Draft Regulations laid before the Scottish Parliament under section 294(4) of the Energy Act 2023 (c. 52), for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2026 No.

WILDLIFE

ENERGY

The Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026

Made - - - -	***
Coming into force - -	*25th May 2026*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 293(1)(b) and 331(2)(b) of the Energy Act 2023(**a**) and all other powers enabling them to do so.

In accordance with section 294(3) of that Act, the Scottish Ministers have consulted with the Secretary of State, Scottish Natural Heritage, and other persons that they considered appropriate.

In accordance with section 294(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026 and come into force on 25 May 2026.

Amendment of the Conservation (Natural Habitats, &c.) Regulations 1994

2.—(1) The Conservation (Natural Habitats, &c.) Regulations 1994(**b**) are amended as follows.

(2) In regulation 3 (duties relating to compliance with the Directives) after paragraph (3) insert—

"(3A) The duties in paragraphs (1) and (3) do not apply to functions under regulation 53ZA (compensatory measures for relevant offshore wind activity).".

(3) In regulation 53 (compensatory measures)—

(a) the text of the existing regulation becomes paragraph (1),

(**a**) 2023 c. 52.
(**b**) S.I. 1994/2716, relevantly amended by S.I. 2007/1843, S.S.I. 2012/228, S.S.I. 2019/113, S.S.I. 2021/44 and S.S.I. 2025/165.

(b) after paragraph (1) insert—

"(2) This regulation does not apply in respect of relevant offshore wind activity.".

(4) After regulation 53 insert—

"Compensatory measures for relevant offshore wind activity

53ZA.—(1) Where in accordance with regulation 49 (considerations of overriding public interest)—

(a) a plan or project is agreed to, in respect of relevant offshore wind activity, notwithstanding a negative assessment of the implications for a European site or European offshore marine site, or

(b) a decision, or a consent, permission or other authorisation in respect of relevant offshore wind activity, is affirmed on review, notwithstanding such an assessment,

the Scottish Ministers must secure that compensatory measures are taken that benefit the UK MPA network in a manner which is reasonably proportionate to the adverse effects, or predicted adverse effects, on the integrity of the European site or European offshore marine site.

(2) The Scottish Ministers must issue guidance about the exercise of the function under paragraph (1).

(3) Guidance issued under paragraph (2) must in particular set out how decisions are to be made under paragraph (1) on whether compensatory measures benefit the UK MPA network in a manner which is reasonably proportionate to the adverse effects, or predicted adverse effects, on the integrity of the European site or European offshore marine site.

(4) The Scottish Ministers must exercise the function in paragraph (1) in accordance with the compensation hierarchy.

(5) Where the Scottish Ministers propose to revise the compensation hierarchy the Scottish Ministers must consult with the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland on the proposed revision.

(6) The compensation hierarchy must be laid before the Scottish Parliament as soon as reasonably practicable after—

(a) it is first published by the Scottish Ministers, and

(b) each time the Scottish Ministers publish a revised version.

(7) The Scottish Ministers must have regard to the guidance issued under paragraph (2) when exercising the function under paragraph (1).

(8) Where the Scottish Ministers propose to revise any guidance issued under paragraph (2) the Scottish Ministers must consult with the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland on the proposed revision.

(9) The Scottish Ministers must—

(a) from time to time carry out a review of—

(i) the exercise of the function under paragraph (1), and

(ii) any guidance issued under paragraph (2), and

(b) as soon as reasonably practicable after carrying out a review prepare and publish a report of the review's findings.

(10) When carrying out a review under paragraph (9)(a) the Scottish Ministers must consider in particular—

(a) the impacts on the environment, and

(b) the impacts on relevant offshore wind activity.

(11) The first report under paragraph (9)(b) must be published before 30th April 2031 and subsequent reports must be published at intervals not exceeding 5 years beginning with the date on which the previous report was published.

(12) The Scottish Ministers must issue guidance about the review to be carried out under paragraph (9)(a).

(13) In this regulation and in regulation 53(2) "relevant offshore wind activity" has the meaning given by section 290 of the Energy Act 2023.

(14) In this regulation—

"compensation hierarchy" means a hierarchy published by the Scottish Ministers, and revised from time to time setting out—

(a) categories of compensatory measures by reference to the manner in which they would benefit the UK MPA network,

(b) the order of priority in which compensatory measures falling within those categories are generally to be selected, which must, subject to the circumstances set out in accordance with paragraph (c), prioritise the selection of measures which benefit the features of the European site or the European offshore marine site which are, or which may be, adversely affected by the relevant offshore wind activity, and

(c) circumstances in which it may be appropriate to select a compensatory measure otherwise than in accordance with the order of priority referred to in paragraph (b), which may include circumstances in which that measure offers a greater ecological benefit to the UK MPA network than a measure which is higher in that order of priority,

"protected site" means—

(a) a site within the UK site network, all or part of which is in the UK marine area,

(b) an area designated under section 116 of the Marine and Coastal Access Act 2009(**a**) or section 13 of the Marine Act (Northern Ireland) 2013(**b**) or section 67(1)(a) of the Marine (Scotland) Act 2010(**c**),

(c) a Ramsar site, all of part of which is in the UK marine area, or

(d) an area notified as a site of special scientific interest under section 3(1) of the Nature Conservation (Scotland) Act 2004(**d**) or section 28(1) of the Wildlife and Countryside Act 1981(**e**), all or part of which is in the UK marine area,

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(**a**) 2009 c. 23.
(**b**) 2013 c. 10 (N.I.).
(**c**) 2010 asp 5.
(**d**) 2004 asp 6.
(**e**) 1981 c. 69. Section 28 was substituted by section 75(1) of the Countryside and Rights of Way Act 2000 (c. 37), and subsection (1) was amended by section 105(1) and paragraph 79 of Schedule 11 of the Natural Environment and Rural Communities Act 2006 (c. 16) and sections 148, 324(2)(b)(ii) and paragraph 2(2) of Schedule 13 of the Marine and Coastal Access Act 2009 (c. 23). Section 28 was repealed by the Nature Conservation (Scotland) Act 2004 (asp 6) in relation to Scotland but remains in force for England and Wales.

"Ramsar site" means wetlands designated under the Ramsar Convention(**a**) as being of international importance, as described in section 38 of the Nature Conservation (Scotland) Act 2004 or section 37A of the Wildlife and Countryside Act 1981(**b**),

"UK marine area" has the meaning given by section 42 of the Marine and Coastal Access Act 2009,

"UK MPA network" means the network of protected sites.".

Amendment of the Conservation of Habitats and Species Regulations 2017

3.—(1) The Conservation of Habitats and Species Regulations 2017(**c**) are amended as follows.

(2) In regulation 9 (duties relating to compliance with the Directives) after paragraph (3) insert—

"(3A) The duties in paragraphs (1) and (3) do not apply to functions under regulation 68A (compensatory measures for relevant offshore wind activity in the Scottish inshore region).".

(3) In regulation 68 (compensatory measures)—

(a) the text of the existing regulation becomes paragraph (1),

(b) after paragraph (1) insert—

"(2) This regulation does not apply in respect of relevant offshore wind activity in the Scottish inshore region.".

(4) After regulation 68, insert—

"Compensatory measures for relevant offshore wind activity in the Scottish inshore region

68A.—(1) Where in accordance with regulation 64 (considerations of overriding public interest)—

(a) a plan or project is agreed to, in respect of relevant offshore wind activity in the Scottish inshore region, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or

(b) a decision, or a consent, permission or other authorisation in respect of relevant offshore wind activity in the Scottish inshore region, is affirmed on review, notwithstanding such an assessment,

the Scottish Ministers must secure that compensatory measures are taken that benefit the UK MPA network in a manner which is reasonably proportionate to the adverse effects, or predicted adverse effects, on the integrity of the European site or European offshore marine site.

(2) The Scottish Ministers must issue guidance about the exercise of the function under paragraph (1).

(**a**) The Convention on Wetlands of International Importance, especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971 [as amended by the Protocol known as the Paris Protocol done at Paris on 3rd December 1982 and the amendments known as the Regina Amendments adopted at the Extraordinary Conference of the Contracting parties held at Regina, Saskatchewan, Canada between 28th May and 3rd June 1987].

(**b**) 1981 c. 69. Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c. 37), and amended by section 105(1) and paragraph 36 of Schedule 11 of the Natural Environment and Rural Communities Act 2006 (c. 16), S.I. 2013/755 (W. 90), paragraph 7 of Schedule 2 of the Planning (Wales) Act 2015 (anaw 4) and paragraph 22 of Schedule 9 of the Local Government and Elections (Wales) Act 2021 (asc 1). Section 37A only extends to England and Wales.

(**c**) S.I. 2017/1012, relevantly amended by S.I. 2019/579.

(3) Guidance issued under paragraph (2) must in particular set out how decisions are to be made under paragraph (1) on whether compensatory measures benefit the UK MPA network in a manner which is reasonably proportionate to the adverse effects, or predicted adverse effects, on the integrity of the European site or European offshore marine site.

(4) The Scottish Ministers must exercise the function under paragraph (1) in accordance with the compensation hierarchy.

(5) Where the Scottish Ministers propose to revise the compensation hierarchy the Scottish Ministers must consult with the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland on the proposed revision.

(6) The compensation hierarchy must be laid before the Scottish Parliament as soon as reasonably practicable after—

(a) it is first published by the Scottish Ministers, and

(b) each time the Scottish Ministers publish a revised version.

