

Response to:

**Consultation on the implementation
of the transport elements of the
Renewable Energy Directive — Non
Road Mobile Machinery**

Contents

1. Foreword.....	3
2. Executive Summary	5
2.1. Summary of final policy for expanding the scope of the Renewable Transport Fuel Obligation	5
2.2. Timing to expansion of the scope of the Renewable Transport Fuel Obligation.....	5
2.3. Contact details.....	6
3. Responses to each question in the consultation related to expansion of the scope of the Renewable Transport Fuel Obligation	7
3.1. Consultation questions and responses	8
3.2. Government response.....	13
4. List of organisations that responded.....	15

1. Foreword

Directive 2009/30/EC was adopted on 23rd April 2009 and amends the Fuel Quality Directive (FQD) (Directive 98/70/EC) on the quality of petrol, diesel and gas oil. Articles 1 and 7a explicitly require that suppliers of fuels for use in non-road mobile machinery (NRMM)¹ reduce the greenhouse gas (GHG) intensity of the fuels they supply.

In our consultations on proposals to implement the FQD and the Renewable Energy Directive (RED) we proposed to implement the FQD, in part, through amendment of the Renewable Transport Fuel Obligation (RTFO). Specifically, we proposed to expand the scope of the RTFO such that the obligation to supply renewable transport fuel is extended to include fuels used in NRMM.

We consulted on how to implement this requirement through the RTFO together with other proposed amendments related to implementation of the RED.

On 7th November 2011 the Department for Transport published the Government's response to the "*Consultation on the implementation of the transport elements of the Renewable Energy Directive*". Details relating to the consultation, responses received and Government response to the consultation can be found on the Department for Transport website:

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

The Government's response stated that further consideration of consultee responses was needed before the final policy for expanding the scope of the RTFO to include fuels used in NRMM could be determined.

This document sets out our final policy and completes the Government response to the consultation on the implementation of the transport elements of the RED.

¹ "NRMM" is used throughout this response to collectively refer to non-road mobile machinery (including inland waterway vessels when not at sea), agricultural and forestry tractors, and recreational craft when not at sea.

A separate Government Response to the consultation on proposals to implement articles 7a to 7e of the FQD will be published on the Department's website at:

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

2. Executive Summary

This document summarises the responses to the questions posed in the “*Consultation on the implementation of the transport elements of the Renewable Energy Directive*” related to expansion of the scope of the UK’s Renewable Transport Fuel Obligation to include fuels used in non-road mobile machinery (NRMM) and provides the Government’s response.

Full details of the responses received to the consultation can be found in the “*Government response to the consultation on the implementation of the transport elements of the Renewable Energy Directive*”:

<http://assets.dft.gov.uk/consultations/dft-2011-05/government-response.pdf>

2.1. Summary of final policy for expanding the scope of the Renewable Transport Fuel Obligation

Our final policy for expanding the scope of the Renewable Transport Fuel Obligation (RTFO) is described in full in section 3 of this document. In summary, we will expand the scope of the RTFO such that the obligation is extended to include fuels used in non-road mobile machinery. The RTFO percentage obligation will be adjusted to maintain the current level of biofuel supply — i.e. expanding the scope of the RTFO will not require additional biofuel to be supplied across the market as a whole. Fuel suppliers that supply fuel for use in non-road mobile machinery will receive Renewable Transport Fuel Certificates in proportion to the amount of renewable transport fuel they provide in that fuel.

2.2. Timing to expansion of the scope of the Renewable Transport Fuel Obligation

Table 1 provides an outline of the proposed timing to implementation. It should be noted that the timings related to the laying and making of legislation are provisional; we will work

towards meeting these dates in order to provide certainty for industry within the shortest achievable timeframe.

Table 1. Timeline to expansion of the scope of the RTFO

Action	Target Date
Legislation laid in draft in Parliament	November 2012
Legislation made ^a	December 2012
RTFO scope expanded	15 April 2013

^a Subject to the Parliamentary process (Parliament must scrutinise the draft legislation before it can be made and come into force).

2.3. Contact details

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3. Responses to each question in the consultation related to expansion of the scope of the Renewable Transport Fuel Obligation

Summary of proposal

We proposed to expand the scope of the Renewable Transport Fuel Obligation (RTFO) to include fuels used in non-road mobile machinery (NRMM). The consultation set out our preferred approach: to expand the scope of the RTFO and adjust the percentage obligation levels such that the absolute volume of biofuel required to be supplied in the UK remained the same as that which would have been supplied under the current, unamended RTFO (which takes into account the Gallagher recommendations²).

