Draft Order laid before Parliament under sections 124(5) and 192(3) of the Energy Act 2004, and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No. 0000

TRANSPORT
ENERGY

SUSTAINABLE AND RENEWABLE FUELS

The Renewable Transport Fuel Obligations (Amendment) Order 2011

Made - - - - *XXth December 2011*

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 124, 125A(1), 125B(1), 125C(1) and (5)(e), 126(1) to (5), 127, 128, 129(1) to (3), 130(2) and (5), 132(1) and 192(4) of the Energy Act 2004(**1**) ("the 2004 Act") and by section 2(2) of, and paragraph 1A(1) of Schedule 2 to, the European Communities Act 1972(**2**) ("the 1972 Act").

The Secretary of State is a Minister designated(**3**) for the purposes of section 2(2) of the 1972 Act in relation to energy and energy sources.

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for any reference in this Order to Annex V to Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources(**4**) to be construed as a reference to that Annex as amended from time to time.

In accordance with section 124(4) of the 2004 Act, the Secretary of State has consulted such persons appearing to him to represent persons whose interests will be affected by this Order, and such other persons, as he considers appropriate.

(**1**) 2004 c.20; sections 125A(1), 125B(1) and 125C(1) and (5)(e) were inserted by the Climate Change Act 2008 (c.27), section 78, Schedule 7, paragraphs 1 and 2; section 126(5) was inserted by the Climate Change Act 2008, section 78, Schedule 7, paragraphs 1 and 3; section 128(6) to (10) was inserted by the Climate Change Act 2008, section 78, Schedule 7, paragraphs 1 and 4.

(**2**) 1972 c.68; section 2(2) of the 1972 Act was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7); paragraph 1A(1) of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and subsequently amended by section 3(3) and Part 1 of the Schedule to the European Union (Amendment) Act 2008.

(**3**) S.I. 2010/761.

(**4**) OJ No L 140, 5.6.2009, p16.

A draft of this Order was laid before Parliament in accordance with sections 124(5) and 192(3) of the 2004 Act and paragraph 2(2) of Schedule 2 to the 1972 Act and approved by a resolution of each House.

Citation and commencement

1. This Order may be cited as the Renewable Transport Fuel Obligations (Amendment) Order 2011 and comes into force on the first day which is the 15th of a month after the day on which the Order is made.

Amendment of the Renewable Transport Fuel Obligations Order 2007

2. The Renewable Transport Fuel Obligations Order 2007(**5**) is amended as follows.

Amendment of article 2 (interpretation)

3.—(1) In article 2(1), in the definition of "connected person", for "section 839 of the Income and Corporation Taxes Act 1988" substitute "section 1122 of the Corporation Tax Act 2010(**6**)".

(2) Insert the following definitions in article 2(1) at the appropriate alphabetical positions—

""the 2011 Order" means the Renewable Transport Fuel Obligations (Amendment) Order 2011(**7**);"

""additional sustainability information" means the information specified in Article 1 of Commission Decision 2011/13/EU of 12 January 2011 on certain types of information about biofuels and bioliquids to be submitted by economic operators to Member States(**8**);"

""the cross compliance requirements" means—

(a) the statutory management requirements—

(i) under the heading 'Environment' in point A of Annex II to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(**9**) ("the CAP regulation"); and

(ii) in row 9 of the table in that Annex; and

(b) the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6(1) of the CAP regulation;"

""the directive" means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC(**10**), and a reference in this Order to Annex V to the directive is a reference to that Annex as amended from time to time;"

(**5**) S.I. 2007/3072, amended by the Finance Act 2008, section 13(10) and S.I. 2009/843 and 2011/493.
(**6**) 2010 c.4.
(**7**) S.I. 2011/ .
(**8**) OJ No L 9, 13.1.2011, p11.
(**9**) OJ No L 30, 31.1.2009, p16.
(**10**) OJ No L 140, 5.6.2009, p16.

""ISAE 3000" means the International Standard on Assurance Engagements 3000(**11**) promulgated by the International Federation of Accountants;"

""the Motor Fuel Regulations" means the Motor Fuel (Composition and Content) Regulations 1999(**12**);"

""notional volume" means, in relation to an amount of renewable transport fuel, the notional volume of that amount of renewable transport fuel determined in accordance with article 5(4A)(**13**);"

""relevant feedstock" means—

(a) products, wastes or residues of biological origin from—

(i) agriculture (including both vegetal and animal substances);

(ii) forestry;

(iii) related industries including fisheries and aquaculture;

(b) industrial or municipal waste of biological origin;"

""renewable energy obligation" has the same meaning as in the directive(**14**);"

""sustainability criteria" means the criteria set out in the Schedule(**15**);"

""sustainable feedstock" means a relevant feedstock which meets the criteria set out in paragraphs 7 to 9 of the Schedule (land criteria);"

""sustainable wastes" means relevant feedstocks which are—

(a) wastes or residues other than residues from agriculture, aquaculture, fisheries or forestry; or

(b) wastes, residues, non-food cellulosic material or ligno-cellulosic material which meet the criteria set out in paragraphs 7 to 9 of the Schedule (land criteria);"

""verifier's assurance report" means a report which meets the requirements of article 16A(**16**);".

(3) In article 2(2)(a), for "activities" substitute "industries including fisheries and aquaculture".

Amendment of article 3 (definitions of fuels and fuel products)

4.—(1) After article 3(2A), insert—

"(2B) "Diesel" has the meaning given to "diesel fuel" in regulation 2 of the Motor Fuel Regulations(**17**)."

