

Draft Order laid before Parliament under sections 124(5) and 192(3) of the Energy Act 2004 for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2021 No.

TRANSPORT

ENERGY

CLIMATE CHANGE

**The Renewable Transport Fuel Obligations (Amendment) Order
2021**

Made - - - - - *****
Coming into force - - - *1st January 2022*

The Secretary of State, having consulted in accordance with section 124(4) of the Energy Act 2004(a), makes this Order in exercise of the powers conferred by sections 124(1) and (2), 125A(1), 126(1) to (3), 127, 129(1) and (3), 132(1) and 192(4) of that Act.

In accordance with sections 124(5) and 192(3) of the Energy Act 2004 a draft of this Order was laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation and commencement

1. This Order may be cited as the Renewable Transport Fuel Obligations (Amendment) Order 2021 and comes into force on 1st January 2022.

Extent

2. An amendment made by this Order has the same extent as the instrument amended.

(a) 2004 c. 20 (“the 2004 Act”), amended by S.I. 2018/374. Section 125A of the 2004 Act was inserted by Schedule 7 to the Climate Change Act 2008 (c. 27). Section 132(1) of the 2004 Act was amended by Schedule 7 to the Climate Change Act 2008. Section 192(4) of the 2004 Act was amended by section 62 of the Scotland Act 2016 (c. 11) and Schedule 6 to the Wales Act 2017 (c. 4). There are other amendments to the 2004 Act, but these are not relevant.

PART 2

Amendment of the Renewable Transport Fuel Obligations Order 2007

Introductory

3. The Renewable Transport Fuel Obligations Order 2007(a) is amended in accordance with this Part.

Amendment of article 1A

4. In article 1A, omit paragraph (4).

Amendment of article 2

5. In article 2(1)—

- (a) for the definition of “additional sustainability information” substitute—
““additional sustainability information” means the information specified in the guidance published by the Administrator under article 15(1)(m);”;
- (b) in the definition of “assessment time”—
 - (i) in sub-paragraph (b), for “is it sold to a retail” substitute “it is sold to a”;
 - (ii) in sub-paragraph (c), after “transport fuel” insert “, not falling within sub-paragraph (b),”;
 - (iii) in sub-paragraph (d), for “(b) or (c)” substitute “(b), (c) or (e)”;
 - (iv) after sub-paragraph (d) insert—
“(e) in relation to a maritime RFNBO, the time at which the RFNBO is dispensed for use in a ship;”;
- (c) for the definition of “the directive” substitute—
““forest biomass” means biomass produced from forestry;
“forest criteria” means the criteria set out in Schedule 3;
“GHG” means greenhouse gas;”;
- (d) after the definition of “issue of an additional RTF certificate” insert—
““land criteria” means the criteria set out in Schedule 2;”
- (e) in the definition of “non-road transports”, after sub-paragraph (d) insert—
“(e) any train not falling within sub-paragraph (a);
(f) any mode of transport that would fall within sub-paragraph (a) but for the fact it is not fitted with an engine within a category set out in paragraph 1 of Article 4 of Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery;”(b);
- (f) in the definition of “relevant crops”, for “feedstocks listed in Annex IX of the directive” substitute “dedicated energy crops”;
- (g) for the definition of “renewable energy obligation” substitute—
““renewable energy obligation” means a scheme, including a scheme under which such requirements may be fulfilled by using RTF certificates or certificates equivalent to RTF certificates, requiring—

(a) S.I. 2007/3072, amended by S.I. 2009/843, 2011/493, 2011/2937, 2013/816, 2015/534, 2018/374 and 2020/1541.

(b) EUR 2016/1628, amended by S.I. 2019/648.

