

# Extension of Feed in Tariff Projects - Closure of the 'Loophole' imminent

29 July 2011

## ■ Introduction

On 27 July 2011, the Department of Energy and Climate Change ("DECC") published a consultation on changing the rules on how extensions to installations are treated under the GB Feed-in Tariffs scheme. This Briefing Note highlights the action DECC is proposing to take and summarises the consequences, if such action is taken. DECC is proposing to introduce changes as soon as possible, subject to a 5 week consultation and Parliamentary approval.

## ■ Background to DECC's Proposed Changes

The consultation seeks to amend Article 15 of the FIT Order<sup>1</sup>. In general terms, the effect of Article 15 at present is that when a generator completes an extension to an accredited installation on or before the first anniversary of the original installation's accreditation date, the entirety of the extended installation (i.e. the original part and the extended part) can benefit from the generation tariff which applied at the time the original accreditation took place. The big advantage of this to developers is that, notwithstanding that there may have been a reduction in the applicable generation tariff before the extension is completed, the extension can still benefit from the higher generation tariff, effectively avoiding any tariff reduction.

Particular attention has been placed on Article 15 in the last few months following the Government's Fast Track Review and consequent reduction in the tariffs applicable to 50kW+ solar projects from 1 August 2011. The focus has been on whether Article 15 would allow a solar developer to accredit an installation before the 1 August 2011 deadline and then rely on Article 15 to extend the project within the next 12 months and claim the pre-August tariff levels in respect of that extension. Our view has been that the legislation as drafted would allow this, but that caution should be placed on relying on this "loophole" as DECC would be likely to regard this as inconsistent with the intended effect of the Fast Track Review. The release of DECC's consultation confirms this.

## ■ What are the Proposed Changes and Likely Impact?

DECC has proposed formal steps to close the "loophole" by amending Article 15. The proposed changes would mean that where an extension is completed within 12 months of the original installation's Eligibility Date<sup>2</sup>, the total installed capacity of the entire extended installation (i.e. the original part and the extended part) would be allocated the relevant generation tariff rate applicable on the date that the extension is commissioned (as opposed to the accreditation date of the original installation). Therefore, any reduction in the generation tariff rates between the original installation's accreditation date and commissioning of the extension would apply to both the original and extended part of the installation.

Under the current FIT regime, for extensions completed within 12 months, the length of tariff support applicable to the extension tracks the eligibility period of the original installation. For example, if an extension to a wind installation was commissioned 10 months after accreditation of the original installation, the extended part would only be entitled to receive the generation tariff until the original installation ceases to be eligible, 19 years and 2 months later, and would not itself get the full 20 years' support. DECC does not propose to amend this principle.

In the immediate future, the amendments to Article 15 will significantly affect any solar PV generators that were intending to extend, within 12 months, an installation which has been accredited before 1 August 2011. For those generators who are able to commission an extension before implementation of the amendment to Article 15, it appears likely (although DECC has not formally conceded this point) that such extensions will be capable of benefiting from the higher tariff levels applicable prior to 1 August 2011. However, if the generator is not able to accredit the extension before the proposed Article 15 amendments take effect, but still does so within 12 months of the original installation's accreditation date, the reduced generation tariff rates applicable at the date of commissioning the extension will apply to the entire installation from that point.

<sup>1</sup> FIT Order, being the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (as amended).

<sup>2</sup> Eligibility Date being the later of the date on which the installation is commissioned and the date of receipt by the Authority of an application for FIT accreditation.

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The proposed changes are not just relevant to solar developers and will affect any developer who is considering extending an installation within 12 months of its original accreditation, particularly where the extension occurs after a changes (whether through Government action or degression) generation tariff rates.

### ■ Should developers wait more than 12 months before extending an installation?

Under the current FIT regime, an extension completed outside of the 12 month period has the benefit of being granted its own FIT eligibility period<sup>3</sup>. In addition, whilst the tariff level applicable to the extension is based on the overall combined capacity of the installation, the extension has no impact upon the tariff level applicable to the original installation, provided the combined installation remains below the 5MW capacity threshold. DECC's consultation is not proposing any amendment to these rules.

Therefore, if and when DECC's proposals are implemented, extensions completed within 12 months will be treated less favourably than those completed after 12 months. DECC suggests in the consultation that extensions completed within 12 months are more likely to be "*artificially staged*" to take advantage of tariff bands, whilst those extended outside 12 months are more likely to be genuine extensions. On that basis, we assume that the difference in treatment of the two types of extension by DECC is deliberate.

The following table illustrates how each type of extension will be treated under the new proposals:

		Extension within 12 months of accreditation	Extension outside 12 months of accreditation
<b>Original Part of the Installation</b>	<i>Generation Tariff Rate</i>	Once the extension is accredited, the rate will change to the rate applicable to the combined capacity of the extended installation at the date the extension was commissioned.	Unchanged.
	<i>Length of support</i>	Unchanged.	Unchanged.
<b>Extended Part of the Installation</b>	<i>Generation Tariff Rate</i>	Rate applicable to the combined capacity of the extended installation at the date the extension is commissioned.	Rate applicable to the combined capacity of the extended installation at the date the extension is commissioned.
	<i>Length of support</i>	Once accredited, 20/25 years, as applicable, from the date of commissioning of the extension, less the period between accreditation of the original installation and commissioning of the extension.	Once accredited, 20/25 years, as applicable, from the date of commissioning of the extension.

When deciding whether to commission an extension within 12 months, or wait until after 12 months has elapsed, the impact of the proposed changes will need to be considered carefully. However, if and when the proposed changes are implemented, waiting 12 months before commissioning an extension may help a generator to maximise both the level of tariff received and the tariff entitlement period.

For further information or to speak to us about any aspect of regulatory support for your renewable energy project, please contact:

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<sup>3</sup> i.e. 20 years in the case of wind, hydro or AD and 25 years in the case of solar PV.