

EXPLANATORY MEMORANDUM TO
THE FEED-IN TARIFFS (AMENDMENT) ORDER 2023

2023 No. 127

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 His Majesty.

2. Purpose of the instrument

2.1 This instrument removes the green import exemption (the exemption) from the Feed-in Tariffs scheme (FIT scheme). The exemption enabled licensed electricity suppliers who import renewable electricity from EU member States and supply it to consumers in Great Britain to reduce their contribution to the overall cost of the FIT scheme.

2.2 This exemption benefits licensed electricity suppliers in Great Britain who import renewable electricity from EU member States.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Scotland and Wales.

4.2 The territorial application of this instrument is England, Scotland and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Sections 41 to 43 of the Energy Act 2008 (the Act) provide powers to establish scheme of financial incentives to encourage small-scale low-carbon generation of electricity.

6.2 The Feed-in Tariffs Order 2012 (the 2012 Order), was made under sections 41(4), 43(3)(a) and 104(2) of the Act. Part 6 of the 2012 Order makes provision about the obligations of licensed electricity suppliers in Great Britain to participate in a levelisation process.

6.3 Levelisation is the mechanism by which the total cost of the FIT scheme is apportioned across licensed electricity suppliers in Great Britain in proportion to their share of the electricity supply market in Great Britain.

6.4 As a condition of State Aid approval of the FIT scheme, the European Commission required eligible renewable electricity imported from EU member States and supplied

to consumers in Great Britain to be exempt from contributing to the cost of the FIT scheme. This was to ensure that the levelisation mechanism complied with Articles 30 and 110 of the Treaty on the Functioning of the European Union (TFEU). Articles 30 and 110 respectively prohibit the imposition of customs duties on imports or exports between member States and the imposition of taxes on the products of other member States in excess of those imposed on domestic products.

- 6.5 The 2012 Order implemented the exemption so that qualifying renewable electricity (QRE) (broadly, electricity that is imported to Great Britain from an EU member State where that electricity is generated by a renewable generating station, which, if located in Great Britain, would have been potentially eligible to apply for support) is excluded from the calculation of electricity suppliers' market shares for the purposes of levelisation (subject to a cap on the total amount of electricity that can be included as QRE in any quarter). The exemption is contained in the definition of "relevant amount of electricity" in article 27(6) of the 2012 Order.
- 6.6 As stated in Ofgem guidance, in order to claim the exemption, suppliers have to submit evidence of eligible imports to Ofgem, the FIT scheme administrator. Ofgem then determines the QRE according to criteria set out in the 2012 Order, and takes this into account when calculating suppliers' levelisation payments.
- 6.7 The UK left the European Union on 31 January 2020 and the Implementation Period, during which the UK remained part of the EU Single Market and Customs Union, ended on 31 December 2020. As the UK is no longer subject to the terms of the TFEU, the need to ensure compliance with Articles 30 and 110 of that Treaty no longer applies. There is also no trading arrangement which includes the exemption. Therefore, there is no longer any legal obligation for the UK to maintain the exemption in the FIT scheme.

7. Policy background

What is being done and why?

- 7.1 The FIT scheme was introduced across Great Britain in 2010 to encourage deployment of small-scale low-carbon electricity generation, particularly amongst those who had not traditionally engaged in the electricity market. The scheme closed to new applications in March 2019.
- 7.2 The scheme is administered by Ofgem and requires certain licensed electricity suppliers to pay fixed tariffs to micro and small-scale renewable and micro-combined heat and power generators for electricity generated and exported to the National Grid. These suppliers have specific FIT obligations under Conditions 33 and 34 of the Standard Conditions of Electricity Supply Licences.
- 7.3 As explained in section 6 of this Explanatory Memorandum, eligible imported electricity is not included in a supplier's market share of supply for the purpose of calculating the FIT levelisation payments that they must make to Ofgem, or that Ofgem must make to them (as the case may be). This means that suppliers supplying electricity in Great Britain which has been generated from renewable sources in an EU member State can reduce their FIT levelisation payments to Ofgem, or receive a higher levelisation payment from Ofgem (as the case may be). This in turn means that other suppliers have to make commensurately higher FIT levelisation payments to Ofgem, or receive commensurately lower levelisation payments from Ofgem (as the case may be). The amount of imported renewable electricity that can qualify under

this exemption is capped in accordance with criteria set out in article 27A of the 2012 Order.