The consultation set out three options that we had considered. These are summarised below to aid interpretation of the summary of responses.

Option A: Expand certification and obligation to cover fuel supplied for NRMM — keep RTFO obligation levels the same

Under this option biofuel supplied in low sulphur gas oil for use in NRMM would be eligible to be counted towards an unchanged obligation level (percentage target). In practice, pursuing this option would lead to an increase in the absolute volume of biofuel supplied owing to the same obligation level now applying to a larger volume of fossil fuel (via the inclusion of low sulphur gas oil).

Option B: Expand certification and obligation to cover fuel supplied for NRMM — adjust RTFO obligation levels to ensure the same absolute volume of biofuel is supplied

Under this option biofuel supplied in low sulphur gas oil for use in NRMM would be eligible to be counted towards an adjusted percentage target. The RTFO obligation levels would be adjusted downwards so that the absolute volume of biofuel supplied is the

² <http://www.dft.gov.uk/topics/sustainable/biofuels/research/>

same as that which would have been supplied had the obligation not been expanded to include low sulphur gas oil used in NRMM.

Option C: Expand only certification to cover NRMM fuel — keep RTFO targets the same and keep obligation on road fuel only

Under this option biofuel supplied in low sulphur gas oil for use in NRMM would be eligible to be counted towards an unchanged RTFO target. In practice, this option would not increase a supplier's obligation to supply biofuel but would reward any biofuel blended with low sulphur gas oil. Consequently, while the volume of biofuel required by the RTFO would remain unchanged, suppliers might choose to supply biofuel blended with low sulphur gas oil which may lead to an overall increase in the absolute volume of biofuel supplied.

3.1. Consultation questions and responses

3.1.1. Question 12: Do you agree with our proposal to pursue Option B, to expand the scope of the RTFO to include fuels intended for use in NRMM but to revise the obligation levels?

Summary of responses

Yes:	13
No:	30

Main messages from respondents

Sixteen respondents preferred Option A, ten preferred Option C and eight prefer our proposed Option B (note that while some respondents said that they agreed with our proposed approach, they nevertheless stated a preference for a different option).

Ten respondents raised concerns over the possible lack of availability of biofuel free gas oil should we proceed with Option B.

Those who preferred Option A were almost all biofuel producers or associated companies. They stated that the Renewable Energy Directive (RED) sustainability criteria are sufficiently stringent to ensure that only sustainable biofuel is supplied and therefore the percentage obligation levels should not be lowered. The

respondents warned that lowering the percentage obligation levels would harm investment in the UK biofuel industry, especially in advanced biofuels, and would reduce the likelihood of the UK attaining the 10% target in 2020.

Those respondents that preferred Option C were mostly obligated suppliers or retailers. They warned that under Options A and B the burden of the obligation would be spread unevenly across the industry and would not have a uniform effect because different fuel suppliers have different supply portfolios (i.e. some suppliers will see the overall volume of biofuel they are required to supply increase, while others will see that volume decrease). Others commented that the proposal goes beyond the requirements of the RED. Some remarked that, as there are currently no proposed interim greenhouse gas (GHG) reduction targets under the Fuel Quality Directive³ (FQD), it would not matter if there were fewer GHG savings and Option C would mitigate the risk of biofuel free gas oil not being available. A comment was also made that Option C would allow the gas oil market to prepare for the introduction of biofuel and that the costs associated with this option are estimated to be lower.

Those respondents that preferred Option B comprised obligated suppliers, biofuel suppliers, environmental groups and members of the public. Their comments welcomed the implementation of the FQD through the RTFO and agreed that a cautious approach to implementing the RED was required. Respondents also asked for future reviews into the volume levels obligated and expansion of the RTFO into other end-uses.

Several respondents raised concerns regarding assumptions made in the Impact Assessment. In particular, respondents were concerned that the baseline was not representative and that we had incorrectly estimated the total volume of gas oil used in NRMM. Respondents were also concerned that the full effect of double counting of biofuels derived from biofuels derived from wastes/residues and interaction with the proposed expansion of the RTFO scope was not taken into account.

³ Directive 98/70/EC as amended by 2009/30/EC

Individual responses/detailed points

An aviation company requested that aviation fuel is also obligated under the RTFO.

