

**2011 No. 1181**

**ELECTRICITY**

**The Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment) Order 2011**

<i>Made</i>	- - - -	<i>27th April 2011</i>
<i>Laid before Parliament</i>		<i>4th May 2011</i>
<i>Coming into force</i>	- -	<i>30th May 2011</i>

The Secretary of State, in exercise of the powers conferred by sections 41(4), 43(3)(a), and 104(2) of the Energy Act 2008(a), makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment) Order 2011 and comes into force on 30th May 2011.

**Amendments**

2.—(1) The Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010(b) (“the 2010 Order”) is amended by articles 3 to 11.

(2) In the following provisions of this Order, a reference to an article is to that article of the 2010 Order.

**Amendment of article 2**

3.—(1) Article 2 (interpretation) is amended as follows.

(2) In paragraph (1), at the appropriate place insert—

““hydro generating station” has the meaning given to it in the ROO (but excluding such a station which generates electricity from water where the hydrostatic head of the water has been increased by pumping);” and

““NFFO arrangement” has the meaning given to it in the ROO;”.

(3) In paragraph (1), for “Standard Condition 33”, substitute “Standard Licence Condition 33” and for “Standard Condition 34” substitute “Standard Licence Condition 34”.

(4) Omit paragraph (2).

---

(a) 2008 c.32.  
(b) S.I. 2010/678.

### **Amendment of article 3**

4. In article 3 (specified maximum capacity), for “declared net capacity” substitute “total installed capacity”.

### **Amendment of article 5**

5. For article 5 (accreditation of eligible installations not previously accredited under the ROO), substitute—

“5.—(1) Subject to articles 8 and 9, the Authority must accredit an eligible installation as an accredited FIT installation if it is satisfied that—

- (a) where it has a declared net capacity of more than 50 kilowatts, it would receive accreditation under the ROO were an application to be made for such accreditation; or
- (b) where it has a declared net capacity of 50 kilowatts or less, the installation meets the criteria in paragraph (2) or (3).

(2) The criteria referred to in paragraph (1)(b) are that—

- (a) the eligible installation—
  - (i) uses an MCS-FIT technology; and
  - (ii) is not a hydro generating station;
- (b) the installation was first commissioned after 15th July 2009; and
- (c) the installation has been submitted by a FIT licensee for registration under the process for MCS certified registration.

(3) The criteria referred to in paragraph (1)(b) are that—

- (a) the eligible installation uses anaerobic digestion; and
- (b) were the installation to have a declared net capacity of more than 50 kilowatts, it would receive accreditation under the ROO were an application to be made for such accreditation.”.

### **Insertion of article 5A**

6. After article 5 (accreditation of eligible installations not previously accredited under the ROO), insert—

#### **“Accreditation of hydro generating stations with a capacity of 50 kilowatts or less**

5A.—(1) Subject to articles 8 and 9, the Authority must accredit an eligible installation as an accredited FIT installation if—

- (a) it is a hydro generating station with a declared net capacity of 50 kilowatts or less; and
- (b) the Authority is satisfied that the installation meets the criteria in paragraph (2) or (3).

(2) The criteria referred to in paragraph (1)(b) are that—

- (a) the eligible installation is first commissioned during the period which began on 1st April 2010 and ends on 1st October 2011; and
- (b) were the installation to have a declared net capacity of more than 50 kilowatts, it would receive accreditation under the ROO were an application to be made for such accreditation.

(3) The criteria referred to in paragraph (1)(b) are that—

- (a) the eligible installation is first commissioned after 1st October 2011; and

(b) the installation has been submitted by a FIT licensee for registration under the process for MCS certified registration.

(4) In respect of an installation accredited under this article where the criteria in paragraph (2) are satisfied, the eligibility date is not as provided by Schedule A to Standard Licence Condition 33, but is the date on which the installation is first commissioned.”.

#### **Amendment of article 6**

7.—(1) Article 6 (accreditation of eligible installations previously accredited under the ROO with a capacity of 50 kilowatts or less) is amended as follows.

(2) In paragraph (1)(a), for “1st October 2010” substitute “1st October 2011”.

(3) After paragraph (2) insert—

“(3) Subject to paragraph (4), in respect of an installation accredited under this article, the eligibility date is not as provided by Schedule A to Standard Licence Condition 33, but is the date on which the notice given under paragraph (1)(a) is received by the Authority after 1st October 2010.

(4) The eligibility date as provided by Schedule A to Standard Licence Condition 33 does apply to an installation in respect of which the Authority received a notice under paragraph (1)(a) from a FIT generator on or before 1st October 2010.”.

#### **Amendment of article 8**

8. For article 8 (exceptions to accreditation applicable to all eligible installations) substitute—

“8.—(1) The Authority must not accredit an eligible installation as an accredited FIT installation where—

- (a) the installation has a total installed capacity which exceeds the specified maximum capacity;
- (b) the installation is an extension to—
  - (i) an accredited FIT installation; or
  - (ii) another installation using an eligible low-carbon energy source, and the aggregate total installed capacity of the extension and installation exceeds the specified maximum capacity; or
- (c) electricity from the installation is or has been sold pursuant to a NFFO arrangement.

(2) The Authority must not accredit an eligible installation as an accredited FIT installation where it has good reason to believe that any generating equipment used at the installation has formed part of an installation previously accredited—

- (a) under the ROO (other than an installation accredited under article 6 or 7 of this Order); or
- (b) under this Part.

