

## SCHEDULES

### SCHEDULE 7

Section 78

#### RENEWABLE TRANSPORT FUEL OBLIGATIONS

##### *Introductory*

- 1 Chapter 5 of Part 2 of the Energy Act 2004 (c. 20) (renewable transport fuel obligations) is amended as follows.

##### *The Administrator*

- 2 For section 125 (the Administrator) substitute—

##### **“125 Appointment of the Administrator**

- (1) For the purposes of provision made by or under this Chapter, an RTF order may—
- (a) establish a body corporate, and
  - (b) appoint that body as the Administrator.
- (2) An RTF order may—
- (a) make provision for the appointment of members of the body;
  - (b) make provision in relation to the staffing of the body;
  - (c) make provision in relation to the expenditure of the body;
  - (d) make provision regulating the procedure of the body;
  - (e) make any other provision that the Secretary of State considers appropriate for purposes connected with the establishment and maintenance of the body.
- (3) The provision that may be made by an RTF order by virtue of this section includes, in particular, provision conferring discretions on—
- (a) the Secretary of State;
  - (b) the body itself; or
  - (c) members or staff of the body.

##### **125A General functions of the Administrator**

- (1) An RTF order may—
- (a) confer or impose powers and duties on the Administrator for purposes connected with the implementation of provision made by or under this Chapter;
  - (b) confer discretions on the Administrator in relation to the making of determinations under such an order and otherwise in relation to the Administrator’s powers and duties; and

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- (c) impose duties on transport fuel suppliers for purposes connected with the Administrator's powers and duties (including, in particular, duties framed by reference to determinations made by the Administrator).
- (2) It is the duty of the Administrator to promote the supply of renewable transport fuel whose production, supply or use—
- (a) causes or contributes to the reduction of carbon emissions, and
  - (b) contributes to sustainable development or the protection or enhancement of the environment generally.

### **125B Functions of the Administrator: supplementary**

- (1) The powers that may be conferred on the Administrator by virtue of section 125A(1) include, in particular—
- (a) power to require a transport fuel supplier to provide the Administrator with such information as the Administrator may require for purposes connected with the carrying out of the Administrator's functions;
  - (b) power to impose requirements as to the form in which such information must be provided and as to the period within which it must be provided;
  - (c) power to impose charges of specified amounts on transport fuel suppliers.
- (2) The Secretary of State may give written directions to the Administrator about the exercise of any power conferred on the Administrator by virtue of subsection (1)(a) or (b).
- (3) The power to give directions under subsection (2) includes power to vary or revoke the directions.
- (4) The Administrator must comply with any directions given under that subsection.
- (5) Sums received by the Administrator by virtue of provision within subsection (1)(c)—
- (a) where the Administrator is the Secretary of State, must be paid into the Consolidated Fund, and
  - (b) otherwise, must be used for the purpose of meeting costs incurred in carrying out the Administrator's functions.
- (6) The Secretary of State may make grants to the Administrator on such terms as the Secretary of State may determine.

### **125C Transfer of functions to new Administrator**

- (1) The Secretary of State may by order—
- (a) appoint a person as the Administrator ("the new Administrator") in place of a person previously so appointed by order under this Chapter ("the old Administrator"), and
  - (b) provide for the transfer of the functions of the old Administrator to the new Administrator.

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- (2) Only the following persons may be appointed as the Administrator by order under this section—
  - (a) the Secretary of State;
  - (b) a body or other person established or appointed by or under any enactment to carry out other functions;
  - (c) a body corporate established by the order for appointment as the Administrator.
- (3) An order under this section that establishes a body for appointment as the Administrator may make any provision that may be made by an RTF order by virtue of section 125.
- (4) An order under this section may provide for the transfer of staff of the old Administrator, and of any property, rights or liabilities to which the old Administrator is entitled or subject, to the new Administrator and may, in particular—
  - (a) provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order;
  - (b) provide for the creation of interests in, or rights over, property transferred or retained or for the creation of new rights and liabilities;
  - (c) provide for the order to have effect in spite of anything that would prevent or restrict the transfer of the property, rights or liabilities otherwise than by the order.
- (5) The order may, in particular—
  - (a) provide for anything done by or in relation to the old Administrator to have effect as if done by or in relation to the new Administrator;
  - (b) permit anything (which may include legal proceedings) which is in the process of being done by or in relation to the old Administrator when the transfer takes effect to be continued by or in relation to the new Administrator;
  - (c) provide for a reference to the old Administrator in an instrument or other document to be treated as a reference to the new Administrator;
  - (d) where the old Administrator was established by order under this Chapter, make provision for the dissolution of the old Administrator;
  - (e) make such modifications of any enactment relating to the old Administrator or the new Administrator as the Secretary of State considers appropriate for the purpose of facilitating the transfer.
- (6) An order under this section that provides for the transfer of staff of the old Administrator to the new Administrator must make provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply to the transfer.
- (7) Subject to subsection (8), an order under this section is subject to the negative resolution procedure.
- (8) The power to make an order under this section is subject to the affirmative resolution procedure if the order—
  - (a) contains provision by virtue of subsection (2)(c), or

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- (b) makes any modification of an enactment contained in—
  - (i) an Act of Parliament,
  - (ii) an Act of the Scottish Parliament,
  - (iii) a Measure or Act of the National Assembly for Wales, or
  - (iv) Northern Ireland legislation.”.

