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STATUTORY INSTRUMENTS

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**2013 No. 1099**

**ELECTRICITY**

**The Feed-in Tariffs (Amendment) Order 2013**

<i>Made</i>	- - - -	<i>7th May 2013</i>
<i>Laid before Parliament</i>		<i>9th May 2013</i>
<i>Coming into force</i>	- -	<i>1st July 2013</i>

The Secretary of State, in exercise of the powers conferred by sections 43(3)(a) and 104(2) of the Energy Act 2008(1), makes the following Order:

**PART 1**

Introductory provisions

**Citation and commencement**

1. This Order may be cited as the Feed-in Tariffs (Amendment) Order 2013 and comes into force on 1st July 2013.

**Interpretation**

2. In this Order, “the Order” means the Feed-in Tariffs Order 2012(2).

**PART 2**

Amendments to the Order

**General**

3.—(1) Article 2 (interpretation) of the Order is amended as follows—  
(2) In paragraph (1)—

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(1) 2008 c.32.  
(2) S.I. 2012/2782.

- (a) in the definition of “energy performance certificate”, for “the Energy Performance of Buildings (Certificates and Inspections) Regulations 2007”, substitute “the Energy Performance of Buildings (England and Wales) Regulations 2012(3);”;
  - (b) after the definition of “MCS certificate”, insert—
    - ““mutualisation distribution”, “mutualisation notice” and “mutualisation payment” have the meaning given by article 30A(3);”;
  - (c) after the definition of “transmission system”, insert—
    - ““working day” means any day other than a Saturday or a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(4).”.
- (3) In the list of expressions in paragraph (2), insert “insolvency event”, “mandatory FIT licensee”, and “voluntary FIT licensee” in the appropriate places.
- (4) After paragraph (2), insert—
- “(3) In this Order, the expression “last resort supply direction” has the meaning given to it in the standard conditions of electricity supply licences.”.
4. In article 11(6) of the Order, in the definition of “dwelling”, for “the Energy Performance of Buildings (Certificates and Inspections) Regulations 2007”, substitute “the Energy Performance of Buildings (England and Wales) Regulations 2012;”.

#### **Treatment of FIT generators following licence revocation**

5. After article 24, insert—

### **“PART 5A**

#### **Treatment of FIT generators following licence revocation**

##### **Accredited FIT installations**

- 24A.**—(1) Paragraph (2) applies where—
- (a) a specified event has happened in relation to a FIT licensee (“A”);
  - (b) immediately before the event a FIT generator (“P”), or P’s nominated recipient, was entitled to receive FIT payments from A in respect of an accredited FIT installation; and
  - (c) another FIT licensee (“B”)—
    - (i) (where B is a mandatory FIT licensee) has received a notification from P that P is to transfer to B for FIT payments in respect of an accredited FIT installation; or
    - (ii) (where B is a voluntary FIT licensee) has received a request from P to transfer to B for FIT payments in respect of that installation and B has accepted that request in writing to P.
- (2) Where this paragraph applies—
- (a) the Authority may give a direction to B (“a continuity of FIT payments direction”) as to the matters to be taken into account by B in determining the date upon which

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(3) S.I. 2012/3118.

(4) 1971 c.80.

- P shall be deemed to have transferred from A to B in respect of the installation referred to in paragraph (1); and
- (b) the date determined by B may be earlier than the date of the notification or the request referred to in paragraph (1)(c).
- (3) For the purposes of paragraph (1), a specified event has happened in relation to A if—
- (a) A’s electricity supply licence is revoked;
  - (b) a last resort supply direction is issued due to circumstances having arisen entitling the Authority to revoke A’s electricity supply licence; or
  - (c) A suffers an insolvency event.

**Other installations not yet accredited**

- 24B.**—(1) Paragraph (2) applies where—
- (a) a FIT licensee (“A”) has received a written request for MCS-certified registration from a FIT generator (“P”) in respect of an eligible installation accompanied by an MCS certificate in respect of that installation;
  - (b) following receipt of that request, a specified event has happened in relation to A; and
  - (c) another FIT licensee (“B”)—
    - (i) (where B is a mandatory FIT licensee) has received a notification from P that P’s request for MCS-certified registration is to be treated as having been made to B; or
    - (ii) (where B is a voluntary FIT licensee) has received a request from P that P’s request for MCS-certified registration be treated as having been made to B, and B has accepted this request in writing to P; and
  - (d) the installation is subsequently accredited.
- (2) Where this paragraph applies, the eligibility date for the installation referred to in paragraph (1)(a) is the later of—
- (a) the date on which the written request for MCS-certified registration accompanied by an MCS certificate in respect of that installation was received by A; or
  - (b) the date on which the installation was commissioned.
- (3) For the purposes of paragraph (1)(b), a specified event has happened in relation to A if an event in article 24A(3) has occurred.”.

