

Consultation

On The Draft

Renewable Transport Fuel Obligations Order 2007

February 2007

Consultation on the Draft Renewable Transport Fuel Obligations Order 2007

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Consultation

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Introduction

Introduction and Executive Summary

- 1** The Energy Act 2004 gave the Government the power to introduce a Renewable Transport Fuel Obligation (RTFO), with the detail of the Obligation to be set out in secondary legislation.
- 2** During 2004 and 2005, the Government carried out a detailed feasibility study which considered whether an RTFO would be technically and legally feasible, how it might work in practice, the benefits it might deliver and what it might cost to implement.
- 3** In the light of the findings of this study (available at <http://www.dft.gov.uk/roads/RTFO>) the Government announced in November 2005 that it would introduce a Renewable Transport Fuel Obligation (RTFO) as a way of supporting the use of biofuels and other renewable fuels in the transport sector. It also announced that the level of the RTFO would reach 5% by 2010.
- 4** The Chancellor of the Exchequer confirmed in the 2006 Budget that the RTFO would start in April 2008, and that the levels of the obligation in the years 2008/9 and 2009/10 would be 2.5% and 3.75% respectively.
- 5** The RTFO is intended to create a strong and stable market for biofuels, and, in the longer term, other renewable fuels, in the UK. By the time the level of the RTFO reaches 5%, it will have created a demand for 2.5 billion litres of biofuel a year. This could save as much as a million tonnes of carbon a year, which would be the equivalent, in carbon terms, of taking a million cars off the road.

Purpose of this consultation

- 6** Part 1 of this consultation seeks views on the detailed design of the RTFO, as set out in the draft secondary legislation (ie the draft Renewable Transport Fuel Obligations Order 2007). This draft is not the final version. Before the draft is laid before Parliament, parts of the Order may be modified in the light of comments received from consultees, and there may be further drafting and other minor changes made.
- 7** Part 2 seeks views on how the RTFO might evolve over time, including on issues such as the nature and level of the RTFO after 2010/11.
- 8** There are a number of documents attached to this consultation paper, including in particular:

- The Partial Regulatory Impact Assessment (pages 37 to 79); and
- The draft RTFO Order (pages 81 to 103).

Consultation questions

- 9 The Government is keen to hear consultees' views on any of the issues covered in this consultation paper. We would be particularly grateful for responses to the 25 questions which appear at various points in the text, and which are summarised at annex A.

How to respond

- 10 This consultation began on 22nd February 2007. Responses to this consultation are requested by Thursday 17th May 2007.
- 11 Please ensure that your response reaches us by that date.
- 12 If you would like further copies of this consultation document it can be found at www.dft.gov.uk/roads/RTFO or you can contact Fahima Mahtab at the address below.
- 13 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.
- 14 A list of those consulted is attached at Annex D. If you have any suggestions of others who may wish to be involved in this process please contact us.
- 15 The information you send us may need to be passed to colleagues within the Department for Transport or other Government Departments and/or published in a summary of responses received in response to this consultation. **We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.**
- 16 Please ensure that if you want your name or response to be kept confidential, you state this clearly in your response. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.
- 17 Responses to the consultation and any enquiries should be addressed to:
- RTFO Team
- Department for Transport
Zone 2/17 Great Minster House
76 Marsham Street
London SW1P 4DR
- E-mail: rtfo.consultation@dft.gsi.gov.uk

What will happen next

- 18** A summary of responses, including the next steps will be published by 31 July 2007 on <http://www.dft.gov.uk/roads/RTFO>. Paper copies will be available on request.
- 19** The Department for Transport will analyse the responses and draft the final Statutory Instrument which will be laid before Parliament in the autumn of 2007, accompanied by an Explanatory Memorandum and full Regulatory Impact Assessment.
- 20** The RTFO Order will be subject to the affirmative resolution procedure, which means that it needs to be laid while Parliament is sitting and debated in both Houses. It will come into force with immediate effect as soon as it has completed this process. This will allow the RTFO to commence in April 2008.
- 21** The Government will make a further announcement in due course about the nature and level of RTFO targets for the years after 2010/11.

Part I

of the consultation

The objectives of the RTFO

- 1** The main purpose of the Renewable Transport Fuel Obligation (RTFO) will be to deliver carbon savings of approximately one million tonnes per annum from the transport sector by 2010/11.
- 2** It will be one of the main policy instruments in the transport sector to reduce greenhouse gas (GHG) emissions and to increase the use of renewable fuels, helping to meet our international obligations under the Kyoto agreement and the EU Biofuels Directive. It will also contribute to the diversity and security of the UK's transport fuel supply, and will offer new opportunities to the UK's biofuel and farming industries.
- 3** It will apply across the whole of the UK, to any road transport fuel supplier who supplies more than 450,000 litres of fossil fuel per annum to the UK market.

The nature of the obligation

- 4** The obligation will require road transport fuel suppliers either:
 - to ensure that a specified percentage of their sales is made up of fuels from renewable sources, or
 - to discharge their obligation in other ways as described below.
- 5** The level of the obligation will be equivalent to 2.5% of total road transport fuel sales in 2008/9, rising to 3.75% in 2009/10 and 5% in 2010-11 and beyond.
- 6** The obligation does not differentiate between different renewable transport fuels: obligated suppliers will be able to meet their obligation by supplying any combination of bioethanol, biodiesel, biogas and any other renewable road transport fuel.
- 7** Any supplier of more than a specified amount of fossil-based road transport fuels (ie hydrocarbon oil used in road vehicles) will be subject to the obligation. The obligation "bites" at the point at which excise duty is payable on the fuel – generally the first inland movement of the fuel.

The obligated parties

- 8** The obligation will fall on refiners, importers and any others who supply fossil-based road transport fuels *at the point at which excise duties become payable*. The precise definition of obligated suppliers is explained in article 4 of the Order. Obligated suppliers will be required to apply to the RTFO Administrator for an RTF account (see paragraph 27 below) and provide details of their fuel sales (across the duty point) on a regular basis.
- 9** In practice this means that only those suppliers who supply a batch of transport fuel *at the point at which that fuel crosses the fuel duty point* will be obligated. A supplier who buys fuel from a UK refiner to *re-sell* it in the UK would not be obligated in respect of that fuel. This situation arises frequently as a result of the “pooling and sharing” arrangements that exist between the UK’s major transport fuel suppliers
- 10** If, for example, a batch of fossil fuel leaves the Shell refinery at Stanlow in Cheshire en route to a Shell forecourt in the North West of England, it will be Shell which pays the duty on that fuel and Shell which acquires the obligation in respect of it. If however a similar batch of fuel is “lifted” by BP from the Shell Stanlow refinery en route to a BP forecourt, it will be BP that pays the duty on that fuel, but it will be Shell, as the supplier, which acquires the obligation in respect of it.
- 11** This will give obligated suppliers complete control over the biofuels that they source, and will give refiners full control over refinery planning and scheduling. It will also give very clear lines of accountability: it will not be possible for one obligated supplier to “blame” another for sourcing unsustainable biofuels that the first supplier has lifted from the second supplier’s refinery.
- 12** Smaller suppliers will be exempt from the obligation provided that they supply less than 450,000 litres of fossil fuels per annum. Suppliers whose sales are just above the threshold value (ie between 450,001 and 10,000,000 litres per annum) will be obligated only on sales above the threshold (see the example of company C in table 2).
- 13** Suppliers of additives and other products that are used in fuels, but which are not hydrocarbon oils, and which are dutiable under section 6A of the Hydrocarbon Oils Duties Act 1979, are exempt from the obligation since these products do not fall within the definition of “relevant hydrocarbons oils” set out in article 3 of the draft Order.
- 14** An alternative approach which has been very carefully considered, and which was proposed in the November 2005 feasibility study, would have been to place the obligation on those suppliers who paid excise duty on fossil fuel sales. To illustrate the difference, consider the second example set out above in paragraph 10. Under the alternative approach, if BP “lift” fuel from Shell at Stanlow, BP would pay the duty and would have the obligation, not Shell.
- 15** The Government accepts that the arguments are finely balanced, but considers that imposing the obligation on the category of suppliers set out in the draft Order is preferable for a number of reasons, including:

- It would give obligated suppliers greater control over the biofuel component of those fuels in respect of which they had an obligation;
- It would reduce the commercial and administrative burdens on UK refiners, who will be responsible for meeting at least 90% of the obligation;
- It would result in a smaller number of suppliers being subject to an obligation, by removing any obligation from a number of smaller suppliers of fossil-based transport fuels.

16 The Government recognises, however, that there are strong arguments which can be made in favour of defining obligated suppliers as those who pay duty on fossil-based road transport fuels, as originally envisaged in the November 2005 feasibility study. The full implications of each approach, including the impacts on both the secondary fuel market and the costs imposed on the obligated suppliers and the RTFO Administrator, will be further explored over the months ahead, and the Government will discuss the precise definition of an obligated supplier further with those stakeholders most closely affected during the consultation period before reaching a final decision.

Question 1: is the definition of an obligated supplier appropriate? Are the compliance costs estimated in the attached Partial Regulatory Impact Assessment broadly accurate?

Question 2: is 450,000 litres an appropriate minimum threshold?

The Obligation Period

17 The obligation will be measured over a period of one year, starting on April 15th and finishing on the following April 14th. This period coincides with the usual reporting period for large fossil fuel suppliers paying excise duty to HM Revenue and Customs, minimising the administrative burden on the suppliers.

The level of the Obligation

- 18** The Government's intention is that in 2010/11 renewable transport fuels should make up 5%, by volume, of *total* road transport fuel sales in the UK.
- 19** The Government intends, however, to express the obligation as a percentage of each supplier's *fossil* fuel sales. This will, among other things, ensure that any road transport fuel supplier selling relatively small amounts of fossil fuel and relatively large amounts of biofuel will be liable to a smaller obligation than would otherwise have been the case.
- 20** The levels of the obligation will therefore be as set out in the table below.

Table 1: Obligation levels

Obligation period	Obligation rate (as it appears in the draft RTFO Order)	Equivalent as a percentage of total transport fuel sales
April 15th 2008 to April 14th 2009	2.5641% of fossil-based road transport fuel sales	2.5%
April 15th 2009 to April 14th 2010	3.8961% of fossil-based road transport fuel sales	3.75%
April 15th 2010 to April 14th 2011	5.2632% of fossil-based road transport fuel sales	5%
Subsequent 12 month periods beginning on April 15th	5.2632% of fossil-based road transport fuel sales	5%

21 The Government recognises that setting the target in this way will make it more difficult for obligated suppliers to meet the obligation solely through the delivery of mainstream retail products. This is because of the blending limit set in the relevant European fuel quality standards, which effectively limits the maximum amount of biofuel that can be blended into standard petrol and diesel to 5.2632% of the fossil fuel volume (ie 5% of the total fuel volume). In practice, in order to ensure that this limit is not breached, obligated suppliers are likely to produce mainstream blends with slightly less biofuel content than the maximum allowable percentage.

22 The Government believes that this will provide a useful incentive for obligated suppliers to either:

- supply a certain amount of niche, high blend biofuel products, or
- purchase RTF certificates from non-obligated suppliers.

Question 3: is it appropriate to calculate the level of the obligation as a percentage of obligated suppliers' fossil fuel sales in this way, despite the fact that this will make it a more stretching target?

Question 4: will setting the target in this way provide increased liquidity in the market for RTF certificates?

23 Road fuel gases are not referred to in the calculation of the RTF obligation in the draft Order (see examples in table 2 below). This is primarily because:

- sales of road fuel gases currently make up less than 0.5% of total road transport fuel sales in the UK.
- there is no obvious renewable alternative to liquefied petroleum gas.

- 24** As noted in paragraph 35, however, biogas will be treated as a renewable transport fuel for the purposes of the obligation, and will be eligible for RTF certificates.

Question 5: is it appropriate to exclude sales of road fuel gases from the calculation of suppliers' obligations?

Table 2: examples of how the RTFO affects different transport fuel suppliers.

Company	Total sales of petrol and diesel (in litres)	Total sales of road fuel gases (in kilogrammes)	Level of obligation in 2008/09 (and explanation)
A	200,000,000 litres	1,000,000	5,128,800 litres (calculated as 200,000,000 multiplied by 2.5641% – NB sales of road fuel gases ignored)
B	200,000,000	Zero	5,128,800 litres (as above)
C.	8,000,000	Zero	193,590 litres (calculated as 8 million litres minus 450,000 litres (because below 10 million litres) equals 7.55 million litres multiplied by 2.5641%)
D.	550,000	Zero	2,564 litres (calculated as 550,000 litres minus 450,000 litres (because below 10 million litres) equals 100,000 litres multiplied by 2.5641%.
E.	400,000	100,000	Nil (note that sales of road fuel gases are ignored)

- 25** The draft Order says that the obligation rate will continue at 5% for every twelve month period in the years after 2010-11. No end date for the obligation is set in the order: the Government's intention is that the obligation should continue until at least 2020.

Question 6: should the RTFO have an end-date defined in the RTFO Order, and if so what should it be?

- 26** The Government is keen that the level should increase above 5% in future, but only provided that certain very important conditions are met. Part two of this consultation discusses this issue in more detail. Once a decision has been taken on future levels of the RTFO, the RTFO order will be amended accordingly.

Meeting the Obligation

- 27** Suppliers who expect to be obligated will be required to register for an account with the Administrator. This will be done through the Administrator's website.
- 28** So that the Administrator can calculate the obligation level for each supplier, obligated suppliers will be required to submit monthly sales volume data to the Administrator. In order to verify this information, the Administrator also has the powers to require non-obligated transport fuel suppliers to supply their monthly sales volume data. These non-obligated suppliers are likely to be duty deferred account holders who source all their fuel from obligated companies.
- 29** All of these suppliers, obligated and non-obligated, will be required to make a return even if they have not supplied any fuel in a particular period. This will be done via a secure web site. The "months" used will be the same reporting months that suppliers use for HMRC reporting i.e. from the 15th of one month to the 14th of the next. The reporting deadline for the information will be after the HMRC reporting deadline. In order to reduce the administrative burden, this information will consist of data already collected and reported by suppliers to HMRC. The Administrator cannot get the data from HMRC due to legal restrictions on the confidentiality of taxpayer information, unless further legislation is passed.
- 30** The Administrator will have the power to require suppliers to provide evidence of the above fuel volumes as appropriate.
- 31** At the end of an obligation period, the Administrator will work out each company's obligation from the recorded fuel volumes. There will be a period of time after the end of the obligation period during which suppliers will be able to finalise any outstanding volume queries with HMRC before the volume of renewable transport fuel which the supplier should have supplied is calculated.
- 32** An obligated supplier will be able to meet its obligation by presenting RTF Certificates as evidence of the supply of renewable transport fuel (see below for how certificates are awarded, and note that certificates can be traded).
- 33** An obligated supplier may meet up to 25% of an obligation by using certificates awarded (to itself, or awarded to other suppliers and transferred to the obligated supplier) in the *previous* period (a process known as "banking" of certificates). Obligated suppliers will not be able to "borrow" certificates from subsequent obligation periods.
- 34** If an obligated company does not have sufficient RTF certificates, it may discharge its obligation by paying a buy-out price for each litre of renewable road transport fuel which should have been – but has not been – supplied.

Eligible fuels

- 35** The Government's intention is that any renewable road transport fuel should be eligible for RTF certificates, provided that the RTFO Administrator is satisfied that excise duty has been paid on it. The Government proposes that, on day one of the RTFO, the following fuels should be considered as renewable fuels for the purposes of the RTFO:
- Any biofuel currently defined as being entitled to a duty incentive under the Hydrocarbon Oils Duties Act of 1979 (HODA 1979) and subsequent amendments (ie biodiesel and bioethanol as defined under that Act);
 - Biogas (as defined in the draft RTFO Order). For the purposes of the RTFO, a kilogram of biogas will be treated as equivalent to a litre of biodiesel or a litre of bioethanol.
- 36** In the longer term, the Government's intention is that the following fuels should also be considered as renewable fuels for the purposes of the RTFO:
- Any biofuel other than biodiesel and bioethanol which at any time in the future becomes eligible for an excise duty incentive under HODA 1979 and subsequent amendments;
 - Any other renewable road transport fuel which the Government considers should qualify for RTF certificates, irrespective of whether or not that fuel is entitled to an excise duty incentive. The Government will amend the RTFO Order as necessary, and after full consultation, to ensure that any such fuels are added to the RTFO Order.

Question 7: does this provide a proper framework for identifying those fuels which should count as renewable fuels for the purposes of the RTFO?

Award of RTF Certificates

- 37** Both obligated suppliers and other suppliers of renewable fuels may apply for certificates in respect of the renewable fuels on which duty has been paid. An RTF certificate will be awarded for the supply of one litre of renewable fuel, as defined above, providing that the following conditions have been met:
- Duty has been paid on the fuel;
 - The supply of the fuel has been reported to the Administrator in the required format and by the required date;
 - The supplier has an RTF account with the Administrator; and
 - A report detailing the carbon saving benefits of the fuel and the sustainability impact of the fuel, in the format set out by the Administrator, has been supplied to the Administrator by the required date (see paragraphs 41-49).
- 38** The Administrator has the power to ask for evidence to support all of the conditions above. If the Administrator deems that the evidence does not support the information

provided, it has the power to reject the application for certificates for some or all of the fuel in a submission. The Administrator will also have the power to revoke a certificate that has been issued if the information and / or evidence on which the certificate was issued is subsequently found to be false.

- 39** RTF Certificates may then be traded amongst suppliers or other persons who have an RTF account. This means that, for example, obligated suppliers who have not been able to fully meet their obligation by supplying renewable fuels themselves can purchase certificates from other suppliers or from traders who have registered with the Administrator.
- 40** An RTF Certificate will also entitle a fuel supplier to a share of any buy-out fund that may be recycled (see paragraphs 56-58 below).

Carbon and sustainability reporting

- 41** The carbon savings offered by different biofuels, and the wider environmental and social impacts of the production of those fuels, vary significantly according to how and from what they are produced. The Government is committed to promoting the use of only the most sustainable biofuels with a low carbon intensity towards meeting the RTFO.
- 42** The Government is keen to move as soon as possible to a system under which only those biofuels which can be proved to come from sustainable sources are eligible for renewable transport fuel certificates under the RTFO, and under which different biofuels are rewarded according to the level of carbon savings that they offer. These issues are discussed further in part two of this consultation paper, and views are sought on the relative merits of different possible approaches.
- 43** As of today, however, there is no internationally agreed definition of a “sustainable biofuel”, nor is there any internationally agreed methodology for calculating the precise greenhouse gas savings from biofuels. If, ahead of international standards being developed, the UK Government were to refuse to allow certain biofuels to qualify for the RTFO on sustainability or carbon saving grounds, this may be successfully challenged as a barrier to trade, threatening the continuation of the RTFO.
- 44** The UK Government is working with the European Commission, other EU Member States and other international bodies to develop comprehensive, verifiable and robust environmental standards for biofuels – but this process will not be complete before April 2008.
- 45** Ahead of this, the Government intends to do everything possible to encourage the use of only the most sustainable biofuels with the lowest carbon intensity, in a way which is compatible with international trade rules.
- 46** We are therefore, as an interim measure, developing a reporting framework under which transport fuel suppliers will be required to report in detail on the greenhouse gas balance and wider environmental impacts of the biofuels they put on the market.

This will be an essential first step towards the development of robust carbon and sustainability standards for biofuels.

- 47** Under this reporting framework, any transport fuel supplier wishing to claim any RTF certificates for the biofuels which it has supplied will have to submit a report on the greenhouse gas savings and wider sustainability impacts associated with them. Companies which do not submit a report will not be eligible for any certificates. Obligated companies will have to submit these reports on a monthly basis, others will have to submit them every time they wish to claim any RTF certificates. Transport fuel suppliers who wish to claim certificates for more than 450,000 litres of biofuel in any year will also have to submit annual reports setting out in more detail the steps they have taken, and intend to take, to ensure the sustainability of their biofuels.
- 48** The Government, working through the Low Carbon Vehicle Partnership¹, has commissioned expert consultants to advise on the precise scope, structure and frequency of these reports, and to produce technical guidance on the information that will be required and the level of detail. This work is already well underway, and the Government intends to pilot and consult on a draft of the guidance in the spring of 2007.
- 49** The Administrator will publish regular reports on the relative performance of different transport fuel suppliers as well as on the total environmental impact of the RTFO. This will put pressure on all transport fuel suppliers to source sustainable biofuels which offer a high level of carbon savings.

Question 8: In advance of internationally agreed standards, is there more that can be done to help ensure that biofuels are sustainably sourced, for example through voluntary standards or agreements?

Auditing of data submitted by suppliers

- 50** The draft RTFO Order includes a number of provisions to allow the Administrator to verify that claims for RTF certificates are genuine. The main checks and balances include:
- Detailed identity checks, for both suppliers and individuals, when an RTF account is applied for;
 - A delay (or “cooling off period”) between the submission of claims for certificates and the issuing of those certificates. This will allow the Administrator to carry out analyses of data reported and other information available to identify unusual volume patterns. The Administrator may seek any evidence of fuel sales (such as confirmation that the necessary fuel duty has been paid to HM Revenue and Customs) to support the reported information;

¹ The Low Carbon Vehicle Partnership is a partnership of organisations from the automotive and fuel industries, Government, academia, environmental NGOs and other stakeholders established in January 2003 to take the lead in accelerating the shift to clean low carbon vehicles and fuels in the UK.

