

EXPLANATORY MEMORANDUM TO
THE FEED-IN TARIFFS (AMENDMENT) ORDER 2013

1. 1.1 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 Order 2012(b) (“the 2012 Order”) to provide for a set of administrative changes to the Feed-in Tariff Scheme, which impact on the operation and administration of the policy.

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

3.1 None.

4. Legislative Context

4.1 The 2012 Order, (made under sections 41(4), 43(3)(a) and 104(2) of the Energy Act 2008) 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 (“FIT 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 2012 Order sets out Ofgem’s functions in relation to the FIT scheme.

4.2 This instrument is made under sections 43(3)(a) and 104(2) of the Energy Act 2008.

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. These amendment includes the following technical changes:

1. Part 6 (articles 25 to 30) of the 2012 Order make provision for a levelisation scheme under which licenced electricity suppliers are to make payments to or receive payments from Ofgem (the scheme administrator) to ensure that the costs of participating in the FIT scheme are proportionate to their market shares in the electricity supply market in Great Britain. This instrument creates a new mutualisation process which permits Ofgem to manage situations where there is a shortfall in payments into the levelisation pot (due, for example, to a licensee

entering insolvency); similar provisions already exist within the Renewables Obligation and Warm Homes Discount policies. In these situations the shortfall is recovered from the other licensees based on their market share (in the same way as the overall levelisation process).

2. Under the current system, in the event of a shortfall, those licensees who are net recipients of funds from the levelisation process (i.e. that they make proportionally more FIT payments than their market share of the electricity supply market) will receive less funds than they need to pay their FIT generators and will have to and would need to pay generators from their own funds. As the costs could be very significant there is a risk of a cascade of insolvencies as a result. The introduction of mutualisation seeks to spread liability for a shortfall across all suppliers (in proportion to their market size) to reduce the impact on an individual company.
3. The intention is to limit the mutualisation liability by creating a levelisation range: a shortfall less than this amount will not trigger the mutualisation process; amounts greater than the range will only be mutualised up to the top of the range. This restriction ensures potentially liabilities to electricity licensees are managed however where the shortfall exceeds the range, the amount in excess will need to be absorbed by individual licensees.
4. FIT Generators are protected in the event of a mutualisation as suppliers have an obligation to pay for their generation.
5. If a licensee becomes insolvent or has its licence revoked, a FIT generator should be able to transfer to a new licensee for the continuation of its FIT payments. The instrument introduces a new power for Ofgem to issue a continuity of payments direction to the new supplier to ensure that the FIT generator does not lose any payments;
6. The Order provides new powers for Ofgem to manage late payments into the levelisation pot, to manage incorrect levelisation calculations and to ensure new FIT generators which have applied to a defunct licensee are managed correctly; and
7. The Order removes a redundant factor which is no longer required from the levelisation process– “net metered export payment”.

8. Consultation outcome

8.1 The changes in this amendment formed the *Government Response to FITs Licensee Consultation* which was conducted in Sept/Oct 2012 and was also outlined in the earlier FITs Phase 2B consultation. The consultation was focused on the 27 licensees, and we received a large proportion of returns and there was significant support for these changes, none of which are controversial. Copies were also sent to major trade associations, Ofgem and consumer groups.

9. Guidance

9.1 Ofgem 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 amendment made by this instrument. Draft Guidance will be published prior to commencement (1 July 2013) and a finalised version will be issued following consultation.

10. Impact

10.1 The impact assessment for the Phase 2B consultation includes the impact of these changes; this is available on the website -

<https://www.gov.uk/government/consultations/tariffs-for-non-pv-technologies-comprehensive-review-phase-2b> .

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The intension of these changes is to provide *greater* protection to small electricity supply companies but ensuring there is provision for continuation of payments in the event of an insolvency in the market.

12. Monitoring & review

12.1 The FITs comprehensive review is now completed. The scheme will continue to be monitored and reviewed as required.

13. Contact

13.1 Alasdair Grainger at the Department of Energy and Climate Change, (email: alasdair.grainger@decc.gsi.gov.uk) can answer any queries regarding the instrument.