

2017 No. 131

ELECTRICITY

The Feed-in Tariffs (Amendment) Order 2017

Made - - - - *7th February 2017*

Laid before Parliament *10th February 2017*

Coming into force - - *20th March 2017*

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

Citation and commencement

1. This Order may be cited as the Feed-in Tariffs (Amendment) Order 2017 and comes into force on 20th March 2017.

Amendment to the Feed-in Tariffs Order 2012

2. The Feed-in Tariffs Order 2012(b) is amended as follows.

Amendment to Article 2 (interpretation)

3. In article 2 (interpretation)—

- (a) in paragraph (1) omit the definition of “tariff period”; and
- (b) in paragraph (2)—
 - (i) after “generation meter;”, insert “generation meter reading;”; and
 - (ii) after “tariff date;”, insert “tariff period;”.

Amendment to Article 8B (the application limit)

4. In article 8B (the application limit), in paragraph (1), for “Table” substitute “tables”.

Amendment to Article 16 (calculating and publishing FIT payment rates)

5. In article 16 (calculating and publishing FIT payment rates)—

- (a) after paragraph (2), insert—

“(2A) On or before 1st April 2017, the Authority must publish a table setting out, for FIT year 8, the generation tariffs and export tariffs which are to apply to all accredited FIT installations with a tariff date before 1st April 2017 and, for the purposes of Standard

(a) 2008 c. 32.

(b) S.I. 2012/2782 as amended by S.I. 2013/1099, 2014/1601, 2014/2865, 2015/35, 2015/1659, 2015/2045 and 2016/319.

Licence Condition 33, this table replaces any other table published under paragraph (2) with respect to FIT year 8.”; and

(b) in paragraph (4)(b), for “36” substitute “35A”.

Amendment to Article 35

6. In article 35, before paragraph (1), insert—

“(A1) This article does not apply where any loss of entitlement to FIT payments arises by virtue of Part 8A.”.

New article 35ZA (notices to reduce, withhold or recoup generation payments for the purposes of Part 8A)

7. After article 35 (notices to reduce, withhold or recoup FIT payments), insert—

“Notices to reduce, withhold or recoup generation payments for the purposes of Part 8A

35A.—(1) Where the Authority has good reason to believe that a FIT generator or nominated recipient may have received a generation payment to which it was not entitled by virtue of articles 38C or 38E, the Authority may give notice to the FIT licensee which made the payment to—

- (a) reduce further generation payments due to be made to the FIT generator or nominated recipient until any amount overpaid has been recovered in full;
- (b) withhold further generation payments due to be made to the FIT generator or nominated recipient until any amount overpaid has been recovered in full;
- (c) recoup, in full, any amount overpaid from the FIT generator or nominated recipient.

(2) Where the Authority has good reason to believe that a FIT generator or nominated recipient may have received a generation payment to which it was not entitled by virtue of articles 38D(3), 38F(3), 38G(5) or 38H(3) the Authority may, if it considers it appropriate to do so in the circumstances, give notice to the FIT licensee which made the payment to—

- (a) reduce further generation payments due to be made to the FIT generator or nominated recipient until any amount overpaid has been recovered in full or in part;
- (b) withhold further generation payments due to be made to the FIT generator or nominated recipient until any amount overpaid has been recovered in full or in part;
- (c) recoup, in full or in part, any amount overpaid from the FIT generator or nominated recipient.

(3) At the same time as the Authority gives notice to the FIT licensee under paragraph (1) or (2), the Authority must give notice to the FIT generator or nominated recipient—

- (a) stating the reasons why payments are being reduced, withheld or recouped; and
- (b) providing the FIT generator or nominated recipient with a right to make representations or objections to the Authority within a reasonable time limit specified by the Authority.

(4) On receiving representations or objections from a FIT generator or nominated recipient, the Authority must take those representations and objections into account when determining, for the purpose of paragraph (5), whether the FIT generator or nominated recipient was entitled to receive the generation payment.