- Where the Administrator is not satisfied as to the accuracy of the evidence provided, it must not issue certificates;
- At the end of each obligation year, the Administrator may require all obligated suppliers and all those claiming certificates to submit an external auditor's statement confirming that the data on fuel sales submitted to the RTFO Administrator precisely matches the data on fuel sales submitted to HM Revenue and Customs;
- It is the intention that the Administrator will run a risk-assessment based programme of planned and random inspections of suppliers claiming certificates in order to maintain high standards of accuracy in reporting;
- There will be high standards of security around the Administrator's systems to prevent unauthorised access to data.

51 It would be preferable simply to cross-check the data submitted to the Administrator with the data submitted on duty to HMRC. However, HMRC are legally prevented from sharing the information with the Administrator unless an Act of Parliament is specifically passed to permit it. The Government is urgently exploring the possibility of making new primary legislation if a suitable opportunity arises.

Question 9: Would obligated suppliers or others wishing to acquire certificates consider these checks and balances to be sufficient to protect against any possible fraudulent claims of RTF certificates from the RTFO Administrator?

Powers to require information

52 The Administrator will have the power to require any information from transport fuel suppliers that it deems necessary for carrying out its functions. This means that both obligated and non obligated suppliers may be required to provide information on the fuel volumes they have sourced and sold, in order to:

- identify any suppliers seeking to evade the obligation;
- calculate the obligation of suppliers, as described above;
- verify the information provided by other suppliers;
- check that suppliers are not themselves obligated;
- verify C&S reports submitted by a supplier.

In this case, the non-obligated suppliers are likely to be duty deferred account holders who source all their fuel from obligated companies.

Buy-out price

53 The draft Order confirms that the buy-out price will be 15 pence per litre in 2008/9. This means that, as a package, the sum of the buy-out price and fuel duty incentive for biofuels for 2008/9 will equal 35 pence per litre.

- 54** The Chancellor is due to announce in Budget 2007 the level of duty incentive for biofuels that will apply in the year 2009/10. The sum of the buy-out price and duty incentive in 2009/10 will, as in 2008/9, equal 35 pence per litre in 2009/10. In 2010/11, it will equal 30 pence per litre. Thereafter, the Government's intention is that it should continue to equal 30 pence per litre for every subsequent 12 month period throughout the lifetime of the obligation, and views are sought on this in part two of this consultation. The Government expects that the emphasis will move from duty incentive towards buy-out price as the principle support mechanism in future years.
- 55** The Government's intention is that the level of the buy-out price should be sufficiently high to ensure that obligated suppliers do not routinely resort to using it. The Government will therefore keep the level of the buy-out price under review to ensure that it remains an effective incentive on obligated suppliers to supply renewable transport fuels. Should it become necessary to adjust the level of the buy-out price, the Government will propose an amendment to the RTFO Order, which will be laid in Parliament after a further consultation with stakeholders.

Redistribution of buy-out fund

- 56** The Energy Act 2004 requires that the buy-out fund is redistributed among transport fuel suppliers. The Order will require the fund to be allocated in proportion to the number of RTF certificates that they have redeemed with the Administrator (including those certificates which have been "surrendered").
- 57** The draft Order confirms that the redistribution will take place as set out in the text box below.

Explanation of recycling of buy-out fund

A certificate is “redeemed” if it is presented by a supplier as evidence of meeting a litre of its obligation.

A certificate is “surrendered” if it is presented by an obligated supplier solely for a share of the buy-out fund, the supplier having already redeemed sufficient certificates to meet its obligation

A certificate is also “surrendered” if it is presented by a non-obligated supplier for the purposes of earning a share of the buy-out fund.

At the end of each obligation period, every certificate redeemed or surrendered with the Administrator will be eligible for a share of any money in the buy-out fund. The value of each certificate’s share will depend on the total amount of money in the buy-out fund and on the total number of certificates redeemed and surrendered.

For example, if, in 2008/9:

Total UK road fuels volume (approx): 50,000 million litres

Obligation rate: 2.5 % of total transport fuel sales

Obligation volume: 1,250 million litres

Suppose that the amount of renewable road transport fuels supplied by all the obligated companies to the UK market amounted to 2.4% rather than 2.5% of their total transport fuel sales.

Certificates redeemed: 1,200 million litres

Buy-out price: 15 pence per litre

The total amount of money in the buy-out fund would be 15p for each of the 50 million litres not supplied by obligated companies.

Buy-out fund: £7,500,000

Suppose also that the non-obligated companies further surrendered 50 million certificates,

Certificates surrendered: 50 million

Certificates redeemed + surrendered 1,250 million

The recycle value per certificate would be £7.5 million divided by 1,250 million certificates.

Recycle value per certificate 0.6 pence per certificate

- 58** The recycling of the buy-out fund is subject to the rules on State Aid. The Government formally notified the European Commission of its intention to proceed in this way in June 2006, and the European Commission confirmed in January 2007 that it was content to approve the recycling provisions as an acceptable State Aid.

Question 10: are the proposed arrangements for the recycling of the buy-out fund appropriate?

The impacts of the RTFO on small-scale biofuel producers

- 59** The possible impacts of the RTFO on micro-scale biofuel producers are considered in the partial Regulatory Impact Assessment.
- 60** On the one hand, the RTFO will create a significant and stable new market for biofuels in the UK from which micro-scale producers will have every opportunity to benefit provided their fuels are of a high quality and provided they are prepared to report on the environmental impacts of those fuels. The fact that the level of the Obligation (see paragraphs 18-22 above) is such that obligated suppliers will have an incentive to do more than simply blend biofuel into their mainstream petrol and diesel fuels should also create opportunities for independent biofuel suppliers.
- 61** On the other hand, the Government is aware of the concerns of some stakeholders that, given the uncertain value of RTF certificates, some micro-scale producers might find it hard to compete in this market. This might become more of an issue if the fuel duty incentive for biofuels were to reduce.

Question 11: what are likely to be the impacts of the RTFO on micro-scale biofuel producers, and how might any adverse impacts be mitigated?

The Office of the RTFO Administrator

- 62** The draft RTFO Order includes provisions to establish a new Non-Departmental Public Body (NDPB) to serve as the RTFO Administrator.
- 63** It is envisaged that the new NDPB would be a small organisation with approximately ten full-time staff and a small Board of Directors. Its running costs would, at least for the early years of the RTFO, come out of the Department for Transport's budget.
- 64** The Administrator will be required to report annually to the Secretary of State for Transport on the extent to which obligated suppliers have complied with the obligation, and on matters such as the overall carbon savings associated with, and wider environmental impact of, the biofuels used to meet the obligation.

Penalties and Revocations

- 65** The Order includes a number of provisions which, if contravened, may lead to civil penalties being imposed by the Administrator. These include:
- attempting to evade the obligation by not applying for an RTF account
 - reporting false data
 - failing to report required data on time
 - failing to keep the Administrator informed of key information changes (e.g. company address or directors' names).
- 66** Appeals against civil penalties imposed must be made to the Administrator's office within 14 days of the penalty being imposed.
- 67** The Administrator must not issue certificates to a supplier if it has reason to believe that the supplier is giving him false information. An obligated supplier would still be required to report data but would not be issued with certificates, nor able to transfer certificates, until the matter was resolved. Once the situation has been resolved, the Administrator will determine how many certificates should be issued for the volume reports submitted up to and during the suspension.
- 68** The Administrator is also under a duty to revoke a certificate where it has been issued on the basis of a false declaration, or where there has been fraud involved. The Administrator has a power to revoke in other circumstances where, although there may not have been dishonesty involved, the certificate has been issued on the basis of materially inaccurate information or insufficient evidence.
- 69** The order makes provision for notification of the supplier where the Administrator is proposing to revoke certificates. The Administrator would also have to give notice to anyone to whom the certificate had been transferred. If a certificate is revoked, the supplier or transferee would be able to ask the chief executive of the Administrator to reconsider the revocation.
- 70** There are time limits on the power to revoke. A certificate cannot be revoked later than 31 July following the obligation period during which it was issued. Any decision on reconsidering a revocation must be made by 31 August following that obligation period.
- 71** Suppliers who acquire certificates from other suppliers should therefore take legal advice to ensure that their interests are adequately protected in the event of a certificate being revoked.

Question 12: are the proposed arrangements for civil penalties and for revocations appropriate?

Part 2

of the consultation

72 Part 1 of this consultation paper has considered the detailed design of the RTFO. Part 2 considers how the RTFO might develop over time, and sets out a number of possible approaches.

73 This part of the consultation paper is in three sections:

- **Section 1** considers the conditions that must be met before the Government is prepared to increase the level of the RTFO beyond 5%;
- **Section 2** considers the possible nature of and level of future RTFO targets;
- **Section 3** considers some of the other ways in which the Government might support the use of “second generation” and other renewable transport fuels.

Section 1: the conditions that must be met before the Government is prepared to increase the level of the RTFO beyond 5%.

Introduction

74 Biofuels have significant potential to deliver carbon savings. The Government has estimated that once the level of the RTFO reaches 5% in 2010/11, it will save around a million tonnes of carbon per annum, which is roughly equivalent to taking a million cars off the road. This calculation assumes that, on average, biofuels offer something like a 60% carbon saving compared to their fossil fuel equivalents. In practice, some biofuels offer a greater carbon saving than this, and some offer a smaller saving. This variance depends on the nature of the biofuel feedstock and the carbon emissions associated with its cultivation (including fertiliser use), harvesting, processing and transportation to point of use.

75 The growing and processing of biofuel feedstocks also has a number of wider environmental impacts, which vary significantly according to where and how the biofuel feedstocks are cultivated. Within the UK, the environmental impacts of growing rapeseed or cereals can vary considerably according to where and how they are cultivated (e.g. whether on set-aside or on arable land, and with the use of different amounts of fertiliser etc.). Internationally, the environmental impacts of crops such as palm oil, soya and sugar-cane depend to a large extent on the previous use of the land on which the crops were grown.

- 76** The Government has made clear that it is committed to increasing the level of the RTFO beyond 5% after 2010/11, but only provided certain conditions are met:
- Confidence that the biofuels will be produced in a sustainable way, so that they deliver the maximum practicable carbon savings with the minimum practicable adverse environmental impact;
 - Certainty that the use of blends of biofuel higher than 5% will not lead to mechanical problems, particularly for owners of older cars which were not designed to run on such mixtures;
 - Confidence that the costs to consumers will be acceptable, both in terms of fuel prices at the pump, and in terms of wider economic impacts, including, for example, the impacts on food prices and on other industries which make use of similar feedstocks.
- 77** Before increasing the level of the RTFO beyond 5%, the Government will also want to be satisfied that this represents an effective use of our biomass resources. Biomass can be used in a number of ways to deliver environmental and other benefits. Alternative uses of biomass, which in many cases can deliver greater carbon savings at lower cost than using an equivalent amount of biomass to produce a high-quality liquid transport fuel, include:
- Using biomass as a substitute for fossil fuels in the generation of electricity;
 - Using biomass as a substitute for fossil fuels in the generation of heat, for use in either domestic or industrial settings;
 - Using biomass (including for example tallow) in the oleo-chemical industry to produce products that would otherwise need to be produced from virgin oils.
- 78** In deciding on future levels of support for biofuels for transport, the Government will wish to take account of the relative costs and environmental benefits of the various alternative uses of biomass. In doing this, we will also take account of the European Commission's proposals for revising the Biofuels Directive (2003/30/EC), and its proposals on wider renewables targets for the EU as a whole.
- 79** These issues will be considered further as part of the Government's Biomass Strategy, due to be published later in 2007.

Sustainable production of biofuels

- 80** Beyond 2010/11, once experience with reporting has been established, the Government's intention is to go beyond the reporting requirement currently associated with certificate issue.
- 81** It might, for example, be possible for the Government to link the award of Renewable Transport Fuel Certificates to the level of greenhouse gas savings achieved by the fuel. For example, a litre of fuel achieving a 30% GHG-saving relative to the fossil fuel it replaces might receive 1 certificate; a 60% saving – 2 certificates; and a 90%

saving – 3 certificates. This will depend on the development of a robust methodology for calculating the lifecycle carbon impact of different biofuel production chains and processes.

- 82** It might also be possible to specify that, from a given date, only those biofuels meeting certain minimum environmental and social standards should qualify for credits under the RTFO. This may depend to some extent on how quickly standards can be agreed in this area. Work is already under way on this in bodies such as the international Round Table on Sustainable Palm Oil production. The European Commission is also planning to develop a certification scheme. It should be noted, however, that until similar standards and practices are developed in other sectors, there will be an ongoing risk that “sustainable” feedstocks are diverted to use as transport fuels, with “unsustainable” feedstocks being used in other sectors (such as food production). Thus, increased demand for “sustainable” biofuel feedstocks might still lead to deforestation and other adverse environmental effects.

Question 13: Should the Government specify that, from a given date, credits under the RTFO should be linked to the GHG-saving of the fuel? If so, what arrangements should operate and how quickly should this requirement be introduced?

Question 14: Should the Government specify that, from a given date, only those biofuels meeting certain minimum environmental and social standards should qualify for credits under the RTFO? If so, what standards should be applied, and from what date?

Implications for vehicles of moving to blends higher than 5%

- 83** Under European Union fuel quality standards, all vehicles on the road today are currently warranted to run on biofuel blends of up to 5%. The use of higher blends can invalidate vehicle warranties and may cause a number of mechanical problems.
- 84** Specially designed vehicles (such as ‘flex-fuel’ cars which can run on blends of up to 85% bioethanol) do provide some scope for the retailing of much higher blends of biofuel. However, whilst such vehicles can play a useful role, issues such as higher running costs and the need for dedicated fuelling pumps may limit their ultimate contribution.
- 85** A European Commission technical standards committee is currently reviewing the relevant European fuel quality standards, and is due to make its recommendations shortly. It is possible that the fuel quality standards will be revised to allow the blending of up to 10% bioethanol and biodiesel into petrol and diesel respectively. This would mean that motorists could fuel their vehicles on a blend of up to 10% biofuel without in any way affecting their vehicle warranties.
- 86** This issue is likely to have been resolved ahead of 2010/11, and the Government has lobbied the European Commission to reach a solution as rapidly as possible. It is unlikely, in the short-term, that there will be a significant market for higher blend

biofuels operating on appropriately adapted vehicles, such as E85 with Flex-fuel vehicles. Accordingly, the UK Government does not believe that it is appropriate to set the level of the RTFO above the maximum blending level allowed under EU fuel quality standards.

Question 15: Is the Government right to await the review of the relevant fuel quality standards before setting targets higher than 5%?

Costs to consumers

- 87** Biofuels tend to be more expensive to produce than fossil fuels, although the precise difference in price varies widely as a result of fluctuations in crude oil and agricultural commodity prices. The Government will keep under review the impacts of the RTFO on fuel prices. At a level of 5%, the impacts on fuel prices are likely to be insignificant. In the early years of the RTFO, the impact on fuel prices at the pump will also be cushioned to some extent by the fuel duty incentive for biofuels. However, increasing the level of the RTFO beyond 5% could start to have more of an impact on pump prices, and hence on the economy as a whole.
- 88** We will also monitor the impacts on other markets which make use of the same feedstocks, including the food and oleo-chemical industries. The Government has received representations from a number of stakeholders to the effect that Government support for biofuels is putting up the price of commodities such as rapeseed oil and palm oil, which is having an impact on food prices. It may also be having an impact on the prices of feedstocks such as tallow, which could affect the competitiveness of EU versus overseas producers of products including detergents, cosmetics, biodegradable lubricants, pharmaceuticals and soap. In some cases, these other uses of tallow may offer greater carbon savings than burning it as a biofuel, since the recycling of tallow as a feedstock for these products has a lower carbon impact than alternative production methods and feedstocks.

Question 16: To what extent should Government support for biofuels be constrained by the impact on fuel prices at the pump?

Question 17: Will the RTFO have an adverse impact on other sectors? To what extent should this constrain future Government support for biofuels?

Section 2: the possible nature of, and level of, future RTFO targets

Nature of targets

- 89** For at least the first three years of its operation, the levels of the RTFO will be expressed as a **percentage, by volume, of fossil-based transport fuel sales**. Moving forward, however, there are a number of other possible ways in which RTFO levels might be expressed, each of which could have very different impacts on the biofuels market (and the market for other renewable transport fuels) in the UK.

90 The main different ways in which future RTFO levels might be expressed include:

- By **volume** (as with the current 2010/11 level);
- By **energy content** (as in the current Biofuels Directive); or
- By the **amount of greenhouse gas emissions saved**.

91 It would also be possible to incorporate other requirements into any future RTFO levels, such as:

- Separate obligations for different types of renewable transport fuel;
- Minimum carbon saving or sustainability requirements.

92 Annex B gives some illustrations of how some of these types of RTFO levels might work.

Question 18: Do you consider the above analysis of the options correct? Are there any other options that the Government should consider?

Question 19: What are your views on the relative merits of the different ways in which future RTFO levels might be expressed?

Level of targets

93 As explained in part one of this consultation paper, the RTFO Order sets out increasing targets to 2010/11, with the annual target maintained at 5.2632% of fossil fuel sales for every year beyond then. This should provide certainty for industry that there will remain a market in the UK for biofuels of at least 5% into the foreseeable future.

94 Provided that the conditions on sustainability, costs and technical standards outlined in section 1 can be met, and irrespective of the precise format of the 2015 or 2020 RTFO target (see annex B), the Government is keen to hear views from stakeholders on whether the level of the RTFO should be **maintained at the 2010/11 level, or increased** (and, if so, by how much) by the years 2015 and 2020.

95 In setting future targets, the Government will also want to take account of the European Commission's proposals for increasing the use of biofuels across the European Union. The Commission has, for example, proposed an amendment to the Fuel Quality Directive which would require transport fuel suppliers to achieve a reduction of 1% per annum in the lifecycle CO₂ emissions associated with their fuels. The Commission is also due to propose a number of amendments to the current Biofuels Directive (2003/30/EC), which are likely to include binding biofuels sales targets.

96 The UK Government will continue to engage with the European Commission and other Member States in discussions on these and other proposals. The Government will want to ensure that any future biofuel targets are justified on carbon saving grounds and include robust safeguards to ensure that they do not lead to the widespread use of unsustainable biofuels.

Question 20: is the Government right to insist that robust carbon-saving and sustainability criteria are built into future EU-wide biofuel targets and support mechanisms?

- 97 The Government is particularly keen to hear stakeholders' views on when targets for individual years beyond 2010/11 should be set. The Government recognises that industry will want certainty to enable planning for the future. However, the full effects of a 5% biofuel penetration, for example on the environment, will not be known until 2010 at the earliest.

Question 21: What should the level of the RTFO target be in future years (eg 2015 and 2020)? Should the level of ambition be maintained at the 2010/11 level, or increased?

Question 22: When should the Government set targets for years beyond 2010/11?

Level of buy-out price

- 98 The Government is also keen to hear views from stakeholders on the future level of the buy-out price. Part one of the consultation paper explained that our intention was to state in the RTFO Order that the sum total of the buy-out price and the fuel duty incentive for bioethanol¹ for each RTFO compliance period after 2010/11 would be **30 pence per litre**. The precise split between the fuel duty incentive and the buy-out price for any given compliance period will be announced by the Chancellor of the Exchequer in the spring Budget three years ahead of the relevant compliance period.
- 99 The Government's intention is that the buy-out price should be set at a level high enough to prevent suppliers from routinely resorting to it as an alternative to supplying renewable transport fuels. It also needs to be at a level low enough to provide a safety valve to protect motorists and others from the possibility of steep price increases at the pump. We believe that the 30 pence per litre "package" strikes the right balance, at present, between these two objectives, and we are committed to keeping it under review to ensure that it is neither too high nor too low.

Question 23: Is our approach to setting the level of the buy-out price a reasonable one? Does the 30 pence per litre "package" strike the right balance between encouraging the use of renewable transport fuels and protecting consumers? For how many years into the future should it be guaranteed?

1 Note that the duty incentive for a particular biofuel (bioethanol) has been chosen for this calculation because it is possible that, in future years, duty incentives for different biofuels will differ. Decisions on this will be a matter for the Chancellor of the Exchequer.

