POLICY NOTE

THE CONSERVATION OF HABITATS AND SPECIES (OFFSHORE WIND) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2026

SSI 2026/143

The above instrument was made in exercise of the powers conferred by sections 293(1)(b) and 331(2)(b) of the UK Energy Act 2023. The instrument is subject to the affirmative procedure.

Summary Box

The instrument amends the Conservation (Natural Habitats, &c.) Regulations 1994 and the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") as they apply to offshore wind activity in the Scottish inshore region (0-12 nautical miles ("nm") to enable greater flexibility in the approach to environmental compensation for offshore wind.

Policy Objectives

The key purpose of the instrument is to enable the delivery of strategic compensation and a wider range of compensatory measures for offshore wind, than is currently permitted by the Habitats Regulations.

In Scotland, as in the rest of the UK, various environmental assessments are required to be carried out in relation to offshore wind plans and projects. This includes Habitats Regulations Appraisals (HRA) required under the Habitats Regulations, which assesses the effects of projects and plans on protected sites in the network of European sites in the UK, which is referred to in the Habitats Regulations as either the UK site network or the national site network ("UK/national site network").

Where a plan or project is not directly connected with or necessary for the management of the protected site(s), and where the possibility of a likely significant effect on these sites cannot be excluded, either alone or in-combination with other plans or projects, an Appropriate Assessment (AA) should be undertaken. If it is concluded that the plan or project will have an adverse effect on the site integrity ("AEOSI") of a protected site (either alone or in-combination with other plans or projects), the derogations process will be triggered. The plan or project can only be authorised where the derogation provisions are satisfied. The derogations provisions currently require that where the alternatives and imperative reasons of overriding public interest (IROPI) tests have been met, compensatory measure(s) must be secured.

Under the current regime, compensatory measures must be secured to ensure that the overall coherence of the UK/national site network is protected. The application in practice of this provision to date has been interpreted to mean that 'like-for-like' compensatory measures must be secured i.e., the measure should be targeted to the impacted habitat or species.

However, there is a limited amount of 'like-for-like' compensatory measures available that can be evidenced to the required degree under the current regime. This creates challenges for

delivering Scotland's and the UK's offshore wind ambitions, as there have been difficulties identifying suitable compensatory measures that are targeted at particular features impacted by offshore wind projects. In light of the proposed pipeline of upcoming offshore wind developments, greater flexibility in our approach to environmental compensation under the Habitats Regulations is required for offshore wind activities.

This SSI reforms aspects of the Habitats Regulations as they apply to offshore wind. The aim of the reforms is to enable compensatory measures that benefit the UK MPA network as a whole rather than the specific feature impacted ("wider measures"). Wider measures can add value by, for example, targeting a similar feature to the feature impacted or large-scale pressures on the UK MPA network. The UK MPA network is defined in the SSI as including the UK/national site network, Sites of Special Scientific Interest and Ramsar sites, all or part of which are in the UK marine area, as well as areas designated as Marine Protected Areas.

This SSI amends the current requirement on compensatory measures to provide that compensatory measures secured for relevant offshore wind activity must benefit the UK MPA network in a manner that is reasonably proportionate to the adverse effects, or predicted adverse effects, on the integrity of the European site or European offshore marine site.

The SSI also provides that a compensation hierarchy must be established and that Scottish Ministers must secure compensatory measures in accordance with the hierarchy. The compensation hierarchy will be a tiered approach to selecting compensatory measures. It will categorise compensatory measures by the way in which they benefit the UK MPA network. It is anticipated that the hierarchy will require 'like-for-like' compensatory measures to be considered first above 'wider measures'. However, there may be circumstances in which it would be appropriate to select a 'wider measure' if it offers a greater ecological benefit to the UK MPA network.

This SSI will apply in the Scottish inshore region (0-12 nm). In parallel a UK SI will make equivalent amendments to the Habitats legislation that applies in the Scottish offshore region (beyond 12 nm).

The SSI includes a duty for Scottish Ministers to publish associated guidance which they will have a duty to have regard to when exercising their function to secure compensation for offshore wind activity in the Scottish inshore region. The UK SI will impose similar duties on Scottish Ministers in relation to the Scottish offshore region.

The SSI and the guidance must be reviewed before 30 April 2031 and no later than every 5 years thereafter.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the Act"), the Scottish Ministers certify that, in their

view, the Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

Statement required by the European Union (Withdrawal) Act 2018

The Cabinet Secretary for Climate Action and Energy has made the following statement under paragraph 16(2) and (3) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018: "In my view there are good reasons for the amendments made by this instrument to the Conservation (Natural Habitats, &c.) Regulations 1994 and the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), which were made under section 2(2) of the European Communities Act 1972 and are assimilated law. I have concluded that the making of these amendments is a reasonable course of action due to the need to enable greater flexibility in our approach to environmental compensation for offshore wind in order to enable the delivery of offshore wind and its benefits for the climate crisis. The effect of the amendments on assimilated law is that new provision is inserted into the Habitats Regulations setting out this new, and more flexible, approach to environmental compensation for offshore wind activity that takes place in the Scottish inshore region.

EU Alignment Consideration

This SSI is likely to impact on the Scottish Government's policy to maintain alignment with the EU. The SSI amends the Habitats Regulations, which incorporated Council Directive 92/43/EEC of 21 May 1993 on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") and Council Directive on the Conservation of Wild Birds (2009/147/EC). The Habitats Regulations are therefore assimilated law (formerly known as retained EU law).

