EXPLANATORY MEMORANDUM TO

THE MOTOR FUEL (ROAD VEHICLE AND MOBILE MACHINERY) GREENHOUSE GAS EMISSIONS REPORTING REGULATIONS 2012

2012 No. 3030

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These Regulations oblige fuel suppliers who in a given year supply more than 450,000 litres of fuel for use in road vehicles, non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), tractors and recreational craft which do not normally operate at sea, to report on the greenhouse gas intensity of the fuel they supply, the volumes of fuel they supply, and to disclose whether the fuel is a fossil fuel, renewable fuel or partially renewable fuel. Renewable and partially renewable fuels must be shown, by means of a verifier's assurance report, to meet specified sustainability criteria or such fuel will be ascribed greenhouse gas emissions equal to or greater than fossil fuel.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 This instrument is being made to transpose the greenhouse gas reporting requirements set out in the European Fuel Quality Directive (FQD) (Directive 98/70/EC as amended by Directive 2009/30/EC). The instrument requires suppliers of fuel for use in road vehicles, non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), agricultural and forestry tractors and recreational craft which do not normally operate at sea to report on the greenhouse gas intensity of the fuels they supply, as well as the sustainability of the renewable fuels they supply. Below all of these end uses, save for use in road vehicles, are referred to as use in non-road mobile machinery, or NRMM, for simplicity.

4.2 The majority of the 2009 amendments to the FQD (made by Directive 2009/30/EC) have already been transposed by the Motor Fuel (Composition and Content) and Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2010, and a further small aspect of the Directive has been transposed by the Biofuel (Labelling) (Amendment) Regulations 2009.

4.3 This latest transposing instrument is closely related to the Energy Act (2004) (Amendment) Regulations 2012, as well as the planned Renewable Transport Fuel

Obligations (Amendment) Order 2013, which it is hoped will be laid in draft towards the end of 2012 and which, combined, will contribute to the transposition of the FQD by widening the scope of the Renewable Transport Fuel Obligations Order 2007 to include suppliers of fuel for use in NRMM.

4.4 A Transposition Note is attached as an annex to this document, detailing how the requirements of the FQD are transposed by these Regulations.

Fuel Quality Directive Scrutiny History

4.5 The proposal to amend the FQD which led to the adoption of Directive 2009/30/EC, was the subject of Explanatory Memorandum 6145/07 which was considered by the House of Commons European Scrutiny Committee on 14 March 2007 (14th Report, Session 2006/2007, reference 28351). The Committee recommended that the document was of political importance and did not clear it, pending receipt of an Impact Assessment (IA).

4.6 The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B following the 1278th sift on 27 February 2007. The Chairman wrote to the Minister on 7 March 2007 requesting further information following the Government's further consideration of the proposal.

4.7 A Supplementary EM was submitted to Parliament on 2 August 2007. The SEM was considered by the House of Commons European Scrutiny Committee on 10 October 2007. The Committee recommended that the document was politically important and should be debated in Standing Committee (REPORT 36, SESSION 06/07).

4.8 The debate took place on 20 November 2007, and cleared the proposal. The House of Lords Select Committee on the European Union referred the SEM to Sub-Committee B at the 1297th sift of 11 September 2007. The Chairman wrote to the Minister on 9 October 2007 requesting further information.

4.9 Ministerial letters were sent to the Committee Chairmen on 5 February 2008, 19 November 2008 and 5 January 2009 to keep them informed of developments. The House of Lords Select Committee on the European Union cleared the proposal on 20 January 2009.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The legislation will be primarily of interest to suppliers in the fossil, renewable and partially renewable fuel industries.

7.2 The policy objective of the legislation is to enable both the Administrator (the Secretary of State) and suppliers to monitor progress towards reducing the lifecycle greenhouse gas intensity of fuels for use in road transport and non-road mobile machinery, as mandated by the FQD.

7.2 This instrument, at regulation 4, accordingly obliges suppliers of fuel for use in road vehicles and non-road mobile machinery to report on the greenhouse gas intensity of the fuels they supply. More specifically, suppliers who supply more than 450,000 litres of fuel for the specified uses in a calendar year will be obliged to report the type, volume, energy content and greenhouse gas intensity of the fuel they supply in accordance with regulations 13 to 15.