Section 3: Support for “second generation” biofuels, and other renewable transport fuels

- 100** The Government is keen to encourage the development and use of those renewable transport fuels which offer the highest levels of carbon saving with the minimum adverse environmental impact. “Second generation” biofuels (ie biofuels generally produced from feedstocks other than food crops through a number of advanced processes, including gasification and the use of enzymes to break down the cellulose in the feedstock) have the potential to meet both of these objectives, as do the best of today’s “conventional” biofuels (particularly where crops are grown with low fertiliser input and processed in an energy efficient way).
- 101** “Second generation” biofuels (and renewable hydrogen) also have the potential to offer other benefits, including contributing to greater diversity of energy supply (since they can be produced from a much greater range of feedstocks) and, where “green waste” is used as a feedstock, reducing pressure on land and the amount of waste that goes to landfill.
- 102** The majority of these processes are currently not proven at commercial scale, however, and their costs are currently prohibitively high. Over time, this is likely to change, provided the right incentives are put in place to allow the necessary development.
- 103** The Government’s proposed approach is to move, over time, to a system under which different biofuels qualified for different numbers of Renewable Transport Fuel certificates on the basis of their carbon saving performance. The Government believes that this would give a real incentive for the development and use of the best fuels, regardless of whether these are “conventional” or “second generation” biofuels.
- 104** There are a number of other ways in which the Government might support the development of “second generation” biofuels, and indeed the development of other “advanced” renewable transport fuels (such as renewably produced hydrogen). These include support for research, development and demonstration programmes, facilitation of technology transfer and capital grants towards the construction of processing plants.

Question 24: Will rewarding different biofuels on the basis of their relative carbon saving performance be sufficient to bring these fuels onto the market? If not, in what other ways might the Government support the development and use of “advanced” renewable transport fuels?

Specialist and high-blend uses of biofuels

- 105** There are a number of vehicles already available in the UK and elsewhere which can run on high blends of biofuels. “Flex-fuel” (or “E85”) vehicles, for example, can run on any mixture of petrol and ethanol up to an 85% ethanol blend. Some diesel vehicles are also able to operate on blends of biodiesel much higher than the 5% “norm”.

- 106** The RTFO will support the use of high-blend applications in as much as an obligated supplier selling E85 fuel will receive a large number of certificates in respect of it (850 certificates per 1,000 litres of E85, rather than 50 certificates per 1,000 litres of E5). Whether or not obligated suppliers choose to do this, however, will depend on a range of factors including the strategies obligated suppliers use to meet their obligation and the level of market demand for high blend products. If obligated suppliers choose to meet their obligations by blending 5% biofuel into every litre of fuel that they sell, there will be no need for them to invest in the additional infrastructure necessary to dispense E85 fuels. On the other hand, selling a certain amount of E85 fuel may give obligated suppliers a greater amount of flexibility on how they meet a 5% obligation, since it would allow them to blend slightly less than 5% across the rest of their fuel sales.
- 107** The use of E85 fuels has a number of downsides, however. First, it requires separate fuel pumps on forecourts, which has cost implications and leads to risks of misfuelling and possible damage to vehicles. Second, the energy content of an E85 mix is considerably lower than the energy content of fossil petrol. This means that although the fuel currently costs much the same at the pump (as a result of the 20 ppl fuel duty incentive), a motorist using E85 fuel will only be able to drive two-thirds as far as s/he would have done if s/he had put straight petrol into the tank.
- 108** Many stakeholders have suggested that, in order for E85 fuels to be an economically attractive option, they would need support over and above the duty incentive and RTFO certificates. But views differ among stakeholders on whether the additional costs of supporting E85 fuels and vehicles would be justified by the environmental benefits. As with all biofuels, the amount of carbon saved will depend entirely on how the fuel has been produced.

Question 25: Should the Government consider providing additional support to encourage the use of high blend biofuels?

Annex A

Summary of consultation questions

Part 1: detailed design of the RTFO

Question 1: is the definition of an obligated supplier appropriate? Are the compliance costs estimated in the attached Partial Regulatory Impact Assessment broadly accurate?

Question 2: is 450,000 litres an appropriate minimum threshold?

Question 3: is it appropriate to calculate the level of the obligation as a percentage of obligated suppliers' fossil fuel sales in this way, despite the fact that this will make it a more stretching target?

Question 4: will setting the target in this way provide increased liquidity in the market for RTF certificates?

Question 5: is it appropriate to exclude sales of road fuel gases from the calculation of suppliers' obligations?

Question 6: should the RTFO have an end-date defined in the RTFO Order, and if so what should it be?

Question 7: does the suggested approach to eligible fuels provide a proper framework for identifying those fuels which should count as renewable fuels for the purposes of the RTFO?

Question 8: in advance of internationally agreed standards, is there more that can be done to help ensure that biofuels are sustainably sourced, for example through voluntary standards or agreements?

Question 9: Would obligated suppliers or others wishing to acquire certificates consider these checks and balances to be sufficient to protect against any possible fraudulent claims of RTF certificates from the RTFO Administrator?

Question 10: are the proposed arrangements for the recycling of the buy-out fund appropriate?

Question 11: what are likely to be the impacts of the RTFO on micro-scale biofuel producers, and how might any adverse impacts be mitigated?

Question 12: are the proposed arrangements for civil penalties and for revocations appropriate?

Part 2: how the RTFO might develop over time

Question 13: Should the Government specify that, from a given date, credits under the RTFO should be linked to the GHG-saving of the fuel? If so, what arrangements should operate and how quickly should this requirement be introduced?

Question 14: Should the Government specify that, from a given date, only those biofuels meeting certain minimum environmental and social standards should qualify for credits under the RTFO? If so, what standards should be applied, and from what date?

Question 15: Is the Government right to await the review of the relevant fuel quality standards before setting targets higher than 5%?

Question 16: To what extent should Government support for biofuels be constrained by the impact on fuel prices at the pump?

Question 17: Will the RTFO have an adverse impact on other sectors? To what extent should this constrain future Government support for biofuels?

Question 18: Do you consider the above analysis of the options [for setting future RTFO targets] correct? Are there any other options that the Government should consider?

Question 19: What are your views on the relative merits of the different ways in which future RTFO levels might be expressed?

Question 20: Is the Government right to insist that robust carbon-saving and sustainability criteria are built into future EU-wide biofuel targets and support mechanisms?

Question 21: What should the level of the RTFO target be in future years (eg 2015 and 2020)? Should the level of ambition be maintained at the 2010/11 level, or increased?

Question 22: When should the Government set targets for years beyond 2010/11?

Question 23: Is our approach to setting the level of the buy-out price a reasonable one? Does the 30 pence per litre “package” strike the right balance between encouraging the use of renewable transport fuels and protecting consumers? For how many years into the future should it be guaranteed?

Question 24: Will rewarding different biofuels on the basis of their relative carbon saving performance be sufficient to bring these fuels onto the market? If not, in what other ways might the Government support the development and use of “advanced” renewable transport fuels?

Question 25: Should the Government consider providing additional support to encourage the use of high blend biofuels?

Annex B

Illustration of some possible alternative ways of setting future RTFO levels

Option	Description	Advantages	Disadvantages
1.	Straight volume-based target, with mandatory reporting of environmental impacts.	Straightforward to do – effectively a continuation of phase one of the RTFO.	No guarantees of carbon savings or sustainability. More difficult to take account of new fuels (eg renewable hydrogen) which might start to emerge.
2.	Volume-based target tied to minimum environmental and/ or carbon saving standards.	Some guarantee of carbon saving and sustainability standards.	Might not incentivise fuels with higher than the minimum carbon or environmental standards. WTO risks. Will depend on standards being agreed.
3.	RTFO target to be expressed on an energy content basis (as per EU Directive).	Consistency with EU Directive. Would allow for the incorporation of other renewable fuels (eg renewable hydrogen).	No guarantee of carbon savings or sustainability. May favour biodiesel over bioethanol (because of higher energy content).
4.	RTFO target to be expressed on an energy content basis (as per EU Directive), but with minimum carbon and sustainability standards.	Some guarantee of carbon saving and sustainability standards.	Might not incentivise fuels with higher than the minimum carbon or environmental standards. WTO risks. Will depend on standards being agreed.

Option	Description	Advantages	Disadvantages
5.	Separate obligations for different transport fuels (including petrol, diesel, and road fuel gases).	Will ensure a market for different renewable transport fuels (unless suppliers “buy out”), thus contributing to diversity of supply.	Complex (would involve different buy-out prices and RTF certificates with different values). Risk of “picking winners” (ie Government would need to decide appropriate “mix” of fuels).
6.	RTFO level expressed as an amount of carbon to be saved through the use of renewable transport fuels, for example issuing different amounts of certificates for every unit of renewable transport fuel according to amount of carbon saved.	Greater certainty of carbon saving (unless suppliers “buy out”), good incentives for use of those fuels delivering highest level of carbon saving (including “second generation” biofuels).	Complex. Depends on robust carbon saving methodologies being agreed and accepted internationally, otherwise WTO risks. May penalise UK producers. May be inconsistent with EU Biofuel Directive. Might have to recognise the fact that not all fossil fuels are equal in terms of their carbon footprint.
7.	RTFO target to be expressed as a percentage by volume of transport fuel sales, but with greater credits for certain types of renewable transport fuel (eg “second generation” biofuels, hydrogen).	Would create an incentive for investment in second generation biofuels and other “advanced” fuels.	Very technology-specific approach. Difficult to define list of fuels which qualify for special treatment, and on what basis. Possible WTO challenge.

Annex C

The Consultation criteria

This consultation is being conducted in line with the Code of Practice on Consultation. The criteria are listed below, a full version of the criteria can be found at:

<http://www.cabinetoffice.gov.uk/regulation/consultation/code/criteria.asp>

If you feel that this consultation does not fulfil these criteria please contact

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 105 Victoria Street, London SW1E 6DT

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Fax number 020 7944 6248
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The Six Consultation Criteria

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about who may be affected, what questions are being asked, and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

Annex D

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:

Active Business Partnerships
AEA Technology
Agricultural Development Advisory Service
Agricultural Industries Confederation
Air Products
Amenity, Environmental and Agricultural Industries
Architects and Engineers for Social Responsibility
Argent Energy
Arkady Feeds (UK) Ltd
ARCC Ltd
Arval/phh
ASDA
Association of UK Oil Independents (AUKOI)
Bath and North East Somerset Council
Bayer Crop Science
Bayford & Co. Ltd
Bioethanol Ltd
Biofuel Corporation plc
Biofuels Alliance
Bio-Power UK Ltd
Bioroute
BIOX Corporation
BIP (Oldbury) Ltd
Biscuit, Cake, Chocolate and Confectionery Association
Blackdown Biodiesel Ltd
Blooming Future Ltd
BMW (UK) Ltd
Bob Larbey Associates
BOC plc
BP plc
Bradford Biofuels
Bridgend Partners
British Edible Pulse Association

British Oat & Barley Millers Association
British Starch Industry Association
British Sugar
Broadlands Fuel
C H Jones
Cambridge University
Campaign to Protect Rural England
Carbon Trust
Cargill (Refined Oils)
Central Science Laboratory
Centre for Ecology & Hydrology
ChevronTexaco
CNG Services
Commission for Rural Communities
Confederation of Forest Industries (UK) Ltd
Confederation of Passenger Transport
Conoco Phillips
Consols Oil
Co-operative Insurance Society
Corus Group
Country Land & Business Association
CPL Petroleum
Credit Suisse
Cremer Energy GmbH
D1Oil plc
DaimlerChrysler UK Ltd
DCS Energy Ltd
Defence Fuel Group
Deloitte & Touche LLP
Department for Trade and Industry
Dunn Commodities Ltd
E4Tech
East Durham Biodiesel Ltd
East of England Development Agency
East of England Regional Biofuels Forum
Ebony Solutions
EcoVector Consulting
ECOTEC Rearch & Consulting Ltd
Edinburgh Centre for Carbon Management
Energy 21
Energy Saving Trust
English Farming and Food Partnerships
English Nature
Ensus Ltd
Envirogroup

Environment Agency
Environmental Industries Commission
Esso Plc
Euro Biodiesel Ltd
European Biodiesel Board
European Fuel Oxygenates Association
European Pure Plant Oils Association
ExxonMobil Petroleum & Chemical
Falmouth Oil Service Ltd
Farm Line
Farmers Link
FCLCUK
Federation of Oils, Seeds & Fats Associations
Federation of Petroleum Suppliers Ltd
Fells Associates
Fleetsolve Ltd
Food & Drink Federation
Ford Fuel Oils Ltd
Ford Motor Company
Forecourt Equipment Federation
Forestry and Timber Association
Forestry Commission
Freight Transport Association
Friends of the Earth
Frontier Agriculture
Futura Petroleum
GasRec
Gemserv Ltd
General Motors UK
Gfleet Services Ltd
GLA (Greater London Authority)
Gloucestershire County Council
Government industry Forum on Non-Food Uses of Crops
Grain & Feed Trade Association (GAFTA)
Grainfarmers plc
Green Biodiesel Ltd
Greenenergy
Greenpeace
Green-Ways
Hampshire County Council
Harvest Energy
Hingley & Callow
Home Grown Cereals Authority (HGCA)
Imperial College
Infineum UK Ltd

Institute for Public Policy Research
Institute for European Environmental Policy
Int Fuel Quality Centre Biofuels
International Institute for Environment & Development
Iogen
Johnston Oils
Kuwait Petroleum
Kyoto Fuels
LACORS
Lincolnshire County Council.
Local Government Association
London Air Quality Steering Group
London Biofuels Plc
Longma Biofuel
Losonoco Ltd
Louis Dreyfus Trading Ltd
LowCVP
LP Gas Association
LSS Oil
Lubrizol
Lyondell
Mabanaft Ltd
Maltsters Association of Great Britain
Manchester Biodiesel Co-operative
Morgan Stanley
Morrison
Murco Petroleum Ltd
National Association of British & Irish Millers
National Audit Office
National Farmers Union
National Non-Food Crops Centre
Natural Alcohol Producers Association
NERC and BBSRC
Neste Oil
New and Renewable Energy Centre Ltd
NFU
Northeast Biofuels/ Teesside Chemical Initiative Ltd
Northern Ireland Executive
NSCA
Ofgem
OGCbuying Solutions
Oikos Storage
One Northeast
Organic Power Ltd/NGVA
Oxera

Petrochem UK Ltd/ Petrochem Carless Ltd
Petrol Retailers' Association
Petroplus
Prism Chemical
Product Board for Margarine, Fat & Oil
Quantock Energy & Environment (Qe²)
RBS
Regenattec
Regional Development Agencies
Renew Tees Valley Ltd
Renewable East
Renewable Energy Association
Renewable Energy Management Ltd
Rix Biodiesel/JR Rix
Roquette UK Ltd
Rozone
RPS Conservation
RSPB
Sainsburys
Sandcroft Consultant
School of Environmental Sciences
Scottish Executive
Scottish Natural Heritage
Scottish Renewables
Scottish Rural Property and Business Association
Seed Crushers & Oil Processors Association (SCOPA)
SembCorp Utilities (UK) Ltd
Sempra Oil Trading Sarl
SenterNovem
Shell
SITA UK
Society of Motor Manufactuers and Traders
Soil Association
Solutions for Environment, Economy & Technology
Somerset County Council
Stroud District Council
Sustainable Development Commission
Sustainable Energy Action
Sustainable Environmental System Ltd
SW Biofuels
SW Seed
Talloil
Terra Nitrogen (UK) Ltd
Tesco
Thames Water

The Royal Society
Tibbio Biofuels
Total
Toyota Motor Europe
Tramp Oil & Marine
UK Maize Millers Association
UKERC
UKPIA
Uniqema Chemical Ltd
University of Abertay Dundee
VCA
V-Fuels Ltd
Volkswagen Group Ltd
Volvo
Vopak Terminal London BV Ltd
Waste Disposal Agency
Welsh Assembly
Wessex Grain
Wessex-Green Spirit Fuels/ Bio fuels
West Devon Council
Wheb Ventures
WWF
Yorkshire and Humber Regional Energy Forum

Partial Regulatory Impact Assessment

Draft Renewable Transport Fuel Obligations Order

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Chapter 1

Title of Proposal

This is the Partial Regulatory Impact Assessment for the Renewable Transport Fuel Obligation (RTFO) which is to be set up by Order. The Government has committed to consulting on the draft Order in early 2007. The power to make such an Order was given to the Secretary of State in the Energy Act 2004.

Chapter 2

Purpose and intended effect

2.1 Objective

The proposed Renewable Transport Fuel Obligation (RTFO) will deliver carbon savings of approximately one million tonnes per annum by 2010.

Alongside duty incentives, it will be the main policy in the transport sector to reduce greenhouse gas (GHG) emissions and to increase the use of renewable fuels, helping to meet our international obligations under the Kyoto agreement and the EU Biofuels Directive.

It will apply across the whole of the UK, to road transport fuel suppliers who supply more than 450,000 litres of fossil fuel per annum to the UK market.

2.2 Background

Carbon Reduction Targets and the Biofuels Directive

UK emissions of a 'basket' of greenhouse gases fell by nearly 14.6 per cent between the 1990 base year and 2004. However, emissions in the transport sector have increased by approximately 10% over the same period. The transport sector is now responsible for approximately 25% of UK GHG emissions – equivalent to 43.8 million tonnes of carbon in 2003.

Against the Kyoto target of a reduction in GHG emissions of 12.5% compared to 1990, by 2008-12, emissions were estimated to be about 14.6 per cent below base year levels, at 179 million tonnes (carbon equivalent) by 2004.

Against the government's own target of a 20% reduction in CO₂ emissions by 2010, a reduction of 5.6% had been achieved by 2004.

The UK needs to comply with EU Directive 2003/30/EC ("the Biofuels Directive") which requires Member States to set targets for biofuel sales. The main objectives of the directive are to reduce life-cycle emissions of CO₂ from transport across Europe, and to reduce the EU's future reliance on external energy sources. The Directive includes a reference value of 5.75% biofuel sales for 2010.

Renewable Fuels Duty Incentive

Renewable fuels are one of the few options identified in the transport sector that can achieve cost-effective carbon savings. However, they can cost more to produce than their fossil fuel equivalents and consequently Government intervention is required to create a stable market for them.

In July 2002, the Government introduced a duty incentive of 20p/litre below regular diesel fuel (ultra low sulphur diesel) for biodiesel. A similar incentive for bioethanol began on 1 January 2005.

Sales of biodiesel have risen from 3 million litres per month in 2005 to 17 million litres a month in autumn 2006. Bioethanol sales have been averaging 7.5 million litres per month over the twelve months to July 2006, compared to zero sales prior to the introduction of the incentive. However, this remains a relatively small percentage of total road fuel sales (about 0.6%), and it is unlikely that, without further support, renewable fuels will move beyond a niche market. Most, if not all, renewable fuels are sold in a blend of up to 5% with fossil fuels and are able to meet fuel quality standards and be used in unmodified vehicles.

The duty incentive at the current sales level costs the Exchequer approximately £59 million p.a. in revenue foregone.

Consideration and analysis of an RTFO

The Department for Transport (DfT) consulted stakeholders on a renewable fuels strategy for the UK in 2004. It sought views on appropriate targets for the UK to set under the Directive, and policy mechanisms that might be used to achieve those targets.

Two central mechanisms have been identified that could be used to promote biofuels and potentially other renewable fuels. These are fuel duty incentives (as used currently), and a 'renewable transport fuel obligation' which would place a regulatory requirement on transport fuel suppliers to source a percentage of their fuels from renewable sources. A voluntary agreement amongst suppliers is an alternative approach.

The Government has recently concluded a study and consultative process to consider in detail the feasibility of an RTFO. This set out to establish the cost effectiveness, administrative feasibility and regulatory burdens of an RTFO and its compatibility with other Government objectives. The results inform this RIA. The study concluded that an RTFO is feasible and could provide an economically efficient measure to introduce renewable fuels into the transport system for the long term.

In November 2005, the Secretary of State for Transport announced that he would be introducing the RTFO. Further detail was announced by the Chancellor of the Exchequer in the 2006 Budget, including details of the obligation rate, buy-out price and fuel duty incentive for the first years of the scheme. The RTFO and the fuel duty incentive will exist side-by-side in the early years, but the Chancellor has announced that over time the Government expects that the emphasis will shift from the duty incentive to the buy-out price as the principal support mechanism for renewable fuels.

2.3 Rationale for Government Intervention

Issues requiring a Government-led response

Whilst all the changes that global warming could bring are not fully understood, there are widespread concerns about climate change. It is likely to have far reaching effects on all aspects of the world's environment, economy and society. The Stern review emphasised that:

“The scientific evidence points to increasing risks of serious, irreversible impacts from climate change associated with business-as-usual (BAU) paths for emissions.”

In identifying the elements of policy to combat climate change, the Stern review says:

“Establishing a carbon price, through tax, trading or regulation, is an essential foundation for climate-change policy... Putting an appropriate price on carbon – explicitly through tax or trading, or implicitly through regulation – means that people are faced with the full social cost of their actions. This will lead individuals and businesses to switch away from high-carbon goods and services, and to invest in low-carbon alternatives...”

Clarity and predictability about the future rules and shape of schemes will help to build confidence in a future carbon price. In order to influence behaviour and investment decisions, investors and consumers must believe that the carbon price will be maintained into the future. This is particularly important for investments in long-lived capital stock. Investments such as power stations, buildings, industrial plants and aircraft last for many decades. If there is a lack of confidence that climate change policies will persist, then businesses may not factor a carbon price into their decision-making. The result may be overinvestment in long-lived, high-carbon infrastructure – which will make emissions cuts later on much more expensive and difficult.”

