

## **ENERGY ACT 2008**

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### **EXPLANATORY NOTES**

#### **Part 2: Electricity from Renewable Sources**

##### **Feed-in Tariffs for Small-Scale Generation of Electricity** Commentary on Sections

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

156. *Subsection (1)* gives the Secretary of State the power to modify electricity supply and distribution licences (as well as standard conditions incorporated in licences, documents maintained in accordance with the conditions of licences or agreements that give effect to those documents) to introduce a scheme (that will be known as “feed-in tariffs”) to encourage small-scale low-carbon generation of electricity. *Subsection (2)* sets out the purposes for which modifications are to be made under the power.
157. *Subsection (2)(a)* states that the modifications in *subsection (1)* may be made for establishing feed-in tariffs for small scale low-carbon electricity generation, or for making arrangements for the administration of such a scheme. *Subsection (2)(b)* states that these modifications may also be made to require that electricity generated by small scale generators is able to enter the distribution network. *Subsection (2)(c)* also allows the Secretary of State to modify the documents referred to in subsection (1) to require the holder of a licence to make arrangements relating to matters referred to in subsection (2)(a) and (b). This is to facilitate the establishment and operation of the feed in tariff scheme.
158. *Subsection (3)* sets out some of the kinds of modifications which could be made under this section to the documents described in *subsection (1)*.
159. Under *subsection (3)(a)*, modifications may require holders of electricity supply licences to make a payment to small-scale low-carbon generators or a payment to the Authority to be passed onto such generators. *Subsection (3)(b)* states that the modifications can provides for how a payment under *subsection (3)(a)* is to be calculated.
160. *Subsection (3)(c)* allows for degression rates, where the tariffs to be paid to new installations would decrease over time. These degression rates could be set in anticipation of technology improvement or cost reductions, and may therefore differ for different technologies and at different sizes of installation.
161. *Subsection (3)(d)* allows the modifications to provide for circumstances where feed-in tariff payments will not be made or where reduced payments will be made. For instance, it is intended that generators will not be entitled to claim “double incentives”, such as both feed-in tariffs and ROCs for the same electricity generation.
162. There may be situations where, subsequent to making a payment under subsection (3) (a), an error is discovered, such as a payment being made in error or a generator being

overpaid as a result of error in administration or in cases of miscalculation. In such circumstance, *subsection (3)(e)* allows for payments to be recovered from generators.

163. *Subsection (3)(f)* allows the modifications to require the holder of a supply licence or distribution licence to pay a levy to the Authority at specified times. *Subsection (3)(g)* allows provision to be made as to how this levy may be calculated. *Subsection (3)(h)* allows the holder of an electricity supply or distribution licence to receive a payment from the Authority. These subsections allow modifications to ensure that costs of tariffs paid out are redistributed fairly across all suppliers. The calculation in *subsection (3)(g)* could include, for example, consideration of the number of small-scale low-carbon generators a supplier services or the amount of electricity generated by small-scale low-carbon generators as a proportion of the total amount of electricity supplied to all customers. Funding for any such redistribution would come from the levy specified at *subsection (3)(f)*.
164. *Subsection (4)* provides definitions of the main terms used in the section. In particular, “the Authority” is defined as the Gas and Electricity Markets Authority and “small-scale low-carbon generator” is defined as the owner of plant used or intended to be used for small-scale low carbon generation. In turn, “small-scale low-carbon generation” is defined as the use, for the generation of electricity, of any plant which relies on the energy sources and technologies listed at *subsection (5)* and which does not exceed the maximum capacity (to be specified by order).
165. *Subsection (4)* puts an upper capacity cap of 5 megawatts on the level which can be specified as the maximum capacity for small-scale low-carbon generation plant under the Order. Beneath this maximum capacity cap the Secretary of State has the power to set a “specified maximum capacity” for small scale low carbon feed-in tariffs by order.
166. *Subsection (5)* sets out the sources of energy and technologies that are eligible for feed-in tariff payments for the generation of small-scale low-carbon electricity. These are biomass, biofuels, fuel cells, photovoltaics, water (including waves and tides), wind, solar power, geothermal sources and non-renewable micro combined heat and power systems with an electrical capacity of up to 50 kilowatts.
167. *Subsection (6)* provides that the list of sources of energy and technologies provided by *subsection (5)* can be modified by order which will be subject to the affirmative resolution procedure (see section 105), thereby enabling the Secretary of State to modify the list in the future. This gives the Secretary of State the flexibility to modify *subsection (5)*, for example if technological developments bring forward new low carbon technologies that the Secretary of State wished to receive feed-in tariffs. In this Act, by virtue of section 106, the power to modify includes the concepts of amending, adding to, revoking or repealing.
168. *Subsection (7)* provides that the power in *subsection (1)* may be exercised generally, only in relation to specified cases or subject to exceptions and also allows for the powers to be exercised differently. *Subsection 7(c)* gives the Secretary of State a power to make any incidental, supplemental, consequential or transitional modifications that may be required. This mirrors the general provision relating to subordinate legislation made under powers in this Act and thus applies similar concepts to the licence modification power to enable the feed-in tariff scheme. *Subsection (8)* further clarifies the scope of the licence modification power.

#### ***Section 42: Power to amend licence conditions etc: procedure***

169. This section sets out the procedure that the Secretary of State must comply with in order to exercise the modification powers conferred by section 41.
170. *Subsection (1)* obliges the Secretary of State, before making modifications, to consult the holders of licences being modified, the Gas and Electricity Markets Authority and others as he considers appropriate. *Subsection (2)* specifies that this consultation

requirement may be satisfied by consultation either before or after the passing of the Act.

171. *Subsections (3) and (4)* provide that before making modifications to any of the documents in *section 41(1)*, the Secretary of State must lay the draft modifications before Parliament and allow a period of 40 days for either House of Parliament to reject the draft. *Subsection (5)* states that if Parliament does not reject the draft modifications then the Secretary of State may proceed to make those proposed modifications, and under *subsection (7)* he must publish details of any modifications as soon as reasonably practicable. *Subsection (6)* makes it clear that if Parliament rejects the draft modifications the Secretary of State may, if he wishes, lay a revised draft in front of Parliament. *Subsections (8) and (9)* outline how the 40 day period is to be calculated. This process mirrors the negative resolution procedure.

### ***Section 43 Feed-in tariffs: supplemental***

172. *Section 43* makes three supplemental provisions in relation to the modification power conferred by section 41. *Subsection (1)* ensures that any modifications made to a standard licence condition under the new power do not prevent any other part of the condition from being a standard condition.
173. *Subsection (2)* ensures that where licence modifications are made to standard licence conditions, the Gas and Electricity Markets Authority must make the same modifications for the purpose of future licences, and also must publish those modifications.
174. *Subsection (3)(a)* is an order making power for the Secretary of State to make provisions conferring functions either on the Authority or the Secretary of State, or both, in connection with the administration of any scheme established through section
175. *Subsection (3)(b)* allows the Secretary of State to make consequential amendments to provisions made by or under an Act (including Acts of the Scottish Parliament) as he considers appropriate in consequence of any provision made under *subsection (3)(a)* or under the section 41 power more generally. Orders made under section 43(3)(a) are subject to the negative resolution procedure (see section 105), whereas orders made under section 43(3)(b) are subject to the affirmative resolution procedure if they contain provision to modify an Act or an Act of the Scottish Parliament, and negative resolution procedure in other cases (see section 105).