- (a) energy producers to include a given share of energy from renewable sources in their production;
 - (b) energy suppliers to include a given share of energy from renewable sources in their supply; or
 - (c) energy consumers to include a given share of energy from renewable sources in their consumption;”;
- (h) after the definition of “RTF account” insert—
- ““ship” includes every description of vessel used in navigation, other than non-road transports;
- “soil carbon criteria” means the criteria in paragraph 2(2) of Schedule 1;
- “support scheme” means any instrument, scheme or mechanism applied by any country, including the United Kingdom, that promotes the use of energy from renewable sources by—
- (a) reducing the cost of that energy;
 - (b) increasing the price at which that energy can be sold; or
 - (c) increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased,
- and for this purpose “instrument, scheme or mechanism” includes investment aid, tax exemptions or reductions, tax refunds, renewable energy obligations, and direct price schemes including feed-in tariffs and sliding or fixed premium payments;”;
- (i) in the definition of “sustainability criteria”, for “the Schedule” substitute “Schedule 1”;
- (j) for the definition of “sustainable feedstock” substitute—
- ““sustainable feedstock” means a relevant feedstock, which—
- (a) to the extent that it consists of material other than forest biomass, residues from agriculture or wastes from agriculture, meets the land criteria;
 - (b) to the extent that it consists of forest biomass, meets the forest criteria;
 - (c) to the extent that it consists of residues from agriculture or wastes from agriculture, meets the land criteria and the soil carbon criteria;”.

Amendment of article 3

6.—(1) Article 3 is amended as follows.

(2) After paragraph (5B) insert—

“(5C) “Maritime RFNBO” means a RFNBO that is for use in ships.”.

(3) In paragraph (10)(b), after “road vehicles” insert “, or is a maritime RFNBO”.

Amendment of article 4

7.—(1) Article 4 is amended as follows.

(2) In paragraph (6C), for the table substitute—

<i>“(1) Obligation period or periods</i>	<i>(2) % which, when applied to the obligated amount, gives the development fuel target</i>	<i>(3) % which, when applied to the obligated amount, gives the main obligation target</i>
1st January to 31st December 2021	0.556%	10.679%
1st January to 31st December 2022	0.908%	12.599%
1st January to 31st December 2023	1.142%	13.078%

1st January to 31st December 2024	1.379%	13.563%
1st January to 31st December 2025	1.619%	14.054%
1st January to 31st December 2026	1.863%	14.552%
1st January to 31st December 2027	2.109%	15.056%
1st January to 31st December 2028	2.358%	15.566%
1st January to 31st December 2029	2.611%	16.083%
1st January to 31st December 2030	2.867%	16.607%
1st January to 31st December 2031	3.127%	17.138%
1st January to 31st December 2032, and subsequent obligation periods	3.390%	17.676%”.

(3) In paragraph (8)(a)(ii), after “road vehicles” insert “, or is a maritime RFNBO”.

(4) In paragraph (9)—

(a) in sub-paragraph (a), for “or (d)” substitute “, (d), (e) or (f)”;

(b) after sub-paragraph (d) insert—

“(e) where the relevant fuel is a maritime RFNBO in the form of ammonia, one kilogram of that fuel must be treated as equivalent to 0.66 litres of liquid relevant fuel;

(f) where the relevant fuel is a maritime RFNBO in the form of methanol, one litre of that fuel must be treated as equivalent to 0.70 litres of liquid relevant fuel.”.

Amendment of article 5

8.—(1) Article 5 is amended as follows.

(2) In paragraph (2A)(a), after “road vehicles” insert “, or is a maritime RFNBO”.

(3) In paragraph (5)—

(a) in sub-paragraph (a), for “or (d)” substitute “, (d), (e) or (f)”;

(b) after sub-paragraph (d) insert—

“(e) where the renewable transport fuel is a maritime RFNBO in the form of ammonia, one kilogram of that fuel must be treated as equivalent to 0.66 litres of liquid renewable transport fuel;

(f) where the renewable transport fuel is a maritime RFNBO in the form of methanol, one litre of that fuel must be treated as equivalent to 0.70 litres of liquid renewable transport fuel.”.

(4) In paragraph (6)(a), after “partially renewable” insert “transport”.

