

EXPLANATORY MEMORANDUM TO
THE FEED-IN TARIFFS (AMENDMENT) (CORONAVIRUS) ORDER 2020
2020 No. 375

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument provides small-scale renewable electricity generators with extra time to apply for accreditation under the Feed-In Tariffs scheme (“FIT scheme”) following unavoidable delays in commissioning their projects caused by the Coronavirus pandemic.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being laid in breach of the 21-day rule for Parliament to pray against Statutory Instruments.
- 3.2 Under the scheme at present, the majority of affected projects have to make an application by 31st March 2020 to receive support under the FIT scheme. There is currently no discretion in the legislation to waive this deadline, and affected applications, including community organisations, have raised concerns about the fate of their projects, some of which have been planned for many years. There is therefore a need to act urgently before this deadline, to give affected projects the legal certainty and clarity about the status of their projects, and to avoid any risk of legislating retrospectively.
- 3.3 Any further extension required due to the continued effects of the Coronavirus pandemic will require a further Statutory Instrument. The Department will keep the need for any further extension under close review.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 41 to 43 of the Energy Act 2008 (“the Act”) provide powers to establish a FIT scheme for the small-scale generation of electricity.
- 6.2 The Feed-In Tariffs Order 2012 (“the 2012 Order”) (as amended), made under section 41(4), 43(3) and 104(2) of the Act, sets out the function of the Gas and Electricity Markets Authority (“the Authority”) and the Secretary of State in connection with the administration of the FIT scheme including procedures by which the Authority will accredit installations applying to the scheme.
- 6.3 The Feed-In Tariffs (Amendment) (Coronavirus) Order 2020 is made under Sections 43(3)(a) and 104(2) of the Act.

7. Policy background

What is being done and why?

- 7.1 The FIT scheme was the Government’s main policy measure to encourage the deployment of small-scale low-carbon electricity generation in Great Britain. The scheme closed to new applications on 31st March 2019 subject to a number of time-limited extensions. There is no discretion in the legislation to change these. Up to 250 projects, mostly community energy installations, who are close to completion are facing delays beyond their control due to the Coronavirus pandemic. These delays include supply chain disruption with materials stuck in transit, buildings closed for installation, installers in isolation and certifiers unable to visit. This means generators will be unable to complete construction and commission the projects and submit their application for accreditation in time. For many projects this is by 31st March 2020. Without action, this will result in the loss of significant investment in the projects.
- 7.2 In these circumstances, Government has decided to extend the validity periods as set out below:
- Microgeneration Certification Scheme (MCS) scale community energy installations (solar PV with a declared net capacity of 50kW or less) that pre-registered between 1st-31st March 2019 will be given until 30th September 2020 to commission and apply for accreditation.
 - ROO-FIT scale community energy installations (solar PV with a declared net capacity over 50kW) that pre-registered between 1st-31st March 2019 will be given until 30th September 2020 to commission and apply for accreditation.
 - ROO-FIT scale wind and anaerobic digestion installations (with a declared net capacity over 50kW) whose preliminary accreditation validity period ends between 1st-31st March 2020 will be given 24 months, or until 30th September 2020, whichever is the later, to commission and apply for accreditation.
 - ROO-FIT scale hydro installations (with a declared net capacity over 50kW) that received preliminary accreditation between 1st-30th September 2018 will be given 36 months, or until 30th September 2020, whichever is the later to commission and apply for accreditation.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation of the 2012 Order is planned at this time.

10. Consultation outcome

10.1 Whilst there is no express duty to consult under the 2012 Order, past practice for any amendment to the FIT scheme has been preceded by consultation. Given the urgency of acting in these circumstances, there has not been time for any formal consultation, but there have been informal discussions with the relevant Trade Bodies, the Authority and with the Devolved Administrations.

10.2 If the consequences of the Coronavirus pandemic continue in the longer term and further extensions are necessary, the Government will consider this, engaging and consulting with interested parties as appropriate.

11. Guidance

11.1 The Authority, as administrators of the FIT scheme, intend to publish revised suppliers guidance on the new arrangements.

12. Impact

12.1 The impact on business, charities or voluntary bodies will be to give projects that are near to completion but delayed by issues beyond their control additional time to apply for support under the FIT scheme.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it does not increase the number of projects that are eligible to apply for support under the FIT scheme. It would be disproportionate to do so.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to reduce the regulatory burden on small businesses. This places no new burden on small businesses who will benefit from the measures.

14. Monitoring & review

14.1 The Department will monitor the pandemic situation and review whether any further extensions are required in the longer term.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Kwasi Kwarteng has made the following statement:

“A review provision is not appropriate because this is a short time-limited measure and would be disproportionate.”

15. Contact

- 15.1 Fiona Shand at the Department for Business, Energy and Industrial Strategy (Telephone: 0300 068 6108 or email: fiona.shand@beis.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Fiona Mettam, Deputy Director for Renewable Electricity Support Schemes, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kwasi Kwarteng, Minister of State at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.