

A Summary of the Feed-In Tariff Scheme – Latest Proposals

February 2010

1. INTRODUCTION

In July 2009, the Government published its Consultation on Renewable Electricity Financial Incentives, which sought responses on the proposed design and tariff levels for the Feed-In Tariff (“FIT”) scheme. This consultation closed on 15 October 2009 and the Government published its formal response on 1 February 2010 (the “Response”).

This note summarises the basis of the FIT scheme (as outlined in the Response) and the significant changes introduced by the Government as a result of the consultation. Should you wish to review the Response in full, a copy can be located at:

http://www.decc.gov.uk/en/content/cms/consultations/elec_financial/elec_financial.aspx

2. THE BASIS OF THE FIT SCHEME AND SIGNIFICANT CHANGES

Objective - the Renewables Obligation (“RO”) is currently the main financial support scheme within the UK for incentivising renewable electricity generation by awarding renewable generators with RO Certificates (“ROCs”). However, the form of incentive for small scale, low carbon electricity generation (i.e. up to and including 5MW) is due to change in April 2010 with the introduction of the FIT scheme. The RO will remain the primary mechanism to incentivise large-scale renewable generation (i.e. above 5MW), whilst the Renewable Heat Incentive (“RHI”) (when introduced in April 2011) will act to incentivise generation of heat from renewable sources at all scales.

Scope – the FIT scheme will apply to new anaerobic digestion, hydro, solar photovoltaic and wind projects with a generation capacity of 5MW or less. The scheme will also support the first 30,000 micro combined heat and power installations (being those with an electrical capacity of 2kW or less). The FIT scheme will not apply to solid or liquid biomass, to which the RO will continue to apply at all scales. Further detail of the FIT scheme is provided in section 3 below.

Significant changes - the main changes to the FIT scheme (as proposed in the 2009 consultation) are as follows:

- all tariffs (i.e. export and generation) are to be indexed by RPI;
- the start date for tariff degeneration has been postponed by one year (until April 2012), with a steeper degeneration profile thereafter (please see attached Schedule for degeneration rates);
- the generation capacity banding structure for anaerobic digestion, hydro and wind technologies have been modified (please see attached Schedule for new bandings);
- FITs will not be available for biomass (other than for anaerobic digestion) – instead, the RO will continue to apply at all scales;
- the export tariff has been reduced from 5p/kWh to 3p/kWh, but a generator can choose on an annual basis whether to take the export tariff or sell the export capacity to the market; and
- a pilot programme for support of domestic scale microCHP will be run via the FIT scheme.

These changes are reviewed in further detail below.

Disclaimer: This briefing is not intended to be a complete coverage of the law in this area. Legal advice should always be taken in any particular case.

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3. KEY POINTS OF THE FIT SCHEME

Tariff structure – the FIT scheme will consist of two tariff payments, which have been calculated to provide an expected rate of return of 5-8%. Both tariffs will be adjusted for inflation (in accordance with RPI):

(a) **a generation tariff** will be paid for each kWh of electricity generated and metered by a FIT generator. The level of tariff and the “lifetime” during which payment will be made varies depending on (a) technology type; and (b) generator capacity – a full breakdown is provided in the attached Schedule. The tariff will be paid regardless of whether the electricity is used on-site or exported to the local electricity network, however, a “degression rate” will be applied to certain technologies, whereby the generation tariff for projects will, from April 2012, decrease year on year (see attached Schedule). The reduced rate will only apply to new installations applying for FITs, therefore installations will continue to receive the tariff applicable at the time of application; and

(b) **an export tariff** – all FIT generators will be entitled to opt to receive a guaranteed market and price for any electricity generated and exported to the local electricity network. This tariff has initially been set at 3p/kWh, with payment lifetime tracking the generation tariff. It is the intention that the level of tariff will remain uniform across the technology types, however, the Government has reserved the right to change the future level, therefore no guarantee can be provided that the export tariff will not subsequently change for individual installations. In contrast, any change made to the level of generation tariffs will not be retrospective. A generator will be entitled to opt in or opt out (i.e. sell their electricity on the open market) of the export tariff regime on an annual basis.

Ability to assign – a generator may assign the benefit of its FIT payments to a third party (subject to certain controls to ensure that the risk of fraud and abuse is minimised). This is of obvious benefit if a generator is seeking debt financing of a FIT project.

Implementation and interaction with the RO – the FIT scheme is to be implemented on 1 April 2010, via modification to electricity supply licences and the laying before Parliament of a FITs Order. After 1 April 2010: (i) all new FIT microgenerators (projects of 50kW or below) will be entitled to apply for FITs (the RO will not apply); and (ii) all new FIT small generators (projects above 50kW, up to and including 5MW) will be entitled to opt for RO or FIT support for the lifetime of the project. With respect to any existing generators that have applied for RO accreditation before 1 April 2010, the guidelines outlined in the table below shall apply.

