

# DRAFT Guidance for Fixed Bottom and Floating Offshore Wind projects on Monitoring the Implementation of Sustainable Industry Rewards and Minimum Standards

NOTE THAT THIS IS A DRAFT DOCUMENT. IT IS SUBJECT TO CHANGE AND WILL CONTINUE TO BE REVISED AHEAD OF THE LAUNCH OF THE SUSTAINABLE INDUSTRY REWARD SCHEME. NEW VERSIONS WILL BE UPLOADED TO GOV.UK ON A ROLLING BASIS. INDUSTRY WILL BE NOTIFIED VIA RENWABLES UK AND SCOTTISH RENEWABLES WITH EACH UPLOAD, AND VIA THE CFD STAKEHOLDER BULLETIN.

## 1. Purpose of this Guidance Document

- 1.1 In order to qualify for a Contract for Difference (CfD) Allocation Round, CfD applicants for all fixed bottom or floating offshore wind generating stations are required to provide National Grid ESO (as Delivery Body) and the Low Carbon Contracts Company (LCCC) with a statement by the Secretary of State for Energy Security and Net Zero, showing that their SIR application has met the minimum standards, as set out in section 12 of the SIR Allocation Framework, and which of their commitments have been awarded SIRs.
- 1.2 This guidance is designed to assist Generators who are awarded a Contract for Difference in understanding how delivery of their Sustainable Industry Reward commitments (including meeting the minimum standards) will be monitored and assessed. Receipt of SIR payments is conditional on successful delivery of commitments.
- 1.3 The guidance also covers the process of determining, and the consequences, of partial and non-delivery of SIR commitments, including the minimum standards.
- 1.4 All matters relating to the allocation of SIRs are dealt with in the SIR Allocation Framework.
- 1.5 An SIR applicant that receives a Contract for Difference, will be referred to hereafter as 'the Generator'.

## 2. Contractual Obligations

- 2.1 After a project is awarded a CfD contract, Generators will be contractually committed to deliver their SIR commitments via their CfD contract, including delivery of the proposed expenditure on the required minimum standards.
- 2.2 All statements and documents provided to meet the requirements of an SIR application, as set out in rules 5, 6 and 7 and 13 of the Allocation Framework may be used in either drawing up contractual requirements to ensure what is being proposed is delivered, or as part of the monitoring process to track delivery of a commitment.
- 2.3 The date by which SIR commitments, including minimum standards, will need to be delivered will be taken from the proposed dates submitted in a Generator's SIR

application for each commitment. In all cases the SIR delivery date must be before the project's commissioning date, as must the delivery of the minimum standard investment.

2.4 A Generator's SIR contractual commitments will match the obligations outlined in the SIR statement issued to the Generator by the Secretary of State, following the SIR allocation.

2.5 A Generator is required to deliver on their SIR contractual obligations in order to be eligible to receive their SIR payment. A Generator who does not comply with their contractual obligations may face a potential performance related adjustment to their SIR (see next sections).

2.6 A Generator is required to deliver on the contractual obligations related to SIR minimum standards. A Generator that does not comply with minimum standards will have performance related adjustments applied to their CfD payments (see next sections).

2.7 For the avoidance of doubt, an eligible Generator that has not obtained any extra revenue support through SIRs must still deliver the minimum standard of investment needed to be eligible to enter the CfD Allocation Round.

### **3. Sustainable Industry Reward Monitoring and Assessment**

#### **Overview of Monitoring and Assessment:**

3.1 Once a Generator has entered into a Contract for Difference, the Department for Energy Security and Net Zero will begin the monitoring process. The purpose of the monitoring process is to gather information on the implementation of all of the SIR commitments a Generator has made, and the implementation of minimum standards. This is necessary to identify any issues that may impede a Generator's ability to meet their commitments, and ensure the SIR is delivered on time.

3.2 After a Generator has implemented their Sustainable Industry Reward commitments and/or met the minimum standard, they can submit an application to DESNZ for an 'implementation statement' which will confirm that commitments have been delivered. The Secretary of State for Energy Security & Net Zero will then assess whether the Sustainable Industry Reward or the minimum standard investment value has been fully implemented.

