

FEED IN TARIFFS and HCA funding (including from the National Affordable Housing Programme)

This statement has been developed in conjunction with the Department for Communities and Local Government (DCLG) and the Department for Energy and Climate Change (DECC).

Its purpose is to alert Investment Partners in receipt of public funding, including from the National Affordable Housing Programme (NAHP), that they are responsible for ensuring that they are entitled to Feed in Tariff, obtaining independent legal advice if necessary, on schemes that have already received any form of public subsidy; and to clarify the Design and Quality requirements of funding under the NAHP.

1. The Feed-in Tariff Scheme

- 1.1. The Feed-in Tariffs (FITs) scheme has been implemented by the Department for Energy and Climate Change (DECC) using powers under the Energy Act 2008. Under the scheme, individuals, organisations and businesses in England, Wales and Scotland are able to claim cash back for electricity they produce from eligible renewable and low carbon sources.
- 1.2. The scheme provides a fixed payment for all the electricity generated, called the “generation tariff”. It also pays for any electricity exported to the grid, the “export tariff”. It went live on 1 April 2010.
- 1.3. DECC states that “the FITs scheme is intended to replace, not supplement, public grant schemes as the principal means of incentivising small scale, low-carbon electricity generation. Because of this, and to ensure value for money for consumers and compliance with EU law on state aids, **it is generally not possible for a generator to benefit from both FITs and a grant from a public body except in specific circumstances.**”
- 1.4. The rules governing eligibility for Feed In Tariffs are set out by Statutory Instrument:

The Feed - in Tariffs (Specified Maximum Capacity and Functions) Order 2010 SI 2010/ 678¹.

- 1.5. In respect of compliance with EU law on state aid, the FITs scheme is governed by the conditions set out in the document in which the European Commission approved the scheme when notified of it by the UK Government (the “State Aid Notification”):

State Aid Notification N94/2010 - United Kingdom Feed in Tariffs to support the generation of renewable electricity from low carbon sources²

- 1.6. The FITs scheme is administered by the Office of the Gas and Electricity Markets (Ofgem). Ofgem’s key role is to maintain the Central FIT Register, a database of accredited installations. Ofgem is also responsible for ensuring suppliers comply with the FIT scheme requirements.³

2. FITs and Grants from Public Funds (State Aid provisions)

The General Rule

¹ <http://www.legislation.gov.uk/ukxi/2010/678/contents/made>

² http://ec.europa.eu/eu_law/state_aids/comp-2010/n094-10.pdf

³ <http://www.ofgem.gov.uk/Sustainability/Environment/fits/Pages/fits.aspx>

2.1. Part 3, Chapter 1, Regulation 8 of the Feed-in Tariffs Statutory Instrument sets out “exceptions to accreditation applicable to all eligible installations”. This states that:

2.2. “The Authority [*Ofgem*] must not accredit an eligible installation as an accredited FIT installation unless the FIT generator has given notice that –

“(a) no grant from public funds has been made in respect of any of the costs of purchasing or installing the installation; or

“(b) where any such grant has been made, the grant has been repaid to the person or authority which made it.”⁴

2.3. Therefore as a general rule, any installation which has received a grant from or on behalf of a public body will not be eligible for the FIT until such grants have been paid back. FIT Licensees will be required to obtain a declaration from the FIT Generator/Applicant that they have not received grant which would make them ineligible for FITs, or if they have received such grant, that it has been repaid in full to the appropriate body.

Exceptions

2.4. Regulation 8 of the SI also states that the Authority [*Ofgem*] is not prohibited from accrediting an installation where the grant is a ‘permitted grant’ or where it does not constitute State Aid.

2.5. ‘Permitted Grants’ are defined as:

(a) a grant made before 1st April 2010 in respect of costs of an eligible installation which was commissioned before 15th July 2009; or

(b) a grant made before 1st April 2010 in respect of costs of an eligible installation on a residential property which was commissioned between 15th July 2009 and 31st March 2010.

2.6. State Aid Notification N94/2010 states that investment aid and FIT payments may be allowed on an individual basis if the cost for an installation is significantly greater than the standardised costs on which the FITs are calculated. In such a situation OfGem will ensure that the difference between i) the production cost of the electricity generated by the plant less the investment aid received; and ii) the amount of FIT payment to be received by the generating plant; is zero.

2.7. Investment Partners will need to obtain their own legal advice as to whether an exception may apply to their installation.

