



Memorandum to the Energy and Climate Change Committee:
Post Legislative Scrutiny of the Green Energy
(Definition and Promotion) Act 2009

Presented to Parliament
by the Secretary of State for Energy and Climate Change
by Command of Her Majesty

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**MEMORANDUM TO THE ENERGY AND CLIMATE CHANGE COMMITTEE:
POST-LEGISLATIVE SCRUTINY OF THE GREEN ENERGY (DEFINITION AND
PROMOTION) ACT 2009**

This memorandum provides a preliminary assessment of the Green Energy Act 2009 and has been prepared by the Department of Energy and Climate Change for submission to the Energy and Climate Change Committee. It will be published as part of the process set out in the document 'Post Legislative Scrutiny – The Government's Approach (Cm 7320)'.

SUMMARY OF THE OBJECTIVES

Introduction

1. The Green Energy (Definition and Promotion) Act 2009 obtained Royal Assent on 12 November 2009. It applies to England and Wales. The Act defines the term "green energy" and states that the Act's purpose is to promote the development, installation and usage of green energy for connected purposes including for microgeneration. The specific proposals contained in the Act are:
 - (i) To define and promote green energy.
 - (ii) To prepare and publish a Microgeneration Strategy.
 - (iii) To consider amending the Town and Country Planning (General Permitted Development) Order 1995 (S.I 1995/418) (the "GPDO"), in relation to England, to provide for the granting of planning permission for specified classes of equipment for microgeneration on, or in a home.
 - (iv) Consider amending the GPDO for the purpose of facilitating the installation for microgeneration on non-domestic land in England.
 - (v) In promoting green energy, to have regard to desirability of alleviating fuel poverty and of securing diverse and viable energy supplies over the long term.

Section 1: Definition and promotion of green energy

2. The principle purpose of this Act is to promote green energy. In this Act "green energy" means "the generation of electricity or heat from renewable or low carbon sources by the use of any equipment, the capacity of which to generate electricity or heat does not

exceed the capacity specified in subsection (3) of the Act; and energy efficiency measures”.

3. The capacity outlined in subsection (3) of the Act is:
 - a) In relation to the generation of electricity, 5 megawatts;
 - b) In relation to the generation of heat, 5 megawatts thermal.

Section 2: Microgeneration Strategy

4. Subsection (1) of the Act requires the Secretary of State to prepare and publish a strategy for the promotion of microgeneration in England. Before preparing the Strategy a consultation process must begin within 6 months beginning with the coming into force of this Act subsection (3). This must then be followed by a publication of the strategy within 6 months beginning with the end of the consultation. The Secretary of State is required to take reasonable steps to secure the implementation of the Strategy subsection (6).
5. In preparing the Strategy, the Secretary of State is required to consider the contribution that can be made by microgeneration to the matters specified in section (82)3 of the Energy Act 2004 (microgeneration strategy for Great Britain). The Secretary of State is also required to consider any other strategy published by the Government after 1st July 2009 in so far as it relates to the generation of electricity and heat from renewable and low carbon sources.
6. The Strategy is limited in scope by the definition of microgeneration under the terms of the Act – up to 50kW for electricity and up to 300kWth for heat. This differs slightly from the microgeneration definition in the Energy Act 2004 section (82)3. However, the Green Energy (definition and promotion) Act 2009 was not seeking to permanently change that definition. The increase to the heat limit recognises that microgeneration technologies can be installed at scale above domestic – namely community and small commercial sites.

Section 3 and Section 4: General Permitted Development Order (GPDO)

7. Section (3) of this Act subsection (1) requires amendments to the Town and Country Planning (General Permitted Development) Order 1995, in relation to England, to provide for the granting of planning permission for specified classes of equipment for microgeneration on, or in a home.
8. The Act clarifies that the classes of equipment for microgeneration specified by virtue of subsection (1) section (3) must be or include wind turbines and air source heat pumps. The amendments mentioned must be made within 6 months beginning with the coming into force of this Act.
9. Section 4 of this Act requires the Secretary of State to consider amending the GPDO for the purpose of facilitating the installation of equipment for microgeneration on non-domestic land in England. Consideration must begin within 6 months beginning with the coming into force of this Act. The Secretary of State must, as soon as reasonably practicable, lay a report before Parliament setting out the outcome of the consideration under subsection (1).