(5) Where, having issued a notice under paragraph (1) or (2), the Authority subsequently establishes that the FIT generator or nominated recipient was entitled to receive the generation payment, the Authority must give notice to the FIT licensee that—

- (a) the amount of any generation payment which was reduced, withheld or recouped should be paid to the FIT generator or nominated recipient as soon as possible; and
- (b) where generation payments have been withheld, generation payments to the FIT generator or nominated recipient should recommence.”.

New Part 8A (anaerobic digestion installations and entitlement to generation payments)

8.—(1) After article 38A, insert—

“PART 8A

Anaerobic digestion installations and entitlement to generation payments

Application

38B. This Part applies to the FIT generator or nominated recipient of an anaerobic digestion installation in respect of which accreditation was granted pursuant to—

- (a) an application for preliminary accreditation made on or after 1st May 2017; or
- (b) an application for accreditation made on or after 1st May 2017, other than an application made during the period of validity of any preliminary accreditation granted in respect of the installation,

in this Part referred to as a “relevant installation”.

Ongoing obligation to meet sustainability criteria

38C. The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation, using biogas other than sustainable biogas.

Ongoing obligation to provide quarterly declarations relating to sustainability criteria

38D.—(1) The FIT generator or nominated recipient must, in relation to each consignment of biomass used to make the biogas used to generate electricity at the relevant installation during a quarterly reporting period, provide the Authority with a declaration that states—

- (a) whether the biogas was made from feedstock that was waste;
- (b) whether the biogas met the greenhouse gas criteria and where the criteria are met, the greenhouse gas emissions for that biogas calculated in accordance with Schedule 2A; and
- (c) whether the biogas was made from feedstock which was solid biomass which met the land criteria.

(2) The FIT generator or nominated recipient must provide the declaration within 28 days after the quarterly reporting period to which the declaration relates.

(3) The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation during any period in which a declaration has not been provided in accordance with this article.

Entitlement to generation payments for electricity produced annually from biogas derived other than from waste and residue

38E. Where less than 50% of the energy content of the biogas used to generate electricity at a relevant installation during an annual reporting period is derived from waste or residue, the FIT generator or nominated recipient is entitled to generation payments calculated in accordance with the following formula—

$$A \times (1.5 - B)$$

where—

A = the total generation payments to which the FIT generator or nominated recipient would be entitled, but for this paragraph;

B = the proportion of the energy content of the biogas which is not derived from waste or residue, expressed as a decimal and rounded to 4 decimal places.

Ongoing obligation to provide annual declarations relating to feedstock types

38F.—(1) The FIT generator or nominated recipient must submit to the Authority a declaration containing the following information for each annual reporting period—

- (a) the total amount of electricity generated during the period by the relevant installation;
- (b) details of feedstock used to make the biogas used to generate the electricity; and
- (c) the proportion of the energy content of the biogas which was not derived from waste or residue, expressed as a decimal and rounded to 4 decimal places.

(2) The FIT generator or nominated recipient must provide the declaration within 3 months after the annual reporting period to which the declaration relates.

(3) The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation during any period in which a declaration has not been submitted in accordance with this article.

Ongoing obligation to provide annual audit report relating to sustainability criteria and feedstock type

38G.—(1) This article applies in respect of a relevant installation with a total installed capacity of 1 megawatt or above.

(2) The FIT generator or nominated recipient must, in relation to an annual reporting period, submit to the Authority an audit report that—

- (a) is prepared by a person who is not the FIT generator or nominated recipient, or a person connected to either within the meaning of section 1122 of the Corporation Tax Act 2010^(a);
- (b) is prepared in accordance with the International Standard on Assurance Engagements 3000 (Revised): Assurance engagements other than audits or reviews of historical financial information dated 9th December 2013^(b) or an equivalent standard;
- (c) states whether anything has come to the attention of the person preparing the report to indicate that the information in the declarations provided under article 38D in respect of the annual reporting period (“the sustainability information”) is not accurate;
- (d) considers—
 - (i) whether the systems used to produce the sustainability information are likely to produce information that is reasonably accurate and reliable;

^(a) 2010 c.4; section 1122 was amended by section 136(6) of the Finance Act 2013 (c. 29) and section 939H(2) of the Corporation Tax Act 2010.

^(b) International Standard on Assurance Engagements (ISAE) 3000 (Revised): Assurance Engagements other than Audits or Reviews of Historical Financial Information, published on 9th December 2013 by the International Federation of Accountants. Copies are available at www.ifac.org.

- (ii) whether there are controls in place to help protect the sustainability information against material misstatements due to fraud or error;
- (iii) the frequency and methodology of any sampling carried out for the purpose of obtaining or checking the data on which the FIT generator or nominated recipient relied in preparing the sustainability information; and
- (iv) the robustness of the data on which the FIT generator or nominated recipient relied in preparing the sustainability information; and
- (e) states that the person preparing the report has reviewed the declaration provided under article 38F in respect of the annual reporting period and states whether the declaration is correct.

(3) Paragraph (2) does not apply in respect of an annual reporting period that is reduced to less than 3 months as a result of the Authority specifying a date for the purpose of article 38I.

(4) The FIT generator or nominated recipient must provide the audit report within 3 months after the annual reporting period to which the audit report relates.

(5) The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation during any period in which an audit report has not been submitted in accordance with this article.

Ongoing obligation to provide quarterly meter readings to the FIT licensee

38H.—(1) The FIT generator or nominated recipient must provide generation meter readings to its FIT licensee for electricity generated by the relevant installation during a quarterly reporting period.

(2) The FIT generator must provide the generation meter readings within 28 days after the quarterly reporting period.

(3) The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation during any period that meter readings have not been submitted in accordance with this article.

(4) When determining the amount of electricity generated by a relevant installation during a certain period (“Period A”) and the periods for which generation meter readings are available do not equate precisely with Period A, the amount of electricity generated during Period A is to be pro-rated by reference to the available meter readings.

Reporting periods

38I.—(1) In this Part—

- (a) a quarterly reporting period in respect of a relevant installation is each consecutive 3 month period; and
- (b) an annual reporting period in respect of a relevant installation is each consecutive 12 month period,

commencing on a date specified by the Authority by notice given to the FIT generator or nominated recipient, and its FIT licensee, or where the Authority has not specified a date, the eligibility date for the installation.

(2) When specifying a date from which reporting periods commence, the Authority may specify a date that has the effect of—

- (a) reducing the preceding quarterly reporting period to a period of less than 3 months; or
- (b) reducing the preceding annual reporting period to a period of less than 12 months,

and must ensure that each reporting period begins immediately on the previous period ending.

Interpretation

38J. In this Part—

“annual reporting period”, in respect of a relevant installation, means a period described in article 38I(1)(b);

“energy content” means the energy contained within a substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance’s gross calorific value within the meaning of BS 7420:1991 (Guide for the determination of calorific values of solid, liquid and gaseous fuels (including definitions))(a);

“greenhouse gas criteria” means the criteria set out in Schedule 2A;

“land criteria” has the meaning given in regulation 36A of the Renewable Heat Incentive Scheme Regulations 2011(b) or in the event that these regulations are revoked and replaced by regulations made in exercise of the powers conferred by sections 100 and 104(2) of the Energy Act 2008(c), the meaning given in those regulations;

“quarterly reporting period”, in respect of a relevant installation, means a period described in article 38I(1)(a);

“sustainable biogas” means—

- (a) biogas which—
 - (i) meets the greenhouse gas criteria; and
 - (ii) is made wholly from feedstock which is solid biomass which meets the land criteria;
- (b) biogas which is made wholly from feedstock which is waste; or
- (c) biogas which consists of a combination of the biogas listed in paragraphs (a) and (b);

“waste” has the meaning given in Article 3(1) of the Directive 2008/98/EC of the European Parliament and of the Council on waste(d) and includes excreta produced by animals.”.

