



Friends of the Earth Scotland Policy Briefing Paper

Response to UK Government Biofuels Consultation

Friends of the Earth Scotland is pleased to have the chance to participate in the UK government's policy on biofuels through this consultation. We align ourselves with comments submitted by our sister organisation, Friends of the Earth England, Wales and Northern Ireland, but submit here our supplementary views, given that policy in this area is reserved to the Westminster Government.

Friends of the Earth Scotland's vision is of 'a world where everyone can enjoy a healthy environment and a fair share of the earth's resources.' We respond to this consultation because EU biofuels policy compromises the health of the environment and the fair distribution of the earth's resources.

Our view is that due to the sheer scale of the 10% renewable energy target in the transport sector by 2020, due to its mandatory nature, and due to the encouragement of the subsidisation of the industry, the current framing of the RED is such that it inevitably leads to increased deforestation, an increase in greenhouse gas emissions as compared with fossil fuels, an increase in global food prices, and an increase in human rights violations associated with the deprivation of people's sovereignty over their own land. This is despite the existence of the sustainability criteria within the RED, which in our view provide insufficient protection.

We acknowledge that there remains debate within the literature as to the *extent* of the contribution of biofuels to global food price increases and on *how to quantify* emissions from ILUC. This debate cannot serve as an excuse to delay reducing our consumption of biofuels. The UK and the EU must apply the precautionary principle, which requires that in the absence of scientific certainty, environmental policy must err on the side of caution. The current proliferation of biofuel consumption puts policy before science, with devastating consequences.

As such, we urge the UK government to call upon Europe to abolish the 10% target for renewable energy within the transport sector. Failing this, we urge it to call for a *de minimis* strengthening of the sustainability criteria.

With regards to the UK's implementation of the RED, we call for the RTFO to be ultimately scrapped. Failing the abolition of the RTFO, we make the following suggestions to the government:

- The UK government could amend the RTFO biofuel supply targets to keep the use of biofuels **stable** or preferably **scale down** the targets for biofuels in transport fuel.
- It could keep some limited targets in place but **remove the availability of RTFCs for biofuel producers.**

Given that the UK government already has reservations about the sustainability of biofuels, it has the opportunity to send a strong message to Europe by slowing its consumption of biofuels before 2014.

We have submitted Consultation responses for questions 1, 2, and 3.

PART 2 - Your Comments

1. Do you agree to the proposed approach to developing the RTFO technical guidance? If not, please can you explain why?	No <input type="checkbox"/>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>We are concerned that if the finer details on the implementation of the RED are contained within a technical guidance document rather than in a piece of legislation, they will not be subject to parliamentary scrutiny and as such, the concerns that individuals have put to MPs concerning biofuels will not have the opportunity to be raised.</p>	

2. Do you agree that we have correctly transposed the RED sustainability criteria in Article 25 of the draft amendment Order?	NO <input type="checkbox"/>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>Friends of the Earth Scotland welcomes the introduction of sustainability criteria into the draft amendment Order as a first step – however it wishes to make the following points on the RED sustainability criteria:</p> <ol style="list-style-type: none">(1) The sustainability criteria are insufficient to prevent environmental degradation and human rights abuses as a result of biofuels in transport fuel in the UK.(2) The UK government has expressed doubts as to the adequacy of the sustainability criteria. It has, in particular, expressed concern about the fact that the sustainability criteria do not take into account ILUC factors. It notes that there is scientific uncertainty surrounding quantifying emissions from ILUC.(3) The increased use of biofuels in the face of scientific uncertainty surrounding ILUC factors and food prices violates the precautionary principle of environmental law.(4) The UK government must implement the precautionary principle by slowing the increased use of biofuels in the UK. The details of how this can be done given that the UK's hands are somewhat tied by the RED are outlined below in Question 3. <p>To expand on these four points:</p> <ol style="list-style-type: none">(1) The sustainability criteria are insufficient to prevent environmental degradation and human rights abuses. <p>- <u>Article 17(2): flawed quantification of emissions reductions from biofuels</u></p> <p>Article 17(2) RED requires that, by 2013, the greenhouse gas emissions savings from biofuels shall be at least 35% more than conventional fossil fuels. However, the methodology used to calculate this does not count emissions caused through ILUC. Therefore, the 35% emissions savings is a flawed target. Research has shown that in some cases, biofuels may have a greater carbon footprint than</p>	

fossil fuels if ILUC factors are accounted for.

It is false accounting to quantify the emissions from biofuels using maths that is based on flawed science. It not only contradicts the key policy reason for using biofuels, but also undermines the legitimacy of both the UK and Scotland's emissions reduction targets.

- **Article 17(7): no protection of human rights/social concerns**

The human rights and social implications of biofuel use have been well-documented and it is not our intention to restate them all here – we are confident that the Government knows that biofuels have been implicated with the forcible dispossession of people from their land in several developing countries, and that biofuels have contributed to hikes in food prices, affecting the human right to food. Since they were labelled a 'crime against humanity' by former UN Special Rapporteur on the Right to Food, Jean Ziegler 4 years ago, increasing evidence has linked biofuels with food price hikes, but the policy has not changed.

Evidence of the links between biofuels and human rights abuses has been known for years – prior to the passing of the RED the European Council acknowledged that action needed to be taken to address concerns.¹ But Article 17(7) simply requires that a report be produced next year and does not provide any safeguards.

Biofuels are often sourced from countries with poor human rights track records and where people have limited opportunities to hold either corporations or their governments to account. The buck must therefore stop with the EU and the UK. We are creating the policy and cannot protect against abuse.

These two examples, though not exhaustive, serve to show that **under the RED's current framing, further human rights abuses and increased greenhouse gas emissions are inevitable.**

(2) The UK government has expressed doubts

Through the Consultation document, the government acknowledges, 'there is still scientific uncertainty about the sustainability of biofuels and their wider socio-economic impacts and we are aware that there are some unsustainable biofuels that deliver no environmental benefit.'² It goes on to acknowledge that the RED's sustainability criteria do not reflect ILUC concerns. It also explicitly recognises that in some cases, biofuels may have a greater carbon footprint than fossil fuels when ILUC concerns are taken into account.

As such, the Government is clearly aware that the sustainability criteria in their current framing are insufficient in terms of ILUC and may not help tackle climate change. It states, 'We are clear that sustainable biofuels do have a role in our efforts to tackle climate change.' However, its current approach endorses all biofuels that meet the 'sustainability criteria' which by its own account cannot be said to guarantee emissions savings as compared with fossil fuels.

We welcome the fact that the UK and the European Commission are working to better understand ILUC and that the UK will work with the Commission as it decides whether and how to quantify emissions from ILUC. However, we stress

¹ Eur. Coun. Report, 'Presidency Conclusions' (17 July 2008), [31]

² Consultation Document, page 9

that **this process in itself is not sufficient action to allow for a business-as-usual approach.**

Although ILUC factors are on the political agenda now due to the Commission's mandate as outlined by Art 19(6) RED, the social concerns surrounding biofuels are equally pressing. The UK government must not simply wait until the European Commission is reports on the human rights/social concerns on biofuels. We are confident that, just as the Commission acknowledged ILUC factors when it was obliged to report on them in December 2010, it will identify human rights and social concerns when it reports in December 2012. The UK must pre-empt the Commission's findings by adopting a precautionary approach towards biofuels now.

(3) Violation of the precautionary principle

Principle 15 of the Rio Declaration states, '[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.' This principle, the 'precautionary principle', has two distinguishing features. First, it recognises the irreversible nature of environmental harm and so favours prevention rather than cure. Second, it recognises that environmental policy tends to be based on scientific evidence, and because science by nature is often uncertain, uncertainty should not be used as an excuse to postpone action to protect the environment.

The precautionary principle can be invoked when there is reason to believe that harm may occur to health or to the environment and when the level of scientific uncertainty is so severe that even the best available scientific advice cannot assess the risk with sufficient confidence to inform decision-making.

In December 2010 we saw the Commission defer action on ILUC until July of this year due to continuing scientific uncertainty. ILUC factors therefore represent a case where the precautionary principle must be invoked.

Action in response to the precautionary principle should be proportionate, consistent, targeted, transparent and accountable. A proper application of the precautionary principle requires decisions to be taken on how to address the threat to the environment, and shifts the burden of proof onto the hazard creator, who should provide enough information to make a decision.³ The proportionality of the response refers to it being cost-effective. For information on the high costs of implementing the RTFO scheme, please refer to Friends of the Earth England, Wales & Northern Ireland's Consultation Response.

The only feasible approach with respect to biofuels would be therefore to scrap the targets.

(4) The UK Government must implement the precautionary principle

The UK government has endorsed the precautionary principle since as far back as 1994 in its Strategy for Sustainable Development. It also stated, 'the principle can be applicable to all forms of environmental damage; nor should it apply only to the actions of government.'

³ This interpretation of the Precautionary Principle in practice is extracted from the UK's Interdepartmental Group on Risk Assessment's guidelines, available at <http://www.hse.gov.uk/aboutus/meetings/committees/ilgra/pppa.htm>

3. Do you have any comments you wish to make regarding how we have transposed the RED sustainability criteria?	YES <input type="checkbox"/>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>Friends of the Earth Scotland welcomes and praises the fact that the RTFO trajectory does not provide for biofuels beyond 5.26% and that the government does not at this stage propose to amend the current RTFO biofuel supply targets.</p> <p>However, this is not sufficient to address the threat, because it still allows for the proliferation of biofuel consumption. We would like to see even stronger action from the UK. We would like to see the RTFO ultimately abolished to ensure that renewable energy targets are truly sustainable.</p> <p>We are also concerned about measures to introduce the double rewarding of biofuels from waste. This is because some biofuels from waste may in fact exacerbate the use of first-generation biofuels by displacing uses of waste biofuels. In 2009, the Renewable Fuel Agency reported on the indirect impacts of biofuels from wastes and residues, due to concerns that that tallow use for biodiesel was causing the soap and chemical industries to import more palm oil. The RFA concluded, "The use of materials which have existing uses (in the absence of biofuels/bioenergy usage) is likely to create negative indirect greenhouse gas effects (i.e. create additional emissions which are not currently accounted for in the carbon reporting methodologies for the RTFO or the RED)".⁴</p> <p>The proposed amendment of the RTFO to double reward biofuels from waste does not distinguish between wastes which would genuinely end up in landfill and those which already have existing uses in chemical industries. Therefore, to double reward for waste biofuels in the current proposal may lead to the increased use of oils in other industries which are not subject to any scrutiny at all.</p> <p>Friends of the Earth Scotland is aware that the UK's hand is somewhat tied by Article 17(8) of the RED which states that Member States shall not refuse to take into account, on other sustainability grounds, biofuels and bioliquids obtained in compliance with the sustainability criteria.</p> <p>Nevertheless, a proper implementation of EU environmental law, which is also based on an implementation of the precautionary principle (Article 191(2) TFEU) requires biofuels not to be taken into account and we would therefore recommend the scrapping of the RTFO.</p> <p>Failing that, there are specific actions that the UK could take without being in violation of the Directive. Suggested measures are as follows:</p> <ul style="list-style-type: none"> - The UK could amend the RTFO biofuel supply targets to further slow or indeed stop the increase of the targets. - It could keep some limited targets in place but remove the RTFC scheme. <p>Some or all of these measures must be implemented if the UK's commitment to</p>	

⁴ Available at www.renewablefuelsagency.gov.uk/reportsandpublications/indirecteffectsofwastes/indirecteffectsofwastes-keyfindings

sustainable energy, human rights protection, and a low carbon future is to be more than rhetoric. Biofuels policy undermines these ends.

In 2014 the European Commission will make an assessment of the feasibility of reaching the target whilst ensuring the sustainability of biofuels production and, if appropriate, propose legislative action. This presents a massive opportunity for the UK – but in order to ensure that the European Commission acts in the interests of sustainable development and environmental protection, the UK must send a stronger message, now.

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