



STATUTORY INSTRUMENTS.

S.I. No. 169 of 2018

EUROPEAN UNION (RENEWABLE ENERGY AND BIOFUEL
SUSTAINABILITY CRITERIA) (AMENDMENT) REGULATIONS 2018

EUROPEAN UNION (RENEWABLE ENERGY AND BIOFUEL SUSTAINABILITY CRITERIA) (AMENDMENT) REGULATIONS 2018

I, DENIS NAUGHTEN, Minister for Communications, Climate Action and Environment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009¹ as amended by Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015², hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Renewable Energy and Biofuel Sustainability Criteria) (Amendment) Regulations 2018.

Interpretation

2. In these Regulations—

“Regulations of 2012” means the European Union (Biofuel Sustainability Criteria) Regulations 2012 (S.I. No. 33 of 2012);

“Regulations of 2014” means the European Union (Renewable Energy) Regulations 2014 (S.I. No. 483 of 2014).

Amendment of Regulation 2 of Regulations of 2014

3. Regulation 2(1) of the Regulations of 2014 is amended—

(a) by the insertion of the following definitions:

“ ‘aerothermal energy’ means energy stored in the form of heat in the ambient air;

‘agricultural, aquaculture, fisheries and forestry residues’ means residues that are directly generated by agriculture, aquaculture, fisheries and forestry excluding residues from related industries or processing;

‘bioliquids’ means liquid fuel for energy purposes other than for transport, including electricity and heating and cooling, produced from biomass;

‘energy from renewable sources’ means energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal,

¹OJ No. L 140, 5.6.2009, p. 16

²OJ No. L 239, 15.9.2015, p. 1

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 25th May, 2018.

hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

‘geothermal energy’ means energy stored in the form of heat beneath the surface of solid earth;

‘hydrothermal energy’ means energy stored in the form of heat in surface water;

‘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 Schedule 3;

‘non-food cellulosic material’ means feedstocks mainly composed of cellulose and hemicellulose, and having a lower lignin content than ligno-cellulosic material and 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;

‘processing residue’ means a substance that is not the end product or products that a production process directly seeks to produce and is not a primary aim of the production process and the process has not been deliberately modified to produce it;

‘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);

‘waste’ means any substance or object which the holder discards or intends or is required to discard within the meaning of section 4(1) of the Waste Management Act 1996 (No. 10 of 1996) excluding any substances that have been intentionally modified or contaminated to meet that definition;”

and

(b) by the substitution for the definition of “Directive” of the following:

“ ‘Directive’ means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009¹ as amended by Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015².”

Amendment of Regulation 18 of Regulations of 2014

4. Regulation 18 of the Regulations of 2014 is amended by the insertion after paragraph (2) of the following paragraph:

“(3) The competent authority for a support scheme or a renewable energy obligation in relation to bioliquids shall, in order to minimise the risk of single consignments of bioliquids being claimed more than once in the European Union including in the State, endeavour to strengthen cooperation with other Member States, the Commission and with voluntary schemes established under Article 18 of the Directive, including, where appropriate, exchanging data.”

Amendment of Regulation 21 of Regulations of 2014

5. Regulation 21 of the Regulations of 2014 is amended—

(a) in paragraph (1)(b) by the substitution of “the examination procedure” for “the advisory procedure”, and

(b) in paragraph (1)(c) by the substitution of “the examination procedure” for “the advisory procedure”.

Amendment of Schedule 1 of Regulations of 2014

6. Schedule 1 of the Regulations of 2014 is amended—

(a) in Part (A) by the insertion after the final subparagraph in paragraph 1 of the following:

“For the purpose of compliance with the national target in respect of the State referred to in Article 3(1) of, and Part A of Annex I to, the Directive, the maximum joint contribution from biofuels and bioliquids 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 not be more than the energy quantity corresponding to the maximum contribution as set out in paragraphs (d) and (e) of Part (B) of this Schedule.”

(b) in Part (B) by the substitution for paragraphs (a) to (d) of the following paragraphs:

“(a) For the calculation of the denominator, that is the total amount of energy consumed in transport, only petrol, diesel, biofuels consumed in road and rail transport, and electricity,

including electricity used for the production of renewable liquid and gaseous transport fuels of non-biological origin, shall be taken into account;