- 7.4 As explained in section 6 of this Explanatory Memorandum, the UK is no longer under any legal obligation to maintain the exemption in the FIT scheme.
- 7.5 There are no discernible benefits from the retention of the exemption. The removal of the exemption addresses a distortion where the costs of the FIT scheme, borne by UK suppliers, are not evenly distributed in relation to an energy supplier's market share. Therefore, following a policy review and public consultation, this instrument amends the 2012 Order to remove the exemption from the FIT scheme.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 The process of levelisation in the FIT scheme is set out in Part 6 of the 2012 Order. QRE was excluded from the calculation of electricity suppliers' market shares for the purposes of levelisation.

Why is it being changed?

- 7.7 The UK is no longer under any legal obligation to maintain the exemption in the FIT scheme. There are no discernible benefits from the retention of the exemption, and it is distortive in that the costs of the FIT scheme are not evenly distributed among suppliers in relation to their respective market shares.

What will it now do?

- 7.8 QRE is no longer excluded from the calculation of electricity suppliers' market shares for the purposes of levelisation. The FIT scheme will otherwise continue to function as before.

8. European Union Withdrawal and Future Relationship

- ~~8.1~~ This instrument is not being made using powers provided in the European Union (Withdrawal) Act 2018, but it relates to the withdrawal of the United Kingdom from the European Union because the exemption was introduced as a result of a condition in the European Commission's State Aid¹ approval of the FIT scheme. The withdrawal of the UK from the EU means that the UK is no longer legally required to maintain the exemption.

9. Consolidation

- 9.1 The Department has no current plans to consolidate the 2012 Order.

¹ Paragraph 46 of the European Commission's letter of 14 April 2010 granting State aid approval to the Feed-in Tariffs scheme:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N94_2010

10. Consultation outcome

- 10.1 A public consultation² (open from 29 March 2022 to 10 May 2022) was undertaken which sought opinions on green imported exemption policy choices³. Three options were given – to retain, extend or repeal the exemption. In response to this question, a clear preference was evident, with Government’s preferred option, to repeal this exemption, favoured by a large majority (chosen by 22 of the 25 respondents of that specific question).
- 10.2 Respondents were then asked to give a preference of two proposed dates for the implementation of their choice of the three options. There was again a clear preference, with the implementation date of 1 April 2023 chosen by the majority of those who responded (chosen by 16 of the 25 respondents of that specific question) as opposed to 1 October 2022.
- 10.3 The devolved administrations in Scotland and Wales have been consulted about the amendments made by this instrument and agree with the public consultation outcome and Government decision.

11. Guidance

- 11.1 Ofgem, administrator of the FIT scheme, will update its guidance before the changes come into force on 1 April 2023.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is limited to electricity suppliers and amounts to a small redistribution of FIT scheme cost obligations, ensuring that the market shares of Great Britain electricity suppliers are more accurately reflected in the FIT levelisation process.
- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because impact to individual businesses is minimal, with a net zero impact across all Great Britain electricity suppliers.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small electricity suppliers, but the amendments made are unlikely to affect small businesses in any significant respect.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Graham Stuart has made the following statement:

² <https://www.gov.uk/government/consultations/feed-in-tariffs-and-contracts-for-difference-proposals-relating-to-guarantees-of-origin>

³ This includes policy choices relating to the Contract for Difference (CfD) scheme. The equivalent scheme cost exemption in the CfD scheme is being removed under a separate SI: the Electricity Supplier Obligations (Green Excluded Electricity) (Amendment) Regulations 2022

“A statutory review clause is not considered appropriate for this instrument as the changes made remove a provision in the FIT scheme that was inserted as a result of a condition of EU State Aid rules, to which the UK is no longer required to adhere.”

15. Contact

- 15.1 Tim Alsop (telephone: 07881 251 573 or email: tim.alsop@beis.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Helena Charlton, Deputy Director at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard
- 15.3 Graham Stuart, Minister for Climate at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.