(3) Subject to paragraph (4), the Authority must not accredit an eligible installation as an accredited FIT installation unless the FIT generator has given notice to the Authority 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) Paragraph (3) does not prohibit the Authority from accrediting an eligible installation where a grant referred to in paragraph (3) has been made and not repaid if the grant is—

- (a) a permitted grant; or
- (b) a grant other than a permitted grant to which the conditions in paragraph (5) apply.

- (5) The conditions referred to in paragraph 4(b) are that—
- (a) the grant is made before 1st July 2011;
  - (b) the installation is first commissioned before 1st October 2011; and
  - (c) the Authority is satisfied that the making of FIT payments in respect of the installation would be in accordance with a de minimis Commission Regulation.

(6) In this article—

“a de minimis Commission Regulation” means—

- (a) Commission Regulation (EC) No. 1998/2006<sup>(a)</sup> on the application of Articles 87 and 88 of the EU Treaty<sup>(b)</sup> to de minimis aid;
- (b) Commission Regulation (EC) No. 875/2007<sup>(c)</sup> on the application of Articles 87 and 88 of the EU Treaty to de minimis aid in the fisheries sector and amending Regulation (EC) No. 1860/2004<sup>(d)</sup>; or
- (c) Commission Regulation (EC) No. 1535/2007<sup>(e)</sup> on the application of Articles 87 and 88 of the EU Treaty to de minimis aid in the sector of agricultural production;

“grant from public funds” means a grant made by a public authority or by any person distributing funds on behalf of a public authority;

“permitted grant” means—

- (a) a grant made before 1st April 2010 in respect of the costs of purchasing or installing an eligible installation where the installation—
  - (i) was first commissioned before 15th July 2009; or
  - (ii) is on a residential property and was first commissioned during the period which began on 15th July 2009 and ended on 31st March 2010; or
- (b) a grant made in respect of the reasonable additional costs of an installation to avoid or mitigate environmental harm, where the amount of the grant does not exceed the amount of those costs.

(7) In this article, a grant is made when the offer of that grant is accepted by the recipient of the offer.”.

### **Amendment of article 33**

9. For article 33(1) (notices of levelisation payments), substitute—

“33.—(1) Where a licensee—

- (a) is entitled to a levelisation payment from the Authority; or
- (b) must make a levelisation payment to the Authority,

the Authority must give notice to the licensee of that matter.”.

### **Amendment of article 37**

10. In article 37(3) (list of FIT licensees), for “Standard Condition 33” substitute “Standard Licence Condition 33”.

---

(a) OJ L 379, 28.12.2006, p. 5.

(b) Following the Treaty of Lisbon, these Articles have been renumbered as Articles 107 and 108 of the Treaty on the Functioning of the European Union respectively.

(c) OJ L 193, 25.7.2007, p. 6.

(d) OJ L 325, 28.10.2004, p. 4.

(e) OJ L 337, 21.12.2007, p. 35.

## **Amendment of article 38**

11. In article 38(a) (annual reports), for “Standard Condition 33 and Standard Condition 34” substitute “Standard Licence Condition 33 and Standard Licence Condition 34”.

27th April 2011

*Greg Barker*  
Minister of State,  
Department of Energy and Climate Change

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (S.I. 2010/678) (“the 2010 Order”) and makes saving provision.

The 2010 Order gives functions to the Gas and Electricity Markets Authority (“the Authority”) in connection with the administration of the Feed-in tariffs scheme (“the FIT scheme”). Other provisions of the FIT scheme are contained in the modifications made to electricity supply licences made under section 41 of the Energy Act 2008 (c.32) and which are available from the Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW.

Article 3 amends article 2 (interpretation) of the 2010 Order, including the insertion of a new definition of hydro generating station.

Article 4 amends article 3 of the 2010 Order to change the measure of capacity used in setting the specified maximum capacity of eligible installations under the FIT scheme.

Article 5 substitutes a new article 5 of the 2010 Order. This provides for the accreditation of eligible installations which were not previously accredited under the Renewables Obligation Order 2009 (S.I. 2009/785) or the Renewables Obligation (Scotland) Order 2009 (S.S.I. 2009/140) (collectively described as the “ROO”).

Article 6 inserts article 5A into the 2010 Order. This provides for the accreditation of hydro generating stations with a capacity of 50 kilowatts or less and for the eligibility date of certain of these installations.

Article 7 amends article 6 of the 2010 Order to extend the period in which a FIT generator may submit a notice to the Authority for accreditation until 1st October 2011. Where such a notice is received after 1st October 2010, the eligibility date for the purposes of accreditation of the FIT generator’s installation is the date of the notice. This amendment does not affect the accreditation of such installations where the FIT generator gave notice before 1st October 2010 in accordance with the provision in the 2010 Order.

Article 8 substitutes a new article 8 of the 2010 Order. This provides exceptions to accreditation under the FIT scheme which are applicable to all eligible installations, including where the purchasing and installation costs of the installation have been funded by a grant from public funds.

Article 9 amends paragraph (1) of article 33 of the 2010 Order to clarify the giving of notices of levelisation payments by the Authority.

Articles 10 and 11 amend articles 37 and 38 of the 2010 Order to insert the amended definitions of “Standard Licence Condition 33” and “Standard Licence Condition 34”.

An impact assessment has been prepared in respect of this Order and copies can be obtained from the Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW. It is also annexed to the Explanatory Memorandum which is available alongside this Order on the OPSI website at: <http://www.opsi.gov.uk/>.

**2011 No. 1181**

**ELECTRICITY**

The Feed-in Tariffs (Specified Maximum Capacity and  
Functions) (Amendment) Order 2011

£4.00