An environmental group stated that the RTFO should only apply to aviation and shipping where there is no alternative to liquid fuel.

3.1.2. Question 13: Do you agree with the assumptions made in our Impact Assessment that accompanies the proposal to expand the scope of the RTFO? If not, are you able to provide additional evidence?

Summary of responses

Yes: 7
No: 13

Main messages from respondents

The six respondents that agreed with the assumptions made in our Impact Assessment comprised one obligated supplier, one biofuel producer representative body, one biofuel producer, an energy provider and two respondents from the marine/inland waterway sector. One of these respondents commented that although they agreed with the assumptions, they felt that the results of the Impact Assessment suggested that Option C should be adopted. Another respondent suggested that the actual costs to the marine and inland waterway sectors could be higher than estimated in the Impact Assessment.

Those that did not agree comprised obligated suppliers, biofuel producers, fuel retailers and representative organisations from these sectors. These respondents provided a variety of comments which are summarised below:

- Queries were raised regarding price projections for biofuel and fossil fuel;
- Several respondents did not agree with our assumption that cost savings would be passed through to the consumer; however, one obligated supplier did support this assumption;

- Concerns were raised that the proposal would result in no biofuel free gas oil being available and that the impact of this action was not fully accounted for in the Impact Assessment;
- More information was requested on the assumptions and estimates made for the supply of gas oil for use in NRMM;
- Several respondents commented that our estimates of likely GHG savings were too conservative;
- Respondents were concerned with some assumptions made in developing the baseline;
- Concern was raised regarding the interaction of the double counting of biofuels derived from wastes/residues and the expansion of the scope of the RTFO;
- Some respondents commented that owing to incompatibility of NRMM equipment with biofuel, assumptions regarding use of biofuel in NRMM equipment were overly optimistic;
- Several respondents felt that the price of gas oil would increase when biofuel was blended into the fuel and that this increase was not adequately captured in the Impact Assessment; and
- One respondent felt that the impact on the rail industry had not been adequately accounted for and suggested that the predicted increase in cost of gas oil would lead to costs of around £8 million per year in the rail sector.

3.1.3. Question 14: What impacts (both desirable and perverse) does our proposal present?

Summary of responses

Number of comments: 25

Main messages from respondents

Twelve respondents (mostly biofuel producers) warned that our proposal to keep the absolute volume of biofuels the same would reduce investor certainty in the UK biofuels industry. Many added that this would particularly hit the advanced biofuels industry.

Seven respondents from across the supply chain and a respondent with an interest in the marine/inland waterway sector mentioned the higher risk of biofuel free fuel not being supplied and emphasised that this would be problematic for the marine/inland waterway sector and also for operators of emergency generators. Concerns were raised regarding the additional housekeeping required for storage of fuel containing biofuel and the need for additional time to prepare for this change.

Two respondents reiterated their concerns about the non uniform impact that expansion of the RTFO scope to include fuel used in NRMM would have.

Six respondents requested that the RTFO be extended to include other end-uses including aviation, shipping and renewable electricity (including for traction purposes) in order to encourage investment in these areas.

Four respondents comprising biofuel producers and an obligated supplier felt that pursuing Option B could put the UK at risk of not meeting the RED 2020 target.

3.2. Government response

In our consultation on proposals to implement the FQD, we proposed to implement the FQD in part through amendment of the RTFO⁴. In short, this means that we need to expand the scope of the RTFO so that it aligns with that of the FQD.

We have considered the comments and further evidence provided by respondents to the consultation. We are aware of the concerns relating not only to the sustainability of biofuels but particularly to the risks (engine compatibility, storage) concerning the use of biofuel in NRMM and the necessity to have sufficient time for oil suppliers and NRMM users to address these issues and prepare for the introduction of biofuel into fuels used in NRMM.

Option A (expand certification and obligation to cover fuel supplied for NRMM while keeping the RTFO obligation levels the same) would lead to an increase in the amount of biofuel required to be supplied. As such, pursuing this option carries the risk of stimulating an increase in the supply of biodiesel (which would be blended into NRMM fuel). Some biodiesel feedstocks are more susceptible to the effects of indirect land use change, which can lead to increased GHG emissions. The Government has already made clear that it will adopt a cautious approach in increasing the level of biofuel supplied in the UK beyond current trajectories while concerns remain regarding the sustainability of certain feedstocks.

