



STATUTORY INSTRUMENTS.

S.I. No. 365 of 2020

EUROPEAN UNION (RENEWABLE ENERGY) REGULATIONS 2020

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I, Eamon Ryan, Minister for Communications, Climate Action and Environment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Articles 4 and 6 of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Renewable Energy) Regulations 2020.

Interpretation

2. (1) In these Regulations -

“Act of 1999” means the Electricity Regulation Act 1999 (No. 23 of 1999);

“agricultural, aquaculture, fisheries and forestry residues” means residues that are directly generated by agriculture, aquaculture, fisheries and forestry excluding residues from related industries or processing;

“ambient energy” means naturally occurring thermal energy and energy accumulated in the environment with constrained boundaries, which can be stored in the ambient air, excluding in exhaust air, or in surface or sewage water;

“biogas” means gaseous fuels produced from biomass;

“biomass” means the biodegradable fraction of products, waste and residues from biological origin from agriculture including vegetal and animal substances, forestry and related industries, including fisheries and aquaculture, as well as the biodegradable fraction of waste including industrial and municipal waste of biological origin;

“demonstration project” means a project demonstrating a technology or system as a first of its kind in the European Union and representing a significant innovation that goes well beyond the state of the art;

¹ OJ No. L 328, 21.12.2018, p. 82

“Directive” means Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources¹;

“energy from renewable sources” means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic), geothermal energy, ambient energy, tide, wave and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogas;

“geothermal energy” means energy stored in the form of heat beneath the surface of solid earth;

“hydrothermal energy” means energy stored in the form of heat in surface water;

“implementation agreement” means an agreement between a successful applicant in a competition and the Minister that sets out matters including -

- (a) completion dates for the delivery of renewable energy projects,
- (b) rules for the delivery of renewable energy projects, and
- (c) milestones for the delivery and commercial operation of renewable energy projects;

“market” means the wholesale or retail electricity market, as the case may be;

“Minister” means Minister for Communications, Climate Action and Environment;

“producer” means a producer of energy from renewable sources;

“renewable energy” means energy from renewable sources;

“renewable energy obligation” means a support scheme requiring energy producers to include a given share of energy from renewable sources in their production, requiring energy suppliers to include a given share of energy from renewable sources in their supply, or requiring energy consumers to include a given share of energy from renewable sources in their consumption, including schemes under which such requirements may be fulfilled by using green certificates;

“residue” means a substance that is not the end product or products that a production process directly seeks to produce and is not a primary aim of the

production process and the process has not been deliberately modified to produce it;

“small scale installations” means -

- (a) installations generating electricity from renewable energy sources, other than installations generating electricity from wind energy, with installed electricity capacity of not more than 1MW, and
- (b) installations generating electricity from wind energy with an installed electricity capacity of not more than 6MW or 6 generation units;

“supplier” means a supplier of energy to final consumers;

“support scheme” means any instrument, scheme or mechanism established by the Minister that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or by other means, the volume of such energy purchased, and includes, but is not restricted to, investment aid, tax exemptions or tax reductions, tax refunds, renewable energy obligation support schemes including those using green certificates, and direct price support schemes including feed-in tariffs and sliding or fixed premium payments;

“waste” means any substance or object which the holder discards or intends or is required to discard within the meaning of section 4(1) of the Waste Management Act 1996 (No. 10 of 1996) excluding any substances that have been intentionally modified or contaminated in order to meet that definition.

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Support schemes for energy from renewable sources

3. (1) These Regulations shall apply to support schemes administered for the purposes of achieving or exceeding the targets for the share of energy from renewable sources for the European Union and the State referred to in Article 3 of the Directive.

(2) Regulations 4 to 8 shall apply to support schemes referred to in paragraph (1) for the production of electricity from renewable sources.

(3) Regulation 9 shall apply to all support schemes referred to in paragraph (1) for the production of energy from renewable sources.

Incentives under support schemes

4. A support scheme referred to in Regulation 3(1) shall provide incentives for the integration of electricity from renewable sources in the market in a manner which –

- (a) is based on conditions in the market,
- (b) is responsive to market conditions,
- (c) avoids unnecessary distortions of electricity markets,
- (d) has regard to system integration costs, and
- (e) has regard to grid stability.

Design of support schemes for electricity from renewable energy sources

5. (1) A support scheme referred to in Regulation 3(1) shall be designed so as to –

- (a) maximise the integration of electricity from renewable sources in the electricity market,
- (b) ensure that producers of renewable energy respond to market price signals in the electricity market, and
- (c) maximise the market revenues of producers of renewable energy.

(2) Where a support scheme referred to in Regulation 3(1) is a direct price support scheme, the support under the scheme shall be granted in the form of a sliding (including floating) market premium or a fixed market premium.

(3) Without prejudice to European Union law on the internal market for electricity and notwithstanding paragraphs (1) and (2), a support scheme referred to in Regulation 3(1) may provide that small-scale installations or demonstration projects or both are exempt from the application of paragraphs (1) and (2) where necessary to ensure the cost-effectiveness of, and to minimise the overall cost of support under, the scheme and in order to take into account the more limited capabilities of such installations or projects.

Grant of support

6. (1) Support provided under a support scheme referred to in Regulation 3(1) shall be granted following a process that is open, transparent, competitive, non-discriminatory and cost-effective.

(2) Notwithstanding paragraph (1), a support scheme referred to in Regulation 3(1) may provide that small-scale installations or demonstration projects or both are exempt from a requirement to engage in a competitive tendering process under the relevant scheme where necessary to ensure the cost-effectiveness of, and to minimise the overall cost of support under, that scheme and in order to take into account the more limited capabilities of such installations or projects.

(3) Notwithstanding paragraph (1), a support scheme referred to in Regulation 3(1) may provide for a mechanism to ensure regional diversification

in the deployment of renewable electricity, in particular cost-effective system integration.

Limitation to specific technologies

7. Notwithstanding Regulation 6(1), a support scheme referred to in Regulation 3(1) may provide that the competitive tendering process under the scheme is limited to specified technologies where opening the scheme to all producers of electricity from renewable sources would lead to a result which is sub-optimal, having regard to one or more of the following as the case may require:

- (a) the long-term potential of a particular technology;
- (b) the need to achieve diversification of technologies;
- (c) grid integration costs;
- (d) network constraints and grid stability;
- (e) with regard to biomass, the need to avoid distortions of the market in raw materials for biomass.

Project realisation

8. Where support for electricity from renewable sources is provided under a support scheme referred to in Regulation 3(1) following one or more than one competitive tendering process under the support scheme, the Minister shall, in order to ensure a high project realisation rate –

- (a) cause to be established and published non-discriminatory and transparent criteria for qualification for the competitive tendering process in the terms and conditions of each competition under the support scheme,
- (b) set clear dates and rules for delivery of renewable electricity projects in accordance with the terms and conditions of each competition and implementation agreement under the support scheme, and
- (c) cause to be published information about previous competitive tender processes and project realisation rates.

Stability of financial support for renewable energy

9. (1) Without prejudice to Articles 107 and 108 of the Treaty on the Functioning of the European Union and any requirement necessary to comply with those Articles and subject to paragraph (2), the level of, and the terms and conditions attached to, support granted or provided under a support scheme referred to in Regulation 3(1) for renewable energy projects shall not be revised in a manner that negatively affects the rights conferred under such a support scheme and that would undermine the economic viability of a project that is in receipt of support under such a support scheme.

(2) Notwithstanding paragraph (1), the level of support granted or provided under a support scheme referred to in Regulation 3(1) for renewable energy projects may be adjusted in accordance with objective criteria established under the original terms of the support scheme.

(3) The Minister shall cause to be published a long-term schedule which shall be for a period of not less than 5 years or, where budgetary planning constraints exist, a period of not less than 3 years, in relation to the expected allocation of support under a support scheme and which shall include -

- (a) the indicative timing of competitive tender processes, to be held by way of competitive auctions,
- (b) if appropriate, the frequency of competitive tender processes intended to be carried out,
- (c) the expected indicative capacity in volume of renewable energy to be procured,
- (d) the budget or the maximum amount of support expected to be allocated to projects under the support scheme, where relevant, and
- (e) if applicable, the technologies expected to be considered eligible for support under the support scheme.

(4) The schedule referred to in paragraph (3) shall be updated on an annual basis to take into account recent developments in the market for renewable energy or in the expected allocation of support under a support scheme.

- (5) (a) The Minister shall cause an assessment to be carried out, at intervals of not less than 5 years, of the effectiveness of support schemes referred to in Regulation 3(1) for electricity from renewable sources and the major distributive effects of such support schemes on different categories of consumers of electricity and investments in renewable electricity.
- (b) An assessment referred to in subparagraph (a) shall take into account possible changes to such support schemes.

(6) The results of an assessment referred to in paragraph (5) shall be taken into account in the long-term planning with respect to support granted or provided under support schemes referred to in Regulation 3(1) and the design of new support schemes for the purposes of Regulation 3(1).

(7) The assessment referred to in paragraph (5) most recently carried out shall be included in each update of the integrated national energy and climate plans and progress reports required to be submitted to the European Commission under Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018².

² OJ No. L 328, 21.12.2018, p. 1



GIVEN under my Official Seal,
21 September 2020.

EAMON RYAN

Minister for Communications, Climate Action
and Environment.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These regulations give effect to Articles 4 and 6 of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 as regards support schemes for energy from renewable sources and the stability of financial support for renewable energy.

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