

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4391 of 24 August, 2017

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LEGAL NOTICE NO. 172 OF 2017.

## ENVIRONMENT ACT 2005

### ENVIRONMENT (RENEWABLE ENERGY SOURCES) (AMENDMENT) REGULATIONS 2017

In exercise of the powers conferred on it by section 18 of the Environment Act 2005 and for the purpose of transposing into the law of Gibraltar Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources, the Government has made the following Regulations-

#### **Title.**

1. These Regulations may be cited as the Environment (Renewable Energy Sources) (Amendment) Regulations 2017.

#### **Commencement.**

2. These Regulations come into operation on 10 September 2017.

#### **Amendment to the Regulations.**

- 3.(1) The Environment (Renewable Energy Sources) Regulations 2011 are amended in accordance with this regulation.

(2) In regulation 2(1)-

- (a) after the definition of “aerothermal energy” insert-

““agricultural, aquaculture, fisheries and forestry residues” means residues that are directly generated by agriculture, aquaculture, fisheries and forestry; they do not include residues from related industries or processing;”;

(b) after the definition of “Directive” insert-

““Directive 2008/98/EC” means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, as amended from time to time;”;

(c) after the definition of “hydrothermal energy” insert-

““ligno-cellulosic material” means material composed of lignin, cellulose and hemicellulose such as biomass sourced from forests, woody energy crops and forest-based industries' residues and wastes;

“low indirect land-use change-risk biofuels and bioliquids” means biofuels and bioliquids, the feedstocks of which were produced within schemes which reduce the displacement of production for purposes other than for making biofuels and bioliquids and which were produced in accordance with the sustainability criteria for biofuels and bioliquids set out in Article 17 of the Directive;”;

(d) after the definition of “Member State” insert-

““non-food cellulosic material” means feedstocks mainly composed of cellulose and hemicellulose, and having a lower lignin content than ligno-cellulosic material; it includes food and feed crop residues (such as straw, stover, husks and shells), grassy energy crops with a low starch content (such as ryegrass, switchgrass, miscanthus, giant cane and cover crops before and after main crops), industrial residues (including from food and feed crops after vegetal oils, sugars, starches and protein have been extracted), and material from biowaste;”;

(e) after the definition of “Plan” insert-

““processing residue” means a substance that is not the end product(s) that a production process directly seeks to produce; it is not a primary aim of the production

process and the process has not been deliberately modified to produce it;”;

(f) after the definition of “renewable energy obligation” insert-

““renewable liquid and gaseous transport fuels of non-biological origin” means liquid or gaseous fuels other than biofuels whose energy content comes from renewable energy sources other than biomass, and which are used in transport;

“starch-rich crops” means crops comprising mainly cereals (regardless of whether only the grains are used, or the whole plant, such as in the case of green maize, is used), tubers and root crops (such as potatoes, Jerusalem artichokes, sweet potatoes, cassava and yams), and corm crops (such as taro and cocoyam);”;

(g) in the definition of “typical value” for “.” substitute “; and”;

(h) after the definition of “typical value” insert-

““waste” shall be defined as in article 3(1) of Directive 2008/98/EC; as substances that have been intentionally modified or contaminated to meet that definition are not covered by this definition.”.

(3) Regulation 3 is amended as follows-

(a) in subregulation (6)(a) after “electricity” insert “, including electricity used for the production of renewable liquid and gaseous transport fuels of non-biological origin,”;

(b) in subregulation (6)(c)-

(i) after “electric vehicles” insert “and for the production of renewable liquid and gaseous transport fuels of non-biological origin”;

(ii) for “2.5” substitute “5”;

