



## RESS 3 Terms and Conditions: Five key changes

# Contents

Introduction	2
What is RESS and how does it work?	3
What are the key changes in the RESS 3 Terms and Conditions?	4
Key change 1: Unrealised available energy compensation	4
Key change 2: Commencement and duration of support	7
Key change 3: Indexation	8
Key change 4: PSO order	9
Key change 5: Grid connection requirements	10
Other notable changes	11
Your key contacts	13

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at [dlapiper.com](https://dlapiper.com).

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2023 DLA Piper. All rights reserved

# Introduction

The terms and conditions for Ireland's third onshore Renewable Energy Support Scheme (**RESS 3**) were published by the Irish Department of the Environment, Climate and Communications (**DECC**) on 4 May 2023 following consultation by DECC.

RESS 3 is the third round of the Irish Government's financial subsidy scheme for the onshore renewable energy industry (RESS 1 closed in July 2020 and RESS 2 closed in June 2022). The purpose of the scheme is to support the onshore renewable energy industry and to accelerate the development of substantial onshore renewable energy generation assets. This will contribute toward Ireland's ambitious target of having 80% of total electricity generation from renewable sources by 2030.

In this briefing, we:

- explain the nature of the support offered under RESS; and
- identify certain other key changes made to the RESS 3 Terms and Conditions as against the RESS 2 position.

The changes made are intended to reduce risks carried by developers in RESS 1 and RESS 2. The extent to which developers are comfortable with the manner in which the scheme has addressed such risks will be a significant factor in determining its success.

According to EirGrid's timetable, the RESS 3 auction will take place in September 2023<sup>1</sup> and in line with this, EirGrid has now provided the Auction Qualification Information Pack<sup>2</sup>.

---

<sup>1</sup> [RESS-3-Auction-Timetable-\(R3AT\).pdf \(eirgridgroup.com\)](#)

<sup>2</sup> [RESS 3 Qualification Information Pack V2 \(eirgridgroup.com\)](#)

# What is RESS and how does it work?

RESS is the primary State subsidy scheme for the promotion of commercial scale generation from onshore renewable sources in Ireland. A separate scheme, the Offshore Renewable Energy Support Scheme (ORESS), provides support for offshore wind.

Support under RESS takes the form of a “floating feed-in premium” (**FIP**), which is similar in its operation to a contract for differences based on prices in the Irish Single Electricity Market (**SEM**) Day Ahead Market. Support is allocated by a “pay as bid” auction and if a project is successful in the auction, the offer price bid into the auction by that project becomes the Strike Price for settlement of that project’s RESS-supported contract for differences. To benefit from RESS, each generator is required to enter into a power purchase agreement with a licensed electricity supplier (the **Offtaker**). The Offtaker buys the power output from the project under that power purchase agreement (typically for the Strike Price less a fee for the Offtaker). The Offtaker then sells the power into the SEM and receives payment for it (although depending on how it trades the power, the amount received per MWh may not be equal to the price in the SEM Day Ahead Market).

In simple terms, to the extent that, for any hour, the price in the SEM Day Ahead Market:

- is less than the Strike Price, the Offtaker will receive a RESS support payment equal to the amount of that shortfall for each MWh generated in the relevant hour; and
- exceeds the Strike price, the Offtaker is required to pay a RESS difference payment, equal to the amount of that excess for each MWh generated in the relevant hour.

RESS is funded by a Public Service Obligation levy (**PSO Levy**) which is imposed as an additional charge on supplies of electricity to final customers.

# What are the key changes in the RESS 3 Terms and Conditions?

## Key change 1: Unrealised available energy compensation

As mentioned in our previous articles on RESS<sup>3</sup> and ORESS<sup>4</sup>, increased connection of renewable generation assets to an Irish grid that requires widespread upgrades to accommodate those assets is likely to mean that constraint (i.e. generation reduction to resolve localised network constraint or transmission congestion) and curtailment (i.e. generation reduction to resolve system wide stability issues) remain significant issues for renewables generators.

RESS 1 and RESS 2 contain a Curtailment Compensation Arrangement (**CCA**) which compensates projects for curtailment where curtailed energy exceeds a 10% threshold. This mechanism left generators carrying significant risk and required them to make assumptions which affected the prices they offered in those auctions. As flagged in the RESS 3 Consultation, subject to State aid approval, DECC has now replaced the CCA with a new “availability” compensation mechanism, known as Unrealised Available Energy Compensation or “**UAEC**”.

