

Consultation on a change to the rules on the treatment of extensions to installations under the GB Feed-in Tariffs scheme

July 2011

The extensions issue and proposed approach

Issue

1. The principal objective of the recent fast-track review of Feed-In Tariffs (FITs) was to prevent a substantial increase in the subsidy costs of the FITs scheme as a result of unforeseen significant uptake of large scale (50kW to 5MW) and all stand-alone solar photovoltaics (PV) installations. This control would in turn limit the impact of the scheme on electricity bills and ensure that we are able to deliver the savings committed to as part of last year's Spending Review, and to comply with the control framework for DECC levy-funded spending.¹
2. On 9 June 2011, the Government published the response to the fast-track review². This document stressed that for the sake of the industry more widely it is vital that we protect the integrity of the scheme and can continue to support the roll-out of new green energy technologies in homes, communities and small businesses. Responses to the fast-track consultation 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.
3. We also confirmed that, having given the matter careful consideration, we would not introduce any transitional arrangements to enable some projects to benefit from the original tariffs beyond 1 August 2011. Doing so would have involved significant additional expenditure which would have required savings to be found from elsewhere in the scheme.
4. Modifications have now been made to Standard Condition 33 of the Standard Conditions of Electricity Supply Licences ("Standard Condition 33") so that new tariff levels will apply to solar PV installations with an eligibility date³ on or after 1 August 2011. This follows the completion of the parliamentary process set out in the Energy Act 2008 and concluding on 19 July 2011.
5. Since announcing the outcome of the fast-track review, we know that some developers have expedited PV projects to enable them to be fully commissioned before 1 August, whilst others have decided not to progress projects. However, we have also become increasingly aware of evidence that some large scale solar PV developers are intending to use provisions in the FITs legislation on the accreditation of extensions to installations, in order to take advantage of the current tariffs beyond 1 August 2011.
6. This was not the intended effect of the extensions rules and is clearly inconsistent with the objective of the fast-track review. These provisions effectively create a loophole which, if it were to remain open, would have a considerable impact on the FITs spending envelope and the integrity of the scheme, undermining the intended

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

² See *Feed-in Tariffs Scheme: Summary of Responses to the Fast-Track Consultation and Government Response*, available at www.decc.gov.uk/assets/decc/Consultations/fits-review/fits-fast-track-government-response---final.pdf

³ "Eligibility date" is defined in Schedule A of Standard Licence Condition 33.

effect of the fast-track review . We therefore consider that there is a strong case for addressing this loophole as soon as possible.

What are the rules on extensions?

7. 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.
8. In order to distinguish between installations that are genuinely extended over an appropriate period of time and those that are artificially staged to take advantage of tariff bands, the current extensions rules treat installations differently depending on how long after the original installation the extension takes place. Under the current rules there are two possible scenarios:-
 - (i) If an extension is commissioned within 12 months of the original installation’s confirmation date, Ofgem is required to re-assess the original installation and the extension for accreditation on the basis that **the capacity of the extension will be combined with that of the original installation**. Ofgem’s supplier guidance explains that, in these cases,

“The combined installation will then be treated as having a new Total Installed Capacity, and if applicable, new Tariff Code and Tariff Rate. However, the new installation will have the same Eligibility Date as the original Installation. If the new total TIC moves the combined Installation into a new Tariff Code, the whole Installation will receive the lower Tariff Rate from the date on which the Extension commissioned.”⁴
 - (ii) If an extension takes place more than 12 months after confirmation in the Central FITs Register, **the extension will be treated as a separate installation** alongside the original installation. Ofgem’s supplier guidance explains that, in these cases,

“The original installation will retain its Tariff Code and Eligibility Period, but the subsequent extension will be given a separate Tariff Code and have a different Eligibility Period. However, they will share the same entry and Unique

⁴ *Feed-in Tariff: Guidance for Licensed Electricity Suppliers (Version 2) – Consultation*, available from www.ofgem.gov.uk/Sustainability/Environment/fits/Info/Documents1/FIT%20Supplier%20Guidance%20V2%20Consultation.pdf

FIT ID on the Central FIT Register, as they will be one combined Eligible Installation.”⁵

9. These provisions also ensure that extensions do not result in installations with a total installed capacity of more than 5MW being supported for FITs.

What is the loophole for large-scale solar PV and why does it need to be addressed?

10. The current FITs legislation is ambiguous about how the rules on extensions should be applied in the event of tariffs being reduced through scheme reviews, as is the case following the fast-track review. We consider that this is a particular concern in relation to the provisions governing the treatment of extensions undertaken within 12 months of the original installation (the scenario described in (i) above). As the legislation stands, a possible interpretation could be that a developer of a 100kW solar PV project with an eligibility date before 1 August 2011 could extend the capacity to 5 MW within 12 months and be eligible for the pre-1 August 2011 tariff for the extended installation. In other words, the extensions rules could mean that new large scale solar PV capacity is able to benefit from the original tariffs even after the tariff regime has changed.
11. Our view is that this is inconsistent with the FITs policy following the fast-track review and prolongs the risks to the FITs spending envelope that the fast-track review was intended to address. We have been monitoring the situation closely to understand how significant the risk would be in practice. This ongoing monitoring, along with evidence received from industry and others, has led us to believe that a number of large scale solar PV developers are contemplating using the FITs extensions rules to continue to obtain the existing tariffs for new generating capacity beyond 1 August. We consider that there is a strong case for urgent action to address this risk.

Proposal

12. In order to address the loophole created by the current rules on extensions, we propose amending Article 15 of the FITs Order as set out in the draft at Annex A. It should be noted that the proposed amendment only relates to the rules for extensions within 12 months of the eligibility date of the original installation; for extensions commissioned after this period, it is proposed that the existing approach in article 15(5) of the FITs Order should continue to apply unchanged.
13. Under this proposal, if Ofgem received notification that an extension to an accredited FIT installation had been commissioned within 12 months of the original installation, the original installation and the extension would continue to be considered as a single installation. That installation would then be eligible under Standard Condition 33 for the relevant tariff at the rate applying at the time when the extension was commissioned, rather than at the rate which applied when the original installation was notified or commissioned. The eligibility period for the extended installation (i.e. the maximum period during which FIT payments may be made for the installation) would

⁵ Ibid.

be reduced to take account of the period for which the original part of the installation had already been eligible for FIT payments, as is currently the case in practice where an extension is made within 12 months.

14. To ensure that the administrative arrangements for accrediting extensions are consistent across technologies, the proposal would apply to all FIT technologies. However, our view is that, in practice, the only immediate impact would be on technologies where there has been a change in tariff, such as those technologies affected by the fast-track review of FITs. Therefore, other technologies currently should not be affected by the proposal.
15. We also propose to take the opportunity to make minor amendments to paragraphs (2)(b) and (4)(b) of article 15 to correct an inconsistency in terminology. The effect of the proposed changes is that the way in which an extension is treated will in future depend on whether the extension is commissioned before or after the first anniversary of the eligibility date (rather than commissioning or confirmation date) of the existing installation.
16. We propose that these changes should apply in all cases where an extension to an installation is commissioned on or after the date on which the amendments come into force. The existing provisions will continue to apply in relation to extensions commissioned before that date.

Consultation Questions

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

Next Steps

17. Responses to this consultation are invited by Wednesday 31 August 2011. The consultation period (5 weeks) is shorter than that recommended in the Government's Code of Practice on Consultation because it is focusing on correcting a single technical issue in order to ensure that the policy intent of the fast-track review is implemented as envisaged following consultation earlier this year.
18. Subject to the responses received to this consultation we are aiming to introduce these changes as soon as possible by amending Article 15 of the FITs Order.

