).

- 10,000 litres of biofuel is accounted for with a GHG intensity equal to that of "the baseline" of 86.4 gCO_2e/MJ.

Example 2

A supplier supplies 10,000 litres of biofuel that fails to meet the minimum GHG savings threshold (of a 35 % saving); it is demonstrated to deliver a 30 % GHG saving (as measured against the fossil fuel comparator), which is equivalent to a GHG intensity of 58 gCO_2e/MJ.

- 10,000 litres of biofuel is accounted for with a GHG intensity equal to that of "the baseline" of 86.4 gCO_2e/MJ.

Example 3

A supplier supplies 10,000 litres of biofuel that fails to meet the minimum GHG savings threshold (of a 35 % saving); it is demonstrated to deliver a −10 % saving as measured against the fossil fuel comparator, which is equivalent to a GHG intensity of 92 gCO_2e/MJ.

- The reported GHG intensity is greater than the baseline.
- 10,000 litres of biofuel is accounted for with a GHG intensity of 92 gCO_2e/MJ.

Question 12: Do you agree with our proposed approach for the accounting of unsustainable biofuel?

11.8. Reporting requirements

We propose that the FQD will be administered by the same body that administers the RTFO. The RFA currently administers the RTFO; however, the Government announced its plans to abolish the RFA and transfer its functions to the Department for Transport.

Our overall aim is to reduce the administrative burdens on obligated suppliers in respect of the reporting requirements of the FQD and RED.

Both the FQD and RED will require similar information to be reported. An IT system (the RFA Operating System (ROS)) is in place under the current RTFO that allows suppliers and verifiers to supply information to the administrator in an electronic format by making changes to an electronic database. We propose to replicate this approach for the reporting requirements of the FQD, i.e., we propose to require each obligated supplier to apply for and maintain an account on the ROS system.

When the FQD comes into force we propose that obligated suppliers should be required to report the GHG intensity of their fuel as well as details of how any biofuels they supply meet the new sustainability criteria. Suppliers would be required to report this information at least annually, but would be able to report on a more frequent basis should they wish. This flexibility will allow suppliers to report on the FQD and RED requirements together (under the proposed amendments to the RTFO obligated suppliers must report supply of fuel to the RTFO administrator on a monthly basis).

Requiring all obligated suppliers to report the GHG data to a common RTFO/FQD administrator will minimise administrative burdens on those suppliers that are already required to supply similar data under the RTFO, and will minimise the burden of the data collection process upon industry and the regulator.

11.8.1. What details must be reported?

We propose to require suppliers to provide, at least annually:

- Total amount of each type of fuel and/or energy supplied as volume of fuel supplied (litres of liquid fuel, kg of gaseous fuel);
- Equivalent amount of energy supplied (MJ)[13];
- Source of each type of fuel and/or energy supplied (origin and where purchased);
- Lifecycle GHG intensity (gCO_2e/MJ);

[13] The administrator will make available (through its guidance) a table of energy densities for the different fuels that are obligated under the FQD.

- Details of verification (all reported data must be verified by an appropriately qualified third party).

Annex III of the RED provides values for the energy content of a range of fuels. We propose to reference this table in the Regulations that transpose the FQD.

11.9. Calculation of GHG intensity of biofuels

The GHG intensity of biofuels must be reported on at least an annual basis. The FQD requires suppliers to calculate the lifecycle GHG emissions from biofuels using either default values or via a prescribed methodology as set out in Annex IV of the Directive. We propose that the FQD regulations will require the use of this calculation methodology.

11.10. Calculation of GHG intensity of fuels other than biofuels, and from energy

The FQD requires that suppliers report on the GHG performance of all fuels/energy that they supply. Article 7a(5)(a) obliges the European Commission to come forward with proposals for a GHG accounting methodology for fuels other than biofuels and from energy.

In the late summer of 2009, the European Commission consulted on a number of high-level options for a suitable accounting methodology[14]. To date, the European Commission has yet to come forward with a proposal for adoption through the EU's committee system for approving delegated legislation ('comitology').

