

**EXPLANATORY MEMORANDUM TO**  
**THE FEED-IN TARIFFS (SPECIFIED MAXIMUM CAPACITY AND FUNCTIONS)**  
**(AMENDMENT) ORDER 2011**

**2011 No. 1181**

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

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. The Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment) Order 2011 (“this Order”) amends the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (SI 2010/678) (the “2010 Order”) which was made and laid before Parliament on the 8<sup>th</sup> and 9<sup>th</sup> March 2010 respectively, and came into force on 1<sup>st</sup> April 2010.

2.2 The scheme is also implemented through the licence modifications to amend the Standard Licence Conditions of electricity supply licences, requiring suppliers of electricity with more than 50,000 domestic customers to offer FITs to all accredited small scale (capacity of 5MW or less) generators of electricity using an eligible low-carbon energy source. These licence modifications<sup>i</sup> are made under sections 41-43 of the Energy Act 2008, which provide powers to modify the operating licences for electricity distribution and supply companies granted under the Electricity Act 1989.

2.3 This Order has been developed in the light of early experience of implementing FITs. It introduces modifications and refinements to the 2010 Order which are designed to ensure that the FITs scheme is being delivered as envisaged. These include amendments to provide greater transparency and clarity on the limited circumstances in which FITs can be combined with publicly funded grants in the light of the European Commission’s state aid approval of the FITs scheme, the conclusions of which were published on 14 June 2010 (decision N94/2010).

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

3.1 The interpretation provision in the 2010 Order refers to the definitions and interpretation section in the modifications contained in Schedule A to Standard Licence Conditions 33 and 34 of the electricity supply licence which, together with the 2010 Order, form the legislative structure of the FITs scheme. The reason for this is to achieve consistency between the two instruments where the same concepts are used in both. Where relevant, this Order also refers to concepts used in Schedule A to Standard Licence Conditions 33 and 34.

3.2 This Order also refers to interpretations used in the Renewables Obligation Order 2009 and the Renewables Obligation (Scotland) 2009 (“the ROO”). This is because the accreditation process for some installations under the FIT scheme builds on the accreditation process used under the ROO and accreditation of some types of installation is the subject of amendments made by this Order. Where these interpretations are referred to, they are consistent in both the ROO for England and Wales and the ROO for Scotland.

#### **4. Legislative Context**

4.1 This Order is made in exercise of the powers conferred on the Secretary of State by Sections 41 (4), 43 (3)(a) and 104(2) of the Energy Act 2008.

4.2 This Order makes a number of modifications and refinements to the 2010 Order. As mentioned above, other provisions of the FITs scheme (in particular, obligations on electricity suppliers) are contained in Schedule A to Standard Licence Conditions 33 and 34, modifications made to the electricity supply licence under sections 41-43 of the Energy Act 2008. However, no further modifications to the electricity supply licence are being made at this time.

#### **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain. The Northern Ireland administration will develop their own legislation if required.

#### **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 This Order amends the 2010 Order which gives functions to the Gas and Electricity Markets Authority (“the Authority”) and the Secretary of State to administer the FITs scheme and sets the maximum capacity for installations participating in the scheme. The 2010 Order provides a formal basis for ensuring a properly run FITs scheme to enable a switch to a low carbon economy and society by providing a support mechanism for distributed and small-scale electricity generation using renewable and other low-carbon sources. The FITs scheme is intended to encourage deployment of additional small scale, low carbon electricity generation, particularly by individuals, householders, organisations, businesses and communities who would not have traditionally engaged with the energy market. In doing so, the FITs scheme is designed to contribute to the binding target contained in the 2009 EU Renewable Energy Directive (2009/28/EC), to achieve 20% of the EU’s energy consumption from renewable sources by 2020 with a UK share of 15%.

