
STATUTORY INSTRUMENTS

2011 No. 1181

The Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment) Order 2011

Amendment of article 8

8. For article 8 (exceptions to accreditation applicable to all eligible installations) substitute—

“**8.**—(1) The Authority must not accredit an eligible installation as an accredited FIT installation where—

- (a) the installation has a total installed capacity which exceeds the specified maximum capacity;
- (b) the installation is an extension to—
 - (i) an accredited FIT installation; or
 - (ii) another installation using an eligible low-carbon energy source, and the aggregate total installed capacity of the extension and installation exceeds the specified maximum capacity; or
- (c) electricity from the installation is or has been sold pursuant to a NFFO arrangement.

(2) The Authority must not accredit an eligible installation as an accredited FIT installation where it has good reason to believe that any generating equipment used at the installation has formed part of an installation previously accredited—

- (a) under the ROO (other than an installation accredited under article 6 or 7 of this Order); or
- (b) under this Part.

(3) Subject to paragraph (4), the Authority must not accredit an eligible installation as an accredited FIT installation unless the FIT generator has given notice to the Authority that—

- (a) no grant from public funds has been made in respect of any of the costs of purchasing or installing the installation; or
- (b) where any such grant has been made, the grant has been repaid to the person or authority which made it.

(4) Paragraph (3) does not prohibit the Authority from accrediting an eligible installation where a grant referred to in paragraph (3) has been made and not repaid if the grant is—

- (a) a permitted grant; or
- (b) a grant other than a permitted grant to which the conditions in paragraph (5) apply.

(5) The conditions referred to in paragraph 4(b) are that—

- (a) the grant is made before 1st July 2011;
- (b) the installation is first commissioned before 1st October 2011; and
- (c) the Authority is satisfied that the making of FIT payments in respect of the installation would be in accordance with a de minimis Commission Regulation.

(6) In this article—

“a de minimis Commission Regulation” means—

- (a) [Commission Regulation \(EC\) No. 1998/2006](#)⁽¹⁾ on the application of Articles 87 and 88 of the EU Treaty⁽²⁾ to de minimis aid;
- (b) [Commission Regulation \(EC\) No. 875/2007](#)⁽³⁾ on the application of Articles 87 and 88 of the EU Treaty to de minimis aid in the fisheries sector and amending [Regulation \(EC\) No. 1860/2004](#)⁽⁴⁾; or
- (c) [Commission Regulation \(EC\) No. 1535/2007](#)⁽⁵⁾ on the application of Articles 87 and 88 of the EU Treaty to de minimis aid in the sector of agricultural production;

“grant from public funds” means a grant made by a public authority or by any person distributing funds on behalf of a public authority;

“permitted grant” means—

- (a) a grant made before 1st April 2010 in respect of the costs of purchasing or installing an eligible installation where the installation—
 - (i) was first commissioned before 15th July 2009; or
 - (ii) is on a residential property and was first commissioned during the period which began on 15th July 2009 and ended on 31st March 2010; or
- (b) a grant made in respect of the reasonable additional costs of an installation to avoid or mitigate environmental harm, where the amount of the grant does not exceed the amount of those costs.

(7) In this article, a grant is made when the offer of that grant is accepted by the recipient of the offer.”.

(1) OJ L 379, 28.12.2006, p. 5.

(2) Following the Treaty of Lisbon, these Articles have been renumbered as Articles 107 and 108 of the Treaty on the Functioning of the European Union respectively.

(3) OJ L 193, 25.7.2007, p. 6.

(4) OJ L 325, 28.10.2004, p. 4.

(5) OJ L 337, 21.12.2007, p. 35.