EXPLANATORY MEMORANDUM TO

THE MARINE RECOVERY FUNDS REGULATIONS

2025 No. 1230

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 of Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Gareth Baynham-Hughes, Director for Marine & Fisheries, at Defra confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Natasha James and Jak Allen at the Department of Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: mrf@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 ("S.I.") uses powers contained in Part 13 of the Energy Act 2023 (c.52, "the Act") to establish the legal framework for the establishment of one or more Marine Recovery Funds ("MRFs"). These will be voluntary schemes that organisations undertaking relevant offshore wind activities (such as developers or plan promoters) can pay into to secure appropriate and strategic compensation measures to compensate for the adverse environmental effects of their projects on protected sites. Section 292 of the Act sets out the regulation-making powers, which include power to confer functions on the Defra Secretary of State in relation to the establishment, operation and management of MRFs, and to allow the Secretary of State to delegate functions relating to the operation or management of an MRF to others.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The UK Government has a mission to make Britain a clean energy superpower, which includes providing energy security with cheaper, zero-carbon electricity by 2030, accelerating to net zero 2050 targets. Decarbonising the energy grid is vital to deliver on the net zero objective, with electricity supply responsible for 11% of UK greenhouse gas emissions in 2023. This will be delivered, in part, by radically increasing the UK's offshore wind capacity.

5.2 Further, the UK Government has domestic and international commitments to protect and recover the marine environment. These include the UK Marine Strategy and the Marine Protected Areas ("MPA") target. The MPA target, set by the Environmental Targets (Marine Protected Areas) Regulations 2023 (S.I. 2023/94), requires that at least 70% of protected features in relevant MPAs in England are in a favourable condition by 31 December 2042, with the remaining features in a recovering condition. Internationally, the UK is also a signatory to the Convention on Biological Diversity ("CBD") – an international treaty to ensure the conservation and sustainable use of biodiversity. The Global Biodiversity Framework of the CBD sets the 30x30 targets, including 30% of land and sea to be effectively conserved and managed by 2030, also known as the "30 by 30" commitment. The UK has other relevant commitments, including under the OSPAR and Bern Conventions.

5.3 The UK offshore wind market has grown significantly in the last twenty years and now hosts the most offshore wind capacity in Europe. There is 16.1 GW of operational offshore wind capacity in the UK and, in 2024, offshore wind generated 17% of electricity. The UK offshore wind pipeline remains healthy and continues to grow. However, there is still the need for accelerated deployment to meet ambitious 2030 clean energy and 2050 net zero targets.

5.4 Identifying and securing suitable compensation in the marine environment, to compensate for the adverse environmental effects of projects on protected sites, is inherently challenging. This has become a key barrier to the deployment of offshore wind as it can take a long time for developers and statutory nature conservation bodies to agree compensatory measures and these are often difficult to deliver on a project-by- project basis. These issues are largely due to the unique nature of the marine environment and delay how long it takes for OFW projects to enter and progress through the planning and consenting process. As offshore wind farms grow in scale and complexity – particularly in regions like the North Sea – these issues have become more pronounced.

5.5 Therefore, the S.I. enables the Secretary of State to establish one or more MRFs. Once operational, an MRF will provide a voluntary and alternative option that organisations undertaking relevant offshore wind activities (such as developers or plan promoters) can pay into to secure appropriate measures, delivered at a larger, strategic scale, to compensate for the unavoidable adverse environmental impacts of their projects on protected sites.

5.6 Introducing one or more MRFs will provide a centralised mechanism which simplifies the planning and consenting process, helping to accelerate the planning and consenting of offshore wind developments. This will contribute to the UK Government's clean power by 2030 mission, including its aims to cut bills, create jobs and deliver energy security with cheaper, zero-carbon electricity. It will also ensure that environmental impacts are compensated for effectively, by providing access to

the most ecologically beneficial and strategic solutions. Moreover, it will increase certainty around securing compensation measures and reducing logistical and administrative burden on developers, saving them time and resource by discharging their liability for environmental compensation.

5.7 An MRF will simultaneously contribute to the growth of the offshore wind sector by reducing planning and consenting timelines.

