EXPLANATORY MEMORANDUM TO

THE CONSERVATION OF HABITATS AND SPECIES (OFFSHORE WIND) (AMENDMENT ETC.) REGULATIONS 2026

2026 No. 508

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food & Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Emma Hardy MP, Parliamentary Under-Secretary of State at the Department for Environment, Food & Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Joly Macleod, Deputy Director, Marine & Fisheries, at the Department for Environment, Food & Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ruth Stubbles and Luke Bantock at the Department for Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: offshorewind@defra.gov.uk. Alternatively, the department can be contacted by telephone: +44 (0) 3459 335577.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Statutory Instrument will support the pipeline of offshore wind projects to deliver the government's Clean Power by 2030 mission, while ensuring the continued protection of the UK's Marine Protected Area ("MPA") network. It will do this by enabling a wider range of environmental compensatory measures for the impacts of offshore wind developments on protected European sites and Ramsar sites than was previously possible. The reforms are for offshore wind and associated infrastructure only.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is the UK.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the UK. It also has effect in relation to offshore wind developments in the English, Scottish, Welsh and Northern Ireland offshore waters and the English inshore waters, and certain offshore wind functions in Welsh and Northern Ireland inshore waters.

5. Policy Context

What is being done and why?

5.1 The UK Government has published a policy note on gov.uk alongside this SI, detailing the wider policy and delivery context as well as providing further information on the forthcoming guidance.[1] The instrument amends the provisions in the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (the "Inshore Regulations" and "Offshore Regulations" respectively, and together, the "Habitats Regulations"). The effect of the amendments is to require that compensatory measures for offshore wind impacts must benefit the UK MPA network and be selected in accordance with the compensation hierarchy. Regulations 68 of the Inshore Regulations and 36 of the Offshore Regulations, require any necessary compensatory measures are taken to ensure that the overall coherence of the national site network is protected. These regulations are disapplied and replaced with duties to secure that appropriate compensatory measures are taken. It also disapplies requirements under the regulations 9 and 6 of the Inshore and Offshore Regulations respectively to exercise functions to secure compliance with, or to have regard to the requirements of, the Habitats Directive and Wild Birds Directive in respect of the new duties, whilst ensuring robust safeguards are in place.

5.2 Defra's policy objective is to broaden the range of options for environmental compensatory measures available to offshore wind developers. This will enable the delivery of the most ecologically effective and beneficial compensatory measures in relation to the impacts of offshore wind plans and projects, and address difficulties reported by such developers in identifying appropriate, effective compensatory measures to address their impacts on protected sites. The current legal requirements in relation to environmental compensatory measures have been identified as a factor delaying the consent of offshore wind projects, and these changes will support the facilitation of timely offshore wind deployment whilst protecting the marine environment.

5.3 The instrument requires compensatory measures to benefit the UK MPA network (made up of special areas of conservation, special protection areas, marine conservation zones (Marine Protected Areas in Scotland), Ramsar sites and sites of special scientific interest, which are at least partly in the UK marine area, in a manner which is reasonably proportionate to the adverse effects, or predicted adverse effects, of the relevant offshore wind plan or project on the integrity of the protected site. The instrument mandates the publication and use of a "compensation hierarchy", with further information being set out in guidance. The compensation hierarchy sets out categories of compensatory measures based on the way the measures would benefit the UK MPA network. The compensation hierarchy also sets out how these categories must be prioritised when selecting compensatory measures and requires compensatory measures that benefit the impacted feature are prioritised, except in certain circumstances. The circumstances may include where a measure offers a greater ecological benefit to the UK MPA network than a measure which is higher in that order of priority.

5.4 The instrument requires wider compensatory measures to be approved by the relevant Minister.

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[1] https://www.gov.uk/government/publications/environmental-compensatory-measures-reforms-for-offshore-wind-policy-background-and-proposed-compensation-hierarchy

What was the previous policy, how is this different?

5.5 Previously for offshore wind, the Habitats Regulations, which operated alongside caselaw, supported by practice and guidance such as the EU's Natura 2000 Guidance, required environmental compensatory measures to protect the overall coherence of the national site network (made up of special areas of conservation and, special protection areas). This was seen as restrictive and a barrier to the offshore wind consenting process, preventing the use of more ecologically beneficial compensatory measures, and also not offering developers adequate options and flexibility to fulfil their environmental obligations.

5.6 These reforms introduce greater flexibility by enabling offshore wind developers to utilise "wider compensatory measures", under certain circumstances. Wider compensatory measures may benefit features similar to the impacted feature, or the wider MPA network more broadly. Wider compensatory measures must deliver positive benefits in a manner which is reasonably proportionate to the level of damage to the UK MPA network.

6. Legislative and Legal Context

How has the law changed?

6.1 The Regulations modify certain provisions of the Habitats Regulations by amending the text of those Regulations. Section 293 of the Energy Act 2023 confers powers to make provisions in relation to environmental assessments and compensation measures for relevant offshore wind activities. The instrument is made under the draft affirmative Parliamentary procedure (further to s.294(2)).

6.2 Section 293(2) of the Energy Act 2023 specifies who is the "appropriate authority" for the purposes of making regulations in relation to compensatory measures under section 293(1)(b). The Secretary of State is the appropriate authority in relation to those relevant offshore wind activities (as defined in section 290) in relation to which the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) are not the appropriate authority.

6.3 This means that, for the Inshore Regulations, the Secretary of State can make regulations in relation to relevant offshore wind activity in the English inshore region and certain relevant offshore wind activities in the Welsh and Northern Ireland inshore regions. The amendments to the Inshore Regulations therefore apply to those activities and confer functions mainly on the Secretary of State. The amendments also confer functions on the Welsh Ministers in respect of certain relevant offshore wind activities taking place in the Welsh inshore region, to the extent that the activity also requires consent, such as a marine licence with associated compensatory measures, in relation to which the Welsh Ministers (including someone exercising their functions) are the appropriate authority.

6.4 The Scottish Ministers are making similar amendments to the Inshore Regulations in relation to relevant offshore wind activity in the Scottish inshore region in their draft Scottish statutory instrument (SSI).[2]

6.5 In relation to relevant offshore wind activities taking place in UK offshore waters, the Secretary of State is the appropriate authority for making the regulations for the whole UK, so the amendments to the Offshore Regulations apply to all such activity. The amendments to these Regulations confer functions on the Scottish Ministers and

[2] The Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026.

Welsh Ministers in respect of relevant offshore wind activities in relation to which they would be the authority securing compensatory measures. The Secretary of State is this authority in relation to relevant offshore wind activity in the Northern Ireland offshore region.

Why was this approach taken to change the law?

6.6 A range of options were identified to improve flexibility for environmental compensatory measures for offshore wind developments. These included issuing revised guidance for existing compensatory measures requirements; issuing guidance as well as limited legislative changes; and making more significant legislative changes. The option to issue guidance as well as limited legislative changes was chosen because it was considered that a non-regulatory option would not sufficiently widen the range of environmental compensatory measures available for developers, but that wider legislative change was not necessary. The problem under consideration can only be solved by Government-led regulation because the issue relates to existing legislation which needs to be amended to create more flexibility.

7. Consultation

Summary of consultation outcome and methodology

7.1 From 22 July 2025 to 2 September 2025, Defra ran a 6-week public consultation on these environmental compensatory measures reforms. Defra asked people for their views on the proposed reforms, including environmental safeguards and also proposed clarifying other aspects of compensatory measures policy for offshore wind development. Concurrently, the Scottish Government ran a public consultation on associated proposed reforms for Scotland.

7.2 The UK consultation was hosted on the online platform Citizen Space, and responses could also be submitted by post and email.

7.3 Defra received 74 responses to the consultation, including from offshore wind developers, offshore wind industry representatives, statutory nature conservation bodies (SNCBs) and other arm's length bodies, environmental non-governmental organisations (eNGOs), consultants, academic organisations, fishing industry representatives, other (non-offshore wind) marine industries representatives, and individuals.

7.4 The summary of responses and government response was published on 3 December 2025.[3]

7.5 In their responses, offshore wind developers generally indicated they wished to reduce consenting barriers for offshore wind projects, while eNGOs expressed concerns about environmental impacts of permitting wider compensatory measures that are not targeted at the impacted feature. Other marine stakeholders, such as the fishing sector, raised concerns about the effects of the expansion of offshore wind on spatial squeeze and a level playing field between marine industries.

7.6 Most respondents supported enabling wider compensatory measures, noting their potential to strengthen the UK's MPA network and improve flexibility in securing environmental compensatory measures. Most respondents did not agree that the proposed environmental safeguards for wider compensatory measures are suitable, some argued they were too restrictive and others suggesting they were too permissive. Of those who did support the safeguards, many emphasised that they should be proportionate and not overly precautionary, as excessive restrictions could hinder

[3] Summary of responses and government response - GOV.UK

development and innovation. Defra believes that the safeguards provide a suitable level of environmental protection while also enabling the expansion of offshore wind development.

7.7 The consultation also proposed specifying in the instrument that, in addition to existing requirements set out in a Development Consent Order, the consenting authority may, on a case-by-case basis, set a time lag between an adverse impact on a protected area occurring and compensatory measures being in place. Some SNCBs and environmental groups highlighted that a time lag in implementing compensatory measures increases environmental risk and thus may require a higher compensation ratio. Some respondents from the offshore wind industry and developers raised concerns that overcompensation can compound delays. Following discussions with Devolved Governments, Defra decided not to include anything for this in the instrument as there is already sufficient flexibility to do this under the current legislative framework.

7.8 The UK Government did not require Devolved Government agreement to consult. However, Defra has worked closely with the Devolved Governments to agree on the approach to the reforms throughout the process. Defra consulted with the relevant Devolved Government ministers, SNCBs and the Marine Management Organisation, and other persons as required under s.294(1) of the Energy Act 2023 on this instrument. Defra has also worked closely with the Department for Energy Security and Net Zero.

8. Applicable Guidance

8.1 The UK Government will publish guidance for this instrument and related matters on gov.uk when it comes into force. That guidance will apply to relevant offshore wind activities in the inshore and offshore waters of England, and to offshore wind activities to which this instrument applies in the inshore and offshore waters of Wales and Northern Ireland. The Welsh Ministers have the option to publish their own guidance and compensation hierarchy for certain matters. The Scottish Ministers will also publish guidance for the SSI. The Scottish guidance will relate to both the Scottish inshore region covered by the SSI and the Scottish offshore region, covered by the UK Government's SI.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment of the effect that this instrument will have on the costs to business, the voluntary sector and the public sector is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no anticipated impact on charities or voluntary bodies because they will not be directly impacted by these reforms.

9.3 There is also no anticipated impact on small or micro businesses. The reforms have a net positive impact to business in general so if there were any impacts on small or micro businesses they would benefit from the reforms in the same way as other businesses would.

9.4 The only anticipated cost to businesses is the cost of familiarisation. This represents the cost to the offshore wind industry of reading and disseminating technical information (this instrument and guidance) within the business. Defra assumes that

this will be a one-off cost occurring in the year this instrument and guidance is introduced. This is calculated as a £0.03m direct cost.

9.5 Option fees changes are expected to impact both businesses and the public sector. Option fees are payments from the offshore wind industry to The Crown Estate to secure seabed rights for development. By shortening planning and consenting time, these measures will reduce the amount of time the offshore wind industry has to pay the option fees, thereby reducing costs for business. However, as the public sector is the recipient of the fees, this does mean less revenue for Government. Option fees are therefore considered a transfer from Government to industry. Option fees revenue transfer is estimated at £460m (so a £460m loss of revenue for Government).

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument requires the Secretary of State to conduct a statutory review of the SI, guidance and compensation hierarchy, and publish a report setting out the conclusions of the review. The first report must be published by the 30th April 2031. Subsequent reports must be published at intervals not exceeding five years.

10.2 If Welsh Ministers publish guidance and a compensation hierarchy, they must also conduct a review within five years of publication and at intervals thereafter of no less than five years.

10.3 The Scottish Ministers must, in respect of the offshore, review the guidance and compensation hierarchy published by them and publish a report setting out the conclusions. The first report must be published by the 30th April 2031 and subsequent reports published at intervals not exceeding five years. A similar requirement applies under their Scottish instrument in the inshore.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State at the Department for Environment, Food & Rural Affairs has made the following statement regarding Human Rights: "In my view the provisions of the Conservation of Habitats and Species (Offshore Wind) (Amendment etc.) Regulations 2026 are compatible with the Convention rights".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").