

ENERGY, INFRASTRUCTURE &
NATURAL RESOURCES

Good Practice Principles for Community Benefit Funds under RESS

On 30 March 2021, the Department of the Environment, Climate and Communications (DECC) published a draft Good Practice Principles for Community Benefit Funds (the GPP) under the first Renewable Electricity Support Scheme (RESS 1) for public consultation.

The RESS 1 terms and conditions (RESS 1 T&Cs) set out the principal requirements in respect of community benefit funds (to benefit communities in close proximity to RESS 1 projects) which are to be implemented by a generator whose project is supported under RESS 1.

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The RESS 1 T&Cs can be summarised as:

- all RESS 1 projects must set up a community benefit fund (a **Fund**) prior to that project's commercial operation
- €2/MWh loss-adjusted metered quantity is required to be paid into the Fund
- community participation in Fund decision making via the establishment of a local committee is noted as being a key element for the GPP
- the generator is required to publicise and promote the availability of the Fund and raise awareness of the application process
- applications for funding from the Fund are required to be assessed in a fair, non-discriminatory and transparent manner
- the generator or a Fund administrator on their behalf (where Fund administration has been outsourced) is required to distribute monies in the Fund on an annual basis in accordance with a prescribed waterfall: where there are insufficient monies in the Fund (e.g. where there are a significant number of households located within 1km of the onshore wind RESS 1 project, each entitled to a minimum of a €1,000 payment and the Fund does not contain sufficient amounts to pay each household), the generator can seek a derogation (a **Derogation**) from the Minister for the Environment, Climate and Communications (the **Minister**)
- the generator is required to prepare an annual report (to be made publicly available) in respect of the use and promotion of the Fund amongst other things
- a generator may offset contributions subject to any local authority mandated funds (such as pursuant to a planning condition) against the contributions required to be made to the Fund (subject to certain conditions)
- in certain circumstances certain monies in the Fund may be carried forward to future years (e.g. in order to fund a substantive, strategic community project)
- the Minister (or a nominated body) may audit the Fund for compliance with RESS 1 T&Cs



The draft GPP provides additional detail on the manner in which the requirements set above may be complied with. It should be noted the GPP is explicit that it is not intended as a further set of conditions to RESS 1, but is intended only as guidance to compliance. In particular the following is noteworthy:

- the GPP is specific to RESS 1 and therefore may change for future RESS rounds
- a strict definition of “community” (being those who may be entitled to benefit from the Fund) is not laid down in the GPP, instead focusing on a flexible approach, and suggesting that in the first instance “community” may be considered in the terms of radius (“e.g. those living within a certain radius of the project, typically up to 10 kilometers (but can be significantly broader)”)
- the SEAI is the oversight and compliance/ audit body for Funds and it has a role in supporting resolution of disputes that might emerge in any Fund Committee



- the Fund should have a “Fund Committee” made up of community volunteers, the generator and, where applicable, the Fund administrator. The generator is required to facilitate the establishment of this committee (with a recommended minimum membership of five members)
- the generator/fund administrator should “expend considerable effort” in publicising the availability of the Fund and in attracting volunteer community representatives
- the generator has ultimate responsibility for ensuring that the Fund is fully compliant with RESS 1 T&Cs, notwithstanding the appointment of a Fund administrator or the decisions of the Fund Committee
- DECC has established a “RESS Communities Steering Board” to, amongst other things, support the development of community electricity generation projects. In addition, the GPP indicates that the RESS Communities Steering Board will ‘consider’ any disputes (we assume amongst a Fund Committee) that cannot be resolved through consultation with the SEAI. However, ultimately the Minister will be the final arbiter of any dispute
- the GPP clarifies that the €2/MWh reserved by a project for the benefit of the community must be transferred to the Fund on an annual basis, beginning on the first anniversary of the commercial operation of the project, thus allowing for a project to build a reserve in the year preceding the relevant anniversary (however, the Fund timeline contained in the GPP makes this less clear as it appears to indicate the Fund is funded prior to commercial operation based on forecasted revenues)
- the GPP clarifies that a Derogation in relation to community benefit payments applies only in respect of the 1km near neighbour payments and not more generally (i.e. the community benefit fund requirement is not subordinate to payment of operating costs for example)
- the Fund should not be used as security by any party for any borrowing or credit. The Fund is precluded from “entering into any borrowing requirements” at any time. Our view is that this applies to the Fund structure itself and that the security restriction only applies to monies actually transferred to the Fund’s account, rather than cashflows of a project reserved for the purpose of making this transfer
- generators, Fund administrators and Fund Committees will need to carefully consider the entities they fund and the level of funding to ensure State aid rules are not breached



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