



Department for
Business, Energy
& Industrial Strategy

Energy Security Bill Policy Statement

Offshore Wind Environmental Improvement
Package Measures

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Summary

The Energy Bill was introduced into Parliament on 6 July 2022. The Bill will deliver a cleaner, more affordable and more secure energy system for the long term. It builds on the ambitious commitments in the British Energy Security Strategy to invest in homegrown energy and maintain the diversity and resilience of the United Kingdom's energy supply.

Offshore wind has a central role to play in delivering Government's climate change and energy security objectives. It provides secure, domestically generated electricity and will play a key role in decarbonising the United Kingdom's power system by 2035, achieving net zero by 2050. The United Kingdom is already a world leader in offshore wind, with the most installed capacity in Europe. The British Energy Security Strategy, published in April 2022, builds on this success and sets out an increased ambition for up to 50 gigawatts of offshore wind, including up to 5 gigawatts of floating wind, by 2030.

Meeting these ambitions will require a significant increase in the pace of deployment, but in doing so we must continue to protect and enhance our marine environment and the vital ecosystem services it provides. The British Energy Security Strategy outlined a series of measures which collectively will accelerate deployment whilst protecting the marine environment. These include:

- Establishing a fast-track consenting route to reduce the offshore wind consent time from up to four years down to one year for priority cases where quality standards are met.
- Strengthening the National Policy Statement for Renewable Energy to reflect the importance of energy security and net zero.
- Developing an Offshore Wind Environmental Improvement Package to address the impacts of offshore wind infrastructure in the marine environment. The package will speed up the consenting process whilst protecting the environment, and will include measures to:
 - deliver Offshore Wind Environmental Standards (previously called nature-based design standards in the British Energy Security Strategy);
 - develop regulations and guidance to streamline the Habitats Regulations Assessment and Marine Conservation Zone assessment process for offshore wind projects;
 - deliver environmental compensatory measures across one or more offshore wind projects to compensate for adverse environmental effects on protected sites that cannot be otherwise avoided, reduced or mitigated;
 - implement a Marine Recovery Fund; and
 - introduce strategic monitoring to improve our understanding of the marine environment and the measures needed to further protect it.

Alongside the other measures, the Offshore Wind Environmental Improvement Package will help to contribute to the British Energy Security Strategy commitment to establish a fast-track consenting route. The Government is also leading wider work to address the coordination of infrastructure for offshore wind, and the impacts of that infrastructure (including the onshore impacts).

Government ran an ‘Opportunity to Comment’ on the Offshore Wind Environmental Improvement Package in summer 2022. Around 150 stakeholders attended discussion sessions and 33 written responses were received. The information generated through this process has informed the development and refinement of our policies. Further engagement will take place as Government continues to develop the Offshore Wind Environmental Improvement Package.

Of the five measures in the Offshore Wind Environmental Improvement Package, three require primary legislation which is being sought through Government amendments to the Energy Bill at the Lords Committee Stage. These are to enable:

- making of regulations about the assessment of the environmental effects on protected sites of offshore wind developments’ marine infrastructure, and about compensatory measures for adverse environmental effects;
- strategic compensatory measures to be taken or secured; and
- making regulations to introduce one or more Marine Recovery Funds, and to allow for delegation of the operation and management of the Funds to other bodies.

As a result of the importance of offshore wind deployment in delivering net zero and increasing domestic renewable energy generation, we propose that these measures are specifically for the development of offshore wind and associated infrastructure in the marine environment (including the intertidal area, from Mean High Water to 200 nautical miles).

These powers will enable improved assessment of the environmental effects of offshore wind developments’ marine infrastructure on protected sites, and earlier assessment to allow adequate time to resolve discrepancies in evidence and data. Where compensatory measures are required for damage to the national site network or a protected marine area, these amendments will allow compensation to be delivered by developers working together if that is more appropriate through “strategic compensation”. The Marine Recovery Fund will be an optional mechanism that developers can choose to use to deliver their compensatory measures.