(2) For article 3(5), substitute—

"(5) "Hydrocarbon oil" means any hydrocarbon fuel which, at 15 degrees C and under a pressure of 101,325 Pa, is a liquid or a gas."

(3) After article 3(7), insert—

(**11**) The International Standard on Assurance Engagements 3000 is set out from page 292 of Part II of the publication entitled "Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements" (2010 edition) (ISBN 978-1-60815-052-6) published by the International Federation of Accountants. Copies can be obtained from www.ifac.org.

(**12**) S.I. 1999/3107; relevant amending instruments are S.I. 2003/3078 and 2010/3035.

(**13**) Article 5 is amended by article 7 of this Order.

(**14**) Article 2(l).

(**15**) The Schedule is inserted by article 23 of this Order.

(**16**) Article 16A is inserted by article 14 of this Order.

(**17**) Regulation 2 of the Motor Fuel Regulations defines "diesel fuel" to mean the same as "diesel fuels" as that phrase is defined in article 2(2) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels (OJ No L 350, 28.12.1998, p58) as last amended by Commission Directive 2011/63/EU (OJ No L 147, 2.6.2011, p15).

"(7A) "Partially renewable transport fuel" means renewable transport fuel other than wholly renewable transport fuel.

(7B) "Petrol" has the same meaning as in regulation 2 of the Motor Fuel Regulations(**18**)."

(4) For article 3(10), substitute—

"(10) "Relevant hydrocarbon oil" means hydrocarbon oil which—

(a) is chargeable to a duty of excise under the 1979 Act;

(b) is for use as fuel in road vehicles; and

(c) falls within one of the following categories—

(i) petrol,

(ii) diesel,

(iii) renewable transport fuel,

but shall not include detergents, cetane improvers, lubricity improvers, viscosity improvers, oxidation inhibitors, gum inhibitors, anti-corrosive preparations and like substances intended for use as fuel additives."

(5) For article 3(11) and (12), substitute—

"(11) "Wholly renewable transport fuel" means renewable transport fuel which is produced wholly from a relevant feedstock.

(12) For the purposes of paragraph (d) of the definition of "renewable transport fuel" in section 132(1) of the 2004 Act, solid, liquid or gaseous fuel which—

(a) is produced wholly or partly from a relevant feedstock, and

(b) does not fall within paragraph (a), (b) or (c) of that definition,

is designated as renewable transport fuel."

(6) Omit articles 3(13) and (14).

Amendment of article 4 (the renewable transport fuel obligation)

5.—(1) For article 4(3)(b), substitute—

"(b) the "specified date" means 29th November (or the next working day after 29th November, if 29th November is not a working day) following the end of the obligation period in question; and".

(2) For article 4(4), substitute—

"(4) For the purposes of section 124(2) of the 2004 Act and this Order, "the specified amount" of renewable transport fuel is determined in accordance with paragraphs (5) and (6)."

(3) After article 4(4), insert—

"(5) The specified amount of renewable transport fuel for the obligation period beginning with 15th April 2011 is determined as follows—

(a) calculate in accordance with article 26 the volume of relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during the period beginning with 15th April 2011 and ending with the day before the 2011 Order comes into force;

(**18**) Regulation 2 of the Motor Fuel Regulations defines "petrol" to have the same meaning as in article 2(1) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels (OJ No L 350, 28.12.1998, p58) as last amended by Commission Directive 2011/63/EU (OJ No L 147, 2.6.2011, p15).

(b) calculate the notional amount of the relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during the period beginning with the day on which the 2011 Order comes into force and ending with 14th April 2012;

(c) in any case where the sum of the amount calculated in accordance with sub-paragraph (a) and the amount calculated in accordance with sub-paragraph (b) is less than 10 million litres, deduct the first 450,000 litres of that amount;

(d) the specified amount is an amount equal to 4.1667% of the sum of the amounts calculated under sub-paragraphs (a) and (b), adjusted in accordance with sub-paragraph (c) if applicable.

(6) The specified amount of renewable transport fuel for any other obligation period is determined as follows—

(a) calculate the notional amount of the relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during the obligation period in question;

(b) in any case where that notional amount is less than 10 million litres, deduct the first 450,000 litres of that amount; and

(c) in relation to the amount calculated in accordance with sub-paragraphs (a) and (b) ("the obligated amount")—

(i) for the obligation period beginning with 15th April 2012, the specified amount is an amount equal to 4.7120% of the obligated amount; and

(ii) for each subsequent obligation period, the specified amount is an amount equal to 5.2632% of the obligated amount.

(7) For the purposes of paragraphs (5)(b) and (6)(a), the notional amount of the relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during any period is determined in accordance with the following formula—

$$F_N = H_A - (E \times S)$$

where—

F_N is that notional amount of relevant hydrocarbon oil;

H_A is the total amount of relevant hydrocarbon oil which was owned by the supplier at the time when the requirement to pay the duty of excise with which that relevant hydrocarbon oil is chargeable took effect and was supplied at or for delivery to places in the United Kingdom during that period;

E is the amount of the eligible oil; and

S is the percentage of the volume of the eligible oil which is attributable to sustainable feedstocks.

(8) For the purposes of paragraph (7)—

(a) "the eligible oil" means the renewable transport fuel which—

(i) the supplier supplied at or for delivery to places in the United Kingdom during the period in question;

(ii) is for use as fuel in road vehicles;

(iii) meets the sustainability criteria; and

(iv) was owned by the supplier at the time when the requirement to pay the duty of excise with which that renewable transport fuel is chargeable took effect;