7.3 The instrument provides for suppliers to report on the greenhouse gas intensity of renewable transport fuels (biofuels), and the renewable energy content of partially renewable transport fuels, by reference to a methodology for calculating greenhouse gas intensities prescribed in separate legislation (the Renewable Transport Fuel Obligations Order 2007) (see regulations 5(2) and 13(1)(a)(vi)). No such methodology is provided to determine the greenhouse gas intensity of fossil fuels as agreement is yet to be reached on this at a European level: rather, in these instances regulation 5(4) obliges suppliers to report a standardised baseline figure ("the fuel baseline standard" defined at regulation 2), which is the same for all fossil fuels.

7.4 Suppliers of renewable or partially renewable transport fuels must also verify, by means of a verifier's assurance report meeting the requirements set out at regulation 6, the sustainability of any renewable or partially renewable fuels that they supply. Failure to do so will, by virtue of regulation 5(2), lead to those fuels being classified as having a greenhouse gas intensity equal to, or greater than (the latter in a case where that is demonstrated by data supplied by the supplier), that of the fossil fuel standardised baseline figure. Verification must meet the requirements in respect of limited assurance engagements prescribed by the internationally recognised assurance standard *ISAE 3000*. Suppliers may, alternatively, seek to persuade the Administrator that another such standard provides at least an equivalent level of assurance.

7.5 Regulation 18 creates a suite of civil penalties to ensure compliance with these reporting requirements, and empowers the Administrator (the Secretary of State) to impose civil penalties when various provisions of the Regulations are contravened. The instrument also provides a process for objecting to a civil penalty (regulation 20), and for appeals to be made to specified courts where a

7.6 The instrument also imposes obligations on the Administrator, in particular to establish and maintain accounts for regulated fuel suppliers (regulation 8), and to require information from regulated suppliers (regulation 13). In circumstances where it is not reasonably practicable for the Administrator to verify the volumes of fuel supplied, the Administrator has a power under regulation 16 to require the relevant supplier to provide a verifier's report on the matter instead, akin to the biofuel sustainability reports referred to at regulation 6.

7.7 To facilitate the administration of the reporting scheme, these Regulations make provision at Part 6 enabling information to be disclosed by Her Majesty's Revenue and Customs to the Administrator, as well as prohibiting further disclosure of that information. These Regulations make the wrongful disclosure of that information, whether by the Administrator or a person authorised by the Administrator to handle that information, a criminal offence which is triable either summarily or on indictment. The legislation establishes clear parameters for what constitutes 'wrongful disclosure' and specifies the maximum sentence that may be imposed on an offender.

7.8 This instrument places an ongoing obligation on the Secretary of State to keep under review whether further steps need to be taken in order to meet the requirements of the FQD and to take any such steps as are identified as being necessary (regulation 25).

7.9 The suppliers who must report under this legislation already fulfil the reporting requirements for the majority of the fuel they supply, as under the Renewable Transport Fuel Obligations (RTFO) Order suppliers of fuel for use in road transport (which comprises over 90% of the fuel that is covered by these Regulations) are required to submit information to the Administrator on the volume, type and energy content of the fuel they supply.

7.10 Moreover, this legislation provides that Renewable Transport Fuel Certificates awarded to suppliers by the Administrator of the RTFO scheme can be produced as evidence that any renewable or partially renewable fuels supplied meet the biofuel sustainability criteria (regulation 17(1)). For these reasons the Regulations will not be burdensome for the fuel industry to implement.

7.11 However, for suppliers of gas fossil fuel (such as liquid petroleum gas or compressed natural gas) and fuel for use in NRMM the requirements will be new.

7.12 The Department has considered options other than legislation. However, it has not been possible to implement without regulation as:

- without regulation, we cannot be sure that the biofuel supplied in the UK is sustainable as required by EU law;

- as part of this implementation, the UK must put in place sanctions for breaches of EU law which are 'effective, proportionate and dissuasive'.

8. Consultation outcome

8.1 The measures detailed in this instrument were subject to a public consultation in the Spring and Summer of 2011. A full impact assessment accompanied this consultation.

8.2 Further to consultation the Government's preferred position was amended (an obligation on suppliers to reduce the greenhouse gas intensity of their fuel by 6% in 2020, which was part of the Government's preferred policy going into the consultation, was removed). The Government's response to this consultation has been published on the Department for Transport's website at http://www.dft.gov.uk/consultations/dft-2011-04/.

9. Guidance

9.1 The Renewable Transport Fuel Obligation unit, a team based within the Department for Transport, will administer the reporting programme on behalf of the Secretary of State.

9.2 Guidance on how suppliers can fulfil their obligations will be provided in writing by the Administrator to suppliers. This guidance will take the form of: a) letters sent to soon to be obligated fuel suppliers preparing them for the coming into force of the Regulations; and b) formal guidance detailing what steps suppliers must take to fulfil the obligations placed on them by the Regulations. This formal guidance will be consulted on with industry in late 2012 and published in early 2013.

9.3 In addition the Administrator will provide guidance to suppliers through stakeholder workshops, both in advance of the Regulations being introduced, and as part of the consultation on the formal guidance to suppliers.

10. Impact

10.1 The impact on business of complying with the above Regulations is estimated to be between an additional £4,000 and £17,500 per year, per obligated supplier. Taking a conservative assumption that all 53 firms registered under the current RTFO, plus five additional NRMM and fossil fuel gas fuel suppliers who will need to open new accounts, will bear these additional costs to the full extent, the industry-wide increase in administrative burden is estimated at around £623,500 annually, starting from the point at which the GHG reporting obligation is introduced.

10.2 The impact on the public sector has been estimated at between £50,000 and £200,000. These costs reflect transitional administrative costs i.e. the cost to the

Administrator of having to change reporting and I.T systems so that they can record and track greenhouse gas saving, in addition to fuel volume, data.

10.3 An Impact Assessment accompanies this memorandum and will be published alongside this Explanatory Memorandum on the UK legislation website (www.legislation.gov.uk).

11. Regulating small business

11.1 The legislation applies to small business. To minimise the impact of the requirements on firms employing up to 20 people, the legislation exempts from its requirements suppliers who supply less than 450,000 litres of relevant fuel in an obligation year.

11.2 The basis for the final decision on what action to take to assist small businesses was the desire to align wherever possible the Regulations with the RTFO Order, which has the same minimum threshold provision and which has successfully minimised its impact on small businesses. The consultation responses we received from industry stakeholders approved of this approach.

12. Monitoring & review

12.1 The Regulations impose an obligation on the Secretary of State to keep under review what further steps need to be taken in order to meet the requirements of the FQD.

12.2 In addition to the above obligation, the Regulations require the Secretary of State to review the Regulations, assess the extent to which the Regulations achieve their objective and publish a report of his findings no more than 5 years after they have come into force.

12.3 The Regulations will be successful if they enable fuel suppliers and the Administrator to monitor progress towards reducing the lifecycle greenhouse gas intensity of fuels for use in road transport and non road mobile machinery.

13. Contact

Stephen Howe at the Department for Transport (0207 944 4895; email Stephen.Howe@dft.gsi.gov.uk) can answer any queries regarding this instrument.

Transposition note for

Articles 7a to 7e and Annex IV of Directive 98/70/EC (as amended by Directive 2009/30/EC)

as transposed by

The Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012

1. For the purposes of this note:

   "The FQD" means Directive 98/70/EC of the European Parliament and of the Council of 13th October 1998 relating to the quality of petrol and diesel fuels, as amended (including changes made by Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009);

   "GHG" means "greenhouse gas";

   "GHG intensity" means the GHG emissions per unit of energy;

   "The RED" means Directive 2009/28/EC of the European Parliament and of the Council of 23rd April 2009 on the promotion of the use of energy from renewable sources;

   "relevant end uses" means use in road vehicles, non-road mobile machinery (including inland waterway vessels when not at sea), agricultural and forestry tractors, and recreational craft when not at sea;

   "The RTFO Order 2007" means the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) as last amended by S.I. 2011/2937;

   "The RTF obligation" means the Renewable Transport Fuel Obligation imposed upon transport fuel suppliers by the RTFO Order 2007 (as amended).

2. These Regulations transpose, in part, articles 7a to 7e and Annex IV of the FQD. Specifically these Regulations impose on fuel suppliers who supply liquid or gaseous fuel in the United Kingdom for relevant end uses an obligation to report on the greenhouse gas intensity of their fuels and upon the sustainability of any biofuels supplied.

3. Separate legislation, provisionally called the Renewable Transport Fuel Obligations (Amendment) Order 2013, will shortly be introduced to give effect to those requirements of Articles 7a to 7e and Annex IV of the FQD that are not transposed via these Regulations, specifically the requirement that suppliers reduce the GHG intensity of the fuels they supply as gradually as possible not only in road transport use but also in non-road mobile machinery (including inland waterway vessels when not at sea), agricultural and forestry tractors, and recreational craft when not at sea (collectively these end uses, except for road transport, are referred to below as 'NRMM').