7.2 Experience of implementing FITs since the scheme started in April 2010 has highlighted areas where modifications and “housekeeping” amendments to the 2010 Order would help to ensure that the FITs scheme is implemented as originally envisaged, enabling its objectives to be delivered. The effects of the amendments in this Order are summarised below:-

- Clarifying the definition of “hydro generating station” to remove the possibility that pumped storage (a non-renewable process used by some hydropower schemes to generate electricity from water that has been artificially pumped into a reservoir) could unintentionally receive support under FITs;
- Clarifying the cross references to the standard conditions of electricity supply licenses in the definitions of Standard Condition 33 and Standard Condition 34;
- Ensuring consistency by changing the measure of capacity used in setting the specified maximum capacity of eligible installations under the FITs scheme from declared net capacity to total installed capacity;
- Providing a transitional arrangement that allows hydro-generating stations with a capacity of 50kW or less that are first commissioned between 1<sup>st</sup> April 2010 and 1<sup>st</sup> October 2011 to be accredited for FITs if they meet the criteria, except as to capacity, for accreditation under the Renewables Obligation Order 2009 or the Renewables Obligation (Scotland) Order 2009 (collectively described as the ROO)). After this transitional period, the relevant Microgeneration Certification Scheme (MCS) standards are expected to be fully in place which will enable hydro generating stations with a capacity of less than 50kW to be accredited under the MCS-FIT process as originally envisaged;
- Extending by a year the period in which eligible installations with a capacity of less than 50kW can transfer from the Renewables Obligation to FITs. This will remove the risk that generators who would otherwise be eligible for FITs, are unable to become accredited because of failure to notify the Authority by the initially specified date of 1<sup>st</sup> October 2010;
- Clarifying that the Authority must not accredit an installation for FITs where it has good reason to believe that any generating equipment which forms part of the installation has formed part of an installation previously accredited under the ROO (except where the installation has transferred from the RO to FITs) or under the FITs scheme. This reflects the focus of FITs support on new installations, as envisaged by the policy and the tariffs (which were set on the basis of new technology costs);
- Ensuring that circumstances where an installation that has benefited from a public grant can also be eligible for FITs, are the exception and not the rule. This is to ensure consistency with the original policy intent of the FITs scheme and to ensure that the scheme provides value for money, particularly in the light of the European Commission’s state aid approval. This Order does this by confirming that the combination of FITs and grants is only possible where:-
  - (i) it meets the EU’s de minimis regulations but only where the grant has been made before 1<sup>st</sup> July 2011 for an installation that is first commissioned before 1<sup>st</sup> October 2011; and
  - (ii) the grant is for expenditure on additional capital/operating costs (i.e. that aren’t part of the standardised costs on which the FITs

were calculated) and which are for the purposes of avoiding or mitigating environmental harm and which don't result in overcompensation;

- Clarifying the position with regards to the Authority giving notice of levelisation payments (levelisation being the process that enables the costs of the FITs scheme to be borne by all licensed suppliers in proportion to their share of the UK electricity supply market; one of the basic principles underpinning the FITs scheme).

## **8. Consultation outcome**

8.1 This Order is intended to ensure that the FITs scheme is being run in the manner envisaged when the scheme was first introduced. Proposals for introducing FITs were part of a three month consultation on a range of renewable energy financial incentives published in July 2009. The consultation referred to a number of government commissioned studies and independent analyses, all of which provided evidence to support the introduction of FITs. The amendments in this Order are within the parameters of the FITs policy as introduced following consultation. There is no statutory obligation to consult in relation to the Order, although there is a statutory duty to consult on the licence modifications. However, the amendments in this Order did not require changes to the licence hence a consultation was not considered necessary.

## **9. Guidance**

9.1 Ofgem already provides detailed guidance for suppliers and potential participants in the FITs scheme (FIT generator) in a variety of forms. The same method will be used to alert electricity suppliers and other to this Order.

## **10. Impact**

10.1 There are no impacts on business, charities or voluntary bodies additional to those described in the Explanatory Memorandum supporting the 2010 Order.

10.2 There are no impacts on the public sector additional to those described in the Explanatory Memorandum supporting the 2010 Order.

10.3 An Impact Assessment is attached to this memorandum.

## **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 amendments in this Order are themselves 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 introduction of this Order. The Authority has a particular role in relation to monitoring the FITs scheme and ensuring compliance.

12.2 More generally, all aspects of the FIT scheme are currently being considered as part of the first comprehensive review of the FITs scheme. The start of this review was announced by the Secretary of State for Energy and Climate Change on 7<sup>th</sup> February 2011. Further information on the review is available from the Department of Energy and Climate Change's website.

### **13. Contact**

Sarah Nightingale at the Department of Energy and Climate Change, email: sarah.nightingale@decc.gsi.gov.uk can answer any queries regarding the instrument.

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<sup>i</sup> The modifications can be found at Schedule A to Standard Licence Conditions 33 and 34 of the electricity supply licence.