In the absence of an EU methodology being agreed before the UK transposes this Directive, we propose to require suppliers to only report on the GHG performance of the biofuel they supply.

Once a fossil fuel/other energy GHG accounting methodology has been agreed at EU level, we will amend the national transposing regulations to reflect the requirement for suppliers to report the GHG performance of all fuels/energy they supply.

[14] The European Commission's consultation can be found at: http://ec.europa.eu/environment/air/transport/pdf/art7a.pdf

11.11. Verification of reported information

The FQD obliges Member States to ensure that suppliers' reports are subject to verification.

Verification of the sustainability of biofuels supplied is described in our consultation on the RED. We consider that the verification report that is generated in order to apply for Renewable Transport Fuel Certificates (RTFCs) under the amended RTFO should be sufficient to meet the verification requirements in respect of the biofuel sustainability criteria of the FQD (additional verification may be needed in respect of certain FQD reporting requirements — the exact nature of these requirements is yet to be agreed at the European level).

We propose that all data provided in suppliers' annual reports should be verified by an independent auditor; this requirement will extend to verification of the volumes/amounts of fuel/energy supplied. In respect of the verification of volumes/amounts of fuel/energy we would expect verifiers' reports to provide assurance that volumes/amounts reported to the administrator are consistent with those reported to HM Revenue and Customs in relation to excise duty payments and that reports concur with records held at distribution centres/terminals, import centres, etc.

Verification reports will be considered of an adequate standard provided that the verifier and the report comply with the International Standard on Assurance Engagements 3000 limited assurance standard[15] promulgated by the International Auditing and Assurance Standards Board.

Question 13: Do you agree that the International Standard on Assurance Engagements 3000 limited assurance standard is a suitable standard for verification under the proposed scheme?

Question 14: Are there any other assurance standards that we should consider?

Question 15: Do you foresee any difficulties in verifying data (including volumes of fuel/energy supplied, sustainability data, GHG intensity)?

[15] www.accountability21.net/uploadedFiles/Issues/ISAE_**3000**.pdf

11.12. Electricity for use in road vehicles

The FQD requires Member States to ensure that providers of electricity for use in road vehicles can choose to contribute to the GHG emission reduction obligation if they can demonstrate that the electricity they provided was used in road vehicles.

We propose to designate electricity providers as being those entities that sell electricity for public consumption. In order for an electricity provider to contribute to the GHG reduction obligation we would require them to supply adequate proof that the electricity they provided was used in road vehicles.

The European Commission is in the process of considering how to account for the GHG emissions associated with electricity. Initial proposals from the Commission have suggested that Member States would be able to choose between assigning the GHG intensity of electricity used in electric vehicles as being equal to either the Member State average, or the EU-wide average for electricity generally.

11.13. Grouping

The FQD requires Member States to allow groups of suppliers to meet GHG reduction obligations jointly. We propose to allow suppliers to group together to meet the 2020 6 % reduction obligation. In forming such a group the individual suppliers in that group will be required to share all of their obligation and GHG savings. The group will then report as a single entity.

11.14. Enforcement and civil penalties

Article 9a of the FQD provides for penalties for non-compliance and breaches, and Member States are responsible for the proper transposition of the requirements of the Directive at national level. In order to do this, Member States are required to lay down sanctions that are effective, proportionate and dissuasive.

Owing to the similarity between the FQD and RED we propose to align the enforcement regimes that underpin the schemes implementing both these Directives. We believe that this would be

best achieved by mirroring the civil sanctions and penalties which will be set out in the amended RTFO.

11.14.1. Mirroring the RTFO enforcement regime

We propose to apply a regime of civil sanctions, which (for the most part) will result in absolute offences with fixed penalties limited at a maximum of £50,000 or 10 % of annual turnover (whichever is the lesser).

We propose to introduce the following sanctionable actions:

- Failure to register for an account;
- Failure to report the required verified information;
- Provision of false/inaccurate information in relation to:
  - Registering for an account/closing down an account;
  - Reporting requirements;
- Provision of information which is later found to be false/inaccurate, and failure to notify the administrator of this;
- Failure to meet the 6 % reduction target.