**Levelisation, mutualisation and correction**

- 6.**—(1) Part 6 (Levelisation) of the Order is amended as follows.
- (2) In article 27(2), omit sub-paragraph (b).
  - (3) In article 27(3)—
    - (a) in sub-paragraph (a), after “levelisation payments”, add “and mutualisation payments”;
    - (b) in sub-paragraph (b), after “levelisation payments”, add “and mutualisation distributions”;and
  - (c) in paragraph (6), omit the definition of “net metered export payment”.
  - (4) In article 29, after “has calculated”, delete “periodic levelisation payments or annual”.
  - (5) In article 30, after paragraph (2), insert—

“(2A) Where the late payment is in respect of a periodic levelisation payment and article 30A does not apply, if the payment is received by the Authority—

- (a) before the Authority makes an annual levelisation calculation for that FIT year under article 26, the payment shall be included in the Authority’s calculations under that article; or
- (b) after the Authority makes an annual levelisation calculation for that FIT year under article 26, the payment shall be distributed in accordance with article 30D(2).”.

(6) After article 30, insert—

**“Mutualisation**

**30A.**—(1) This article applies—

- (a) if one or more licensees fail to make the whole or part of a periodic levelisation payment to the Authority within 5 working days of the date on which it is due (“the due date”); and
- (b) after 5 working days following the due date, the total of unpaid amounts (“the total”) is equal to or greater than the lower limit of the mutualisation trigger range.

(2) In paragraph (3), “the amount to be mutualised” means the lesser of—

- (a) the total referred to in paragraph (1)(b); or
- (b) the upper limit of the mutualisation trigger range.

(3) The Authority must—

- (a) apportion the amount to be mutualised between all licensees other than the defaulting licensee, in proportion to each licensee’s market share at the due date;
- (b) give notice to each of those licensees (a “mutualisation notice”)—
  - (i) that it is liable to make a payment of the amount apportioned to it (a “mutualisation payment”);
  - (ii) of the date by which the mutualisation payment is due; and
- (c) where paragraph (4) applies, make a distribution of the total amounts received by the Authority (a “mutualisation distribution”) to any licensee which—
  - (i) is not a defaulting licensee; and
  - (ii) to whom, because of the unpaid amounts, payment of all or part of a periodic levelisation payment to which it is entitled to under article 28 has been deferred.

(4) Paragraph (3)(c) applies if—

- (a) the date by which the mutualisation payment is due has passed; and
- (b) the Authority has received mutualisation payments.

(5) If after giving a mutualisation notice to a licensee, the Authority identifies that any mutualisation payment specified in that notice is incorrect, the Authority must—

- (a) cancel that mutualisation notice; and
- (b) issue a further mutualisation notice under paragraph (3).

(6) Where a mutualisation notice is issued to a licensee in accordance with paragraph (5)(b) (“the new notice”), the Authority may treat any mutualisation payment made by that licensee in respect of the cancelled notice as a mutualisation payment made in respect of the new notice.

(7) Where, after receiving mutualisation payments from licensees, the Authority receives an unpaid amount from a defaulting licensee, the Authority must within 20 working days distribute that amount among qualifying licensees in proportion to their market shares at the unpaid amount's due date.

(8) Where the Authority receives a mutualisation payment after the date on which it is due—

- (a) if the Authority has not yet made a mutualisation distribution, then this amount shall be included in the distribution; or
- (b) if the Authority has made a mutualisation distribution, then this amount shall be distributed in accordance with article 30D(2).

(9) In this article—

“defaulting licensee” means a licensee which has failed to make the whole or part of a periodic levelisation payment to the Authority by the date on which it is due;

“market share” is to be determined in accordance with article 27;

“mutualisation trigger range” has the meaning set out in article 38;

“qualifying licensee” is a licensee who has made a mutualisation payment under paragraph (3) in respect of the unpaid amount mentioned in paragraph (7); and

“unpaid amount” means an amount of a periodic levelisation payment which a defaulting licensee has failed to pay by the date on which it is due.

### **Termination of supply licence**

**30B.**—(1) This article applies if the electricity supply licence of a licensee (E) is terminated.

(2) E is not to be treated as a licensee for the purposes of any periodic levelisation, annual levelisation or mutualisation which takes place after the termination of its licence.

(3) If, before the termination of E's licence, it has been determined upon a periodic or annual levelisation under this Part that E is liable to pay or entitled to receive an amount, to the extent that the amount is unpaid, E remains subject—

- (a) to that liability, or
- (b) to such part of the entitlement that the Authority shall determine.

(4) If—

- (a) an annual levelisation takes place after the termination of E's licence; and
- (b) E had received or paid periodic levelisation payments for the FIT Year to which the annual levelisation relates,

the Authority may adjust the annual levelisation payment of each remaining licensee to ensure that the total amount of levelisation payments made or due to be made by licensees for the FIT Year is equal to the total amount of levelisation payments received or due to be received by licensees for the FIT Year.