Amendment of article 15

9. After article 15(1)(l) insert—

“(m)to publish guidance explaining—

(i) the information that constitutes additional sustainability information;

(ii) how the Administrator is to be satisfied that the soil carbon criteria are met;

- (iii) for the purposes of paragraph 3 of Schedule 1, how the GHG emission saving from the use of an amount of renewable transport fuel is to be determined and, in particular, how default values and actual values are to be determined in relation to an amount of renewable transport fuel;
- (iv) how the Administrator is to be satisfied that the land criteria are met; and
- (v) how the Administrator is to be satisfied that the forest criteria are met.”.

Amendment of article 16

10.—(1) Article 16 is amended as follows.

(2) In paragraph (2)(a)(ii)—

- (a) for the words from “the support scheme” to “or a UK” substitute “a support scheme, or a”;
- (b) after “supplier” insert “(but see paragraph (6))”.

(3) In paragraph (3)(ea)—

- (a) for the words from “the support scheme” to “or a UK” substitute “a support scheme, or a”;
- (b) after “supplier” insert “(but see paragraph (6))”.

(4) After paragraph (5) insert—

“(6) Nothing in paragraphs (2)(a)(ii) or (3)(ea) applies to support schemes in the form of—

- (a) investment aid benefitting the production plant in which the renewable transport fuel was produced, whether situated in the United Kingdom or elsewhere; or
- (b) the reduction in any duty payable in the United Kingdom under the 1979 Act.”.

Amendment of article 17

11. In article 17(1)(a), after “road vehicles” insert “, or is a maritime RFNBO”.

Amendment of article 23

12. In Article 23(8A), for “is £0.30” substitute—

“is—

- (a) where it relates to an application for an RTF certificate made on or before 31st December 2021, £0.30;
- (b) where it relates to an application for an RTF certificate made on or after 1st January 2022, £0.50”.

Amendment of the Schedule

13.—(1) The Schedule is amended as follows.

(2) Renumber the Schedule as Schedule 1.

(3) In paragraph 1—

- (a) omit the definition of “GHG”;
- (b) omit the definition of “nature protection area”;
- (c) omit the words from the definition of “primary forest” to the end.

(4) For paragraph 2 substitute—

“Compliance with the sustainability criteria

2.—(1) To the extent that renewable transport fuel was produced from a feedstock listed in column (2) of the table below, that feedstock meets the sustainability criteria if it meets the conditions specified, in relation to the feedstock concerned, in column (3) of the table.

<i>(1) Entry number</i>	<i>(2) Feedstock</i>	<i>(3) Conditions that the feedstock must meet in order to meet the sustainability criteria</i>
1	Forest biomass, including residues from forestry or wastes from forestry	The GHG emission saving threshold and the forest criteria
2	Residues, including processing residues, which are not residues from agriculture, aquaculture, fisheries or forestry	The GHG emission saving threshold
3	Wastes, which are not wastes from agriculture, aquaculture, fisheries or forestry	The GHG emission saving threshold
4	Residues from agriculture or wastes from agriculture	The GHG emission saving threshold, the land criteria and the soil carbon criteria
5	Renewable energy of non-biomass origin	The GHG emission saving threshold
6	Any feedstock not falling within entries 1 to 5 above	The GHG emission saving threshold and the land criteria

(2) A relevant feedstock meets the soil carbon criteria if the renewable transport fuel supplier provides evidence, by reference to the guidance published by the Administrator under article 15(1)(m), that satisfies the Administrator that adequate monitoring or management plans are in place for the land concerned which address the impacts on soil quality and soil carbon of the harvesting of the relevant feedstock from that land.

(3) In the table, “GHG emission saving threshold” means the threshold established in accordance with paragraph 3.”.

(5) In paragraph 3—

(a) in sub-paragraph (3)—

(i) in paragraph (a), for “in accordance with paragraph 5” substitute “by reference to the guidance published by the Administrator under article 15(1)(m)”;

(ii) in paragraph (b), for “in accordance with paragraph 6” substitute “by reference to the guidance published by the Administrator under article 15(1)(m)”;

(b) in sub-paragraph (4), for “any guidance produced by the Administrator under article 15(2)(b)” substitute “the guidance published by the Administrator under article 15(1)(m)”.