UAEC is intended to de-risk developers from oversupply and curtailment related uncertainty, enabling support to be provided on the basis of a quantity closer to the energy available to be produced rather than energy actually produced (and not produced because of oversupply or curtailment). UAEC forms part of the overall support provided for under RESS 3, alongside the RESS 3 FIP that applies for energy actually generated.

A key change, compared to the CCA, is that the UAEC applies to both:

- curtailment; and
- oversupply, including for hours with negative Day Ahead Market prices,

unlike the CCA which only applies to curtailment. However, constraints will not be compensated by the UAEC, as the RESS 3 Terms and Conditions state that transmission constraints remain an important locational signal as firm grid access is not required in order to benefit from UAEC.

Where available energy is not converted to generation for reasons of either curtailment or oversupply, RESS 3 will pay compensation for each MWh of such unproduced generation at the Strike Price. Further benefits of the UAEC compared to the CCA are that the 10% threshold in the CCA is removed and compensation under the UAEC will be available for hours in which the Day Ahead Market price is negative, which was not the case with the CCA.

---

<sup>3</sup> [Five key takeaways from Ireland's RESS 3 Consultation](#)

<sup>4</sup> [ORESS 1 Terms and Conditions: Five Key Takeaways](#)

Where a RESS 3 project receives compensation for curtailment or oversupply other than pursuant to the UAEC (i.e. under Article 13 of the Clean Energy Package Electricity Regulation<sup>5</sup>) such amounts will be deducted from the UAEC.

It is envisaged that by removing curtailment and oversupply risk, downward pressure would be applied on auction Strike Prices, since there would no longer be a need for developers to price these risks into their auction bids.

One consideration for developers is that projects may need enhanced measuring devices to be eligible to receive UAEC. This is because physical availability will be measured against a standard, which will be set by the regulatory authority using physical measurement of availability from anemometers or similar, and subject to any new measurement, testing and verification procedures that may be required to measure availability for RESS 3 projects.

To receive such compensation, generators must have participated in the SEM and offered their output at their variable cost.

## HOW DO THE RESS 3 TERMS AND CONDITIONS COMPENSATE FOR CURTAILMENT (UAEC)?

The table below sets out the key comparisons between the RESS 1 and RESS 2 curtailment compensation mechanism and UAEC:

RESS 1 / RESS 2 Compensation	RESS 3 UAEC
Compensation only available for curtailment.	Compensation available for curtailment and oversupply.
For compensation to be available, curtailment must exceed 10% and compensation is only available for a certain portion of curtailed energy.	No minimum threshold for curtailment or oversupply in order for compensation to be available. Compensation is calculated as set out below and available for all electricity not generated due to curtailment or oversupply.
No compensation for constraint.	Same.
Compensation paid at the Strike Price.	Same.

---

<sup>5</sup> Regulation (EU) 2019/943

## HOW IS UAEC CALCULATED?

UAEC will be funded through the PSO Levy and will be available at all times regardless of whether the Day-Ahead Market Price is positive or negative.

To calculate UAEC, in simple terms:

- First, the “**Physical Availability**” of the project for the relevant hour of generation needs to be calculated:
  - “Physical Availability” is calculated as the actual availability of the relevant project in any hour to produce Active Power (as defined in the SEM Trading and Settlement Code) and will be measured using anemometers or similar devices.
- Second, the “**Eligible Available Quantity**” of the relevant project for the relevant hour of generation needs to be calculated:
  - The “Eligible Available Quantity” for the relevant hour of generation is calculated as the “Physical Availability” (see above) for that hour (to the extent offered into the SEM Day Ahead Market, a SEM Intra-Day Market or the Balancing Market (but there is no need to have secured an ex-ante market position) at an offer price no greater than the short run marginal cost of generation) minus any reductions in power resulting from:
    - network constraints;
    - local system stability constraints; or
    - forced or planned transmission connection asset outages.
- Third, the “**Unrealised Available Energy**” of the relevant project for the relevant hour of generation will need to be calculated:
  - The “Unrealised Available Energy” is calculated as the difference between the loss-adjusted “Eligible Available Quantity” (see above) and the actual Loss-Adjusted RESS Metered Quantity of the relevant project in that hour (i.e. the quantity that is used for the calculation of Support Payments and Difference Payments (both as defined in the RESS 3 Terms and Conditions)).
  - The “Unrealised Available Energy” will be zero if the relevant project fails to comply with a dispatch instruction from the transmission system operator (TSO) (i.e. EirGrid plc) or the Loss-Adjusted RESS Metered Quantity is greater than the Loss-Adjusted Eligible Available Quantity in that hour.
- Fourth, “**UAEC**” will be calculated by multiplying Unrealised Available Energy for the relevant hour of generation by the Strike Price and deducting “Other Compensation for Unrealised Available Energy”.
  - “Other Compensation for Unrealised Available Energy” is any other compensation obtained for the Unrealised Available Energy outside the provisions of the RESS 3 Terms and Conditions that is duplicative of the Unrealised Available Energy Compensation, including any compensation for energy corresponding to the Unrealised Available Energy received pursuant to Article 13 of Regulation (EU) 2019/943 (as implemented in the SEM).



