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# EXPLANATORY MEMORANDUM TO

# THE FEED-IN TARIFFS (SPECIFIED MAXIMUM CAPACITY AND FUNCTIONS) (AMENDMENT No. 3) ORDER 2012

## 2012 No. 2268

**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.

## 2. Purpose of the modifications

2.1 This instrument amends the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 ("the 2010 Order") to provide for an existing method by which small hydro generating stations may be accredited for feed-in tariffs to continue to operate after 30 September 2012.

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

3.1 None.

## 4. Legislative Context

4.1 The 2010 Order, 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 tariffs scheme ("FITs scheme") for small-scale low-carbon electricity generation. The Standard Licence Conditions impose obligations on electricity suppliers which are to pay feed-in tariffs, while the 2010 Order sets out Ofgem's functions in relation to the FITs scheme.

## 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7.1 Under the 2010 Order as originally made, most types of generating installations with a capacity of 50 kilowatts or less were required to be registered under the Microgeneration Certification Scheme ("MCS"), or an equivalent scheme, as a condition of eligibility for FITs. Because of delays in getting MCS standards in place for micro hydro generating stations, article 5A was inserted by amendment to enable such installations to be accredited for FITs if they meet the criteria, except as to capacity, for accreditation under the Renewables Obligation Order 2009 or the Renewables Obligation (Scotland) Order 2009.

7.2 Article 5A was originally intended to be a temporary provision until the Government had consulted on longer term arrangements for the accreditation of micro hydro installations, and hence it currently provides for the alternative method of accreditation to apply to installations that are commissioned on or before 30 September 2012. Following consultation on this issue it was decided to make the current transition arrangements permanent by removing that time limit.

7.3 The Department announced on 20 July 2012 that it intends to implement changes arising from the final phase ("Phase 2B") of the review of the FIT scheme with effect from 1 December 2012. It is necessary to implement this amendment earlier to avoid the accreditation provision expiring before that date.

- ***Consolidation***

7.4 The Department intends to consolidate the 2010 Order when it makes the remainder of the changes arising from the review of the FIT scheme.

## 8. Consultation outcome

8.1 This amendment was proposed in the FITs Phase 2B consultation, feedback from consultees was supportive and the Departments' intention to implement this change was announced in the FITs Phase 2B Government Response document, released on 20 July 2012.

## 9. Guidance

9.1 Ofgem already provides detailed guidance for existing and potential participants in the FITs scheme in a variety of forms. That guidance will be updated to alert electricity generators and suppliers and others to the amendment made by this Order.

## 10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as no impacts are foreseen on business, charities or voluntary bodies or on the public sector.

## 11. Regulating small business

11.1 The legislation applies to small business.

11.2 There are no regulatory impacts for firms employing up to 20 people as the instrument merely continues the application of an existing method of accreditation.

## 12. Monitoring & review

12.1 The FITs comprehensive review is now completed. The scheme will continue to be monitored and reviewed as required.

## 13. Contact

13.1 Alasdair Grainger at the Department of Energy and Climate Change, email: alasdair.grainger@decc.gsi.gov.uk can answer any queries regarding the instrument.