- (b) without prejudice to paragraphs (d) and (e) and to the measurement of compliance of energy from renewable sources with the requirements of the Directive and these Regulations, for the calculation of the numerator, that is the amount of energy from renewable sources consumed in transport, all types of energy from renewable sources consumed in all forms of transport shall be taken into account;
- (c) (i) for the calculation of the contribution from electricity produced from renewable sources and consumed in all types of electric vehicles and for the production of renewable liquid and gaseous transport fuels of non-biological origin for the purposes of paragraphs (a) and (b), the SEAI shall use the share of electricity from renewable energy sources in the State as measured two years before the year in question;
- (ii) for the calculation of the electricity from renewable energy sources consumed by electrified rail transport, that consumption shall be considered to be 2.5 times the energy content of the input of electricity from renewable energy sources;
- (iii) for the calculation of the electricity from renewable energy sources consumed by electric road vehicles for the purposes of the calculation referred to in paragraph (b), that consumption shall be considered to be 5 times the energy content of the input of electricity from renewable energy sources;
- (d) (i) 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 not be more than 7% of the final consumption of energy in transport in the State in 2020;
- (ii) biofuels produced from feedstocks listed in Schedule 5 shall not count towards the limit set out in subparagraph (i);”

and

- (c) by the insertion after paragraph (d) of the following paragraphs:

- “(e) 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, shall not count towards the limit set out in paragraph (d)(i), provided that:
- (i) verification of compliance with the sustainability criteria for biofuels and bioliquids set out in Schedule 3 was carried out in accordance with Regulations 5 and 6 of the Regulations of 2012, and
 - (ii) these crops were grown on land that falls under paragraph 8 of Part C of Schedule 4 and the corresponding bonus ‘eB’ set out in paragraph 7 of Part C of Schedule 4 was included in the calculation of greenhouse gas emissions, for the purposes of showing compliance with paragraph 1 of Schedule 3;
- (f) (i) the Minister shall seek to achieve a national target for a level of consumption in the State of biofuels produced from feedstocks and other fuels listed in Part A of Schedule 5 of 0.25% in energy content of the share of energy from renewable sources in all forms of transport in the State in 2020;
- (ii) biofuels made from feedstocks not listed in Schedule 5 that were determined to be wastes, residues, non-food cellulosic material or ligno-cellulosic material by the Agency and used in existing installations prior to 9 September 2015 shall be counted towards the national target of 0.25% referred to in subparagraph (i);
- (g) the Minister shall cause to be made publicly available information on the quantities of biofuels consumed which are produced from feedstocks and other fuels listed in Part A of Schedule 5;
- (h) In the setting of policies for the promotion of the production of fuels from feedstocks listed in Schedule 5, due regard shall be had to the waste hierarchy referred to in section 21A(1) of the Waste Management Act 1996 and to subsection (2)(b) of that section regarding life-cycle thinking on the overall impacts of the generation and management of different waste streams;
- (i) the SEAI, when calculating the share of energy from renewable sources in all forms of transport in the State, shall ensure the contribution made by biofuels produced from feedstocks listed in Schedule 5 shall be considered to be twice their energy content.”.

Amendment of Schedule 3 of Regulations of 2014

7. Schedule 3 of the Regulations of 2014 is amended—

- (a) in paragraph 3 by the insertion of “method” after “combined”,

(b) by the deletion of paragraph 4, and

(c) by the substitution for paragraph 5 of the following:

“5. The default percentage may only be used for the purposes of paragraph 1 if, in relation to the bioliquids or biofuel, the result of the calculation in paragraph 7 of Part C of Schedule 4 is equal to, or less than, zero.”.

Amendment of Schedule 4 of Regulations of 2014

8. Schedule 4 of the Regulations of 2014 is amended in Part C by the substitution for paragraph 7 of the following:

“7. Annualised emissions from carbon stock changes caused by land-use change, e_l , shall be calculated by dividing total emissions equally over 20 years. For the calculation of those emissions, the following rule shall be applied:

$$e_l = (CS_R - CS_A) \times 3.664 \times 1/20 \times 1/P - e_B, *$$

where

e_l = annualised greenhouse gas emissions from carbon stock change due to land-use change (measured as mass (grams) of CO₂-equivalent per unit biofuel energy (megajoules)). ‘Cropland’** and ‘perennial cropland’*** shall be regarded as one land use;

CS_R = the carbon stock per unit area associated with the reference land-use (measured as mass (tonnes) of carbon per unit area, including both soil and vegetation). The reference land-use shall be the land-use in January 2008 or 20 years before the raw material was obtained, whichever was the later;

CS_A = the carbon stock per unit area associated with the actual land-use (measured as mass (tonnes) of carbon per unit area, including both soil and vegetation). In cases where the carbon stock accumulates over more than one year, the value attributed to CS_A shall be the estimated stock per unit area after 20 years or when the crop reaches maturity, whichever is the earlier;

P = the productivity of the crop (measured as biofuel energy per unit area per year); and

e_B = bonus of 29 gCO₂_{eq}/MJ biofuel if biomass is obtained from restored degraded land under the conditions provided for in paragraph 8.

*The quotient obtained by dividing the molecular weight of CO₂ (44.010 g/mol) by the molecular weight of carbon (12.011 g/mol) is equal to 3.664.

**Cropland as defined by IPCC.

***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.”.

Amendment of Regulations of 2014 by insertion of Schedule 5

9. The Regulations of 2014 are amended by the insertion after Schedule 4 of the following Schedule:

“SCHEDULE 5

Part A

Feedstocks and fuels, the contribution of which towards the target referred to in paragraph (d) of Part (B) of Schedule 1 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, other than separated household waste subject to recycling targets under Regulation 31(2)(a) of the European Communities (Waste Directive) Regulations 2011 (S.I. No. 126 of 2011).
- (c) Bio-waste within the meaning of section 5(1) of the Waste Management Act 1996 from private households subject to separate collection within the meaning of that section.
- (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, excluding feedstocks specified 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 other than 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 the energy source is renewable energy.
- (t) Bacteria, if the energy source is renewable energy.

Part B

Feedstocks, the contribution of which towards the target referred to in paragraph (d) of Part (B) of Schedule 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 2009³.”.

Amendment of Regulations of 2012

10. The Regulations of 2012 are amended—

(a) in Regulation 2(1)—

- (i) by the substitution for the definition of “Directive” of the following:

“ ‘Directive’ means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009¹ as amended by Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015²;”,

- (ii) in the definition of “Directive of 1998” by the insertion after subparagraph (e) of the following subparagraph:

“(f) Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015²;”,

and

- (iii) by the insertion of the following definition:

³OJ No. L. 300, 14.11.2009, p. 1

“ ‘waste’ means any substance or object which the holder discards or intends or is required to discard within the meaning of section 4(1) of the Waste Management Act 1996 (No. 10 of 1996) excluding any substances that have been intentionally modified or contaminated to meet that definition;”,

- (b) in Regulation 4 by the insertion after paragraph (2) of the following paragraphs:

“(3) The Agency shall, in order to minimise the risk of single consignments of biofuel being claimed more than once in the European Union including in the State, endeavour to strengthen cooperation with other Member States, the Commission and with voluntary schemes established under Article 18 of the Directive, including, where appropriate, exchanging data.

(4) The Agency shall encourage the development and use of systems which track and trace feedstocks and the resulting biofuels over the entire value-chain to prevent materials from being intentionally modified or discarded in order to come within Schedule 5 of the Regulations of 2014.”,

- (c) in Regulation 5(1) by the substitution of “Schedule 3 of the Regulations of 2014” for “Articles 17 and 18 of the Directive”, and

- (d) by the insertion after Regulation 7 of the following Regulations:

“7A. A person is guilty of an offence under Regulation 5 or 6, if the person—

(a) for the purposes of Regulation 5 or 6, makes a statement or furnishes information which is false or misleading, knowing it to be false or misleading in a material respect or being reckless as to whether it is so false or misleading, or

(b) fails to disclose a material particular.”

7B. Summary proceedings for an offence under Regulation 5 or 6 may be brought and prosecuted by the Agency.

7C. A person who is guilty of an offence under Regulation 5 or 6 is liable on summary conviction to a class A fine or imprisonment for a term of 6 months or both.

7D. (1) Where an offence under these Regulations is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body

corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

7E. (1) Subject to paragraphs (2) and (3), a document that is required to be given to a person by these Regulations shall be addressed to the person concerned by name, and may be so given to the person in one or more of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address;
- (d) where there is a facility for receiving the text of the notice by electronic means at the address at which the person carries on business or ordinarily resides, by transmitting the text of the notice by such means to such address, provided that the notice is also delivered in any of the other ways referred to in this paragraph;
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises.

(2) Where a document under these Regulations is to be given to a person who is the owner or occupier of land or property and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words “the owner” or, as the case may require, “the occupier”.

(3) For the purposes of this Regulation, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) Where an opinion, finding, statement or decision of the Agency is contained in a document which—

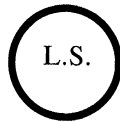
(a) purports to have been made by or at the direction of the Agency, and

(b) is produced in evidence by the Agency in any proceedings,

such document shall be admissible in evidence and shall be evidence of any such opinion, finding, statement or decision in such proceedings without further proof.”.

Revocation

11. Regulation 23 of the Regulations of 2014 is revoked.



GIVEN under my Official Seal,
17 May 2018.

DENIS NAUGHTEN,
Minister for Communications, Climate Action and
Environment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

This S.I. transposes the elements of Directive (EU) 2015/1513 (the Indirect Land-use Change (ILUC) Directive) relating to the Renewable Energy Directive (Directive 2009/28/EC).

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