

**EXPLANATORY MEMORANDUM TO**  
**THE ENERGY ACT 2004 (AMENDMENT) REGULATIONS 2012**

**2012 No. 2723**

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 This instrument amends section 132(3) and (4) of the Energy Act 2004 so as to widen the scope of the fuels which can be taken into account when setting renewable transport fuel obligations. Section 132(3) is amended so as to bring fuel for use in various forms of mobile machinery (which are set out in paragraph 4.1) within the meaning of use for “transport purposes”. The term “transport purposes” is used in the definition of “supply” in section 132(1), which in turn is used in other provisions in Chapter 5 of Part 2 of the Energy Act 2004 relating to renewable transport fuel obligations.

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

3.1 None.

**4. Legislative Context**

4.1 Articles 1 and 7a(2) of the EU Fuel Quality Directive (“FQD”) (Directive 98/70/EC as amended by Directive 2009/30/EC) require fuel suppliers to reduce the greenhouse gas emissions of fuel supplied for 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 (referred to below collectively as “non-road mobile machinery”).

4.2 The Department is transposing this requirement of the FQD in part through bringing fuel used in non-road mobile machinery within the Renewable Transport Fuel Obligation scheme. This instrument has the effect of expanding powers in the Energy Act 2004, in order that a further instrument can be made using those powers so as to bring non-road mobile machinery within the scope of the Renewable Transport Fuel Obligation scheme.

4.3 This instrument would come into effect in autumn 2012, with a view to the further instrument (referred to above) being made in late 2012.

**5 Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

- 6.1 Norman Baker, Parliamentary Under Secretary of State at the Department for Transport, has made the following statement regarding Human Rights:

“In my view the provisions of the Energy Act 2004 (Amendment) Regulations 2012 are compatible with the Convention rights.”

## **7. Policy background**

- 7.1 The Renewable Transport Fuel Obligations Order 2007 (SI 2007 No. 3072) obliges suppliers of fuel used for road transport in the UK to produce evidence showing that they have supplied a specified amount of renewable transport fuel. The evidence is in the form of Renewable Transport Fuel (RTF) certificates issued by the Renewable Transport Fuel Obligations Administrator (“the Administrator”) for renewable fuel supplied. RTF certificates must then be presented to the Administrator 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 buy out price, instead of supplying renewable transport fuel and presenting RTF certificates.
- 7.3 The Department consulted on proposals to implement the FQD and the closely related Renewable Energy Directive (“RED”) in March 2011<sup>1</sup>. It was proposed to expand the scope of the Renewable Transport Fuel Obligations Order 2007 so that it aligns with that of the FQD. In the RED consultation it was also proposed to place the renewable transport fuel obligations on the suppliers of all petrol, diesel and low sulphur gas oil that is intended for use in the end uses covered by the FQD, so as to include fuel used in non-road mobile machinery. Similarly it was proposed to allow any type of renewable fuel for these end uses to be eligible for RTF certificates. The Government’s response to the consultation on these proposals was published on 16 July 2012<sup>2</sup>.

## **Consolidation**

- 7.4 As the legislation being amended is an Act, the powers under which this instrument is made would be insufficient for the purpose of consolidation. In any event only minor changes are being made.

## **8. Consultation outcome**

- 8.1 During the consultations on the FQD and the RED, concerns were raised about the risks associated with the use of renewable transport fuel in non-road mobile machinery - particularly in respect of engine compatibility and storage, and the need to have sufficient time for oil suppliers and end users to address these issues. Therefore the Department does not intend to exercise the wider powers created by these Regulations in a manner

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<sup>1</sup> <http://www.dft.gov.uk/consultations/dft-2011-04>

<sup>2</sup> <http://www.dft.gov.uk/consultations/dft-2011-05>

which would expand the scope of the Renewable Transport Fuel Obligation scheme to include non-road mobile machinery earlier than 15 April 2013.

## **9. Guidance**

9.1 The Department does not consider that any guidance is needed for this statutory instrument as it will have no direct impact on business or individuals. However, as explained above, the intention is to introduce further legislation in late 2012 to include fuel used in non-road mobile machinery within the Renewable Transport Fuel Obligation scheme. Should Parliament agree to these further legislative changes, the Department will revise its guidance covering the scheme.

## **10. Impact**

10.1 The impact of this instrument on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is negligible.

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

10.4 However, further to this statutory instrument a further amending order would be required to expand the scope of the Renewable Transport Fuel Obligation scheme to include non-road mobile machinery. This proposal was the subject of a public consultation in March last year. A final impact assessment following that consultation and a Government response was published on 16 July 2012<sup>3</sup>.

## **11. Regulating small business**

11.1 The Energy Act 2004 (Amendment) Regulations 2012 do not apply directly to small businesses.

## **12. Monitoring & review**

12.1 This instrument amends provisions in primary legislation which have the effect of expanding the power under which a further instrument will be made. As such it does not itself have any regulatory impact. Therefore no measures for success for this instrument, or system for monitoring and review, have been put in place.

## **13. Contact**

13.1 Michael Wright at the Department for Transport Tel: 0207 944 4378 or email: Michael.Wright@dft.gsi.gov.uk can answer any queries regarding the instrument.

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<sup>3</sup> <http://www.dft.gov.uk/consultations/dft-2011-05>