

EXPLANATORY MEMORANDUM TO
THE FEED-IN TARIFFS (AMENDMENT) ORDER 2017

2017 No. 131

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Feed-in Tariffs scheme (“FIT scheme”) is the Government’s main policy measure to encourage the deployment of small-scale low-carbon electricity generation in Great Britain, and is implemented by the Feed-in Tariffs Order 2012 (“the 2012 Order”) (as amended) and modifications to Conditions 33 and 34 of the standard conditions of electricity supply licences (“the Standard Licence Conditions”).

2.2 The Feed-in Tariffs (Amendment) Order 2017 and the associated modifications to the Standard Licence Conditions set revised generation tariffs to be paid under the scheme for anaerobic digestion (AD); amend default degression for AD on a quarterly basis to coincide with the deployment caps; introduce a requirement for new AD installations to comply with lifecycle greenhouse gas emission limits and restrict the place from which feedstock can be sourced; restrict payments to owners of installations generating electricity from AD where less than 50% of the biogas produced is derived from waste or residues; and bring support for micro-Combined Heat and Power (mCHP) within the scheme’s capacity cost control mechanism in the form of a limit in the aggregate capacity (measured in megawatts) that can be applied for bi-annually.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Sections 41 to 43 of the Energy Act 2008 (“the Act”) provide powers to establish a feed-in tariff scheme for the small scale generation of electricity.

4.2 The 2012 Order, made under section 41(4), 43(3)(a) and 104(2) of the Act, sets out the functions of the Gas and Electricity Markets Authority (“the Authority”) and the Secretary of State in connection with the administration of the FITs scheme including the procedure by which the Authority will accredit installations applying to the scheme. The Feed-in Tariffs (Amendment) Order 2017 is made under sections 43(3)(a) and 104(2) of the Act.

- 4.3 Modifications to the Standard Licence Conditions (“the Licence Modifications”) made under section 41(1) of the Act impose requirements on electricity suppliers to pay a generation tariff and an export tariff to generators of accredited installations under the scheme and prescribe the level of tariffs to be paid.

5. Extent and Territorial Application

- 5.1 This instrument extends to Great Britain.
5.2 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 The Feed-in Tariffs scheme (“FIT scheme”) is the Government’s main policy measure to encourage the deployment of small-scale low-carbon electricity generation in Great Britain. The FIT scheme encourages deployment of small scale renewables up to 5 MW and supports over 880,000 installations. The FIT scheme is funded through levies placed on the electricity bills of households and businesses.
- 7.2 A review of the FIT scheme was undertaken in 2015 to meet two core objectives. Firstly, to comply with the scheme’s State aid approval, a review of the support levels offered is required every three years. Secondly, proposals aimed at controlling the cost of the scheme to limit the impact on consumer bills.
- 7.3 Support for AD and mCHP has been reviewed at a later date due to the complexities of these technologies and this review completes the comprehensive FIT review. The revised tariffs for AD have been calculated using the same tariff-setting methodology as the 2015 Review. Similarly, the cost control measures follow the approach taken with the other technologies, which includes implementation of quarterly default degeneration for AD to account for technology cost reductions, as well as placing limits on the deployment capacity for mCHP and the introduction of contingent degeneration should a cap be reached. The introduction of sustainability criteria and feedstock restrictions for new AD installations has also been considered to ensure the approach is in line with other renewable subsidy schemes.
- 7.4 Although there was relatively high media and public interest in the 2015 review, this review of support for AD and mCHP has attracted relatively low media and public interest.

Consolidation

- 7.5 The 2017 Order comprises the eighth amendment made to the 2012 Order. Further consolidation is not proposed at this time. If further amendments or modifications are proposed to the 2012 Order, the Department will consider whether consolidation would be appropriate.
- 7.6 The 2017 Modifications comprise the fourth amendment made to the Standard Licence Conditions since consolidation in 2012. Further consolidation is not proposed at this time. If further amendments or modifications are proposed to the Standard

Licence Conditions, the Department will consider whether consolidation would be appropriate.

8. Consultation outcome

- 8.1 The consultation was published on 26 May 2016 and ran for a period of 6 weeks due to the need to urgently ensure costs were controlled and the scheme provides value for money for bill payers, and the need to complete the 2015 comprehensive review of the scheme ensuring compliance with our State Aid approval. A one week extension was applied to allow stakeholders to consider an update made to cost data in the Impact Assessment. The consultation closed on 14 July 2016 with 76 unique responses and 446 campaign responses regarding payment restrictions based on feedstock. Respondents ranged from manufacturers, trade associations, energy generators as well as individuals.
- 8.2 Respondents affected by a discrepancy in the consultation document about who was affected by the proposals were given a further 2 weeks to provide any updates to their responses in light of this.
- 8.3 The Government's response to this consultation was published simultaneously with the laying of this legislation. This sets out a detailed analysis of the consultation responses and policy decisions and is available at <https://www.gov.uk/government/consultations/review-of-support-for-anaerobic-digestion-and-micro-combined-heat-and-power-under-the-feed-in-tariffs-scheme>. The key issues are summarised below.

Anaerobic Digestion – Value for Money

- 8.4 The majority of respondents disagreed with the proposed reduction in AD generation tariffs suggesting they were based on inaccurate assumptions and misleading evidence, and felt that the further reduction due to default degression would make installations unviable. After careful consideration of the consultation evidence the AD generation tariffs have been revised upwards to better reflect the current market situation and AD's default degression has been amended in line with other technologies.

