

2019 No. 1005

ELECTRICITY

The Smart Export Guarantee Order 2019

Made - - - - *9th June 2019*

Laid before Parliament *10th June 2019*

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by sections 41(4), 43(3)(a) and 104(2) of the Energy Act 2008(a), makes the following Order.

PART 1

Introductory

Citation and commencement

- 1.—(1) This Order may be cited as the Smart Export Guarantee Order 2019.
(2) This article and articles 2 and 5 come into force on 1st October 2019.
(3) Otherwise, this Order comes into force on 1st January 2020.

Interpretation

- 2.—(1) In this Order—

“SEG licensee” means a person who is a holder of a licence under section 6(1)(d) of the Electricity Act 1989(b) and, immediately prior to the current SEG year, submitted a notification to the Authority(c) that it will be a SEG licensee for that SEG year;

“Standard Licence Condition 57” means the condition so numbered in the standard conditions incorporated in licences granted under section 6(1)(d) of the Energy Act 1989 by virtue of section 8A of that Act(d).

(2) In this Order the following expressions have the meanings given to them in Schedule A to Standard Licence Condition 57—

“AD installation”;

“AD reporting start date”;

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- (a) 2008 c. 32. Section 41(4) was amended by section 146 of the Energy Act 2013 (c. 32).
(b) 1989 c.29. Section 6(1)(d) was amended by S.I. 2012/2400. Other amendments have been made to section 6, but those amendments are not relevant.
(c) “The Authority” is defined in section 41(4) of the Energy Act 2008 as the Gas and Electricity Markets Authority.
(d) The standard conditions are incorporated into electricity supply licences by virtue of section 8A of the Electricity Act 1989 Act. Section 8A was inserted by section 33 of the Utilities Act 2000 (c. 27) and has been amended, but those amendments are not relevant.

“anaerobic digestion”;
“eligible installation”;
“export tariff”;
“mandatory SEG licensee”;
“SEG”;
“SEG generator”;
“SEG payments”
“SEG year” and “first SEG year”;
“total installed capacity”;
“voluntary SEG licensee”.

PART 2

Specified maximum capacity

Specified maximum capacity

3. The specified maximum capacity is 5 megawatts of total installed capacity.

PART 3

Functions of the Authority

Functions of the Authority in relation to AD installations

4.—(1) This article applies where the Authority receives confirmation from a SEG generator who intends to seek SEG payments in respect of an AD installation that the SEG generator intends to comply with the provisions of the Schedule.

(2) The Authority must—

- (a) verify whether the SEG generator meets the criteria set out in the Schedule; and
- (b) notify the SEG generator of whether those criteria were met or not.

(3) The Authority must verify that the SEG generator has continued to meet the criteria in accordance with paragraph (2)(a) on a quarterly basis in relation to the sustainability criteria, and on an annual basis in relation to the feedstock criteria, and notify the SEG generator of the result of that verification as soon as practicable after its conclusion.

(4) Where the Authority cannot be satisfied on the basis of information provided by the SEG generator, including an audit report provided under paragraph 5 of the Schedule, that the SEG generator has met the criteria set out in that Schedule, the Authority must inform the SEG generator that it is not able to verify that the criteria have been met.

(5) Where paragraph (4) applies, the SEG generator may, on the Authority’s request or otherwise, provide further information, including a further audit report complying with paragraph 5 of the Schedule, to the Authority, and, on receipt of such further information, the Authority must consider whether it is able to ascertain whether the criteria set out in the Schedule are met or not.

Guidance

5.—(1) The Authority must publish, before 1st January 2020, guidance to SEG generators and SEG licensees on the operation of the SEG.

(2) The Authority must keep the guidance published under this article under review, and, if it thinks it appropriate to do so, publish updated guidance.

List of SEG Licensees

6. Before the start of each SEG year (except the first SEG year), the Authority must publish a list of all SEG licensees, and that list must distinguish between mandatory SEG licensees and voluntary SEG licensees.

