

## **BRIEFING ON OUTCOME OF FITS JR APPEAL**

### **Overview**

- The Government has lost its appeal on the FITs JR.
- This means that as the law currently stands, we cannot legislate to apply new tariffs, from 1 April 2012, to installations which became eligible for FITs on or after 12 December 2011.
- The decision doesn't affect our announcement last week of new lower tariffs which, subject to parliamentary clearance, will apply to new installations that become eligible for FITs on or after 3 March. Nor does it preclude us from taking forward other proposals from the FITs consultation (e.g. new energy efficiency requirement).
- We respectfully disagree with the judgment and are seeking permission to appeal to the Supreme Court. The Court of Appeal hasn't granted permission for a further appeal, so we are seeking permission directly from the Supreme Court. We have 28 days from the Court of Appeal's decision in which to do this.
- This means that the reference date proposal isn't completely off the table. If our appeal were successful, we could legislate in future to apply new tariffs to installations that became eligible for FITs from a December 2011 reference date.
- There are a number of reasons for our decision to pursue a further appeal. Key is the fact that the current tariffs for solar PV are not sustainable. We estimate that the additional cost to consumers of the current high tariffs continuing to be available until 2 March (for the next 25 years) would be around £1.5bn (real, discounted).
- The Government wants as many people as possible to be able to benefit from FITs. For every one installation that can be afforded at the current 43.3p/kWh tariff, two could be supported at the new 21p/kWh rate.

### **Handling**

**Policy Handling:** Contingency plan already in place with licence modifications laid before Parliament. Subject to the Parliamentary process, new tariffs due to come into force from 1 April 2012 in respect of installations with an eligibility date on or after 3 March 2012. Seek permission to appeal to the Supreme Court.

**Line to take:** “The Court of Appeal has upheld the High Court ruling on FITs *albeit* on different grounds. We respectfully disagree with the judgment and are seeking permission to appeal to the Supreme Court.”

**Media Handling:** Greg Barker statement on the DECC website. Greg Barker to accept media bids received.

## **Q AND As**

### **What does the judgement mean?**

- The Court of Appeal has upheld the High Court’s ruling that the “reference date” approach to implementing new tariffs is unlawful.
- We respectfully disagree with the Court’s judgment and are seeking permission to appeal to the Supreme Court.
- We will not know the outcome of this appeal in time to apply new tariffs to electricity generated from 1 April.

### **Will DECC appeal against the Court of Appeal’s decision?**

- Yes. We are seeking permission to appeal to the Supreme Court.
- We have 28 days from the Court of Appeal’s decision in which to seek permission.

### **Why are you appealing the Court’s decision? Can’t you just admit you were wrong and draw a line under it?**

- We respectfully disagree with the Court’s decision.
- The fact remains that the current high tariffs for solar PV are not sustainable. The longer they continue, the greater the impact on the FITs budget which is funded by consumers through their energy bills.

### **Would you consider closing the scheme?**

- We have no current plans to close the scheme but cannot rule out any option at this stage.
- Whatever happens, the fact remains that the current high tariffs for solar PV – paid for by consumers - are unsustainable.

### **Does this mean that the current tariff rates continue unabated?**

- No.
- In any scenario we have already laid draft licence modifications which, subject to Parliamentary approval, will reduce the tariffs from 1 April for installations with an eligibility date on or after 3 March 2012.
- We are planning to appeal to the Supreme Court against this decision.
- We will not know the outcome of this appeal in time to apply new tariffs to electricity generated from 1 April.

- However, if our appeal to the Supreme Court were successful we would have the option of applying new, lower tariffs to electricity generated from a later date.

**What does this mean if I installed between 12 December and 2 March – do I get 43p for 25 years?**

- We cannot guarantee this at this stage.
- We are seeking permission from the Supreme Court to appeal against the Court of Appeal's decision.
- Pending the outcome of that appeal, we cannot provide any certainty to generators with an eligibility date between 12 December and 2 March as to whether they would be eligible for the current tariffs for 25 years.
- If our appeal to the Supreme Court were successful we would have the option of applying new, lower tariffs to electricity generated from a later date.

**When will you publish the government response to the consultation?**

- The consultation closed on 23 December 2011 and over 2,000 consultation responses were received which we have been analysing carefully.
- Last week we published the response to the question on reducing the tariffs and have laid licence modifications in Parliament which, subject to the parliamentary process, will bring new tariffs into force from 1 April in respect of installations with an eligibility date on or after 3 March 2012.
- We are intending to announce the outcome of the rest of the consultation (including the proposals on energy efficiency and multi-installation tariff rates) by 9 February 2012, in time for any resulting legislative changes to come into effect from 1 April 2012.
- Our aim is that this announcement will be accompanied by a set of reform proposals for the next phase of the comprehensive review of the FITs scheme, which will be the subject of a further consultation.

