

Won't get fuelled again – the Renewable Transport Fuel Obligations Order

THE PRICE OF PETROL IS NOW OVER £1 AT MOST garages across the UK. Sadly, the Renewable Transport Fuel Obligations Order (RTFO) will not curb these escalating prices, and may indeed bring further upward pressure to bear. Such is the cost of cleaner, greener supply.

The RTFO introduces a mechanism, running parallel to the Renewables Obligation, to encourage the transport sector to cut its carbon emissions. According to the Department for Transport 'Partial Regulatory Impact Assessment Draft Renewable Transport Fuel Obligations Order' (the Impact Assessment), this sector is now responsible for approximately 25% of UK greenhouse gas emissions, which was equivalent to 43.8 million tonnes of carbon in 2003. The Renewable Transport Fuel Obligation (the Obligation) is expected to deliver carbon savings of between 2.6 million and 3 million tonnes of carbon dioxide a year by 2010.¹ The Obligation also aims to contribute to the diversity and security of the UK's transport fuel supply, and to offer new opportunities to industry.²

Under the scheme, suppliers of fossil fuels for transport are obliged to supply a certain percentage of renewable fuels each year. The newly established Office of the Renewable Fuels Agency will issue renewable transport fuel (RTF) certificates for every litre of renewable fuel supplied. The certificates can be used as evidence that a supplier has supplied sufficient renewable fuel that year. Certificates can be traded, so a supplier may buy the extra certificates needed in order to meet their obligation. Failing that, they must make a payment into a buy-out fund to meet their obligation.

The RTFO came into force on 26 October 2007, under powers conferred by the Energy Act 2004 (ss124-130, 131(1), 132(4) and 192(4)(c)). The scheme will run from April next year. In light of developments in EU law and uncertainty as to the sustainability and environmental impact of biofuels, the RTFO leaves room for evolution of the scheme after 2010.

BACKGROUND

Fulfilment of international obligations

First, the carbon reduction from the transport sector will help the UK meet its obligations under the Kyoto Protocol.

The scheme will also help the UK meet its obligations under the Biofuels Directive (the Directive on the Promotion of the Use of Biofuels or Other Renewable Fuels for Transport (2003/30/EC)). This requires member states to set national targets for increased sales of renewable transport fuels to ensure that the EU meets the target of 5.75% biofuel sales by 2010. In March this year, however, the Council of Ministers agreed a new, legally binding target that at least 10% of the EU's transport fuels must come from biofuels by 2020. The European Commission is consulting on how to implement this new goal.

A way to reduce greenhouse gas emissions in the transport sector

The government has identified that renewable fuels are one of the few cost-effective options to reduce carbon emissions in the transport sector (as opposed to alterations to the vehicles themselves). Renewable fuels do, however, cost more to produce than their fossil fuel equivalents, so the government has introduced the Obligation to help encourage demand for renewable fuels and to promote a stable market for them. This is in addition to the duty incentives currently available for biofuels.

The government expects that the buy-out price created by the new scheme will become the principal support mechanism rather than duty incentives. The government currently forgoes £59m in revenue due to biofuel sales. According to the Impact Assessment, if sales of biofuels were to increase to 5% of fuel sales, this would amount to £480m, which would have a notable impact on the public purse.

WHO DOES IT APPLY TO?

The Obligation is imposed on every transport fuel supplier which supplies a 'relevant hydrocarbon oil' across the UK. 'Hydrocarbon oil' has the same



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meaning as in the Hydrocarbon Oil Duties Act 1979 (the 1979 Act), which includes petroleum oil, coal tar and oil produced from coal, shale, peat or any other bituminous substance. Amongst those affected are oil refiners and oil importers.

The Obligation only applies to suppliers who supply 450,000 litres or more of fossil fuels per year. They are known as ‘obligated suppliers’. Those who supply less than this are known as ‘non-obligated suppliers’ (Article 4(2) RTFO). This threshold was introduced so that companies that pay duty on small volumes of fossil fuels avoid the Obligation. The Impact Assessment cites those involved in engine testing and car racing as examples of non-obligated suppliers.

The Obligation falls on the person who owns the fuel at the point at which the duty to be paid on that oil takes effect (Article 5(4) RTFO). The government hopes to minimise the administrative burden of the Obligation by assessing a supplier’s Obligation at this existing duty point.

WHAT ARE RENEWABLE TRANSPORT FUELS?

Renewable transport fuels include biofuels and the biofuel component of blended biofuels. Currently, bioethanol and biodiesel (defined in ss2AA and 2AB of the 1979 Act) are amongst the most common biofuels. They can be produced from crops: sugar and starch crops can be used to make bioethanol, whilst vegetable oil crops can be used to make biodiesel. Biodiesel can also be made from waste cooking oil. Biogas, ie methane, is also treated as a renewable transport fuel, although sales of biogas make up less than 0.5% of total road fuel sales in the UK (see the Department for Transport consultation on the draft Renewable Transport Fuel Obligations Order).

It should be noted that only the renewable transport fuel that is supplied for use in road vehicles (whether or not it may also be used in other vehicles) will count towards fulfilling a supplier’s Obligation (Article 5(2) RTFO).

WHAT IS THE OBLIGATION?

The amount of renewable transport fuel to be supplied for use in road vehicles is calculated as a percentage of the volume of fossil fuels that the supplier has supplied in the UK. The scheme has been divided into three periods. An ‘obligation period’ runs from 15 April until 14 April the following year (Article 4(3)(a) RTFO), which coincides with the existing reporting requirements of excise duty (see box above).

Suppliers who have supplied less than 10 million litres of fossil fuels during an obligation period

Obligation period	Amount of renewable transport fuel to have been supplied as % of volume of traditional fuels supplied
2008/09	2.5641%
2009/10	3.8961%
Subsequent years	5.2632%

deduct the first 450,000 litres from their total supply of fossil fuels (Article 4(4)(b) RTFO).

During the consultation process, the government asked consultees for their views on how the Obligation levels are expressed. The majority were in favour of the levels being expressed in terms of carbon/greenhouse gas savings. Consequently, in June the government announced that it aims to reward biofuels under the RTFO in accordance with the carbon savings that they offer from April 2010 onwards.

WHO REGULATES AND ENFORCES THE RTFO?

Article 6(1) RTFO establishes the Office of the Renewable Fuels Agency (the Agency) and appoints it as the Administrator (pursuant to s125 of the Energy Act 2004). According to the Impact Assessment, other bodies were considered for the role of Administrator; HM Revenue & Customs and Ofgem declined the offer, and the Environment Agency could not take on the role, as it only has jurisdiction in England and Wales.

DISCHARGING THE OBLIGATION

After the end of an obligation period, the Agency will calculate the amount of renewable transport fuel (ie the relevant percentage of the volume of fossil fuels supplied for that period) which an obligated supplier should have supplied during that obligation period (Article 21(1) RTFO).

RTF certificates, held to the credit of the supplier’s account (see below), are evidence of the supplier meeting its Obligation (Article 21(1)(b) RTFO). The certificates will have been issued by the Agency or bought from another account holder (RTF certificates are transferable (Article 18(1) RTFO). Any certificates used to meet its Obligation are then debited from the supplier’s account (Article 21(3) RTFO).

Certificates relating to one obligation period can also be rolled over and used to meet a supplier’s Obligation in the subsequent obligation period, but a supplier can only meet up to 25% of its obligation using rolled-over certificates (Article 19 RTFO). >

If a supplier does not wholly discharge the Obligation by surrendering certificates, it must pay a buy-out payment to the Agency (Article 21(6) RTFO (see below)).

ISSUE OF RENEWABLE TRANSPORT FUEL CERTIFICATES

To be issued with RTF certificates, a supplier will need to:

- a) have an RTF account (see below);
- b) provide information regarding the amount of renewable transport fuel they have supplied; and
- c) have paid any duty of excise due on the renewable transport fuel (Article 16(3) RTFO).

In addition the supplier must provide information as to the effects on carbon emissions; agriculture; other economic activities; sustainable development; or the environment generally which are or may be associated with the production, supply or use of the renewable transport fuel it has supplied. This information will help the government address the problem surrounding the use of biofuels, which received a great deal of publicity earlier this year. In particular, environmental groups argued that demand for biofuels would increase environmental damage, including destruction of the rainforests.

BUY-OUT PAYMENTS

The amount of the buy-out payment (Article 21(7) RTFO) is calculated as shown in the box above.

The buy-out payment must be made by 5 November following the end of the obligation period for which it is due (Article 21(8) RTFO). Interest must also be paid on any outstanding payment.

RECYCLING OF BUY-OUT PAYMENTS

The buy-out payments paid to the Agency form the 'buy-out fund'. This is to be distributed to obligated suppliers or persons who have an account at the Agency containing unredeemed certificates relating to the same obligation period as the buy-out fund (Article 22 RTFO). A person would therefore be able to choose whether to cash in their certificates or roll them forward to the following obligation period. They will, however, have to decide whether or not to cash in their certificates before the size of the fund and the total number of certificates to be cashed is known. The person has to notify the Agency of the number of certificates they wish to cash in by 5 November following the obligation period to which the fund relates.

Buy-out payment =

Shortfall amount (in litres)

(ie the volume of renewable transport fuel which should have been supplied by the supplier but for which the supplier does not have RTF certificates)

multiplied by the buy-out price

Buy-out price =

£0.35

(for the obligation periods beginning April 2008 and 2009)

or £0.30

(for subsequent obligation periods)

minus the duty derogation

£0.5035 (rate of duty for bioethanol (s6AD(3) 1979 Act (as amended by the Finance Act 2004)) minus £0.3035 (rate of duty for sulphur-free petrol (s6(1A)(aa) 1979 Act (as amended by the Finance Act 2004)).

FAILURE TO DISCHARGE THE OBLIGATION

If a person fails to discharge their Obligation by redeeming certificates or paying the buy-out payment, they are liable to a civil penalty (Article 21(6) RTFO).

ACCOUNTS

An obligated supplier must apply for an account with the Agency within 28 days of the date on which it became an obligated supplier (Article 7(2) RTFO).

Non-obligated suppliers may also apply for an account, as may persons who intend to trade or invest in RTF certificates (Article 7(3) RTFO).

DUTIES AND POWERS OF THE RENEWABLE FUELS AGENCY

Reporting

The Agency must publish an annual report in relation to each obligation period by 31 January in the year following the end of that obligation period (ie the report for 2008/09 is to be published by 31 January 2010).

The report is to include details of compliance by each obligated supplier with its Obligation, and the effects on carbon emissions, agriculture, other economic activities, sustainable development, or the environment generally, which the Agency considers to be associated with the production, supply or use of the renewable transport fuel that has been supplied (Article 14(4)(a) and (b) RTFO).

'The supplier must provide information as to the effects on the environment associated with the production, supply or use of the renewable transport fuel it has supplied.'

Information required by the Agency

The Agency will require information from obligated suppliers as to:

- whether or not a supplier has supplied any fossil fuels or any renewable transport fuels at or for delivery to places in the UK in each obligation period;
- the amount of the fossil fuels which has been supplied by or received by the supplier during each obligation period; and
- the amount of any renewable transport fuels, which the supplier owns and supplies at or delivers to places in the UK or is received from another transport fuel supplier in the UK (Article 12(2) RTFO), for use as fuel in road vehicles in each obligation period (Article 12(1) RTFO).

The Agency may also require such information of non-obligated suppliers (Article 13(1)(3) RTFO).

As mentioned above, the Agency may also require information from suppliers (both obligated and non-obligated) as to the effects on carbon emissions, etc, relating to the renewable transport fuel which has been supplied.

Persons may be liable for civil penalties for providing information or evidence which is inaccurate (Article 23 RTFO).

Revocation of certificates

The Agency has the power to revoke an RTF certificate if:

- the declaration as to the accuracy of the information submitted in the application for RTF certificates is false;
- the certificate was issued as a consequence of any fraudulent behaviour, statement or undertaking on the part of the supplier to whom it was issued, or any connected person;
- the information provided to the Office is materially inaccurate; or

- the evidence provided in relation to the information is insufficient to substantiate it.

The supplier to whom the certificate was issued or the transferee may apply for the Office to reconsider the revocation. They must give notice of their application within 14 days of receiving notice of the revocation (Articles 20(6) and (7) RTFO).

CIVIL PENALTIES

The amount of a civil penalty is £50,000, except if the penalty is for gaining or attempting to gain RTF certificates in contravention of the Obligation, in which case it is two times the value of the RTF certificates which the account holder has gained. The value of a certificate is equal to the buy-out price (Article 23(7) RTFO).

FUTURE

As to how the scheme will be structured after April 2011, the government appears to be adopting a wait-and-see policy. A cautious approach seems appropriate, given the potential for changes in EU legislation and policy and the uncertainties surrounding the effect that biofuels have on the environment. Nevertheless, although the impact of the RTFO on motorists is unlikely to be a much-desired reduction in spiralling fuel costs, the artificial market support being given to expensive renewable fuels should lead to their increased availability. It will be interesting to see if and how car manufacturers react.

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NOTES

- 1) Department for Transport press release 'Renewable Fuels Agency starts up', 5 November 2007.
- 2) Department for Transport press release, 'Renewable Fuels Agency starts up', 5 November 2007.