The Energy Review in July 2006 stressed the importance of the RTFO as a tool for achieving reductions in GHG emissions in the transport sector. Renewable fuels and, in the future, other renewable road fuels can add to measures already in place to counter climate change by reducing emissions of carbon dioxide from transport.

The Energy Review also considered that the UK's exposure to international risks will increase gradually over the medium term, as our net energy imports increase and as supply chains lengthen. Renewable fuels can both reduce the UK's reliance on imported oil and expand the sources of imports, and thus improve both fuel security and diversity of supply.

The Government needs to ensure that it meets its obligations under the Biofuels Directive, and that its support for renewable fuels is consistent with the EU's Biomass Action Plan and other related strategies.

The “do-nothing” scenario

As has been seen with unleaded petrol and renewable fuels (detailed above), Government intervention through duty incentives has had some success in achieving improved environmental performance of fuels.

It continues to be the case that the extra costs of renewable fuels prevent them competing successfully with cheaper fossil fuels and so reduce the penetration that can be achieved without Government intervention.

The Government could continue the current level of fuel duty incentive as the main mechanism of support for renewable fuels, possibly supplemented by a number of measures currently in development such as enhanced capital allowances for certain biofuel production processes. If current high oil prices are maintained, this should see the continuation and gradual expansion of the current niche market.

It will also continue to cost the Exchequer approximately £96 million in foregone revenue for every 1% of market penetration.

Unless and until there is a significant breakthrough in technology leading to reduced biofuel production costs, there is a risk that the market will remain a niche one. This would substantially limit carbon savings from this source, one of the few currently available in the transport sector. It would also limit UK investment opportunities in developing advanced technologies, renewable fuels production and supply infrastructure. In the future, continued near-total reliance on fossil fuels for transport could also negatively affect the UK's fuel security and diversity of supply.

The UK would also be at increased risk of infraction proceedings taken against it by the European Commission for failure to implement the EU Biofuels Directive.

Impacted groups

The main impacted group are the obligated suppliers i.e. suppliers of fossil fuels for road transport. This includes approximately eight major oil companies and 20-40 smaller oil importers and distributors.

The impacted sectors are discussed in more detail below.

UK Refiners

These companies supply most of the fossil fuel sold in the UK and consequently would be subject to the largest share of the burden. Increasing their percentage of renewable fuels sold increases their costs, which is partly compensated by the current level of duty incentive. They will source renewable fuels from the global market, tending towards long term contracts with small numbers of large suppliers. They are generally keen to improve their environmental credentials and come under heavy scrutiny from environmental interest groups.

The UK refiners are members of UKPIA (UK Petroleum Industry Association) through which they have been heavily involved in the development of the policy implementation

considerations. The companies are: BP, Chevron, Conoco Phillips, ExxonMobil, Ineos (which bought the BP refinery at Grangemouth), Murco, Petroplus, Shell and Total.

Oil Importers

There are a number of suppliers that sell oil in the UK that is imported rather than produced in a UK refinery. These suppliers import from global markets using storage facilities at ports. They pay duty to HMRC in the normal manner. They will have to source and supply renewable fuels, which will increase their costs as for refiners above.

There are believed to be 20-40 companies matching this description. Some of these companies are members of a trade group called AUKOI (Association of UK Oil Independents) which has been involved in stakeholder discussions throughout the lifetime of the policy development.

Large Biofuel Suppliers

There are two large biofuel plants in operation in the UK at time of writing, with a number in development or planning stages. There are also a small number of suppliers importing renewable fuels in high volumes into the UK. These suppliers will have the opportunity to supply a growing UK market if the RTFO option is approved.

Some of these companies are members of AUKOI (see above) and / or the Renewable Energy Association's Renewable Fuels Resource Group and have been involved in consultation throughout.

Small Biofuel Suppliers

There are believed to be about 1200 small biofuel suppliers, who develop their own renewable fuels and sell them, blended with fossil fuel or otherwise, to local customers, or simply use the fuels in their own vehicles. They pay duty on the fuels supplied and are competitive because of the duty incentive. An increased level of fuel duty incentive would be expected to increase demand for their product, potentially benefiting small producers. However, measures to move away from the current niche market (whether through incentive or obligation) could also put pressure on smaller firms as larger suppliers became more involved in the market, taking advantage of economies of scale and greater investment capacity.

The Government has announced that, in introducing the RTFO, it intends to progressively reduce the duty incentive that applies to renewable fuels. If the Chancellor should decide to do this, it would have a significant impact on the competitiveness of small suppliers and could put their businesses at risk.

The main concern raised by smaller suppliers regarding measures to promote renewable fuels more widely is so-called 'secondary blending', where the oil majors and importers bring in fuel that already has a biofuel component. This may make it more difficult for smaller suppliers to add a biofuel component themselves (as they buy the base fuel from the oil majors, and current blending limits, set at EU level, restrict the amount of biofuel that can be added to fossil fuel). This potential problem for the independents is something that the industry would

need to address were there to be a major renewable fuels market in the UK, and regardless of which mechanism were used to achieve this.

Stakeholder communications efforts have included presentations to groups including small biofuel suppliers. Further detail is included in Chapter 6 – the Small Firms Impact Test.

Suppliers paying duty on small volumes of fossil fuels

There are some companies who pay duty on quite small volumes of fossil fuels. These include companies using the (road transport) fuel for specialist, non-transport uses e.g. engine testing, car racing. For companies such as these, renewable fuels are not a practical option and hence it would be unfair to impose an obligation. Therefore the draft order includes provision for a de minimis level of volume. A supplier supplying less than this volume, set at 450,000 litres per annum, would not be subject to the obligation.

Fuel distributors and retailers

The major refiners, supermarkets, distributors and independent retailers sell fuel to the public and commercial fleets. Most fuels currently supplied to the market can, under EU standards comprise of up to 5% renewable fuels, blended into fossil products prior to delivery to petrol stations. The fuel is delivered through the same pumps as currently and should not impact overall volumes or activity levels. The supply of bioethanol may require a ‘one off’ cleaning of fuel storage tanks due to its hygroscopic nature. Measures that successfully resulted in promoting renewable fuels penetration into the fuel market could mean that all road fuels sold in the UK could contain a biofuel blend, and therefore all retail outlets could require cleaning. Although the additional cost for each forecourt is not great, the Petrol Retailers Association have suggested that it could have a detrimental impact on the fuel retail sector where the number of sites has been contracting in recent years due to lack of profitability. Further detail is included in Chapter 6 – the Small Firms Impact Test.

UK Farmers

The farming community could potentially benefit, as there would be an increased demand for biomass crops such as wheat, sugar beet and oil seed rape. Officials have participated in a number of meetings with farmers and their representatives to discuss policy development. It will be up to obligated suppliers, however, to decide whether to source their renewable fuels from the UK or from overseas producers. Further detail is included in Chapter 6 – the Small Firms Impact Test.

Other industries

It is not possible to define the exact net effect of a significant increase in renewable fuels use across other industries, but there would be an impact. A number of industries currently use biomass feedstocks, and therefore diverting biomass to a new use – such as biofuel – would alter the current equilibrium. The possible impact on the oleo-chemical industry is such an example, as discussed under ‘Unintended Consequences’ in Chapter 4.

Environmental groups

There are numerous environmental groups who are concerned with both measures to reduce greenhouse gas emissions and to ensure the sustainability of any biomass used to produce transport fuels. These groups have been engaged with policy development through the Low Carbon Vehicle Partnership (LowCVP)¹. A number of environmental groups have argued that the Government should only support renewable fuels which meet certain minimum environmental standards, but WTO rules currently mean that such a requirement would be subject to challenge.

Consumers and fuel users

All of the options discussed assume no changes in fuel standards in the medium term, so that all vehicles currently on the road will be able to use fuel as normal. There may be impacts on the retail price of fuel under the different options, as discussed below. Communications would need to alert consumers to EU fuel standards, the restrictions on blending and the risks to vehicle performance and warranties if those standards were ignored.

Government

The Treasury set duty incentive levels and so have an interest in the revenue foregone to encourage increased use of renewable fuels. Her Majesty's Revenue and Customs (HMRC) collect duties and key data and would have an important role to play under any of the options. The Department for Trade and Industry (DTI) and the Department for the Environment, Food and Rural Affairs (Defra) share the DfT Public Service Agreement on reducing greenhouse gas emissions. DTI also work with the petroleum industry on a number of other issues. The Environment Agency issue permits to the refiners and large biodiesel producers.

Energy is a reserved matter under devolution. Devolved administrations have been consulted throughout and have seats on the RTFO Programme Board.

1 The Low Carbon Vehicle Partnership is a partnership of organisations from the automotive and fuel industries, Government, academia, environmental NGOs and other stakeholders established in January 2003 to take the lead in accelerating the shift to clean low carbon vehicles and fuels in the UK.

Chapter 3

Consultation

3.1 Within Government

Within Government, an interdepartmental group was established to oversee implementation of the EU Biofuels Directive, and subsequently to consider the feasibility of introducing an RTFO. Departments represented on these groups included DTI, the Treasury (HMT), HMRC, Defra and the Cabinet Office. Officials from the Devolved Administrations have also attended meetings and been consulted through e-mail exchange.

3.2 Public Consultation

DfT has consulted extensively in developing its renewable fuels policy, maintaining links with stakeholders throughout.

The Government-funded Low Carbon Vehicle Partnership, which has members from interested stakeholders including relevant parts of industry, academia and environmental organisations, has been closely involved in renewable fuels policy development, particularly through the Fuels Working Group. Details of the organisation, its members, papers and minutes from meetings are available on the Partnership's website at <http://www.lowcvp.org.uk>

The Government consulted broadly on its biofuels policy in spring 2004. The consultation document is on the DfT website at:

www.dft.gov.uk/stellent/groups/dft_roads/documents/page/dft_roads_028393.hcsp

Responses indicated strong support for the Government to introduce additional measures to support renewable fuels and to set ambitious targets under the EU Biofuels Directive. Duty Incentives were generally the preferred method, though there was also strong interest in the prospects for an RTFO, particularly for the long term. A summary of the responses is available at: www.dft.gov.uk/stellent/groups/dft_roads/documents/page/dft_roads_033085.hcsp

In the light of the consultation, the Government committed to conduct a feasibility study and consultative process to explore the prospects for an RTFO. This set out to assess the cost-effectiveness, administrative feasibility, regulatory burdens and compatibility of an obligation with other Government objectives. As part of this study, the DfT held a number of stakeholder workshops in spring 2005 (attended by over 100 individuals from industry, academia and NGOs) as well as ongoing meetings with relevant stakeholders. Two pieces of external research consultancy work were also undertaken to inform the study. All of these are available on the Department's website at:

http://www.dft.gov.uk/stellent/groups/dft_roads/documents/divisionhomepage/610328.hcsp

Since the announcement of the intention to impose the RTFO, consultation with stakeholders has continued on all aspects of the scheme. The following activities with public stakeholders have taken place:

- workshops with key stakeholders in January, February, June and November 2006 and January 2007 on detailed design aspects of the RTFO;
- regular scheduled meetings with key stakeholders through the Low Carbon Vehicle Partnership;
- regular one on one meetings with key stakeholders from the outset, with both Ministers and officials, including detailed discussions on the scheme design;
- DfT presentations on the RTFO at regional, national and international conferences (by both officials and Ministers).

Further meetings are scheduled prior to formal consultation in early 2007. There are also plans for regular communications to and from stakeholders via bulletins and the RTFO website within the DfT public website at www.dft.gov.uk/roads/rtfo

Table 1: List of stakeholders who have participated in discussions on the RTFO

Biofuel Producers and Supporters	Oil Industry producers and retailers	Environmental Groups
Argent Energy	Asda	Campaign to Protect Rural England
Archer Daniels Midland	Association of UK Oil Independents (AUKOI)	Carbon Trust
British Association for Biofuels and Oils (BABFO)	BP	Energy 21
Bioethanol Ltd	British Sugar	English Nature
Biofuels Corporation	ChevronTexaco	Farmers Link
Biofuels Alliance	Conoco Phillips Ltd	Friends of the Earth
Bio-power UK Ltd	Esso UK PLC	Greenpeace
British Biogen	ExxonMobil Petroleum & Chemical	Natural Environment Research Council and Biotechnology and Biological Sciences Research Council
Ebony Solutions	Federation of Petroleum Supporters Ltd	Royal Society for the Protection of Birds
Eternal Fuels Ltd	Ineos	Scottish Rural Property and Business Association

Biofuel Producers and Supporters	Oil Industry producers and retailers	Environmental Groups
Global Commodities	Morrisons	Soil Association
Greenergy	Murco Petroleum	Sustainable Energy Action
logen	Sainsburys'	Sustainable Farming and Food Implementation Group
Longma Energy Ltd	Shell	Tyndall Centre
Northeast Biofuels/ Teesside Chemical Initiative Ltd	Tesco	Consultants
Petroplus	Total UK	AEA Technology
Renew Tees Valley Ltd	UK Petroleum Industry Association (UKPIA)	Climate Change Capital
Renewable Energy Management Ltd	UK Oil Industry Taxation Committee – Indirect Tax Committee (UKOITC)	E4Tech
RIX Biodiesel	Others	Ecofys
RPS Conservation	Active Business Partnerships	ECOTEC Research & Consulting Limited
Sustainable Environmental System Ltd	Amenity, Environmental and Agricultural Industries	EcoVector Consulting
Tate and Lyle	Architects & Engineers for Social Responsibility	Gfleet Services Ltd
Terra Nitrogen (UK) Ltd	NFU Scotland	Institute for European Environmental Policy
Tibbio Renewable fuels	NFU Wales	Sandcroft Consultants
Wessex Grain	Thames Water	Motor Industry
Public Sector	Westray Development Trust	BMW (GB) Ltd
Bath and North East Somerset Council	Yorkshire and Humber Regional Energy Forum	DaimlerChrysler UK Ltd
Energy Saving Trust	Capita Symonds	Ford Motor Company Ltd
Environment Agency	Cargill	Freight Transport Association
Greater London Authority	Country Land and Business Association	Road Haulage Association Ltd

Public Sector	Others	Motor Industry
Gloucestershire County Council	Conference of Passenger Transport	Saab Great Britain Ltd
Hampshire County Council	East of England Regional Biofuels Forum	Society of Motor Manufacturers and Traders
Local Authorities Co-ordinator Of Regulatory Services	English Farming and Food Partnerships	
National Non-Food Crops Centre	European Biodiesel Board	
Department of Environment for Northern Ireland	European Fuel Oxygenates Association	
Office of Government Commerce buying solutions	European Pure Plant Oils Association	
Regional Development Agencies	Forecourt Equipment Federation	
Scottish Executive	Forestry Commission	
South Gloucestershire Council	Forestry and Timber Association	
Stroud District Council	Green Resources Ltd	
Welsh Assembly	Home Grown Cereals Authority	
West Devon Council	London Air Quality Steering Group	
	New and Renewable Energy Centre Ltd	
	National Farmers Union	

Chapter 4

Options

Four options have been considered for achieving the desired objective:

1. **Maintain the current duty incentives** – the “do nothing option” – and rely on it to produce increased biofuel sales;
2. **Increase duty incentives** to a higher level to compensate for the extra costs of renewable fuels;
3. Seek a **voluntary agreement** with the oil industry to supply increased volumes of renewable fuels;
4. Introduce a **renewable transport fuel obligation**, along the lines of the Renewables Obligation in the electricity industry, to oblige transport fuel suppliers to achieve a specified level of biofuel sales in their UK businesses.

Option 1. Maintain the current duty incentive

How would it work?

As happens currently, biofuel supplies would benefit from a 20 pence per litre duty incentive. This is administered by HMRC on an established basis within the fuel duty system.

Risks with respect to the stated objective

Due to the costs of producing fuels, the fluctuations in the relative prices of renewable fuels and fossil fuels, and the uncertainty attached to a duty incentive that is reviewed in every Budget, it is unlikely that renewable fuels would grow to beyond a tiny niche market under this option. Four years of incentives for biodiesel have seen sales reach 0.4% of all fuel sales by Dec 06.

At current rates of sales, the duty incentives cost the Exchequer £59 million p.a. in foregone revenue. If biofuel sales were to reach 5% under this option, the foregone revenue would amount to £ 480 million p.a.

To the extent that renewable fuels are sold into the UK market in the future, there is an ongoing risk of renewable fuels providing minimal carbon saving compared to fossil fuels due to the methods used to produce the biofuels throughout the supply chain. Similarly, there is a risk that supplies predominantly come from ‘unsustainable’ sources, as this option has no

controls or mechanisms for encouraging sustainability. Whilst renewable fuels clearly offer a number of environmental benefits, the possible expansion of biomass production could also have a number of other effects, including possible impacts on land-use, landscape, biodiversity and soil structure, both in the UK and abroad.

There is no “implementation” risk for this “do-nothing” option.

Enforcement and compliance

HMRC currently enforce the payment of excise duties on fuels for road use, including the reduced duty rates for renewable fuels. HMRC officers have wide ranging powers to enforce the correct payment of duties and specific measures for dealing with renewable fuels have been introduced.

This “do-nothing” option would have no impact on the administrative burden imposed on suppliers.

Implementation Plan

No implementation plan is required for this option.

Option 2: Increase the duty incentive level

How would it work?

Industry has consistently called for higher duty incentives than the current 20 pence per litre (ppl), typically of the order of 25ppl to 30ppl. Depending on other market factors at a given point in time, duty incentives at these sorts of levels could substantially increase the penetration of renewable fuels in the UK, and consequently carbon savings in the transport sector, albeit at a cost to the general taxpayer. This was a popular option from our public consultation in 2004, particularly in the shorter term.

Experience in Germany has shown that a very significant duty incentive can deliver increased sales. A 100% duty incentive on biodiesel, introduced in 2004, enabled sales to exceed 2 billion litres in 2005¹. However, the duty incentive is being phased out and replaced by an obligation, because of the cost to the Government.

Risks with respect to the stated objective

Implementing a higher duty incentive would be relatively straight-forward, as the Chancellor reviews rates at the Budget on an annual basis, and HMRC already distinguish renewable fuels for duty purposes.

Increasing the duty incentive would require State Aid Clearance by the European Commission. This might be considered a relatively low risk as a number of other European countries have substantially higher duty incentives than the UK's. However, with current high

1 Source: <http://www.biokraftstoffverband.de/downloads/430/PresentationDr.Retzlaff>

oil prices, which have narrowed the cost differential between fossil and renewable fuels, a much higher incentive might prove difficult to justify, as biofuel production that is already economic with the current level of incentive (e.g. from used cooking oils) could be over-compensated.

The risks of low carbon savings and unsustainable supplies identified in option 1 apply to this option also, and would be increased assuming the policy was successful in achieving higher sales levels. Similarly, the risks related to the possible variance in carbon life cycle benefits actually achieved apply too.

There remains a risk that the desired levels of carbon savings through biofuel sales would not be achieved with a greater duty incentive. As the duty incentive is only announced on a rolling three-year basis, it does not provide a high level of certainty for investors considering the potential risks and returns on investments in the biofuel capacity and infrastructure necessary to deliver the target levels of biofuel sales.

Increasing the duty incentive also creates additional, ongoing costs to the Exchequer if increased sales are achieved. At 5% biofuel sales, a 25ppl duty incentive would cost £600 million. A 30ppl incentive would cost £720 million.

Enforcement and compliance

As outlined in option 1, mechanisms are already in place to enforce the payment of excise duties on fuels for road use, including the reduced duty rates for renewable fuels. An increased duty differential would increase the incentive for fraudulent claims for the reduced rates of duty, but this risk may be relatively low given the tight controls in place and considerable penalties applicable.

As in Option 1, there would be no increase in the administrative burden placed on suppliers.

Option 3: Seek a Voluntary Agreement amongst suppliers

How would it work?

The Department for Transport would be responsible for negotiating an agreement with industry, working closely with the Department for Trade and Industry who are responsible for the oil sector within Government.

The potential for a voluntary agreement with industry to supply renewable fuels was considered as part of the UK's public consultation on implementation of the EU Biofuels Directive in 2004. Consultees overwhelmingly considered that a voluntary approach would be unworkable, mainly because of the significant additional costs of supplying renewable fuels, which would incentivise "rogue" non-compliance.

Risks with respect to the stated objective

Industry has signalled that they consider a voluntary agreement to be an unworkable solution to achieving increased renewable fuels penetration, so negotiating a workable agreement could prove very difficult, and may not be possible.

A voluntary agreement would not provide the level of certainty needed to support investment decisions by biofuel producers, and so capacity may not increase sufficiently.

There is a risk that a voluntary agreement in the UK would be the lowest priority for fuel suppliers faced with obligations or high levels of incentives in other European countries.

Without sanctions for missing targets, it is likely that targets would not be met and CO₂ emissions would not be reduced.

In order to get 100% agreement across the industry, it is likely that the agreed level of targets and performance will be at the low end of the possible range. There is still a risk of non-participation or suppliers getting a “free-ride”.

The risks that apply to options 1 and 2 in terms of carbon saving and sustainability of renewable fuels apply to this option also.

Overall, the risk of failing to achieve the policy objectives would be very high.

Enforcement and compliance

The lack of strong compliance and enforcement measures associated with a voluntary agreement, combined with the high cost that compliance would impose, are the main reasons industry is opposed to such a policy solution.

