



Energy Act 2023

2023 CHAPTER 52

PART 13

OFFSHORE WIND ELECTRICITY GENERATION, OIL AND GAS

CHAPTER 1

OFFSHORE WIND ELECTRICITY GENERATION

290 Meaning of “relevant offshore wind activity”

- (1) In this Chapter, “relevant offshore wind activity” means—
 - (a) the planning, construction, operation or decommissioning of offshore wind electricity infrastructure, or
 - (b) the identification of an area for activity within [paragraph \(a\)](#) (whether or not any particular offshore wind electricity infrastructure is in contemplation).
- (2) In subsection (1), “offshore wind electricity infrastructure” means—
 - (a) a generating station, in the UK marine area, that generates electricity from wind (an “offshore wind generating station”), or
 - (b) infrastructure, in the UK marine area, used or intended for use in connection with—
 - (i) an offshore wind generating station, or
 - (ii) the conveyance of electricity generated by an offshore wind generating station.
- (3) For the purposes of the reference in [subsection \(2\)\(b\)\(ii\)](#) to infrastructure used or intended for use in connection with the conveyance of electricity generated by an offshore wind generating station, it does not matter whether the infrastructure is also used or intended for use in connection with the conveyance of electricity generated from other sources.

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291 Strategic compensation for adverse environmental effects

- (1) This section applies where a public authority is subject to one or more environmental compensation obligations in relation to relevant offshore wind activities.
- (2) “Environmental compensation obligation” means—
 - (a) a statutory duty (however expressed) to secure that measures are taken to compensate for adverse environmental effects of an activity, or
 - (b) a statutory condition (however expressed) requiring a public authority, before granting consent for the doing of an act by a person (“P”) in connection with an activity, to be satisfied that P will take or secure the taking of measures to compensate for adverse environmental effects of the act.
- (3) The public authority may determine that—
 - (a) measures taken or secured by the authority in the exercise of any of its functions, or
 - (b) measures to be taken or secured by the authority in the exercise of any of its functions,
 are to count towards discharging the environmental compensation obligation or obligations to which the authority is subject.
- (4) In this Chapter, “adverse environmental effect” means—
 - (a) anything that adversely affects the integrity of any site comprised in the national site network, or
 - (b) anything that hinders the achievement of the conservation objectives stated for a protected marine area.
- (5) The measures referred to in subsection (3) may be measures taken at the site or sites of the activities to which the measures relate or elsewhere.
- (6) In this section—
 - “act” includes omission;
 - “the national site network” has the same meaning as in the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#));
 - “protected marine area” means an area designated under—
 - (a) section 116 of the Marine and Coastal Access Act 2009 or section 13 of the Marine Act (Northern Ireland) 2013 ([c. 10 \(N.I.\)](#)) (marine conservation zones), or
 - (b) section 67(1)(a) of the Marine (Scotland) Act 2010 ([asp 5](#)) (marine protected areas);
 - “statutory”, in relation to a duty or condition, means imposed by or under primary legislation.
- (7) For the purposes of subsection (3), a public authority (“authority A”) may, with the consent of another public authority (“authority B”), treat measures taken or secured (or to be taken or secured) by authority B as taken or secured (or to be taken or secured) by authority A in the exercise of any of its functions.
- (8) In subsection (4)(b), the reference to the conservation objectives stated for a protected marine area is a reference to the conservation objectives stated for the area pursuant to (as the case may be) section 117(2)(b) of the Marine and Coastal Access Act 2009, section 14(2)(b) of the Marine Act (Northern Ireland) 2013 or section 68(3)(b) of the Marine (Scotland) Act 2010.

292 Marine recovery fund

- (1) The Secretary of State may by regulations make provision for the establishment, operation and management of one or more marine recovery funds.
- (2) A marine recovery fund is a fund—
 - (a) into which payments may be made in respect of relevant offshore wind activities, and
 - (b) out of which payments may be made towards expenditure on measures to compensate for adverse environmental effects of relevant offshore wind activities.
- (3) The following provisions of this section are without prejudice to the generality of subsection (1).
- (4) Regulations under this section may make provision—
 - (a) enabling a determination to be made, by or on behalf of the relevant person, as to whether (and, if so, the extent to which) a payment into the fund discharges a compensation condition imposed on another person in connection with the granting of consent in respect of a relevant offshore wind activity;
 - (b) for a payment into the fund to be treated as discharging a compensation condition to the extent (if any) determined by virtue of paragraph (a).
- (5) “Compensation condition”, in relation to a person, means a condition requiring the person to take measures to compensate for adverse environmental effects of a relevant offshore wind activity.
- (6) “Relevant person”, for the purposes of a determination made by virtue of subsection (4)(a), means the person who imposed the compensation condition.
- (7) Regulations under this section may make provision—
 - (a) enabling payments to be made out of the fund towards expenditure described in subsection (2)(b);
 - (b) about the persons to whom such a payment may be made;
 - (c) enabling conditions to be imposed on a person to whom such a payment is made in connection with the taking of measures described in subsection (2)(b).
- (8) Regulations under this section may make provision—
 - (a) about the recovery of costs incurred in connection with the exercise of functions conferred by the regulations;
 - (b) conferring functions, including functions involving the exercise of a discretion, on the Secretary of State;
 - (c) for the delegation of functions conferred on the Secretary of State, where the functions relate to the operation or management of a marine recovery fund.
- (9) Regulations made by virtue of subsection (8)(c) may provide that a function may be delegated—
 - (a) to a Scottish public authority only if the function relates to the taking or securing of measures in Scotland;
 - (b) to a Welsh public authority only if the function relates to the taking or securing of measures in Wales;
 - (c) to a Northern Ireland public authority only if the function relates to the taking or securing of measures in Northern Ireland.