⁴ <http://www.legislation.gov.uk/ukxi/2010/678/article/8/made>

3. NAHP requirements

- 3.1. Through the National Affordable Housing Programme (NAHP), the HCA provides investment to enable affordable homes to be provided to specified eligible households whose needs are not met by the market. The NAHP itself will be replaced by the Affordable Homes Programme in April 2011.
- 3.2. The HCA's inherited Design and Quality Standards include a requirement for applicable developments to meet Code for Sustainable Homes (CSH) level 3. The November 2010 revision of the Building Regulations aligned the requirements in Part L with CSH level 3.⁵
- 3.3. Investment Partners in receipt of funding under the NAHP are responsible for determining how to meet Building Regulation and CSH requirements.
- Decisions on eligibility for FITs are a matter for Ofgem.
 - In order to achieve Ofgem accreditation and to receive FIT subsidy, Investment Partners will have to declare that public funding, including from the NAHP, has not been received to pay for installations for which FIT is sought or if it has been received that such funding has been repaid in full.
 - Investment Partners are advised to take their own independent legal advice should they have concerns regarding their compliance with legislation governing FIT.
- 3.4. The HCA together with DCLG and DECC consider that compliance with the 2010 Part L/CSH Level 3 energy performance standard can generally be met through fabric efficiency measures. Renewable sources of electricity or heat generation are not essential to meet this standard. Therefore, the ability to meet this standard does not automatically or absolutely require renewable measures to be installed.
- 3.5. Where grant is allocated or other public subsidy (including land) is provided upon the condition that an Investment Partner achieves higher CSH levels, and microgeneration measures are to be installed, then it is likely that such installation will not be eligible for FIT unless the element of the grant relating to such installation is repaid or one of the exceptions set out at section 2 above applies. Grant recipients as well as funding authorities are responsible for ensuring that they comply with State Aid provisions and are advised to ascertain this at the outset of project development.
- 3.6. Organisations may wish to consider repaying grant in order to benefit from the FIT Tariff where it is more economically advantageous to do so. If an Investment Partner wishes to repay grant in order to qualify for the FIT scheme, they should contact their grant issuer in the first instance.
- 3.7. Investment Partners are advised that they should ascertain eligibility for FITs at an early stage, obtaining independent legal advice if necessary. There is

⁵ Code level 3 previously set a standard of energy performance 25% better than that required by Part L of the Building Regulations 2006.

no pre-accreditation process for FIT, therefore eligibility will only be confirmed in response to submission of an application.

4. Future development of policy

4.1. The Minister for Housing has stated that for the meantime the HCA will continue to use existing inherited standards (including CSH3) but that in the long term, the standards that apply to private and public housing may converge. Therefore, policy does not currently place Investment Partners under an obligation to install microgeneration. The issue of how far microgeneration might be needed to ensure compliance with future standards and/or regulations will be considered when any proposals to change these are brought forward.

5. Further information

5.1. Information is available on the DECC website:

http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/renewable/feedin_tariff/fits_grants/fits_grants.aspx

5.2. Information on Feed in Tariff is also available on the Ofgem website:

<http://www.ofgem.gov.uk/Sustainability/Environment/fits/Pages/fits.aspx>

5.3. Information on State Aid can be found on the BIS website:

<http://www.bis.gov.uk/policies/business-law/state-aid>

HCA issues Feed In Tariff guidance for partners

Published date : 15 March 2011

The Homes and Communities Agency has today issued a statement to its Investment Partners to explain how the Feed In Tariff relates to schemes that have received HCA funding.

The statement has been developed in conjunction with the Department for Communities and Local Government (DCLG) and the Department for Energy and Climate Change (DECC) to clarify issues about State Aid rules on 'double public subsidy' for Investment Partners.

Under the Feed In Tariff scheme, individuals, organisations and businesses in England, Wales and Scotland are able to claim back cash for electricity they produce from eligible renewable and low carbon sources. The scheme provides a fixed payment for the electricity generated and pays for any unused electricity exported to the grid as well as for electricity generated and used on site.

However, where an Investment Partner has been awarded funding through the National Affordable Housing Programme, or any other form of public subsidy, they will need to demonstrate that this funding has not been used to pay for installations for which Feed In Tariff is then sought.

Alison Mathias, strategy manager at the Homes and Communities Agency said: "We are writing to our Partners to help them understand the relationship between our funding and the Feed In Tariff so that it's clear what can and can't be claimed. Our enabling role includes helping to translate policy in to practical advice and we hope the statement we are sending to all of our Investment Partners today helps clarify State Aid rules on the Feed In Tariff.

"While one of our funding requirements is that Partners achieve Level 3 of the Code for Sustainable Homes on their schemes, this is very possible to achieve without the use of micro renewables. Therefore HCA requirements do not prevent Investment Partners from demonstrating that they have not used affordable housing grant to install microgeneration equipment while meeting our standards.

"We do emphasise though that grant recipients should ensure that they obtain independent legal advice where necessary."

The Feed In Tariff scheme is administered by the Office of the Gas and Electricity Markets (Ofgem), whose responsibility it is to ensure suppliers comply with the requirements. Read the [HCA statement](#) for full details.

For HCA projects that have not received funding through the National Affordable Housing Programme but have received public investment in the form of land or other funding streams, partners will be advised on a case by case basis following consultation with legal experts to ensure clear understanding of the Feed In Tariff in these circumstances.

Ends