Amendment to Schedule 1A (limits on aggregate capacity of eligible installations)

9. In Schedule 1A, after Table 1 insert—

“Table 2

Limit of aggregate installed capacity of eligible installations (in megawatts) applied for in respect of eligible combined heat and power installations for a particular tariff period

| | <i>1st April to 30th September 2017</i> | <i>1st 2017 March 2018</i> | <i>October to 31st</i> | <i>1st April to 30th September 2018</i> | <i>1st 2018 March 2019</i> | <i>October to 31st</i> |
|--|---|------------------------------------|----------------------------|---|------------------------------------|----------------------------|
| <i>Combined heat and power installation with total installed capacity of 2 kilowatts or less</i> | <i>5.0</i> | <i>5.0</i> | | <i>5.0</i> | <i>5.0</i> | |

(a) The ISBN for the English language version of this standard is ISBN 0 580 19482 5. This standard was published by the British Standards Institution on 28 June 2011 and copies can be obtained at www.bsigroup.com
 (b) S.I. 2011/2860: relevant amending instruments are S.I. 2015/145, 2015/1459 and 2016/257
 (c) 2008 c. 32
 (d) OJ No L 312, 22.11.2008, p3

Amendment to Schedule 2 (FIT applications data)

10. In Schedule 2, after paragraph 2(a) insert—

- “(aa) the aggregate total installed capacities of combined heat and power installations (each with total installed capacity of 2 kilowatts or less) applied for within the deployment period;”

New Schedule 2A (greenhouse gas criteria)

11. After Schedule 2 (FIT applications data), insert—

“SCHEDULE 2A Articles 38D and 38J Greenhouse gas criteria

PART 1

Greenhouse gas criteria

The greenhouse gas criteria

1. The biogas used to generate electricity at a relevant installation meets the greenhouse gas criteria if the greenhouse gas emissions from each consignment of biomass used to make the biogas are equal to, or less than, the relevant target.

Calculating the greenhouse gas emissions

2. For the purposes of paragraph 1, and subject to paragraphs 3 and 4, the greenhouse gas emissions from the use of biomass to make the biogas are to be calculated using the actual value method or the default value method.

3. The default value method must not be used to calculate greenhouse gas emissions from the use of biomass unless—

- (a) the biomass was used in a generating station with a total installed capacity of less than 1 megawatt;
- (b) the biomass is described in the first column of the table in Part 2; and
- (c) in relation to biomass, the result of the calculation in paragraph 7 of Part C of Annex 5 to the Renewables Directive is equal to, or less than, zero.

4. For the purposes of paragraph 3(c), paragraph 7 of Part C of Annex 5 to the Renewables Directive is to be read as if—

- (a) for each reference to “biofuel” there was substituted “biomass”; and
- (b) the words “or bioliquid” were omitted in each place in which those words occur.

Interpretation

5. In this Schedule—

“actual value method” means the calculation method provided for in paragraphs 6 and 7 of Part 2 of Schedule 2 to the RO Order and all references to “the month” in paragraph 7 are to be read as references to “the quarterly reporting period”;

“default value method” means the calculation method provided for in paragraphs 8 and 9 of Part 3 of Schedule 2 to the RO Order and the reference in paragraph 9 of that Part to “the table in Part 4” is to be read as a reference to the table in Part 2 of this Schedule;

“relevant target” means—

- (a) in relation to biogas used to generate electricity before 1st April 2020, 66.7 grams per megajoule of electricity;
- (b) in relation to biogas used to generate electricity on or after 1st April 2020 and before 1st April 2025, 55.6 grams per megajoule of electricity; and
- (c) in relation to biogas used to generate electricity on or after 1st April 2025, 50 grams per megajoule of electricity;

“the Renewables Directive” means Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources^(a);

“the RO Order” means the Renewables Obligation Order 2015^(b).

PART 2

Default greenhouse gas emissions from the production of biomass

| <i>Biomass</i> | <i>Default greenhouse gas emissions from the production of biomass (in grams)</i> |
|---|---|
| <i>Bagasse briquettes where the process to produce the briquettes was fuelled by wood</i> | 17 |
| <i>Bagasse bales</i> | 20 |
| <i>Palm kernel</i> | 27 |
| <i>Rice husk briquettes</i> | 28 |
| <i>Biogas produced from wheat, where the whole plant was used to produce the biogas</i> | 21 |
| <i>Wheat straw</i> | 2 |
| <i>Biogas produced from straw</i> | 21 |
| <i>Biogas produced from organic maize, where the whole plant was used to produce the biogas</i> | 19 ⁹ |

Jesse Norman

Parliamentary Under Secretary of State

Department for Business, Energy and Industrial Strategy

7th February 2017

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies to Great Britain, amends the Feed-in Tariffs Order 2012.