FQD Article	FQD Objective	Transposition
Article 7a	Article 7a(1) requires Member States to impose requirements on	The RTFO Order 2007 already requires suppliers of petrol, diesel

	suppliers of fuel/energy for use in relevant end uses to report on the total amount of fuel/energy supplied, where that fuel/energy was purchased and its origin, and the GHG intensity of the fuel/energy supplied. Member States are required to ensure that information reported under these requirements is subject to verification. The article also requires Member States to allow suppliers of electricity for use in road vehicles to contribute to the GHG reduction obligation set out in article 7a(2) of the FQD, should those suppliers elect to do so.	and renewable transport fuel (commonly called biofuel) for use in road vehicles to report on the volume, type and energy content of fuel supplied and to provide independent verification that a certain proportion of that fuel is sourced from sustainable renewable sources. Furthermore, it is intended shortly to expand the scope of the RTFO Order 2007's reporting obligations to cover NRMM. In order to meet the requirements of Article 7a(1), the following additional obligations are imposed by these Regulations: ▪ Regulation 3 includes use in NRMM in the definition of 'relevant use'. The effect is immediately to obligate suppliers of fuel for use in NRMM to report under these Regulations (and before the RTFO Order 2007 is amended). ▪ Regulation 3 includes 'gaseous fuel' in the definition of 'energy product'. The effect is to obligate suppliers of fossil fuel gas for use in road transport and NRMM to report under the Regulations. These suppliers are not obligated under the RTFO Order 2007. ▪ Regulations 4 and 13 require suppliers to report to the Secretary of State on the greenhouse gas intensity of all the fuels they supply for relevant end uses on an annual basis. ▪ Regulation 6 requires suppliers to ensure that the information reported under these requirements is subject to verification.

		The relevant European institutions have yet to define the meanings of the expressions “where purchased” and “origin” for the purposes of Article 7a(1)(a) of the FQD. As such, it has not been possible to transpose these requirements at this time. Similarly, the relevant European Institutions have yet to establish an agreed methodology to calculate the contribution of electricity used in electric road vehicles. As such, it has not been possible to transpose these requirements at this time.
	Article 7a(2) obliges Member States to require suppliers of fuel/energy for use in relevant end uses to reduce the GHG intensity as gradually as possible of the fuel/energy they supply towards a reduction of 6% by 31 December 2020.	The RTF obligation already requires obligated suppliers to reduce the GHG intensity of the road transport fuels they supply by virtue of the requirement for those suppliers to supply sustainable renewable transport fuel that delivers certain minimum GHG savings. The minimum GHG savings required increase over time. Furthermore it is intended shortly to expand the scope of the RTFO Order 2007’s reporting obligations to cover NRMM. Regulation 17 of these Regulations allows suppliers to use evidence of compliance with the RTF obligation to discharge their reporting obligations under these Regulations. In addition, regulation 25 of these Regulations places an obligation on the Secretary of State to keep under review what further steps need to be taken to meet the requirements of the FQD.
	Article 7a(3) requires that the GHG intensity of biofuels must be accounted for in accordance with the methodology set out in Article 7d of the FQD. In addition, the GHG intensity of other fuels/energy must be	See below notes on transposition of Article 7d. The relevant European institutions have yet to agree a GHG accounting methodology for other types of fuel/energy. Further legislation will be brought forward

	accounted for in accordance with the methodology laid down in accordance with Article 7a(5).	to transpose any agreed accounting methodology in due course.
	Article 7a(4) requires that Member States allow suppliers to meet the reduction obligations jointly, should they elect to do so.	It is through the RTFO Order 2007 that the UK requires reductions in GHG intensity over time. That Order allows suppliers to group together in meeting their obligation to supply renewable transport fuel through its certificate trading mechanism. The relevant European institutions have yet to agree "any necessary rules" to give effect to Article 7a(4) (as envisaged by Article 7a(5)(c)), which may influence how this obligation is met in the future.
Article 7a(5)		Transposition is not required, as these paragraphs impose obligations on the European Commission rather than on Member States.
Article 7b	Article 7b establishes certain minimum sustainability criteria for biofuels that are used to deliver GHG intensity reductions.	The minimum sustainability criteria specified here have already been transposed into UK legislation by the Schedule to the RTFO Order 2007. Regulation 5 of these Regulations accordingly provides that, if suppliers do not provide verification reports under regulation 6 which are adequate to prove that the renewable fuel they have supplied meets the sustainability criteria by reference to the Schedule to the RTFO Order 2007, then the GHG intensity of that fuel is deemed to be equal to, or greater than, the standardised baseline figure for the GHG intensity of fossil fuel. Regulation 17 allows suppliers to use evidence of compliance with the RTF obligation to discharge their obligation to report on sustainability under these Regulations.
Article 7c	Article 7c(1) requires that a mass	Regulation 15 transposes this

