

CLIMATE CHANGE ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Other provisions

Renewable transport fuel obligations

Section 78 and Schedule 7: Renewable transport fuel obligations

406. This section introduces Schedule 7 to the Act. Schedule 7 amends Chapter 5 of Part 2 of the Energy Act 2004 which enables the Secretary of State to set up a renewable transport fuel obligations scheme (“RTFO scheme”) by order (“RTF order”).
407. An RTFO scheme is a scheme that requires specified transport fuel suppliers to produce evidence that for a specified period a specified amount of renewable transport fuel has been supplied at or for delivery to places in the United Kingdom. “Specified” for these purposes means specified in or determined in accordance with the RTF order. A “transport fuel supplier” means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom. Renewable transport fuel means:
- a) biofuel (a liquid or gaseous fuel that is produced wholly from biomass);
 - b) blended biofuel (a liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel);
 - c) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced wholly by energy from a renewable source or wholly by a process powered wholly by such energy; or
 - d) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel.
408. The Renewable Transport Fuel Obligations Order 2007 (“2007 order”) was made under existing powers in the Energy Act 2004 on 25th October 2007. The 2007 order set up an RTFO scheme with the first obligation period to commence on 15th April 2008. The 2007 order also established the Office of the Renewable Fuels Agency (a non-departmental public body) (“RFA”) and appointed the RFA as Administrator of the scheme.
409. The main changes to the Energy Act 2004 contained in Schedule 5 are explained in the following paragraphs. Some of the changes will enable the RTFO scheme to be altered by order in the future. These include the powers to appoint a new Administrator and transfer functions accordingly (in new section 125C) and the provisions about payments received by the Administrator under the scheme (in section 128 as amended). Other amendments will apply in relation to the scheme as soon as they come into force, such as the duty on the Administrator to promote renewable fuels which have a beneficial environmental effect (in new section 125A), the powers for the Secretary of State to give directions (in new section 125B and section 126 as amended) and the provisions for

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disclosure of information to the Administrator by Her Majesty's Revenue and Customs (in new sections 131A to 131C).

410. *Paragraph 2* substitutes new sections 125, 125A, 125B and 125C of the Energy Act 2004 for the existing section 125 of that Act.
411. New section 125 deals with the appointment of the first Administrator of the RTFO scheme. The 2007 order appointed the RFA as the Administrator under section 125 as it currently stands. New section 125 replicates the provision currently in section 125 allowing an RTF order to establish a body corporate and to appoint that body as the Administrator. It will preserve the effect of the 2007 order.
412. New section 125A allows an RTFO order to confer or impose functions on the Administrator. It also imposes a new duty on the Administrator to promote the supply of renewable transport fuel which by its production, supply or use, causes or contributes to the reduction of carbon emissions and contributes to sustainable development or to environmental protection or enhancement.
413. New section 125B(1) makes further provision about the functions of the Administrator. Paragraphs (a) and (b) re-enact the provision currently in section 125(3)(a) and (b) of the Energy Act in enabling powers to be conferred on the Administrator to require information from fuel suppliers; paragraph (c) re-enacts the provision currently in section 125(3)(c) of the Energy Act in enabling powers to be conferred on the Administrator to impose charges on fuel suppliers. Subsection (2) creates a new power for the Secretary of State to give written directions to the Administrator about the exercise of his powers conferred by virtue of subsection (1)(a) or (b). The Administrator must comply with any such directions. The power includes power to revoke or vary any directions given. This power may be used for example to direct the Administrator to collect information in a particular form or using a particular methodology to show the carbon savings achieved by renewable transport fuel supplied and certificated under the RTFO scheme.
414. New section 125B(5) replaces the provisions of section 125 of the Energy Act 2004 which set out what the Administrator must do with money that he receives from charges imposed on transport fuel suppliers by an RTF order (although the 2007 order does not impose any such charges). It alters the current requirement that any such charges must be used to meet the Administrator's costs by providing that if the Administrator is the Secretary of State any charges must be paid into the Consolidated Fund.
415. New section 125C creates a new power for the Secretary of State by order to replace an existing Administrator with a new Administrator and to provide for the transfer of functions, staff, property, rights and liabilities from the old to the new Administrator. The new Administrator can be the Secretary of State or an existing statutory body or a body corporate established under this new power.
416. The new power is subject to the negative resolution procedure unless it is used to establish a new body corporate or to modify an Act of Parliament, Act of the Scottish Parliament, Act or Measure of the National Assembly for Wales or an Act of the Northern Ireland Assembly, in which case the affirmative resolution procedure will apply.
417. *Paragraph 3* amends section 126 of the Energy Act 2004 which enables an RTF order to make provision about how amounts of transport fuel may count towards discharging obligations imposed by an RTFO scheme. New section 126(5) means that if a future RTF order makes such provision by reference to a document it may provide for references to the document to have effect as references to it as revised or re-issued from time to time. This will enable reference to be made to international standards for carbon and sustainability without the need to amend the order whenever those standards are revised.

418. *Paragraph 3* also amends section 126 of the Energy Act 2004 to create a new power for the Secretary of State to give written directions to the Administrator about the exercise of any of the Administrator's functions in connection with counting or determining amounts of transport fuel for the purpose of the RTFO scheme. The Administrator must comply with any such directions. The power includes power to revoke or vary any directions given. This power may be used for example to direct the Administrator to use a particular methodology if a future RTF order requires amounts of transport fuel to be counted or determined by reference to its effects on carbon emissions or sustainable development.
419. *Paragraph 4* amends the provisions of the Energy Act 2004 which set out what the Administrator must do with money he receives when administering the RTFO scheme from buy-out payments.
420. Currently, the powers in section 128 of the Energy Act 2004 mean that the Administrator may (if an RTF order so provides, as the 2007 order does) receive buy-out payments from transport fuel suppliers who choose to buy-out their obligation rather than supply the specified amount of renewable transport fuel. By section 128(7) such sums must be paid to transport fuel suppliers under a system of allocation specified in the RTF order (subject to first meeting the costs of the Administrator if the RTF order so provides under the power in section 128(6), which the 2007 order does not).
421. As a result of amendments to section 128 by paragraph 4, where the Administrator is the Secretary of State new section 128(6)(a) will require the buy-out payments to be paid into the Consolidated Fund. But new section 128(6)(b) will allow (but not require) the RTF order to provide for the Secretary of State to make payments to transport fuel suppliers under a system of allocation specified in the order. The RTF order must ensure that the total paid out does not at any time exceed the total of the buy-out payments received up to that time (new section 128(7)).
422. If the Administrator is a person other than the Secretary of State, it will be possible for the RTF order to provide instead that the Administrator must use some or all of the buy-out payments to meet his costs or must pay some or all of the buy-out payments to the Secretary of State (in which case they will be payable by him into the Consolidated Fund) (new section 128(8)). To the extent that the payments are not dealt with in this way, they will have to be paid to transport fuel suppliers under a system of allocation specified in the RTF order (new section 128(9)).
423. *Paragraph 5* amends section 129(7) of the Energy Act 2004 which currently provides that civil penalties received by the Administrator under an RTF order must be paid to the Secretary of State for payment into the Consolidated Fund. The amendment makes it clear that, if the Secretary of State is the Administrator, he is to pay those sums into the Consolidated Fund directly.
424. *Paragraph 6* inserts into the Energy Act 2004 new sections 131A, 131B and 131C which make provision enabling information to be disclosed by Her Majesty's Revenue and Customs ("HMRC") to the Administrator, as well as prohibiting further disclosure of the information. The information in question is restricted to information held in connection with HMRC's functions under or by virtue of the Hydrocarbon Oil Duties Act 1979. This is to limit the information to that which is relevant to the Administrator's functions.
425. New section 131A permits the information to be disclosed to the Administrator or an authorised person (a person who provides services to or acts on behalf of the Administrator and is authorised by the Administrator to receive the information).
426. New section 131B prohibits the disclosure of the information by the Administrator, an authorised person or any other person who obtains it in the course of providing services to or acting on behalf of the Administrator, except in certain specified cases (for example a disclosure required by a court order). The restrictions on further disclosure

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only apply to information received under new section 131A that has not also been received by the Administrator or an authorised person by another means.

427. Wrongful disclosure contrary to new section 131B is an offence under new section 131C if the information is about a person who is identified in or identifiable from the disclosure. The offence is triable either summarily or on indictment. Section 131C provides that a person convicted on indictment may be imprisoned for up to 2 years or fined or both, and that on summary conviction a person is liable to imprisonment for up to 12 months or to a fine not exceeding the statutory maximum (currently £5000) or both. It also provides that, in England and Wales, the penalty on summary conviction of an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force will be 6 months' imprisonment. The same penalty will apply in Northern Ireland. A person charged with an offence under new section 131C has a defence if he can prove that he reasonably believed that the disclosure was lawful or that the information was already lawfully in the public domain.