5.8 The S.I., therefore, sets out the procedures for applications and the associated payments that may be required from prospective applicants to enter an MRF (see Part 7). The Secretary of State will determine the procedure for the making of an MRF application. An example payment could be a reservation fee which secures entry into an MRF through the allocation of a compensation measure, prior to the applicant's consent examination for their offshore wind project. Furthermore, the S.I. outlines the process for formalising entry into an MRF (see Part 8) through a signed MRF contract. The contract terms will stipulate, among other things, an agreed payment plan and the point at which liability is transferred from the applicant to the Secretary of State to deliver, monitor, maintain, and adapt the allocated compensation measure.

5.9 The S.I. also provides for the Secretary of State to pay other bodies for their work on the operation and management of an MRF (see Part 5); for example, to reimburse costs incurred by another public body when exercising their functions in assisting with an MRF (where that activity would not otherwise be carried out).

What was the previous policy, how is this different?

5.10 Under the current policy framework, offshore wind developers and plan promoters are required to carry out a Habitats Regulations Assessment ("HRA") to determine whether a proposed offshore wind plan or project could significantly affect the designated features of a Special Area of Conservation ("SAC") or Special Protection Area ("SPA") – two types of protected marine sites. If a plan or project is likely to have a significant effect on these sites (either alone or in combination with others), and is not directly connected to the site's management, an Appropriate Assessment (a key component of the HRA) must be undertaken in accordance with the Conservation of Offshore Marine Habitats and Species Regulations [S.I 2023/1013] ("the Habitats Regulations"). Under the Habitats Regulations, where the adverse effect of a plan or project cannot be avoided, reduced, or mitigated, the plan or project may still be consented if there are no alternative solutions and it must be carried out for imperative reasons of overriding public interest. Where this happens, the appropriate authority (the Secretary of State or relevant Devolved Minister) has a duty under the Habitats Regulations to secure that any necessary compensation measures are taken to ensure that the overall coherence of the National Site Network (the network of SACs and SPAs) is protected.

5.11 Where an offshore wind activity could affect, even insignificantly, the protected features of a Marine Conservation Zone ("MCZ") – a third category of protected marine site – or any ecological or geomorphological processes supporting those features, a separate MCZ assessment is required under the Marine and Coastal Access Act 2009 by the relevant public authority. However, developers will be expected to provide the necessary information to prepare the assessment. These assessments determine whether a development could harm protected habitats and species, and outline how any adverse effects can be avoided, minimised, or mitigated.

5.12 To date, developers have largely delivered compensation on a project-by-project basis. A change to deliver compensation strategically involves compensatory

measures that work across a wide area, joining up across projects and organisations. This will allow unavoidable impacts to MPAs to be compensated for at a strategic level across multiple offshore wind projects or plans, providing access to the most ecologically beneficial and strategic solutions.

6. Legislative and Legal Context

How has the law changed?

6.1 The S.I. uses powers contained in section 292 of the Act to create the legal framework for establishing one or more MRFs. There are no changes to existing legislation.

Why was this approach taken to change the law?

6.2 There are no changes to existing legislation, so a free-standing set of regulations is appropriate. The Act provides power to create regulations enabling the Secretary of State to establish and take responsibility for one or more MRFs, and this is the first use of that power.

7. Consultation

Summary of consultation outcome and methodology

7.1 Defra conducted a 6-week public consultation, from 31/03/2025 to 12/05/2025, on the operational design and delivery model of the MRF. The consultation was hosted on the online platform Citizen Space, and responses were also collected via post and email. Defra received 43 responses to the consultation in total, from industry, environmental non-governmental organisations, statutory nature conservation bodies, other arm's length bodies, fishing trade bodies, and research bodies. Defra conducted a thematic analysis of responses to understand how the policy needed amending. Defra published a summary of responses and government response on 13/10/25.[1]

7.2 This was an opportunity for stakeholders to view and respond to Defra's proposals for: the MRF application process, the MRF costing models, the discharging of developer's liability for compensation, and the intention for a MRF Operator to provide monitoring, adaptive management, and decommissioning of compensation measures.

7.3 Some of the consultation questions sought the perspective of those who will use the MRF, to understand if Defra's proposals were compatible with the planning and consenting system. Other questions were crafted to understand if Defra's proposals would reduce planning and consenting timelines without compromising on the UK Government's commitments to protect the marine environment.

