EXPLANATORY MEMORANDUM TO

THE FEED-IN TARIFFS (AMENDMENT) ORDER 2014

2014 No. 1601

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Feed-in Tariffs Order 2012 ("the 2012 Order") in relation to the circumstances in which a granted preliminary accreditation for an installation can be withdrawn.

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

3.1 None.

4. Legislative Background

4.1 The 2012 Order (made under sections 41(4), 43(3)(a) and 104(2) of the Energy Act 2008), together with provisions contained in Conditions 33 and 34 of the standard conditions of electricity supply licences ("the Standard Licence Conditions"), implement the Feed-in Tariff Scheme ("FIT Scheme") for small-scale low-carbon electricity generation. 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. The Standard Licence Conditions impose obligations on electricity suppliers which are to pay feed-in tariffs to accredited small scale generators of electricity using an eligible low-carbon energy source, and make provision about the tariffs to be paid to those generators.

5. Territorial Extent and Application

5.1 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 Article 2 of this Order introduces a new provision to Part 3 of the 2012 Order to place an obligation on the Authority to withdraw a granted preliminary accreditation where particular conditions are satisfied.

7.2 Following a comprehensive review of the FIT scheme in 2011 and 2012, the Department introduced the following changes (among others) to the FIT Scheme on 1 December 2012:

- a new tariff band and rate for hydroelectricity installations of a capacity of greater than 100kW and not exceeding 500 kW ("the relevant hydro installations"). State aid approval was required from the European Commission before the new tariff would become operative, and that approval was subsequently received on 15 March 2013.

- the ability for prospective FIT generators to apply to the Authority for preliminary accreditation of a proposed feed-in tariff installation. The purpose of preliminary accreditation is to provide greater certainty to prospective FIT generators before constructing such installations that they will be accredited under the FIT scheme, and as to the tariff rate for which they will be eligible. An installation granted preliminary accreditation is assigned the tariff rate operative on the date that their application for preliminary accreditation was received by the Authority. The installation is able to access this tariff provided it is commissioned and granted full accreditation by the Authority within a limited (technology specific) period of time.

7.3 The rules of the FIT scheme, as amended by the changes described above, meant that a relevant hydro installation granted preliminary accreditation on the basis of an application received by the Authority between 1 December 2012 and 31 December 2012 would be assigned a tariff date linked to the old tariff rate (being the tariff rate operative before the tariff rate introduced on 1 December 2012 obtained state aid approval). The combination of tariff changes and new conditions around preliminary accreditation resulted in some confusion, and at least one relevant hydro installation applied for preliminary accreditation in December 2012 and were therefore assigned a tariff date that equated to the old tariff rate.

7.2 The Feed-in Tariff scheme does not provide the ability for a prospective FIT generator to withdraw their application for preliminary accreditation after it has been granted by the Authority. It is also not possible for an installation to submit a second application for preliminary accreditation or accreditation whilst a granted preliminary accreditation exists for that installation.

7.3 The amendment to the 2012 Order made by this instrument aims to rectify the issue caused by this very specific set of circumstances, by allowing the prospective FIT generator of a relevant hydro installation to withdraw a granted preliminary accreditation if their application in respect of that installation was received by the Authority between 1 December 2012 and 31 December 2012.

7.4 This change will impact on a limited number of feed-in tariff generators.

- ***Consolidation***

7.5 This instrument comprises the second amendment made to the 2012 Order, and consolidation is not proposed. If further amendments are proposed to the 2012 Order, the Department will consider whether consolidation would be appropriate.

8. Consultation Outcome

8.1 The policy proposal was consulted on for four weeks from 1 April 2014 to 29 April 2014. The consultation length reflected the nature of the consultation – on a discrete issue relating to one aspect of the FIT scheme – and the small number of interested stakeholders and the limited public interest.

8.2 In total eight responses were received to the consultation. Six responses were received in support of the proposed policy change, including on the basis that confusion had resulted and a precedent would not be set for 'ad hoc legislative changes'. The remaining two respondents were not in favour of the proposal on the grounds that this policy change should not be a priority for the use of resource and because of the precedent set by making this change. A document summarising these responses and setting out the Government's response has been published and is available from the Department's website[1].

8.3 Following careful consideration of the consultation responses it was decided to make the legislative changes as proposed in the consultation document.

9. Guidance

9.1 The Authority 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 Order.

10. Impact

10.1 There are no impacts on business, charities or voluntary bodies additional to those described in the Explanatory Memorandum supporting the 2012 Order.

10.2 There are no impacts on the public sector additional to those described in the Explanatory Memorandum supporting the 2012 Order.

10.3 An Impact Assessment has not been prepared for this amendment as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation applies to small business.

[1] https://www.gov.uk/government/consultations/consultation-on-feed-in-tariff-change-for-hydroelectricity

11.2 There are no regulatory impacts for firms employing up to 20 people as the approach taken is that no electricity supply companies employ 20 or fewer people.

12. Monitoring & review

12.1 The Department will continue to carry out ongoing monitoring of the FIT 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 FIT scheme with their obligations.

13. Contact

Rosemary Love at the Department of Energy and Climate Change Tel: 0300 068 6907 or email: rosemary.love@decc.gsi.gov.uk can answer any queries regarding the instrument.