

Joint UKBCSE and ERA Response to the Consultation on “Proposal to Modify Electricity Supply Licence Conditions for the Purpose of Introducing the Feed-in Tariff Scheme”

The UK Business Council for Sustainable Energy (UKBCSE) brings together the key players¹ in the energy sector to develop an effective dialogue with Government that can help strengthen the UK's strategic agenda for sustainable energy.

The Energy Retail Association (ERA) represents domestic energy suppliers in Great Britain with membership encompassing all the main electricity and gas retailers.

The UKBCSE and ERA welcome the opportunity to comment on DECC's “*Proposal to Modify Electricity Supply Licence Conditions for the Purpose of Introducing the Feed-in Tariff Scheme*”.

The Associations and their members are keen to ensure that an effective Feed-in Tariffs (FiTs) scheme is introduced on 1 April and, to this end, have been active in promoting and engaging in discussions with DECC on its design and implementation.

The Council therefore welcomes the publication of the consultation on the draft Supply Licence Conditions as the first stage in the process of establishing the detailed legal framework that will underpin the scheme and which starts to provide some of the details that are needed.

Indeed the creation of new Supply Licence Conditions is clearly a critical issue for licensed suppliers and companies are concerned that the timing of this consultation, spanning as it does the traditional Christmas/New Year holiday period, and then the worst winter for thirty years, has limited their ability to respond as fully as they would normally wish to.

Moreover the full picture will clearly not be available until Government's decision document on the current consultation, the secondary legislation setting out Ofgem's role and powers and Ofgem's Guidance document are also published. This means that companies' views are, to an extent, partial in that the full picture is not yet available.

¹ Members of the Council include Centrica, EDF Energy, E.ON UK, National Grid, RWE npower, Scottish and Southern Energy, and Scottish Power

Two of the areas companies are particularly concerned about are:

- *The treatment of power exports* – ultimately consumers will get the fair deal they deserve as they get the full benefit of smart meter roll out and any measure prior to this will inevitably be interim in nature. Indeed implementing a scheme based entirely on the current metering and settlement arrangements remains problematic;
- *'Levelisation' arrangements* – it appears to companies that there is a lack of detail on the proposed arrangements. Indeed those who track developments on the similar, but apparently separate, discussions on the social price support regime (in the current Energy Bill) do feel they could be scope for having some equality of regime between FiTs and the proposed 'equalisation' regime under the current Energy Bill, as well as with the upcoming Renewable Heat Incentive, Carbon Capture and Storage Levy and any other similar levies.

In addition, companies are concerned about the potential for any subsequent drafting changes to affect those parts of the proposed Licence Conditions which appear acceptable, in the current draft, in ways which cannot be anticipated.

Companies' high level observations are set out in the next section, and more detailed comments are contained in the Appendix to this submission.

Key Issues

Implementation Timescales

Companies are keen to ensure that for the benefit of their customers efficient and effective systems and processes to deliver FiTs are in place by 01 April 2010.

Companies are therefore concerned that the lack of detail that is currently available from DECC and Ofgem on the final form of the scheme will compromise their ability to develop the appropriate systems and process to achieve this.

Power exports

It is clear that the roll out of smart meters will significantly improve the customer benefits of FiTs. It is understood that companies have indicated to DECC that they feel it will not be possible to introduce a scheme based on installing Non Half Hourly (NHH) meters and settling export, by 1 April 2010 based on current mass metering technologies and the existing settlement system and that they do not consider it is cost effective to do so in advance of the roll out of smart meters.

Two solutions do, however, exist. Larger community based schemes already have their own metering solutions available, and at the household level provisions that enable companies to "deem" the output for generators below a pre-specified threshold should be brought in. However any such "deeming rules", which could be included in Ofgem's Guidance, would need to be agreed to ensure companies adopt a broadly common approach.

“Levelisation” Arrangements

Companies welcome the Government’s approach to allowing costs to be shared equitably via “levelisation” arrangements, and would like to see the general approach adopted consistently across policy areas, such as the proposed social price support scheme that is under consideration, as well as for the upcoming Renewable Heat Incentive, Carbon Capture and Storage Levy and any other similar levies.