## Key change 2: Commencement and duration of support

The RESS 1 and RESS 2 terms and conditions provide for projects to achieve commercial operation (i.e. the date that the RESS 3 project has both:

- a. been issued with an interim operational notification from the TSO or has paid the 'third stage payment' under the grid connection agreement; and
- b. achieved equal to or greater than the minimum installed renewable capacity) (**Commercial Operation**) within a specific window, with RESS support commencing on the date on which Commercial Operation is achieved.

Subject to possible extensions for force majeure, the period of support for all RESS 1 and 2 projects ends on a single fixed date, regardless of the date on which Commercial Operation is achieved. This means that the period of support can vary between individual projects but is, depending when Commercial Operation is achieved, payable for a maximum of 16.5 years.

For RESS 3 projects, support commences on the later of 31 October 2024 or 90 days after the date on which the RESS 3 project's interim operational notification (**ION**) is issued by the TSO or DSO, as appropriate (the **RESS 3 Support Start Date**). DECC has stated that this means support commences on successful energisation of projects (with a buffer period to allow projects a reasonable duration to progress through dispatch testing). This is a change from RESS 1 and RESS 2 under which the support period was triggered via a declaration by participants.

The deadline by which projects must achieve Commercial Operation within the meaning of the RESS 3 Terms and Conditions is 30 April 2027 and failure to achieve this will result in revocation of the letter of offer for RESS 3 support from the Minister for the Environment, Climate and Communications to the generator and exclusion from RESS 3.

Subject to possible extensions for force majeure, the period of support for all projects which are allocated RESS 3 support begins on the RESS 3 Support Start Date and ends on the earlier of 30 April 2042, or where the RESS 3 project has had its Letter of Offer withdrawn or revoked or has exited or withdrawn from RESS 3 the date of such withdrawal, revocation or exit (the **RESS 3 Support Period**).



## Key change 3: Indexation

### REOPENING THE DOOR TO INDEXATION MECHANISMS

Strike Prices were not subject to any indexation under RESS 1 and RESS 2. This was a significant change on introduction of RESS, as the floor prices under the previous REFIT schemes were subject to CPI indexation.

The significant rise in inflation in recent times has impacted the ability to finance and deliver RESS 1 and RESS 2 projects. Pricing inflation risks into bids also contributed to higher Strike Prices in the RESS 2 auction. Developers have been consistent in their calls for DECC to introduce indexation mechanisms to the onshore and offshore RESS schemes. Following such calls, the RESS 3 Terms and Conditions provide for limited indexation.

In the offshore context, the ORESS 1 Terms and Conditions incorporate detailed indexation provisions, which provide for a one-off full indexation of the Strike Price at the start of construction and partial indexation of the Strike Price on an annual basis after that.

Although more limited than the equivalent provisions for offshore, the incorporation of indexation provisions in the RESS 3 Terms and Conditions by DECC is a positive development.

### THE RESS 3 POSITION ON INDEXATION

The RESS 3 Terms and Conditions provide that the strike price will be adjusted on each annual indexation date (each 1 January after the closing date for receipt of offers for participation of a project in RESS 3) by reference to the Harmonised Index of Consumer Price (**HICP**) published by Eurostat, or such other replacement index as the Minister may designate. The Minister (or its nominee) will after each Indexation Date publish the calculations in respect of the indexation of the Strike Price for that date and notify each project of the adjustments to their Strike Prices.

On each 1 January occurring after the Indexation Date, the RESS 3 Terms and Conditions provide for the indexation of 30% of the then-current Strike Price upwards or downwards in proportion to the change in the HICP since the last indexation adjustment.