**What about after April – there's no certainty, is there?**

- The full phase 1 decision document, combined with the consultation proposals for phase 2, should provide greater clarity on the future of PV tariffs beyond 1 April 2012.

**GENERAL Q AND As**

**What regulations did you lay last week?**

- DECC has laid before Parliament draft licence modifications which, subject to the Parliamentary process set out in the Energy Act 2008, makes provision for a reduced tariff rate (from 1 April 2012 onwards) for new solar PV installations with an eligibility date on or after 3 March 2012 under the Feed-in Tariffs scheme (FITs).
- Further information on the Government's response to this aspect of the FITs consultation, together with a summary of the relevant consultation responses,

has been published on the Department of Energy and Climate Change's website.

### **Why did you take this action?**

- We needed to act as quickly as possible. It was not clear when we would get the judgement from the Court of Appeal, so we are acted to protect consumer bills and to avoid bust in the industry and the budget.
- Was too important for us to sit and do nothing while we waited for the judgment.
- We put in place a contingency that will bring a 21p rate into effect from April for installations with eligibility dates on or after 3 March to put us in a better position to protect the budget for everyone involved

### **What evidence have you got that you should reduce it to 21p from 1 April for those with an eligibility date on or after 3rd March? How can you do this without publishing the government response?**

- We have published a government response to the relevant question (Q1) from the consultation document – this is available on our website.
- Many respondents to the consultation agree that tariffs need to be reduced
- We will publish the full government response to the rest of the consultation alongside our final decisions on the whole package

### **What did Greg Barker say about the contingency regulations?**

#### **Energy and Climate Change Minister Greg Barker said:**

“I know this is a difficult time for the sector and I want to do as much as I can to end the current uncertainty created by the legal challenge. We must reduce the level of FITs for solar panels as quickly as possible, to protect consumer bills and to avoid bust in the whole Feed-in Tariffs budget. We're appealing against the court ruling that's challenged our proposal for a December reference date. This remains our aim, and we are waiting for the judgment of the Court of Appeal. But this is too important for us to sit and do nothing while we wait. Today we're putting in place a contingency that will bring a 21p rate into effect from April for installations from 3 March. However, we are still pressing ahead with our appeal and if successful, we retain the option of introducing a December reference date. In the circumstances we believe this gives the industry as much certainty as is possible. And it puts us in a better position to protect the budget for everyone involved.”

### **What are the latest figures of budget against spend under FITs?**

- The figures change day by day as new installations are registered, but the total budgetary impact is impossible to determine as we don't yet know if we will have to pay 43p for the next 25 years for all installations between 12 December and 1 April, nor how many of these installations there will be.
- We're fighting to keep the FITs scheme open for all.

### **Haven't you already overspent the budget?**

- The FITs budget is under a lot of pressure. The latest comparison of estimated expenditure and the budget is available in the answer to supplementary question four from the select committee and is available [here](#)

## **KEY FACTS:**

### **GB Feed in Tariffs Scheme | Key Facts**

- By mid January, there were nearly **210,000 PV** installations with a capacity of **840MW** - a total capacity that is far more than we originally projected under the scheme.
- OFGEM reports another 36MW of large-scale in pipeline.
- More small scale PV capacity (380MW) installed in the 6 weeks between launch of the FITs consultation and the proposed reference date (12 December) than in the whole of the year before then (310 MW).

### **Rates of return have doubled – 5% to 10%**

- PV costs have fallen at least **30%** since April 2010
- Electricity prices have risen **13%**
- Each week at mid-November installation rates and tariffs costs **£275m** (over 25 yrs)
- On latest data, doing nothing would add **£40p/a** in 2020 to domestic electricity bill (was £26 in IA)
- Not doing the Fast Track review on large-scale would have added **additional £10** to consumer bills in 2020

### **GB Feed in Tariffs Scheme | Current consultation proposals**

- Cost to consumers by 2014-15: £250m-£280m, £2.60-£2.80p/a on average domestic electricity bill.
- Could be higher given recent installation rates – £320m-£360m in 2014/15, or £3.30-£3.60p/a on bills
- Typical domestic installation could still earn around £500p/a plus £190 bill savings.
- Waiting until 1 April 2012 to make changes would lead to additional costs of:-
- £60m p/a in 2014/15, adding 80p to bills (Impact Assessment)
- Given recent installation rates, could add £160-£170m p/a in 2014/15, or £1.60-£1.80 to bills