

EXPLANATORY MEMORANDUM TO
THE FEED-IN TARIFFS (SPECIFIED MAXIMUM CAPACITY AND FUNCTIONS)
(AMENDMENT NO. 3) ORDER 2011

2011 No. 2364

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 instrument

2.1 This instrument amends the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (“the 2010 Order”) to change the provisions about the accreditation for feed-in tariffs of extensions to existing generating installations.

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 This instrument makes amendments to Part 4 of the 2010 Order, which makes provision about the accreditation of extensions (i.e. increases in the generating capacity) of existing installations.

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 Articles 2 to 4 of this Order amend Part 4 of the 2010 Order principally to change the treatment of extensions to installations which are accredited for Feed-in Tariffs, where the extension occurs within 12 months of the accreditation of the existing installation.

7.2 Extensions undertaken within 12 months of the accreditation of the existing installation will now be treated in the same way as extensions undertaken more than 12 months after that date. The practical effect of this change is that an extension will be treated as a separate installation for the purposes of accreditation, and will therefore qualify for the tariff in force when the extension becomes eligible for FITs (rather than the tariff which was in force when the existing installation became eligible). The extension's tariff will be based on the combined capacity of the existing installation and the extension. The purpose of the change is to prevent new extensions from being eligible for outdated tariffs, following the implementation of tariff changes such as those recently made for large scale solar photovoltaics.

7.3 Article 15 of the 2010 Order provides only for the accreditation of extensions to installations which have been accredited for feed-in tariffs. This reflects the fact that in most instances, if a modification were made to an installation to add extra capacity before that installation was accredited, then the generator could vary their application for accreditation of the existing installation. However, feedback from the consultation on the proposed changes to the rules on extensions suggested that, since the time taken for an installation to obtain accreditation is not wholly within the applicant's control, it could in some cases result in unfairness if the amendments to article 15 were to apply to a generator who, before the amendments come into force, has extended an installation in respect of which a request for accreditation is awaiting determination. Therefore, the transitional provision in Article 5 of this Order provides that the principal amendments to article 15 do not apply either to extensions to accredited FIT installations ("Case 1") or to extensions to eligible installations that are awaiting determination of a request for accreditation ("Case 2"), provided that (in both cases) the extension is commissioned and notified before 18 October 2011 and that in Case 2 the eligible installation is subsequently accredited.

7.4 Other minor amendments have been made to Part 4 of the 2010 Order to clarify the scope of article 16 and to insert a definition of "notice" for the purposes of Part 4.

- Consolidation

7.5 The Department is presently carrying out a comprehensive review of the entire FITs scheme. If it is decided to make further changes to the FITs 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 27 July 2011 to 31 August 2011 on the proposal to amend the provisions on extensions. The consultation length reflected the nature of the consultation - on a discrete issue relating to one aspect of the FITs scheme - and the urgency of the budgetary concerns about the impact on the FITs spending envelope. It was considered appropriate on these grounds to consult for a shorter period than is recommended as standard in the Cabinet Office guidance on consultations.

8.2 Consultation responses were received from a total of 78 different organisations or individuals. [24% of respondents agreed with the proposal to amend the extension rules, 75% disagreed and 1% commented but neither agreed or disagreed.] Strong arguments were put forward by both those disagreeing and agreeing with the consultation proposals. A document summarising these responses and setting out the Government's response has been published and is available from the Department's website (www.decc.gov.uk/FITs).

8.3 Following consideration of the consultation responses, two modifications have been made to the proposal as consulted upon. First, the amendment to article 15 has been changed so that the tariff applying to the original part of an installation will not be affected as a result of the installation being extended. Secondly, a transitional provision has been introduced as described in paragraph 7.3 above.

9. Guidance

9.1 Ofgem already provides detailed guidance for existing and potential participants in the FITs scheme. 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 Memorandum supporting the 2010 Order.

10.2 There are no impacts on the public sector additional to those described in the Explanatory Memorandum supporting the 2010 Order.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

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 are a product of ongoing monitoring of the FITs scheme to ensure that the objectives of the 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.