EXPLANATORY MEMORANDUM TO

THE OFFICE OF THE RENEWABLE FUELS AGENCY (DISSOLUTION AND TRANSFER OF FUNCTIONS) ORDER 2011

2011 No. 493

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

2.1 The Order abolishes the Renewable Fuels Agency (RFA) and transfers its role as administrator of the Renewable Transport Fuel Obligation (RTFO) to the Department for Transport. To facilitate this transfer the Order makes amendments to the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) (the RTFO Order), to remove those provisions which would not work with the Department for Transport as administrator.

2.2 The Order also transfers the assets and liabilities of the RFA to the Department for Transport and ensures that staff of the RFA transfer to the Department for Transport in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006.

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

3.1 There are legislative references to the RFA which are not removed by the instrument and which will therefore be left on the statute book. Those references will be redundant once the instrument comes fully into force. The instrument does not remove the references because, if it did, it would be subject to affirmative Parliamentary procedure by virtue of section 125C(8)(b)(i) of the Energy Act 2004 (as amended). If the instrument were subject to affirmative procedure, that would put at risk the Government's ability to bring it fully into force by 1 April 2011. That is important because the RFA's financial year ends on 31 March 2011 and considerable administrative inconvenience would result if the instrument were to come into force part way through a financial year.

3.2 With one exception, the legislative references to the RFA are all contained in enactments which it is the Government's practice to amend or re-enact from time to time. The Government intends that those references will be omitted at the next amendment or re-enactment. The exception concerns the reference in the Legislative and Regulatory Reform (Regulatory Functions) Order 2007. The Government intends to make an order removing the reference to the RFA.

4. Legislative Context

4.1 In 2007 the RTFO Order was made using powers in Chapter 5 of the Energy Act 2004. The RTFO Order requires annual increases in the amount of renewable transport fuel supplied for road transport use by suppliers of certain

fossil fuel to the UK. The RTFO Order established the RFA and appointed it as the administrator of the RTFO scheme. The RTFO scheme began on 15 April 2008.

4.2 The Energy Act 2004 (as amended by schedule 7 to the Climate Change Act 2008) allows the Secretary of State to transfer the RFA's functions to the Department.

4.3 The Order applies the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the transfer of the RFA's functions. The provision of the Order which applies those regulations comes into force two weeks before the rest of the Order. That is in order to allow the provisions of those regulations which are relevant to the period before the transfer to take effect.

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 RTFO Order obliges suppliers in the UK of fossil fuel for road transport to produce evidence showing that they have supplied a specified amount of renewable transport fuel. The RFA is the administrator of the RTFO. The evidence is in the form of Renewable Transport Fuel (RTF) certificates issued by the RFA for each litre of renewable fuel supplied. RTF certificates must be presented to the RFA at the end of the obligation year.

7.2 The amount of renewable fuel for which RTF certificates must be produced by a supplier in an obligation year is a proportion of the amount of road transport fuel supplied by the supplier during that year. Suppliers can buy out of their obligation by paying a sum of money (known as the 'buy out price') instead of supplying biofuel and presenting RTF certificates.

7.3 The Government announced on 14 October 2010 that the functions of the RFA would be brought in-house following a cross-government review of public bodies.

Consolidation

7.4 It is not intended to consolidate the RTFO Order at this time.

8. Consultation outcome

8.1 There is no statutory requirement for a public consultation on the instrument.

8.2 It is not considered that a public consultation would be proportionate for this transfer of functions from one public body to another. The RFA has a comparatively small budget of approximately £1.5m and is currently funded and sponsored by the Department for Transport. No costs on business are envisaged as a result of this transfer of functions.

9. Guidance

The Department intends to produce guidance in due course to explain how appeals against certain decisions of the administrator will be dealt with once the role of the RFA has been taken over by the Department, and setting out whistle blowing procedures for those wishing to report breaches of the RTFO Order.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. We do not expect any new business costs with these proposals. We would expect that from a supplier's perspective the change of administrator will have no significant impact in respect of the operation of the RTFO or their interaction with it.

10.2 The transfer should reduce the cost of administering the RTFO by around a third.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The measures for success for this instrument are that the transfer will achieve (i) a reduction in the cost of administering the RTFO scheme of around a third and (ii) this will have no detrimental impact on the administration of the RTFO. The Department for Transport intends to complete an internal review of the abolition of the RFA and the transfer of its functions in 2013 and publish the results on its website.

13. Contact

Laura Fellowes at the Department for Transport Tel: 0207 944 4901 or email: Laura.Fellowes@dft.gsi.gov.uk can answer any queries regarding the instrument.