EXPLANATORY MEMORANDUM TO

THE FEED-IN TARIFFS (AMENDMENT) (NO. 2) ORDER 2015

2015 No. 1659

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Feed-in Tariffs scheme ("FIT scheme") is the Government's main policy measure to encourage the deployment of small-scale low-carbon electricity generation in Great Britain, and is implemented by the Feed-in Tariffs Order 2012 ("the 2012 Order") (as amended) and modifications to Conditions 33 and 34 of the standard conditions of electricity supply licences ("the Standard Licence Conditions").

2.2 The Feed in Tariffs (Amendment)(No.2) Order 2015 ("the 2015 Order") amends article 9 of the 2012 Order by inserting a cut-off date of 30 September after which Ofgem will no longer accept application for preliminary accreditation ('pre-accreditation'). The 2015 Order also inserts the same cut-off date into article 11 so that the eligibility date and the tariff date become the same date for installations pre-registering after this cut-off date. The effect of these changes is that installations are no longer able to pre-accredit or pre-register onto a particular tariff before they are completed and ready to generate.

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

3.1 None.

4. Legislative Context

4.1 The 2012 Order sets out the functions of the Gas and Electricity Markets Authority ("the Authority") and the Secretary of State in connection with the administration of the FIT scheme.

4.2 It is intended to bring the 2015 Order into force on 30 September 2015.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the 2015 Order 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 The Government is removing pre-accreditation from the FIT scheme to control costs under the scheme and limit the impact on electricity bill payers of surges in applications for pre accreditation adding to deployment at current tariff rates under the scheme, in particular those applications we expect to be made in response to the tariff changes set out in the full FIT review. The effect of this will be that after the cut-off date of 30 September new participants in the scheme will only receive the tariff rate as at the date they apply for full accreditation (i.e. after their installation is commissioned).

7.2 Preliminary accreditation ("pre-accreditation") was introduced under the FIT scheme as part of the 2011-12 comprehensive review. Pre-accreditation gives generators a guaranteed tariff level in advance of commissioning their installation, provided a project is commissioned and full accreditation applied for within a specified window. To qualify for pre-accreditation, a project must have planning consent and a grid connection agreement (and, for hydro installations, environmental permits). Pre accreditation was intended to mitigate the risk involved in tariff degression (whereby tariffs under the scheme reduce at regular intervals) by offering greater certainty to industry. The duration of the pre-accreditation validity window for each technology reflects expected construction times: six months for solar PV, twelve months for wind and AD and two years for hydro.

7.3 Both deployment and spending under the FIT scheme have outstripped expectations, with over 700,000 installations having applied for accreditation as of June 2015 (against original projections of 750,000 installations by 2020). The FIT scheme has contributed to a projected overspend of around £1.5bn on the Levy Control Framework (LCF), which has a corresponding impact on electricity consumer bills. On 27th August the Government published a further consultation – the full FIT Review 2015 which proposes more cost control measures- caps on entrants, reduced tariff levels and steeper degression of tariffs to better control costs under the LCF and limit the resulting impact on consumer bills.

7.4 Given the LCF overspend, and the further risk to consumer bills if the proposed cost control measures are implemented, Government considers that it is necessary at this point to remove pre-accreditation from the FIT scheme to prevent a surge in applications onto the current tariff before any cost control measures be implemented. Subject to the outcome of the full FIT Review, we will consider reintroducing pre-accreditation, whether for certain groups only or for all participants, to enable participants to pre-accredit at the proposed lower tariff rates and subject to the cap in the number of new entrants to the scheme.

8. Consultation outcome

8.1 The consultation on removing pre-accreditation ran from 22 July to 19 August, and in total received 2370 responses, of which some 1987 were template letters organised by different campaigning groups and 383 were unique responses.

8.2 A large number of responses criticised the length of the consultation process and the lack of a separate accompanying Impact Assessment, and stated that these factors had adversely affected their ability to respond in full to the consultation questions.

