

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

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Foreword

The Renewable Transport Fuel Obligation¹ requires suppliers of road transport fuel to ensure that a certain proportion of the fuel they supply comes from sustainable renewable sources.

The Government is proposing to make changes to the legislation that establishes the Renewable Transport Fuel Obligation scheme (“the RTFO”) – namely the Renewable Transport Fuel Obligations Order 2007 (SI 2007/3072 – “the RTFO Order 2007”). The change is to put it beyond doubt that civil penalties issued under the scheme are enforceable as civil debts.

¹ 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, the Renewable Transport Fuel Obligations (Amendment) Order 2009 (SI no 2009/843), the Office of the Renewable Transport Fuels Agency (Dissolution and Transfer of Functions) Order 2011 (SI no 2011/493), and the Renewable Transport Fuel Obligations (Amendment) Order 2011 (SI no 2011/2937).

Executive summary

1.1. Proposed measure on Civil Penalties

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 is proposing to make a change to the legislation that establishes the Renewable Transport Fuel Obligation scheme. The change is to put it beyond doubt that civil penalties issued under the scheme are enforceable as civil debts and are recoverable by the RTFO Administrator (or by an agent acting on its behalf). The amendment would also set out the relevant dates from which interest may be charged on late payments.

1.2. Overview of the current Renewable Transport Fuel Obligation

The Renewable Transport Fuel Obligations Order 2007(SI 2007/3072 - “the RTFO Order 2007”) places an obligation on owners of fuel (at the duty point - the point when a fuel becomes chargeable for duty) which is intended for road transport use to ensure that either a certain amount of sustainable renewable transport fuel is supplied or that a substitute amount of money 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) by volume, 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. RTFCs may be traded between participants in the scheme.

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 fuel supplied which does not meet sustainability criteria, 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, such as failing to meet the obligation, failing to register with the RTFO Administrator, failing to provide accurate information and evidence to the Administrator, or knowingly making a false declaration on an application for an RTFC.

1.3. Geographical coverage

This consultation, like the RTFO Order 2007, applies to the whole of the United Kingdom.

1.4. 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; or
- a supplier of renewable transport fuel, including both obligated and non-obligated account holders under the existing RTFO scheme.

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

1.5. How to respond

The consultation period began on 25 July 2012 and will run until 4 September 2012. Please ensure that your response reaches us by 4 September 2012. The Department considers that this 6 week period is sufficient because the consultation is targeted at stakeholders and has a limited scope (i.e.: concerns civil penalty enforcement only), and because the amendment involves putting

matters beyond doubt rather than any change in policy or new regime.

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 need alternative formats (Braille, audio CD, etc.).

Please send consultation responses to

Name: Michael Wright
Address: Department for Transport, Zone 1/32, Great
Minster House, 76 Marsham Street, London,
SW1P 4DR
Phone number: 020 7944 4378
Fax number: 020 7944 2605
Email address: biofuels.transport@dft.gsi.gov.uk

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 B. If you have any suggestions of others who may wish to be involved in this process please contact us.

1.6. 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 (EIR)).

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.

2. Detailed proposals

2.1. Enforcement of civil penalties

The Renewable Transport Fuel Obligations scheme (“the RTFO”) is underpinned by an enforcement regime based on civil penalties. The RTFO Administrator has the power to impose civil penalties on suppliers for non-compliance with the requirements of the RTFO. For example for failing to meet the obligation, failing to register under the RTFO, failing to provide accurate information and evidence to the Administrator, or knowingly making a false declaration on an application for a Renewable Transport Fuel Certificate (“RTFC”).

We propose 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).

Outstanding payments from a civil debt would have interest applied to that debt at a rate of 5 percentage points above the base rate of the Bank of England until that outstanding debt is paid in full.

Putting it beyond doubt that civil penalties are recoverable as civil debts will make sure that the RTFO enforcement regime is robust and will encourage compliance.

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.

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?
Question 2:	Do you have any comments on this proposal or the costs and benefits set out in the attached analysis (Annex C)?

