

**EXPLANATORY MEMORANDUM TO**  
**THE FEED-IN TARIFFS (AMENDMENT) ORDER 2016**

**2016 No. 319**

**1. Introduction**

1.1 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 instruments**

2.1 The Feed-in Tariffs scheme (“FITs 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.3) Order 2015, and the associated Modifications to the Standard Conditions of Electricity Supply Licences 2015 No.3 published in December 2015, made changes to the 2012 Order and to the Standard Licence Conditions to, among other things, set out a revised level of generation tariffs to be paid under the scheme and to introduce a cost control mechanism in the form of a limit in the aggregate capacity (measured in megawatts) that can be applied for per quarter per type of installation under the scheme.

2.3 This Order (the Feed-in Tariffs (Amendment) Order 2016) and further modifications to the standard licence conditions to be laid on 10<sup>th</sup> March 2016 (“the Licence Modifications”) have been developed in the light of early experience of implementing these revisions to the FITs scheme. They make technical changes and minor corrections to amendments made to the 2012 Order by the Feed-in Tariffs (Amendment) (No.3) Order 2015 and the associated Modifications to the Standard Conditions of Electricity Supply Licences 2015 No.3. These changes are designed to ensure that the changes to the FITs scheme confirmed by the Government in its Response to the Review of the FITs Scheme published on 17 December 2015 are delivered as envisaged.

**3. Matters of special interest to Parliament**

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

3.1 None

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 Sections 41 to 43 of the Energy Act 2008 (“the Act”) provide powers to establish a feed-in tariff scheme for the small scale generation of electricity.

4.2 The 2012 Order, made under section 41(4), 43(3)(a) and 104(2) of the Act, 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 FITs scheme including the procedure in which the Authority will accredit installations applying to the scheme. The Feed-in Tariffs (Amendment) Order 2016 is made under sections 43(3)(a) and 104(2) of the Act.

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

5.1 The territorial extent of this instrument is England, Wales and Scotland.

5.2 This instrument applies to Great Britain.

## 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 Early experience of implementing the changes to the FITs scheme confirmed in the Government’s Response to the Review of the FITs Scheme in December 2015 has highlighted areas where clarifications to the 2012 Order and the Standard Licence Conditions would help to ensure that the changes to the scheme are implemented as envisaged.

7.2 The effects of the amendments to the 2012 Order in this Order are summarised below:-

- Amending article 2 to apply the definition of “qualifies for accreditation” set out in the Standard Licence Conditions to the same expression used in the Order.
- Amending article 4 to clarify that Ofgem cannot accredit transitional Microgeneration Certification Scheme (MCS) installations that apply for FITs after 31 March 2016. Transitional MCS installations are those sub-50kW solar PV and wind installations whose applications for FITs accreditation are received by their FIT licensee on or after 15 January 2016 but which have an MCS certificate with a time/issue date before 15 January 2016. . These installations are not subject to the new cost control measures for FITs but have to get their applications to their FIT licensee by 31 March 2016 to be eligible for FITs. (There is a consequential amendment to article 8D to clarify that pre-registered community energy installations and school installations are not transitional MCS installations and therefore not affected by this amendment.)
- Amending article 8B to provide additional clarity that MCS installations count towards the new deployment caps once an MCS certificate has been issued.
- Amending article 9 to clarify how validity periods work for applications for pre-accreditation which, because of a deploying cap being hit, are not accepted until a later cap period. This Order confirms that the validity period (i.e. the period of time in which an installation with pre-accreditation can convert to full accreditation) for applications in this position starts on the first date of the

tariff period in which their application for preliminary accreditation is accepted by Ofgem.

- Amending article 10 -
  - to clarify that the tariff for an installation with preliminary accreditation should be based on the first date of the cap period in which Ofgem accepts the application for preliminary accreditation, instead of the start date of the cap period in which Ofgem grants preliminary accreditation. There could be a delay of several months between Ofgem accepting the application for preliminary accreditation and actually granting preliminary accreditation. It is important for renewable generators that such a delay does not affect the tariff an installation is eligible for;
  - to clarify what material changes may be made to the total installed capacity of an installation between pre-accreditation being granted, and the installation in question commissioning and converting to full accreditation. This restores the earlier wording from the 2012 Order and is intended to ensure that the provision remains workable and does not have any unintended adverse impacts on installations with valid pre-accreditations pre-dating the changes to the FITs scheme confirmed in December 2015.
- Amending Schedule 2 to ensure that the tariff bands listed there match the tariff bands in Schedule 1A to the 2012 Order and Tables 3A to 3C in Annex 4A to Schedule A to the Standard Licence Condition 33 and 34.

## 8. **Consultation outcome**

- 8.1 A consultation paper on the FITs Review was published on 27 August 2015 and closed on 23 October 2015. The Government's response to this consultation was published on 17 December 2015. This sets out a detailed analysis of the consultation responses and policy decisions and is available at <https://www.gov.uk/government/consultations/consultation-on-a-review-of-the-feed-in-tariff-scheme>. This Order is intended to make a number of clarifying changes to ensure that the policy decisions in this document are implemented as intended.

## 9. **Guidance**

- 9.1 Ofgem already provides detailed guidance for electricity suppliers and potential participants in the FIT scheme in a variety of forms. That guidance has been updated to reflect the latest changes to the FIT scheme and Ofgem will continue to review whether further updates are needed in future.

## 10. **Impact**

- 10.1 These changes will have an impact on businesses, charities and voluntary bodies. These organisations are subject to rising electricity costs under the levy control framework, and this measure is intended to mitigate these costs. These bodies may also deploy low carbon technologies under the FIT scheme. This ability to deploy may be affected by the introduction of a cap on overall deployment. This effect, however, should be mitigated by the reintroduction of pre-accreditation, especially for community organisations who have a longer validity period in which to deploy.

- 10.2 These changes will have an impact on the public sector, which is subject to rising electricity costs under the levy control framework. The public sector may also deploy low carbon technologies under the FIT scheme. This ability may be affected by the introduction of a cap on overall deployment.
- 10.3 An Impact Assessment is attached to this memorandum and is published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## 11. **Regulating small business**

- 11.1 This Order will have no impact on small businesses additional to those described in the Impact Assessment and Explanatory Memoranda accompanying the recent Feed-in Tariffs (Amendment) (No.3) Order 2015 and associated Modifications to the Standard Conditions of Electricity Supply Licences 2015 No. 3.

## 12. **Monitoring & review**

- 12.1 The changes implemented by this instrument aim to ensure that the changes to the FITs Scheme confirmed in the Government's Response to the 2015 FITs Review are implemented as intended. The Department will continue to carry out ongoing monitoring of the FITs scheme to ensure that its objectives are delivered in a way which ensures value for money, particularly to consumers who ultimately pay. The Authority also carries out monitoring to ensure compliance by electricity suppliers and participants in the scheme with their obligations.

## 13. **Contact**

- 13.1 Fiona Shand at the Department of Energy and Climate Change (Telephone: 0300 068 6108 or email: [Fiona.shand@decc.gsi.gov.uk](mailto:Fiona.shand@decc.gsi.gov.uk)) can answer any queries regarding this Order.