Form of generation	Applied for RO accreditation on or after 15 July 2009 and before 1 April 2010	Applied for RO accreditation before 15 July 2009
Microgenerators - capacity of 50kW or below and of FIT technology	Transfer to FIT at the appropriate tariff level for their technology and capacity, and will receive support for 20 years (25 years for solar photovoltaic).	Transfer to FIT at a generation tariff of 9p/kWh and receive support until 2027.
Small generators - capacity above 50kW, up to and including 5MW and of FIT technology	Ability to elect whether to transfer to FIT. If wishing to transfer as of (i) 1 April 2010* – generator must notify Ofgem as soon as possible before this date; or (ii) 1 April 2011** – generator must notify Ofgem by no later than 31 August 2010. Failure to notify within these timescales will result in the generator remaining in the RO.	Will remain in the RO and will not be eligible for FIT.

*/** Generators will receive FITs at the appropriate tariff level for their technology and capacity, however, the lifetime of the support (as stated in the attached Schedule) will be reduced by (i) 6 months, if transferring at 1 April 2010; and (ii) 18 months if transferring at 1 April 2011.

Note: (i) small generators that commission on or after 15 July 2009, but before 1 April 2010, which have **not applied** for RO accreditation have a one-off choice as to which scheme they wish to join;

(ii) all small generators who elect to receive FITs (whether via transfer or direct joining) will be unable to opt to receive RO support at a later date (unless the generator subsequently exceeds 5MW and is no longer eligible for FITs). Therefore, careful review of the level of support available from each scheme will need to be undertaken prior to making any election to ensure the correct decision is made - an incorrect choice could significantly affect the level of revenue realised from the project; and

(iii) any installation that commissioned before 15 July 2009 that had **not applied** for RO accreditation before this date will not be eligible for FITs.

Interaction with the Renewable Heat Incentive - on 1 February 2010, the Government published a consultation on the introduction of an RHI scheme, which it aims to introduce in April 2011 (a copy of which is available at <http://www.decc.gov.uk/en/content/cms/consultations/rhi/rhi.aspx>). The consultation seeks views on the proposed scheme, with the deadline for responses being Monday 26 April 2010.

We will circulate shortly a client briefing note which will review the proposed RHI scheme in more detail, however, it should be noted that the consultation confirms that the FIT scheme will not offer any compensation or uplift for heat output of combined heat and power (“CHP”) projects. Instead, it is proposed that normal RHI eligibility criteria (as set out in the RHI consultation) will apply to the useful heat output of FIT-eligible CHP installations. Notwithstanding this, it is recognised that a number of issues need to be addressed in moving towards separate support for heat and electricity output under the RHI, RO and FITs. These include administrative and compliance costs, and consistency with European laws such as the Cogeneration Directive.

Interaction with other policies – the receipt of FITs will not affect a generator’s eligibility for exemption from the Climate Change Levy and the issue of Renewable Energy and CHP Guarantees of Origin.

Definition of an “installation” – the maximum generation capacity of an “installation” capable of applying for FITs is 5MW. Careful consideration therefore needs to be given to what constitutes an “installation”. No strict definition is provided, however, the Response provides the following guidelines on this issue:

- if a generator installs two different technologies on one site, they will be classed as two different installations and the relevant generation tariffs will apply;
- if a generator installs multiple installations of the same technology on one site, they will be classed as one installation – therefore a total capacity across all installations will be calculated to assess FIT eligibility;
- any capacity expansion of an installation within 12 months of the installation’s registration in the Central FIT register will be treated as an increase in capacity of the installation – if this expansion results in a capacity greater than 5MW, the installation will no longer be eligible for FITs (and, instead, will need to revert to the RO);
- any capacity expansion of an installation after 12 months of the installation’s registration in the central FIT register will be treated as a separate installation. However, the original installation will be treated as having continued in the same tariff band, whilst the new installation will be rated at the aggregated capacity of the two installations (meaning a lower tariff may apply as, for certain technologies, rates decrease as generation capacity increases); and
- a “site” shall be defined by reference to a number of factors including address, map reference and electricity meter identification - this may open up the possibility of arranging separate metering to separate projects/installations.

Although the above guidelines provide an indication of the Government’s approach on this issue – i.e. the minimisation of any “perverse incentives” such as undersizing plants or registering two installations via an artificial split of one large project, it will be important to carefully review the FITs Order (once published) to determine the full scope of the relevant definitions and the manner in which they are applied.

We are aware of an ability in other EU jurisdictions to “slice and dice” renewable projects to enable the maximum benefit of any available financial incentives to be secured, and it remains to be seen whether any flexibility will be apparent within the FIT scheme to adopt a similar approach.