(6) In paragraph 4, for sub-paragraphs (a) and (b) substitute—

“(a) where the renewable transport fuel is not RFNBO—

(i) if the fuel is produced in an old chain of installations, 55%;

(ii) if the fuel is produced in a new chain of installations, 65%;

(b) where the renewable transport fuel is RFNBO, 65%.”.

(7) Omit paragraphs 5 to 9.

Insertion of Schedules 2 and 3

14. After Schedule 1 (as so renumbered) insert—

“SCHEDULE 2

Article 2(1)

Land criteria

Meeting the land criteria

1. A relevant feedstock meets the land criteria if the renewable transport fuel supplier provides evidence, by reference to the guidance published by the Administrator under article 15(1)(m), that satisfies the Administrator that the relevant feedstock was not obtained from land of a description falling within paragraphs 2 to 4, subject to the exceptions set out in those paragraphs.

Prohibited land categories

2. Land with a high biodiversity value that had one of the following statuses in or after January 2008, whether or not the land continues to have that status—

- (a) primary forest or other wooded land of native species, where there is no clearly visible indication of human activity and the ecological processes are not significantly disturbed;
- (b) land not falling within sub-paragraph (a) which is, or which has been identified as, highly biodiverse forest or other wooded land that is species-rich and not degraded, unless—
 - (i) the land is designated for nature protection purposes; and
 - (ii) evidence is provided that satisfies the Administrator that the production of the relevant feedstock did not interfere with the purposes for which the land is designated for nature protection purposes;
- (c) land not falling within sub-paragraphs (a) or (b) which is designated for nature protection purposes, including for the protection of rare, threatened or endangered ecosystems or species, unless evidence is provided that satisfies the Administrator that the production of the relevant feedstock did not interfere with the purposes for which the land is designated for nature protection purposes;
- (d) highly biodiverse grassland spanning more than one hectare that is—
 - (i) natural grassland that would remain as grassland and that maintains its natural species composition and ecological characteristics and processes in the absence of human intervention; or
 - (ii) non-natural grassland that would cease to be grassland in the absence of human intervention and that is species-rich and not degraded and which has been identified as being highly biodiverse, unless evidence is provided that satisfies the Administrator that the harvesting of the raw material is necessary to preserve its status as highly biodiverse grassland.

3.—(1) Land with high-carbon stock that had one of the following statuses at any time in January 2008 and which no longer has that status—

- (a) wetlands, where the land is covered with, or saturated by, water permanently or for a significant part of the year;
- (b) continuously forested areas spanning more than one hectare with trees higher than five metres and a canopy cover of more than 30%, or trees able to reach those thresholds in situ;

- (c) land spanning more than one hectare with trees higher than five metres and a canopy cover of between 10% and 30%, or trees able to reach those thresholds in situ, unless evidence is provided that satisfies the Administrator that the GHG emission saving from the use of the renewable transport fuel concerned is equal to or greater than the minimum GHG emission saving applicable to the fuel at the time when it is used, as set out in Schedule 1.

(2) But this paragraph does not apply if, at the time the relevant feedstock was harvested, the land concerned had the same status as it had in January 2008.

4. Land that was peatland at any time in January 2008, unless evidence is provided that satisfies the Administrator that the cultivation and harvesting of the raw material concerned did not involve drainage of previously undrained soil.

SCHEDULE 3

Article 2(1)

Forest criteria

Meeting the forest criteria

1. Forest biomass meets the forest criteria if the renewable transport fuel supplier provides evidence, by reference to the guidance published by the Administrator under article 15(1)(m), that satisfies the Administrator that the requirements in paragraphs 2 and 3 are met, subject to the exceptions set out in those paragraphs.