2.2. Impact assessment

This consultation is for a measure which would make a minor amendment to an existing enforcement regime which is part of the

RTFO scheme. This would ensure a level playing field and effective enforcement. No formal impact assessment has been produced as the impact was considered as part of the consultation carried out on the RTFO Order 2007 including the proposed measures for enforcement and compliance. However, a draft summary of costs and benefits on the specific change to that legislation proposed in this consultation is included in Annex C.

The specific proposal in the consultation places no new burdens on business. The amendment to the civil penalty scheme would remove any doubt that monies owed from civil penalties are recoverable civil debts to ensure effective enforcement of the RTFO and a level playing field for suppliers.

The proposal to amend the RTFO Order 2007 so as to put it beyond doubt that civil penalties are enforceable as civil debts, is not expected to increase the burdens associated with compliance with the RTFO. This consultation does seek to gather views on the likely costs and benefits of the amendment to inform the Department's assessment.

3. Consultation questions

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

Question 2: Do you have any comments on our proposal or the costs and benefits set out in the attached analysis (Annex C)?

4. What will happen next?

The Department for Transport will analyse the responses received and will aim to lay a draft Renewable Transport Fuel Obligations (Amendment) Order before Parliament in 2012. This will be accompanied by an Explanatory Memorandum.

The draft order will be subject to the affirmative resolution procedure, which means that it needs to be laid in draft and to be approved by both Houses. It would come into force on the first day which is the 15th of a month after the day on which the Order is made (though some provisions within the Order will have different commencement dates).

We will aim to publish a summary of responses, including the next steps, within three months of the consultation closing on the Department's website. Paper copies will be available on request.

5. Code of practice on consultation

This is a targeted consultation which is being run in line with the principles set out in the Government's Code of Practice on Consultation (though see comments at section 1.5 above on duration) which can be found at:

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

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

Consultation Co-ordinator
Department for Transport Zone 1/14 Great Minster House London
SW1P 4DR

Tel: 020 7944 6186

Fax: 020 7944 2605

consultation@dft.gsi.gov.uk

Annex A: Consultation Response Form

Consultation Response Form

PART 1 - Information about you

Name	
Address	
Postcode	
email	
Company Name or Organisation (if applicable)	
Please tick one box from the list below that best describes you /your company or organisation.	
<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)
<input type="checkbox"/>	Large Company
<input type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Police
<input type="checkbox"/>	Member of the public
<input type="checkbox"/>	Other (please describe):
If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members:	
If you would like your response or personal details to be treated confidentially please explain why:	

PART 2 - Your Comments

1. Do you agree with our proposal to amend the RTFO Order to put it beyond doubt that civil penalties are enforceable as civil debts?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>Please explain your reasons and mention any additional topics on which you would wish to see further guidance :</p>		

2. Do you have any comments on our proposal, or the costs and benefits set out in the attached analysis (Annex C)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>Please explain your reasons and mention any additional topics on which you would wish to see further guidance :</p>		

Annex B: List of those consulted

In addition to publication on the DfT website, the following have been alerted to the publication of this consultation document and asked for their comments:

710 UK Ltd

A & V Squires Plant Co Ltd

Abako Ltd

Aeolus Partnership

Agri Energy

Alan Heywood & Company

Amplefuel

apple fuels limited

Argent Energy (UK) Ltd

Associated British Bio-Fuels Ltd

ASM (D) Ltd

Auraria Currency & Commodities Invest AG

BCL accountants

B.W.O.C Ltd

BENP Lillebonne

Bio Grade Limited

Bio UK Fuels (Sheffield) Ltd

Biofuel Refineries Ltd

Biomotive Fuels Ltd

Biotec Engineering Limited

BP Oil UK Limited
British Sugar plc.
Business Bio Fuels Ltd
Claire Pitts & Co Ltd
Confederation of British Industry
Connect Oil Limited
ConocoPhillips Limited
Convert2Green Limited
Devon Biofuels
Doncaster Bio Fuels
Dorset Bio Solutions
Double Green Ltd
Downstream Fuel Association
East Yorkshire Biofuels Ltd
Edible Oil Direct Ltd.
Ensus UK Ltd
Ernst & Young
ERM Certification and Verification Services
ESL
Essar Oil (UK) Limited
Esso Petroleum Company Limited
Evergreen Oil (High Laver) Ltd
Federation of Small Businesses
Figure Fox Ltd