Annex A

Under the proposal, Article 15 of the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (as amended) would be amended as follows:

Accreditation of extensions to accredited FIT installations

15.—(1) This article applies where the Authority receives notice from a FIT licensee that an accredited FIT installation has been extended.

(2) Paragraph (3) 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; and
- (b) the extension was commissioned on or before the first anniversary of the ~~confirmation~~ eligibility date of the existing accredited FIT installation.

(3) Where this paragraph applies—

- (a) the Authority must—
 - (i) ~~subject to sub-paragraph (b), treat the extension as if it were part of the original eligible installation~~ treat the extended installation as a new eligible installation for the purposes of accreditation;
 - (ii) decide whether or not to accredit the extended installation in accordance with Part 3; and
- (b) where the Authority decides not to accredit the extended installation, the Authority must treat the notice as a notice to which article 21 applies.

(3A) Where the Authority decides to accredit an extended installation under paragraph (3)—

- (a) the eligibility date of the extended installation is the date on which the extension was commissioned; and
- (b) the eligibility period for the extended installation is the period set out in the table at Annex 1 of Schedule A to Standard Licence Condition 33, reduced by the period between—
 - (i) the eligibility date of the original accredited FIT installation; and
 - (ii) the eligibility date of the extended installation.

(3B) In paragraph (3A)(b), “eligibility period” means the maximum period during which a FIT generator may receive FIT payments for an extended installation.

(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; and
- (b) the extension was commissioned after the first anniversary of the ~~date on which the accredited FIT installation was commissioned~~ eligibility date of the existing accredited FIT installation.

(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.

How to respond

The closing date for responses is 31 August 2011

Online responses are preferred and can be submitted at the following link:

https://econsultation.decc.gov.uk/decc-policy/fits_extensions_to_installations/consult_view.

If you are unable to submit your response online please submit this in an email to:

rfi@decc.gsi.gov.uk. Please use the template provided to record your response, which can be found at: http://www.decc.gov.uk/en/content/cms/consultations/fits_ext_inst/fits_ext_inst.aspx

Alternatively, hard copy replies should be sent to:

Feed-in Tariffs Team,
Office for Renewable Energy Deployment,
Department of Energy and Climate Change,
4th Floor, Area A,
3 – 8 Whitehall Place,
London, SW1A 2AW.

Additional copies

You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

Feed-in Tariffs Team,
Office for Renewable Energy Deployment,
Department of Energy and Climate Change,
4th Floor, Area A,
3 – 8 Whitehall Place,
London, SW1A 2AW.
Telephone: 0300 068 6174

An electronic version can be found at:

http://www.decc.gov.uk/en/content/cms/consultations/fits_ext_inst/fits_ext_inst.aspx

Other versions of the document are available on request.

Confidentiality and Data Protection

When this consultation ends, members of the public may ask for a copy of responses under freedom of information legislation. If you do not want your response – including your name, contact details and any other personal information – to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that will not count as a confidentiality request.

Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, we cannot promise that we will always be able to keep those details confidential.

We will summarise all responses and place this summary on our website at

www.decc.gsi.gov.uk. This summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.

Help with queries

Please direct any queries about this consultation to our dedicated e-mail address:

rfi@decc.gsi.gov.uk,

or in writing to:

Feed-in Tariffs Team, ,
Office for Renewable Energy Deployment,
Department of Energy and Climate Change,
4th Floor, Area A,
3 – 8 Whitehall Place,
London, SW1A 2AW
Telephone: 0300 068 6174

If you have any comments or complaints about the consultation process, please address them to:

DECC Consultation Coordinator
Area 6A
3 Whitehall Place
London, SW1A 2AW
Email: Consultation.coordinator@decc.gsi.gov.uk

A copy of the Code of practice on Consultations can be found at:

www.decc.gov.uk/Media/viewfile.ashx?FilePath=Consultations\1_20090408170031_e_@@_codepracticeconsultation.pdf&filetype=4

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