In line with the current RTFO, we propose that civil penalty notices would be issued by the administrator where they are satisfied that an obligated supplier is liable to receive one. The civil penalty notice would include details such as the amount of the penalty being imposed and a date before which it must be paid.

We propose to align the processes for objections to civil penalties with those set out in the current RTFO, i.e., persons to whom civil penalty notices are given would be able to object to the administrator and also to the courts[16] within a specified period. We believe this is the most proportionate approach to adopt at this stage, and we propose to keep this approach under review.

[16] The current RTFO provides for persons to object to the High Court in England, Wales and Northern Ireland, and to the Court of Session in Scotland.

11.14.2. Penalty for failure to meet GHG obligation

In addition to the fixed penalty associated with failure to meet the 6 % reduction obligation, we also propose to introduce a second variable penalty assessed by reference to the extent of the failure to meet the GHG reduction obligation. We propose to link the value of this penalty to the cost of GHG abatement via increased supply of biofuel. As such, if a supplier fails to meet their GHG reduction obligation, we propose to apply a penalty equivalent to the cost of supplying biofuel to meet the short fall.

We propose to link the calculation of the cost of supplying the amount of biofuel that could have been supplied to deliver the CO_2 reduction that was not achieved to the minimum GHG saving required for biofuels from existing installations in 2020 – i.e. it will be assumed that every mega joule (MJ) of biofuel achieves a 50 % GHG reduction (as measured against the relevant fossil fuel comparator[17]). We propose the abatement cost should be the same as the buy-out price in the RTFO for that year (based on supply of bioethanol). This approach is designed to be appropriately dissuasive by incentivising compliance with the obligation over calculated acceptance of the variable penalty. This is achieved by assuming the minimum GHG saving permitted by the RED in 2020 and combining this with the lower energy density of ethanol (in comparison to biodiesel) for the purposes of calculating the abatement cost.

So, for example, if a supplier fell short of meeting their GHG reduction obligation/target by 3,000 kgCO_2e, we would apply a penalty equivalent to the cost of the amount of biofuel required to deliver 3,000 kgCO_2e savings. We would assume that the biofuel offered a 50% saving as measured against the fossil fuel comparator of 83.8 gCO_2e/MJ (i.e. 41.9 gCO_2e/MJ) and that bioethanol has an energy density of 21 MJ/litre, as stated in Annex III of the RED; in addition, we would assume the RTFO buy-out price (currently set at 30 pence per litre).

[17] The relevant fossil fuel comparator is detailed in Annex IV, Part C, paragraph 19 of the Directive.

Amount of biofuel that is required to abate 3,000 kgCO_2e is equal to:

= 3,000 kgCO2e ÷ 41.9 gCO_2e/MJ

= 71, 599 MJ

Volume of bioethanol required

= 71,599 MJ ÷ 21 MJ/litre

= 3,409 L

Equivalent RTFO buy-out price and FQD penalty

= 3,409 L × 30 pence per litre

= £1,023

In line with the current RTFO, should the supplier fail to pay all or any part of the sum of money related to the additional penalty, we propose that the amount of that penalty will increase at a rate of 5 percentage points above the Bank of England base rate until full payment is made. This proposal is in line with the current provision of Article 21 (9) of the RTFO.

11.14.3. Avoiding duplication of sanctions

Because the information required under the FQD and RED is similar, it is easy to envisage situations where a supplier could, by the same act or omission, fall foul of the amended RTFO Order and the legislation transposing the FQD at the same time. For example, a supplier might forget to apply for an account within the specified timeframe. We will ensure that the administrator, when it chooses to apply these sanctions, does not penalise a supplier twice for failure to satisfy requirements common to both the amended RTFO and the regulations transposing the FQD.

11.15. Powers for the administrator

The administrator will need a number of powers to be able to administer and regulate the FQD scheme and, in addition, we will need to require the administrator to discharge a number of duties.

