STATUTORY INSTRUMENTS

# 2017 No. 131

# ELECTRICITY

## The Feed-in Tariffs (Amendment) Order 2017

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| *Made - - - -* | *7th February 2017* |
| *Laid before Parliament* | *10th February 2017* |
| *Coming into force - -* | *20th March 2017* |

The Secretary of State, in exercise of the powers conferred by sections 43(3)(a) and 104(2) of the Energy Act 2008(**1**), makes the following Order:

### Citation and commencement

**1.** This Order may be cited as the Feed-in Tariffs (Amendment) Order 2017 and comes into force on 20th March 2017.

### Amendment to the Feed-in Tariffs Order 2012

**2.** The Feed-in Tariffs Order 2012(**2**) is amended as follows.

### Amendment to Article 2 (interpretation)

**3.** In article 2 (interpretation)—

(a) in paragraph (1) omit the definition of "tariff period"; and

(b) in paragraph (2)—

(i) after "generation meter;", insert "generation meter reading;"; and

(ii) after "tariff date;", insert "tariff period;".

### Amendment to Article 8B (the application limit)

**4.** In article 8B (the application limit), in paragraph (1), for "Table" substitute "tables".

### Amendment to Article 16 (calculating and publishing FIT payment rates)

**5.** In article 16 (calculating and publishing FIT payment rates)—

(**1**) 2008 c. 32.

(**2**) S.I. 2012/2782 as amended by S.I. 2013/1099, 2014/1601, 2014/2865, 2015/35, 2015/1659, 2015/2045 and 2016/319.

(a) after paragraph (2), insert—

"(2A) On or before 1st April 2017, the Authority must publish a table setting out, for FIT year 8, the generation tariffs and export tariffs which are to apply to all accredited FIT installations with a tariff date before 1st April 2017 and, for the purposes of Standard Licence Condition 33, this table replaces any other table published under paragraph (2) with respect to FIT year 8."; and

(b) in paragraph (4)(b), for "36" substitute "35A".

**Amendment to Article 35**

**6.** In article 35, before paragraph (1), insert—

"(A1) This article does not apply where any loss of entitlement to FIT payments arises by virtue of Part 8A.".

**New article 35ZA (notices to reduce, withhold or recoup generation payments for the purposes of Part 8A)**

**7.** After article 35 (notices to reduce, withhold or recoup FIT payments), insert—

"**Notices to reduce, withhold or recoup generation payments for the purposes of Part 8A**

**35ZA.**—(1) Where the Authority has good reason to believe that a FIT generator or nominated recipient may have received a generation payment to which it was not entitled by virtue of articles 38C or 38E, the Authority may give notice to the FIT licensee which made the payment to—

(a) reduce further generation payments due to be made to the FIT generator or nominated recipient until any amount overpaid has been recovered in full;

(b) withhold further generation payments due to be made to the FIT generator or nominated recipient until any amount overpaid has been recovered in full;

(c) recoup, in full, any amount overpaid from the FIT generator or nominated recipient.

(2) Where the Authority has good reason to believe that a FIT generator or nominated recipient may have received a generation payment to which it was not entitled by virtue of articles 38D(3), 38F(3), 38G(5) or 38H(3) the Authority may, if it considers it appropriate to do so in the circumstances, give notice to the FIT licensee which made the payment to—

(a) reduce further generation payments due to be made to the FIT generator or nominated recipient until any amount overpaid has been recovered in full or in part;

(b) withhold further generation payments due to be made to the FIT generator or nominated recipient until any amount overpaid has been recovered in full or in part;

(c) recoup, in full or in part, any amount overpaid from the FIT generator or nominated recipient.

(3) At the same time as the Authority gives notice to the FIT licensee under paragraph (1) or (2), the Authority must give notice to the FIT generator or nominated recipient—

(a) stating the reasons why payments are being reduced, withheld or recouped; and

(b) providing the FIT generator or nominated recipient with a right to make representations or objections to the Authority within a reasonable time limit specified by the Authority.

(4) On receiving representations or objections from a FIT generator or nominated recipient, the Authority must take those representations and objections into account when determining, for the purpose of paragraph (5), whether the FIT generator or nominated recipient was entitled to receive the generation payment.

(5) Where, having issued a notice under paragraph (1) or (2), the Authority subsequently establishes that the FIT generator or nominated recipient was entitled to receive the generation payment, the Authority must give notice to the FIT licensee that—

(a) the amount of any generation payment which was reduced, withheld or recouped should be paid to the FIT generator or nominated recipient as soon as possible; and

(b) where generation payments have been withheld, generation payments to the FIT generator or nominated recipient should recommence.".

**New Part 8A (anaerobic digestion installations and entitlement to generation payments)**

**8.**—(1) After article 38A, insert—

# "PART 8A

## Anaerobic digestion installations and entitlement to generation payments

### Application

**38B.** This Part applies to the FIT generator or nominated recipient of an anaerobic digestion installation in respect of which accreditation was granted pursuant to—

(a) an application for preliminary accreditation made on or after 1st May 2017; or

(b) an application for accreditation made on or after 1st May 2017, other than an application made during the period of validity of any preliminary accreditation granted in respect of the installation,

in this Part referred to as a "relevant installation".