Implementation plan

The responsibility for delivering this option would reside with the fuel industry. It would require reconciliation of the interests of the different groups within the industry. It would need to ensure 100% participation in order for participants to avoid being disadvantaged with respect to competitors.

A feasible scheme, monitoring system and implementation plan have not been achievable for this option and are not believed to be achievable.

Option 4: Introduce a Renewable Transport Fuel Obligation (RTFO)

How would it work?

A market-based obligation mechanism, broadly along the lines of the Renewables Obligation that operates in the power generation sector, could provide a tool to ensure that the Government’s policy objectives are attained. An RTFO would require transport fuel suppliers to ensure that a specified percentage of their fuel was from a renewable source. There was considerable (though not universal) support for this option in response to public consultation,

and many consultees considered it the most favourable mechanism to provide long term market stability.

The powers to introduce the RTFO are contained in the Energy Act 2004. The scheme design set out below will work effectively. However, some opportunities to improve the robustness and efficiency of the scheme have been identified and the Government is considering primary legislation to enable those changes. The changes relate primarily to:

- an information gateway from HMRC;
- the establishment of the Administrator;
- C&S reporting requirements.

The consideration of which organisation should act as the Administrator is also set out below.

Core Scheme Design

The Obligation. Obligated suppliers would be fossil fuel suppliers who supply more than 450,000 litres of fossil fuel across the duty point during a year. This “de minimis” threshold would exempt small suppliers and those paying duty on small amounts of fuel for purposes other than road transport e.g. engine testing and racing. Suppliers supplying additives would also be exempt.

The setting of the obligation level, as a percentage of a supplier’s fossil fuel sales, would give the Government some control of the level of biofuel sales achieved, and hence the delivery of the carbon saving objective and the meeting of Biofuels Directive targets.

The obligation level is set out in the RTFO order as follows:

Table 2: Obligation rates for each period

Period	Obligation Rate
2008-9	2.5%
2009-10	3.75%
2010-11	5%
Thereafter	5%

and will be amended by order if necessary.

The obligation can be met by either presenting Renewable Transport Fuel (RTF) Certificates, which will be awarded for the supply of biofuel across the duty point, or by paying an amount known as the “buy-out” (see below).

By focusing on the fuel crossing the duty point, the scheme narrows its scope to a relatively small number of fuel suppliers and simplifies scheme administration and compliance. By obliging suppliers who *supply* fuel across the duty point, rather than those that *pay* duty, the large refiners, who will have the obligation for approximately 95% of the fuel, will be able to

meet the obligation without any additional impact on their operations and planning and with a minimised administrative burden.

The complex nature of the fuel supply chain would have meant that other definitions of the obligation point would have made administering the obligation much more complex for the administrator and the companies.

Other definitions of obligated suppliers and volumes have been proposed, including obligating duty payers, as proposed in the 2005 feasibility study. The relative benefits of this definition compared to the scheme outlined here are finely balanced and the Government will continue to assess the relative merits of each scheme design during the consultation period.

The “Office”. The RTFO would be regulated and enforced by an organisation known as the “Office of the RTFO”, or “Office”. The Office will be responsible for communicating the nature of the obligation and for informing suppliers of the available options for meeting their obligation. It will also be responsible for registering suppliers, awarding certificates and ensuring that the obligation has been met by all the obligated suppliers. It will administer the collection and recycling of “buy-out” funds (see below).

Registration. Obligated suppliers would be required to register for an account with the Office. The Office will be able to require other transport fuel suppliers to register, if it requires them to prove that they are not obligated or to provide information about fuel supplied in order to verify the data supplied by obligated suppliers. Suppliers of renewable fuels will be able to register in order to be awarded certificates. People wishing to act as traders in certificates will also be able to register.

Registration will be largely an on-line process, except for the submission of some documentary proofs of identity.

Monthly Information Returns. Obligated suppliers, and other suppliers to be determined by the Office, will be required to make a monthly return of data. Using the secure website provided by the Office, they will be required to supply information relating to their supply volumes and duty payments (described fully in Appendix A) so that the Office can validate their reports fully and correctly calculate their obligation. However, the information required is all currently collected by the suppliers, so there is no *additional* data gathering burden.

The data will have to be submitted within two weeks of monthly duty returns to HMRC. No paper forms or physical evidence are required at this stage, unless the Office has reason to believe the data may be inaccurate or incorrect.

Awarding RTF Certificates. Suppliers who supply renewable fuels across the duty point, and on which duty is paid, will be eligible to claim RTF certificates from the “Office”. They will have to submit:

- information about the volume of renewable fuels supplied across the duty point
- information about the carbon saving of the renewable fuels supplied
- information about the sustainability impact of the renewable fuels supplied.

The last two items are known as a “C&S” report.

Both obligated and non-obligated suppliers will be able to apply for RTF certificates in the manner described. This data must also be submitted to the Office within two weeks of the monthly return to HMRC. The Office will then allow a one-month “cooling-off” period during which the Office may ask suppliers for evidence to support the volumes supplied in monthly submissions.

Once the cooling-off period has elapsed, certificates will be awarded, at one certificate for every litre of renewable fuel (or for every kilogramme of biogas). Certificates will be awarded by a credit to an account on the Office's system. Suppliers will be able to see the balance in their account, as well as volumes of other fuels submitted. Certificates will be allocated to a specific obligation period.

Trading. Suppliers will be able to trade certificates, but the pricing and financial aspects of the trade will be outside the Administrator's scope and systems. Suppliers wishing to trade certificates may request to have their contact details published on the Office's website. A supplier wishing to execute a sale of certificates will need to provide the Office with details of the purchaser's account, the volume of certificates, the obligation period of the certificates and the date on which the transaction should take place.

Meeting the Obligation. At the end of a compliance period, an obligated company will be able to meet its obligation by one or more of these options:

- Redeeming RTF certificates awarded during the current or previous period (allowing suppliers to smooth production across periods)
- Redeeming RTF certificates that have been bought from another supplier
- Paying a “buy-out” price for each litre of obligation that has not been fulfilled by a certificate.

Suppliers will notify the Office, via an electronic form, of how they wish to meet the obligation. The Office will set out an annual timetable, in accordance with the process set out in the order, for the finalisation of volumes, calculation of obligations, presentation of certificates and payment of buy-out funds.

Any buy-out funds received will be “recycled” to all fuel suppliers in proportion to the number of certificates they have earned and have opted to redeem against an obligation or to “surrender” for a share of the buy-out. This recycling aspect has been deemed an acceptable State Aid by the European Commission.

Suppliers will be able to bank un-redeemed certificates to be used in the future. This allows them greater flexibility in how they meet their obligation over a longer timeframe. The order will limit the amount of certificates from a previous period that can be used to meet a current obligation to 25% of the current obligation. Suppliers may not “borrow” from future certificates in order to meet a current obligation.

Validation and Compliance. The Administrator will use risk-based assessment to manage compliance and enforcement activity. The Administrator will work closely with other regulating bodies, where permitted, to share compliance performance information about regulated suppliers. The risk assessment will consider:

- the impact on the achievement of policy of evasion / incorrect reporting by a particular supplier i.e. fossil and biofuel volumes;
- the supplier's track record of compliance with the scheme;
- the supplier's track record of compliance with other regulations;

as well as other factors to be determined by the Administrator as the scheme matures.

The data provided by the suppliers will allow extensive cross-checking to validate all the figures. This provides the Office with reassurance on a monthly basis that volumes have been accurately reported.

All suppliers who have submitted volume data to the Office will be required to supply an opinion from an external auditor that states that the volumes reported to the Administrator are the same as those reported to HMRC for duty payment purposes, for the relevant fuels. This will be required during the period after the end of an obligation period when the Office is finalising the obligations of the suppliers prior to the presentation of certificates. This auditor's opinion will provide further assurance as the HMRC's extensive powers of inspection and imposition of penalties ensure accurate reporting to themselves.

Carbon and Sustainability Reporting (C&S) The RTFO targets savings of around one million tonnes of carbon emissions per year. To achieve this at a 5% obligation by 2010-11, the average carbon saving of each litre of fuel needs to be 60%. Requiring fuel suppliers to report the carbon saving of their fuels allows the Office to measure whether the policy is being successful.

It is also important that the fuels supplied come from sustainable sources, for example that rain forest is not being destroyed in order to grow plantations that provide biomass for renewable fuels. The requested sustainability data allows the Office to measure the impacts of the fuels being supplied.

Currently, the global fuel supply chains do not reliably transmit all the desirable information on C&S that the Office would like to receive. Work is currently underway with stakeholders to trial information collection systems, with a view to implementing deliverable, practical requirements that suppliers can meet. It is expected that the information requirement on sustainability will increase over time, as the global supply chains pass more information more consistently. This evolution in the reporting requirement will be done in full consultation with stakeholders and with appropriate notice of changes.

Reporting. The Office will publish a set of standard monthly reports that describe the performance of the scheme, carbon savings achieved and the sustainability of the fuels, where known. A more detailed annual report will describe how individual suppliers have met their obligation, without disclosing sensitive market share or volume data, as well as a broader report on the impact of the RTFO. It is intended that this publication will encourage suppliers to improve the carbon savings attributable to the fuels they supply, and to ensure that the fuels come from proven sustainable sources.

The Office will also report on its effectiveness as a regulator, the advice it provides, known levels of fraud or evasion and other relevant performance indicators.

Better Regulation. The scheme has been set-up to follow Hampton report guidelines as far as applicable, for example:

- No paper forms are required, all information will be captured electronically.
- Volume information is already collected, in the desired format, by the industry. Only the bare minimum of data needed to verify and calculate the obligation level, and to measure the carbon and sustainability performance of the fuels, will be required. Existing data captured by the HMRC cannot be used by the Administrator due to legislation prohibiting the sharing of taxpayer information. Data currently captured by DTI under the Compulsory Stocking Obligation is insufficient for the Administrator's purposes, as it does not cover renewable fuels.
- The scheme is closely tied to the processes, definitions and reporting calendar of HMRC's excise regime, to minimise the additional burden on suppliers.
- The verification and enforcement provisions have been rigorously examined to ensure effectiveness whilst minimising the burden imposed. The NAO have been consulted on the design of fraud prevention measures.
- Resources and processes have been allocated in the Office's plans for the provision of advice to regulated suppliers.
- The Administrator's annual report will have to account for the cost-effectiveness of the organisation with respect to the delivery of policy objectives. While it is acknowledged that small administrators are more expensive, no other option was available under legislation and extensive work is being done to minimise the cost base of the Administrator.

Stakeholders have been consulted extensively on how the scheme will work, and the draft order is published alongside this RIA for a 12-week consultation. Stakeholder communications already include a newsletter, website and frequent workshops and smaller sessions.

Possible changes to primary legislation

As mentioned above, a number of possible improvements to the scheme design have been identified, but they require enabling primary legislation. The possible changes and their benefits are shown in the table below.

Table 3: Possible changes to primary legislation

Provisions	Benefits
To establish an information gateway from HMRC to the Office, allowing the forwarding of confidential taxpayer information to the Office, with appropriate safeguards and sanctions	<ul style="list-style-type: none"> ■ Reliable verification of supplier data ■ Reduced evasion of the obligation ■ Significantly reduced administrative burden ■ Quicker processes
To allow the Secretary of State to appoint himself or an agency as the Administrator	<ul style="list-style-type: none"> ■ Reduced costs of administration ■ Avoids the creation of a new body

If the information gateway from HMRC was enabled, a number of the aspects of the scheme design that focus on verification and fraud prevention would not be necessary, as the RTFO would be able to rely on the detailed compliance regime that oversees fuel excise payments:

- i. Certificates could be awarded every month as soon as data had been checked with HMRC figures
- ii. Suppliers would have to submit amendments to data following any agreement of revised figures with HMRC;
- iii. The auditor's opinion would not be required from suppliers
- iv. Evasion would be more difficult for suppliers, unless they are also evading the excise regime, hence reducing the Office's need to investigate possible evasion
- v. Significantly reduced requirement to carry out random checks
- vi. Significantly reduced fraud risk

The provision in the draft order on the establishment of the RTFO Administrator is dealt with below.

The establishment of the Office

The Energy Act 2004 set out that the Secretary of State could appoint as the Administrator either an existing body created by enactment or a new body. This prevents the Secretary of State setting up a team in the Department for Transport or one of its agencies.

A number of existing bodies were asked if they wished to carry out the role of Administrator, now known as the "Office of the RTFO". HMRC, who already collect the required data, declined. Ofgem, who run the similar Renewables Obligation, also declined. The Environment Agency was the preferred candidate for the role. However, the EA only has jurisdiction in England and Wales. Although the Energy Act 2004 gives the Secretary of State powers to amend the powers of the Administrator if necessary, no satisfactory legal or political solution could be found in the time available. As such, the EA could no longer be considered for the role.

The DfT's existing executive NDPBs (the Civil Aviation Authority, the British Transport Police, and Passenger Focus) have roles that are too different from those of the Administrator of the RTFO.

No other bodies with the rights skills, experience and powers were found.

The RTFO will therefore be run by a new Non-Departmental Public Body, the Office of Renewable Transport Fuels, unless further primary legislation is passed.

Risks with respect to the stated objective

The risks related to the level of carbon savings and sustainability identified in option 1 potentially apply to an RTFO also. However, the RTFO incorporates measurement and reporting mechanisms that increase the level of control and visibility of these risks. Under the RTFO, suppliers will have to report on the carbon savings expected from their fuels. This will allow the Administrator to measure whether the target is being achieved. The RTFO could in future move to rewarding fuels in proportion to the carbon saved, giving a material incentive to use "better" biofuel. The Administrator will also be able to compare the relative carbon saving achieved by different suppliers. Suppliers will also have to report on the sustainability impacts of their fuels and the publication of comparative data should again encourage them to use fuels from sustainable sources.

The risk of the UK failing to implement the EU Biofuels Directive would be much reduced if the Government were to introduce an obligation at an appropriate level.

Unlike options 1 and 2, using an RTFO to achieve the Government's policy objectives would require extensive new measures to implement the policy. This would have a number of risks, including:

- possible delays to implementation of the policy – at the time of publication of this RIA the programme is on track;
- identifying or setting up a body to be the Administrator – the establishment of the Office as a Non-Departmental Public Body is described above;
- procuring, developing and implementing appropriate IT solutions; and
- possible teething problems in implementation.

The Government has conducted a feasibility study to consider these issues and has not identified any insurmountable problems. A suitably skilled programme team has been put together to ensure successful implementation of the policy. Nonetheless, implementing an RTFO would be a relatively complex process compared with duty incentives and in consequence has higher risks associated with implementation.

There is a risk that suppliers might opt for the "buy-out" option rather than supply renewable fuels at the obligation rate, so targeted carbon savings would not be achieved. This risk should be mitigated by the setting of the buy-out price at a sufficiently high level, in combination with the duty incentive, to make the use of biofuels attractive.

There is a risk that suppliers may attempt to evade the obligation.

Enforcement and compliance

The Administrator will ask suppliers to provide an accountant's opinion that data provided to the Administrator matches that submitted to HMRC. This should impose a light burden as only a small amount of evidence needs to be seen by the external accountant, but at the same time provides an effective verification of the volumes reported.

The Administrator will have the power to request detailed evidence of fuel supplies to justify the award of certificates, and will not issue certificates if satisfactory evidence can not be provided.

The Administrator will conduct risk-assessed auditing and inspection visits to suppliers as well as a programme of random visits.

The accuracy and honesty of carbon and sustainability reporting is considered separately from volume data. There will be a standard method for calculating carbon savings. Consideration is being given to developing a quality standard for the reporting of carbon and sustainability data so that the Administrator would have confidence in the data reported by suppliers certified to the standard. A programme of risk-assessed auditing and inspection would also be put in place.

The legislation provides for a system of civil penalties that may be imposed by the Administrator for failure to comply with aspects of the scheme.

Implementation Plan

The Department for Transport has an RTFO programme working towards the introduction of the RTFO for April 2008, in accordance with the announcement made by the Secretary of State on 11 November 2005 and further by the Chancellor in the 2006 Budget. The programme team is led by Malcolm Fendick as Senior Responsible Owner.

This RIA is in support of the Statutory Instrument (the "draft order") that will introduce the RTFO and the Administrator. The Instrument has been drafted and is scheduled to be laid before Parliament in autumn 2007.

The RTFO programme is also working on setting up the Administrator of the scheme and commissioning the IT system that will support the scheme. Work on the latter is scheduled for the spring and summer of 2007, leading to extensive testing and piloting with suppliers in late 2007/early 2008.

The programme is continuing its efforts to engage with the stakeholder community. This activity has had a high priority since the inception of the programme and informal consultations will continue throughout the development and introduction of the scheme. This has included working with organisations representing large and small fossil and biofuel producers (UKPIA, AUKOI, UKOITC, REA, EIC), biomass producers (including the NFU, Country Landowners Association) and relevant NGOs.

Work has been commissioned to determine the specification of carbon and sustainability reporting that will be required from suppliers. The scope of this work includes how carbon

savings should be calculated and reported, what principles and criteria of sustainability should be measured, what data is available to enable reporting and how these requirements may evolve over time. This work will produce guidance for suppliers in summer/autumn 2007.

As a result of these design considerations, the Administrator should be a very small organisation that is able to devote effort to providing advice and guidance to suppliers and improving the scheme.

Unintended consequences (all Options)

The unintended consequences of this policy goal all relate to the consequences of the goal being achieved rather than the chosen option, so they have been considered in a single section.

There is a lot of uncertainty surrounding the impact of growth in biofuel usage as it is an emerging industry within the complex interdependencies of environmental issues and globalised fuel supply chains. Many possible unintended consequences can be imagined but some of these are much less likely, and less well understood, than others.

Environmental and sustainability

There could be unintended environmental consequences of increased demand for renewable fuels:

- Increased sourcing of renewable fuels from unsustainable sources could cause substantial environmental damage, particularly in the case of Indonesian palm oil, where sensitive habitats are at risk from clearing in order to plant new crops;
- Renewable fuels could be channelled into transport fuel usage rather than for generating electricity or heat, where the carbon savings can be greater;
- There may be difficulties in correctly disposing of the waste products associated with biofuel production;
- The RTFO may promote the development of widespread monocultures that can have multiple adverse impacts.

All of these issues may be used by NGOs to attack the RTFO and perhaps to make it a scapegoat for other unrelated environmental issues.

The RTFO will require reporting on the sustainability impacts of the fuel supplied, in order to encourage suppliers to source sustainably and to monitor the impacts of the fuels supplied.

Fuel Market

The RTFO is being introduced to a well-established and efficient market supplying a strategic commodity to people, businesses and government across the UK. The programme has endeavoured to work with stakeholders to minimise the impact of the scheme on the oil industry, but nevertheless there may be unintended consequences as businesses in various parts of the supply chain adapt to the new environment. These include:

- If the de minimis level is set too low, suppliers that do not have usable biofuel alternatives may be obligated and may have to buy-out with no option of supplying the biofuel;
- If the de minimis level is set too high, suppliers may find it efficient to create new companies for each major imported shipment of fuel and hence avoid the obligation;
- Oil suppliers change their commercial relationships with biofuel suppliers to require the latter to pay the duty on the fuel supplied, giving the latter significant cash flow issues;
- Oil companies have to change the commercial arrangements around the pooling and sharing schemes in order to meet the obligation and reporting requirements;
- The RTFO becomes a target for consumer complaints if pump prices increase significantly, giving the Treasury less flexibility on tax changes;
- If the duty incentive is phased out, biofuel entrepreneurs are disincentivised and small businesses may struggle to survive;
- Environmental pressure groups buy up certificates on the market, with the intention of reducing the supply of certificates for sale and hence forcing the obligated suppliers to supply more fuel or buy-out;
- The price of renewable fuels may rise steeply, or other countries may set higher buy-out prices or duty incentives, so that it becomes economically sensible for obligated suppliers to buy out of the obligation in the UK;
- The costs of preparing infrastructure for a small retail filling station could be excessive and result in the closure of small outlets;
- The intention to move to issuing certificates in proportion to the verified carbon saving may discourage investment in biofuel capacity capable of producing fuel with carbon savings at the lower end of the range; hence reducing biofuel capacity in the short term;
- There may be significant fall in the price of glycerine, a by-product of biofuel production.

Government and Regulatory

There are a number of possible unintended consequences for the Government:

- There may be a cash flow issue for duties paid on petrol “splash blended” with bioethanol at inland terminals. Currently, this duty is paid as the petrol leaves a coastal terminal or refinery. As an unfinished “process oil”, the duty on fuel supplied through inland terminals would instead be payable at the terminal so the Government would get the cash later;

- Any increase in fuel price caused by the RTFO and any reduction in the duty incentive could cause an increase in black market activities in fuel, resulting in reduced revenues and / or increased costs for HMRC;
- If there are widespread attempts to defraud the RTFO, there could be numerous court cases, perhaps with farmers as defendants, which could be high profile and give negative publicity to the scheme.