We propose to duplicate most of the provisions contained in Article 15 of the RTFO. However, we propose a number of amendments to these provisions in order to reflect the differences between the two schemes.

We propose to place a duty on the administrator to report to the Secretary of State for Transport (should the administrator not be the Department for Transport) on the performance of suppliers against the requirements of the Regulations and to publicise the new scheme. In addition, we would require the administrator to identify that all obligated parties are registered with the administrator.

We will also provide the administrator with the powers necessary to develop technical guidance for suppliers, in a similar manner to the existing powers it has to develop technical guidance for the RTFO scheme.

11.16. Coming into force date

As it is our intention to align implementation of the FQD with that of the RED as far as possible, we propose that regulations transposing the FQD should come into force at the same time as the amended RTFO comes into force.

The RTFO scheme runs from 15th April to 14th April each year and it is accordingly proposed in the consultation on the amendments to the RTFO, that the amended RTFO should come into force on the 15th day of the earliest month possible in order to minimise the impact on reporting arrangements.

Although the FQD scheme will run from 1st January to 31st December (i.e., the reporting cycle will run on a calendar year basis), we propose that the regulations transposing the FQD will be commenced on the same day that the amended RTFO comes into force (i.e., the 15th day of the earliest month possible).

Question 16: Do you support the proposal for the FQD GHG Regulations to come into force on the same date as the amended RTFO comes into force?

12. Impact Assessment

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

We would also welcome any suggestions for alternative methods for reaching the objectives pursued, and views about any potential unintended consequences of the proposals, or practical enforcement or implementation issues.

Question 17: Do you agree that the Impact Assessment correctly identifies the likely economic impacts?

Question 18: Do you have any further evidence you would like the Department to consider in relation to the Impact Assessment?

13. Consultation questions

The Government is keen to hear consultees' views on any of the issues covered in this consultation paper. We would be particularly grateful for responses to the 18 questions which appear at various points in the text, and which are summarised below.

Question 1 Do you have any comments on our analysis of the three proposed approaches?

Question 2 Do you have any additional evidence you would like to share with the Department?

Question 3 Do you agree with our proposal to do the minimum necessary to implement the FQD now whilst continuing to improve our evidence base?

Question 4 What are the potential impacts of pursuing approach C on the resilience and security of supply of the UK market?

Question 5 Do you agree with our proposal to mirror the RTFO approach in determining who is an obligated supplier?

Question 6	Would the application of the same minimum threshold to both the RED and FQD significantly reduce the burden on the industry?
Question 7	Would the introduction of a minimum threshold set at 450,000 litres introduce any significant perverse impacts?
Question 8	Would the introduction of a minimum threshold set at 10,000,000 litres introduce any significant perverse impacts?
Question 9	Do you agree with our proposal to obligate GHG reductions for all road-grade diesels and all low-sulphur gas oil?
Question 10	Do you agree with our proposals regarding partially renewable fuels?
Question 11	Does our proposed approach to biofuels produced from non-biodegradable feedstocks present any significant difficulties?
Question 12	Do you agree with our proposed approach for the accounting of unsustainable biofuel?
Question 13	Do you agree that the International Standard on Assurance Engagements 3000 limited assurance standard is a suitable standard for verification under the proposed scheme?
Question 14	Are there any other assurance standards that we should consider?
Question 15	Do you foresee any difficulties in verifying data (including volumes of fuel/energy supplied, sustainability data, GHG intensity)?
Question 16	Do you support the proposal for the FQD GHG Regulations to come into force on the same date as the amended RTFO comes into force?
Question 17	Do you agree that the Impact Assessment correctly identifies the likely economic impacts?
Question 18	Do you have any further evidence you would like the Department to consider in relation to the Impact

Assessment?

14. What will happen next?

The Department will analyse the responses received and intends to lay draft implementing Regulations before Parliament in November 2011, accompanied by an Explanatory Memorandum and a final Impact Assessment. Subject to the responses received during this consultation process, we expect the regulations to come into force on 15th December 2011.

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 FQD.

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 Community 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.bis.gov.uk/files/file47158.pdf

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

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