Anaerobic Digestion – Sustainability Criteria

- 8.5 Most respondents broadly supported the introduction of the sustainability criteria which will require AD operators to use feedstock which meets both a greenhouse gas emissions limit and land criteria (which requires that feedstock must not be sourced from land with high biodiversity value, or which has high carbon stock value). There was support for aligning these criteria with the Renewable Heat Incentive (RHI) and Renewables Obligation (RO) schemes, as well as ensuring the use of sustainable feedstock.

Anaerobic Digestion – Feedstock Restrictions

- 8.6 The responses to the proposals to limit payments made on electricity generated from non-wastes and residues were mixed, with some respondents emphasising the importance of ensuring that all AD plants under FITs are using wastes, and others arguing that some purpose-grown crops could be carbon cost-effective when used in AD.

- 8.7 Government intends to introduce this restriction because it will ensure that the most carbon cost-effective installations (installations which use crops tend to be more carbon cost-effective than those which use food or agricultural waste) will be supported under the scheme. It is also Government policy that the primary purpose of agricultural land should be for growing food, and data published at the end of 2015 suggests maize is increasingly being grown for AD installations.

Micro Combined Heat and Power – Value for money

- 8.8 A significant majority of respondents disagreed with bringing mCHP within the deployment cap mechanism and strongly argued to maintain previous Government commitment for up to 30,000 units to be supported under the scheme. This was seen by the industry as vital to establish the economy of scale required for technology to take off. Economy of scale was also seen as a prerequisite in order for contingent degression to be effective.
- 8.9 mCHP was introduced as a pilot scheme under FITs and to date has failed to achieve a sustained level of deployment. It was assumed that the proposed deployment cap of 3.6MW would be adequate support based on historical deployment. However, evidence from the consultation indicated that the sector may be closer to commercialisation than previously thought. The deployment cap has therefore been increased to 20 MW which will support expected deployments up to 2019, based on industry projections. Contingent degression has also been applied should the cap be reached, to reduce costs in line with other technologies and ensure greater cost control. Contingent degression reduces future tariffs by 10%.

Generation Tariff Indexation

- 8.10 The opportunity has also been taken in the modifications to the Standard Licence Conditions to rectify the omission of indexation which should have been applied to mCHP and AD tariffs on 1 April 2016, in line with the other FIT technologies. These tariffs were updated on 8 February 2016 following the pause in the scheme as part of the 2015 FIT review. Indexation for 2016 and 2017 will be applied to mCHP and AD tariffs from 1 April 2017 and will apply to tariff payments from this point forward. Indexation requires tariffs to be adjusted on 1st April each year based on the percentage change in the Retail Price Index over the 12-month period ending on 31st December of the previous calendar year.

9. Guidance

- 9.1 Ofgem E-Serve already provides detailed guidance for electricity suppliers and potential participants in the FIT scheme in a variety of forms. That guidance will be updated to include the introduction of the sustainability criteria and feedstock restrictions. This will reflect where possible the Renewable Heat Incentive guidance on these topics. It will also reflect the changes made to the degression mechanisms for AD and mCHP as well as the mCHP deployment cap. Ofgem E-Serve will continue to review whether further updates are needed in future.

10. Impact

- 10.1 These changes will have an impact on businesses, charities and voluntary bodies. These organisations are subject to rising electricity costs under the levy control framework, and the cap scheme is intended to mitigate these costs. These bodies may also deploy AD and mCHP technologies under the FIT scheme. This ability to deploy

may be affected by the introduction of a mCHP cap on overall deployment and the introduction of sustainability criteria and feedstock restrictions for new AD installations. The requirement for AD plants above 1MW to have an independent audit report will also increase the administrative burden of the scheme.

- 10.2 These changes will have an impact on the public sector, which is subject to rising electricity costs under the levy control framework. The public sector may also deploy AD and mCHP technologies under the FIT scheme. This ability may be affected by the introduction of a mCHP cap on overall deployment and the introduction of sustainability criteria and feedstock restrictions for new AD installations.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 Small businesses are affected by increasing electricity costs under the levy control framework, and this measure is intended to mitigate those costs. Small businesses operating in the AD and mCHP sectors supported by the FIT scheme will also be affected by this legislation, which introduces a cap on overall spend and deployment under the scheme and for AD installations introduces sustainability criteria and feedstock restrictions.

12. Monitoring & review

- 12.1 The changes implemented by this instrument aim to ensure that AD tariffs provide an appropriate level of compensation for new participants and that overall spending on the scheme, including that on mCHP, is subject to suitable cost control. The changes implemented by this instrument also ensure that the sustainability criteria and feedstock restrictions for FITs are in line with other renewable subsidy schemes. The Department will continue to carry out on-going monitoring of the FIT scheme to ensure that its objectives are delivered in a way which ensures value for money, particularly to consumers who ultimately pay. The Department will also review generators' compliance with the new feedstock requirements in line with those of the RHI. The Authority also carries out monitoring to ensure compliance by electricity suppliers and participants in the scheme with their obligations.

13. Contact

- 13.1 Fiona Shand at the Department for Business, Energy and Industrial Strategy (Telephone: 0300 068 6108 or email: Fiona.Shand@beis.gov.uk) can answer any queries regarding the instrument.