IMPLEMENTATION

Microgeneration

10. Section (2) subsection (1) of the Act was brought into force on 12 November 2009 with a requirement to prepare and publish a Microgeneration Strategy and to report on its implementation subsection (6). The Microgeneration Strategy was published, following a consultation process, with an Action Plan in June 2011. An interim report on implementation was published in June 2012 followed by a final report bringing the work to an end in October 2013.
11. As part of the Microgeneration Strategy and to enforce part 2 section (7) of the Act a Microgeneration Government Industry Contact Group (MGICG) was set up and charged with working in partnership with Government to develop and implement the strategy.
12. The MGICG Action Plan was a two year programme (2011/12 and 2012/13) comprising seven taskgroups that covered 35 workstreams covering 7 issues:

- 1) Microgeneration Certification Scheme (MCS) - to improve effectiveness of the MCS scheme to deliver high-quality design and installation of microgeneration systems and strengthen consumer protection. To develop MCS into a non-profit legal company managed by a Board of Directors selected from the relevant stakeholder groups;
- 2) Energy Performance Certificates (EPCs) – to develop an assessment framework that enables accurate representation of the contribution of microgeneration technologies to low carbon homes and buildings;
- 3) Skills and knowledge - to ensure that there are significant levels of skills and knowledge in the industry to meet the demands of a rapidly growing sector in line with UK carbon reduction and green economy policies;
- 4) Warranties and insurances – to ensure effective consumer protection schemes are in place and to consider how they are communicated to the market;
- 5) Technology – to promote deployment of system-based approaches to microgeneration technology, produce clear guidance on technologies, improve consideration of electricity grid and connection issues and encourage reliable market growth for microgeneration technologies;
- 6) Communication – to achieve consensus within the industry on core messaging across the range of technologies, and to promote a collaborative approach to dissemination, and enabling a greater reach; and
- 7) Community delivery – to encourage and support uptake of renewable energy technologies by communities and facilitate area-based approaches. This work was taken forward separately working with the Community Energy Contact Group.

13. The key outcomes of this work included:

- a) Synergy of policy drivers across government departments that promote the effective take-up of microgeneration technologies in homes, communities and small-scale commercial buildings.

- b) Improved consumer confidence in microgeneration technologies and their installation through:
- Enhanced consumer awareness of finance options (Feed in Tariffs, Renewable Heat Incentives, and Green Deal);
 - Appropriate independent advice for consumers about microgeneration options (including Green Deal finance options) and adequate education on the maintenance and operation of their systems; and
 - Supportive local authority governance: planning officers, councillors and building control officers.
- c) Enhanced skills and competencies of installers through:
- Increased uptake of approved training courses and assurance schemes;
 - Strengthened design and commissioning skills; and
 - Enhanced professional ethics.
- d) Support in the development of the performance assessment tools to ensure installers are able to correctly evaluate the performance of microgeneration systems.
- e) Installation of minimum energy efficiency measures in conjunction with microgeneration technologies.
- f) Significant progress on the development of MCS industry standards, installer competence framework and training provision. Field trials led by the Energy Saving Trust provided useful information about microgeneration technologies and how they perform in situ. Building on that learning and in preparation for RHI, the MCS heat pump standards were significantly revised to improve the installation and performance of heat pumps.

At the time nearly 5,000 SME installer companies in the microgeneration sector were registered with MCS. MCS has developed the standards to ensure there is clarity for installers about the scheme requirements and how to complete certification, especially small companies, through the redraft of MCS001 (Installation Company Standard) and the development of accompanying guidance.

- g) MGICG has also provided a platform for wider engagement on the Standard Assessment Procedure (SAP), Energy Performance Certificates (EPCs), Green Deal (GD); and grid connection issues.
- h) There has also been work on clarifying the warranty and insurance landscape to identify gaps and how they might be filled. A review of the legal requirements and the available accreditation schemes and consumer protection products was undertaken and a paper produced in June 2011. The output of this work was used to support the design of Green Deal consumer protection mechanisms. In January 2012, the MGICG held a workshop with the key providers of warranties, guarantees and insurance, and produced a report and plan of action.
- i) The strategy set out actions to improve the governance on MCS and to establish the scheme as a legal entity. This work was taken forward and progress made although it is not yet fully completed. However, building on that work, agreements are now in place to operate the MCS Company under interim arrangements, including plans for an enduring solution, which should be in place in the next 12-18 months.
- j) The Strategy supported work to align competence requirements for Green Deal, Feed in Tariffs, Renewable Heat Incentive, and competent person schemes. Work also took place to begin updating the National Occupational Standards for microgeneration technologies. The March 2013 “The Future of Heating: Meeting the Challenge” document included an action to launch a voucher scheme (October 2013) to support installer training in preparation for the domestic Renewable Heat Incentive, as well as reviving the Building Services Engineering Competency Advisory Group (BSECAG) to continue the development of competences and the training framework.