Article 3 amends article 2 (interpretation) by omitting the definition of “tariff period” and adding “generation meter reading” and “tariff period” to the list of expressions that have the meaning given in Standard Licence Condition 33 of electricity supply licences.

Article 4 amends article 8B (the application limit) to account for the amendment to Schedule 1A.

(a) OJ No L 140, 5.6.2009, p. 16-62.

(b) S.I. 2015/1947 to which there are amendments not relevant to this Order.

Article 5 amends article 16 (calculation and publishing FIT payment rates) to require the Authority to publish tariff tables for the period 1 April 2017 to 31 March 2018, at the beginning of the period to replace the table previously published for the period.

Article 6 limits the Authority's powers under article 35 (notices to reduce, withhold or recoup FIT payments) to cases other than those arising under new Part 8A (anaerobic digestion installations and entitlement to generation payments). Article 7 inserts new article 35ZA (notices to reduce, withhold or recoup generation tariffs for the purposes of Part 8A) giving the Authority powers to reduce, withhold or recoup generation payments in cases where a FIT generator or nominated recipient received payments to which it was not entitled by virtue of new Part 8A.

Article 9 inserts new Part 8A (anaerobic digestion installations and entitlement to generation payments). Article 38B (application) provides that the requirements of the new Part apply in respect of anaerobic digestion installations that preaccredit or (in the absence of pre-accreditation) accredit on or after 1 May 2017. Article 38C (ongoing obligation to meet sustainability criteria) requires that the feedstock used to generate electricity at these installations meets criteria relating to land use and greenhouse gas emissions. Article 38D (ongoing obligation to provide quarterly declarations relating to sustainability criteria) requires a FIT generator or nominated recipient to report quarterly on matters relevant to verifying compliance under article 38C (ongoing obligation to meet sustainability criteria). Article 38E (entitlement to generation payments for electricity produced annually from biogas derived other than from waste and residue) provides for a reduced entitlement to generation tariffs where more than 50% of the biogas used to generate electricity at an installation is derived from waste or residue. Article 38F (ongoing obligation to provide annual declarations relating to feedstock types) requires a FIT generator or nominated recipient to report annually on matters relevant to verifying entitlement under article 38E (entitlement to generation payments for electricity produced annually from biogas derived other than from waste and residue). Article 38G (ongoing obligation to provide annual audit report relating to sustainability criteria and feedstock type) requires a FIT generator or nominated recipient to provide annual independent audit reports assessing the reliability of the information provided in the reports under articles 38D (ongoing obligation to provide quarterly declarations relating to sustainability criteria) and 38F (ongoing obligation to provide annual declarations relating to feedstock types). Article 38H (ongoing obligation to provide quarterly meter readings) requires a FIT generator or nominated recipient to provide meter readings that are concurrent with reporting periods, and permits pro-rating where meter readings are not concurrent with a particular reporting period. Article 38I (reporting periods) describes quarterly and annual reporting periods.

Article 9 amends Schedule 1A (limits on aggregate capacity of eligible installations) for the purpose of bringing combined heat and power installations (less than 2 kilowatts, using fossil fuel) within the scope of article 8B (the application limit), which imposes a limit on the aggregate capacity of eligible installations to be granted accreditation or preliminary accreditation in a tariff period. Article 10 amends Schedule 2 (FIT applications data) for the purpose of bringing such combined heat and power installations within the scope of article 35A (FIT applications data), which requires the Authority to publish certain data about applications.

Article 11 inserts new Schedule 2A (greenhouse gas criteria). Schedule 2A sets out the greenhouse gas criteria that new anaerobic digestion installations must meet and the means of calculating compliance with these criteria.

An impact assessment has been prepared in respect of the changes to the FIT scheme affected by this Order, and by associated licence modifications, and copies can be obtained from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET or www.gov.uk.

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£6.00

UK201702092 02/2017 19585

<http://www.legislation.gov.uk/id/uksi/2017/131>

ISBN 978-0-11-115423-6



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