## Key change 4: PSO order

The RESS 3 Terms and Conditions introduce new obligations for generators to, and to procure that their Suppliers, take all necessary steps to ensure that:

- its RESS 3 project is listed in the PSO Order in respect of the PSO Levy Period/Year (i.e. the one-year period running from 1 October to 30 September the following year) in which its ION will be issued; and
- all necessary information and documentation required for the purposes of ensuring that its RESS 3 project is entitled to (as applicable) make or receive RESS 3 payments is provided to the regulatory authority (i.e. the CRU) as soon as practicable,

in each case such that RESS 3 payments may be made in respect of the RESS 3 project with effect from with effect from the date its ION is issued.

If a generator fails to comply with the above obligation, or fails to procure that its supplier does so, the following significant consequences apply:

- the RESS 3 Payments made to it in any subsequent PSO Levy Year will be subject to an adjustment of market revenues of the project in the period of non-compliance minus the Strike Price multiplied by the metered output of the relevant RESS 3 project (however, where the calculation results in a negative number no adjustment will be made) and such amount will be applied to decrease support payments/increase difference payments (as applicable); and/or
- the project's participation in RESS 3 will be terminated, the Letter of Offer revoked, and the full performance security may be drawn down by the Minister (as applicable).

## Key change 5: Grid connection requirements

As with RESS 1 and RESS 2, the RESS 3 Terms and Conditions contain eligibility criteria regarding matters such as planning and grid which projects must satisfy in order to be eligible to participate in the RESS 3 auction.

From a grid perspective, in order to be eligible to participate in RESS 2, projects were required to:

- have been issued with a grid connection offer;
- be party to a grid connection agreement; or
- be an Enduring Connection Policy (ECP)<sup>6</sup> project that is eligible to be processed to receive a valid connection offer.

For RESS 3, this has been tightened significantly.

The definition of “**Grid Contracted Project**” in the RESS 3 Terms and Conditions has been changed such that projects must either:

- have received a grid connection offer which offer is capable of acceptance within the 90-day period; or
- have accepted a grid connection offer and be party to a grid connection Agreement which is valid for the duration of the RESS 3 Support Period.

The tightening of these provisions will inevitably rule certain projects out of the auction and, therefore, potentially reduce the level of competition in the auction. In his press release on the matter the Minister stated that the changes will “minimise the risks associated with projects speculatively bidding in the auction and the consequent significant risk to project delivery.”

Further detail was provided in the RESS 3 Consultation response document that accompanied the RESS 3 Terms and Conditions. It stated that:

“This will better mitigate the risks associated with projects speculatively or prematurely bidding in the auction and the consequent significant risk to project delivery. A number of respondents cited this change as potentially problematic, and cautioned that it may result in delayed deployment of projects. It is noted that the same respondents also requested that the hard stop deadline for delivery be removed as projects not in receipt of a grid offer at the time of the auction would a) struggle to meet the Longstop date, and b) need to price in a premium for this risk. The Department is of the view that this change in eligibility criteria is in the best interests of consumers and places the risk with the party best placed to manage it.”

It is noted that despite tightening the rules regarding access to RESS 3, DECC still does not allow projects whose grid connection is delayed to claim force majeure to obtain relief from the RESS 3 milestone dates (as set out in the RESS 3 Terms and Conditions).

---

<sup>6</sup> The CRU's Enduring Connection Policy for grid connection allocation. For further detail on this, please see our article on the most recent ECP 2.4 round which is available [here](#).

## Other notable changes

Other notable changes included in the RESS 3 Terms and Conditions include:

### 1. COMMUNITY PROJECTS AND BENEFIT FUNDS

- References to community led projects have been removed from the RESS 3 Terms and Conditions. DECC has stated that support for communities for the development of renewable projects will now transition to the non-competitive Small-Scale Generation Scheme (**SSGS**) which is due to be launched later this year.
- The requirement for projects to contribute €2.00/MWh to a community benefit fund has been retained in the RESS 3 Terms and Conditions which also give the Minister further rights to request and receive all documents and records in connection with these funds, to ensure compliance with the RESS 3 Terms and Conditions and the Good Practice Handbook.

### 2. MAXIMUM OFFER PRICE

- For RESS 1 and RESS 2, the maximum offer price that generators could bid into the auction was €120/MWh. The RESS 3 Terms and Conditions state that the maximum offer price will be confirmed in the Auction Information Pack provided by EirGrid.
- The average price for offshore wind in ORESS 1 (which included a UAEC similar to RESS 3 and a more generous indexation provision than RESS 3) of €86.05/MWh is not necessarily a guide due to the significantly different nature of offshore projects and other factors such as offshore projects receiving a significant contribution towards the cost of grid construction which is not available to onshore developers.

### 3. DISPATCH INSTRUCTIONS

- The RESS 3 Terms and Conditions include a new provision which requires that RESS 3 projects must comply at all times with TSO dispatch instructions in order to be eligible to receive RESS 3 support. The explanatory documents provided by DECC do not specify the concerns which led to this inclusion.

### 4. BID BOND AND PERFORMANCE SECURITY CALCULATIONS

- The RESS 3 Terms and Conditions provide that the use of any capacity factor in the calculation of the bid bond requirement amount other than renewable capacity factors specified in the RESS 3 Terms and Conditions will result in an incorrect amount and if submitted to the TSO will result in the applicant's disqualification from RESS 3.

- Similarly, the RESS 3 Terms and Conditions provide that the use of any capacity factor in the calculation of the performance security amounts other than renewable capacity factors specified in the RESS 3 Terms and Conditions will result in an incorrect amount and if submitted to the TSO may render a successful applicant ineligible to receive a Letter of Offer and result in the Minister instructing the TSO to draw down on the bid bond provided by the successful applicant.

## **5. DECLARATIONS**

- Declarations submitted by directors in connection with the RESS 3 auction must be signed by a practising solicitor and evidence of the solicitor's practising certificate or registration number must be provided.
- In addition to legal penalties, if any statement in the declaration is not found to be true or accurate for the duration of the RESS 3 Support Period, the project may be disqualified from participating in RESS 3, the Letter of Offer may be revoked and bid bond/performance security may be drawn down, and the applicant may be prohibited from participating in RESS competitions for 5 years. The prohibition on participation for 5 years applies regardless of whether the RESS 3 auction is held.

## **6. NOT REACHING RESS 3 SUPPORT START DATE**

- Any successful RESS 3 project which has executed an Implementation Agreement with the Minister and received a Letter of Offer but has not reached the RESS 3 Support Start Date (including where it withdraws prior to achieving the RESS 3 Support Start Date) is prohibited from participating in any future RESS competitions which take place prior to 30 April 2027.

## **7. CORPORATE PPAS**

- Corporate PPAs (CPPAs) naturally compete with RESS for projects and the changes to RESS 3 such as the UAEC and partial indexation appear to have made RESS more attractive than many CPPA terms. In our previous RESS 3 article, we noted that the RESS 3 Consultation referred the CPPA Roadmap's statement that RESS design decisions for each RESS auction should provide levers to stimulate the CPPA market. The RESS 3 Consultation specifically asked how the RESS 3 design should facilitate CPPAs in a way that aligns with the CPPA Roadmap Principles.
- The RESS 3 Terms and Conditions state that the Minister, in setting the maximum and minimum quantities of energy to be procured by RESS 3, took into account the objective of stimulating the CPPA market. No further detail on these considerations is provided.

## Your key contacts



**William Marshall**

Legal Director

T: +353 1 487 6696

[william.r.marshall@dlapiper.com](mailto:william.r.marshall@dlapiper.com)



**Seán McGrenaghan**

Legal Director

T: +353 1 588 4711

[sean.mcgrenaghan.dlapiper.com](mailto:sean.mcgrenaghan.dlapiper.com)



**Conor Houlihan**

Partner, Head of Finance, Projects  
& Restructuring in Ireland

T: +353 1 436 5465

[conor.houlihan@dlapiper.com](mailto:conor.houlihan@dlapiper.com)



**Matthew Cole**

Partner, Head of Corporate in Ireland

T: +353 1 487 6669

[matthew.cole@dlapiper.com](mailto:matthew.cole@dlapiper.com)

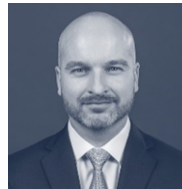


**Natasha Luther-Jones**

Global Co-Chair, ENR and  
International Head ESG

T: +44 (0) 113 369 2978

[natasha.luther-jones@dlapiper.com](mailto:natasha.luther-jones@dlapiper.com)



**Eanna Mellett**

Partner

T: +353 1 436 5468

[eanna.mellett@dlapiper.com](mailto:eanna.mellett@dlapiper.com)



**Rebecca Clabby**

Associate

T: +353 1 588 4726

[rebecca.clabby@dlapiper.com](mailto:rebecca.clabby@dlapiper.com)



**John McGrath**

Associate

T: +353 1 487 6657

[john.mcgrath@dlapiper.com](mailto:john.mcgrath@dlapiper.com)