(7) The Scottish Ministers must have regard to guidance issued under paragraph (2) when exercising the function under paragraph (1).

(8) Where the Scottish Ministers propose to revise any guidance issued under paragraph (2) the Scottish Ministers must consult with the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland on the proposed revision.

(9) The Scottish Ministers must—

(a) from time to time carry out a review of—

(i) the exercise of the function under paragraph (1), and

(ii) any guidance issued under paragraph (2), and

(b) as soon as reasonably practicable after carrying out a review prepare and publish a report of the review's findings.

(10) When carrying out a review under paragraph (9)(a) the Scottish Ministers must consider in particular—

(a) the impacts on the environment, and

(b) the impacts on relevant offshore wind activity.

(11) The first report under paragraph (9)(b) must be published before 30th April 2031 and subsequent reports must be published at intervals not exceeding 5 years beginning with the date on which the previous report was published.

(12) The Scottish Ministers must issue guidance about the review to be carried out under paragraph (9)(a).

(13) In this regulation and in regulation 68(2) "relevant offshore wind activity" has the meaning given by section 290 of the Energy Act 2023.

(14) In this regulation—

"compensation hierarchy" means a hierarchy published by the Scottish Ministers, and revised from time to time setting out—

(a) categories of compensatory measures by reference to the manner in which they would benefit the UK MPA network,

(b) the order of priority in which compensatory measures falling within those categories are generally to be selected, which must, subject to the circumstances set out in accordance with paragraph (c), prioritise the selection of measures which benefit the features of the European site or

European offshore marine site which are, or which may be, adversely affected by the relevant offshore wind activity, and

(c) circumstances in which it may be appropriate to select a compensatory measure otherwise than in accordance with the order of priority referred to in paragraph (b), which may include circumstances in which that measure offers a greater ecological benefit to the UK MPA network than a measure which is higher in that order of priority,

"protected site" means—

(a) a site within the national site network, all or part of which is in the UK marine area,

(b) an area designated under section 116 of the Marine and Coastal Access Act 2009 or section 13 of the Marine Act (Northern Ireland) 2014 or section 67(1)(a) of the Marine (Scotland) Act 2010,

(c) a Ramsar site, all of part of which is in the UK marine area, or

(d) an area notified as a site of special scientific interest under section 3(1) of the Nature Conservation (Scotland) Act 2004 or section 28(1) of the Wildlife and Countryside Act 1981, all or part of which is in the UK marine area,

"Ramsar site" means wetlands designated under the Ramsar Convention as being of international importance, as described in section 38 of the Nature Conservation (Scotland) Act 2004 and section 37A of the Wildlife and Countryside Act 1981,

"UK marine area" has the meaning given by section 42 of the Marine and Coastal Access Act 2009,

"UK MPA network" means the network of protected sites.".

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the securing of measures by the Scottish Ministers in compensation for any adverse environmental effects on a European site or a European offshore marine site caused by relevant offshore wind activity in the Scottish inshore region ("compensatory measures").

The Regulations do this by amending the Conservation (Natural Habitats, &c.) Regulations 1994 ("the 1994 Regulations") and the Conservation of Habitats and Species Regulations 2017 ("the 2017 Regulations").

Regulation 2(4) inserts regulation 53ZA into the 1994 Regulations and regulation 3(4) inserts regulation 68A into the 2017 Regulations ("regulations 53ZA and 68A"). When a plan or project for a relevant offshore wind activity is approved despite a negative assessment of the implications for a European site or a European offshore marine site, regulations 53ZA and 68A require the Scottish Ministers to secure compensatory measures that benefit the UK MPA network (as defined in the regulations) in a manner which is reasonably proportionate to the adverse effects, or predicted adverse effects, on the integrity of the European site or European offshore marine site.

Regulations 53ZA and 68A require the Scottish Ministers to issue guidance which they must have regard to when they are exercising the function of securing compensatory measures under those regulations. The Scottish Ministers must also publish a compensation hierarchy and they must exercise their function on securing compensatory measures in accordance with it.

The Scottish Ministers are required under regulations 53ZA and 68A to carry out a review of the operation of the new provisions including the compensation hierarchy and any guidance that they issue. The Scottish Ministers must prepare and publish a report of the review's findings. The first report must be published before 30th April 2031 and thereafter at intervals not exceeding five years.

Regulation 2(2) disapplies the duties in regulation 3(1) and (3) of the 1994 Regulations and regulation 2(3) disapplies regulation 53 of the 1994 Regulations, in respect of compensatory measures for relevant offshore wind activity.

Regulation 3(2) disapplies the duties in regulation 9(1) and (3) of the 2017 Regulations and regulation 3(3) disapplies regulation 68 of the 2017 Regulations in respect of compensatory measures for relevant offshore wind activity in the Scottish inshore region.

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