

**EXPLANATORY MEMORANDUM TO**  
**THE FEED-IN TARIFFS (CLOSURE, ETC) ORDER 2018**  
**2018 No. 1380**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument provides for the closure of the Feed-in Tariffs scheme (“FIT scheme”) to new applicants after 31 March 2019 and sets out a number of time-limited extensions to the closure, for installations meeting certain criteria. It also introduces some administrative changes to the scheme, including an exemption from the annual levelisation payment calculation for electricity supplied to energy intensive industry (EII) customers

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

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

- 3.1 None

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is Great Britain.  
4.2 The territorial application of this instrument is Great Britain.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Sections 41 to 43 of the Energy Act 2008 (“the Act”) provide powers to establish a scheme of financial incentives to encourage small-scale low-carbon generation of electricity.  
6.2 The Feed-in Tariffs Order 2012 (“the 2012 Order”) (as amended), 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 FIT scheme including the procedure by which the Authority will accredit installations applying to the FIT scheme.

6.3 The Feed-in Tariffs (Closure, etc) Order 2018 is made under sections 43(3)(a) and 104(2) of the Act.

## 7. Policy background

### *What is being done and why?*

7.1 The FIT scheme has been the Government's main policy measure to encourage the deployment of small-scale low-carbon electricity generation in Great Britain. The FIT scheme encourages deployment of small-scale renewables up to 5 MW and supports over 800,000 installations. The FIT scheme is funded through levies placed on the electricity bills of households and businesses.

7.2 Following the 2015 review of the FIT scheme, the Government decided that spending on new generation after the introduction of revised generation tariffs would be capped and would cease in March 2019. This was to ensure there would be no additional impact on energy bills due to generation tariffs beyond forecasts at that time.

7.3 Growth in the small-scale low-carbon generation sector must be sustainable; driven by competition and innovation, not direct subsidies. Government has therefore decided to close the current flat rate export tariff at the same time as the generation tariff, to reflect its desire to move towards fairer, cost reflective pricing and the continued drive to minimise support costs on consumers. This will mean that the FIT scheme will close to new applications after 31 March 2019 subject to a number of time-limited extensions and the grace period set out below: -

- ROO-FIT scale installations (all hydro and anaerobic digestion; solar PV and wind with a declared net capacity over 50kW) for which applications for preliminary accreditation or extended preliminary accreditation for community energy installations are received by the Authority on or before 31<sup>st</sup> March 2019 and which apply for accreditation during the period of validity of their preliminary accreditation;
- Microgeneration Certification Scheme (MCS)-scale installations (solar PV and wind with a declared net capacity of 50kW or less; and all micro-combined heat and power) that are not pre-registered as a community energy or school installation, for which an MCS certificate is issued on or before 31<sup>st</sup> March 2019, and which apply for accreditation on or before 31<sup>st</sup> March 2020;
- MCS-scale community energy installations for which applications for pre-registration are received by the Authority on or before 31<sup>st</sup> March 2019, and which commission and apply for accreditation during the period of one year following receipt of the pre-registration application;
- MCS-scale school installations for which applications for pre-registration are received by the Authority on or before 31<sup>st</sup> March 2019, and which apply for accreditation during the period of one year following receipt of the pre-registration application; and
- ROO-FIT scale installations to which the 12-month grace period set out in the new article 7B applies. This has been designed to reduce the risk of projects with preliminary accreditation missing the period of validity due to delays in grid works or radar works beyond their control. This only applies to those installations whose preliminary accreditation validity periods end on or after 31 March 2019.

7.4 The tariff rate for installations accrediting on or after 1 April 2019 will be determined as follows: -

- For a ROO-FIT installation with preliminary accreditation, assuming all eligibility requirements are met, the tariff would be determined in accordance with the existing rules by reference to the date and time that the application for preliminary accreditation is submitted to the Authority;
- For an MCS-scale installation (including a school or community energy installation with an MCS certificate issued on or before 31 March 2019), assuming all eligibility requirements are met, the tariff would be determined in accordance with the existing rules by reference to the date and time the installation's MCS certificate was issued; and
- For an MCS-scale community energy installation with an MCS certificate issued on or after 1 April 2019, assuming all eligibility requirements are met, the tariff would be determined by reference to a tariff date of 1 January 2019; and

Provision is made in the instrument for how these installations accredited by virtue of the time-limited extensions should count towards the deployment caps.

- 7.5 The closure of the FIT scheme has no effect on currently accredited installations. Generators will continue to receive generation and export payments for the duration of their support under the scheme in accordance with the existing rules.
- 7.6 The other administrative changes made to the 2012 Order are summarised below: -
- Introduction of an exemption from the annual levelisation payment calculation for electricity supplied to EII customers, with effect from 1 April 2019 if the Secretary of State is satisfied on or before 31 March 2019 that this will be in accordance with State aid rules, or otherwise from the first day of the first month following the day on which he is so satisfied;
  - Inclusion of net metered export payments in the calculation of a FIT licensee's annual contribution; and of a determination relating to net metered export payments in the Secretary of State's annual determination; and minor change to clarify how annual levelisation payments are calculated; and
  - Updating references to applicable MCS installation standards for solar photovoltaic installations; for heat-led combined heat and power installations; and for electricity-led combined heat and power installations; taking effect for installations commissioned on or after 12 March 2019.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 No consolidation of the 2012 Order is planned at this time.

## **10. Consultation outcome**

- 10.1 A consultation on the closure of the FIT scheme, and levelisation/administrative measures, was published on 19 July 2018 and ran for a period of eight weeks. 345 responses were received from a range of stakeholders including trade associations,

manufacturers, energy suppliers, project developers, community groups, consultants, local authorities and individuals.

- 10.2 The Government's response to this consultation was published simultaneously with the laying of this legislation. This sets out a detailed analysis of the consultation responses and policy decisions and is available at <https://www.gov.uk/government/consultations/feed-in-tariffs-scheme>
- 10.3 An eight-week consultation was held between April and May in 2016 on an exemption for EII from the indirect policy costs of the Renewables Obligation (RO) and FIT schemes. 68 responses were received from manufacturers, energy suppliers, trade associations and individuals. The Government's response to the FIT aspect of the consultation was published on 19 July 2018. This sets out a detailed analysis of the consultation responses and policy decisions and is available at <https://www.gov.uk/government/consultations/implementing-an-exemption-for-energy-intensive-industries-from-the-indirect-costs-of-the-ro-and-the-fits>
- 10.4 The key issues from these consultations are summarised below: -
- Scheme closure*
- 10.5 The majority of respondents were opposed to the closure of the FIT scheme. The arguments put forward included that it would be unfair for small-scale generators to provide free electricity to the grid when not self-consuming, that closure was incompatible with meeting climate change targets and other environmental and health targets, and that this would have a destabilising effect on the industry, jobs and supply chain. There was also concern about the lack of routes to market for small-scale generators leading to reduced deployment and knock-on impacts on the development of smart infrastructure. Many were concerned about a possible hiatus in a route to market between the closure of the scheme in March 2019 and the introduction of any potential successor arrangements.
- 10.6 After careful consideration of the consultation responses, the Government's assessment remains that the export tariff should close alongside the generation tariff because the current fixed and flat rate does not align with the wider government objectives to move towards market-based solutions, cost reflective pricing and the continued drive to minimise support costs on consumers.
- 10.7 The majority of respondents disagreed with the closure and proposed exception arrangements because they opposed the end of the export tariff and closure of the scheme. Respondents also made suggestions on how the deployment caps should be adjusted before closure and argued that the closure arrangements should include grace periods like those available for the closure of the RO.
- 10.8 After careful consideration of the consultation responses, the Government decided to implement the closure exceptions as proposed with a minor change to extend the application window deadline for MCS-scale installations that have not pre-registered as a school or community energy installation from 31 January to 31 March 2020. This will allow easier comprehension of the key cut-off dates in the scheme for small-scale generators. There will also be a 12-month grace period for ROO-FIT scale installations (all hydro and anaerobic digestion; solar PV and wind with a declared net capacity over 50kW) that apply for preliminary accreditation on or before 31 March 2019, are accepted into a cap, are unable to accredit within their preliminary accreditation validity period due to grid and/or radar delay, and can evidence to the

Authority that they suffered such grid and/or radar delay for reasons beyond their control.

### ***Levelisation/Administrative measures***

- 10.9 Government proposed amending the levelisation mechanism to include the net costs of metered exports to suppliers. Levelisation is the mechanism by which the cost of the FIT scheme is apportioned across all Licensed Electricity Suppliers (regardless of their FIT participation status) according to their share of Great Britain's electricity market, taking into account any applicable exemptions. It also proposed using the average time-weighted System Sell Price (SSP) to determine the value of metered export to FIT licensees. This is only relevant for a very small proportion of stakeholders, and the majority of respondents did not express a clear opinion, commenting on the complexity and technical nature of the subject matter. Most respondents who disagreed did so because they opposed the closure of the scheme. Those who agreed with the proposal thought that this approach would take away the risk associated with metered export customers where system and wholesale prices are outside of suppliers' control.
- 10.10 Having considered the views presented, Government decided to introduce net metered export into the levelisation process from FIT year 10 with the value set using the average time-weighted SSP.

### ***Energy Intensive Industries (EII) Exemption***

- 10.11 The majority of respondents agreed with the proposals and the Government decided to implement the exemption in accordance with these so that: -
- It will be available to the same EII that are eligible for the Contract for Difference (CfD) and RO exemptions, and will be based on the same application process as the CfD exemption.
  - It will be applied by deducting EII exempt electricity from the calculation of each supplier's market share and the calculation of overall supply.
  - The calculations regarding the exemptions will be adjusted to ensure that no supplier can have a negative market share.
- 10.12 Subject to securing State aid approval, Government intends to implement the exemption from 1 April 2019 if the Secretary of State is satisfied on or before 31 March 2019 that this will be in accordance with State aid rules, or otherwise from the first day of the first month following the day on which he is so satisfied.

## **11. Guidance**

- 11.1 The Authority, as administrators of the FIT scheme, intend to publish draft revised suppliers' guidance on the closure arrangements and the EII exemption for informal consultation. A final version of the guidance will then be made available in March.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies will be one affecting their ability to deploy small-scale low-carbon generating projects. In some cases where there is uncertainty as to whether the project will be able to commission before the closure date, it may lead the project to seek alternative means of support or not to proceed. In other cases, the time-limited extensions and grace period will give greater confidence

that the project will be able to accredit under the FIT scheme thereby enabling the project to proceed. Business, charities or voluntary bodies are also subject to rising electricity costs under the levy control framework, and the closure of the scheme is intended to mitigate those costs.

- 12.2 The closure will also have an impact on the public sector, which is subject to rising electricity costs under the levy control framework, and the closure of the scheme is intended to mitigate these costs. The public sector's ability to deploy small-scale low-carbon technologies will be affected by closure.
- 12.3 The impact of the change in levelisation will be limited to Licensed Electricity Suppliers who will now share the net costs of metered export payments according to their share of Great Britain's electricity market.
- 12.4 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

### **14. Monitoring & review**

- 14.1 The Department will monitor the operation of the time-limited extensions and grace period to inform the development of any other similar arrangements in future. Success measures will include: straightforward, low-cost operation and administration for both those projects seeking to benefit from an extension or grace period, and for the Authority.
- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Claire Perry has made the following statement:

“A review provision is not appropriate because the FIT scheme is closing to new applications after 31 March 2019. The Department will continue to carry out on-going monitoring of the scheme, once closed to new entrants, whilst payments continue to be made (up to March 2039) 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.”

### **15. Contact**

- 15.1 Jeremy Brutus at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 8263 or email: [Jeremy.Brutus@beis.gov.uk](mailto:Jeremy.Brutus@beis.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Vicky Dawe, Deputy Director for Renewable Electricity Support Schemes, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Energy and Clean Growth, Claire Perry, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.