

## EXPLANATORY MEMORANDUM TO

### THE RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER 2022 No. [XXXX]

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

#### 2. Purpose of the instrument

- 2.1 The Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) (“the RTFO Order”) delivers greenhouse gas reductions in transport fuels by setting annual obligations on fuel suppliers to ensure the supply of renewable transport fuel, which fuel suppliers can discharge through acquiring renewable transport fuel certificates (“RTFCs”). The trading of RTFCs provides a financial incentive to suppliers of renewable fuels.
- 2.2 This instrument seeks to define a more flexible approach for producers of renewable transport fuel from energy to qualify for support under the renewable transport fuel obligation (RTFO). It does this while maintaining real terms greenhouse gas reductions by ensuring renewable energy is not diverted from existing uses.
- 2.3 This instrument also amends the type of RTFC that hydrogen produced from the reformation of biomethane is awarded. Such hydrogen will only be eligible for more valuable “development fuel certificates” where production also employs significant carbon capture and storage (CCS). This reflects the alternative use for biomethane as a fuel in its own right, and the lower greenhouse gas emissions savings where CCS is not employed.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees*

- 3.1 Paragraph 13 of Schedule 8 of the European Union (Withdrawal) Act 2018 does not apply to this instrument to the extent that Sections 124(5) and 192(3) of the Energy Act 2004 already require a draft of this statutory instrument to be approved by resolution of each House of Parliament. Paragraph 14 of European Union (Withdrawal) Act 2018 does apply, and a draft of this instrument and the Explanatory Memorandum have accordingly been published 28 days prior to laying.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

#### 5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State Trudy Harrison has made the following statement regarding Human Rights:

“In my view the provisions of the Renewable Transport Fuel Obligations (Amendment) Order 2021 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 Chapter 5 (renewable transport fuel obligations) of Part 2 (Sustainability and renewable energy sources) of the Energy Act 2004 (c. 20) sets out the legislative provisions under which the Secretary of State made the RTFO Order imposing renewable transport fuel obligations on fuel suppliers in the United Kingdom.
- 6.2 This instrument amends the RTFO Order to increase the flexibility for hydrogen and Renewable Fuels of Non-Biological Origin (RFNBOs) producers to produce qualifying fuel. It also reduces the incentive to use biomethane for hydrogen production where CCS is not employed.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The changes to the RTFO Order implemented by this instrument define the basis by which RFNBO production facilities can use renewable energy supplied over the grid provided they can demonstrate this energy was additional to that which would have been supplied to the grid in the absence of that RFNBO facility. This ensures existing renewable energy is not diverted from current uses, likely to be replaced by fossil gas generation, and thereby having an overall increase in greenhouse gas emissions compared to using diesel fuel. Article 3(2) introduces a definition of “additional renewable energy” while 3(4), (5) and (6) provide for how the administrator should determine specific eligibility points.
- 7.2 Prior to these changes, RFNBO producers were generally required to have a direct connection between renewable energy production, such a wind turbine or solar array, and a hydrogen electrolyser. While this ensured greenhouse gas emissions savings, it was restrictive for producers. The new provisions allow the use of contractual arrangements like power purchase agreements, and the use of previously curtailed renewable generation to be utilised for qualifying RFNBO production and supply.
- 7.3 A second component of this instrument is to allow electricity grids to be assessed for renewability and greenhouse gas (GHG) intensity at scales other than national. This is driven by cases like Northern Ireland where the grid is distinct from the grid in Great Britain, but which under previous provisions would have to be assessed based on a UK average. It is also relevant to areas such as the Orkney islands where there is more renewable generation capacity than the islands are capable of exporting to the mainland UK. This means that there is much higher fraction of renewability and much reduced GHG intensity in this part of the grid which is not representative of the national picture. These provisions are introduced via Article 3(4)(ii).
- 7.4 Article 3(3) changes the type of RTFC awarded to hydrogen produced from biomethane without the use of CCS from the development obligation to the main obligation. This change reflects both the level of technical development and investment needed, and the average greenhouse gas emissions savings provided. Without CCS the use of biomethane for hydrogen production and transport fuelling delivers significantly reduced greenhouse gas savings compared to using the biomethane as a fuel itself. Where CCS is employed, the greenhouse gas emissions are significantly improved, and this drives investment into a strategically important

technology. As a result, biohydrogen produced in this way will remain eligible for development fuel certificates.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the RTFO Order, which these Regulations amend, contains provisions made under section 2(2) of the European Communities Act 1972. This means that paragraph 14 of Schedule 8 of the European Union (Withdrawal) Act 2018 applies to this instrument, and a draft of this instrument and the Explanatory Memorandum have accordingly been published 28 days prior to laying in accordance with paragraph 14(2) of Schedule 8.

## **9. Consolidation**

- 9.1 There is currently no intention to consolidate the RTFO Order.

## **10. Consultation outcome**

- 10.1 The department carried out a public consultation on the policy changes introduced by this instrument between 25th March and 23rd April 2021. Questions relating to RFNBO and hydrogen measures received 93 responses. These were from a range of organisations, including fossil and renewable fuel suppliers, non-government organisations, academic researchers, industry representative bodies and energy providers.
- 10.2 The proposals relating to additional renewable energy and regional grids received broad support, while a number of respondents pushed for further flexibility. In considering these responses, we believe the policy put forward in the SI and accompanying guidance represent the most flexibility we can provide, whilst ensuring the approach secures greenhouse gas savings for each kg of hydrogen supplied under the RTFO.
- 10.3 The proposals relating the reclassification of biohydrogen without CCS received broad support and had been signalled for some time.
- 10.4 A full summary of responses to the consultation has been published alongside this instrument and explanatory memorandum.