The SSI will result in a divergence from EU law. The implementation of the SSI and associated guidance will result in a different approach to how the Habitats Regulations apply for offshore wind in the Scottish inshore region when compared to the current approach taken within the EU. However, as noted in the statement above, the Scottish Government remains committed to maintaining and advancing the high environmental standards that Scotland shares with the EU such as by adhering to international environmental obligations and driving forward policy that targets the climate and nature crises. The compensation hierarchy which will be published, as noted above, will be an important environmental safeguard in the application of this SSI.

Consultation

The Scottish Government held a public consultation on the strategic compensation policy proposals that are being implemented by this SSI, and associated impact assessments, for six weeks between 22 July to 1 September 2025. The consultation was supported by two online engagement events.

A total of 43 responses were received, of which 95% were from organisations and 5% from members of the public. A range of organisations responded including the offshore wind sector, organisations representing fishing interests, marine science and research organisations, environmental non-governmental organisations, public bodies, and political parties.

The following key themes emerged from the consultation responses:

- Strategic Impact: compensation must be meaningful, long-term, and aligned with national biodiversity and climate goals.
- Integrity & Additionality: measures must be genuinely new, not rebranded obligations or shortcuts.
- Monitoring & Governance: stakeholders want transparent, adaptive systems with independent oversight.
- Community Equity: coastal and island communities must benefit and be actively involved.
- Legal & Policy Clarity: clear guidance and alignment across frameworks are essential to avoid weakening protections.
- Cumulative Effects: compensation must account for combined and delayed environmental impacts.
- Risk & Resources: overcompensation is acceptable when justified; delivery requires adequate funding and capacity

The consultation responses informed the finalisation of the strategic compensation policy and the SSI.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website, it includes NatureScot, offshore wind sector organisations such as Scottish Renewables and Renewables UK, environmental non-government organisations such as Royal Society for the Protection of Birds and Scottish Environment LINK, and fishing sector organisations such as the Scottish Fisherman's Federation.

Following the close of the consultation, Scottish Government policy officials also took part in two post-consultation policy development workshops with the UK Government, other devolved administrations and cross UK-wide Statutory Nature Conservation Bodies ("SNCBs") including NatureScot. The focus of these workshops was to discuss policy implementation options following the Scottish Government and UK Government consultations on the proposed reforms. The workshops successfully resulted in agreements on what should be brought forward through the Scottish and UK Statutory Instruments and what elements of the policies consulted on would be for inclusion in guidance and how SNCBs would be involved in the development of guidance.

Scottish Government officials also plan to undertake targeted engagement with relevant stakeholders as part of the development of the associated guidance and separately as part of development and delivery of strategic compensatory measures enabled by the SSI and guidance. This continued stakeholder engagement will support successful implementation of the reforms and post implementation monitoring.

To comply with the requirements of Section 294(3)(a) of the Energy Act 2023 the Secretary of State was consulted by way of ministerial letter. The Scottish Government has been working closely with the UK Government to ensure alignment between the SSI and the SI. As a result of consultation with the UK Government the scope of the protected site network, which compensatory measures must benefit, was broadened to include the UK/national site network, Sites of Special Scientific Interest and Ramsar sites, all or part of which are in the UK marine area, as well as areas designated as Marine Protected Areas This network is defined in the SSI as the UK MPA network.

Impact Assessments

The following impact assessments have been completed to evaluate the likely impact of the strategic compensation policy and this associated SSI:

- Business and Regulatory Impact Assessment (BRIA)
- Child Rights and Wellbeing Impact Assessment (CRWIA)
- Strategic Environmental Assessment (SEA)
- Data Protection Impact Assessment (DPIA)

A partial BRIA and SEA were included as part of the consultation for consultees to review and provide feedback on. The BRIA was updated following the consultation and will be published to coincide with the laying of this instrument alongside the CRWIA and this Policy Note. A SEA Post Adoption Statement is being undertaken by the external consultants APBmer and in accordance with the SEA legislation, this will be published following the adoption of the SSI and guidance.

Screening exercises were also undertaken for the following impact assessments:

- Islands Communities Impact Assessment (ICIA)
- Fairer Scotland Duty Assessment (FSDA)
- Equalities Impact Assessment (EQIA)
- Consumer Duty Impact Assessment (CDIA)
- Human Rights Impacts Assessment (HRIA)

The screening exercises scoped out full impact assessments as there are no aspects of the proposals which have a differential or discriminatory impact on equality groups, island populations, or individuals with protected characteristics.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

Reforming how compensatory measures are secured for offshore wind development has been recognised as essential for supporting a clean energy pipeline and its economic benefits, and as a means of delivering net zero and tackling the twin crises of climate change and biodiversity loss. If the policy was not progressed, there is a real risk that Scotland's offshore wind ambitions would be constrained by the availability of compensatory measures.

The strategic compensation policy is anticipated to have a positive impact for offshore wind developers and related sectors by increasing investor confidence and assisting in streamlining the offshore wind consenting process, helping new projects move from application to construction faster.

By supporting the expansion of offshore wind development in Scottish waters and increasing the demand on marine space for the implementation of compensatory measures, the policy is anticipated to have a negative impact on fisheries. However, not all compensatory measures are anticipated to have this negative effect or require marine space over time. For example, it may be possible to deliver compensatory measures such as marine litter removal, and predator eradication on Scottish islands, without a demand for marine space.

There may also be impacts on regulatory bodies such as Marine Directorate Licensing Operations Team and SNCBs. For example, the delivery of strategic compensation for multiple projects at the same time may have a positive impact as it could streamline the consideration of compensatory measures across multiple project applications. However the governance, monitoring and evaluation of compensatory measures and the reforms will also have resource/time implications for SNCBs, the Marine Directorate and Offshore Wind Directorate.

Scottish Government
Offshore Wind Directorate

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