3.3 Once the Secretary of State is satisfied the SIR commitment or minimum standard has been implemented, they will issue an SIR Implementation Statement to the Generator and notify the Low Carbon Contracts Company (LCCC) to allow the payment of the Sustainable Industry Reward to the Generator.

### **4. Principles of monitoring and assessment**

4.1 As part of the monitoring and assessment phases, the Department for Energy Security & Net Zero will be looking for evidence that Generators have either:

- met their commitments.
- are on track to meet their commitments.

- 4.2 The monitoring process will be used to track progress and identify emerging problems with the default position being to solve issues, rather than penalising Generators. Note that the Department for Energy Security & Net Zero may ask any questions it deems relevant to the fulfilment of a commitment, even if that means asking about events, projects or activities that are not explicitly name checked in a commitment, as per regulations X.
- 4.3 If an SIR commitment can only be partially met or may not be met, the Generator should inform DESNZ as soon as practicable, as to how much of the commitment can be delivered. Upon request, DESNZ can set out how missing or underperforming on a given commitment translates into likely underspend against that commitment.

## 5. Force majeure

- 5.1 Should a Generator realise that an SIR commitment cannot be delivered due to unforeseen circumstances and for reasons outside of their control, they should inform the DESNZ monitoring team as soon as reasonably practical, setting out the details of what has happened.
- 5.2 In the first instance, the Generator should check if the impact of the loss of their SIR commitment will result in them failing to meet the minimum standard investment. If the Generator has invested above the minimum standard investment, they may still be eligible for a partial SIR payment. Should there be a shortfall in the minimum standard, a Generator should seek to propose alternative minimum standard investment to cover the shortfall.
- 5.3 If a Generator is unable to submit alternative investments to meet the minimum standard investment total, a Generator may submit a force majeure claim and provide evidence to support their claim, including details of any action taken to rectify the issue.
- 5.4 DESNZ will deem that non-delivery is not a Generator's fault if:
- 5.4.1 [The issue arising could not reasonable have been foreseen
  - 5.4.2 A manufacturer and/or port cannot deliver on their contractual commitments with the Generator
  - 5.4.3 An issue arises from an unforeseeable change in law
  - 5.4.4 Further clauses TBD]
- 5.5 The DESNZ monitoring team will assess the evidence provided and inform the Generator if the force majeure claim is acceptable.
- 5.6 If the issue prevented fulfilment of the SIR minimum standard, and DESNZ deems it is not the generator's fault, and no alternatives could be found, an SIR Implementation Statement in relation to that proposal may be given, but it will be specified that no payments are to be made and that no Performance Related Adjustment is to be applied to that commitment.

5.7 Should DESNZ disagree with the Generator's claim that non-delivery was out of their control, the SoS may refuse an implementation statement due to minimum standards not being met and setting out performance related adjustment.

5.8 A Generator may still use the force majeure clause in the CfD contract if they take issue with the SoS's refusal to issue an implementation statement or release payments, or request a Judicial Review.

## **6. Frequency of monitoring**

6.1 DESNZ will hold regular monitoring meetings, at least twice a year, with the Generator on each of their SIR commitments until implementation. DESNZ and the Generator will agree dates for monitoring meetings at the first session, and the meetings will continue until an application has been issued or refused by the Secretary of State. Either party may ask for a monitoring meeting at any time outside of the pre-scheduled ones. The frequency of monitoring is to ensure that all emerging issues are identified and addressed in a timely manner.

## **7. The monitoring process up to Delivery of an SIR Commitment**

7.1 The monitoring meetings will be based on the Generator's SIR commitments, including minimum standards. Each commitment will be examined in turn, and evidence of progress or difficulties will be required for each meeting. The Generator should provide notice as soon as reasonably practicable to DESNZ of any potential issues arising that may impact the delivery of their SIR commitments.

7.2 The Generator should provide a colour-coded RAG rating summarising progress against each of their commitments. The categories used will be:

- On track or fulfilled (green)
- Off-track but still deliverable (amber)
- Commitment not met or unlikely to be met (red)

7.3 All supporting documents from the Generator must be submitted no later than one week before the scheduled meeting. Failure to submit supporting documents one week before may result in the meeting being delayed until DESNZ has had a chance to review all documents.