	balance system is used when demonstrating compliance of biofuels with the sustainability criteria set out in Article 7b.	provision by defining, and requiring suppliers to use, a “mass balance system” for reporting information on the sustainability of biofuel to the Administrator.
	Article 7c(2)	This paragraph imposes obligations on the Commission rather than on Member States.
	Article 7c(3) requires Member States to ensure that biofuel suppliers report reliable information related to the sustainability of their biofuels, and that the data used to develop this information is made available to the Member State on request. Article 7c(3) also requires biofuel suppliers to report on additional sustainability information related to measures taken to protect soil, water and air, to restore degraded land and to avoid excessive use of water consumption in areas where water is scarce. The Commission established a list of the required information by issuing Decision 2011/13/EU (OJ No L9, 13.1.2011, p11). Article 7c(3) also requires that suppliers arrange for an adequate standard of independent audit of the information they report.	Regulation 13 requires suppliers to report to the Administrator on the sustainability characteristics of the fuels/energy they supply, including the additional sustainability information defined by the Directive. This same regulation provides that the Administrator may require a supplier of energy products to produce evidence to substantiate information which the supplier has provided to the Administrator under this regulation. Regulation 6 sets out the standards with which independent audits of the information reported in respect of biofuel must comply if GHG emission savings are to be credited to that fuel. Regulation 5 provides that, if suppliers do not provide verification reports under regulation 6 which are adequate to prove that the renewable fuel they have supplied meets the sustainability criteria by reference to the Schedule to the RTFO Order 2007, then the GHG intensity of that fuel is deemed to be equal to, or greater than, the standardised baseline figure for the GHG intensity of fossil fuel.
	Article 7c(4) allows the Commission to decide that voluntary national or international schemes setting standards for the production of biomass products contain accurate data for the purposes of demonstrating that consignments of biofuel comply with some or all of the sustainability criteria.	See text on Article 7c(7) below.
	Articles 7c(5) and (6)	These paragraphs impose obligations on the Commission

		rather than on Member States.
	Article 7c(7) provides that, where a supplier provides proof or data in accordance with a voluntary scheme that has been recognised by the Commission, Member States shall not require suppliers to provide any further evidence in relation to the sustainability information covered by the approved scheme.	The effect of regulation 6(1)(b) is to require suppliers to indicate whether their biofuel has been certified or accepted as complying with any of the sustainability criteria defined in Article 7(b) except where a supplier accepts that a given consignment of renewable transport fuel cannot be shown to comply with the sustainability criteria. Voluntary schemes that have been recognised by the Commission will necessarily prove compliance with at least some of these criteria, and where biofuel feedstocks are shown to be covered by a voluntary scheme recognised by the European Commission, the Administrator will therefore only require evidence in relation to sustainability information not covered by the approved scheme. As there are provisions to this same effect in the RTFO Order 2007, regulation 6(3)(b) states that there is no need for a verification report duplicating matters already reported under that Order. Regulation 17 provides that an RTF certificate awarded in accordance with the RTFO Order 2007 may be relied upon as evidence that the fuel to which the certificate relates meets the sustainability criteria.
	Articles 7c(8) and (9)	These paragraphs impose obligations on the Commission rather than on Member States.
Article 7d	Article 7d and Annex IV set out how the GHG intensity of biofuels must be calculated.	The minimum GHG saving criteria specified here are already set out in UK legislation in the Schedule to the RTFO Order 2007. Regulation 5 of these Regulations accordingly provides that, if suppliers do not provide verification reports under regulation 6 which are adequate to prove that the renewable fuel they have supplied meets the sustainability criteria (including

		the minimum GHG saving criteria) by reference to the Schedule to the RTFO Order 2007, then the GHG intensity of that fuel is deemed to be equal to or (should suppliers provide actual emissions data that shows a biofuel GHG intensity to be higher than the baseline) greater than the standardised baseline figure for the GHG intensity of fossil fuel. Regulation 17 allows suppliers to use evidence of compliance with the RTF obligation to discharge their obligation to report on sustainability under the GHG Regulations.
Article 7e	Article 7e(1) provides that the various implementing measures allowed for at various points throughout the FQD shall take full account of the purposes of the Renewable Energy Directive (Directive 2009/28/EC).	This obligation does not need to be transposed into UK law as it imposes obligations to take full account of certain matters solely for the purpose of legislative processes at an EU level.
	Article 7e(2)	This paragraph imposes obligations on the Commission rather than on Member States.