7.4 Stakeholders provided broad and strong support for the overall design of the MRF. Many respondents welcomed the proposed approach, particularly the application process and the clear point at which liability will be discharged. Many respondents also emphasised the importance of ensuring the MRF becomes operational as soon as possible, and sought additional information on how the policy would function in practice.

7.5 Suggestions included providing greater clarity and transparency on: how the application process would work for projects which do not require a Development Consent Order; the method of calculation of MRF costs, how these are apportioned between applicants, and what costs will be used for; the proposed approach to apply

[1] www.gov.uk/government/consultations/offshore-wind-setting-up-the-marine-recovery-fund

adaptive management to compensation measures; and how Defra plans to address cross-boundary impacts from offshore wind projects.

7.6 Given the overall agreement that the MRF will speed up planning and consenting, and provide an attractive alternative to delivering compensation independently, only minor refinements were made to the operating model in response to the feedback received. Further information will be included in guidance to address stakeholder suggestions.

7.7 The UK Government did not require devolved government agreement to consult, as it was a UK Government consultation. However, Defra has worked closely with the devolved governments to ensure the regulations aligned with their jurisdictional requirements. Per the requirements in section 292(12) of the Energy Act 2023, Defra also undertook a three-week formal consultation with the devolved governments on the S.I. in October 2025.

8. Applicable Guidance

8.1 Guidance explaining the application process for the MRF and the operation of the Fund by the prospective MRF Operator will be published by the end of the year.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment is submitted with this Explanatory Memorandum and published alongside it on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business is contingent on uptake in the MRF, with no anticipated impacts on charities or voluntary bodies. The MRF will form a key part of Defra's Offshore Wind Environmental Improvement Package ("OWEIP"), a cornerstone of the UK Government's Clean Power by 2030 mission. OWEIP is designed to accelerate offshore wind deployment and reduce consenting times whilst protecting the marine environment. The package will include reforms to environmental compensation, the creation of offshore wind environmental standards, a strategic approach to environmental monitoring, and the introduction of MRF(s). The latter is expected to lead to time savings over the planning and consenting process. Businesses could see £1.3bn in option fee savings attributed to the MRF. These are fees which are paid to The Crown Estate by offshore wind developers and plan promoters to reserve their area in the seabed; they are paid annually until construction begins on developments. In the last seabed leasing round (Round 4), average annual option fees were £110m per GW.

9.3 While small and micro businesses are eligible for the MRF, they will not be required to use the MRF if it is not their preferred route to compensating for their projects. However, there are no small or micro offshore wind developers that Defra are aware of, with the industry generally made up of large multinational companies who can finance the upfront costs of developing an offshore wind farm.

9.4 There is no, or no significant, impact on the public sector because no additional financial costs are anticipated.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 A non-statutory post implementation review ("PIR") will be undertaken by 01/01/2032. This will be six years since the beginning of the MRF becoming operational. This allows sufficient time to evaluate numerous factors, including:

- Whether strategic measures are being delivered as a result of the MRF, and the environmental outcomes of these measures.
- Whether the MRF has been a successful policy intervention, and if any adjustments are required carrying forward.
- An evaluation of the MRF against its critical success factors and SMART objectives.
- An assessment on whether expected costs and benefits were realised and to understand any deviations.
- An evaluation of the performance of the MRF Operator(s), including how accessible the MRF(s) are, their uptake, and how well they have delivered Strategic Compensation Measures to meet UK Government targets and objectives.

10.2 This will also allow Defra to measure outcomes against the 2030 offshore wind targets. Subsequent reviews, however, would follow the standard five-year cycle after Defra's six-year initial review.

10.3 Defra recognises that the UK offshore wind industry is moving rapidly. If the MRF cannot function due to operational or financial challenges, review may come earlier. The same applies if finances or the operator are not allowing the MRF to remain functionable. During the third year of operation, the MRF will be subject to a separate evaluation and the Defra Secretary of State will take a decision on a future, longer-term operator. Officials within Defra will be operating the day-to-day functions of the MRF, on behalf of the Defra Secretary of State, for this initial "incubation" period of three years.

10.4 Given the robust review process that is already planned and explained above, a statutory review is therefore not included in the S.I.. This follows the statutory guidance under section 31 of the Small Business, Enterprise and Employment Act.

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

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)