*Determination of amounts of transport fuel*

3 In section 126 (determination of amounts of transport fuel), after subsection (4) insert—

- “(5) If an RTF order makes provision for the counting or determination of amounts of transport fuel for the purposes of provision made by or under this Chapter by reference to any 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.
- (6) The Secretary of State may give written directions to the Administrator about the exercise of any of the Administrator’s functions in connection with the counting or determination of amounts of transport fuel for the purposes of provision made by or under this Chapter.
- (7) The power to give directions under subsection (6) includes power to vary or revoke the directions.
- (8) The Administrator must comply with any directions given under that subsection.”.

*Discharge of obligation by payment*

4 In section 128 (discharge of obligation by payment), for subsections (6) and (7) substitute—

- “(6) Where the Administrator is the Secretary of State—
  - (a) sums received by the Administrator by virtue of this section must be paid into the Consolidated Fund, and
  - (b) an RTF order may make provision for sums to be paid by the Administrator to transport fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation.
- (7) Such an order must contain provision ensuring that the total of the sums so paid by the Administrator does not at any time exceed the total of the sums so received by the Administrator up to that time.
- (8) Where the Administrator is a person other than the Secretary of State, an RTF order may—
  - (a) require the Administrator to use, to the specified extent, sums received by the Administrator by virtue of this section for the purpose of meeting costs incurred in carrying out the Administrator’s functions, or
  - (b) require the Administrator to pay, to the specified extent, sums so received to the Secretary of State.

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- (9) Sums so received which are not dealt with in accordance with provision made under subsection (8) must be paid by the Administrator to transport fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation.
- (10) The Secretary of State must pay sums received by the Secretary of State by virtue of provision made under subsection (8)(b) into the Consolidated Fund.”.

#### *Civil penalties*

5 In section 129 (imposition of civil penalties), for subsection (7) substitute—

- “(7) Sums received by the Administrator by virtue of this section—
- (a) where the Administrator is the Secretary of State, must be paid into the Consolidated Fund, and
  - (b) otherwise, must be paid to the Secretary of State, who must pay them into the Consolidated Fund.”.

#### *Disclosure of information*

6 After section 131 insert—

##### **“131A Disclosure of information held by Revenue and Customs**

- (1) This section applies to information held by or on behalf of the Commissioners for Her Majesty’s Revenue and Customs in connection with their functions under or by virtue of the Hydrocarbon Oil Duties Act 1979.
- (2) Such information may be disclosed to—
  - (a) the Administrator, or
  - (b) an authorised person,for the purposes of or in connection with the Administrator’s functions.
- (3) In this Chapter “authorised person” means a person who—
  - (a) provides services to, or exercises functions on behalf of, the Administrator, and
  - (b) is authorised by the Administrator to receive information to which this section applies.
- (4) The Administrator may authorise such a person to receive information to which this section applies either generally or for a specific purpose.

##### **131B Further disclosure of information**

- (1) This section applies to information disclosed under section 131A, other than information which is also provided to the Administrator or an authorised person otherwise than under that section.
- (2) Information to which this section applies may not be disclosed—
  - (a) by the Administrator,
  - (b) by an authorised person, or

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(c) by any other person who obtains it in the course of providing services to, or exercising functions on behalf of, the Administrator, except as permitted by the following provisions of this section.

(3) Subsection (2) does not apply to a disclosure made—

- (a) by the Administrator to an authorised person,
- (b) by an authorised person to the Administrator, or
- (c) by an authorised person to another authorised person,

for the purposes of, or in connection with, the discharge of the Administrator's functions.

(4) Subsection (2) does not apply to a disclosure if it is—

- (a) authorised by an enactment,
- (b) made in pursuance of an order of a court,
- (c) made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Administrator has functions,
- (d) made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Administrator has functions,
- (e) made with the consent of the Commissioners for Her Majesty's Revenue and Customs, or
- (f) made with the consent of each person to whom the information relates.

### **131C Wrongful disclosure**

(1) A person commits an offence if—

- (a) he discloses information about a person in contravention of section 131B(2), and
- (b) the person's identity is specified in the disclosure or can be deduced from it.

(2) In subsection (1) “information about a person” means revenue and customs information relating to a person within the meaning of section 19(2) of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure).

(3) It is a defence for a person charged with an offence under this section to prove that he reasonably believed—

- (a) that the disclosure was lawful, or
- (b) that the information had already and lawfully been made available to the public.

(4) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum or both.

(5) A prosecution for an offence under this section—

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- (a) may be brought in England and Wales only with the consent of the Director of Public Prosecutions;
  - (b) may be brought in Northern Ireland only with the consent of the Director of Public Prosecutions for Northern Ireland.
- (6) In the application of this section—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, or
  - (b) in Northern Ireland,
- the reference in subsection (4)(b) to twelve months is to be read as a reference to six months.”.

### *Interpretation*

- 7 (1) Section 132(1) (interpretation of Chapter 5 of Part 2) is amended as follows.
- (2) For the definition of “Administrator” substitute—
- ““Administrator” means the person for the time being appointed as the Administrator by order under this Chapter;”.
- (3) In the appropriate place insert—
- ““authorised person” has the meaning given by section 131A(3);”;
- ““enactment” includes—
- (a) an enactment contained in subordinate legislation,
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
  - (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;”.
- (4) In section 196(1) of the Energy Act 2004 (c. 20) (general interpretation), in the definition of “enactment”, after ““enactment”” insert “(except in Chapter 5 of Part 2)”.