Diversity and security of supply

Although the increased use of renewable fuels may deliver benefits in terms of increased diversity of supply, this may also give rise to some issues:

- The UK would become increasingly dependent on fuel from countries with whom it does not have the same history of relationships and supply management as the oil-producing nations, becoming more vulnerable to a crisis in relations or supply;
- The UK would become increasingly reliant on a product susceptible to “a bad year”, due to crop, weather or other problems.

Impacts on the Oleo-chemical and other industries

An increased level of incentive for use of biofuel feedstocks would affect other industries using the same feedstocks. For example, representatives of the oleo-chemical industry have highlighted their concern about tallows being diverted for use in both biofuel and power generation as a direct result of policy intervention.

The oleo-chemical industry, which employs 10,000 people in Europe, has argued that Government support for renewable fuels has significantly increased prices for natural oils, a crucial feedstock for their industry, and for which demand will quickly exceed the available, fixed, supply. The European industry is vulnerable to competition from Asia which has alternate raw material sources available, including palm oil, at lower cost. The industry believes that its very survival is at stake if tallow is accepted as a biomass for fuel. Officials have held a number of meetings with industry representatives and will continue to monitor the situation.

The increased demand for crops that can also be used for food production, for example wheat, could increase the price of the food products for UK consumers.

Chapter 5

Costs and Benefits

5.1 Costs

Policy Costs

1. *The duty incentive*

The duty incentive represents lost revenue to the Treasury, with the amount increasing as sales of renewable fuels increase.

The costs illustrated in the table below are based on the desired target of 5% biofuel sales on 48 billion litres of total fuel sales p.a., relative to Option 1, the “do-nothing” option. It is assumed that for option 2, the duty incentive increases to 30 pence per litre. For option 3, the current duty incentive is assumed. For option 4, it is assumed that the duty incentive will decrease to 10ppl early in the life of the RTFO.

Costs are calculated using the formula:

$$\text{Costs} = \text{£ (total UK sales)} * (\text{obligation rate}) * (\text{duty incentive per litre})$$

Table 4: Costs of the duty incentive to the Exchequer

	Costs incurred by	1. Maintain duty incentive	2. Increase duty incentive	3. Voluntary Agreement	4. Introduce the RTFO
Duty Costs	Government	£480 million	£720 million	£480 million	£240 million

2. *Costs of meeting the obligation*

In assessing the costs and benefits of renewable fuels, key assumptions must be made regarding the costs of renewable fuels and fossil fuels. These can vary significantly, both currently and over time. Consequently the analysis in this RIA presents low, medium and high *relative* cost scenarios. The *low* cost scenario is based on current petrol and diesel prices and *low* renewable fuels prices. The *medium* cost scenario assumes oil prices of around \$40 a barrel and higher biofuel prices as a result of increased demand. The *high* cost scenario assumes that oil prices fall back to

around \$20 a barrel, and that this is combined with *high* prices for renewable fuels due to increased demand. The fuel cost assumptions are given in table 1 below.

Table 5: Fuel cost assumptions

Scenario	Year	Cost of diesel (£/l)	Cost of biodiesel (£/l)	Cost of petrol (£/l)	Cost of bioethanol (£/l)
Low	2010	£0.36	£0.38	£0.32	£0.26
	2020	£0.38	£0.18	£0.34	£0.22
Medium	2010	£0.25	£0.44	£0.22	£0.32
	2020	£0.27	£0.30	£0.24	£0.26
High	2010	£0.16	£0.53	£0.14	£0.47
	2020	£0.16	£0.44	£0.14	£0.32

Notes: Costs of renewable fuels shown here include blending & infrastructure costs, but not import tariffs. These plus other taxes are included in the analysis of retail price impacts.

Renewable fuels tend to be more expensive to produce than fossil fuels. The duty incentive and the buy-out price combine to encourage suppliers to overcome this. The cost will ultimately be borne by consumers.

In the first instance the extra cost per litre of petrol or diesel is calculated by multiplying (the proportion of renewable fuel sold) by the sum of (the extra cost – the duty incentive). However, should the differential in prices approach or exceed 15 pence per litre, suppliers will be able to buy-out of their obligation rather than supply the renewable fuel. In this way, consumers are protected from excessive price differentials by the buy-out mechanism.

Table 6: Costs to consumers

	Costs incurred by	4. Introduce the RTFO
2. Meeting the Obligation	Consumers	Low scenario (2010): 5% x (2p-20p) for diesel = -0.9 p
		Low scenario (2010): 5% x (-6p-20p) for petrol = -1.3 p
		Medium scenario (2010): 5% x (19p-20p) for diesel = -0.05 p
		Medium scenario (2010): 5% x (10p-20p) for petrol = -0.5p
		High scenario (2010): 5% x (37p-20p) for diesel = 0.85p
		High scenario (2010): 5% x (33p-20p) for petrol = 0.65p

3. *Infrastructure to distribute renewable fuels*

Fuel suppliers currently sell small amounts of renewable fuels. It may be necessary to make upgrades to their infrastructure to deliver significantly higher volumes. These costs would not vary between the different options for the same level of renewable fuel sales.

The use of bioethanol is particularly problematic as its water-attracting properties mean it cannot share infrastructure with petrol or other fuels. Instead, it will have to be blended with petrol immediately prior to delivery to a forecourt. Forecourts may require a one-off cleaning of their tanks, at an estimated cost of £500. Separate storage tanks may have to be constructed for bioethanol at inland fuel distribution terminals on the mainland UK. Establishing separate bioethanol infrastructure at terminals on islands may be more difficult.

4. *Administrator set-up costs*

Costs will be incurred by the Government in establishing the Office as an NDPB. The major items include design and build of IT systems, consulting advice, staff costs and establishing premises.

These costs are estimated at £5.8 million.

Administrative Costs

1. *Duty collection costs*

The costs of collecting the duty incentive are largely independent of the level of incentive, except where a higher level encourages greater fraud and hence requires more enforcement. Similarly, a zero duty incentive may slightly reduce the costs of enforcement to HMRC.

2. *Administrator's running costs*

Under the RTFO, the Office would have running costs associated with measuring supplier performance, enforcing the obligation, auditing and checking volume, carbon and sustainability information and managing the staff and operations of the Administrator.

These costs are currently estimated at £1-2 million per annum. The main items would be staff, IT hosting and software maintenance.

3. *Compliance costs to business*

Under options 1 and 2, there would be no further administrative costs to business. Costs under option 3, a voluntary agreement, cannot be evaluated as no viable scheme has been proposed.

Under option 4, the RTFO, obligated suppliers would incur compliance costs in a number of ways. The main cost items are:

- a. The costs of registering with the Administrator (a one-off occurrence), involving completing some on-line documentation with standard information to identify the company and users of the system, and providing key documents to the Administrator for verification.

Registration, including preparation of data, may be a four-hour task for a mid-level employee.

- b. The cost of staff time to gather and submit the monthly volumes of fuel on which duty has been paid. This data is already collected by suppliers to submit to HMRC in point 1 above. The RTFO would require them to re-send it to the Administrator, as HMRC are prohibited from sharing the data with the Administrator. Usually, this would involve uploading data via a web page in a prescribed, simple format. Submitting this data, including checking for correctness, should be at most a two-hour task for a mid-level employee.
- c. The end of year reconciliation process might take perhaps 2 days of preparation time for a mid level employee and perhaps 4 hours of a more senior person and one hour of a director's time. An external auditor might be required for a maximum of a day.
- d. The cost of submitting carbon saving and sustainability data on a monthly basis. This information would have to be gathered from the businesses that have supplied the renewable fuels to the obligated company, which may involve system development costs and work to establish and test the processes that will transmit the information. The information would have to be passed to the users of the RTFO system, who would then have to enter the information required for every batch. The exact specification of the information required is not yet finalised.

A methodology will be developed to allow consistent and accurate reporting of carbon savings. Suppliers will have to report a figure for each batch.

It is expected that for each batch of fuel, the number of sustainability questions that would need to be answered would be in the range 5-10, and these would all be "tick-box" questions.

Gathering and inputting the data each month might take perhaps 5 days of a mid-level employee's time. The work required to get suppliers to provide the data might be 5 weeks per year of a senior level employee.

- e. The cost of producing an independently verified annual report addressing the supplier's overall efforts to supply renewable fuels that have increasing levels of carbon saving and sustainability. This external cost could perhaps entail three weeks of support at £500 per day.

Table 7: Ongoing compliance cost estimate for businesses

	Suppliers required to report		
Number	Maximum 44		
Cost item	Hourly cost	Annual hours	Annual cost
Cost (a)	£30	4	£120
Cost (b)	£30	24	£720
Cost (c)	£521	21	£1080
Cost (c) – External	–	8	£1000
Cost (d)	£381	680	£26400
Cost (e)	–	–	£7500
Total cost per firm			£36,820

Assumptions: A mid-level manager earning £40,000 per year is costed at £30 per hour to include all costs. A senior manager is costed at £60 per hour and a director at £120 per hour. An external auditor is costed at £1000 per day. 1 Blended rate

The feasibility study estimated the costs to the industry as a whole to be £2.5 million per annum, with £2 million in additional start-up costs. The numbers in Table 7 would suggest that if all of the suppliers with duty-paying accounts registered, the total costs would be £1.62 million.

Suppliers of renewable fuels, who are not obligated, would only incur costs if they opted into the scheme in order to earn certificates. These costs would be incurred as for obligated suppliers, except that they may, in some cases, be able to provide carbon and sustainability data more easily, if they have produced it and/or the biomass themselves.

It is expected that all these costs will be passed onto consumers. £2.5 million in annual costs would equate to 0.1p per litre of renewable fuel, at the 5% obligation rate.

5.2 Benefits

Independently of the option selected, the benefits of achieving a 5% level of biofuel sales can broadly be summarised as:

- Significant reduction in CO₂ emissions in the transport sector;
- Improved fuel security through diversity of fuel supply;
- New development opportunities for UK agriculture;

Along with delivering these benefits, a 5% level of biofuel sales would also help to:

- Meet Kyoto targets for reduction in greenhouse gas emissions;

- Meet self-imposed targets for reducing CO₂ emissions;
- Comply with the EU Biofuels Directive for biofuel usage in transport.

The introduction of the RTFO would provide a significant additional benefit: a platform for an increased level of obligation and hence carbon savings, which is not necessarily achievable under the other options, and would cost more. Under the RTFO, the only additional cost of a higher obligation level would be that of the renewable fuel.

Reduced emissions of CO₂ and other greenhouse gases

The benefits of renewable fuels are primarily their carbon savings compared with the use of conventional fossil fuel (petrol and diesel). Renewable fuels are produced from plants which are a renewable source of energy. When renewable fuels are burned they do not add to the net release of CO₂ to the atmosphere in the same way as the burning of fossil fuels does, because the crops that have been used to make them will have absorbed an equivalent amount of CO₂ from the atmosphere as they grow.

However, the production of renewable fuels does involve the use of energy. If fossil fuels are used to produce that energy, the production of renewable fuels leads to the release of CO₂ from fossil sources. The carbon savings from the use of renewable fuels are therefore usually quantified as *net* i.e. in terms of their fossil-CO₂ emissions relative to conventional petrol and diesel. Thus, if a renewable fuel is produced using little fossil fuel derived energy, it might provide 85% *net* carbon savings relative to conventional road fuels. If it is produced using a lot of fossil fuel, it might provide only 25% *net* carbon savings.

There can also be a significant variance in the net carbon savings associated with renewable fuels depending upon the feedstocks used. The table below presents the carbon saved assuming that the average net carbon savings are currently around 50% and grow to 75% over time (though it is important to note that actual variance is potentially far wider). It also presents the gross carbon savings in the transport sector (i.e. not taking account of CO₂ emissions from the production of renewable fuels).

Table 8 summarises the net present benefits (costs) of the RTFO. It includes the benefits from the carbon savings, according to the assumptions in the note to the table. It does not include the intangible benefits of improved fuel security and diversity of supply, nor does it make any assumptions on the opportunities available to UK agriculture. It includes the increased costs of the fuels, according to the “medium cost scenario” outlined above. It also includes the start-up and administrative costs for both government and the fuels industry.

Table 8: Estimated carbon savings and benefits (assuming 5% renewable fuels penetration)

		Annual Savings of Carbon (MtC)		Net Present Value of Benefits, £m		Cost-effectiveness, £benefit/tC saved
		2010	2020	2010	2020	2010-2020
Gross Carbon Savings	100%	1.7	1.7	-297	-526	-104
Net Carbon Savings	50-75%	1.0	1.3	-432	-1,085	-159

Notes: The carbon savings and benefits presented here are based on the ‘medium’ cost scenarios described in section 5.1 above. Total fuel sales are assumed to be 45.7 billion litres in 2010 and 48.1 in 2020 (DfT projections). The ‘present value’ of benefits is the sum of benefits discounted at a rate of 3.5% per year. It includes CO₂ emission reduction and air quality benefits.

Improved fuel security

Wider use of biofuels will result in a rise in the number of countries from which the UK sources road fuel. While around 90% of UK crude oil is imported from just two countries (Norway & Russia), the supply of vegetable oils is more diffuse. Five countries (Papua New Guinea, Indonesia, Malaysia, Colombia & the Netherlands) provide around 85% of the UK’s imports of palm oil and four countries (France, Belgium, Finland and the Netherlands) provide over 90% of the UK’s imports of rape oil.

Potential opportunities for UK agriculture

The UK currently has the capacity to produce 334 million litres of fuel at major plants, not including small plants. Facilities currently under construction would add a further 774 million litres by 2008.

It has been estimated that a 100 million litre biodiesel processing plant would create/sustain 200 jobs in farming and 62 jobs at the plant itself¹. If the plants above are supplied entirely by feedstock produced in the UK, this would equate to 2200 farming jobs and 682 jobs at the plants.

¹ Research carried out on behalf of the East of England Development Agency (EEDA). Further information available via www.eastofenglandobservatory.org.uk/

Chapter 6

Small Firms Impact Test

There are three types of small firms impacted by the RTFO:

- Small firms that retail petrol through one or more forecourts;
- Small renewable fuel producers; and
- Farmers producing crops for fuel (feedstock).

The retailers are impacted by the need for a one-off clean of their tanks, as described in the costs section at 5.1.

The renewable fuel producers and the producers of feedstock crops should see an expanded market for their products. Biofuel sales could increase from the current level of approximately 300 million litres per annum to 2,400 million litres a year by 2010-11 and the obligation ensures a level of demand at that level for future years. Most of this fuel will be sold to be blended into petrol and diesel by the major oil companies, who will be able to choose how they source their fuels, which may include importing. Nevertheless, this represents a significant opportunity for both farmers and biofuel producers.

Those producers that sell their fuels across the duty point will also be able to earn certificates, which may have a market value for obligated suppliers.

They will have to register with the Administrator and comply with the reporting and auditing requirements if they wish to earn and trade certificates. They will be able to comply with all these requirements electronically. Inspections will be risk-assessed ensuring that small firms are not unduly burdened with compliance activity.

The Department for Transport has sent out enquiries to four business federations prior to this consultation, to gather their concerns or issues, but has received no replies.

The Department would welcome responses to this consultation from small businesses.

Chapter 7

Competition Assessment

Promotion of biofuels through either regulation or fiscal incentives would, if successful, result in fossil fuels for road transport being substituted by renewable fuels. It should therefore have a significant impact on the current markets. However, it is not anticipated that the effects would negatively affect the competitiveness of the fossil fuel or emerging biofuel markets.

The UK oil market is highly competitive. Traditionally it has been dominated by the UK's major oil companies, but in recent years the 'independents', have gained market share, particularly in the retail sector. In particular the sector has been affected by the entry into the market of the major supermarkets which has intensified competition. The independents have led the introduction of biofuels into the UK market, with the supermarkets in particular increasing the availability of biofuels in the retail market.

The biofuel market in the UK is very new and makes up a very small proportion of overall fuel sales (approaching 0.6%). The majority of biofuel sales are currently from imports, brought in by the independents, but there is also growing UK capacity, particularly for biodiesel. This currently consists of a small cottage industry, but two major plants are in operation and a number of others are in the development or construction stages.

Measures to promote biofuels further, whether through obligation or fiscal incentives, are likely to further develop and mainstream the biofuel market in the UK, and lead to both increased imported biofuels and domestic capacity. As with any new and emerging market, the cottage industry is likely to be replaced in time with large scale industry. This should return benefits from economies of scale and investment capacity for technological developments.

It is not anticipated that the market will restructure significantly in response to an RTFO or increased fiscal incentives, as all of the current actors in the fuels market have (or can attain) the capacity to deliver biofuels through the existing supply chains. Biofuels are readily available on the world markets as well as through increasing domestic capacity, and can be blended with today's fossil fuels at up to 5% by volume within current technical standards.

However, new links will need to develop between the oil companies and the biofuels and farming sectors, and in the longer term new patterns of ownership could emerge. For example, one oil major already has a significant stake in a company that is developing an advanced biofuel technology and production capacity. A growing biofuel market should provide new opportunities for suppliers to compete, for example in developing cheaper biofuels and other renewable fuels. This should aid the technological development of renewable fuels, benefiting both the consumer and the environment.

Chapter 8

Enforcement, sanctions and monitoring

There are no new enforcement or sanctions issues associated with options 1 or 2, as duty incentives are already in use. Customs officials tightly regulate the road fuel market to ensure that duties are paid on road fuels, including the particular rates for renewable fuels. However, if renewable fuels become a more significant part of the market, HMRC may need to dedicate more resources to ensure that the correct duties are paid, and that the fuels qualify for the reduced duty rates.

For option 3 – some form of voluntary agreement – workable enforcement and sanction methods have not been identified.

For option 4, the RTFO order describes the enforcement powers and sanctions that will be available to the office. The main areas of focus are:

- Avoidance of the obligation;
- Under-reporting of fossil fuel sales, to minimise a company's obligation; and
- Over-reporting of renewable fuel sales, to earn extra certificates.

Most of the obligated suppliers will be known to the Office at the outset of the RTFO. The Office will have the power to require information from any transport fuel supplier to identify either whether it is obligated or is sourcing fuel from another supplier that ought to be obligated. The most difficult suppliers to identify will be those who import fuel occasionally and are not already known to the Office.

The Office will use its powers to ask for evidence to support reports of fuel volumes. The main evidence will be the external auditor's opinion that the fuel volumes submitted to the Office tally with those submitted to HMRC for duty purposes, for the relevant fuels.

The Office will report regularly on the impacts of the scheme – the amount of renewable fuel sold, the carbon savings achieved and the sustainability impacts of the fuel. The Office will also produce an annual report that describes how the obligated suppliers have performed against their obligation, how they have met it and how their fuels have performed from a carbon and sustainability perspective.

The effects of the current fuel duty incentive are monitored on a regular basis through close contacts with industry, and through data available on the HMRC website at www.uktradeinfo.com/index.cfm?task=statvat

The EU Biofuels Directive requires Member States to report annually on progress made in implementing the Directive, and these reports are available on the EU and DfT websites.

Consultants have recommended that the obligation mechanism itself be introduced with built-in review periods, at which certain aspects of the Scheme could be changed. They have suggested that in the first years of the RTFO, the reviews should be on an annual basis.

Appendix A

Monthly Information Requirement

1. Obligated suppliers would be obliged to provide:
 - a. Volumes of all road fuels on which they have paid duty
 - b. Volumes of all road fuels which they have supplied, on a duty deferred basis, to other suppliers or persons
 - c. Volumes of all road fuels with which they have been supplied on a duty deferred basis, by other suppliers or persons
2. Suppliers with duty deferred accounts, who may not have an obligation, would be required to provide important information that collectively will be able to validate the information provided by obligated suppliers:
 - a. Volumes of all road fuels on which they have paid duty
 - b. Volumes of all road fuels which they have supplied, on a duty deferred basis, to other suppliers or persons
 - c. Volumes of all road fuels with which they have been supplied on a duty deferred basis, by other suppliers or persons
3. Suppliers of biofuels would only have to supply biofuel sales information if they wanted to claim certificates. The Administrator will be able to vary the required frequency of reporting to match the requirement to report to HMRC for these suppliers.

Draft Renewable Transport Fuel Obligations Order 2007

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.

DRAFT STATUTORY INSTRUMENTS

2007 No.

TRANSPORT

ENERGY

SUSTAINABLE AND RENEWABLE FUELS

The Renewable Transport Fuel Obligations Order 2007

Made - - - - *XXXX 2007*

Coming into force - - *XXXX 2007*

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THE SCHEDULE — The Office of the Renewable Fuels Agency

The Secretary of State makes the following Order in exercise of the powers conferred by sections 124 to 129 of the Energy Act 2004(a).

A draft of this Order was laid before Parliament in accordance with sections 124(5) and 192(3) of that Act and approved by a resolution of each House of Parliament.

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

PART 1
INTRODUCTORY PROVISIONS

Citation and commencement

1. This Order may be cited as the Renewable Transport Fuel Obligations Order 2007 and shall come into force on XXXX 2007.

(a) 2004 c.20.