## **8. Assessment of SIR Implementation**

- 8.1 For DESNZ to release SIR payments or to confirm delivery of the minimum standards, Generator's are required to submit an application to the Secretary of State for DESNZ to issue an SIR Implementation Statement in respect of the delivery of the SIR commitment or minimum standard.
- 8.2 The Secretary of State will then assess whether the SIR or minimum standard has been fully implemented, relying in part on information collected during the monitoring meetings. Projects with multiple SIRs can choose whether to submit applications for SIR Implementation Statements individually or in bulk.
- 8.3 As part of the final assessment of the implementation of an SIR commitment or minimum standard, a Generator must submit supporting evidence to show how they have implemented each commitment. It is up to the Generator to choose a format to present their evidence.
- 8.4 Generators are required to submit the following evidence: -
- Evidence of total amount of investment.
  - Copy of relevant parts of the signed contracts showing total investment.
  - Updated benefits statement (as originally submitted in the application, see SIR Allocation Framework).
  - Confirmation of any other deliverables linked to the investments.
- 8.5 Generators will receive an email to confirm receipt of the submission of these documents within three working days. If a Generator does not receive an email confirmation, or if they encounter any problems submitting documents, they should contact the DESNZ at the earliest opportunity.
- 8.6 DESNZ will then assess the evidence against the SIR commitments or minimum standards. This will entail, DESNZ checking that all the SIR obligations in the contract have been met and checking the veracity of the evidence submitted to satisfy the Secretary of State that the SIR or minimum standard has been delivered.
- 8.7 DESNZ will undertake to assess the submitted documentation within [20] working days of receipt. DESNZ will assess each SIR commitment in turn for delivery.
- 8.8 If an SIR commitment has been fully implemented, the Department will issue an SIR Implementation Statement from the Secretary of State to the Generator and notify the Low Carbon Contracts Company (LCCC) to pay the full amount of the Sustainable Industry Reward to the Generator.
- 8.9 If an SIR commitment has only been partially implemented by the Generator by the delivery date of their commitment and after a grace period of [6 months] during which corrective action may be undertaken by the Generator, and so long as the Generator has exceeded the minimum standards set out in the contract, the Department will issue a partial SIR Implementation Statement to the Generator and notify the Low Carbon Contracts Company (LCCC) to pay the revised amount of the Sustainable Industry Reward to the Generator (see below for how a Performance Related Adjustment is calculated).

- 8.10 A Generator that does not deliver their SIR commitment by the delivery date of their commitment and after a grace period of [6 months] during which corrective action may be undertaken, but does invest the minimum standard, will neither receive a partial SIR payment nor face a performance related adjustment. The Department will issue a qualified SIR Implementation Statement to the Generator and notify the Low Carbon Contracts Company (LCCC) that no Sustainable Industry Reward is payable to the Generator in respect of that SIR commitment (see below for how a Performance Related Adjustment is calculated).
- 8.11 A Generator that does not deliver on the minimum standards as set out in the Allocation Framework cannot receive SIR payments.
- 8.12 A Generator that does not deliver on the minimum standards should still submit evidence of any investments they have made. This evidence can be submitted at any time before the commissioning date of the project. There will be a grace period of [6 months] during which corrective action may be undertaken by the Generator.
- 8.13 If, after the grace period, corrective action has not resulted in the delivery of the minimum standard, the Department will notify the Generator of its refusal to provide a sustainable industry reward implementation statement and the extent to which the generator has failed to meet the minimum standards of contribution to the development and sustainability of supply chains, as set out in the SIR allocation framework. The Department will notify both the Generator and the Low Carbon Contracts Company (LCCC) of the Performance Related Adjustment amount to be deducted from the Generator's CfD payments (see below for performance related adjustment calculations).
- 8.14 If a Generator fails to submit evidence to DESNZ of delivering the minimum standard of investment after the [6 months] grace period has ended, DESNZ will assume that no investments have been made towards meeting the minimum standard and will therefore deduct the full amount of the minimum standard as set out in the contract for the Generator's CfD payments. The Generator will not be issued an SIR Implementation Statement, on the grounds that the generator could not evidence it met the minimum standards of contribution to the development and sustainability of supply chains, as set out in the SIR allocation framework. The Low Carbon Contracts Company (LCCC) will be notified of the Performance Related Adjustment amount to be deducted from the Generator's CfD payments.

