EXPLANATORY MEMORANDUM TO

THE RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER 2024

2024 No. 634

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Transport (DfT) and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister Anthony Browne at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

2.2 Debbie Stockwell/Claire Swadkin, Deputy Directors for Low Carbon Fuels, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 George Patterson at the Department for Transport (Telephone: 07977358640 or email: George.patterson@dft.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) ("the RTFO Order") delivers greenhouse gas reductions in transport fuels by setting annual obligations on fuel suppliers to ensure the supply of renewable transport fuel, which fuel suppliers can discharge through acquiring renewable transport fuel certificates ("RTFCs"). The trading of RTFCs provides a financial incentive to suppliers of renewable fuels.

4.2 This instrument seeks to extend the scope of fuels that can be rewarded under the RTFO Order, to include recycled carbon fuels (RCFs). RCFs are to be classified under the development fuel obligation, receiving 1 Renewable Transport Fuel Certificate (RTF certificate) per litre of fuel, but are excluded from the additional RTF certificate in 17A (issue of an additional RTF certificate) that is otherwise awarded to development fuels.

4.3 The SI will allow the Administrator to reward the supply of RCFs with RTF certificates, if the fuel complies with the GHG emissions saving threshold and the sustainable waste management criteria.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.5 The territorial application of this instrument (that is where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 DfT is introducing support for RCFs under the RTFO Order.

5.2 The RTFO Order is the primary scheme government implemented for the decarbonisation of road transport fuels.

5.3 RCFs are fuels produced from fossil wastes such as municipal solid waste and industrial waste gases, that cannot be avoided, re-used, or recycled. An example of an RCF feedstock would be rejected plastics from a recycling plant.

5.4 In a 2021 consultation, DfT committed to supporting RCFs under the RTFO Order. RCFs are fuels formed from wastes of fossil origin and have the potential to reduce GHG emissions by over 50% compared with traditional fossil fuels. The policy has been designed to ensure it does not undermine the waste hierarchy, incentivise waste production or encourage poor waste management processes.

5.5 To ensure the above principles are maintained, and to reflect the fact that RCF fuels are not renewable, support for RCFs under the RTFO Order is being introduced at a rate of 1 RTF certificate per litre equivalent. This is half the support received by other comparable renewable fuels. This is further supported via additional sustainability criteria to ensure GHG savings are effective.

What was the previous policy, how is this different?

5.6 RCFs are not currently eligible for support under the RTFO Order. They have not historically been eligible due to the 2004 Act stating that only renewable fuels can be supported under renewable transport fuel schemes.

5.7 An amendment to the 2004 Act via the 2023 Act, provided the primary powers through which to support RCFs.

5.8 The support is being introduced to encourage the production of RCFs, to accelerate the decarbonisation of UK transport, especially in difficult to decarbonise sectors such as aviation and heavy goods vehicles.

5.9 The production of RCFs has no indirect land use change effects, and therefore no negative impact on food security, unlike crop-based biofuels. This use for wastes from fossil origin feedstocks can incentivise improved waste management, offering another end-of-life pathway for un-recyclable materials.

5.10 RCFs will be a key source of sustainable aviation fuel (SAF). The UK is committed to introducing a SAF Mandate in 2025 which will require that 10% of jet fuel from SAF suppliers is made from sustainable sources by 2030. By supporting RCFs, DfT are aligning with these strategic aims.

6. Legislative and Legal Context

How has the law changed?

6.1 The primary powers that allow RCFs to be supported under the RTFO Order are taken from the amendment to the Energy Act 2004 (the 2004 Act). Section 157 of the Energy Act 2023 (c.52) (the 2023 Act) inserts section 131D into the 2004 Act. This amendment provides the power to make an RTF order to designate RCFs and nuclear derived fuels (NDFs) to be treated as renewable transport fuel under the RTFO Order. Prior to this amendment, only renewable fuels (as defined in section 132(1) of the 2004 Act) were eligible for support under the RTFO Order.

6.2 The amendment to the 2004 Act was debated when tabled at the Lords Report stage on 28th March 2023 in the Energy and Security Bill which received royal assent on 26 October 2023 and became the Energy Act 2023 (the 2023 Act).

6.3 This instrument amends Article 2 (interpretation) of the RTFO Order to increase the range of fuels which can be rewarded under the order to include RCFs and increase the potential carbon savings to be made from the RTFO Order.