Permitted Development Rights

14. The Act requires amendments to secondary legislation to bring forward new rights for domestic and non-domestic properties. These changes have been delivered through changes to the General Permitted Development Order via statutory instruments.

- Permitted development rights for domestic wind turbines and air source heat pumps came into force on 1 December 2011 via The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2011(No. 2056).

- Permitted development rights to introduce permitted development rights for solar panels, ground and water source heat pumps, and flues forming part of biomass and combined heat and power systems installed on non-domestic premises was introduced via the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2012 (No.748).

ASSESSMENT OF THE ACT

Microgeneration

15. The Act has met its objectives. A microgeneration strategy has been consulted on, published and implemented. The feed-in tariff mechanism continues to support micro-electricity and combined heat and power technologies. Micro heat technologies have also been supported by the domestic Renewable Heat Incentive since 2014. In addition, microgeneration technologies are eligible to be included in Green Deal packages. In total, as at 16 October 2014, there are 19,080 MCS-registered products, 3631 MCS-registered installation companies. The total number of microgeneration installations registered on the Microgeneration Installation Database, since the Act came into force in November 2009, have risen from 3,231 to over 667,420.
16. The Act did lead to a new strategy to promote and support the development of microgeneration technologies. Implementation of strategy has played a part in the delivery of the Feed-In Tariffs scheme and Green Deal, and preparation for the start of the domestic Renewable Heat Incentive by beginning to address some of the key supply chain issues. Work on microgeneration will continue to be taken forward in terms of heat through further commitments in the March 2013 “The Future of Heating: Meeting the Challenge” document published by DECC, and Solar PV will be supported by the Solar Strategy Group. Solar PV accounts for the significant rise in the number of small-scale renewable electricity installations, with almost 600,000 registered for FITs by the end of September 2014.
17. The work with the MGICG did not continue post publication of the final report. However, engagement with industry and key stakeholders has continued through a variety of groups, with a particular focus on the financial incentives and building the supply chain for small scale renewable and low carbon technologies. There is currently a Strategy Group for Solar PV and Renewable Heat Incentive Advisory Group that meets regularly on RHI/heat. As a result of the March 2013 “The Future of Heating: Meeting the

Challenge” document, a group has been set up looking at the continued development of a competence framework for installers of low carbon and renewable technologies.

Domestic PDR

18. Section (3) of the Green Energy Act 2009 requires the Secretary of State to amend the Town and Country Planning (General Permitted Development) Order 1995, to provide for the grant of planning permission for specified classes of equipment for microgeneration on, or within a home. The aforementioned equipment must include wind turbines and air source heat pumps.

19. Both Act requirements have been met by Part 40 of the General Permitted Development Order Installation of Domestic Microgeneration Equipment. Part 40 sets out the permitted development rights for domestic premises and includes:
 - Class G – permitted development rights in relation to air source heat pumps on or in a house or block of flats.

 - Class H – permitted development rights in relation to the installation, alteration or replacement of a wind turbine on a detached house, a detached building or a block of flats.

 - Class I – permitted development rights in relation to the installation, alteration or replacement of a stand-alone wind turbine in a house or block of flats.

20. Part 40 also sets out the limits of the permitted development above which the permitted development right would not apply. In summary, this includes but is not limited to, the number; height, size and location of the equipment (see SI No.2056 for full details). Development outside of the permitted development requirements may still go ahead subject to receiving planning permission from the local planning authority.

21. Permitted development rights for domestic wind turbines and air source heat pumps came into force on 1 December 2011. This part of the Act has been implemented.

Non-domestic PDR

22. The Act also includes a requirement for the Secretary of State to consider amending the General Permitted Development Order for the purpose of facilitating the installation of equipment for microgeneration on non-domestic land. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2012 added Part 43 to Schedule 2 to introduce non domestic permitted development rights for solar panels, ground and water source heat pumps, and flues forming part of biomass and combined heat and power systems installed on non-domestic premises. This part of the Act has also therefore been implemented.