Option C (expand only certification to cover NRMM fuel while keeping RTFO targets the same and keep obligation on road fuel only) was presented at consultation to stimulate discussion. However, the Department does not consider that this option would adequately implement the FQD. Article 7a explicitly requires that suppliers of fuels for use in NRMM reduce the GHG intensity of the fuels they supply. Option C does not formally require any biofuel to be supplied in NRMM fuels.

We will continue with our preferred approach for expanding the RTFO, Option B. The scope of the RTFO will be expanded such that the obligation falls on suppliers of renewable transport fuel, petrol, diesel and gas oil for use in road vehicles and NRMM. The

⁴ <http://www.dft.gov.uk/consultations/dft-2011-04>

obligation level will be adjusted so that the required volume of biofuel to be supplied under the expanded RTFO is the same as that which would have been supplied had the RTFO not been expanded.

Suppliers will be required to supply an amount of sustainable biofuel for each litre of fuel (petrol, diesel, and gas oil) supplied for use in road vehicles and NRMM. Suppliers will continue to have discretion regarding how they supply the required biofuel, i.e. suppliers may choose to blend the required amount of biofuel in petrol and diesel fuel streams and not blend any biofuel into NRMM fuel streams. This approach mirrors that of the current RTFO, where suppliers have discretion regarding how their total obligation to supply biofuel is split between the obligated fuels they supply for use in road vehicles.

We are mindful of the time needed for industry to prepare for this change. As such, we will not expand the scope of the RTFO to include fuels used in NRMM until 15 April 2013.

The obligation target for biofuel (by volume) in fuel supplied will change from 5% to around 4.7%, for 2013/2014 and subsequent years. As the inclusion of NRMM will increase the volume of biofuel supplied under the RTFO (for a given target level). The RTFO target level will be adjusted with the aim of keeping the absolute volume of biofuel supplied at the level currently provided for under the RTFO. We have estimated the supply of fuel for use in NRMM at 3,079 million litres in 2013/2014, for the purposes of calculating the approximate reduced obligation level. More detail on the data (and assumptions used to estimate the volume of supply in 2013/2014) is provided in the impact assessment accompanying this government response.

4. List of organisations that responded

ActionAid

Agri Energy

Agricultural Industries Confederation Ltd

Air Products

Anaerobic Digestion and Biogas Association

Argent Energy

Association of Train Operating Companies

B9 Shipping

Biofuelwatch

BioMCN B.V.

BP Oil UK Limited

Brazilian Sugar Cane Industry Association

British Airways plc

British Association for Chemical Specialities and UK Cleaning Products Industry Association

British Sugar

Butamax Advanced Biofuels LLC

Cargill

Chartered Institution of Water and Environmental Management

Conidia Bioscience Ltd

ConocoPhillips Limited

Downstream Fuel Association

E3 Foundation
EcoNexus
EDF Energy
Ensus
Esso Petroleum
European Biodiesel Board
European Fuel Ethers Association
Federation of Petroleum Suppliers
Friends of the Earth
Friends of the Earth Scotland
Gasrec Ltd
Grain and Feed Trade Association
Greenergy Fuels Ltd
Greenpeace
Ineos Refining
Ineos Bio Ltd
JouleVert Ltd
Low Carbon Vehicle Partnership
Mabanaft UK Ltd
McDonald's Restaurants Ltd
National Association of Boat Owners
National Farmers Union
Neste Oil Corporation
Non-Fossil Purchasing Agency Group

North East Process Industry Cluster
Northeast Biofuels
Novozymes – European Union Office
Nuffield Council on Bioethics
Oil Firing Technical Association
Passenger Boat Association
Proforest
Renewable Energy Association
Royal Society for the Protection of Birds
Royal Yachting Association
SABIC Europe
Scottish Environment Protection Agency
Scottish Natural Heritage
Shell UK
Society of Motor Manufacturers and Traders
The National Non-Food Crops Centre
Total UK Limited
UK & Ireland Boeing United Kingdom Limited
UK Petroleum Industry Association
UK Renderers' Association also representing the Foodchain & Biomass
Renewables Association
UK Sustainable Biodiesel Alliance
Unilever UK
United Kingdom Major Ports Group and British Ports Association

Veg Oil Motoring

Vireol Bio-Industries PLC

Virgin Atlantic Airways Ltd

Vivergo Fuels Ltd

Wm Morrison Supermarkets PLC

Wyton Energy Consulting