### Ongoing obligation to meet sustainability criteria

**38C.** The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation, using biogas other than sustainable biogas.

### Ongoing obligation to provide quarterly declarations relating to sustainability criteria

**38D.**—(1) The FIT generator or nominated recipient must, in relation to each consignment of biomass used to make the biogas used to generate electricity at the relevant installation during a quarterly reporting period, provide the Authority with a declaration that states—

(a) whether the biogas was made from feedstock that was waste;

(b) whether the biogas met the greenhouse gas criteria and where the criteria are met, the greenhouse gas emissions for that biogas calculated in accordance with Schedule 2A; and

(c) whether the biogas was made from feedstock which was solid biomass which met the land criteria.

(2) The FIT generator or nominated recipient must provide the declaration within 28 days after the quarterly reporting period to which the declaration relates.

(3) The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation during any period in which a declaration has not been provided in accordance with this article.

**Entitlement to generation payments for electricity produced annually from biogas derived other than from waste and residue**

**38E.** Where less than 50% of the energy content of the biogas used to generate electricity at a relevant installation during an annual reporting period is derived from waste or residue, the FIT generator or nominated recipient is entitled to generation payments calculated in accordance with the following formula—

$$A \times (1.5 - B)$$

where—

A = the total generation payments to which the FIT generator or nominated recipient would be entitled, but for this paragraph;

B = the proportion of the energy content of the biogas which is not derived from waste or residue, expressed as a decimal and rounded to 4 decimal places.

**Ongoing obligation to provide annual declarations relating to feedstock types**

**38F.**—(1) The FIT generator or nominated recipient must submit to the Authority a declaration containing the following information for each annual reporting period—

(a) the total amount of electricity generated during the period by the relevant installation;

(b) details of feedstock used to make the biogas used to generate the electricity; and

(c) the proportion of the energy content of the biogas which was not derived from waste or residue, expressed as a decimal and rounded to 4 decimal places.

(2) The FIT generator or nominated recipient must provide the declaration within 3 months after the annual reporting period to which the declaration relates.

(3) The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation during any period in which a declaration has not been submitted in accordance with this article.

**Ongoing obligation to provide annual audit report relating to sustainability criteria and feedstock type**

**38G.**—(1) This article applies in respect of a relevant installation with a total installed capacity of 1 megawatt or above.

(2) The FIT generator or nominated recipient must, in relation to an annual reporting period, submit to the Authority an audit report that—

(a) is prepared by a person who is not the FIT generator or nominated recipient, or a person connected to either within the meaning of section 1122 of the Corporation Tax Act 2010(**3**);

(**3**) 2010 c.4; section 1122 was amended by section 136(6) of the Finance Act 2013 (c. 29) and section 939H(2) of the Corporation Tax Act 2010.

(b) is prepared in accordance with the International Standard on Assurance Engagements 3000 (Revised): Assurance engagements other than audits or reviews of historical financial information dated 9th December 2013(**4**) or an equivalent standard;

(c) states whether anything has come to the attention of the person preparing the report to indicate that the information in the declarations provided under article 38D in respect of the annual reporting period ("the sustainability information") is not accurate;

(d) considers—

(i) whether the systems used to produce the sustainability information are likely to produce information that is reasonably accurate and reliable;

(ii) whether there are controls in place to help protect the sustainability information against material misstatements due to fraud or error;

(iii) the frequency and methodology of any sampling carried out for the purpose of obtaining or checking the data on which the FIT generator or nominated recipient relied in preparing the sustainability information; and

(iv) the robustness of the data on which the FIT generator or nominated recipient relied in preparing the sustainability information; and

(e) states that the person preparing the report has reviewed the declaration provided under article 38F in respect of the annual reporting period and states whether the declaration is correct.

(3) Paragraph (2) does not apply in respect of an annual reporting period that is reduced to less than 3 months as a result of the Authority specifying a date for the purpose of article 38I.

(4) The FIT generator or nominated recipient must provide the audit report within 3 months after the annual reporting period to which the audit report relates.

(5) The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation during any period in which an audit report has not been submitted in accordance with this article.

**Ongoing obligation to provide quarterly meter readings to the FIT licensee**

**38H.**—(1) The FIT generator or nominated recipient must provide generation meter readings to its FIT licensee for electricity generated by the relevant installation during a quarterly reporting period.

(2) The FIT generator must provide the generation meter readings within 28 days after the quarterly reporting period.

(3) The FIT generator or nominated recipient is not entitled to generation payments for electricity generated by the relevant installation during any period that meter readings have not been submitted in accordance with this article.

(4) When determining the amount of electricity generated by a relevant installation during a certain period ("Period A") and the periods for which generation meter readings are available do not equate precisely with Period A, the amount of electricity generated during Period A is to be pro-rated by reference to the available meter readings.

(**4**) International Standard on Assurance Engagements (ISAE) 3000 (Revised): Assurance Engagements other than Audits or Reviews of Historical Financial Information, published on 9th December 2013 by the International Federation of Accountants. Copies are available at www.ifac.org.