Legal framework

2.—(1) The country in which the forest biomass was harvested has in place a legal framework, including monitoring and enforcement systems, to ensure that—

- (a) the forest biomass has been harvested in accordance with applicable laws;
- (b) the area of harvesting of the forest biomass is subject to forest regeneration, and for this purpose “forest regeneration” means the re-establishment of a forest stand by natural or artificial means following the removal of the previous stand by felling or as a result of natural causes, including fire or storm;
- (c) the forest biomass has not been harvested from wetlands, peatlands or from a protected area, unless—
 - (i) the land is designated for nature protection purposes; and
 - (ii) the production of the relevant feedstock did not interfere with the purposes for which the land is designated for nature protection purposes;
- (d) the harvesting of the forest biomass has been carried out with consideration for the maintenance of, and with the aim of minimising any decline in, soil quality and biodiversity; and
- (e) the harvesting of the forest biomass has been carried out in a manner that maintains or improves the long-term production capacity of the forest from which it was harvested.

(2) But if evidence is not available to demonstrate that the legal framework described in sub-paragraph (1) is in place in the country concerned, then the Administrator must be satisfied that management systems at the forest sourcing area level were in place in that country to ensure that the conditions in sub-paragraph (1)(a) to (e) were met.

(3) In this Schedule, “sourcing area” means the geographically defined area from which the forest biomass is sourced, from which reliable and independent information is available to show that the conditions in sub-paragraph (1)(a) to (e) were met, and where conditions

are sufficiently homogeneous to evaluate the risk of the sustainability and legality characteristics of the forest biomass.

Land-use, land-use change and forestry

3.—(1) The country or regional economic integration organisation of origin of the forest biomass is a party to the 2015 Paris Agreement adopted under the United Nations Framework Convention on Climate Change(a) (the “Paris Agreement”) and—

- (a) has submitted a nationally determined contribution (“NDC”) to the United Nations Framework Convention on Climate Change, covering emissions and removals from agriculture, forestry and land use which ensures that changes in carbon stock associated with forest biomass harvest are counted towards the country’s commitment to reduce or limit GHG emissions as specified in the NDC; or
- (b) has laws in place, which are applicable in the area of the harvesting, and which regulate the harvesting of forest biomass, to conserve and enhance carbon stocks and sinks, and which require that evidence is provided to show that reported land-use, land-use change and forestry-sector emissions do not exceed removals.

(2) But if evidence is not available to demonstrate that the requirement in sub-paragraph (1) is satisfied, then the Administrator must be satisfied that management systems were in place at the forest sourcing area level to ensure that carbon stocks and sink levels in the forest are maintained or increased over the long-term.”.

PART 3

Consequential amendment and transitional provision

Amendment of the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012

15. In the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012(b), in regulation 2, in the definition of “the RTFO Order”, after “2007,” insert “as it had effect immediately before 1st January 2022,”.

Transitional provision

16. The amendments made by this Order have no effect in relation to renewable transport fuel supplied before 1st January 2022.

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department for Transport

EXPLANATORY NOTE

(This note is not part of the Order)

Part 2 of this Order contains various amendments to the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072, “the RTFO Order”). The key changes and provisions are summarised as follows.

-
- (a) A copy of the Paris Agreement can be viewed at: <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>. Hard copies are available for inspection at reasonable times by prior arrangement with the Low Carbon Fuels Division, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR.
 - (b) S.I. 2012/3030, amended by S.I. 2018/374. There are other amendments, but none is relevant to this Order.

Articles 5 and 6 make various amendments in relation to the definitions used in the RTFO Order, in particular inserting a definition of “forest criteria” and adding maritime renewable fuel of non-biological origin as a type of fuel. Article 7 increases the renewable fuel targets imposed on fuel suppliers in respect of the development fuel obligation and the main obligation for obligation periods commencing on or after 1st January 2022. Article 9 places an obligation on the Administrator to publish guidance on certain matters. Article 13 amends the existing Schedule, in particular updating the sustainability criteria. Article 14 inserts new Schedules 2 and 3 into the RTFO Order, which set out the land criteria and the forest criteria respectively.

In Part 3 of this Order, article 15 contains a consequential amendment to the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (S.I. 2012/3030). Article 16 contains a transitional provision.

An impact assessment on the effect that this Order will have on the costs of business and the voluntary sector is available from the Low Carbon Fuels Division, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR. The impact assessment is annexed to the Explanatory Memorandum, which is available alongside this Order at <http://www.legislation.gov.uk>.

DRAFT