Report

7.—(1) The Authority must at least once in each calendar year, beginning with 2021, prepare and publish a report, which must set out—

- (a) the export tariffs that have been offered by SEG licensees;
- (b) the number of eligible installations which are in receipt of SEG payments;
- (c) how much generation has been the subject of SEG payments;
- (d) the total amount of SEG payments which have been made; and
- (e) a breakdown of SEG payments by—
 - (i) capacity; and
 - (ii) the energy source generating the electricity.

(2) The Authority must also set out in the report the period which that report covers.

Information

8. The Authority may require a SEG licensee to provide it with any information which it believes the licensee holds and which, in the Authority's opinion, it requires in order to enable it to discharge its functions under this Order.

9th June 2019

Chris Skidmore
Minister of State
Department for Business, Energy and Industrial Strategy

SCHEDULE

Article 4

PART 1

Sustainability and feedstock criteria

1. This Part sets out the sustainability and feedstock criteria in relation to which the Authority must verify that each SEG generator who receives or intends to receive SEG payments in respect of an AD installation has met.

Ongoing obligation to meet sustainability criteria

2. A SEG generator must confirm that it has sought SEG payments only for electricity exported by the AD installation generated using sustainable biogas.

Ongoing obligation to provide quarterly declarations relating to sustainability criteria

3.—(1) A SEG generator must, in relation to each consignment of biomass used to make the biogas used to generate electricity at the AD installation during a quarterly reporting period,

provide the Authority with a declaration that states that one of the provisions at paragraph (2)(a) to (c) applies, and which provision applies.

(2) The provisions referred to at paragraph (1) are that—

- (a) the biogas was made from feedstock that was waste;
- (b) the biogas met the greenhouse gas criteria and where the criteria are met, the greenhouse gas emissions for that biogas were calculated in accordance with paragraph 7 of Part 2 of this Schedule; or
- (c) the biogas was made from feedstock which was solid biomass which met the land criteria.

(3) The SEG generator must provide the declaration within 28 days after the end of the quarterly reporting period to which the declaration relates.

Ongoing obligation to provide annual declarations relating to feedstock types

4.—(1) A SEG generator must provide the Authority with a declaration containing the following information for each annual reporting period—

- (a) the total amount of electricity generated during the period by the AD installation;
- (b) details of the type of feedstock used to make the biogas used to generate the electricity; and
- (c) the proportion of the energy content of the biogas which was not derived from waste or residue, expressed as a decimal and rounded to 4 decimal places.

(2) The SEG generator must provide the declaration within 3 months after end of the annual reporting period to which the declaration relates.

Ongoing obligation to provide annual audit report relating to sustainability and feedstock types

5.—(1) This paragraph applies in respect of a SEG generator in respect of an AD installation with a total installed capacity of 1 megawatt or above.

(2) The SEG generator must, in relation to an annual reporting period, submit to the Authority with the declaration required in accordance with paragraph 4, an audit report that—

- (a) is prepared by a person who is not the SEG generator or a person connected with the SEG generator within the meaning of section 1122 of the Corporation Tax Act 2010^(a);
- (b) is prepared in accordance with the International Standard on Assurance Engagements 3000 (Revised): Assurance engagements other than Audits or Reviews of Historical Financial Information dated 9th December 2013^(b) or an equivalent standard;
- (c) states whether anything has come to the attention of the person preparing the report to indicate that the information in the quarterly declarations provided under paragraph 3 in respect of the annual reporting period (“the sustainability information”) is not accurate;
- (d) considers—
 - (i) whether the systems used to produce the sustainability information are likely to produce information that is reasonably accurate and reliable;
 - (ii) whether there are controls in place to help protect the sustainability information against material misstatements due to fraud or error;
 - (iii) the frequency and methodology of any sampling carried out for the purpose of obtaining or checking the information on which the SEG generator relied in preparing the sustainability information; and

(a) 2010 c. 4.