6.4 It introduces the definition of an RCF into Article 3 (definition of fuels and fuel products) of the RTFO Order. The definition states that:

"recycled carbon fuel" means a transport fuel designated under paragraph (15);"

and that:

"For the purposes of this Order, a liquid or gaseous fuel produced wholly from a waste of fossil origin designated by the Administrator as a relevant feedstock is designated as a recycled carbon fuel."

6.5 The instrument inserts a new Article 15A which places an obligation on the Administrator to determine which wastes of fossil origin may be used to produce recycled carbon fuel. This is determined with reference to considerations set out in section 126 (4) of the 2004 Energy Act. There is also an obligation for the Administrator to publish a list containing each waste of fossil origin designated as a relevant feedstock under article 15A(1) of the instrument.

6.6 Schedule 1 is amended, and inserts wastes of fossil origin as a new feedstock with the conditions it must meet to comply with the sustainability criteria These conditions are the GHG emissions saving threshold and the sustainable waste management criteria.

Why was this approach taken to change the law?

6.7 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The department carried out a public consultation on the technical aspects of the policy changes introduced by this instrument between 19th July and 19th September 2022. 32 responses were received. These were from a range of organisations, including fossil and renewable suppliers, equipment manufacturers, chemical research companies, trade associations, waste management companies, power producers, and energy trading companies. The government response to this consultation was published on 16th February 2024. This response affects the need for this instrument, as it confirms DfT's policy position to reward RCFs under the RTFO Order and

outlines the technical aspects of how they will be rewarded, which will be implemented through the instrument. A hard copy of all documents referred to in this Explanatory Memoranda can be accessed from the Department for Transport, Great Minister House, 33 Horseferry Road, London, SW1P 4DR.

8. Applicable Guidance

8.1 Technical guidance is published by the Administrator in support of its operation of the RTFO Order. This guidance covers details of the processes which fuel suppliers must follow to fulfil their obligations and claim RTF certificates.

8.2 Draft guidance that is essential to understand the operation of the proposed amendments was published on 16th February 2024.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because matters relating to the RTFO Order are normally assessed via a cost benefit analysis, approved by His Majesty's Treasury. This is because the RTFO is considered a tax and spend measure due to how the schemes costs are passed on to fuel suppliers.

9.2 By 2033, the proposed amendment to the RTFO is projected to result in the supply of up to 1.12 billion litres of additional low carbon fuel. Over the whole appraisal period from 2024-2033, this policy is estimated to produce an additional 15.45 million tCO2e in greenhouse gas savings. Using current central carbon appraisal values, this equates to discounted benefits of £3.49 billion, based on UK Government carbon prices. A cost benefit analysis is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.3 The impact on business, charities or voluntary bodies is dependent on the extent to which they consume the RCFs dealt with in this instrument. The increase in the availability of qualifying development fuels within the RTFO Order will reduce the cost of compliance and contribute to lowering the already approved cost on general road fuel consumers.

9.4 The legislation does impact small or micro businesses.

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

9.6 The basis for the final decision on what action to take to assist small businesses was taken following the public consultation on proposals. Small businesses were largely represented by fuel producers/suppliers, and no additional mitigations were raised.

9.7 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 In accordance with article 1A (review) of the RTFO Order, the Secretary of State is under an existing duty to review the regulatory provisions contained in the RTFO Order and publish reports setting out the conclusions of the review. Reports must be published at intervals not exceeding 5 years. No additional review provision has been included in this instrument.

10.2 The measures in this instrument are intended to support renewable fuels and enable such fuels to cost effectively contribute to the UK's future Carbon Budgets. The RTFO Order further aims to promote investment in the supply of sustainable renewable fuels in the UK.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The RTFO Order, which this instrument amends, contains provisions made under section 2(2) of the European Communities Act 1972 (1972 c.68). Paragraphs 13, 14 and 15 of Schedule 8 of the European Union (Withdrawal) Act 2018 (EUWA 2018) do not apply to this instrument since being revoked by section 10 of the Retained EU Law (Revocation and Reform) Act 2023 (c.28).

12. European Convention on Human Rights

12.1 Parliamentary Under Secretary of State, Anthony Browne has made the following statement regarding Human Rights:

"In my view the provisions of The Renewable Transport Fuel Obligations (Amendment) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").