(5) For the purposes of this article an electricity supply licence is terminated if—

- (a) it is revoked by the Authority in accordance with the terms of the licence;
- (b) it is surrendered by the licensee; or
- (c) it expires by effluxion of time.

### **Levelisation correction**

**30C.**—(1) Paragraph (2) applies where the Authority identifies that any determination or calculation under article 26(1) or article 27, made before or after the coming into force of this article, is incorrect.

(2) The Authority may, having regard to any payment made or received under the articles listed in paragraph (1), calculate any levelisation payment that each licensee is entitled to receive from, or is required to pay into, the levelisation fund in order to correct the error identified under paragraph (1).

(3) After making a calculation under paragraph (2), the Authority must give notice to licensees in accordance with article 29.

(4) Payments received from licensees in respect of a FIT year as a result of paragraph (2) shall be distributed in accordance with article 30D(2).

### **Late payments**

**30D.**—(1) This article applies when the Authority receives a payment as a consequence of the application of—

- (a) article 30(2A)(b);
- (b) article 30A(8); or
- (c) article 30C(3).

(2) The Authority must distribute the payment to licensees in proportion to each licensee's market share.

(3) For the purposes of paragraph (2), a licensee's market share is to be calculated in accordance with article 27(4) in respect of the FIT year in which the payment was received by the Authority.

(4) The distribution under paragraph (2) must be made on or before 1st October following the end of the FIT year in which the payment was received.

(5) Before making a distribution under paragraph (2), the Authority must give notice to each licensee entitled to receive part of the distribution setting out—

- (a) what the distribution relates to; and
- (b) the amount the licensee is to receive.”.

### **Amendments to Part 8 (Functions of the Secretary of State) of the Order**

**7.**—(1) Part 8 (Functions of the Secretary of State) is amended as follows.

(2) In article 38(1)—

- (a) omit sub-paragraph (b); and
- (b) after sub-paragraph (c), insert—

“and

- (d) a lower and a higher limit for the unpaid amounts (as referred to in article 30A(1)(b) and defined in article 30A(9)) that will trigger a mutualisation (“the mutualisation trigger range”).”.

(3) After article 38, insert—

“**38A.** For the period commencing on 1st July 2013 until the end of the FIT year within which that date falls, the mutualisation trigger range (as defined in article 38(1)(d)) shall be £1,700,000 to £16,900,000.”.

7th May 2013

*Greg Barker*  
Minister of State  
Department of Energy and Climate Change

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which extends to Great Britain, amends the Feed-in Tariffs Order 2012 (“the 2012 Order”).

The Order inserts article 24A (accredited FIT installations) into the 2012 Order to provide for the treatment of Feed-in Tariff (“FIT”) generators if the FIT licensee from whom they are receiving payments for their accredited installation has its licence revoked, or enters insolvency. A further article 24B (other installations not yet accredited) is inserted to provide for the treatment of a FIT generator who has made a request for MCS-certified registration for their FIT installation from a licensee, but the licensee has its licence revoked etc. before registering that installation.

Mutualisation is a process by which costs arising from the non-payment of periodic levelisation payments are allocated among the FIT licensees. In order to provide for the mutualisation of the unpaid amounts of levelisation payments, the Order amends articles 27 (calculation of FIT contributions, etc), 29 (notice of levelisation payments), 30 (payments by the Authority) and 38 (determinations relating to levelisation) of the 2012 Order and inserts new articles 30A (mutualisation), 30B (termination of supply licence), 30C (levelisation correction), 30D (late payments) and 38A.

Article 27 is also amended to remove net metered export payments from the calculation of the FIT contribution of a licensee.

Article 30A provides the conditions which will trigger a mutualisation, how the Authority is to apportion the unpaid amounts among the licensees and how a mutualisation payment is to be distributed.

Article 30B provides what happens in respect of levelisation and mutualisation if in the course of a FIT year, a FIT licensee has its licence terminated.

Article 30C provides for a correction mechanism if the Authority identifies that a determination or calculation made under article 26 (calculation of levelisation payments) or article 27 is later found to have been incorrect.

Article 30D provides for the treatment of late mutualisation payments, or late levelisation payments not triggering a mutualisation.

A new sub-paragraph is inserted in article 38 (amendments to Part 8 (Functions of the Secretary of State) of the Order) to require the Secretary of State to determine a range for mutualisation on an annual basis. This range is an upper and lower limit for the amount of unpaid periodic levelisation payments within which mutualisation is triggered. A new article 38A sets out the mutualisation trigger range for the FIT year in which 1st July 2013 falls.

An impact assessment has been prepared in respect of the changes to the FIT scheme effected by this Order and copies can be obtained from the Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW.