

GB Feed-in Tariffs Scheme

Consultation on a change to the rules on the treatment of extensions to installations: summary of responses and Government response

September 2011

Contents

Contents	2
Executive Summary	3
Respondents to the Consultation	4
Summary of Responses to Question 1	5
Summary of Responses to Question 2	6
Government Response	7
Next Steps	9
Annex A List of Respondents to the Consultation	10
Annex B Text of amendments made by the Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment No.3) Order 2011	11

Executive Summary

1. The fast-track review of Feed-In Tariffs (FITs) for small-scale low carbon electricity was conducted in early 2011 in order to prevent a substantial increase in the subsidy costs of the FITs scheme as a result of unforeseen significant uptake of large scale (50 kW to 5 MW) and stand-alone solar photovoltaic (PV) installations.
2. Changes made as a result of the review were to ensure that we are able to deliver the savings committed to as part of last year's Spending Review, and also to comply with the control framework for DECC levy-funded spending.¹ Doing so will limit the impact of the scheme on electricity bills and will also protect the sustainability of the scheme.
3. On 9 June 2011 we confirmed the outcome of the fast-track review and explained that responses to the fast-track consultation had increased our conviction of the need to make changes to the tariffs for large scale and all stand-alone solar PV projects, and the need to do so as a matter of urgency.
4. We know that, following this announcement, some developers expedited projects to enable them to be fully commissioned before 1 August 2011, whilst others decided not to progress projects. We then also became increasingly aware of evidence that some large scale solar PV developers were intending to use provisions in the FITs legislation regarding the accreditation of extensions to installations, in order to take advantage of the pre fast-track review tariffs beyond 1 August 2011.
5. When the FITs scheme was developed, it was recognised that there were likely to be instances where generators would increase the size of their installation over time. For example, they might have installed one wind turbine in year 1 of the FITs scheme and then sought to install another after some time on the same site, increasing the total capacity incrementally over a number of years. Where modifications are made to an accredited FITs installation that increase its capacity using the same technology type, this is described as an "extension". The legislation underpinning the FITs scheme, specifically Articles 15 and 16 of the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (as amended) ("the FITs Order"), sets out the rules for accrediting such extensions.
6. The existing extensions rules treat installations differently depending on how long after the original installation the extension takes place. This is to avoid incentivising artificial staging of extensions over a short period of time in order to take advantage of tariffs in certain bands.

¹ See http://hm-treasury.gov.uk/psr_controlframework_decc.htm

7. The intended effect of the extensions rules was not to enable grandfathering of tariffs in the event of a change in tariffs. However, with the fast-track change in tariffs the extensions rules have effectively created a loophole allowing them to be used in this way. Were this loophole to remain open, it would have a considerable impact on the FITs spending envelope and the integrity of the scheme, undermining the intended effect of the fast-track review.
8. In the light of these concerns, on 27 July 2011 we published a *Consultation on a change to the rules on the treatment of extensions to installations under the GB Feed-in Tariffs scheme*. This document details the responses received to each question in that consultation paper and explains the Government response and steps we intend to take as a result of the consultation.

Respondents to the Consultation

9. We received 63 responses to the consultation, one of which was a joint submission from 16 different organisations, so a total of 78 different organisations or individuals responded. There were 12 confidential responses and the names of the 60 non-confidential respondents which are not duplicates or individuals are listed in Annex A.

Summary of Responses to Question 1

Do you agree or disagree with the proposal to take steps to amend the extension rules? Please give reasons for your answer.

10. Of the responses received, 75% disagreed with the proposal and 24% agreed, 1% commented on the question but did not indicate whether they agreed or disagreed.
11. The majority of those who disagreed with the proposal cited the negative impact on investors in renewable energy that a further change to the FITs regime would have. They argued that the fast-track review had already caused significant disruption and uncertainty and many felt that further changes to the scheme should be avoided, at least until the comprehensive review. Respondents argued for greater clarity and consistency in policy making and felt this was not being provided in relation to the FITs scheme.
12. Some respondents stated that the extensions provisions should have been considered as part of the fast-track review and, failing that, a subset felt that the comprehensive review would be the correct place to consider this issue.
13. Some also felt that the changes were not acting to close a loophole but were in fact a fundamental policy change. A common assertion was that the extensions rules were intended to provide a “safety net” for investors in the event of a tariff change and that those that intended to make use of the extensions provision were being consistent with Government policy.
14. A small number of respondents suggested that there were good policy reasons for leaving the extensions provisions unchanged, namely that they allow for phased building of large projects, technological innovation and greater investor confidence in complex projects.
15. Some respondents suggested that other technologies than solar PV were looking to the extensions rules to provide these benefits, particularly in the context of the comprehensive review. They were therefore concerned about the application of the proposed new rules to all technologies.
16. Some of the respondents who were in the process of developing sites which would be affected by this change suggested that there should be exceptions from the changes for certain schemes. Various examples were proposed, including installations on public buildings, community funded sites and those which intend to use much of the electricity generated on site.
17. A number of respondents also reiterated arguments made in the context of the fast-track review about the benefits of large scale solar PV. For example, some noted the potential

creation of jobs which would be put at risk by this change, citing experience of support for large scale solar PV in other EU countries, principally Germany.

18. Some respondents questioned the evidence on which the consultation proposal was based, suggesting that the number of sites in a position to extend was small, as was the potential cost to the overall FITs scheme.
19. Those that agreed with the suggested changes considered that the potential costs of not acting were significant and that urgent change was necessary to ensure that the policy direction indicated by the fast-track review was implemented. It was also stated that leaving the loophole open was discriminatory towards those that had acted to discontinue investment following the fast-track changes.

Summary of Responses to Question 2

Do you agree or disagree with the way in which it is proposed to change these rules, as set out in the draft amendment to Article 15 of the FITs Order? If you disagree, please provide reasons to support an alternative.

20. 75% of respondents disagreed with this proposal, 21% agreed and 4% of respondents did not answer.
21. Some respondents did not have concerns with the proposed approach to changing the extensions rules, while a subset reiterated their underlying concern with the prospect of change per se. Others provided more detailed comments and made the following suggestions.
22. Some respondents suggested different ways in which extensions could continue to be governed by the current extensions rules but with additional controls to limit the size of an extension and the associated cost to the FITs scheme. This could be done, for instance, by restricting extensions to those where the increased capacity remains within the parameters of the original tariff band or a capped percentage (e.g. to double the original size). It was argued that this would allow some sites to extend under the current rules but would mitigate the budgetary impact of substantial extensions (for example a 50 kW project extending to a 5 MW project).
23. An alternative option suggested was to retain the current extensions rules for certain types of projects. Examples proposed included local authority projects, projects where the majority of electricity generated is used on-site, and those where the owner of the project remains the same both at the time of original commissioning and at the time of extension.
24. Others felt that the suggested changes would unfairly restrict sites which had other, non-financial reasons for seeking to extend and were not simply trying to generate the maximum

possible return by circumventing the intent of the fast track review. Several examples were provided including community schemes which intended to build a medium size PV installation gradually and companies intending to add building integrated PV panels to their property.

25. Some respondents felt that there should be a transitional period of 6 to 12 months before any changes to the rules on extensions came into force. This would allow schemes currently being extended to complete but then restrict additional sites from doing so. Those that suggested this option noted that they had significant investments at risk, including the costs of planning, grid connections and contractual obligations with materials suppliers and that they should be permitted to complete these extensions under the current rules.
26. However, some respondents who supported the proposals argued that the policy intent of the fast-track review was clear and that, to ensure consistency with this, the changes should be made as soon as possible.
27. A number of respondents also commented on the length and timing of the consultation period, stating that the five week period was unreasonably short, particularly given that it spanned the summer holiday period.
28. During the consultation process, a number of stakeholders noted a potential issue with the drafting proposed in the consultation which, if left unchanged, would create uncertainty for developers about how the proposed changes would apply to them. This issue is addressed below.

Government Response

29. We have carefully considered all the responses received. This section sets out our response, and also seeks to clarify the position in relation to some of the recurring points made in consultation responses.
30. Several respondents expressed concern about the consultation process. We remain of the view that the nature of the consultation – on a discrete issue relating to one aspect of the FITs scheme - and the urgency of the concerns about the impact on the FITs spending envelope, provided sufficient justification for consulting for a shorter period than is recommended as standard in the Cabinet Office guidance on consultations, and that the consultation period was reasonable in all the circumstances.
31. Since publishing the consultation, we have continued to monitor the situation closely. In doing so we have increased our estimate of the number of projects that have the potential to extend under the existing extensions rules to prolong access to the pre fast-track review tariffs. For example, we are aware that a number of PV projects that were commissioned and applied for FITs accreditation before 1 August have grid connections capable of

supporting much larger PV installations than the installed capacity at 1 August. Whilst some installations will, by default, have high capacities of connection as they are sited at existing industrial sites, others will use the additional export capacity to facilitate the deployment of additional installed capacity. In addition, it was also clear from feedback received through the consultation period that a number of existing accredited FIT installations are already actively extending to higher installed capacities within a short timeframe.