## **9. Performance related adjustments**

### **9.1 Partial Delivery**

- 9.1.1 A Generator that partially delivers an SIR commitment set out in their contract will only receive a partial SIR payment, proportionate to the level of delivery, once CfD payments begin. No payment will be made if the Generator fails to meet the minimum standards as set out in the contract, which will reflect the minimum standards set out in this SIR Allocation Framework.

- 9.1.2 The performance related adjustment for partially delivered SIR commitments will be calculated as follows:

*Partial SIR payment = Proportionate to value of proposed investment delivered*

- 9.1.3 For example, if a generator proposes an investment of £100, contingent on SIR support of £10, but only £90 of investment is made, then the SIR payment will be adjusted proportionally, e.g. £90 is 90% of the original commitment, therefore only 90% of the payment will be made, i.e. £9.

- 9.1.4 The Secretary of State will notify the Generator through the SIR Implementation Statement what they consider to be the total actual spend on an SIR commitment, and why, allowing the Low Carbon Contracts Company to calculate the relevant performance related adjustment. The Department will also notify the Low Carbon Contracts Company (LCCC) directly as to the contents of this statement.

### 9.3 Non-delivery SIR, but project has delivered the Minimum Standards

- 9.3.1 A Generator that does not deliver their SIR commitment but does invest to the minimum standard will neither receive a partial SIR payment, nor face a performance related adjustment.

### 9.4 Non-delivery of Minimum Standards

- 9.4.1 A Generator that does not deliver on the minimum standards as set out in the contract, will have performance adjustments applied to their quarterly CfD payments, until the full value of the performance adjustment has been applied.

- 9.4.2 These adjustments will be equal to the difference between the total minimum standard required, and the actual spend of the Generator against that minimum standard.

$$\begin{aligned} \text{Performance related adjustment} \\ = \text{Min standards} - \text{actual spend on Min Standards} \end{aligned}$$

- 9.4.3 The Secretary of State will not issue an Implementation Statement and will notify the Generator that they consider that the minimum standard spend is below the required amount, and the reasons supporting this. The Department will also notify the Low Carbon Contracts Company (LCCC) as to the Secretary of State's refusal to issue an Implementation Statement.

## **10. Payment of SIRs and Performance Related Adjustments**

- 10.1 Sustainable Industry Rewards are part of Contract for Difference; therefore, SIR payments or deductions will be made through the Low Carbon Contracts Company (LCCC), the counterparty to the CfD contract.
- 10.2 SIR payments or deductions can only be made once a Generator has started receiving CfD payments for the generation of electricity from the project. SIR payments/deductions will be paid/recovered in [full as a one-off lump sum] [over a series of quarterly CfD payments], at the earliest practical CfD payment date

once the SIR Implementation Statement has been issued to the Generator or the Generator has been notified that the minimum standard spend is below the required amount and the LCCC has been notified.

## **11. Dispute Resolution**

- 11.1 If, after an application for an SIR statement has been submitted, and after the grace period has passed and the Secretary of State does not consider commitments to have been implemented, or only partially implemented, and any identified issues have not been or only been partially addressed, the Secretary of State will either issue a qualified SIR Implementation Statement or refuse to issue such a statement.
- 11.2 If the Generator disagrees with the Secretary of State's decision after the grace period, they may challenge SoS' decision through seeking a review of the decision by DESNZ, setting out the grounds of the challenge. If still not satisfied, the Generator may challenge SoS' decision through a judicial review. Neither the DESNZ review nor a judicial review will impede non-SIR CfD payments. It would only affect either the SIR payments or the timing of performance related adjustment deductions.

## **12. Publishing the Recipients of Sustainable Industry Rewards**

- 12.1 DESNZ may publish some details of the Sustainable Industry Rewards being supported, including the names of the recipients and the amount they have been awarded, [one year] after the signing of the contract between the developer and the recipients of SIR investment. DESNZ will consider any necessary commercially sensitive information before publishing in conjunction with the relevant party.