The role of the supplier – the FIT scheme is to be primarily implemented via modification to electricity supply licences, which will require electricity suppliers to make FIT payments to eligible generators. The overall costs of the FIT scheme will be shared by all suppliers in proportion to their share of the electricity supply market (via a process of “levelisation”, which will be undertaken by Ofgem on an annual basis). Note, an “opt out” is available for suppliers with less than 50,000 customers, which enables the supplier to decline provision of FITs to small generators.

4 CONCLUSION

The FIT scheme has the potential to open up the deployment of small renewable projects and provide the support needed for many technologies that are and have been struggling under the RO regime. The burden remains, however, on the small generator to decide whether to opt in or opt out. It is also interesting to note that the Conservatives support the FIT scheme and the future may even see a Tory Government expanding FITs to larger plants and wider technologies.

BURGES SALMON'S RENEWABLE ENERGY TEAM

Burges Salmon has one of the most respected Renewable Energy teams in the UK and was recognised for its work in this area in 2009 when it was awarded “Energy and Infrastructure Team of the Year” at The Lawyer Awards 2009. The team advise on all types of technology including anaerobic digestion, solar, geothermal, wind, biomass and hydro. Our work has included structuring and documenting small community projects, public authority projects, direct on-site generation and advising on a new generation of direct power purchase arrangements which are becoming increasingly popular.

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Schedule – Table of Generation Tariffs to 2020

Technology	Scale ¹	Tariff level for new installations in period (pence/kWh)											Tariff Lifetime (years)
		(Note: tariffs will be inflated annually)											
		1 1/4/10- 31/3/11	2 to 31/3/12	3 to 31/3/13	4 to 31/3/14	5 to 31/3/15	6 to 31/3/16	7 to 31/3/17	8 to 31/3/18	9 to 31/3/19	10 to 31/3/20	11 to 31/3/21	
Anaerobic digestion	<500 kW	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	20
Anaerobic digestion	>500 kW	9.0	9.0	9.0	9.0	9.0	9.0	9.0	9.0	9.0	9.0	9.0	20
Hydro	<15 kW	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	20
Hydro	≥15 - 100 kW	17.8	17.8	17.8	17.8	17.8	17.8	17.8	17.8	17.8	17.8	17.8	20
Hydro	>100Kw - 2MW	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	20
Hydro	>2 MW – 5MW	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	20
MicroCHP pilot ²	≤2 kW	10	10	10	10	10	10	10	10	10	10	10	10
PV	≤4 kW (new build) ³	36.1	36.1	33.0	30.2	27.6	25.1	22.9	20.8	19.0	17.2	15.7	25
PV	≤4 kW (retrofit) ⁴	41.3	41.3	37.8	34.6	31.6	28.8	26.2	23.8	21.7	19.7	18.0	25
PV	>4 - 10 kW	36.1	36.1	33.0	30.2	27.6	25.1	22.9	20.8	19.0	17.2	15.7	25
PV	>10 - 100 kW	31.4	31.4	28.7	26.3	24.0	21.9	19.9	18.1	16.5	15.0	13.6	25
PV	>100kW - 5MW	29.3	29.3	26.8	24.5	22.4	20.4	18.6	16.9	15.4	14.0	12.7	25
PV	Stand alone system ⁵	29.3	29.3	26.8	24.5	22.4	20.4	18.6	16.9	15.4	14.0	12.7	25
Wind	≤1.5 kW	34.5	34.5	32.6	30.8	29.1	27.5	26.0	24.6	23.2	21.9	20.7	20
Wind	>1.5 - 15kW	26.7	26.7	25.5	24.3	23.2	22.2	21.2	20.2	19.3	18.4	17.6	20
Wind	>15 - 100 kW	24.1	24.1	23.0	21.9	20.9	20.0	19.1	18.2	17.4	16.6	15.9	20
Wind	>100 - 500 kW	18.8	18.8	18.8	18.8	18.8	18.8	18.8	18.8	18.8	18.8	18.8	20
Wind	>500 kW - 1.5MW	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	20
Wind	>1.5MW - 5MW	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	20
Existing microgenerators transferred from the RO		9.0	9.0	9.0	9.0	9.0	9.0	9.0	9.0	9.0	9.0	9.0	To 2027

¹ Where a technology is on a banding boundary, the installation will be eligible for the higher tariff (i.e. it will be classed as in the lower capacity band).

² The microCHP pilot will support up to 30,000 installations (however, a review will be undertaken when the 12,000th microCHP installation has occurred).

³ "New Build" means where installed on a new building before first occupation.

⁴ "Retrofit" means installed on a building which is already occupied.

⁵ "Stand-alone" means not attached to a building and not wired to provide electricity to an occupied building.