

EXPLANATORY MEMORANDUM TO
THE FEED-IN TARIFFS (SPECIFIED MAXIMUM CAPACITY AND FUNCTIONS)
(AMENDMENT NO. 2) ORDER 2012

2012 No. 1393

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 instrument

2.1 The proposed Order amends the functions of the Gas and Electricity Markets Authority (“the Authority”) and the Secretary of State in relation to the administration of the feed-in tariff scheme.

2.2 It requires the Authority to publish a table every three months of the tariffs which are to apply to new solar photovoltaic installations in the following quarter, and requires the Secretary of State to publish quarterly data about the deployment of solar photovoltaic installations which are eligible for feed-in tariffs, which are to be used in calculating the tariffs for the following quarter.

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

3.1 This Order is to come into force at the same time as modifications to Standard Licence Condition 33 of the standard conditions of electricity supply licences, which were laid before Parliament in draft on 24 May 2012, and the Order includes references to specific provisions of Standard Licence Condition 33 which are contained in those modifications.

4. Legislative Context

4.1 This Order is made in exercise of the powers conferred on the Secretary of State by sections 43(3)(a) and 104(2) of the Energy Act 2008. It amends the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (“the 2010 Order”) which, together with the licence conditions referred to above, forms the legal basis for the feed-in tariff scheme. The 2010 Order gives functions to the Authority and the Secretary of State in connection with the administration of the FITs scheme, while the licence conditions require suppliers of electricity to offer FITs to accredited small scale generators of electricity using an eligible low-carbon energy source, and make provision about the tariffs to be paid to those generators.

5. Territorial Extent and Application

5.1 The modifications apply 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 draft modifications to the standard conditions of electricity supply licences will, among other things, introduce a cost control mechanism under which tariffs for solar photovoltaic (PV) installations will automatically be reduced (“degressed”) every quarter from 1 November 2012 if deployment of solar PV installations in a previous period exceeds a minimum level, with the rate of degression depending on the level of deployment in the previous period. This follows a consultation published on 9 February 2012, and its purpose is to set tariffs in a transparent and predictable way, and to ensure that they respond to changes in the solar PV market and remain aligned with installation costs.

7.2 This Order amends the 2010 Order to include a requirement on the Authority to publish, at least two months before the start of each quarter, a table setting out the tariffs which are to apply to new solar photovoltaic installations in the following quarter. Provision about the calculation of those tariffs is contained in the draft licence modifications.

7.3 The Order also amends the 2010 Order to require the Secretary of State to publish specified data every three months about the deployment of solar photovoltaic installations in the preceding quarter. That data is to be used in determining the rate at which tariffs are to degress for the following quarter.

- *Consolidation*

7.4 A separate consultation on proposed changes to tariffs for other technologies and the administration of the FIT scheme concluded on 26 April 2012, and the Department is currently considering the responses with a view to implementing changes later this year. The Department will consider consolidating the 2010 Order when it implements those changes.

8. Consultation outcome

8.1 The Government’s consultation on solar PV tariffs took place from 9 February to 3 April 2012, and a total of 244 consultation responses were received. The Government has decided to proceed with many of the proposals set out in the consultation document, but has made significant changes reflecting responses to the consultation.

8.2 In relation to the cost control mechanism, the consultation proposed that tariffs for solar PV installations should be reduced every 6 months, or at more frequent intervals if deployment exceeded specified levels. There was some support for this approach, with 39% of respondents agreeing with the principle, although many respondents preferred the dates of degressions to be fixed so as to provide greater certainty. However, 83% of respondents disagreed with the proposal that the rate of degression should be 10% every 6 months, with some suggesting smaller tariff reductions at more frequent intervals. There was also a strong view that any contingent degression mechanism should also make provision to respond to under-deployment of

solar PV as well as over-deployment. The idea of applying different deployment triggers to different tariff bands was largely supported. We have taken these views on board in the design of the degression mechanism, as a result of which this instrument provides for quarterly tariff reductions on fixed dates, with smaller reductions than were proposed in the consultation (except in the event of exceptionally high deployment), and provision for there to be no reduction in the event of low deployment.

8.3 A more detailed analysis of the consultation responses and policy decisions is presented in the Government's response to the consultation on Phase 2A of the Comprehensive Review of Feed-in Tariffs, available on the Department of Energy and Climate Change's website at http://www.decc.gov.uk/en/content/cms/consultations/fits_rev_ph2a/fits_rev_ph2a.aspx

9. Guidance

9.1 Ofgem already provides detailed guidance for suppliers and potential participants in the FITs scheme (FIT generators) in a variety of forms. That guidance will be updated to take account of this instrument.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published on the Department of Energy and Climate Change's website.

11. Regulating small business

11.1 The legislation does apply to small business.

11.2 There are no impacts for firms employing up to 20 people as no electricity supply companies employ 20 or fewer people.

12. Monitoring & review

12.1 The amendments to the 2010 Order and modifications to the licence conditions are a product of the ongoing monitoring of the FITs scheme to ensure that delivery of the scheme is as envisaged by the policy consulted on in 2009 and introduced in April 2010. This ongoing monitoring is designed to ensure that the objectives of the FITs scheme are delivered in a way which ensures value for money, particularly to consumers who ultimately pay. The degression mechanism in particular will be regularly reviewed in consultation with the PV industry, to ensure that it is operating as intended.

13. Contact

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