8.3 DECC notes that Cabinet Office guidance provides that consultation periods should be between two and twelve weeks; and advises against consultations being held over the August holiday period. This consultation proposed only one change to and asked only four questions on an established and well-understood policy. Taking into account the urgency of implementing these proposals to protect bill-payers from rising policy costs caused by installations continuing to being able to pre accredit at the current high rate and so be over compensated, we judged that four weeks was adequate for stakeholders to be able to provide a considered response. We also consider that this urgency justified holding the consultation over August. DECC also considered complaints about the absence of an accompanying Impact Assessment; we judged the information provided in the consultation document, and in particular the statement of impact in paragraphs 1.16-1.21 was adequate.

8.4 The majority of respondents were opposed to the proposed changes. The main theme of responses was that removing pre-accreditation would undermine confidence in renewable energy, leading to a significant number of projects not deploying in the short term as well as harming wider investor confidence in the long term.

8.5 The majority of respondents stated that the consultation had understated the impact of the proposed change, which they stated would severely curtail deployment. Respondents also argued that the consultation had failed to sufficiently reflect the impacts across different sectors and technologies, as well as on small and medium-sized businesses. The community energy sector was the most commonly cited area where the proposed change would have a disproportionate impact.

8.6 In response to a question asking whether there were groups for whom it would be appropriate to reintroduce pre-accreditation, the most frequent response was to highlight the particular impact of the proposed change on the community energy sector, where projects typically involve longer lead-in times and find it more difficult to raise finance. In addition, cases were made for reintroducing pre-accreditation for specific technologies, with the length and complexity of construction times the most frequently cited factors. As a result of this, and subject to the outcome of the FIT Review, DECC will consider reintroducing pre-accreditation as part of its proposals to implement a cost-controlled FIT scheme going forward.

8.7 In making its final decision DECC considered the likely impact on deployment of making this change. While we accept that this action introduces unwelcome uncertainty for industry and will have the effect of reducing deployment, against this we have balanced the urgency of taking action to reduce costs under the LCF; and specifically the importance of preventing deployment surges so that, subject to the outcome of the FIT Review, there remains sufficient budget under the FIT scheme to continue to offer generation tariffs to new applicants for the next few years:

- The FIT Review proposes new generation tariffs, based on the latest evidence, that indicate the need for large reductions for new generation tariff applicants. Keeping pre-accreditation open would allow applicants to lock into tariffs now which our evidence suggests are poor value for money.
- The decision to continue offering generation tariffs for new FITs applicants hinges around Government's assessment of scheme affordability. One factor in this will be the level of deployment which happens before the conclusion of the Feed-in Tariff Review. It is in the long-term interests of the viability of the scheme over all to close pre-accreditation in the short-term.
- We consider that some deployment under the scheme will continue.
- Keeping pre-accreditation for certain groups raises risks. In particular, there is the risk of gaming, where commercial developers may exploit a loophole around an exemption for community groups in order to pre-accredit their projects.
- Furthermore, there is a potential risk of non-compliance with our State Aid approval for the FIT scheme – which approves a FIT scheme that applies to all sectors without discrimination, if we retain pre-accreditation (and the tariff guarantee aspects of pre-registration) for certain groups.

8.8 DECC published the Government response to this consultation on 9 September. This response can be found at https://www.gov.uk/government/consultations/changes-to-feed-in-tariff-accreditation.

9. Guidance

9.1 Ofgem already provides detailed guidance for electricity suppliers and potential and existing participants in the FIT scheme in a variety of forms. That guidance will be updated as appropriate to reflect the changes to the FIT scheme made by this 2015 Order.

10. Impact

10.1 DECC published a qualitative assessment of the impacts of the proposed change as part of its consultation document.

10.2 The consultation document, including the statement of impact, is attached to this Explanatory Memorandum and can also be found at: https://www.gov.uk/government/consultations/changes-to-feed-in-tariff-accreditation.

11. Regulating small business

11.1 The legislation applies to small business, including community organisations.

12. Monitoring & review

12.1 The overall policy on FITs was reviewed in summer 2015. The full FIT Review consultation was published on 27 August 2015 and closes on 23 October 2015. This document can be found at: https://www.gov.uk/government/consultations/consultation-on-a-review-of-the-feed-in-tariff-scheme.

13. Contact

13.1 Joseph Wilkinson at the Department of Energy and Climate Change, Tel: 0300 068 6574, email: joseph.wilkinson@decc.gsi.gov.uk, can answer any queries regarding these instruments.