## **11. Guidance**

- 11.1 Technical guidance is published by the Administrator in support of its operation of the RTFO Order. This guidance covers details of the processes which fuel suppliers must follow to fulfil their obligations and claim RTFCs. Technical guidance relating to the amendments in this instrument accompanies the publishing of this instrument.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is dependent on the extent to which they consume RFNBOs or hydrogen dealt with in this instrument. The overall costs of the RTFO scheme are not expected to change as the obligation levels are not being amended. While the changes provide increased flexibility to RFNBO suppliers, as the development fuel obligation is not being altered, these changes should simply

encourage increased use of RFNBO fuels for transport, reducing the need for suppliers to “buy-out” of their obligation.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because matters relating to the RTFO Order are normally assessed via a cost benefit analysis, approved by Her Majesty’s Treasury. This is because the RTFO is considered a tax and spend measure due to how the schemes costs are passed on to fuel suppliers. As the changes in this instrument will not affect the overall cost of the scheme, or the businesses obligated under it, it was agreed that no cost benefit analysis was required.

### **13. Regulating small business**

- 13.1 The RTFO Order applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to exempt suppliers who supply less than 450,000 litres of relevant fuel in an obligation year from obligations in the RTFO Order. The exception to this is those obligations related to claiming financial support for the supply of renewable fuels in the form of RTFCs. To date this has successfully minimised the impacts on small businesses.

### **14. Monitoring & review**

- 14.1 In accordance with Article 1A of the RTFO Order, the Secretary of State is under an existing duty to review the regulatory provisions contained in the RTFO Order and publish a report setting out the conclusions of the review. The first report must be published before 15th April 2023 and on a five-yearly basis from then on. Accordingly, no further provision for review of the RTFO Order has been included in this instrument.
- 14.2 The RTFO unit publish regular statistical releases monitoring the types and volumes of fuels delivered under the RTFO scheme. An annual report also provides detail on overall costs.
- 14.3 The measures put in place by this instrument will be successful if they, alongside the other provisions in the RTFO order and measures to support renewable fuels, enable such fuels to cost effectively contribute to the UK’s future Carbon Budgets. The RTFO Order further aims to promote investment in the supply of sustainable renewable fuels in the UK

### **15. Contact**

- 15.1 Tim Simon at the Department for Transport: 07773 643828 or email: [tim.simon@dft.gov.uk](mailto:tim.simon@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Debbie Stockwell and Vicky Edmonds, Joint Deputy Directors for Low Carbon Fuels at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Trudy Harrison MP Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

### Part 1A

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

## Part 1B

### Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

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## Part 2

### Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

#### **16. Good reasons**

16.1 The Parliamentary Under Secretary of State Trudy Harrison MP has made the following statement in accordance with paragraph 15(2) of Schedule 8 to the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.

16.2 These are: because of the on-going need to decarbonise road transport via the increased use of sustainable renewable fuels such as hydrogen and other renewable fuels of non-biological origin. It also important the Renewable Transport Fuel Obligation continues to maximise the greenhouse gas emissions savings from renewable fuels, whilst encouraging investments into the strategic technologies we will need to meet out climate change commitments.

#### **17. Explanations**

17.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.

#### **18. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972**

18.1 The Parliamentary Under Secretary of State, Trudy Harrison MP has made the following statement in accordance with paragraph 14(4) of Schedule 8 to the European Union (Withdrawal) Act 2018:

18.2 “I have taken the following steps to ensure the draft instrument is published in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018 available to each House of Parliament. Copies of the draft instrument were published on the gov.uk website on 20<sup>th</sup> July 2022. Copies of the draft instrument were also deposited in the libraries of both Houses of Parliament on 20<sup>th</sup> July 2022 for comment and for any recommendations.

#### **19. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972**

19.1 The Parliamentary Under Secretary of State, Trudy Harrison has made the following statement in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) Act:

“Paragraph 15(3)(a): Law which is relevant to the amendment:

Requirements relating to the supply of renewable fuels and associated sustainability criteria are prescribed by the Renewable Transport Fuel Obligations Order 2007 (S.I.



2007/3072), “the RTFO Order”. Amendments to these requirements were partly made under section 2(2) of the European Communities Act 1972, and therefore constitute EU-derived domestic legislation (which is retained EU law) within the meaning of the European Union (Withdrawal) Act 2018. The RTFO Order implemented into domestic law Articles 3, 17 to 19 and 21(2), and Annexes I and V, of the Renewable Energy Directive (Directive 2009/28/EC) including in so far as they relate to standardised sustainability criteria for renewable fuels supplied in transport.

“Paragraph 15(3)(b): Effect of the amendment or revocation on retained EU law:

- 19.2 The effects of the amendments on retained EU law, as set out in the RTFO Order and introduced by this instrument, are to ensure that sustainability of renewable fuels of non-biological origin is maintained while increasing the flexibility afforded to producers of those fuels. The instrument does not diminish standards in the above directives. The statutory instrument will increase the supply of low carbon fuels while updating and strengthening the sustainability criteria.

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