- (iii) for “.” substitute a “;”;
- (c) after subregulation (6)(c) insert-
  - “(d) for the calculation of biofuels in the numerator, the share of energy from biofuels produced from cereal and other starch-rich crops, sugars and oil crops and from crops grown as main crops primarily for energy purposes on agricultural land shall be no more than 7% of the final consumption of energy in transport in 2020;
  - (e) biofuels produced from feedstocks listed in Schedule 6 shall be considered to be twice their energy content for the purpose of complying with the target set out in subregulation (1).
  - (f) the Government may decide that the share of energy from biofuels produced from crops grown as main crops primarily for energy purposes on agricultural land, other than cereal and other starch-rich crops, sugars and oil crops, does not count towards the limit set out in the first subparagraph of this point, provided that-
    - (i) verification of compliance with the sustainability criteria set out in Article 17(2) to (5) of the Directive was carried out in accordance with Article 18; and
    - (ii) those crops were grown on land that falls under point 8 of part C of Annex V to the Directive and the corresponding bonus ‘e<sub>B</sub>’ set out in point 7 of part C of Annex V was included in the calculation of greenhouse gas emissions, for the purposes of showing compliance with Article 17(2);
  - (g) the Government shall seek to achieve the objective of there being a minimum level of consumption in Gibraltar of biofuels produced from feedstocks and of other fuels, listed in part A of Schedule 6;

- (h) for the purposes of paragraph (g) there shall be a target, which it shall endeavour to achieve;
  - (i) the target referred to in paragraph (h) is 0.5 percentage points in energy content of the share of energy from renewable sources in all forms of transport in 2020 referred to in subregulation (1), to be met with biofuels produced from feedstocks and with other fuels, listed in part A of Schedule 6, and in addition, biofuels made from feedstocks not listed in Schedule 6 that were determined to be wastes, residues, non-food cellulosic material or ligno-cellulosic material by competent authorities and are used in existing installations prior to the adoption of Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources, may be counted towards the target.”.
- (d) for subregulation (7) substitute-
- “(7) The Government may set a target lower than the reference value of 0.5 percentage points in subregulation (6)(i), based on one or more of the following grounds-
- (a) objective factors such as the limited potential for the sustainable production of biofuels produced from feedstocks and of other fuels, listed in part A of Schedule 6, or the limited availability of such biofuels at cost-efficient prices on the market;
  - (b) the specific technical or climatic characteristics of the national market for transport fuels, such as the composition and condition of the road vehicle fleet; or
  - (c) national policies allocating commensurate financial resources to incentivising energy

efficiency and the use of electricity from renewable energy sources in transport.

- (8) The Government must provide available information on the quantities of biofuels consumed from feedstocks and other fuels, listed in part A of Schedule 6 and do so again where the target is varied in accordance with subregulation (7).
- (9) When setting policies for the promotion of the production of fuels from feedstocks listed in Schedule 6, the Government shall have due regard to the waste hierarchy as established in Article 4 of Directive 2008/98/EC, including its provisions regarding life-cycle thinking on the overall impacts of the generation and management of different waste streams.
- (10) To prevent materials from being intentionally modified or discarded in order to fall under Schedule 6, the Government shall encourage the development and use of systems which track and trace feedstocks and the resulting biofuels over the whole value chain.
- (11) The Government shall by 31 December 2017, and every two years thereafter, report on the measures it has taken if it has not provided equivalent information on reliability and protection against fraud in its reports on progress in the promotion and use of energy from renewable sources drawn up in accordance with regulation 22(2)(d).”.

(4) In regulation 6(2)-

- (a) after both instances of “3(1)” insert “and 3(6)”;
- (b) for “,” substitute “.”;
- (c) delete the tailpiece.

(5) In regulation 22(2)-

- (a) for paragraph (i) substitute-

“the development and share of biofuels made from feedstocks listed in Schedule 6 including a resource assessment focusing on the sustainability aspects relating to the effect of the replacement of food and feed products for biofuel production, taking due account of the principles of the waste hierarchy established in Directive 2008/98/EC and the biomass cascading principle, taking into consideration the regional and local economic and technological circumstances, the maintenance of the necessary carbon stock in the soil and the quality of the soil and the ecosystems;”;

- (b) in paragraph (m) delete “and”;
- (c) in paragraph (n) for “.” substitute “; and”;
- (d) after paragraph (n) insert-

“(o) the amounts of biofuels and bioliquids in energy units corresponding to each category of feedstock group listed in part A of Schedule 5 taken into account by that Member State for the purpose of complying with the targets set out in regulation 3(1) and (2), and in subregulation 3(5).”.

(6) Regulations 23 and 24 are deleted.

