

Response to:

**Targeted consultation on a proposed
amendment to the Renewable
Transport Fuel Obligations Order
2007 (as amended) - civil penalties**

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1. Foreword

The Renewable Transport Fuel Obligation requires suppliers of road transport fuel to ensure that a certain proportion of the fuel they supply comes from sustainable renewable sources.

The Government has proposed to make an amendment to the legislation that establishes the Renewable Transport Fuel Obligation scheme. The amendment would serve to put it beyond doubt that civil penalties issued under the scheme are recoverable as civil debts and the basis on which any interest would be calculated.

This document sets out a summary of the responses received to the “*Targeted consultation on a proposed amendment to the Renewable Transport Fuel Obligations Order 2007 (as amended) - civil penalties*” and the Government’s comments on those responses.

The consultation period began on 25 July 2012 and ran until 4 September 2012. The consultation was published on the Department for Transport website at:

<http://www.dft.gov.uk/consultations/dft-2012-27/>

We would like to thank all those who took the time to respond to this consultation.

2. Executive Summary

2.1. Summary of respondents

There were a total of 4 responses received from a cross-section of the industry and individuals and organisations who are interested in the new legislation. Table 1 provides a summary of those that responded to the consultation.

Table 1 Summary of responses from organisations and companies

Category of interest	Number of responses
Organisations representing the fuel industry	2
Large Companies supplying fuel	2
Total	4

Part One of this document summarises the responses to the questions posed in the consultation and the Government's Response.

Part Two provides a list of those organisations that responded to the consultation and the final cost-benefit analysis.

2.2. Summary of final policy for amending provisions on civil penalties

Our final policy implementation is described in full detail under the relevant sections in Part One of this document. In summary, we intend (subject to Parliamentary approval) to amend the Renewable Transport Fuel Obligations Order 2007 ("the RTFO Order 2007") so as to put it beyond doubt that where the RTFO Administrator issues a civil penalty this is recoverable as a civil

debt on which interest is payable. We will provide further guidance on the compliance requirements in RTFO Guidance.

2.3. Timing

The intention is to lay the draft instrument amending the civil penalties provisions before Parliament at the earliest opportunity. Subject to parliamentary approval, we anticipate that the amendments regarding civil penalties would come into force in the first quarter of 2013. The Department will aim to amend the RTFO guidance to correspond with this.

2.4. Contact details

If you have any questions regarding this response, please contact:

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3. Introduction

3.1. Overview of civil penalties issued under the current Renewable Transport Fuel Obligation

The Renewable Transport Fuel Obligations Order 2007(SI 2007/3072 - “the RTFO Order 2007”) places an obligation on large suppliers of fossil fuel to show that a certain proportion of the fuel which they supply for transport purposes is sustainable renewable transport fuel. (At present this applies only to road transport fuel, but the obligation is due to be expanded to cover additional fuel types). The obligation takes effect at the duty point (that is, the point when a fuel becomes chargeable for duty). The obligation has the effect of requiring that either a certain amount of sustainable renewable transport fuel is supplied or that a substitute amount of money (known as “buy-out”) is paid.

The amount of renewable transport fuel that must be supplied increases annually until April 2013, when it reaches 5% (of total road transport fuel supplied in the UK) by volume¹, and then remains at that level for subsequent years until further notice.

Owners of sustainable renewable transport fuel at the duty point are awarded one Renewable Transport Fuel Certificate (RTFC) per litre of liquid renewable fuel, or kilogram of biomethane, supplied where it meets mandatory sustainability criteria. Double certificates are awarded for renewable fuels produced from certain wastes, residues, non-food cellulosic or ligno-cellulosic material. RTFCs may be traded between participants in the scheme.

¹ The Government has proposed to amend the obligation target for biofuel (by volume) in transport fuel supplied from 5% to around 4.7%, for the obligation year 2013/2014 and subsequent years, with the aim of keeping the absolute volume of biofuel supplied at the level currently provided for under the RTFO. This is part of the proposed expansion of the RTFO scheme to include fuels used in Non-Road Mobile Machinery (as defined in the Fuel Quality Directive). These legislative changes are subject to the introduction of legislation and the parliamentary process.

At the end of the reporting year, those fuel suppliers to whom the RTFO scheme applies (referred to as “obligated” suppliers or account holders) demonstrate compliance with the RTFO by redeeming the appropriate number of RTFCs to demonstrate the required volume of sustainable renewable fuel was supplied. Alternatively, obligated suppliers can pay a buy-out price per litre of fossil fuel supplied, the buy-out price being set in the RTFO Order 2007.

To ensure compliance with the RTFO scheme the RTFO Order 2007 includes a power for the RTFO Administrator to issue civil penalties. Under the RTFO Order 2007, civil penalties can be issued for a number of reasons. These include failing to register under the RTFO, failing to pay any buy-out sum due, failing to provide accurate information and evidence to the Administrator, or knowingly making a false declaration on an application for RTF Certificates.

In our consultation we proposed to amend the RTFO Order 2007 so as to put it beyond doubt that any civil penalty that is imposed on a recipient of a civil penalty notice issued by the RTFO Administrator is enforceable as a civil debt. This would be recoverable by the RTFO Administrator (or an agent acting on its behalf).

The Government also proposed that the amending order would make provision for the basis on which interest is to be charged on unpaid civil penalties. These proposals are consistent with the position for outstanding buy-out payments in the RTFO Order 2007 and the recovery of civil penalties issued as part of the Renewables Obligation under the Electricity Act 1989.

Subject to Parliamentary approval of the relevant legislation, we now propose to amend the RTFO Order 2007 to this end.

Full details of all proposals can be found in the consultation document:

<http://www.dft.gov.uk/consultations/dft-2011-05>

4. PART ONE: Responses to each question in the consultation

4.1. Civil Penalties and RTFO Guidance

Summary of proposal

To amend the RTFO Order 2007 so as to put it beyond doubt that any civil penalty that is imposed on a recipient of a civil penalty notice issued by the RTFO Administrator is enforceable as a civil debt and recoverable by the RTFO Administrator (or an agent acting on its behalf)

4.1.1. Question 1: Do you agree with our proposal to amend the RTFO Order 2007 so as to put it beyond doubt that civil penalties are enforceable as civil debts?

Summary of responses

Agree: 4
Disagree: 0

Main messages from respondents

All respondents agreed that this was an appropriate way forward. In summary respondents were of the view that the policy aims of ensuring a level playing field for all participants in the RTFO scheme and effective enforcement are sound.

Individual responses/detailed points

Whilst in agreement that the proposed amendment to the RTFO is desirable respondents raised a number of concerns in respect of current RTFO Guidance relevant to the powers of the RTFO Administrator to issue civil penalties. These were that:

- Civil penalties should be issued as a last resort by the RTFO Administrator and proportionately, particularly where a supplier has acted in good faith.

- Further guidance on the appeals procedure would be beneficial.
- Clear guidance is needed, within the Department for Transport's RTFO technical guidance on what is considered to be sufficient, accurate evidence – specifically to ensure that where suppliers have audited the information they provide to the RTFO Administrator to the required ISAE 3000 standard further information is only required in the event of suspected fraudulent activity.
- Related to the above, concern was expressed over the RTFO Administrator's interpretation of what may constitute reasonable steps suppliers must take to ensure the accuracy of information and evidence provided to the Administrator.

4.1.2. Government Response

On the basis of the responses received we intend to proceed with our proposed amendment of the RTFO Order 2007.

We are grateful for the helpful responses received in respect of the related issue of RTFO guidance. The Government remains committed to ensuring that the enforcement of the RTFO scheme is proportionate, targeted, consistent, accountable and transparent.

The Department consulted on changes to the RTFO Order 2007 in 2011 in relation to transposing the transport elements of the Renewable Energy Directive. This included a proposal to alter the basis under which a supplier must provide information such that suppliers would be required to provide information that is 'accurate' rather than 'accurate to the best of the supplier's knowledge and belief'. This change was necessary to ensure the integrity of sustainability reporting and to prevent fraudulent reporting as the RTFO scheme has moved from a system of voluntary sustainability reporting to mandatory sustainability reporting.

The Government's response to the Consultation on the implementation of the transport elements of the Renewable Energy Directive is on the Department for Transport website at:

<http://www.dft.gov.uk/consultations/dft-2011-05>

In light of this the Government does not consider that it would be appropriate to produce RTFO guidance setting out that the issue of a civil penalty is a matter of last resort or what would be considered in all cases as reasonable steps a supplier might take to ensure the integrity of information and evidence supplied to the RTFO Administrator. It is not possible to predict every possible scenario in which the RTFO Administrator may need to require information from suppliers to demonstrate compliance with mandatory sustainability criteria nor would it be desirable to unnecessarily fetter the RTFO Administrator's ability to effectively enforce the RTFO scheme.

The Government does, however, recognise suppliers' desire for further clarity and guidance. To this end the Department for Transport intends to consult on amendments to RTFO guidance at the end of 2012. This would cover providing further information on:

- The appeals procedure.
- What is considered to be sufficient, accurate evidence and how verification to the required ISAE 3000 standard relates to this.
- What might constitute reasonable steps suppliers may take to ensure the accuracy of information and evidence provided to the Administrator.

The RTFO Administrator will continue to work closely with RTFO account holders as this guidance is developed.

4.2. Costs and benefits of the proposal

Summary of costs and benefits

The final cost benefit summary for the proposal is at Annex A. The consultation suggested that the proposed amendment to the RTFO places no new burdens on business, but would put it beyond doubt that monies owed from civil penalties are recoverable as civil debts - to ensure effective enforcement of the RTFO and a level playing field for suppliers.

4.2.1. Question 2: Do you have any comments on this proposal or the costs and benefits set out in the attached analysis?

Main messages from respondents

There was no disagreement with the cost-benefit analysis included in the consultation. There was agreement that the amendments to the RTFO Order 2007 would have no material difference on the operation of the RTFO scheme other than assisting the RTFO Administrator to effectively and equitably enforce the scheme.

4.2.2. Government Response

The Government remains of the view that under a worst case scenario, which includes non-compliance with the RTFO scheme, there are no net costs or benefits. Due to the small scale of the costs involved, the amendments are not expected to have a significant impact on how suppliers meet their obligations under the RTFO Order 2007. Therefore there is not expected to be any impact on fuel pump prices or greenhouse gas emissions from transport.

5. PART TWO: Annexes

Annex A: Final Cost-benefit summary

Background

The Renewable Transport Fuel Obligations Order 2007 (RTFO Order 2007) places an obligation on certain fuel suppliers to supply renewable transport fuels. At the end of an obligation period, obligated suppliers must redeem a number of Renewable Transport Fuel Certificates (RTFCs), which can be obtained by supplying sustainable renewable transport fuels or purchased from other suppliers of such fuels, or suppliers can “buy-out” of their obligation. The RTFO Order 2007² also sets out certain reporting requirements for suppliers.

Under the RTFO Order 2007, civil penalties can be issued for a number of reasons, such as failing to register under the RTFO, failing to pay any buy-out sum due, failing to provide accurate information and evidence to the Administrator, or knowingly making a false declaration on an application for RTF Certificates. The purpose of the amendment proposed is to put it beyond doubt that civil penalties can be enforced as civil debts, along with any interest owed. The policy rationale is to facilitate the effective enforcement of the RTFO scheme.

Under the RTFO Order 2007, unpaid buyout payments are recoverable as a civil debt attracting interest at 5% over the Bank of England base rate. We wish to make similar specific provision in respect of enforcing civil penalties under the Order.

Micro companies are not exempted from the RTFO scheme. The obligation bites on those companies supplying 450,000 litres of fossil fuel at the duty point, and a business employing less than 10 people is capable of supplying that volume and coming under the obligation.

² The Renewable Transport Fuel Obligations Order 2007 (as amended) (SI No. 2007 / 3072).

Historic data on RTFO penalties

In 2009/10 three civil penalties were issued, totalling £60,000. No interest was charged on these penalties, but one penalty, of £50,000, was paid 6 months late and could have incurred interest charges³.

Costs and benefits

The RTFO Administrator has the power to impose civil penalties. We wish to make express provision that any civil penalties imposed can be enforced as a civil debt (as for buy-out payments). Enforcement of a civil debt involves recovering monies owed from the civil penalty and any interest or other financial penalty for late payment.

Assuming that there is 100% compliance with the RTFO, no civil penalties are issued and there are no impacts arising from the enforcement of civil penalties as civil debts. Therefore there are no costs or benefits of the proposed changes.

We have considered non-compliance against the available evidence. If all civil penalties issued are paid promptly there will be no interest charged and there are no costs or benefits associated with the proposed changes.

However, an alternative scenario has been considered as a high estimate of the potential costs and benefits. Based on data for 2009/10, it is assumed that there are £50,000 of penalties per year that are paid 6 months late and incur interest at a rate of 5% above the Bank of England base rate. There is a £16,000 10-year Present Value Benefit to Government from increased revenue. Therefore, under this scenario which includes non-compliance with the RTFO, there are still no net costs or benefits.

The civil penalties, and any interest charged on them, constitute a transfer of monies from fuel suppliers to the Treasury's consolidated fund. Under this scenario which includes non-compliance with the RTFO there are still no net costs or benefits.

Making specific provision that civil penalties are enforceable as civil debts will facilitate effective enforcement of the RTFO. It

³ The Renewable Fuels Agency's press notice on this civil penalties is archived at: <http://webarchive.nationalarchives.gov.uk/20110407094507/http://renewablefuelsagency.gov.uk/news/company-receives-%C2%A350000-penalty-breaching-biofuel-regulations>

should also be noted that the transfer of cost from suppliers to the Treasury's consolidated fund, is essentially a transfer of monies from suppliers who are failing to meet their legal obligation to money available for public spending. One benefit from this transfer is that it ensures that suppliers seeking to avoid their RTFO obligation do not gain an unfair advantage over those operating within the legal requirements of the RTFO.

Due to the small scale of the costs involved, the amendments are not expected to have a significant impact on how suppliers meet their obligations under the RTFO. Therefore there is not expected to be any impact on fuel pump prices or greenhouse gas emissions from transport.

Annex B: List of organisations that responded

Downstream Fuel Association

Greenergy Fuels Ltd

Petroineos Refining and Trading

RMI Petrol Retailers' Association