



Energy Act 2008

2008 CHAPTER 32

PART 2

ELECTRICITY FROM RENEWABLE SOURCES

Feed-in tariffs for small-scale generation of electricity

41 Power to amend licence conditions etc: feed-in tariffs

- (1) The Secretary of State may modify—
 - (a) a condition of a particular licence under section 6(1)(c) or (d) of the Electricity Act 1989 (distribution and supply licences);
 - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
 - (c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of—
 - (a) establishing, or making arrangements for the administration of, a scheme of financial incentives to encourage small-scale low-carbon generation of electricity;
 - (b) requiring or enabling the holder of a distribution licence to make arrangements for the distribution of electricity generated by small-scale low-carbon generation;
 - (c) requiring the holder of a licence to make arrangements related to the matters mentioned in paragraph (a) or (b).
- (3) Modifications made by virtue of subsection (1) may include—
 - (a) provision requiring the holder of a supply licence to make a payment to a small-scale low-carbon generator, or to the Authority for onward payment to such a generator, in specified circumstances;

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- (b) provision specifying how a payment under paragraph (a) is to be calculated;
- (c) provision for the level of payment under paragraph (a) to decrease year by year in accordance with a formula published, or to be published, by the Secretary of State;
- (d) provision about the circumstances in which no payment, or a reduced payment, may be made to a small-scale low-carbon generator;
- (e) provision about the circumstances in which a payment may be recovered from a small-scale low-carbon generator;
- (f) a requirement for the holder of a supply licence or distribution licence to pay a levy to the Authority at specified times;
- (g) provision specifying how a levy under paragraph (f) is to be calculated (which may require specified matters to be determined by the Authority or the Secretary of State);
- (h) provision conferring an entitlement on the holder of a supply licence or distribution licence to receive a payment from the Authority.

(4) In this section—

“Authority” means the Gas and Electricity Markets Authority;

“distribution licence” means a licence under section 6(1)(c) of the Electricity Act 1989 (c. 29);

“owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;

“plant” includes any equipment, apparatus or appliance;

“small-scale low-carbon generation” means the use, for the generation of electricity, of any plant—

- (a) which, in generating electricity, relies wholly or mainly on a source of energy or a technology mentioned in subsection (5), and
- (b) the capacity of which to generate electricity does not exceed the specified maximum capacity;

“small-scale low-carbon generator” means an owner of plant used or intended to be used for small-scale low-carbon generation, whether or not the person is also operating or intending to operate the plant;

“specified maximum capacity” means the capacity specified by the Secretary of State by order, which must not exceed 5 megawatts;

“supply licence” means a licence under section 6(1)(d) of the Electricity Act 1989 (c. 29).

(5) The sources of energy and technologies are—

- (a) biomass;
- (b) biofuels;
- (c) fuel cells;
- (d) photovoltaics;
- (e) water (including waves and tides);
- (f) wind;
- (g) solar power;
- (h) geothermal sources;
- (i) combined heat and power systems with an electrical capacity of 50 kilowatts or less.

- (6) The Secretary of State may by order modify the list of sources of energy and technologies for the time being listed in subsection (5).
- (7) The power conferred by subsection (1)—
 - (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
 - (b) may be exercised differently in different cases or circumstances;
 - (c) includes a power to make incidental, supplemental, consequential or transitional modifications.
- (8) Provision included in a licence by virtue of that power—
 - (a) need not relate to the activities authorised by the licence;
 - (b) may make different provision for different cases.

42 Power to amend licence conditions etc: procedure

- (1) Before making a modification, the Secretary of State must consult—
 - (a) the holder of any licence being modified,
 - (b) the Gas and Electricity Markets Authority, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) Before making modifications, the Secretary of State must lay a draft of the modifications before Parliament.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (5) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (6) Subsection (4) does not prevent a new draft of proposed modifications being laid before Parliament.
- (7) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (8) In this section, “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (9) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (10) In this section “modification” means a modification under section 41(1).

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43 Feed-in tariffs: supplemental

- (1) A modification under section 41 of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section 41(1)(b) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority (“the Authority”) must—
 - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
 - (b) publish the modification.
- (3) The Secretary of State may by order—
 - (a) make provision conferring functions on the Authority or the Secretary of State (or both) in connection with the administration of any scheme established by virtue of section 41;
 - (b) make such modifications of provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made under paragraph (a) or section 41.