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- (10) Regulations made by virtue of subsection (8)(c) must provide that the delegation of a function—
- (a) to a Scottish public authority requires the consent of the Scottish Ministers;
 - (b) to a Welsh public authority requires the consent of the Welsh Ministers;
 - (c) to a Northern Ireland public authority requires the consent of DAERA.
- (11) Regulations made by virtue of subsection (8)(c) must provide that the delegation of a function—
- (a) may be cancelled by the Secretary of State in accordance with the regulations;
 - (b) does not prevent the Secretary of State from carrying out any function delegated.
- (12) Before making regulations under this section, the Secretary of State must consult—
- (a) the Scottish Ministers, so far as the regulations relate to relevant offshore wind activities in Scotland,
 - (b) the Welsh Ministers, so far as the regulations relate to relevant offshore wind activities in Wales,
 - (c) DAERA, so far as the regulations relate to relevant offshore wind activities in Northern Ireland, and
 - (d) such other persons as the Secretary of State considers appropriate.
- (13) Regulations under this section are subject to the negative procedure.

293 Assessment of environmental effects etc

- (1) The appropriate authority may by regulations make—
- (a) provision for and in connection with the assessment of the environmental effects of relevant offshore wind activities in relation to protected sites;
 - (b) provision about the taking or securing of measures by a public authority in compensation for any adverse environmental effects of relevant offshore wind activities in relation to protected sites (“compensatory measures”).
- (2) The appropriate authority is the Secretary of State, subject to paragraphs (a) to (c)—
- (a) the Scottish Ministers are the appropriate authority in relation to relevant offshore wind activities in the Scottish inshore region;
 - (b) the Welsh Ministers are the appropriate authority in relation to relevant offshore wind activities in the Welsh inshore region, subject to subsection (3) and other than in relation to qualifying Secretary of State functions;
 - (c) DAERA is the appropriate authority in relation to relevant offshore wind activities in the Northern Ireland inshore region, other than in relation to qualifying Secretary of State functions.
- (3) In subsection (2)(b), “relevant offshore wind activity” does not include an activity within section 290(1)(a) relating to a generating station that has a capacity such that the construction or extension of the generating station would be a nationally significant infrastructure project (within the meaning given by sections 14 and 15 of the Planning Act 2008).
- (4) The provision that may be made by virtue of subsection (1) includes provision—
- (a) specifying the matters to be dealt with by an assessment;

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- (b) about the procedure to be followed in carrying out an assessment, including when an assessment must be carried out and matters that must be taken into account;
 - (c) specifying the person by whom an assessment, or a specified kind of assessment, must be carried out;
 - (d) requiring an assessment to be carried out by a specified person in specified circumstances;
 - (e) authorising or requiring the supply of information (including information the supply of which would not otherwise be permitted) for the purposes of an assessment;
 - (f) enabling a person carrying out an assessment (an “assessor”) to require a person who has applied for consent to provide the assessor with assistance for the purposes of or in connection with the assessment;
 - (g) prohibiting the granting of consent in respect of an activity where an assessment has not been carried out in accordance with the regulations;
 - (h) about when or how compensatory measures must or may be provided;
 - (i) disapplying or otherwise modifying, whether generally or in specified circumstances or subject to specified conditions, any of the provisions listed in subsection (5)(a), (b), (c) or (d) (as the case may be).
- (5) The provisions referred to in subsection (4)(i) are—
- (a) in the case of regulations made by the Secretary of State—
 - (i) section 126 of the Marine and Coastal Access Act 2009;
 - (ii) regulations 9 and 10 and Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012);
 - (iii) regulations 6, 27, 28 and 30 to 37 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013);
 - (iv) any other provision that relates to the taking or securing of compensatory measures, where the provision is made by or under an Act;
 - (b) in the case of regulations made by the Scottish Ministers—
 - (i) section 83 of the Marine (Scotland) Act 2010 (asp 5);
 - (ii) regulations 3 and 3A and Part 4 of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716);
 - (iii) regulations 9 and 10 and Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012);
 - (iv) any other provision that relates to the taking or securing of compensatory measures in or in relation to the Scottish inshore region, where the provision is made by or under an Act of the Scottish Parliament;
 - (c) in the case of regulations made by the Welsh Ministers—
 - (i) section 126 of the Marine and Coastal Access Act 2009;
 - (ii) regulations 9 and 10 and Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012);
 - (iii) any other provision that relates to the taking or securing of compensatory measures, where the provision is made by or under an Act or Measure of Senedd Cymru;
 - (d) in the case of regulations made by DAERA—
 - (i) section 23 of the Marine Act (Northern Ireland) 2013;

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- (ii) regulations 3 and 3A and Part 4 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 ([S.R. \(N.I.\) 1995 No. 380](#));
 - (iii) any other provision that relates to the taking or securing of compensatory measures in or in relation to the Northern Ireland inshore region, where the provision is made by or under Northern Ireland legislation.
- (6) But regulations under this section may not disapply or otherwise modify, or make provision which could undermine or circumvent—
- (a) section 126(7)(a) or (b) of the Marine and Coastal Access Act 2009, section 83(4)(b)(i) or (ii) of the Marine (Scotland) Act 2010 or section 23(7) (a) or (b) of the Marine Act (Northern Ireland) 2013,
 - (b) regulation 64 of the Conservation of Habitats and Species Regulations 2017,
 - (c) regulation 29 of the Conservation of Offshore Marine Habitats and Species Regulations 2017,
 - (d) regulation 49 of the Conservation (Natural Habitats, &c.) Regulations 1994,
 - (e) regulation 44 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995, or
 - (f) any provision about qualifying Secretary of State functions (unless the regulations are made by the Secretary of State).
- (7) Regulations made under this section by the Secretary of State—
- (a) may not provide for a function that is exercisable by a Scottish public authority, a Welsh public authority or a Northern Ireland public authority to cease to be exercisable by that authority, and
 - (b) to the extent that a function is exercisable by or on behalf of a Scottish public authority, a Welsh public authority or a Northern Ireland public authority, may not provide for the function also to be exercisable to that extent by another person,
- but may (subject to paragraphs (a) and (b)) modify such a function.
- (8) Regulations under this section may make provision—
- (a) enabling the appropriate authority or a specified person to direct a person to take steps or to refrain from taking steps;
 - (b) requiring a person given such a direction to comply with it.
- (9) But regulations made by the Secretary of State by virtue of subsection (8)(a) may not enable directions to be given—
- (a) to a Scottish public authority by a person other than the Scottish Ministers;
 - (b) to a Welsh public authority by a person other than the Welsh Ministers.
- (10) Regulations under this section may require the appropriate authority or a specified person—
- (a) to give guidance about specified matters;
 - (b) to consult specified persons, or persons of a specified description, before giving guidance by virtue of [paragraph \(a\)](#).
- (11) Regulations under this section may confer functions, including functions involving the exercise of a discretion—
- (a) in the case of regulations made by the Secretary State, on any person;
 - (b) in any other case, on a person other than a Minister of the Crown.

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- (12) The functions that may be conferred on a person by virtue of subsection (11) include a function of giving advice in relation to the application or exercise of any other function, whether exercisable by that or another person, under or by virtue of regulations under this section.
- (13) In this section—
- “protected site” has the meaning determined in accordance with regulations under this section; and those regulations—
 - (a) must be framed so that protected sites consist of natural habitats or habitats of species, and
 - (b) must in particular include protected marine areas;
 - “qualifying Secretary of State functions” means functions of the Secretary of State in relation to relevant offshore wind activities in (as the case may be) the Welsh inshore region or the Northern Ireland inshore region;
 - “specified” means specified in regulations under this section.

294 Regulations under [section 293](#): consultation and procedure

- (1) The Secretary of State must, before making regulations under [section 293](#), consult—
- (a) the Marine Management Organisation,
 - (b) the Joint Nature Conservation Committee,
 - (c) Natural England,
 - (d) the Scottish Ministers and Scottish Natural Heritage, so far as the regulations relate to relevant offshore wind activities or protected sites in Scotland,
 - (e) the Welsh Ministers and the Natural Resources Body for Wales, so far as the regulations relate to relevant offshore wind activities or protected sites in Wales,
 - (f) DAERA, so far as the regulations relate to protected sites in Northern Ireland, and
 - (g) such other persons as the Secretary of State considers appropriate.
- (2) Regulations made by the Secretary of State under [section 293](#) are subject to the affirmative procedure.
- (3) The Scottish Ministers must, before making regulations under [section 293](#), consult—
- (a) the Secretary of State,
 - (b) the Marine Management Organisation, so far as the regulations relate to protected sites in England or the Northern Ireland offshore region,
 - (c) Natural England, so far as the regulations relate to protected sites in England,
 - (d) the Joint Nature Conservation Committee, so far as the regulations relate to protected sites in such part of the UK marine area as is beyond the seaward limits of the territorial sea,
 - (e) Scottish Natural Heritage, so far as the regulations relate to protected sites in Scotland,
 - (f) the Welsh Ministers and the Natural Resources Body for Wales, so far as the regulations relate to protected sites in Wales,
 - (g) DAERA, so far as the regulations relate to protected sites in Northern Ireland, and
 - (h) such other persons as they consider appropriate.