Footprint Fuels
Fossil Fuels LTD
Four Rivers Biofuels Limited
Four Seasons Fuel Ltd
Fuel Systems UK Limited
Gasrec Limited
Graham Hoggard
Grant Thornton
Green Fuels Ltd
GreenerDiesel.com (UK) Limited
Greenenergy Fuels Limited
Greenfuel Oil Co (North West) Ltd
GreenFuel Supply Solutions Ltd
Greenolysis Ltd
Gwynedd Biofuels Ltd
Hale Financial Ltd
Harvest Energy Ltd
Hillcrest (Midlands Limited
Hodgson & Oldfield
Ian Robinson
INEOS Europe Limited
International Exchange Services
Inspectorate International Ltd
J.R.Rix & Sons Ltd

Kassero Edible Oils Ltd
KPMG
Lissan Coal Company Limited
Mabanaft UK Ltd
Mex Technologies Limited
MFS Fuel Supplies Ltd
Mobene
Morgan Stanley Capital Group Inc.
MPB Bioproducts Limited
Muirhouse Farm Partnership
Murco Petroleum Ltd
Neal Environmental Ltd
Neste Oil
NFPAs Ltd
Ofgem
Olyphant and Talbot Fuels
Organic Drive Limited
Organic Waste Management (UK) Limited
Petrolneos Trading Limited
Petroplus Refining Teesside Limited
Phoenix Speciality Oils Ltd
Phillips 66 Ltd
Pilkington Oils Limited
Prax Petroleum Ltd

PricewaterhouseCoopers
Proper Energy Ltd
PRS Environmental
Pure Fuels Ltd
Regenattec Limited
Renewable Certificates Ltd
Renewable Energy Association
Robert Hayden & Co
Royal Society for the Protection of Birds
Rural Development Trust
SGS United Kingdom Ltd
Seed Crushers and Oil Processors Association
Shell UK Ltd
Shepherds Bakery
SIA European Commodities Trading Company
STX Services
Topaz Energy Limited
Total Additifs et Carburants Speciaux
Total UK Ltd
UK Renewable Fuels Ltd
UK LPG
UK Petroleum Industry Association
UK Sustainable Biodiesel Alliance
Uptown Biodiesel Ltd

Valero Energy Ltd

Veg Oil Motoring

Verdant Fuel Limited

Vireol

Wight Made Diesel

William John Brown T/as Greenearth Biodiesel

World Fuel Services (Europe) Ltd

Worton LLP

Yateley Industries for the Disabled Limited

Yorkshire Petroleum Company Ltd

Annex C: Draft cost-benefit summary

Background

The Renewable Transport Fuel Obligations Order 2007 (RTFO Order 2007) mandates the obligation of 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 “buy-out” of their obligation. The RTFO Order 2007 also sets out certain reporting requirements for suppliers.

Under the RTFO Order 2007², civil penalties can be issued for a number of reasons, such as failing to meet the obligation, failing to register with the RTFO Administrator, failing to provide accurate information and evidence to the Administrator, or knowingly making a false declaration on an application for an RTFC. The purpose of the amendment proposed in this consultation 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 efficient enforcement of the RTFO scheme.

Under the RTFO Order 2007 Order, 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.

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 specific 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.

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

³

<http://webarchive.nationalarchives.gov.uk/20110407094507/http://renewablefuelsagency.gov.uk/news/company-receives-%C2%A350000-penalty-breaching-biofuel-regulations>

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 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 enforcement of the RTFO. It 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 suppliers seeking to avoid their obligation do not gain an 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.