Interpretation

2.—(1) In this Order—

“the 1979 Act” means the Hydrocarbon Oil Duties Act 1979(a);

“the 2004 Act” means the Energy Act 2004;

“account holder” has the meaning given in article 7(8);

“chief executive” means the person appointed as such pursuant to paragraph 1 of the Schedule;

“connected person” means, in relation to a transport fuel supplier, a person connected to the supplier within the meaning of section 839 of the Income and Corporation Taxes Act 1988(b);

“non-obligated supplier” means a transport fuel supplier other than one upon whom a renewable transport fuel obligation is imposed under article 4;

“obligation period” has the meaning given in article 4(3)(a);

“obligated supplier” means a transport fuel supplier upon whom a renewable transport fuel obligation is imposed under article 4;

“road vehicle” means a vehicle constructed or adapted for use on roads, but does not include any vehicle which is an excepted vehicle within the meaning given by Schedule 1 to the 1979 Act(c);

“RTF account” means an account which is established pursuant to article 7; and

“working day” means any day other than—

(a) Saturday or Sunday,

(b) Christmas Day or Good Friday,

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(d).

(2) For the purposes of this Order and of section 132(4) of the 2004 Act, “biomass” means the biodegradable portion of—

(a) products, wastes and residues from agriculture, forestry and related activities, or

(b) industrial and municipal waste.

Definitions of fuels and fuel products

3.—(1) The following paragraphs of this article define the various descriptions of fuels and fuel products referred to in this Order.

(2) “Bioblend”, “biodiesel”, “Bioethanol” and “bioethanol blend” have the same meaning as in the 1979 Act.

(3) “Fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products.

(4) “Hydrocarbon oil” has the same meaning as in the 1979 Act.

(5) “Natural road fuel gas” means road fuel gas that has a methane content of not less than 84%.

(6) “Natural gas” means any gas derived from natural strata.

(7) “Petroleum products” means the following substances produced directly or indirectly from crude, that is to say, fuels, lubricants, bitumen, wax, industrial spirits and any wide-range substance

(a) 1979 c.5.

(b) 1988 c.1. Section 839 was amended by the Finance Act 1995 (c.4), section 74 and Schedule 17, paragraph 20, the Income Tax (Trading and Other Income) Act 2005 (c.5), section 882(1) and Schedule 1, paragraphs 1 and 341; the Finance Act 2006 (c.25), section 89 and Schedule 13, Part 2, paragraphs 7, 25 and 27; S.I. 1997/1154, regulation 15; and S.I. 2005/3229, regulations 47 and 100 - [To be checked again later]

(c) Schedule 1 to the 1979 Act was substituted by the Finance Act 1995 (c...), section 8(2) and (3), and was amended by the Finance Act 2000 (c....), sections 9, 156, Schedule 40, Part 1(1).

(d) 1971 (c.80).

(meaning a substance whose final boiling point at normal atmospheric pressure is more than 50°C higher than its initial boiling point).

- (8) “Relevant hydrocarbon oil” means hydrocarbon oil which is—
- (a) fossil fuel,
 - (b) chargeable to the duty of excise on hydrocarbon oil under section 6 of the Hydrocarbon Oil Duties Act 1979(a), and
 - (c) for use as fuel in road vehicles (whether or not it may also be used in other vehicles).
- (9) “Road fuel gas” has the same meaning as in the 1979 Act.
- (10) “Road transport fuel” means transport fuel which is for use as fuel in road vehicles (whether or not it may also be used in other vehicles).

PART 2

RENEWABLE TRANSPORT FUEL OBLIGATIONS

The renewable transport fuel obligation

4.—(1) A renewable transport fuel obligation referred to in section 124 of the 2004 Act is imposed on every transport fuel supplier who in a specified period—

- (a) owns relevant hydrocarbon oil at the time when the requirement to pay the duty of excise with which the oil is chargeable takes effect, and
- (b) supplies that oil at or for delivery to places in the United Kingdom.

(2) But this obligation does not apply to a transport fuel supplier who, in a specified period, supplies less than 450,000 litres in total of the oil (a “non-obligated supplier”).

(3) For the purposes of section 124(2) of the Act and this Order—

- (a) the “specified period” means the period beginning on 15th April in a year and ending on 14th April the following year, and this period is referred to in this Order as an “obligation period”;
- (b) the “specified date” means 7th September (or the next working day after 7th September, if 7th September is not a working day) following the end of the obligation period in question; and
- (c) “evidence” which is of “the specified kind and in the specified form” means one or more certificates issued in electronic form by the Administrator in accordance with this Order.

(4) For the purposes of section 124(2) of the Act and this Order, “the specified amount” of renewable transport fuel is determined as follows—

- (a) calculate the volume of 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 the supplier has supplied less than 10 million litres in total of relevant hydrocarbon oil, deduct the first 450,000 litres of such oil;
- (c) in relation to the remaining volume of such oil—
 - (i) for the obligation period beginning on 15th April 2008, the specified amount is an amount equal to 2.5641% of that volume;
 - (ii) for the obligation period beginning on 15th April 2009, the specified amount is an amount equal to 3.8961% of that volume; and
 - (iii) for each subsequent obligation period, the specified amount is an amount equal to 5.2632% of that volume.

(a) 1979 c.5; [need to insert reference to relevant amending provisions]

Determinations of amounts of transport fuel

5.—(1) Where, in relation to an amount of transport fuel, it is shown that a person owns the fuel at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect, it is to be presumed, unless the contrary is shown, that that amount of fuel is supplied by that person at or for delivery to places in the United Kingdom at that time.

(2) An amount of renewable transport fuel shall only count towards the discharging of the renewable transport fuel obligation for an obligation period if—

- (a) it is for use as fuel in road vehicles (whether or not it may also be used in other vehicles),
- (b) it is of one of the descriptions set out in paragraph (3), and
- (c) the condition set out in paragraph (4) is satisfied.

(3) The descriptions are—

- (a) biodiesel in relation to which a duty of excise is chargeable under section 6AA of the 1979 Act;
- (b) the biodiesel component in bioblend, where a duty of excise is chargeable in relation to that bioblend under section 6AB of the 1979 Act;
- (c) bioethanol in relation to which a duty of excise is chargeable under section 6AD of the 1979 Act;
- (d) the bioethanol component of bioethanol blend, where a duty of excise is chargeable in relation to that bioethanol blend under section 6AE of the 1979 Act; or
- (e) natural road fuel gas—
 - (i) in relation to which a duty of excise is chargeable under section 8 of the 1979 Act; and
 - (ii) which is produced wholly from biomass.

(4) The condition is that the person who applies for the fuel to count is the person who owns the fuel at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect.

(5) For the purposes of calculating the specified amount under article 4(4), 1 kilogram of the renewable transport fuel referred to in paragraph (3)(e) shall be treated as equivalent to one litre of a renewable transport fuel referred to in paragraph (3)(a) to (d).

(6) The amount of the biodiesel component referred to in paragraph (3)(b), and of the bioethanol component referred to in paragraph (3)(d), shall each be measured by its volume.

PART 3**THE ADMINISTRATOR****The Administrator**

6.—(1) There shall be a body corporate to be known as the Office of the Renewable Fuels Agency which is appointed as the Administrator pursuant to section 125 of the 2004 Act.

(2) The Schedule (which makes provision about the Administrator) shall have effect.

Establishment of RTF Accounts

7.—(1) The Administrator shall establish and maintain an account in electronic form for each person who—

- (a) is, or is likely to become, subject to a renewable transport fuel obligation,
- (b) applies for an account, and
- (c) satisfies the Administrator that the person is a transport fuel supplier.

(2) A person shall apply for an account under paragraph (1) not later than the end of the period of 28 days beginning on the date on which the person becomes an obligated supplier.

(3) The Administrator may establish and maintain an account in electronic form for each of the following who applies for an account—

- (a) each transport fuel supplier who is not, and is not likely to become, subject to a renewable transport fuel obligation, and
- (b) any other person who intends to trade or invest in RTF certificates.

(4) The Administrator may not establish an account for a supplier or other person referred to in paragraph (3) unless the Administrator is satisfied that the supplier or other person—

- (a) is genuine, and
- (b) has consented to allowing the Administrator such access to premises (other than a dwelling), computers, records, or documents, as the Administrator may require in order to verify information given by the supplier or other person.

(5) A supplier or other person who applies for an account under this article shall provide such information or produce such evidence (or both) to the Administrator as the latter may reasonably request in order to satisfy the Administrator that the supplier or other person is genuine.

(6) A supplier or other person who applies for an account under this article shall not provide any information or produce any evidence which is inaccurate.

(7) The Administrator may reject any application under this article if the Administrator reasonably believes that the information provided to the Administrator under this article is inaccurate or incomplete or that the supplier or other person is not genuine.

(8) An “account holder” is a supplier or other person for whom the Administrator establishes an account pursuant to this article.

(9) *[For further consideration later : should the Administrator have power to require a non-obligated supplier to apply for an RTF account?]*

Power of the Administrator to require further information or evidence

8.—(1) Where the Administrator has reason to believe that an account holder for whom an account has been established pursuant to paragraph (1) of article 7—

- (a) is not subject, and is not likely to become subject, to a renewable transport fuel obligation, or
- (b) is not genuine,

the Administrator may require the account holder to provide such information or produce such evidence (or both) to the Administrator as may be necessary for the Administrator to become satisfied as to whether the account holder is subject, or is likely to become subject, to the renewable transport fuel obligation, or is genuine, as the case may be.

(2) Where the Administrator has reason to believe that an account holder for whom an account has been established pursuant to paragraph (3) of article 7 is not genuine, the Administrator may require the account holder to provide such information or produce such evidence (or both) to the Administrator as may be necessary for the Administrator to become satisfied as to the genuineness of the account holder.

(3) An account holder shall not provide any information or produce any evidence under this article which is inaccurate.

Closures of accounts

9.—(1) This article applies in the case of an account holder who is a supplier or other person referred to in paragraph (3) of article 7.

(2) The Administrator must close the account of such an account holder where—

- (a) the Administrator is no longer satisfied that the account holder meets the criterion set out in paragraph (4)(a) of that article, and
 - (b) any certificates standing to the credit of the account have been revoked or otherwise may no longer be produced as evidence pursuant to section 124(2) of the 2004 Act.
- (3) The Administrator may close the account of such an account holder where, in the immediately preceding period of 36 months—
- (a) no RTF certificate has been issued to the account holder, or
 - (b) no RTF certificate has been credited to the account of the account holder.

Managing accounts

10. Subject to the provisions in this Part, the Administrator may manage accounts, including amending details of accounts, and consolidating the accounts of account holders, as the Administrator thinks fit.

Processing of information and evidence

11.—(1) The Administrator must—

- (a) record and retain information submitted for the purpose of—
 - (i) establishing that a transport fuel supplier is, or reasonably expects to be, subject to a renewable transport fuel obligation, or
 - (ii) calculating the amount of renewable transport fuel for which a transport fuel supplier is required to produce evidence under section 124(2)(b) of the 2004 Act;
- (b) record and retain information which is submitted by an account holder in support of an application for an RTF certificate;
- (c) record each RTF certificate which is issued, and
- (d) correct any error which is discovered in information stored by the Administrator in relation to an account.

(2) The period for which the Administrator must retain any information pursuant to paragraph (1) is such period as the Administrator considers is reasonable, but which shall not be a period of less than ten years beginning on the date of receipt of the information.

(3) The Administrator may record and retain any other information as the Administrator thinks fit for purposes connected with the carrying out of the Administrator’s functions.

Duty to require information from obligated suppliers

12.—(1) The Administrator shall impose a requirement on an obligated supplier to provide the Administrator with information as to—

- (a) whether the supplier has supplied any relevant hydrocarbon oil at or for delivery to places in the United Kingdom during each relevant period,
- (b) whether the supplier has supplied any renewable transport fuel at or for delivery to places in the United Kingdom during each relevant period,
- (c) the amount of any relevant hydrocarbon oil which has been—
 - (i) supplied by the supplier at or for delivery to places in the United Kingdom during each relevant period, or
 - (ii) received by the supplier from another transport fuel supplier at places in the United Kingdom during each relevant period; and
- (d) the amount of any renewable transport fuel which during each relevant period is—
 - (i) for use as fuel in road vehicles (whether or not it may also be used in other vehicles), and
 - (ii) of one of the descriptions set out in article 5(3),

and is—

- (aa) owned by the supplier at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect, and supplied by the supplier at or for delivery to places in the United Kingdom during each relevant period, or
- (bb) received by the supplier from another transport fuel supplier at places in the United Kingdom during each relevant period.

(2) In paragraph (1), a “relevant period” means a period beginning on the 15th day of each month and ending on the 14th day of the following month during an obligation period.

(3) The Administrator may impose requirements as to—

- (a) the form in which the information must be provided
- (b) the methodology to be used in calculating and providing the information, and
- (c) the period within which it must be provided.

(4) The supplier must ensure that information which it provides under this article is—

- (a) accurate, and
- (b) provided in such form, and using such methodology, and within such period, as the Administrator may require.

(5) A transport fuel supplier shall inform the Administrator as soon as the supplier becomes aware that any information which the supplier has provided to the Administrator under this article is no longer accurate.

(6) The Administrator may require a transport fuel supplier to produce such evidence as the Administrator may determine is necessary in order to substantiate information which the supplier has provided to the Administrator under this article.

(7) A transport fuel supplier shall—

- (a) produce such evidence where so required, and
- (b) ensure that that evidence is accurate.

Power to require information

13.—(1) The Administrator may impose a requirement on a transport fuel supplier to provide the Administrator with such information as the Administrator may require for purposes connected with the carrying out of the Administrator’s functions.

(2) The Administrator may impose requirements as to—

- (a) the form in which the information must be provided
- (b) the methodology to be used in calculating and providing the information, and
- (c) the period within which it must be provided.

(3) Without prejudice to the generality of paragraph (1), the Administrator may require a non-obligated transport fuel supplier to provide the Administrator with information, in relation to that supplier, which is referred to in paragraph (1)(a) to (d) of article 12; and references in that paragraph to the “relevant period” shall be treated as references to such period during an obligation period as the Administrator notifies to the supplier.

(4) Without prejudice to the generality of paragraph (1), the Administrator may require a transport fuel supplier (whether obligated or non-obligated) to provide the Administrator with information as to the effects on—

- (a) carbon emissions,
- (b) agriculture,
- (c) other economic activities,
- (d) sustainable development, and
- (e) the environment generally,

which are or may be associated with the production, supply or use of the renewable transport fuel which has been supplied by the supplier at or for delivery to places in the United Kingdom.

(5) Where the Administrator imposes a requirement under this article on a transport fuel supplier to provide information, the supplier must ensure that the information is—

- (a) accurate, and
- (b) provided in such form, and using such methodology, and within such period, as the Administrator may require.

(6) A transport fuel supplier shall inform the Administrator as soon as the supplier becomes aware that any information which the supplier has provided to the Administrator pursuant to this article is no longer accurate.

(7) The Administrator may require a transport fuel supplier to produce such evidence as the Administrator may determine is necessary in order to substantiate information which the supplier has provided to the Administrator pursuant to this article.

(8) A transport fuel supplier shall—

- (a) produce such evidence where so required, and
- (b) ensure that that evidence is accurate.

Duty to report to Parliament

14.—(1) The Administrator must—

- (a) by 31st December 2009 publish an annual report in relation to the obligation period ending on 14th April 2009, and
- (b) by 31st December in each subsequent year publish an annual report in relation to the obligation period ending on the previous 14th April.

(2) Before publishing an annual report under paragraph (1), the Administrator must send a copy of the report to the Secretary of State.

(3) As soon as possible after the Secretary of State has received the annual report from the Administrator and the report has been published, the Secretary of State shall lay a copy of the report before each House of Parliament.

(4) The report is to include details of—

- (a) the compliance by each obligated supplier with its renewable transport fuels obligation during the relevant period, including the extent to which that obligation has been met by the production of renewable transport fuel certificates or by payments made under article 21;
- (b) the effects on—
 - (i) carbon emissions,
 - (ii) agriculture,
 - (iii) other economic activities,
 - (iv) sustainable development, and
 - (v) the environment generally,

which are reported by renewable transport fuel suppliers to be associated with the production, supply or use of the renewable transport fuels which were the subject of renewable transport fuel certificates issued during the obligation period;

- (c) the effectiveness of the Administrator in carrying out the Administrator's duties, including the accuracy of the Administrator's activities under article 11, and the number of RTF certificates issued erroneously;
- (d) the effectiveness of advice given by the Administrator to transport fuel suppliers, and the time taken to provide such advice;
- (e) the effectiveness of the enforcement activities of the Administrator;

- (f) the value for money of the Administrator;
- (g) any other matter which is notified by the Secretary of State to the Administrator and is relevant to purposes connected with Chapter 5 of the 2004 Act, and
- (h) any other matter which the Administrator considers is relevant to purposes connected with Chapter 5 of the 2004 Act.

(5) In preparing its annual report the Administrator must exclude from the report, so far as reasonably practicable, details of information provided to the Administrator under article 12(1) or 13(3), where those details identify a particular transport fuel supplier or make such a supplier identifiable. *[For further consideration: how to make this provision more specific in terms of referring to certain volume data.]*

Other powers and duties conferred and imposed on the Administrator

15.—(1) In addition to the duties imposed upon the Administrator elsewhere in this Order, the Administrator shall have the following duties—

- (a) to publicise the renewable transport fuel obligation so as to secure that it is brought to the attention of all transport fuel suppliers who are or may be subject to the renewable transport fuel obligation;
- (b) where an RTF certificate is transferred between account holders, to record that fact in the relevant accounts;
- (c) to verify, so far as reasonably practicable, the information supplied pursuant to article 12(1) or 13(3) or (4) by each account holder who is a transport fuel supplier;
- (d) to process buy-out funds;
- (e) to calculate and disburse payments under article 22;
- (f) to ensure, so far as possible, that there is no obligated supplier who, having failed wholly to discharge his renewable transport fuel obligation, is failing to pay the sum due under article 21; and
- (g) to take reasonable steps to promote good working relationships with transport fuel suppliers and others having an interest in the implementation of provision made under Chapter 5 of the 2004 Act.

(2) In addition to the powers conferred upon the Administrator elsewhere in this Order, the Administrator shall have power to publish such reports (other than the annual report referred to in article 14) as the Administrator thinks fit for purposes connected with the carrying out of the Administrator's functions.

(3) But the Administrator must exclude from any such reports, so far as reasonably practicable, details of information provided to the Administrator under article 12(1) or 13(3), where those details identify a particular transport fuel supplier or make such a supplier identifiable. *[For further consideration: how to make this provision more specific in terms of referring to certain volume data.]*

PART 4

RENEWABLE TRANSPORT FUEL CERTIFICATES

Application for RTF certificates

16.—(1) The manner in which an application for an RTF certificate is to be made is—

- (a) in electronic form, through a website of the Administrator, or
- (b) in another manner, in a case where the Administrator determines that it is necessary to allow an application in that manner.

(2) The evidence which must be included in the application is—

- (a) a declaration from a person nominated by the supplier which confirms that the information submitted in the application is true to the best of the person’s knowledge and belief; and
- (b) such other evidence as the Administrator may reasonably determine is necessary, and in such form as the Administrator may reasonably determine is appropriate, in order to substantiate the information provided by the supplier in relation to the renewable transport fuel.

(3) For the purposes of section 127(3)(c) of the 2004 Act, the other conditions which must be satisfied for the issue of an RTF certificate are that—

- (a) the supplier has an RTF account;
- (b) in the case of an obligated supplier, the supplier has provided the Administrator with the information required by the Administrator pursuant to article 12(1) and in the form and within the period required by the Administrator;
- (c) in the case of a non-obligated supplier, the supplier has provided the Administrator with such information as may have been required by the Administrator pursuant to article 13(3);
- (d) the supplier (whether obligated or non-obligated) has provided the Administrator with the information referred to in article 13(4);
- (e) the Administrator is satisfied that the information provided by the supplier is accurate;
- (f) any excise duty payable on the renewable transport fuel has been paid, and
- (g) the supplier makes the application for the RTF certificate within such period as the Administrator may require.

(4) The person who makes the declaration referred to in paragraph (2)(a) shall ensure that the information submitted in the application is true to the best of the person’s knowledge and belief.

Issue of certificates

17.—(1) Where each of the criteria in article 16 has been met, the Administrator shall issue an RTF certificate to a transport fuel supplier for each litre of renewable transport fuel which is—

- (a) for use as fuel in road vehicles (whether or not it may also be used in other vehicles).
- (b) of one of the descriptions set out in article 5(3),
- (c) owned by the supplier at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect, and
- (d) supplied by the supplier at or for delivery to places in the United Kingdom during an obligation period.

(2) An RTF certificate shall be issued as soon as reasonably practicable after an application for it has been made in accordance with article 16.

(3) For the purposes of section 127(2)(d) of the 2004 Act, “the other specified facts” are that the supplier has notified the Administrator of each of the matters listed in section 127(2)((a) to (c).

Transfers of RTF certificates

18.—(1) A transfer of an RTF certificate may be made between any persons who are account holders.

