EXPLANATORY MEMORANDUM TO

THE FORESTRY ACT 1967 (CONSENT TO RENEWABLE ELECTRICITY DEVELOPMENT) (ENGLAND) REGULATIONS 2026

2026 No. 89

1. Introduction

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

2. Declaration

2.1 Minister Creagh, Minister for Nature at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Laura Bellingham, Deputy Director for Environmental Governance, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kate Kurton at the Department for Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: fcsponsorship@defra.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument is made in exercise of the powers conferred by section 3B(1) of the Forestry Act 1967 ("Forestry Act").

4.2 This instrument enables the Secretary of State to require the Forestry Commission to obtain consent before using its powers under section 3A of the Forestry Act to allow renewable electricity developments on forestry land in England. Consent must be given explicitly, unless it is automatically deemed granted if no decision is made within 60 days. This period may be extended by up to 30 days, provided that the Forestry Commission is formally notified of the extension.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The Forestry Commission has powers under the Forestry Act, to develop renewable electricity projects within and across the Public Forest Estate. The Forestry

Commission's use of these powers is subject to ministerial consent where specified criteria are met.

5.2 This Statutory Instrument establishes those regulations and requires the Forestry Commission to obtain the Secretary of State's consent before exercising its powers relating to renewable electricity.

5.3 This Statutory Instrument also sets the timeframe within which the Secretary of State must make a consenting decision and provides for the practical arrangements that apply if further information is required from the Forestry Commission.

5.4 The intent of these regulations is to ensure that the Secretary of State, as landowner of the Public Forest Estate, is consulted on certain developments so that land-use decisions can be appropriately considered.

What was the previous policy, how is this different?

5.5 The power to build renewable energy developments on the Public Forest Estate did not exist previously and there was no power to lease land for those purposes. The new power permits renewable energy development.

6. Legislative and Legal Context

How has the law changed?

6.1 The Forestry Commission has powers under sections 3A, 3B and 3C of the Forestry Act (as inserted by Section 29 of the Planning and Infrastructure Act 2025) to bring forward proposals - either directly or in partnership with developers - for generating, storing, transmitting and supplying renewable electricity within and across the Public Forest Estate.

6.2 Prior to the amendments made to the Forestry Act, there was no power to use the Public Forest Estate for renewable electricity projects.

6.3 Sections 3B and 3C of the Forestry Act require the Forestry Commission to obtain the consent of the Secretary of State before exercising powers under section 3A.

6.4 This Statutory Instrument brings the new powers in sections 3A, 3B and 3C into effect by enabling the Secretary of State to require the Forestry Commission to obtain consent before exercising its powers related to renewable electricity.

Why was this approach taken to change the law?

6.5 This approach was taken because Section 3C(5) of the Forestry Act confers discretion for regulations to be made under Section 3B(1), subject to annulment in pursuance of a resolution of either House of Parliament (negative procedure).

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government has not formally consulted on this instrument, as it is limited to internal operational processes between the Department for Environment, Food and Rural Affairs and the Forestry Commission. However, the Department for Environment, Food and Rural Affairs has engaged with the Department for Energy Security and Net Zero to ensure consistency with the existing statutory landscape.

8. Applicable Guidance

8.1 There is not a requirement to provide guidance alongside this Statutory Instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument, as it does not regulate business activity and relates to governance arrangements between the Department for Environment, Food and Rural Affairs and the Forestry Commission. Publication of a full impact assessment is not necessary for such legislation.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this Statutory Instrument establishes conditions on a power granted to a public body, rather than to business or businesses. Forestry England is an executive agency of the Forestry Commission, a non-ministerial government department sponsored by the Department for Environment, Food and Rural Affairs. Therefore, the direct impacts of the measure fall on government bodies rather than business.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is limited, as this instrument introduces regulatory requirements that apply only to the Forestry Commission's existing power and does not create new obligations for other public sector organisations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument is not subject to the duty to review regulatory provisions in secondary legislation in section 28 of the Small Business, Enterprise, and Employment Act 2015. It will be kept under review per the ordinary course of government business.

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 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

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").