(7) After Schedule 4 insert-

#### **“SCHEDULE 5**

#### **AMOUNTS OF BIOFUELS AND BIOLIQUIDS IN ENERGY UNITS CORRESPONDING TO EACH CATEGORY OF FEEDSTOCK GROUP**

*Regulation 22(2)(o)*

#### **Part A**

*Provisional estimated indirect land-use change emissions from biofuel and  
bioliquid feedstocks (gCO<sub>2eq</sub>/MJ) (†)*

Feedstock group	Mean (*)	Interpercentile range derived from the sensitivity analysis (**)
Cereals and other starch-rich crops	12	8 to 16
Sugars	13	4 to 17
Oil crops	55	33 to 66

(\*) The mean values included here represent a weighted average of the individually modelled feedstock values.

(\*\*) The range included here reflects 90% of the results using the fifth and ninety-fifth percentile values resulting from the analysis. The fifth percentile suggests a value below which 5% of the observations were found (i.e. 5% of total data used showed results below 8, 4, and 33 gCO<sub>2eq</sub>/MJ). The ninety-fifth percentile suggests a value below which 95% of the observations were found (i.e. 5% of total data used showed results above 16, 17, and 66 gCO<sub>2eq</sub>/MJ).

## Part B

### *Biofuels and bioliquids for which the estimated indirect land-use change emissions are considered to be zero*

Biofuels and bioliquids produced from the following feedstock categories will be considered to have estimated indirect land-use change emissions of zero:

- (1) feedstocks which are not listed under part A of this Schedule;
- (2) feedstocks, the production of which has led to direct land-use change, i.e. a change from one of the following IPCC land cover categories: forest land, grassland, wetlands, settlements, or other land, to cropland or perennial cropland (<sup>††</sup>). In such a case a direct land-use change emission value (e<sub>i</sub>) should have been calculated in accordance with point 7 of part C of Annex V of the Directive.

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(<sup>†</sup>) The mean values reported here represent a weighted average of the individually modelled feedstock values. The magnitude of the values in the



Schedule is sensitive to the range of assumptions (such as treatment of co-products, yield developments, carbon stocks and displacement of other commodities) used in the economic models developed for their estimation. Although it is therefore not possible to fully characterise the uncertainty range associated with such estimates, a sensitivity analysis conducted on the results based on a random variation of key parameters, a so-called Monte Carlo analysis, was conducted.

<sup>(++)</sup> Perennial crops are defined as multi-annual crops, the stem of which is usually not annually harvested such as short rotation coppice and oil palm.

## SCHEDULE 6

### FEEDSTOCKS AND FUELS

*Regulation 3(6)(d) and 22(2)(i)*

#### Part A

Feedstocks and Fuels, the contribution of which towards the target referred to in the first subparagraph of article 3(4) of the Directive shall be considered to be twice their energy content:

- (a) algae if cultivated on land in ponds or photobioreactors;
- (b) biomass fraction of mixed municipal waste, but not separated household waste subject to recycling targets under point (a) of Article 11(2) of Directive 2008/98/EC;
- (c) bio-waste as defined in Article 3(4) of Directive 2008/98/EC from private households subject to separate collection as defined in Article 3(11) of that Directive;
- (d) biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, and excluding feedstocks listed in part B of this Schedule;
- (e) straw;
- (f) animal manure and sewage sludge;
- (g) palm oil mill effluent and empty palm fruit bunches;
- (h) tall oil pitch;
- (i) crude glycerine;
- (j) bagasse;
- (k) grape marcs and wine lees;
- (l) nut shells;
- (m) husks;
- (n) cobs cleaned of kernels of corn;
- (o) biomass fraction of wastes and residues from forestry and forest-based industries, i.e. bark, branches, pre-commercial thinnings, leaves, needles, tree tops, saw dust, cutter shavings, black liquor, brown liquor, fibre sludge, lignin and tall oil;
- (p) other non-food cellulosic material;
- (q) other ligno-cellulosic material, except saw logs and veneer logs;

- (r) renewable liquid and gaseous transport fuels of non-biological origin;
- (s) carbon capture and utilisation for transport purposes, if it is energy from renewable sources;
- (t) bacteria, if it is energy from renewable sources.

**PART B**

Feedstocks, the contribution of which towards the target referred to in regulation 3(1) shall be considered to be twice their energy content:

- (a) used cooking oil;
- (b) animal fats classified as categories 1 and 2 in accordance with Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation).”.

Dated 24th August, 2017.

DR. J. CORTES,  
Minister with responsibility for the Environment for the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations transpose into law Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources.