

EXPLANATORY MEMORANDUM TO
THE FEED-IN TARIFFS (SPECIFIED MAXIMUM CAPACITY AND FUNCTIONS)
(AMENDMENT NO. 2) ORDER 2011

2011 No. 1655

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the modifications

2.1 This instrument amends the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (“the 2010 Order”), to extend a method of accreditation for feed-in tariffs for small-scale hydro generating stations, and to make minor amendments consequential on changes to the standard conditions of electricity supply licences.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2010 Order, together with provisions contained in Conditions 33 and 34 of the standard conditions of electricity supply licences (the “Standard Licence Conditions”), implement the feed-in tariffs scheme (“FITs scheme”) for small-scale low-carbon electricity generation. The Standard Licence Conditions impose obligations on electricity suppliers which are to pay feed-in tariffs, while the 2010 Order sets out Ofgem’s functions in relation to the FITs scheme.

4.2 The amendment made by this instrument to article 5A of the 2010 Order extends a temporary provision providing a method of accreditation under the FITs scheme for hydro generating stations with a capacity of 50 kilowatts or less.

4.3 On 9 June 2011 modifications to the Standard Licence Conditions were laid before Parliament in draft under section 42 of the Energy Act 2008. Those modifications are intended to come into force on 1 August 2011. The amendments made by this instrument to articles 10 and 13 of the 2010 Order make minor changes to Ofgem’s functions to ensure consistency with the changes to the Standard Licence Conditions.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 On 7 February 2011 the Secretary of State for Energy and Climate Change announced the first comprehensive review of the FITs scheme. This review is being conducted in two parts of which the first, fast track review, resulted in a decision to make changes to tariffs for new solar PV installations greater than 50 kilowatts and all stand-alone PV installation, and anaerobic digestion installations of up to 500 kilowatts. The changes do not affect existing FIT generators. Modifications to Standard Licence Condition 33 to give effect to those tariff changes were laid before Parliament in draft on 9 June 2011, and are intended to come into force on 1 August 2011. The policy reasons for those tariff changes are summarised in the Explanatory Memorandum accompanying the draft licence modifications.

7.2 The second part of the review is a comprehensive review of the entire FITs scheme. This is now under way. We will consult on the detailed proposals as part of the review later this year and intend to bring any changes into force on 1 April 2012 unless the review reveals a need for greater urgency.

7.3 Under the 2010 Order as originally made, most types of generating installations with a capacity of 50 kilowatts or less were required to be registered under the Microgeneration Certification Scheme (“MCS”), or an equivalent scheme, as a condition of eligibility for FITs. Because of delays in getting MCS standards in place for micro hydro generating stations, the Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment) Order 2011 (SI 2011/1181) (“the first Amendment Order”) inserted article 5A to provide a transitional arrangement. Under this, hydro generating stations with a capacity of 50kW or less that are first commissioned on or before 1 October 2011 may be accredited for FITs if they meet the criteria, except as to capacity, for accreditation under the Renewables Obligation Order 2009 or the Renewables Obligation (Scotland) Order 2009. The Government recently published a Microgeneration Strategy which proposed the withdrawal of the exclusive link between micro hydro and the MCS for the purposes of FITs eligibility and accreditation. The Strategy confirmed that the Government will consider how this can be taken forward through the comprehensive review of the FITs scheme. This Order amends article 5A to extend the application of the transitional arrangement to hydro generating stations commissioned on or before 31 March 2012, to preserve it as a method of accreditation whilst the review of the FITs scheme is carried out.

7.4 Standard Licence Condition 33 contains a payment rate table specifying the tariffs applying to different descriptions of installations which become eligible for FITs within each FIT year (i.e. a period from 1 April to the following 31 March). The tariffs set out in that table are subject to annual adjustment in line with the Retail Prices Index. Article 10 of the 2010 Order requires Ofgem to assign a tariff code to each installation accredited for FITs, and article 13 (read together with Standard Licence Condition 33) requires Ofgem annually to publish a FIT payment rate table adjusted for RPI changes. The original drafting of articles 10 and 13 did not anticipate how this requirement would work if changes to the tariffs for new installations come into effect in the middle of a FIT year (as is intended to be the case with the modifications to the Standard Licence Conditions that are currently before Parliament). This Order therefore amends those articles in consequence of the amendments being made to Standard Licence Condition 33.

- ***Consolidation***

7.5 If it is decided to make additional changes to the FIT Scheme following the comprehensive review, the Department will consider whether it is appropriate to consolidate the legislation rather than making further amendments to the 2010 Order.

8. Consultation outcome

8.1 We consulted from 18 March 2011 to 6 May 2011 on the tariff changes to be effected by the modifications to Standard Licence Condition 33 referred to above, and received over 500 responses. Having considered all responses received we published the Government's response to the consultation on 9 June 2011. This is available from www.decc.gov.uk/FITs and sets out the decision to proceed with the proposed tariff reductions for large scale solar photovoltaic and increases for farm-scale anaerobic digestion installations. Comments received relating to the FITs scheme overall will be considered as part of the comprehensive review.

8.2 There is no statutory duty to consult in relation to the Order, and specific consultation on the amendments made by this Order was not considered necessary in view of their minor or consequential nature.

9. Guidance

9.1 Ofgem already provides detailed guidance for existing and potential participants in the FITs scheme in a variety of forms. That guidance will be updated to alert electricity generators and suppliers and others to the amendments made by this Order.

10. Impact

10.1 There are no impacts on business, charities or voluntary bodies additional to those described in the Explanatory Memoranda and Impact Assessments supporting the modifications to the Standard Licence Conditions and the first Amendment Order.

10.2 There are no impacts on the public sector additional to those described in the Explanatory Memoranda and Impact Assessments supporting the modifications to the Standard Licence Conditions and the first Amendment Order.

10.3 An Impact Assessment has not been prepared for this instrument. The Impact Assessment for the modifications to the Standard Licence Conditions, and the Impact Assessment for the first Amendment Order, are attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There are no impacts for firms employing up to 20 people as the approach taken is that no electricity supply companies employ 20 or fewer people.

12. Monitoring & review

12.1 The amendments made by this instrument, and the related changes to the Standard Licence Conditions, are a product of the ongoing monitoring of the FITs scheme to ensure that delivery of the scheme is as envisaged by the policy consulted on in 2009 and introduced in April 2010. This ongoing monitoring is designed to ensure

that the objectives of the FITs scheme are delivered in a way which ensures value for money, particularly to consumers who ultimately pay.

12.2 All aspects of the FITs scheme are currently being considered as part of the comprehensive review, further information on which is available from the Department of Energy and Climate Change's website.

13. Contact

13.1 Karen Dennis at the Department of Energy and Climate Change, email: karen.dennis@decc.gsi.gov.uk can answer any queries regarding the instrument.