<b>Title:</b> <b>Impact Assessment for the Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment) Order 2011</b> <b>Lead department or agency:</b> Department of Energy and Climate Change <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> DECC0048
	<b>Date:</b> April 2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Karen Dennis

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

The Feed-in Tariffs (FITs) scheme for Great Britain was introduced in April 2010 to encourage greater deployment of low carbon electricity generation particularly by those who would not have traditionally engaged with the energy market.

The introduction of FITs has created a subsidy framework which is easily understood, offers more certain returns than schemes such as the Renewables Obligation, and covers a wide range of sub-5MW technologies. This will enable broad participation of individuals and communities, as well as energy professionals, in the “big energy shift” to a low carbon economy. As well as providing a direct contribution to the 2020 Renewable Energy Target, the policy is in line with longer-term energy and climate change goals.

Intervention is now necessary to ensure that the FITs scheme is being delivered as originally intended, in light of early experience of implementing the scheme.

### What are the policy objectives and the intended effects?

Initial indications are that the scheme is working, however there are instances where amendments to the 2010 Order would help ensure that the original policy intent of the FITs scheme is preserved, for example by making sure that micro-hydro installations have an available route to apply for accreditation.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Two options have been considered – ‘Do-Nothing’ and ‘Amend the 2010 Order’.

‘Amend the 2010 Order’ involves modifications and refinements to the 2010 Order including:

- Providing transitional arrangements to enable micro-hydro schemes to obtain accreditation
- Extending the period in which eligible micro-installations can transfer over from the RO to FITs
- Reflecting the European Commission’s decision on FITs in relation to State Aid, but also time limiting the period under which generators can receive both grants and FITs under the de minimis rule.

The counterfactual / ‘do-nothing’ would be to leave any changes to be considered as part of the first comprehensive review of FITs that was announced on 7<sup>th</sup> February 2011.

The preferred option is to amend the 2010 Order as soon as possible rather than wait. Providing clarity sooner rather than later will contribute to building greater market confidence and ensure that the scheme continues to operate smoothly.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed 2011
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible : Greg Barker..... Date: 27<sup>th</sup> April 2011

# Summary: Analysis and Evidence

Policy Option

## Description:

Amend the 2010 Order

Price Base Year N/A	PV Base Year	Time Period Years 20	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £n/a

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

None

### Other key non-monetised costs by 'main affected groups'

The transitional arrangement for allowing micro-hydro installations to be accredited via the RO could increase resource and subsidy costs of the FITs scheme. However this potential impact is not expected to be significant.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

There is insufficient evidence available to monetise the impacts that the Amendment Order will have on benefits of the FITs scheme, however benefits are set out qualitatively below. This is deemed to be a proportional approach to this Impact Assessment.

### Other key non-monetised benefits by 'main affected groups'

Following the FITs 2010 Order, the European Commission finalised its decision on state aids in relation to the FITs scheme, including the position for generators seeking FITs for an installation that has already benefited from a grant. The Amendment Order 2011 will reflect the Commission's decision, but will also time limit the period under which generators can receive both FITs and grants under the de minimis rule. This change, in line with the original policy intent of FITs, will therefore limit the extent of any over-subsidy and prevent FITs costs from rising unnecessarily. It will also provide clarity over eligibility of grant recipients to claim FITs and grants which should also bring a further administrative benefit.

The Amendment Order 2011 will also provide clarity to Ofgem, Suppliers, Generators and other participants in the scheme as to how the FITs scheme, as originally introduced, is intended to run. By avoiding unintended consequences of the scheme e.g. by making it clear which installations are and aren't eligible to receive FIT payments, the Amendment Order will prevent unnecessary increases in the costs of the scheme, which are ultimately expected to be passed on to electricity consumers.

