

## Annex A: Response Form for Consultation on the RTFO Guidance

### Information about you

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Company Name or Organisation (if applicable)	Joint Nature Conservation Committee (JNCC)
Please tick one box from the list below that best describes you /your company or organisation.	
<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)
<input type="checkbox"/>	Large Company
<input type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Non-Governmental Organisation
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Member of the public
<input checked="" type="checkbox"/>	Other (please describe):
If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members: Executive Non Departmental Public Body (Arms Length Body)	
If you would like your response or personal details to be treated <b>confidentially</b> please explain why:	

The consultation questions can be found below and are divided into four sections: general questions followed by questions on each of the three parts of the RTFO Guidance (Process Guidance,

C&S Guidance, Guidance for Verifiers). Context for the issues raised in each of the chapters and explanatory notes can be found in the consultation document and respondents are advised to refer to these before answering the questions.

## Your comments

### General Questions

#### Questions 1-3:

We have no comments on these questions.

#### Questions on Part 1: Process Guidance

##### (Questions 4-15)

We have no comments on these questions.

#### Questions on Part 2: Carbon & Sustainability Guidance

16. In Chapter 2: Reporting biofuel carbon and sustainability information is sufficient guidance provided for suppliers on how to report their C&S data when applying for RTFCs?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <ul style="list-style-type: none"> <li>Paragraph 2.4 states: “Obligated suppliers are also required to supply a certain percentage of their road transport fuel as sustainable biofuel and/or to redeem RTFCs sourced from other suppliers of sustainable biofuel. They may also buy-out of their obligation.”</li> </ul> <p>What does “certain percentage” refer to here? In order to receive Renewable Transport Fuel Credits (RTFCs) (for biofuel consignments to count towards the RED GHG emissions reduction target), obligated suppliers are now only able to supply biofuel that meets the sustainability criteria.</p> <p>Is the above statement therefore incorrect (or from a previous guidance document), or does this mean that as long as 10% of transport fuel in 2020 comes from biofuels that meet the sustainability criteria, any amount of biofuel above the 10% threshold (in 2020; and presumably at other thresholds during the interim period) can be unsustainable? If it is the latter, then this is an unsustainable policy for this component of biofuel production. Or perhaps, does this certain percentage refer to the wastes and certain residues which are not required to meet some of the sustainability (data) requirements? Clarity in the guidance on these points would be helpful.</p> <ul style="list-style-type: none"> <li>For clarity it would be helpful if “full life cycle” was added in the</li> </ul>		

consultation document, where appropriate, in relation to text relating to GHG emissions savings requirements, such as in paragraph 2.11 (first bullet).

17. Do you agree with the assessment of which ROS fields are elective and compulsory to demonstrate compliance with the RED, as outlined in Chapter 2? If not, which should change and why?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>No comments.</p>		

18. Do you agree that Chapter 4: Demonstrating compliance with the land criteria identifies the appropriate land use categories for demonstrating compliance with the RED land criteria?	YES <input checked="" type="checkbox"/>	NO <input checked="" type="checkbox"/>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>Mainly “Yes”, but some points for consideration:</p> <ul style="list-style-type: none"> <li>• In relation to Article 17(4)(b) on <b>continuously forested areas</b>, it should be made clear that the final paragraph of Article 17(4) stating “The provisions of this paragraph shall not apply if, at the time the material was obtained, the land had the same status as it had in January 2008” does not mean that a reduction in forest area coverage (down to a minimum of 1ha) or a reduction in canopy cover (down to 30%) is permitted. The guidance must be clear that “the same status” refers to no change ‘on the ground’ and that it does not just mean still meeting the minimum thresholds (i.e. for total coverage, average tree height, canopy cover (as stated above)).</li> <li>• A similar point can be made for <b>wetlands</b> in terms of ensuring no change has occurred in the length of time of its saturation status over the year.</li> <li>• It would be helpful to clarify the definition of <b>undrained peatland</b>. Footnote 21 (paragraph 4.3) defines undrained peatland as “peatland that was not drained (either partially or completely)”. It would help if this definition is also noted in Table 4.1 and also as a footnote for the land class list in paragraph 4.10 for consistency. Also, therefore, is ‘drained</li> </ul>		

peatland' a land class that should be added as a result? There are UK-wide restoration targets for degraded peatlands so this should also be accounted for when considering appropriate definitions of drained/undrained peatland.

- **Paragraph 4.30** may be better worded by adding in the following words in italics: "...unless it can be proven that status of the land was not changed (highly biodiverse grassland, cropland {ADD "*and other land (habitat) classes*"}) protected for nature protection purposes, forestland, peatland, wetland)."
- In relation to **paragraph 4.33** appropriate safeguards need to be in place at the **independent verification** stage to ensure that actual land cover or type is reported rather than the land category designated in a country's land registry. Are there appropriate methodologies and procedures in place to determine and ensure this?
- In **Table 4.1**, where it is necessary to reference "**primary forest**" in the 'compliance with RED biodiversity criteria' column, it should probably state "primary forest and other wooded land" to be consistent with the text in Article 17(3)(a) of the RED.

Other/wider related comments:

- In relation to paragraph 4.11, because the Commission is still to produce **guidance on what constitutes highly biodiverse grassland**, it would be appropriate, consistent with Article 191 of the Lisbon Treaty, to apply the precautionary principle not to grant any biofuel consignments an RTFC which have been sourced from a grassland habitat (any grassland land class) unless it can be shown, using some sort of simple screening approach, that the grassland has/had no biodiversity importance (in or after 2008) or the harvest of the raw material is/was in accordance with the nature protection purposes.

It is therefore crucial that UK government continues to encourage the Commission to establish this guidance through comitology as a matter of urgency due to the implications of this delay in Members States' transposition of the Directive and the negative effect this might have to global grassland ecosystems (including highly biodiverse grasslands) during the early implementation period of the RED.

- Additionally, the need to also define "areas designated for the protection of rare, threatened or endangered ecosystems or species recognised by international agreements..." etc. as per Articles 17(3)(b)(ii) and 18(4) (second sub-paragraph) through comitology is also outstanding and should be addressed as a matter of urgency.

- Moreover, although it is not a legal obligation as per the RED text, guidance from the Commission relating to other land classes would be helpful (forests, wetlands, peatlands).

19. Do you agree that the RTFO Biofuel Sustainability Standard should be retained as an optional tool to demonstrate compliance with the RED land criteria, as outlined in Chapter 4?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
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Please explain your reasons and add any additional comments you wish to make:

- Yes, the RTFO Biofuel Sustainability Standard should be retained as an option to demonstrate compliance.

Other/wider related comments:

- It would be useful if DfT could provide information as to the relative merits (effectiveness) of the different voluntary sustainability schemes (for each of the sustainability criteria) recognised by the Commission or the RTFO Administrator, and the RTFO Biofuel Sustainability Standard, with an aim to encourage maximum “best practise” use by operators of the schemes/standards which deliver the highest sustainability, through periodic independent assessment.

20. Are there any other resources or guidance of relevance to the land criteria that would be helpful for suppliers?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
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Please list these and explain why they are relevant:

No comments.

21. The Defra guidance is still being developed. Is the table found online on types and sources of information that might be used to help demonstrate compliance with the land criteria helpful and in a user-friendly format?	YES <input checked="" type="checkbox"/>	NO <input checked="" type="checkbox"/>
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Please explain your reasons and add any additional comments you wish to make:

- The Defra guidance is a very useful start and sets out well the different tests of assurance required by each of the sustainability criteria.
- Following transposition, once we understand the types of evidence being used by operators and verifiers to demonstrate compliance against the different sustainability criteria, it will be important to ensure (e.g. through monitoring) that suitable evidence types and sources are being used by different operators/verifiers and in appropriate and consistent ways.
- It would also be helpful if there was a complimentary flow diagram that diagrammatically presented the decision making process required in order to demonstrate and verify compliance with the sustainability criteria and to highlight the types of necessary information that might show land status, compliance under special circumstances (as per the RED) and the sources of that information available for the UK. The existing table with the detail and an additional flow diagram outlining the process would complement each other and provide further clarity. JNCC would be happy to assist Defra in this regard.
- Presumably, logic dictates that producers and operators in the market of producing biofuels for transport will carry out an ex-ante assessment to ensure that the biodiversity and carbon sustainability criteria will be met before growing/processing the biofuel feedstocks, in order to be more confident in their ability to be able to receive Renewable Transport Fuel Credits and contribute to the RED's GHG emissions saving targets.
- As requests for information materialise, this will identify gaps in knowledge in terms of the effectiveness of the types of current evidence sources for operators/verifiers to show compliance against each of the criteria. Where insufficient evidence currently exists under particular circumstances, procedures such as the RTFO Biodiversity Audit or use of assessments by third-party certified experts should then be used.
- It would be helpful to specify the significance of "15 years" where it states in the table under evidence types "Farm or other records showing land that has been cultivated within the last 15 years".
- The guidance table identifies the UK's statutory nature conservation bodies (including the Countryside Council for Wales, Natural England, the Council for Nature Conservation and the Countryside (through the Northern Ireland Environment Agency), Scottish Natural Heritage and the Joint Nature Conservation Committee) as being possible sources of evidence. At present it is unclear what will be required in this respect. It

is also unclear what role is identified for the conservation bodies in relation to acting as certified experts.

During the early stages of implementing the RTFO in the UK, consultation and dialogue between DfT/Defra and the conservation bodies in relation to their role in providing evidence used to support claims on compliance with the RED sustainability criteria should be maintained. The lack of existing clarity around what this equates to in practise means it is difficult to assess whether this can be undertaken within existing capacity, based on currently-available knowledge and information, or whether it requires new processes for which additional resources would be needed.

22. The Defra table of information is not meant to be exhaustive but are you aware of any other types or sources of information that might be added?

YES

NO

Please explain your reasons and add any additional comments you wish to make:

See comments to Q21 (above).

### **Questions 23 – 43 of Part 2 Carbon & Sustainability Guidance**

We have no comments on these questions.

### **Questions on Part 3: Guidance for Verifiers**

#### **Questions 44-49**

We have no comments on these questions.