(2) Such a transfer shall not be effective unless—

- (a) the transferor notifies the Administrator of the following details of the transfer—
 - (i) the name and account number of the account holder to whom the certificate is transferred; and
 - (ii) the date of the transfer (“the notified date”); and
 - (iii) the obligation period in respect of which the certificate was issued;

- (b) the transferor so notifies the Administrator—
 - (i) through a website of the Administrator, or
 - (ii) in another manner, in a case where the Administrator determines that it is necessary to allow notification in that manner.
- (c) the transferor so notifies the Administrator—
 - (i) on the date of the transfer, or
 - (ii) before the date of the transfer, in which case the notification must be within the period of one month ending immediately before the date of the transfer;
- (d) the transfer relates to not more than one transferee;
- (e) there are a sufficient number of certificates being held to the credit of the transferor's account at the date of the transfer; and
- (f) the Administrator is satisfied that at the date of the transfer, there is no reason to consider the revocation of the certificate under article 20.

(3) In the event of there being an insufficient number of certificates held to the credit of a transferor's account on the notified date to transfer certificates to two or more transferees, the Administrator shall give priority to the transfer which was first notified to the Administrator.

Use of an RTF certificate in a later obligation period

19.—(1) In the circumstances referred to in paragraph (2), the production of an RTF certificate by a supplier to the Administrator may count for the purposes of calculating the extent to which the supplier has supplied renewable transport fuel at or for delivery to places in the United Kingdom for a period that is later than the period stated in the certificate in question.

(2) The circumstances are that the certificate is produced in relation to the obligation period ("the later period") which immediately follows the period stated in the certificate in question.

(3) But an RTF certificate shall not count in relation to more than 25% of the renewable transport fuel obligation imposed on that supplier during that later period.

Revocation of an RTF certificate

20.—(1) The Administrator shall revoke an RTF certificate where the Administrator is satisfied that the declaration provided in relation to that certificate pursuant to article 16(2)(a) is false, or that the certificate was issued as a consequence of any fraudulent behaviour, statement or undertaking on the part of the transport fuel supplier to whom it was issued or any connected person.

(2) The Administrator may revoke an RTF certificate where the Administrator is satisfied that the information provided to the Administrator in relation to the certificate was materially inaccurate or that the evidence provided in relation to the information was insufficient to substantiate it.

(3) Before revoking an RTF certificate, the Administrator shall give notice in writing to the transport fuel supplier to whom the certificate was issued and, where the certificate has been transferred to another person to whose credit the certificate is held (a "transferee"), to that other person.

(4) The notice must state that—

- (a) the Administrator is proposing to revoke the certificate, and
- (b) the supplier and any transferee may make representations to the Administrator in relation to the proposed revocation.

(5) The Administrator may not revoke an RTF certificate—

- (a) within a period of 28 days beginning on the date of the notice, or
- (b) later than 31st July following the obligation period during which the RTF certificate was issued.

(6) Where the Administrator revokes an RTF certificate, the Administrator shall, within a period of seven days beginning on the date of revocation, give notice in writing of such revocation to the transport fuel supplier to whom the certificate was issued, and to any transferee.

(7) Where the Administrator revokes an RTF certificate, the transport fuel supplier to whom the certificate was issued and any transferee may apply to the chief executive of the body corporate appointed as the Administrator by notice in writing to reconsider the revocation.

(8) Such notice must—

- (a) be given to the chief executive within a period of 14 days beginning on the date of receipt of the notice of revocation, and in any event not later than 15th August following the obligation period during which the RTF certificate was issued, and
- (b) set out the grounds for reconsidering the revocation.

(9) The chief executive shall reconsider the revocation not later than the 31st August following the obligation period in which the RTF certificate was issued.

(10) Where the chief executive is unable to reconsider the revocation, or unable to do so by the time referred to in paragraph (9), another member of the body corporate appointed as the Administrator may reconsider it.

(11) The Administrator shall give notice in writing of the decision of the chief executive or other member to the transport fuel supplier to whom the certificate was issued, and to any transferee.

(12) Where—

- (a) neither the chief executive nor another member reconsiders the revocation by the time referred to in paragraph (9), or
- (b) a certificate is revoked but is subsequently re-instated,

the certificate shall be deemed to have been re-instated as at the end of the obligation period to which the certificate relates.

(13) A transport fuel supplier who provides information or produces evidence to the Administrator in respect of a reconsideration of a revocation shall ensure that the information or evidence is accurate.

PART 5

DISCHARGE OF OBLIGATION

Payments

21.—(1) As soon as reasonably practicable after the end of an obligation period, the Administrator shall notify each obligated supplier of the following—

- (a) the amount of renewable transport fuel which the Administrator calculates the supplier should, in accordance with section 124(2)(b) of the 2004 Act and article 4(4) have supplied at or for delivery to places in the United Kingdom during that obligation period, and
- (b) the number of certificates being held to the credit of the supplier's RTF account which may be used as evidence for the purposes of meeting the supplier's renewable transport fuel obligation.

(2) A certificate may be produced as evidence by the supplier pursuant to section 124(2) of the 2004 Act—

- (a) by means of an electronic submission transmitted to a website of the Administrator, or
- (b) by other means, in a case where the Administrator determines that it is necessary to allow production of a certificate by those means.

(3) A supplier shall notify the Administrator of the number of RTF certificates held in the supplier's RTF account which are to be counted towards the discharge of the supplier's renewable transport fuel obligation for the obligation period in question.

(4) That notification must be given to the Administrator by 7th September (or the next working day after 7th September, if 7th September is not a working day) immediately following the obligation period in question.

(5) Where a supplier fails to notify the Administrator of the number of RTF certificates to be counted by the date mentioned in paragraph (4), the Administrator shall deem the number to be nil.

(6) A supplier who does not wholly discharge his renewable transport fuel obligation for an obligation period by the production of evidence by the specified date mentioned in article 4(3)(b) must pay to the Administrator a sum determined in accordance with paragraph (7).

(7) That sum is determined as follows.

Step 1

Calculate in litres the amount of renewable transport fuel for which the supplier was obligated to produce evidence during the obligation period in question, pursuant to section 124(2) of the 2004 Act and article 4 ("the obligated amount").

Step 2

Calculate in litres the amount of renewable transport fuel which the supplier has supplied during the obligation period in question, and for which the supplier has produced RTF certificates as evidence in accordance with paragraph (2) ("the actual amount").

Step 3

Calculate the number of litres by which the actual amount falls short of the obligated amount ("the shortfall amount").

Step 4

Subtract the amount of money referred to in section 6AD(3) of the 1979 Act (rate of duty for bioethanol) from the amount of money referred in section 6(1A)(aa) of that Act (rate of duty for sulphur-free petrol)(a). The amount given by this step is the "duty derogation amount".

Step 5

In respect of the obligation period beginning on 15th April 2008 or 15th April 2009, subtract the duty derogation amount from £0.35. In respect of each subsequent obligation period, subtract the duty derogation amount from £0.30. The amount given by this step is the "buy-out price".

Step 6

Multiply the shortfall amount by the buy-out price. The amount given by this step is the sum which the supplier is to pay to the Administrator under paragraph (3).

(8) Where a section of the 1979 Act referred to in Step 4 of paragraph (5) is amended after the date on which this Order is made, the reference to that section shall be treated as a reference to that section as it had effect on the first day of the obligation period in question.

(9) For the purposes of section 128(1), the period within which the sum must be paid to the Administrator ("the buy-out payment period") is the period beginning on 15th April immediately following the obligation period in question and ending on 7th October in the same year.

(10) Where a supplier does not pay all or any part of the sum to the Administrator by the end of the buy-out payment period—

- (a) the sum or the part of the sum outstanding, as the case may be, shall increase at the rate specified in paragraph (11) and calculated in accordance with paragraph (12), and
- (b) the increased sum, or the increased part of the sum outstanding, as the case may be, shall be a debt due from the supplier to the Administrator until it has been paid in full.

(a) [Details of amendments to these sections to be completed later.]

(11) The rate for the purpose of paragraph (10)(a) is 5 percentage points above the base rate of the Bank of England as at 8th October immediately following the buy-out payment period in question.

(12) The increase shall be calculated on a daily basis beginning on 8th October immediately following the buy-out payment period in question, and ending on the date on which payment is received by the Administrator.

Re-cycling of buy-out payments

22.—(1) For the purposes of section 128(7) of the 2004 Act, the transport fuel suppliers of a specified description are any transport fuel supplier—

- (a) who is an obligated supplier, or
- (b) for whom an account is maintained by the Administrator pursuant to article 7(3)(a),

and who held one or more RTF certificates in an RTF account at the end of the obligation period in respect of which the sums referred to in section 128(7) were received by the Administrator.

(2) The system of allocation of the sums referred to in section 128(7) is as follows—

- (a) each transport fuel supplier referred to in paragraph (1) shall notify the Administrator of the number of RTF certificates held in the supplier’s RTF account which the supplier surrenders to the Administrator in relation to the obligation period in question;
- (b) those notifications must be given to the Administrator by 7th October (or the next working day after 7th October, if 7th October is not a working day) immediately following the obligation period in question;
- (c) where a supplier fails to notify the Administrator by that date of the number of RTF certificates to be surrendered, the Administrator shall deem the number to be nil;
- (d) the Administrator must calculate the total sums received by the Administrator pursuant to article 21(6) and (10) by 7th November (or the next working day after 7th November, if 7th November is not a working day) (“the buy-out fund”);
- (e) the Administrator may also include in the buy-out fund any sums received by the Administrator pursuant to article 21(6) and (10) after 7th November (or after the next working day after 7th November, if 7th November is not a working day);
- (f) the Administrator must also include in the buy-out fund such sums as were—
 - (i) paid under article 21(6) and (10) in respect of the previous obligation period,
 - (ii) received by the Administrator on or after 7th November (or the next working day after 7th November, if 7th November was not a working day) of the previous year, and
 - (iii) not included in the buy-out fund in respect of the previous obligation period;
- (g) the Administrator must allocate the buy-out fund in equal shares between each RTF certificate which is counted under article 21(3) or surrendered under paragraph (a); and
- (h) the Administrator must make the payments as soon as reasonably practicable after the date mentioned in sub-paragraph (e) to the suppliers who held those RTF certificates at the end of the obligation period.

(3) For the purposes of paragraph (2), a supplier “surrenders” an RTF certificate where the supplier—

- (a) does not need the certificate to count towards the discharge of the supplier’s renewable transport fuel obligation (if any) for the obligation period in question,
- (b) renounces any further benefit from holding the certificate, and
- (c) claims a share of the buy-out fund for the obligation period in question.

PART 6

IMPOSITION OF CIVIL PENALTIES

Civil penalties

23.—(1) The following provisions are designated for the purposes of section 129 of the 2004 Act: articles 7(2) and (6), 8(3), 12(4), (5) and (7), 13(5), (6) and (8), 16(4), 20(13) and 21(6).

(2) A supplier or other person is liable to a civil penalty if—

- (a) he knows, or has reasonable cause to believe, that the information or evidence referred to in a provision mentioned in paragraph (1) is inaccurate, or
- (b) he does not know, and does not have reasonable cause to believe, that that information or evidence is inaccurate, but the condition set out in paragraph (3) is satisfied.

(3) The condition is that the supplier or other person—

- (a) has not informed the Administrator that the information or evidence is inaccurate within five working days of discovering it, and
- (b) has not corrected or otherwise remedied the inaccuracy within ten working days of discovering it.

(4) For the purposes of section 129(2), a civil penalty notice must be given by written notice to the defaulter.

(5) For the purposes of section 129(3)(a), “the specified amount” is—

- (a) in the case of an account holder who has gained, or attempted to gain, one or more RTF certificates by contravening a provision referred to in paragraph (1), an amount equivalent to twice the value of the RTF certificates which the account holder has gained, or attempted to gain, and
- (b) in any other case, £50,000.

(6) In paragraph (5)(a), the value of an RTF certificate is equivalent to the buy-out price, as calculated in accordance with article 21(7), for the obligation period in respect of which the RTF certificate is issued or would have been issued.

(7) For the purposes of section 129(3)(b), the turnover is determined by calculating the amounts, ascertained in conformity with normal accounting practice in the United Kingdom, which are—

- (a) derived by the defaulter from the supply of road transport fuel at or for delivery to places in the United Kingdom, and
- (b) computed on an accruals basis so that the amounts referred to in paragraph (a) relating to the period for which the turnover is being determined are taken into account, without regard to the date of invoice or receipt of payment,

after deduction of trade discounts, value added tax and any other taxes based on such amounts.

(8) For the purposes of section 129(3)(b), “the specified business of the defaulter” means the business of the defaulter which relates to the supply of road transport fuel at or for delivery to places in the United Kingdom.

Objections to civil penalties

24.—(1) For the purposes of section 130(2)(b), the manner in which the notice of objection must be given to the Administrator is—

- (a) by delivering it to the Administrator,
- (b) by leaving it at the address of the Administrator [will there be more than one?], or
- (c) by sending it by post to the Administrator at that address,

and “delivering” includes transmitting by means of an electronic communications network, or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) For the purposes of section 130(2)(b), the period within which the notice must be given is a period of 14 days beginning on the day immediately after the day on which the civil penalty notice is given.

(3) For the purposes of section 130(5), the manner in which the notification of the outcome of the Administrator’s consideration is—

- (a) by delivering it to the objector,
- (b) by leaving it at his proper address, or
- (c) by sending it by post to the objector at that address,

and “delivering” includes transmitting by means of an electronic communications network, or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(4) Section 193(3) to (7) of the 2004 Act shall apply in relation to the giving or sending of the notification to the objector under paragraph (3).

(5) For the purposes of section 130(5), the period before the end of which the notification must be given is a period of 28 days beginning on the day immediately after the day on which the notice of objection is given to the Administrator.

Signatory text

<p>Address Date</p>	<p><i>Name</i> Parliamentary Under Secretary of State Department</p>
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THE SCHEDULE

Article 6(2)

The Office of the Renewable Fuels Agency

Constitution

1.—(1) The Office of the Renewable Fuels Agency shall consist of—

- (a) a chairman,
- (b) a chief executive, and
- (c) at least three but not more than five other members

who must be appointed by the Secretary of State.

(2) The chairman or other member—

- (a) may not be appointed for a term of more than five years (but may be reappointed),
- (b) may resign by notice in writing to the Secretary of State, and
- (c) shall hold and vacate office in accordance with the terms of his appointment.

(3) Before appointing a member (other than the chairman), the Secretary of State shall consult the chairman.

2. The Secretary of State may dismiss a member of the Office by notice in writing on the grounds that the member—

- (a) has been absent from meetings of the Office without permission of the Office during a period of more than three months,
- (b) has a financial or other personal interest which is likely to influence the performance of his functions as a member,

- (c) is the subject of a bankruptcy restrictions order (or interim order),
- (d) has had his estate sequestrated in Scotland or, under Scots law, has made a composition or arrangement with, or granted a trust deed for, his creditors,
- (e) has misbehaved, or
- (f) is unable, unfit or unwilling to perform his functions as a member.

Staff

- 3.—(1) The Office may appoint employees.
- (2) The power under sub-paragraph (1) may be exercised only if the Office has the approval of the [Treasury] [or Secretary of State? or both of them?] as to—
- (a) numbers, and
 - (b) terms and conditions of employment.

Proceedings

4. Where so required by the Secretary of State, the Office shall establish a committee chaired by a member.
5. The Office may establish one or more other committees (which may include persons who are neither members of nor employed by the Office).
6. The Office may delegate a function to—
- (a) the Chief Executive,
 - (b) any employee of the Office, or
 - (c) a committee.
7. The Office shall—
- (a) determine arrangements for the conduct of its proceedings (which may, in particular, include arrangements for a quorum), and
 - (b) publish those arrangements.
- 8.—(1) The Office may do anything which it thinks necessary or expedient for purposes connected with the implementation of provision made by Chapter 5 of the 2004 Act or by this Order.
- (2) Sub-paragraph (1) is subject to paragraph 13.
9. The validity of any proceedings of the Office (including any decision on a reconsideration of a revocation under article 20) shall not be affected by—
- (a) a vacancy, or
 - (b) a defective appointment.

Money

10. The Office may with the approval of the Secretary of State make to or in respect of members of the Office, employees or committee-members payments by way of or in respect of—
- (a) remuneration;
 - (b) pension;
 - (c) allowances;
 - (d) expenses.
11. If the Secretary of State thinks that special circumstances of a person's ceasing to be a member of the Office make it appropriate to pay him compensation, the Office may pay him

compensation of an amount approved by the Secretary of State (whether or not he receives other benefits by way of pension).

12. The Office may with the approval of the Secretary of State incur expenditure in connection with advisory or other services provided to the Office.

13. The Office may not borrow money.

Accounts and audit

14.—(1) The Office must—

- (a) keep proper accounts and proper accounting records, and
- (b) in respect of each financial year, prepare a statement of its accounts.

(2) Every statement of accounts prepared under sub-paragraph (1)(b) must—

- (a) give a true and fair view of the Office’s income and expenditure for the financial year in question and its state of affairs, and
- (b) comply with every requirement relating to the accounts which the Secretary of State has notified to the Office.

(3) The requirements notified under sub-paragraph (2)(b) may include, in particular, requirements relating to—

- (a) the information to be contained in the statement;
- (b) the manner in which that information is to be presented; and
- (c) the methods and principles according to which the statement is to be prepared.

15.—(1) The statement of accounts and other accounts of the Office relating to each financial year must be audited by the Comptroller and Auditor General.

(2) The Comptroller and Auditor General must send the Office a copy of his report on the accounts audited under sub-paragraph (1).

(3) The Office must send the Secretary of State—

- (a) a copy of the accounts audited under sub-paragraph (1); and
- (b) the report of the Comptroller and Auditor General.

(4) The Secretary of State must lay a copy of the documents sent to him under sub-paragraph (3) before Parliament.

Accounting Officer

16.—(1) The Secretary of State shall appoint a member of the Office as the accounting officer of the Administrator.

(2) The accounting officer shall have, in relation to the accounts and finances of the Administrator, the responsibilities which are from time to time specified by the Secretary of State.

(3) Those responsibilities include in particular—

- (a) responsibilities in relation to the signing of accounts,
- (b) responsibilities for the propriety and regularity of the finances of the Administrator, and
- (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Administrator are used.

(4) The responsibilities which may be specified under this paragraph include responsibilities owed to the House of Commons or its Committee of Public Accounts.

Information

17. The Office must give the Secretary of State information, advice and assistance about any matter in respect of which it has any functions if—

- (a) the Office considers it appropriate to do so; or
- (b) the Secretary of State asks the Office to do so in connection with the carrying out of any function of his.

Conflict of interest

18.—(1) Before appointing a person as a member of the Office the Secretary of State shall satisfy himself that the person neither has nor is expected to acquire a financial or other personal interest which is likely to influence the performance of his functions as a member.

(2) From time to time the Secretary of State shall satisfy himself that no member of the Office has a financial or other personal interest which is likely to influence the performance of his functions as a member.

19.—(1) Procedural arrangements made by the Office under paragraph 7 shall include arrangements under which a member, employee or committee-member who has a financial or other personal interest which is likely to influence his performance of a particular function is obliged—

- (a) to declare the interest, and
- (b) to withdraw from the performance of the function to the relevant extent.

(2) Procedural arrangements made by the Office under paragraph 7 shall include arrangements under which a member, employee or committee-member who has a financial or other personal interest which is relevant to a particular function but does not fall under sub-paragraph (1) is obliged—

- (a) to declare the interest, and
- (b) unless the members of the Office direct otherwise, to withdraw from the performance of the function to the relevant extent.

Status of the Office

20.—(1) The Office is not to be treated—

- (a) as the servant or agent of the Crown; or
- (b) as enjoying any status, immunity or privilege of the Crown.

(2) The property of the Office is not to be regarded as property of the Crown or as held on behalf of the Crown.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements Chapter 5 of the Energy Act 2004, and imposes on transport fuel suppliers who supply relevant hydrocarbon oil in the United Kingdom an obligation to supply a certain amount of renewable transport fuel (the “RTF obligation”) (*Part 2*).

The Order provides for the establishment of a new body corporate as the Administrator, and this is to be known as the Office of the Renewable Fuels Agency (*article 6*). The Schedule makes provision about the Office as regards its constitution, staff, proceedings, money, accounts and audit, duty to give information to the Secretary of State, and any conflicts of interest. *Part 3* makes provision about the Administrator establishing and maintaining accounts for transport fuel suppliers (*articles 7 to 11*), and making an annual report to the Secretary of State which is then to be laid before Parliament (*article 14*).

Part 4 provides for the issue of renewable transport fuel certificates to suppliers who are subject to an RTF obligation, and to other suppliers who are not so obligated. These certificates can then be

produced as evidence that the obligation has been discharged. Certificates may also be transferred (*article 18*).

Part 5 provides for the discharge of an RTF obligation by payment in cases where a supplier has not wholly discharged the obligation by supplying sufficient renewable transport fuel. *Article 22* makes provision for the re-cycling of buy-out payments to certain transport fuel suppliers.

Part 6 provides for a person who contravenes certain provisions to be liable to a civil penalty. It also provides for the process of objecting to a civil penalty (*article 24*). Section 131 of the Energy Act 2004 provides for appeals to be made to the High Court (in England and Wales or Northern Ireland) or the Court of Session (in Scotland) where a person disputes that he is liable to a penalty or that the penalty is too high.