Domestic PDR review

23. The Act also sets a requirement on the Secretary of State to review the effect of the amendment of the GPDO as soon as reasonably practicable after the end of the 2 years beginning with the date on which the amendment comes into force. The Department for Communities and Local Government in partnership with the Department for Energy and Climate Change and Department for Food and Rural Affairs conducted a one year review of the permitted development noise limit for wind turbines and air source heat pumps on domestic properties. The review was completed in the Spring of 2013 and subsequently published on the Microgeneration Certification Scheme website. The survey found that there was no significant increase in complaints about domestic wind turbines or air source heat pumps. A review of all responses indicated that the case was not made at that time for a change to the maximum permitted noise level which remains at 42 decibels to comply with Microgeneration Certification Scheme Planning Standards. The Department for Communities is currently preparing a survey to conduct a 2 year review.

Fuel Poverty

24. The role of microgeneration in helping to alleviate fuel poverty continues to develop, and DECC is considering how best to exploit all of its potential for those on low incomes living in the coldest homes. Fuel poverty is not dealt with as a particular workstream or action in the Strategy, as in parallel there was a separate legislative framework on fuel poverty.

25. The Energy Act 2013 amended Warm Homes and Energy Conservation Act 2000 and put in place a legal duty to set out a new target in secondary legislation, supported by a

statutory strategy. On 22 July 2014, DECC laid draft regulations ((The Fuel Poverty (England) Regulations 2014)), to put in place a new target ‘to ensure that as many fuel poor homes as reasonably practicable reach an energy efficiency standard of C by 2030’ (EPC bandings consider not only fabric efficiency of the building itself but also heating systems and any microgeneration technologies that have been installed). Alongside this DECC consulted in preparation for a new fuel poverty strategy in England. The new fuel poverty strategy will be published once the regulations have been agreed by Parliament.

LEGAL ISSUES

26. There are no outstanding legal issues in respect to Microgeneration Strategy or permitted development rights.

OTHER REVIEWS

Microgeneration and Feed in Tariff Scheme

27. There are no other planned microgeneration reviews at this time, though a periodic review of the Feed-in Tariff scheme is planned for 2015.

Green Deal Measures

28. DECC keeps the Green Deal Framework under continuous review. A number of new measures will become eligible within the Green Deal when new assessment software is released later this year. These new measures include circulation pumps, glazing replacement and party wall insulation. Full details can be found on the Green Deal Orb website at <http://gdorb.decc.gov.uk/news-a-events/254-bre-publishes-updated-green-deal-occupancy-assessment-methodology>.

Review of In Use Factors

29. DECC is currently reviewing the evidence base for In-Use Factors (IUFs) with a view to making recommendations on the level of IUFs going forward. In-Use Factors (IUFs) are part of the calculation used in DECC to estimate the energy savings achieved through to the installation of energy efficiency improvements in domestic properties. They modify the energy savings calculated using either Standard Assessment Procedure (SAP) or Reduced Data Standard Assessment Procedure (RdSAP) to account for some of the differences between the assumptions used in these models and what happens in practice in the real world.

30. IUFs are applied as part of the Green Deal ‘Golden Rule’ calculation, which determines the level of finance that a household can access for the installation of energy efficiency improvements. The Golden Rule states that, for the measures installed, charges attached to energy bills should not exceed the expected savings, and the length of the payment period should not exceed the expected lifetime. The purpose of the IUFs is to ensure that the energy savings calculated using SAP or RdSAP are in line with what a ‘typical’ household could expect to achieve through installing a particular measure in their home.

Domestic PDR Review

31. The Government has undertaken a 1 year review of the permitted development noise limit for wind turbines and air source heat pumps on domestic properties and will shortly issue a survey for the 2 year review to local authorities.

Secondary Legislation

32. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2011 (No. 2056)

33. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2012 (No.748).

Ministerial statements during the passage of The Green Energy Bill

34. Second reading of the Green Energy Bill

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090508/debtext/90508-0001.htm#09050918000081>

35. Third reading of the Green Energy Bill – consideration of Bill.

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090703/debtext/90703-0001.htm#09070374000071>

36. Full list of Bill documents – Green Energy (Definition and Promotion) Act 2009 along with Explanatory Notes and Research Papers.

<http://services.parliament.uk/bills/2008-09/greenenergydefinitionandpromotion/documents.html>

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