

**EXPLANATORY MEMORANDUM TO
MODIFICATIONS TO THE STANDARD CONDITIONS OF ELECTRICITY SUPPLY
LICENCES (NO. 1 OF 2012)**

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 modifications

2.1 The Feed-in Tariffs (“FITs”) scheme is the Government’s main policy measure to encourage the deployment of small scale low carbon electricity generation in Great Britain.

2.2 The scheme was implemented in part through the insertion of provisions in the standard conditions of electricity supply licences, requiring electricity suppliers with more than 50,000 domestic customers to offer FITs to accredited small scale generators of electricity using an eligible low-carbon energy source. The licence conditions, among other things, specify the tariffs payable to generators for each unit of electricity generated by eligible installations. Those tariffs differ according to the description and capacity of the eligible installation and the date on which it becomes eligible for FITs.

2.3 The modifications in this draft instrument, which will come into force on 3 March 2012 (after being laid before Parliament in draft for 40 days in accordance with section 42 of the Energy Act 2008), reduce tariffs for solar PV installations of up to 250kW capacity which become eligible for FITs on or after that date. The reduced tariffs will apply in respect of electricity generated by those installations on or after 1 April 2012.

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

3.1 Not applicable. These are licence modifications and not a Statutory Instrument.

4. Legislative Context

4.1 These licence modifications are to be made in exercise of the powers conferred on the Secretary of State by section 41 of the Energy Act 2008 to modify the licences for electricity suppliers as established under the Electricity Act 1989. They are laid before Parliament in draft in accordance with section 42 of that Act.

4.2 They amend Schedule A to Standard Condition 33 of the standard conditions of electricity supply licences. Standard Condition 33 was inserted with effect from 1 April 2010, and Schedule A was previously amended with effect from 1 August 2011, by licence modifications made by the Secretary of State under the same power.

4.3 Further provision about the administration of the FIT scheme is contained in the Feed-in-Tariff (Specified Maximum Capacity and Functions) Order 2010 (S.I. 2010/678, as amended by S.I. 2011/1181, 2011/1655 and 2011/2364).

5. Territorial Extent and Application

5.1 The modifications apply to Great Britain.

6. **European Convention on Human Rights**

6.1 No statement is required.

7. **Policy background**

- *What is being done and why*

7.1 On 31 October 2011 the Government published a consultation on Feed-in Tariffs (FITs) for solar photovoltaics (PV). This set out proposals for responding to developments in the solar PV sector, particularly a substantial increase in deployment prompted by falling PV prices. Specifically, the consultation sought views on:-

- (i) reducing the generation tariffs for solar PV installations to a more sustainable level consistent with providing a reasonable rate of return.
- (ii) applying the new generation tariffs from 1 April 2012 to all new solar PV installations with an eligibility date on or after an earlier 'reference date' which we proposed should be 12 December 2011.
- (iii) introducing new multi-installation tariff rates for aggregated solar PV schemes i.e. where a single individual or organisation owns or receives FIT payments from more than one PV installation, located on different sites.
- (iv) strengthening the link between FITs and energy efficiency by introducing a new energy efficiency requirement for FITs for solar PV.

7.2 On 21 December 2011, in *R. on application of Friends of the Earth Ltd and others v. Secretary of State for Energy and Climate Change*, the Administrative Court ruled that the approach proposed in the consultation document, of applying new tariffs to installations which became eligible for FITs from a reference date earlier than the coming into force date of legislation giving effect to the new tariffs, was unlawful. The Government appealed against the decision, and on 13 January 2012 the Court of Appeal heard the appeal and reserved its decision. A date has not yet been set for handing down of the Court of Appeal's judgment.

7.3 Given this uncertainty about timing, the Government has decided to bring forward part of its decision on the aspects of the consultation concerning tariffs for solar PV, and proceed with the implementation of tariff changes to the extent that the power to do so is not in issue in the current legal proceedings. One aim of this is to alleviate to some extent the current uncertainty pending the outcome of those proceedings.

7.4 This accelerated timing should also help to manage the impact on the FITs budget if DECC were to lose the appeal, which would otherwise result in the current tariffs applying for up to 25 years for all installations which become eligible for FITs before 1 April 2012. The impact on the budget for every new installation at the current tariff would be more than twice the impact of installations receiving a 21p tariff. In

addition, we anticipate the higher tariff would drive greater demand given the increased profit margin for generators – so the combined effect of these two increases would be very significant.

8. Consultation outcome

8.1 The consultation closed on 23 December 2011, and a total of 2,370 consultation responses were received. Many respondents disagreed with the proposed new tariffs for solar PV, citing a variety of reasons. These reasons included arguments that the scale of the proposed reductions was too steep, the assumptions on PV prices incorrect, and the target return of 4.5% to 5% too low.

8.2 On the other hand, many respondents accepted that the current tariffs were too high and did need to be reduced. A number from within the solar industry agreed that the tariff levels proposed would still allow a reasonable rate of return (in most circumstances), as manufacturing and other costs associated with solar PV had come down significantly and were still reducing. These respondents accepted that the tariff cuts were needed in order to protect the budget so that the scheme would remain available for future generators; indeed some expressed concern that if cuts were not made soon enough, or were not severe enough, the budget for FITs could be exhausted and the Government might be forced to close the scheme altogether.

8.3 We have carefully considered all the feedback from the consultation. While we recognise that the scale of the proposed reductions in tariffs is significant, we continue to consider that this is justified and necessitated by the magnitude of the recent reductions in the costs of solar PV and the need to manage expenditure.

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 will be published together with the Government's full response to the consultation.

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 the approach taken is that no electricity supply companies employ 20 or fewer people.

12. Monitoring & review

12.1 The 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. This monitoring will continue with the further development of the comprehensive review.

12.2 Further information on the review is available from the Department of Energy and Climate Change's website.

13. Contact

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