### Key assumptions/sensitivities/risks

None

### Discount rate (%)

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Policy cost savings:	Net:	

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain
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From what date will the policy be implemented?			May 2011			
Which organisation(s) will enforce the policy?			DECC/Ofgem			
What is the annual change in enforcement cost (£m)?			None			
Does enforcement comply with Hampton principles?			Yes			
Does implementation go beyond minimum EU requirements?			No			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: None		Non-traded: None	
Does the proposal have an impact on competition?			No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)		Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?		Yes	Yes	Yes	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	*	
<b>Economic impacts</b> Competition <a href="#">Competition Assessment Impact Test guidance</a> Small firms <a href="#">Small Firms Impact Test guidance</a>	*	
<b>Environmental impacts</b> Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a> Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	*	
<b>Social impacts</b> Health and well-being <a href="#">Health and Well-being Impact Test guidance</a> Human rights <a href="#">Human Rights Impact Test guidance</a> Justice system <a href="#">Justice Impact Test guidance</a> Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	*	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	*	

\*Specific Impact Tests have not been carried out for this Impact Assessment as the listed impacts are either irrelevant to the policy option under consideration or are not expected to be material. The minimal impacts expected justify the proportionate approach taken.

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.



## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

No	Legislation or publication
1	The Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 document, available at: <a href="http://www.legislation.gov.uk/uksi/2010/678/contents/made">http://www.legislation.gov.uk/uksi/2010/678/contents/made</a>
2	Modifications to the Standard Conditions of Electricity Supply Licence document, available at: <a href="http://www.decc.gov.uk/assets/decc/What%20we%20do/UK%20energy%20supply/Energy%20mix/Renewable%20energy/policy/fits/1_20100331172153_e_@@_FITlicencemodification.pdf">http://www.decc.gov.uk/assets/decc/What%20we%20do/UK%20energy%20supply/Energy%20mix/Renewable%20energy/policy/fits/1_20100331172153_e_@@_FITlicencemodification.pdf</a>
3	Department's Response to the Consultation on the Feed-in Tariffs document, available at: <a href="http://www.decc.gov.uk/assets/decc/Consultations/Renewable%20Electricity%20Financial%20Incentives/1_20100204120204_e_@@_FITsconsultationresponseandGovdecisions.pdf">http://www.decc.gov.uk/assets/decc/Consultations/Renewable%20Electricity%20Financial%20Incentives/1_20100204120204_e_@@_FITsconsultationresponseandGovdecisions.pdf</a>
4	FITs Impact Assessment Accompanying Government Response document, available at: <a href="http://www.decc.gov.uk/assets/decc/Consultations/Renewable%20Electricity%20Financial%20Incentives/1_20100204103559_e_@@_FITsImpactAssessmentaccompanyingGovernmentResponse.pdf">http://www.decc.gov.uk/assets/decc/Consultations/Renewable%20Electricity%20Financial%20Incentives/1_20100204103559_e_@@_FITsImpactAssessmentaccompanyingGovernmentResponse.pdf</a>
5	The Consultation on Renewable Electricity Financial Incentives 2009 document, available at: <a href="http://www.decc.gov.uk/assets/decc/Consultations/Renewable%20Electricity%20Financial%20Incentives/1_20090722165845_e_@@_ConsultationonRenewableElectricityFinancialIncentives2009.pdf">http://www.decc.gov.uk/assets/decc/Consultations/Renewable%20Electricity%20Financial%20Incentives/1_20090722165845_e_@@_ConsultationonRenewableElectricityFinancialIncentives2009.pdf</a>
6	European Commission State Aids decision, available at:

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section

# Evidence Base (for summary sheets)

## Impact Assessment accompanying the Feed in Tariffs (Specified Maximum Capacity and Functions) Amendment Order 2011

### Background

The FITs scheme was launched in April 2010 as the primary mechanism for incentivising small scale low carbon electricity generation. FITs are a per unit subsidy payment (p/kWh) for new anaerobic digestion, hydro, solar photovoltaic and wind projects up to and including the 5MW capacity limit of the scheme<sup>2</sup>. The FITs scheme also supports the first 30,000 micro combined heat and power installations with an electrical capacity of 2 kilowatts (kW) or less, as a pilot programme.

The design of the scheme is intended to provide the right level of simplicity and certainty to encourage non-energy professionals (including householders, businesses and communities) to invest in small-scale generation.

Bringing electricity generation closer to the public and involving individuals, communities and businesses as producers of energy (in addition to their usual role as consumers) means that people can make an active contribution to our energy and climate change goals. Government and Parliament has shown a desire to involve individuals and communities in small-scale electricity generation by making it cost-effective for them to do so.

The FITs are funded by electricity suppliers, who are expected to pass on costs through to final electricity consumers.