Given the importance of levelisation, companies are particularly concerned about the lack of detail on the “levelisation” arrangements. In particular, detail on the schedule of payments and which costs are included or excluded from the levelisation process appear to be unavailable – all of which are critical to the success of FiTs.

Distinction between readings and obligations in respect of Export Meters and Generation Meters

Export meters are typically installed and owned by suppliers and located in places generally accessible to suppliers’ agents.

Generation meters are different and are typically installed at the request of the generator (generally by the installer and may be in locations not readily accessible by suppliers’ agents) and owned by the generator. Suppliers have no rights of access/maintenance or repair.

A further variation is that largely as a result of the pioneering technology support provided by the former Department of Energy, many of the CHP generation units (such as that installed at Ofgem) which could be at the heart of community scale energy systems already include integrated metering technology that is remotely read by the provider of the unit as part of a long term energy services contract.

However it appears the drafting of the regulations makes no distinction between meter readings, and other meter obligations, from generation meters and export meters, let alone those already fully integrated into CHP based generation units.

These differences need to be recognised and catered for. Companies feel that the way in which metering requirements are undertaken in the Renewables Obligation would provide a quick, practical, and cost effective way forward. Any additional costs could then be catered for without placing further costs on the generality of consumers who are funding FiTs.

Payments & Obligations Governed by Entry into Central Register

New entrants to the market will need to be catered for in ways that ensure that undue barriers to entry are not inadvertently created. Companies believe that the Central FiTs Register should be the key to the operation of the scheme and all requirements on licensed suppliers in respect of payments and services should be recorded within the Central Register (either the Generator or Payee as appropriate).

Recovering incorrect FiTs payments

In order to ensure good value for the consumer's money that is being committed to the FiTs, and retain public confidence, it will be important to include mechanisms that enable any over-payments to be recovered. Licensed suppliers may well need to have a role in this process.

To achieve this desirable outcome companies suggest that the final form of the Licence Conditions should ideally include a relatively simple and transparent means to recover costs in circumstances where FiTs generators may change their FiTs supplier.

Scenarios have been suggested whereby a FiTs generator has received payment from a number of different suppliers such that the supplier identifying the problem may not themselves have made the majority of the incorrect payments. Clearly it would be inappropriate if the supplier who is acting in the best interests of the consumers who are paid for FiTs is then unduly burdened with recovering payments that may have been made by a previous supplier(s). Equally it would be impractical to have multiple suppliers involved in the process.

There is, therefore, a need for a single central process, undertaken by Ofgem, to recoup incorrect payments in these and other situations.

Migration between RO and FiTs

It will be in the customer's interest that the arrangements should allow seamless migration between the RO and FiTs scheme (particularly for those generators who may be required to leave the RO).

The simple way of doing this would be the start date for FiTs eligibility (and the start generation meter read and export meter read where applicable) being the same as the RO end date/meter read. However it is not clear that this can be done within the current drafting of "Eligibility Date" and "Eligibility Period".

Similarly there may need to be a cut-off period. For example, where a generator exits the RO (either by choice or because it is required to do so) does not start the process of seeking admission to the FiTs scheme for a period exceeding (say) 12 months.

Bundling of FiTs generation and export with import

It will be essential to ensure that every consumer has a right to receive their FiTs payments from an identifiable supplier at the point they enter the scheme.

Companies generally expect that generators (and many suppliers) will wish to offer and receive a bundled service where a single company provides the import, purchases the export, and pays the FiTs generation payment for particular premises.

However, there will always be some FiTs recipients who are not able to get a bundled solution and / or who will not want a bundled service and there may be some companies who opt not to offer a bundled solution. In addition, keeping all the FiTs elements (import/FiTs and guaranteed export) together through all the change of supplier processes may be difficult in all circumstances (possibly impossible in some!).

To ensure consumer confidence in the Fits mechanism is achieved and maintained it is suggested that the Licence Conditions should impose obligations on Mandatory FiTs Suppliers to provide FiTs, on request, where:

- it is the generator's import supplier;
- any generator that is off-grid; and
- any generator that is a customer of a non-FiTs supplier.

However, these obligations should only apply at the point where the FiTs generator enters the scheme and should not prevent the generator from receiving its FiTs payments from a different FiTs supplier (should another supplier offer them) either at the point it enters the scheme or subsequently.

FiTs Agreement

It will be vital that the integrity of the FiTs regime is established from the outset and then maintained.

This means that there is a clear and effective contractual arrangement between the FiTs Generator and FiTs Supplier before any payments are made, and should be clearly distinguished for any other terms and conditions for more general supply etc.

Ideally, there would be a standard template setting out Core FiTs Terms included within Ofgem's Guidance.

In Annex 2, there is an initial suggestion on the terms that should be included although this has not been discussed in detail by companies and further work is required to refine the content. Companies will need to the opportunity to comment on the final form and content any such document.

In general the contract should reflect only obligations that the FiTs Generator and FiTs Supplier can reasonably comply with.

However there are a number of places where the proposed Licence Conditions seem to place obligations on companies that it is by no means clear they would be in a position to comply with. The majority (but not all) of these concerns relate to obligations in Part A 3.4 and Part C 11 and 12. Annex 1 covers this in more detail.

Netting of import liability and FiTs Payments

Where a supplier is owed and owes money to the same party as a result of import and FiTs obligations, it would be helpful if the supplier was able to make (or request) a net payment.

Clarity on Ownership

There needs to be clarity on what evidence suppliers and Ofgem should be entitled to use to determine what constitutes “ownership”. We suggest that the starting point, for Microgeneration Certification Scheme (MCS) registrants, should be presentation of the MCS certificate.

In the event of dispute, Ofgem should, as the statutory authority, be responsible for determining the identity of the owner to be recorded in the Central FiTs Register.

There also needs to be a robust “change of owner process” that specifies what information needs to be obtained before changing the identity of the owner (or the nominated payee) within the Register (this could be set out in Ofgem’s guidance). Again, Ofgem would need to be the arbiter in the event of a dispute.

There also needs to be an effective “change of owner process” that specifies what information needs to be obtained before changing the identity of the owner within the Register (this could be set out in Ofgem’s guidance). Again, Ofgem would be ideally placed to be the arbiter in the event of a dispute.

Assignment within the Scheme

Assignment within the scheme should be allowed. Indeed this will be crucial to some of the innovative applications of FiTs that the Council understands are under consideration. The Central FiTs Register should identify the person entitled to receive FiT payments, who may be different to the owner of the installation (Companies hence support the provisions of 3.6).

Companies consider that concerns about the potential for fraud may have been overstated as the FiT scheme has a number of in-built safe guards. For example:

- Only installations installed by MCS accredited installers, or those that have passed through Ofgem’s Renewable Obligation accreditation process, will be eligible for payments;
- For the smaller end of the market, where volume should be highest, only MCS certified installations will be eligible; and
- Suppliers will be checking whether the volume of electricity being rewarded lie within the expected tolerances for the size of the installation/technology.

FiTs Export opt in/out

Companies strongly believe that consumers must be able to benefit from the choice between the certainty that opting in for exports would allow and the commercial flexibility of opting out.

However, companies consider that allowing generators to swap between the two creates unnecessary costs for consumers. There should be a one off right to choose at the point the generator enters the scheme.

Combating Fraud

We believe that in order to maintain consumer confidence in the scheme there should be a consistent and comprehensive approach to combating Fraud and that this should be the responsibility of Ofgem with suppliers providing such assistance recognising that consumer generators can and will move supplier.

Conclusion

We hope that these comments are useful. We look forward to receiving the additional information that is needed as soon as practicably possible so that all concerned can have a clear picture of Government and Ofgem's fuller intentions.

We are keen to continue to work with Government, Ofgem and other key stakeholders to ensure that the new FiTs scheme is set up on time, is fit-for-purpose, and deliver the transformational outcomes that have been anticipated for it.

15 January 2010

The views expressed in this paper cannot be taken to represent the views of all parts of all the companies in the UKBCSE and the ERA. However, they do reflect a general consensus.

Annex One - Detailed comments

General Comment

Dates and Meter readings

Throughout the Licence Condition consultation document the obligations and rights are specified in terms of dates; in reality they need to relate back to meter reads obtained on or within a reasonable period of those dates because payments will be linked to electricity produced or exported (or deemed to have been exported) within the specified time period.

It is interesting to note that in the initial phase on the Renewables Obligation (RO) the timings of meter reads were very strict. Practicality intervened and a more flexible approach was adopted. This provides a clear lesson for the FiTs!

DEFINITIONS AND INTERPRETATIONS

Applicant

Delete text in brackets – Ofgem has advised that preliminary accreditation will not be available.

Central FiTs Register – is referred to throughout this annex as the CFR.

Complaints Procedure

Companies understand that DECC is developing proposals for an Ombudsman based approach but this will not be in place before the scheme goes live.

It is clearly difficult for companies to therefore agree to comply with a licence condition they have yet to see, and still need to be consulted on.

Bearing in mind previous experience with consumer protections codes for small generators which were agreed by companies, consumers and others, and then never promulgated by the then DTI, the Council urges DECC to take steps to ensure that effective codes that give protection to all parties are in place as soon as is reasonably practicable.

Eligibility Date

The Eligibility Date appears to be being used in two different ways in the proposed LCs.

- First to define the point in time from which consumer based generators have an entitlement to FiTs (albeit they may not be able to receive those payments until a later point in time);
- Second to determine the start point for the Eligibility Period (20 or 25 years entitlement to payment – albeit the current draft is silent on how RO migrated generators are to be treated).

These two dates will need to be different for RO migrated generators. For these generators, the start point for entitlements should align with the date they leave the RO (or the start of the FiTs scheme – whichever is later).

However, the start of the eligibility period should be the point at which they became entitled to payments under the RO.

This will either require an adjustment to Eligibility Date (and related provisions) or a new “Start Date” definition to define the point from which the amount of generation eligible for payment would be determined.

There will also need to be some limit that ensures generators cannot unreasonably claim back payments for multiple years.

In (a)(ii) companies think that “Eligible Installation” should be “Applicant”. Companies do not support the requirement for the application to be in writing this appears to be unduly restrictive in the age of E Government!

Eligible Installation

This definition and the definition of “FiTs Generator” appear to be circular. Is this the intention?

Eligible Low-carbon Energy Source

Comment on square brackets - Gas fired mCHP is not within the RO.

Does Scope need to s.41 (6) EA 08 as well as ref s41(5)?

Eligibility Period

See above – the critical bit is not yet defined.

Companies believe that “from the [1 April] following the Confirmation Date” should be “from the [1 April] following the Eligibility Date”.

Export

Needs to include provision for the amount to be determined by deeming for unmetered export for generation below a threshold level (all export onto the system is accounted for within BSC settlement – either directly via meter reads or indirectly via the Grid Supply Point (GSP) metering and the GSP Group Correction Factor smearing process).

Export Meter

Companies believe this needs to include provisions that allow a supplier to elect not to register the export in settlement where the generation is below the threshold level (and entitled to be deemed) but an export meter has been installed and payment for export is made by reference to meter reads.

“shall” should be “may”

Export Payment

This should refer to the sum paid to the “payee identified in the Central FiTs Register”.

Extension

This should have the following changes:

“generation” should be “total installed capacity”

Delete – “which affects its Tariff Code”

FiTs Generator

The current definition and the definition of “Eligible Installation” again appears to be circular. Is this intended?

As the FiTs Generator is identified as the person to whom payments are owed under LC 33, for clarity, companies suggest that the FiTs Generator should be the Generator identified within the CFR. This would ensure the CFR is the master database and suppliers are not being required to make judgements as to the status of generators.

It would be of benefit to consumers who apply for a FiT if an ‘Eligible Installation’ would then be a wider definition as it would encompass generating facilities that have been accepted into the scheme and those that have yet to complete the processes.

It is noted that these changes would require wide redrafting of the proposed LCs.

FiTs Payments

This should refer to payments made to generators identified as entitled to participate in the scheme within the CFR.

FiTs Notification

All suppliers should be required to notify. Notification obligations should align with existing obligations such as, for example, CERT.

Generation Payment

This should refer to the sum paid to the “payee identified in the Central FiTs Register”.

Insolvency Event

This should refer back to the existing definition in the *scheme made pursuant to paragraph 16 and 17 of schedule 7 to the utilities act 2000 in respect of the electricity supply licences Schedule 2 Clause 1(f)*.

MCS-FiTs Technology

Is it necessary to list these in the licence, such that there would need to be a licence change if a new technology is added? Can this be specified elsewhere – for example under the Order? The history of technology deployment and the Government’s own innovation policy would suggest a degree of flexibility is always desirable!

Meter Readings

Is this provision really needed? If so, companies consider that it is essential to incorporate provision for “deemed readings” for technologies below the threshold size.

Migrated ROO Generator

Companies understand that Generators are not obliged to participate in the scheme; but some are obliged to leave the RO.

Switching

This is limited to FiTs providers switching; as such it will be necessary to ensure this does not overlap with switching of import or opted out export.

PART 1

2

As noted in the description of the key issue on bundling of FiTs generation and export with import companies believe that this Clause should be recast so that Mandatory FiTs Suppliers should not be able to refuse a request for FiTs from the specified types of generator rather than they should be obliged to pay.

We also consider the drafting should make it clear that the obligations within Clause 2 do not prevent a new generator seeking FiTs payments from some other category of supplier and that the obligations, in Clause 2, fall away once the generator has entered into an agreement within another supplier (we suggest 3.3.2 should be incorporated in Clause 2).

It would be in the consumers’ interest if Clause 2 also made it clear that nothing in Clause 2 should prevent the FiTs Generator seeking FiTs payments from a different FiTs supplier in the future.

In addition, the obligations within Clause 2 should be subject to ALL the conditions in Clause 3.1 and 3.3.

2.1 consequently, “make” should be “offer on request” or “not decline”.

In 2.11, 2.12, the “and”s should be “or”s.

2.1.2 and 2.1.3

Companies will need to depend on information provided by customers to determine whether these conditions are met, it would hence be reasonable to ensure that they not be held to be in breach of a licence condition if this information supplied by the customer is subsequently found to be incorrect.

The final sentence...subject to satisfaction of the terms of ... should be deleted once the obligation is in respect of generators registered in the CFR as this is the information suppliers should be able to rely on to determine eligibility.

3.1

See comments on definitions. Entitlements should refer back to the point at which RO migrated generators drop out of the ROO, not the point at which they are confirmed to have arrived in the FiTs scheme (the understanding is that the process of leaving the RO and joining the FiTs is not automatic and may not be aligned – although ideally it should be!). However, there would need to be a cut-off point to ensure generators cannot back date claims for multiple years which would increase the cost base for the generality of consumers who are funding the FiTs.

It is also essential that the wording here is consistent with 6.5.

3.2

The limitation should be to no more than **12 months** since the last payment was made.

3.3.2

The limitation is essential and should be explicit within 2.1. and should refer to where another supplier is identified within the CFR as the FiTs supplier for this generator.

3.3.3

This clause needs to include deeming for generators below the threshold size.

3.3.4

This clause is unnecessary.

3.3.6

This is clearly an issue companies cannot determine – and should be determined as part of the Ofgem registration process. Suppliers will be paying in accordance with the information held on the CFR and hence it should be the duty of a statutory body such as Ofgem to determine entitlement. This in turn would need to incorporate an appropriate appeals process.

The obligation should be to notify the FiTs administrator as soon as reasonably possible following notification by the generator of an extension in accordance with the FiTs Agreement (9.2.1 (c)(iv) refers).

3.3.7

Again companies are not in a position to determine this – this really should be determined as part of the Ofgem registration process. Suppliers will then pay in accordance with the CFR. The obligation should be to notify the FiTs administrator and suspend payments if (and only if) instructed to do so by the Authority.

Suggested New Clause 3.3.8

To ensure that only generators that have signed a FiTs agreement are eligible for payments, signature of the agreement would also need to be a pre-condition for payment. Therefore, a new sub-clause is required here to the effect that generators have entered into a FiTs agreement containing the “Core Terms” for eligibility.

3.4

3.4.1 Suppliers cannot reasonably force customers who are using FiTs to provide meter readings (the only sanction is to withhold payments until meter reads are provided?).

3.4.2 Clarification is required of the meaning of “verification of meter reads” for both current and smart meters – suppliers can undertake checks to determine whether the meter readings provided fall within expected tolerances for the registered technology/capacity but are not best placed to physically inspect the generation meter or obtain physical reads. Indeed meter testing etc is already subject to statutory controls which have been within the purview of Ofgem for a number of years now.

Clarity is required on what happens where generators fail to provide generation meter readings over prolonged periods of time. It would be in the best interest of the customers who are funding FiTs and the reputation of the scheme that entitlements can be accrued over extended (multi-year) periods of time.

Export meter readings (where required) are already subject to existing licence and other obligations – no additional conditions are required here.

3.5

Supply businesses should only be required to make payments in accordance with the information held in the Central FiTs Register. They do not have access to information to separately determine what generators are eligible for.

Lead in to 3.5 should refer to ... “in accordance with the “Tariff Code” recorded in the CFR”.

3.5.1

As there may be eligible installations that may not have been through a registration process this should only refer to generators registered in the CFR.

3.5.2

This should only include those that have not opted out (or those that have opted in if the ability to change after initial registration is allowed under clause 8.)

Suppliers cannot necessarily determine whether the generator is physically capable of exporting. This should be determined either as part of the MCS process or the RO accreditation process and recorded in the CFR. Companies believe that the ability to change export status is a further complication and feel that it should be progressed at this stage.

3.6

Payments should be made to the payee identified within the CFR to allow rights to be assigned within the scheme and agree that the payee should be identified at the point that the generator is registered. However, the provisions also need to include scope to allow the registered payee to be changed – particularly to improve the scope for innovation in the delivery of the new regime.

There needs to be scope for the payee to be changed (to cope with situations where, for example, a loan has been repaid – or when a property is sold).

4.1

It seems unnecessary to refer to “accredited and registered” in the obligations in respect of generators registered in the CFR as the registration process should ensure that registration is not completed unless the generator has the appropriate accreditation.

4.2

See comments under 5.2, suppliers are following the relevant registration process procedure.

4.2.1

Companies need to see the guidance to make an informed comment on this obligation.

5.1

The obligation should be to confirm that the installation is an MCS (or equivalent) certified installation. The current definition of an Eligible Installation is unclear; it may be better to refer to installation using Eligible Low Carbon energy source.

5.2

Suppliers need to see the guidance in order to make an informed comment on this obligation.

Suppliers are providing information to **support** MCS-certified registration not “undertake” registration Ofgem needs to complete the registration process (specifying the Tariff Code).

5.3

Provide the FiTs Generator with a FiTs Agreement incorporating the Core FiTs terms (see comments on FiTs Agreement in Key Issues).

5.4

This Clause is unclear, companies think that the Confirmation Date should be the date from which the supplier should be required to pay the generator in respect of generation produced from the Eligibility Date.

Such payments to date back to the point that the generator left the RO (subject to a cut-off to prevent multi-year back payments).

6.3

Companies need to see the guidance on what information will be required in order to make an informed comment on this obligation.

6.4

Provide the FiTs Generator with a FiTs Agreement incorporating the Core FiTs terms (see comments on FiTs Agreement in Key Issues).

6.5

See previous comments on migration from RO. Suggest delete text after “Confirmation Date. The FiTs licensees’ obligation to make payments would need to start at the point at which it gets the generator’s agreement to the Core FiTs Terms – which will be after the Confirmation Date.

7

Clause 7 will need to be adjusted to accommodate the Core FiTs terms.

7.1

The obligation should be to offer to enter into (the supplier cannot require the generator to enter into it).

7.2...and in accordance with Ofgem’s Guidance; the Guidance would need to specify the Core FiTs Terms.

7.3

Obligation should be in respect of changes to the details recorded within the CFR.

8.1

“Central Register” should be “Central FiTs Register”.

Consumers should have the right to choose at the point their generation unit enters the scheme if they wish to export or not.

Regularly opting in or out of the FiTs Export would inevitably increase cost for the generality of consumers who are paying for FiTs.

It is, however, suggested that if the ability to flip in and out of export remains then inserting the wording “or afterwards in accordance with Clause 8.2” after “Central Register” would be desirable (see below).

8.2

As 8.1 is limited to actions that can happen before entry into the CFR it seems odd to refer to using clause 8.1 for changing the position post entry into the CFR.

8.3

We suggest that the obligation should be to purchase such FiTs Export from FiTs Generators (new definition – i.e. those that have completed registration) and entered into a FiTs Agreement containing the Core FiTs Terms.

9. General Comment

Much of Clause 9 could be deleted if the provisions referring to the Core FiTs Agreement were to be included within Ofgem’s Guidance.

9.1.1

Suppliers’ businesses need to see this before they can comment on the obligation (see comment on CP definition). This should be phrased as an obligation to participate in the CP.

9.1.2

Electricity Supplier should be “Relevant” Electricity Supplier.

9.1.3

The Switching process for generation payments, and payments for deemed exports, should to be handled (and facilitated) centrally by the scheme administrator.

Companies consider that their general obligations under the Licence and this Schedule are sufficient. At most the obligation should be limited to complying with requirement on suppliers to participate in the switching process.

The Switching process for exports that are registered within settlements should follow the existing processes and be consistent with the Government’s desire for ‘smart regulation’ then no additional LCs would be needed.

9.1.4

Companies believe they cannot deliver the suggested outcome. The condition, if needed, should be to fulfil obligations in a way that delivers an efficient Scheme.

9.2

This should capture the Core FiTs Terms; comments on current drafting follow.

9.2.1(c)(ii)

To ensure consistency between suppliers, what constitutes a “key risk” should be included within Ofgem’s guidance.

9.2.1(c)(v)

We support this provision.

9.2.1 (d)

We suggest that this becomes a reference to the Core FiTs Terms to be set out in Ofgem’s Guidance.

10

Companies welcome the commitment made in the consultation not to mandate suppliers to recoup incorrect payments

There should be a single central process, undertaken by a statutory authority, such as Ofgem, to recover incorrect payments.

Companies are strongly of the view that dealing with costs via the levelisation process may well not be sufficient as costs (and indeed individual case costs) could vary. They also feel it would be unworkable where, for instance, a FiTs generator has received payment from a number of different suppliers such that the supplier identifying the problem may not have made the majority of the incorrect payments. It would also seem unreasonable that a supplier that had identified a problem should then be burdened with the task of recovering payments that may have been made by a previous supplier. Equally it would be unworkable to have multiple suppliers involved in the process.

It is for all these reasons that we propose an authority with appropriate statutory powers should be involved.

10.1.2

“proven” by whom – how is this recorded in the CFR?

There is a risk that if this is not managed through the details within the CFR then a generator could simply go to another supplier.

New Clause 10.1.3

Companies are concerned that they have yet to see the draft FiTs order and may have no opportunity to comment on it.

Subject to this a further clause would be needed required to include “as instructed by the Authority” in accordance with the provisions of the FiTs Order.

It is suggested that the requirements under the whole of Clause 10.1 would be assisted by some indication on the “CFR” that such actions are being undertaken.

11.2

The obligation under 11.1 is sufficient to ensure that suppliers are required (using reasonable steps) to ensure that any abuses they may become aware of addressed in accordance with Ofgem’s Guidance and this clause appears sufficiently wide to encompass the issues identified within 11.2. Specifying these individual circumstances in 11.2 appears to create a stronger set of drivers in respect of these issues than companies believe they can reasonably discharge.

It is considered by companies that 11.1 is sufficient on its own and that 11.2 should be deleted.

It is noted that:

11.2.1 – only the Authority can do this – it needs to be part of the central checks made by it when confirming the “CFR” registration

11.2.2 – suppliers clearly do not know in detail what other suppliers are doing, indeed it could lay them open to action under the Competition Acts where this to be so! The way to achieve the outcome desired would be to ensure that suppliers should be required to pay only where they are identified as the FiTs supplier within the CFR.

11.2.3 – suppliers need to rely on what is recorded within MCS or what has been recorded under the ROO accreditation process.

11.2.4 - suppliers can only meet this requirement in respect of any export meter that might be installed (and this should be covered by existing LCs). Similarly suppliers can determine whether the generation is within expected tolerances for the registered capacity/technology. However, where Suppliers do not own and have no rights over generation meters then clearly it would be unrealistic for them to take on this role.

11.2.5- In the interest of the Government’s desire for ‘smart regulation’ this should be consistent with the approach taken under the RO.

11.3

It is essential for the integrity and reputation of the Government's scheme that the responsibility for investigating and substantiating fraud is undertaken centrally – in the same way as the RO. Suppliers' obligations should be to notify the Authority of any suspected fraud (with reasons) but it should be for the Authority to investigate.

Suppliers should only adjust payments to generators in accordance with 11.4.

11.3.1 – details provided should be limited to why it suspects abuse.

11.3.2 – suppliers must make payments in accordance with the CFR – it should be for the Authority to notify suppliers of any changes to be made to FiTs payments.

12 – General comment

Is a distinction needed between when a change is made that has yet to be recorded within the CFR (where suppliers need to notify the Authority of the need to change information held on the CFR) and actions to be taken once the CFR is changed (when suppliers must act in accordance with the information held on the CFR)?

It is considered that most of the obligations within here should, properly, sit with the Statutory Authority – Ofgem - under the FiTs Order.

Comments below are on the current draft as it stands.

12.1

It is essential that the process of adjusting an installation's entitlement when it is extended is done centrally and the change recorded in the CFR. Suppliers should be required to notify the Authority when they are made aware of an extension so that the Authority can update the CFR to include the information suppliers need to be able to calculate the correct payments to be made.

12.1.2 – Suppliers must refer to the information in the CFR as they will not hold their own database with this information for ALL generators.

12.1.3 – The Authority is responsible for setting the Tariff Code, to do otherwise could be to open up potential action under the Competition Acts.

12.1.5and make payments in accordance with the new details in the CFR.

12.2.1..the Authority must determine these matters using information provided by the generator or supplier

12.2.2

(b)....the Authority should set the Tariff Code echoing Ofgem's role in many other areas

12.3 – suppliers will only be able to do this IF the CFR contains sufficient information for them to be able to determine that this is required.

12.4 - suppliers will only be able to do this if the CFR identified them as separate installations.

13.1.1 – this would be better dealt with through requiring regular declarations from ALL suppliers.

13.3 – does there need to be a backstop specifying who these generators have a right to claim FiTs payments from?

Part 2

Comments as per Part 1

Part 3

2

Companies feel strongly that this is a critical issue for suppliers which it is not possible to comment on in the absence of the full suite of consultation documents

3 – General

It is not clear that this clause is needed given the information provision obligations in SLC 5 of the supply licence.

3.1

Companies believe this is a critical issue for suppliers which it is not possible to comment on because the FiTs Order is not available.

Part 4

2

It seems almost inevitable that the timescales in which this Schedule has been drafted that inconsistencies will arise. We suggest that this clause should also deal with the potential for inconsistency between these provisions and the provisions of the rest of the supply licence and indeed between the provisions within this schedule.

ANNEX TWO – Initial Suggestions for Content of Core Terms for FiTs Agreement

Feed in Tariff Customer Ts&Cs

1. Supplier will make payments in accordance with info on Central FiTs Register
2. Declaration for the generator to sign to say that they are entitled to the FiTs payment
3. Obligations on customer to provide correct information on registration
4. Start date for contract, and eligibility period (i.e. term of contract)
5. Tariff rates and other relevant details from the Tariffs Register
6. Frequency of payment
7. Basis for payment: to be based on meter reads provided by customer, with ability to adjust payment if meter read taken by supplier varies from customer supplied reads
8. Supplier ability to withhold payment in the event of suspected abuse by customer, pending investigation of such abuse
9. Supplier ability to recoup payment in the event of an error by Supplier, customer or Ofgem or abuse by the customer
10. Change in terms (including export tariff rate) – provisions in accordance with licence condition (i.e. notice will be given, customer ability to switch, etc)
11. Obligation on customer to provide the following information:
 - a. meter readings (frequency?)
 - b. notice as soon as reasonably possible in the event that the ownership of the microgen equipment changes including house sale or change of tenancy, or the microgen equipment is extended or any other event occurs which is likely to affect the eligibility of the customer to participate in the scheme
12. Provision setting out that payments will not be made unless customers provide meter readings
13. Access to customer property to take meter reads (which may need to be far reaching, if we are required to access and read and verify a generation meter which may be owned by a customer)
14. Rules and customer obligations for change on FiT supplier
15. Provisions re meters, ownership, damage, etc
16. Information on how customer can change their selection re export tariff payments
17. Information on how customer can assign the FiT to another person.
18. Use of personal information
19. Details of complaints procedure
20. Exclusion of liability
21. Governing law