32. We have given careful consideration to the alternative suggestions provided and summarised in paragraphs 21 to 25 above. However, we remain concerned that all of the alternatives would either fail to address the overall concern about extensions or would incur significant costs to the scheme which outweigh any benefits they may provide. Additionally, all of the alternatives suggested would require a change in the policy intent of the extensions rules to include some provision of a safety net for investors. This was not the original policy intent of the extensions rules and we do not consider that there is a strong policy reason for changing the policy intent at this stage. We have therefore decided to proceed with changes to the rules on extensions by amending the FITs Order. The new rules on extensions will apply to all extensions unless they are commissioned, and Ofgem or suppliers receive notice in respect of them, before 18 October 2011.
33. However, to address concerns raised in the consultation, we have decided to implement a modified version of the amendments proposed in the consultation document. From the date of commencement of the order, an extension to an installation which occurs within 12 months of the eligibility date of the original installation will be subject to the same rules as those applying to an extension which occurs more than 12 months after the eligibility date of the original installation.
34. Thus, the tariff for the original installation (excluding the extension) will remain unchanged, but, once it has been commissioned and accredited, the extension will be given a separate Tariff Code and have a different Eligibility Period. The tariff for the extension will be based on the aggregate total installed capacity of the original installation and the extension, and on the tariff rates applicable at the eligibility date of the extension. In this way, developers can still choose to extend an installation but the tariff assigned to the extension will be the current tariff, rather than the tariff at the time the original installation commissioned.
35. Additionally, we have included a transitional provision. This is to address an issue which was raised through the consultation process about the treatment of extensions which are commissioned before the changes to the extensions rules take effect, but where the original installation has not been accredited. Delays to accreditation may occur for a number of reasons, including because of normal processes, the need for operators to provide further information and/or backlogs in Ofgem's and suppliers' systems. Under the consultation proposal, the implication was that extensions could only be notified in relation to accredited installations, with no clarity on how extensions to installations pending accreditation in this scenario would be treated. Concerns were raised that, in the context of proposals to change the rules on extensions, this would create unnecessary additional uncertainty for

developers as a result of factors over which they have little control. Therefore, in the interests of transparency and certainty, the changes to the FITs Order that are being introduced include a transitional provision which means that in the interim period before the FITs Order comes into force, the current rules on extensions will apply both:

(a) where an extension is made to an accredited installation and that extension is commissioned and notified to Ofgem before the commencement date of the amending Order; and

(b) where an extension is made to an eligible installation that has commissioned and has applied for accreditation (and is subsequently accredited), and that extension is commissioned and notified to Ofgem before the commencement date of the amending Order.

36. The opportunity has also been taken to include in the amending Order some drafting amendments to Part 4 of the 2010 Order, to improve its clarity and consistency of terminology.

Next Steps

37. The Feed-in Tariffs (Specified Maximum Capacity and Functions)(Amendment No. 3) Order 2011 was laid in the Houses of Parliament on Tuesday 27 September and will come into force on Tuesday 18 October 2011. The text of Part 4 of the 2010 Order as amended, and the transitional provision, can be found at Annex B.

Annex A List of Respondents to the Consultation

Ampair
BADOT Ltd
BG Renewables Micro-generation Consultants
Bluewater Works
Bristol Water plc
The Carbon Catalysts Group
Carbon Green Projects Limited
Community Energy Solutions
Connolly Land and Developments Ltd
The Co-operative Group
Co-operatives UK
Cornwall Power
Cornwall Power Limited
Cross Green Energy
DJK Renewables
Eaton Partners LLP
EcoCentroGen Ltd
ecoConnect
Enexos Ltd
Ennoviga Solar Ltd
ESTA (Energy Services and Technology Association)
Farm Renewables Limited
Friends of the Earth
GMI Renewable Energy Group Ltd
Good Energy
Grafton Group PLC
Greenfield Holdings
Grey Rock Management Limited
Hazel Capital and AEE
Heat and Power Limited

Inherent Energy Ltd
Kier Energy Solutions
Local Government Group
Low Carbon
Low Carbon Group
The NAPIT Group
The National Energy Foundation
National Farmers' Union
Nextpower Trevemper Limited
OVESCO
Peterborough City Council
Photon Energy Ltd
The Power Exchange
Puragen
RenewableUK
RENPower Investments U.K Ltd
Riomay Ltd.
Riomay Renewable Energies
ScrewFast Foundations Limited
Solar BIPV Ltd
Solar Media Ltd.
Solar Power Portal
Solaris Developments
Solaris Developments
Solarworks Ltd
SSE
T4 Sustainability Limited
Thames Water
Western Solar Ltd
The Woodhorn Group

Annex B

Part 4 of the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 as amended by articles 2 to 4 of the Amendment Order

Note: Text inserted or substituted by the Amendment Order is in italics.

“PART 4

Accreditation of extensions to installations

Accreditation of extensions to accredited FIT installations

15.—(1) This article applies where the Authority receives notice ... *[words omitted]* ... that an accredited FIT installation has been extended.

(2) *[Omitted]*

(3) *[Omitted]*

(4) Paragraph (5) applies where—

(a) the accredited FIT installation is extended by increasing its capacity to generate electricity using the same eligible low-carbon energy source for which it is accredited.

(b) *[Omitted]*

(5) Where this paragraph applies, the Authority must—

(a) treat the extension as a separate eligible installation;

(b) decide whether or not to accredit the extension in accordance with Part 3; and

(c) where it decides to accredit the extension, assign the extension a separate tariff code based on the aggregate total installed capacity of both the extension and the existing accredited FIT installation.

(6) Paragraph (7) applies where the accredited FIT installation was extended by increasing its capacity to generate electricity using a different eligible low-carbon energy source to that for which it is accredited.

(7) Where this paragraph applies, the Authority must—

(a) treat the extension as a separate eligible installation; and

(b) decide whether or not to accredit the extension in accordance with Part 3.

Accreditation of extensions to installations which are not accredited FIT installations

16.—(1) Paragraph (2) applies where—

(a) *the Authority receives notice that an installation which uses an eligible low-carbon energy source (“the existing installation”) has been extended; and*

(b) *either—*

(i) a request for accreditation of the existing installation as an accredited FIT installation has been refused; or

(ii) if a request were made for accreditation of the existing installation, the request would be refused.

(2) Where this paragraph applies, the Authority must—

(a) treat the extension as a separate eligible installation;

(b) decide whether or not to accredit the extension in accordance with Part 3; and

- (c) where it decides to accredit the extension, assign the extension a separate tariff code based on the aggregate total installed capacity of both the extension and the existing installation.

Part 4: interpretation

16A. —(1) In this Part, “notice”, in relation to an installation, means a notice given to the Authority by—

- (a) a FIT licensee; or
- (b) the owner of the installation.”

Transitional provision - article 5 of the Amendment Order

Note: The amendments made by article 2(3) and (4) of the Amendment Order (referred to in paragraph (2) of this transitional provision) are the omission of paragraphs (2), (3) and (4)(b) of article 15 of the 2010 Order.

“Transitional provision

5.—(1) Paragraph (2) applies where an installation has been extended as described in paragraph (3) (“Case 1”) or paragraph (4) (“Case 2”).

(2) In relation to the accreditation of that extension, article 15 applies as if the amendments made by article 2(3) and (4) of this Order had not been made.

(3) Case 1 is that before 18th October 2011—

- (a) an extension to an accredited FIT installation has been commissioned; and
- (b) the Authority or the relevant FIT licensee has received notice of the extension.

(4) Case 2 is that—

(a) before 18th October 2011—

- (i) a request has been made to the Authority, or (in the case of an eligible installation with a total installed capacity not exceeding 50kW) a FIT licensee, for accreditation of an eligible installation which has been commissioned;
- (ii) an extension to that eligible installation has been commissioned; and
- (iii) the Authority or the FIT licensee has received notice of that extension; and

(b) the eligible installation is subsequently accredited as an accredited FIT installation.

(5) In this article—

(a) the following expressions have the same meanings as in the 2010 Order—

- “accreditation”;
- “accredited FIT installation”;
- “the Authority”;
- “central FIT register”;
- “commissioned”;
- “eligible installation”;
- “extension”;
- “FIT licensee”;
- “FIT payments”; and
- “total installed capacity”; and

(b) in paragraph (3), “relevant FIT licensee” means the FIT licensee identified on the central FIT register as responsible for making FIT payments in respect of the accredited FIT installation.”

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