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- (4) Regulations made by the Scottish Ministers under [section 293](#) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#))).
- (5) The Welsh Ministers must, before making regulations under [section 293](#), consult—
 - (a) the Secretary of State,
 - (b) the Marine Management Organisation, so far as the regulations relate to protected sites in England or the Northern Ireland offshore region,
 - (c) Natural England, so far as the regulations relate to protected sites in England,
 - (d) the Joint Nature Conservation Committee, so far as the regulations relate to protected sites in such part of the UK marine area as is beyond the seaward limits of the territorial sea,
 - (e) the Scottish Ministers and Scottish Natural Heritage, so far as the regulations relate to protected sites in Scotland,
 - (f) the Natural Resources Body for Wales, so far as the regulations relate to protected sites in Wales,
 - (g) DAERA, so far as the regulations relate to protected sites in Northern Ireland, and
 - (h) such other persons as they consider appropriate.
- (6) The power of the Welsh Ministers to make regulations under [section 293](#) is exercisable by statutory instrument.
- (7) A statutory instrument containing regulations made by the Welsh Ministers under [section 293](#) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (8) DAERA must, before making regulations under [section 293](#), consult—
 - (a) the Secretary of State,
 - (b) the Marine Management Organisation, so far as the regulations relate to protected sites in England or the Northern Ireland offshore region,
 - (c) Natural England, so far as the regulations relate to protected sites in England,
 - (d) the Joint Nature Conservation Committee, so far as the regulations relate to protected sites in such part of the UK marine area as is beyond the seaward limits of the territorial sea,
 - (e) the Scottish Ministers and Scottish Natural Heritage, so far as the regulations relate to protected sites in Scotland,
 - (f) the Welsh Ministers and the Natural Resources Body for Wales, so far as the regulations relate to protected sites in Wales, and
 - (g) such other persons as DAERA considers appropriate.
- (9) The power of DAERA to make regulations under [section 293](#) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 ([S.I. 1979/1573 \(N.I. 12\)](#)).
- (10) Regulations may not be made under [section 293](#) by DAERA unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.
- (11) In this section, “protected site” has the same meaning as in [section 293](#).

295 Interpretation of Chapter 1

(1) In this Chapter—

“adverse environmental effect” has the meaning given by [section 291\(4\)](#);

“consent” means any consent, approval, permission, authorisation or confirmation (however described or given) that is required, or otherwise provided for, by or under primary legislation;

“DAERA” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

“England” includes the English inshore region and the English offshore region;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (see section 8(1) of that Act);

“Northern Ireland” includes the Northern Ireland inshore region;

“primary legislation” means—

- (a) an Act of Parliament,
- (b) an Act or Measure of Senedd Cymru,
- (c) an Act of the Scottish Parliament, or
- (d) Northern Ireland legislation;

“protected marine area” has the meaning given by [section 291\(6\)](#);

“public authority” means—

- (a) a Minister of the Crown,
- (b) the Scottish Ministers,
- (c) the Welsh Ministers,
- (d) a Northern Ireland department, or
- (e) any other person with functions of a public nature;

“relevant offshore wind activity” has the meaning given by [section 290](#);

“Scotland” includes the Scottish inshore region and the Scottish offshore region;

“UK marine area” has the meaning given by section 42(1) of the Marine and Coastal Access Act 2009;

“Wales” includes the Welsh inshore region and the Welsh offshore region.

(2) References in this Chapter to the English, Scottish, Welsh or Northern Ireland inshore and offshore regions are to be construed in accordance with the Marine and Coastal Access Act 2009 (see section 322 of that Act).

(3) References in this Chapter—

- (a) to a Scottish public authority are to the Scottish Ministers or any other public authority whose functions are exercisable only or mainly in or as regards Scotland;
- (b) to a Welsh public authority are to the Welsh Ministers or any other public authority whose functions are exercisable only or mainly in or as regards Wales;
- (c) to a Northern Ireland public authority are to a Northern Ireland department or any other public authority whose functions are exercisable only or mainly in or as regards Northern Ireland.