### Problem under consideration

Early experience of implementing the FITs scheme has highlighted some areas where modifications would improve implementation and ensure that the policy is being delivered as envisaged at the implementation of the 2010 Order. For example, the Amendment Order would address issues such as: 1) hydro schemes having been unable to receive accreditation due to the relevant Microgeneration Certification Scheme<sup>3</sup> (MCS) not being in place when the FITs scheme was launched in April; 2) the risk of generators becoming ineligible for FITs if they failed to notify Ofgem before the initially specified deadline of 1 October 2010; and 3) the European Commission's ruling on FITs and state aid.

In relation to 3) above, it has always been the intention that the FITs scheme would be the main vehicle of financial support for small-scale low carbon electricity generation, replacing previous support schemes such as grants. Therefore, the 2010 Order precludes installations that have benefited from public grants from receiving FITs except in certain circumstances. These include where the combination of FITs and grants would be in line with EU rules on state aid. The FITs scheme was launched before the Commission had published its final decision on the scheme in relation to state aid. The Commission's decision (available at [http://ec.europa.eu/community\\_law/state\\_aids/comp-2010/n094-10.pdf](http://ec.europa.eu/community_law/state_aids/comp-2010/n094-10.pdf)) included clarification of the limited circumstances in which FITs and grants in combination could be in line with rules on state aid. We now propose to amend the 2010 Order in the light of the extra clarification provided by that decision, but also to ensure that circumstances where an installation can receive a double benefit from both grants and FITs, are the exception and not the rule. The amendments achieve this by time-limiting the period over which generators are able to receive both grants and FITs under the de minimis rule (to installations for which a grant is made before 1<sup>st</sup> July 2011 and which are

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<sup>2</sup> The scheme will also support the first 30,000 micro combined heat and power (mCHP) installations with an electrical capacity of 2 kilowatts (kW) or less, as a pilot programme.

<sup>3</sup> The MCS is an independent certification scheme accredited by the United Kingdom Accreditation Service (UKAS), which assesses installer companies and products against robust standards. It is expected to be the main vehicle for accrediting installation below 50kW, including hydro installations. Appropriate product and installation accreditation in turn is required for eligibility to receive FIT payments.

commissioned before 1<sup>st</sup> October 2011), and by providing clarity over eligibility to claim FITs where a grant has been made for 'non-standardised costs'<sup>4</sup> (ensuring that claims are only made where justified).

## **Rationale for intervention**

Intervention is necessary to ensure that the FITs scheme is being delivered as originally intended given early experience of implementing the scheme, and with consideration of expected scheme costs.

## **Policy objective**

In light of early experience of implementing the FITs scheme, the 2011 Amendment Order introduces modifications and refinements to the 2010 Order to ensure that the scheme is delivered as envisaged, including consideration of the European Commission's state aid approval of the scheme and overall scheme costs.

## **The Options considered**

Two options are considered in this Impact Assessment: 'Do-Nothing' and 'Amend the 2010 Order'.

### Do-Nothing

The counterfactual / 'do-nothing' would be to leave any changes to be considered as part of the first comprehensive review of FITs which was announced by the Secretary of State for Energy and Climate Change on 7<sup>th</sup> February 2011.

### Amend the 2010 Order

Amending the 2010 Order will provide greater clarity for the Authority (Ofgem), suppliers, generators and wider participants in the scheme as to how the FITs scheme is intended to run. The amendments include changes to make clear which installations are eligible for FIT payments and changes to take into account the Commission's decision on FITs in relation to state aids. The impacts associated with this option are set out in detail below.

The amendments to the 2010 Order are within the parameters of the FITs policy as introduced following consultation, and thus are consistent with the original policy intent and way that the scheme was originally intended to operate. There is no statutory obligation to consult in relation to the Order, although there is a statutory duty to consult on the licence modifications. Given that the amendments covered by this impact assessment do not require changes to the licence, a consultation is not considered necessary.

## **Costs and Benefits associated with the preferred option**

The preferred option is to amend the 2010 Order. The specific changes that the Amendment Order 2011 will make, together with the expected impacts of these changes, are set out below.

- Remove the risk that hydro stations which generate electricity using pumped storage (a non-renewable process to generate electricity from water that has been artificially pumped into a reservoir) could be eligible for FITs. This would be contrary to the original policy intent of hydro being eligible for FITs as a renewable technology. This change will therefore ensure that eligibility for FITs (and associated cost expectations) is consistent with the original policy intent.