(b) International Standard on Assurance Engagements (ISAE) 3000 (Revised): Assurance Engagements other than Audits or Reviews of Historical Financial Information, published on 9th December 2013 by the International Federation of Accountants. Copies are available at www.ifac.org or in hard copy on request from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

- (iv) the robustness of the data on which the SEG generator relied in preparing the sustainability information; and
 - (e) states that the person preparing the report has reviewed the information provided under paragraph 4 in respect of the annual reporting period and states whether the information contained in the declaration under that paragraph is accurate.
- (3) This paragraph does not apply in respect of an annual reporting period that is reduced to less than 3 months as a result of the Authority specifying a date for the purpose of paragraph 6.

Reporting periods

6.—(1) In this Part—

- (a) a quarterly reporting period in respect of an AD installation is each consecutive 3 month period; and
- (b) an annual reporting period in respect of an AD installation is each consecutive 12 month period,

with the first day of each period commencing on the AD reporting start date.

- (2) The Authority may reduce either a quarterly or an annual reporting period if it considers it appropriate to do so, but must ensure that each reporting period begins immediately on the ending of the previous reporting period.

PART 2

Greenhouse gas criteria

The greenhouse gas criteria

7.—(1) The biogas used to generate electricity at an AD installation meets the greenhouse gas criteria if the greenhouse gas emissions from each consignment of biomass used to make the biogas are equal to, or less than, the relevant target.

(2) In this paragraph, “relevant target” means—

- (a) in relation to biogas used to generate electricity before 1st April 2020, 66.7 grams per megajoule of electricity;
- (b) in relation to biogas used to generate electricity on or after 1st April 2020 but before 1st April 2025, 55.6 grams per megajoule of electricity;
- (c) in relation to biogas used to generate electricity on or after 1st April 2025, 50 grams per megajoule of electricity.

Calculating the greenhouse gas emissions

8. Subject to paragraph 9, the greenhouse gas emissions from the use of biomass to make biogas are to be calculated using the actual value method or the default value method.

9. The default value method must not be used to calculate the greenhouse gas emissions from the use of biomass to make biogas unless—

- (a) the biomass was used in an AD installation with a total installed capacity of less than 1 megawatt;
- (b) the biomass and the default greenhouse gas emissions from the production of that biomass are set out in the table in paragraph 11; and—
- (c) in relation to the biomass, a calculation made in accordance with paragraph 7 of Part C of Annex 5 to the Renewables Directive produces results which are equal to, or less than, zero.

10. For the purposes of paragraph 9(c), paragraph 7 of Part C of Annex 5 to the Renewables Directive is to be read as if—

- (a) for each reference to “biofuel” there was substituted “biomass”; and
- (b) the words “or bioliquid” were omitted in each place in which those words occur.

11. The table containing biomass and the default greenhouse gas emissions from the production of biomass is as follows—

<i>Biomass</i>	<i>Default greenhouse gas emissions from the production of biomass (in grams)</i>
Bagasse briquettes where the process to produce the briquettes was fuelled by wood	17
Bagasse bales	20
Palm kernel	27
Rice husk briquettes	28
Biogas produced from wheat, where the whole plant was used to produce the biogas	21
Wheat straw	2
Biogas produced from straw	21
Biogas produced from organic maize, where the whole plant was used to produce the biogas	19

PART 3

Interpretation

12. In this Schedule—

“actual value method” means the calculation method provided for in paragraphs 6 and 7 of Part 2 of Schedule 2 to the RO Order and all references to “the month” and “generating station” in paragraph 7 of that Part are to be read as references to “the quarterly reporting period” and “AD installation” respectively;

“annual reporting period” means a reporting period described in paragraph 6(1)(b);

“default value method” means the calculation method provided for in paragraphs 8 and 9 of Part 3 of Schedule 2 to the RO Order and the reference in paragraph 9 of that Part to “the table in Part 4” is to be read as a reference to the table in paragraph 11 of this Schedule;

“energy content” means the energy contained within a substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance’s gross calorific value within the meaning of BS 7420:1991 (Guide for the determination of calorific values of solid, liquid and gaseous fuels (including definitions))(a);

“land criteria” has the meaning given in regulation 47 of the Renewable Heat Incentive Scheme Regulations 2018(b) or in the event that those Regulations are revoked and replaced by regulations made in exercise of the powers conferred by sections 100 and 104(2) of the Energy Act 2008, the meaning given in those regulations;

“quarterly reporting period” means a reporting period described in paragraph 6(1)(a);

“the Renewables Directive” means Directive 2009/28/EC on the promotion of the use of energy from renewable sources(c);

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- (a) The ISBN for the English language version of this standard is ISBN 0 580 19482 5. This standard was published by the British Standards Institution on 28th June 2011 and copies can be obtained at www.bsi.com or can be inspected in hard copy on request at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.
 - (b) S.I. 2018/611 to which there are amendments not relevant to this Order.
 - (c) Directive 2009/28/EC of the European Parliament and of the Council of 23rd April 2009 on the promotion of the use of energy from renewable sources, O.J. No. L 140, 5.6.2009, p.16. The Directive was amended by Council Directive 2013/18/EU of 13th May 2013 adapting Directive 2009/28/EC of the European Parliament and of the Council on the

“the RO Order” means the Renewables Obligation Order 2015**(a)**;

“sustainable biogas” means—

(a) biogas which—

(i) meets the greenhouse gas criteria; and

(ii) is made wholly from feedstock which is solid biomass which meets the land criteria;

(b) biogas which is made wholly from feedstock which is waste; or

(c) biogas which consists of a combination of the biogas listed in paragraphs (a) and (b);

“waste” has the meaning given in Article 3(1) of Directive 2008/98/EC on waste**(b)** and includes excreta produced by animals.

promotion of the use of energy from renewable sources, by reason of the accession of the Republic of Croatia, O.J. No. L 158, 10.6.2013, p.230, and by Directive (EU) 2015/1513 of the European Parliament and of the Council of 9th September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources, O.J. No. L 239, 15.9.2015, p.1.

(a) S.I. 2015/1947 to which there are amendments not relevant to this Order.

(b) OJ No L 312, 22.11.2008, p3. The Directive was amended by Commission Regulation (EU) 1357/2014 of 18th December 2014 replacing Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives, OJ No. L 365, 19.12.2014, p. 89, Council Regulation (EU) 2017/997 of 8th June 2017 amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 “Ecotoxic”, OJ No. 150, 14.6.2018, p. 1, and by Directive (EU) 2018/851 of the Parliament and of the Council of 30th May 2018 amending Directive 2008/98/EC on waste, OJ No L150, 14.6.2018, p. 109.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes arrangements in connection with the Smart Export Guarantee (SEG), which provides for payments to be made to generators of small-scale low-carbon electricity generation. Other provisions of the SEG are contained in modifications made under section 41 of the Energy Act 2008 to the standard conditions of energy supply licences (“the SEG licence conditions”), which are available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

Article 3 sets the specified maximum capacity for eligible installations in the SEG at 5 megawatts.

Article 4 confers specific functions on the Gas and Electricity Markets Authority (“the Authority”) where electricity is generated by way of anaerobic digestion. Where that is the case, the Authority must verify that a SEG generator has complied with the sustainability and feedstock requirements set out in the Schedule, and review its verification on a quarterly basis in relation to sustainability and on an annual basis in relation to feedstock.

Article 5 requires the Authority to issue guidance on the operation of the SEG, and to keep the guidance under review.

Article 6 requires the Authority to publish, before the start of each SEG year, except the first SEG year, a list of each licensee which has offered tariffs under the SEG, distinguishing between mandatory licensees and voluntary licensees which intend to offer tariffs under the SEG.

Article 7 requires the Authority to publish report annually, and sets out what the report must cover.

Article 8 provides that the Authority may require a SEG licensee to provide it with information which the SEG licensee holds and which the Authority believes it needs in order to fulfil its obligations under this Order.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

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