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<sup>4</sup> For the purpose of the Amendment Order 2011, 'non-standardised costs' refer to capital/operating costs that aren't part of the standardised costs on which the FITs were calculated but which are for the purposes of avoiding or mitigating environmental harm and which don't result in overcompensation.

- Provide a transitional arrangement to allow micro-hydro (<50kW capacity) generating stations that are first commissioned between 1<sup>st</sup> April 2010 and 1<sup>st</sup> October 2011 to be accredited for FITs under the Renewables Obligation Order 2009 or the Renewables Obligation (Scotland) Order 2009 (collectively described as the ROO) after which the relevant MCS standards are expected to be fully in place. This change will allow micro-hydro schemes to receive the necessary accreditation in order to receive FITs and hence is a benefit to scheme developers who did not have an accreditation route in the absence of agreed MCS standards. The change also has a positive impact on renewable electricity generation and associated carbon savings compared with the 'Do-Nothing'. There will be an increase in resource and subsidy costs compared to the 'Do-Nothing', but not compared to original projections of micro-hydro costs - given that the amendment is intended to allow the scheme to operate as originally intended by enabling micro-hydro installations to obtain appropriate accreditation. Any impacts of the change (costs and benefits) are not expected to be significant given that the changes are time limited and are therefore only likely to be relevant for schemes already in the pipeline.
- Extend by a year the period in which eligible installations with a capacity of less than 50kW can transfer from the RO to FITs. This will remove the risk that generators who would otherwise be eligible for FITs, are unable to become accredited because of failure to notify Ofgem by the initially specified date of 1<sup>st</sup> October 2010. This change allows installations to transfer over from RO to FITs as originally intended, and compared with the 'Do-Nothing' delivers a benefit to those generators who may not have notified Ofgem by the specified date. Although not monetised, this impact is not expected to be significant given that the majority of micro-generators are expected to have already transferred over from the RO to FITs.
- Clarify that only equipment which had not been previously accredited should be able to access FITs support as envisaged by the policy. This is to eliminate the risk of a previously ineligible installation becoming eligible for FITs as the tariffs were set on the basis of new technology costs. This change will in turn prevent unexpected cost (bearing in mind that the costs of FITs are ultimately borne by consumers).
- Provide clarity by ensuring that the Order reflects the European Commission's decision on FITs and state aid in relation to combining FITs and grants, whilst also preserving the original policy intent that the FITs scheme should be the primary means of funding for small scale low carbon energy. The change will time limit the period over which generators can potentially receive both grants and FITs under the 'de minimis' rule (for installations where a grant has been received before the 1<sup>st</sup> July 2011 and which are commissioned before 1<sup>st</sup> October 2011), hence limiting the extent of any 'over-subsidy' and preventing FIT costs from rising unnecessarily. The amendment will also provide clarity over eligibility to claim FITs and grants under the 'non-standardised costs' rule will also limit the extent of any 'over-subsidy'.

In addition to the changes above, the Amendment Order will also make the following changes for the purposes of clarification (no material impacts expected, however the changes will bring benefits of allowing the scheme to operate as originally intended):

- Resolve inconsistencies between the measure of capacity used in setting the specified maximum capacity of eligible installations under the FITs scheme from Declared Net Capacity (DNC) to Total Installed Capacity (TIC) to align it with the Renewables Obligation ("RO") and the Licence Conditions.
- Clarify the position with regards to Ofgem giving notice of levelisation payments to the electricity suppliers (levelisation being the process that enables the costs of the FITs scheme to be borne by all licensed suppliers in proportion to their share of the UK electricity supply market; one of the basic principles underpinning the FITs scheme). This eliminates the risk of Ofgem not having full authority to be able to exercise its duties for the levelisation process.
- Clarify the cross references to the Standard Conditions of Electricity Supply Licenses in the definitions of Standard Condition 33 and Standard Condition 34. This removes any ambiguity

by making consistent reference to the document as “Standard Licence Condition 33 and “Standard Licence Condition 34”.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p>
<p><b>Reasons for not planning a PIR:</b> [If there is no plan to do a PIR please provide reasons here]</p> <p>There are no plans to carry out a separate review of the 2011 Amendment Order. The FITs scheme itself is subject to periodic reviews as set out in the Impact Assessment supporting it, and the first scheme review is now underway. Therefore, effectively this Amendment Order will be reviewed as part of that wider review process.</p>