Where Government is taking powers to introduce future regulations, we have included examples of how these powers are likely to be used and what they are intended to achieve. The examples provided are primarily illustrative in nature and are therefore subject to change prior to the laying of regulations as a result of further policy development and engagement with stakeholders.

This policy statement also describes the other measures Government intends to bring forward as part of the Offshore Wind Environmental Improvement Package, but for which primary

legislation is not necessary. Government will explore the most effective mechanism to implement a strategic monitoring system and is developing Offshore Wind Environmental Standards. Government is proposing to implement the Offshore Wind Environmental Standards under the National Policy Statement designated under the Planning Act 2008. A review of the National Policy Statement is ongoing and Government will publish a response to the public consultation on the National Policy Statement in due course.

Background on offshore wind consenting and environmental assessment

The United Kingdom Government and Devolved Administrations designate protected marine areas (Marine Conservation Zones in England, Wales and Northern Ireland, Marine Protected Areas in Scotland) under the Marine and Coastal Access Act 2009, the Marine (Scotland) Act 2010 and the Marine Act (Northern Ireland) 2013, and designate Special Areas of Conservation and Special Protection Areas under the Conservation of Habitat and Species Regulations 2017 in England and Wales, the Conservation of Offshore Habitats and Species Regulations 2017 in the United Kingdom offshore area, the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) in Scotland and the Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 (as amended) in Northern Ireland, (from here on collectively referred to as the “Habitats Regulations”). The purpose of these designations is to restore, preserve and maintain biodiversity by protecting key habitats and species.

Offshore wind farm developers are required to consider the environmental impacts of their projects on protected marine areas and the national site network. This information is scrutinised by the decision-maker who subsequently undertakes the formal environmental assessment and takes the final decision on whether to consent to the windfarm based on advice from Statutory Nature Conservation Bodies and other relevant authorities.

Developers must first demonstrate how they propose to avoid, reduce or mitigate any impacts on protected habitats and species. A plan or project cannot be consented if it is not possible to rule out an adverse effect on site integrity (Special Areas of Conservation/Special Protection Areas). For protected marine areas, the same applies for any act that has a significant risk of hindering the achievement of a site’s conservation objectives.

However, where impacts cannot be avoided, reduced or mitigated, the public authority, such as the Department for Business, Energy and Industrial Strategy Secretary of State, can consider whether the plan or project should be considered for a derogation.

Under the Habitats Regulations, a derogation may be used if the public authority is satisfied that it is necessary due to Imperative Reasons of Overriding Public Interest. For protected marine areas such as Marine Conservation Zones, a developer must demonstrate that there is no other means of proceeding that would lower the risk of achieving the areas conservation objectives and that the public benefit outweighs the risk of environmental damage.

If a derogation is used, there is a duty on the public authority to secure compensatory measures from the developer, and they attach conditions to their consent, to ensure that the overall coherence of the national site network is protected for Special Areas of Conservation/Special Protection Areas and/or Measures of Equivalent Environmental Benefit to the damage which is likely in the protected marine area (from here on collectively referred to as ‘compensatory measures’). The public authority cannot consent the project unless these compensatory measures are secured. The purpose of compensatory measures is therefore to

offset unavoidable adverse environmental effects that hinder site conservation objectives of protected marine areas and maintain the coherence of the national site network (Special Areas of Conservation and Special Protection Areas).

Detail of Legislative Measures

Assessment of environmental effects of offshore wind on protected sites: this includes a power to amend or replace the Habitats Regulations Assessment or Marine Conservation Zone processes specifically for the marine aspects of offshore wind development

This power enables the appropriate regulation-making authority to make provision in regulations for a revised process for the assessment of environmental impacts on protected sites of offshore wind and associated infrastructure in the marine area.

The purpose of these amendments is to ensure that environmental protection of protected areas is addressed early enough in the pre-application planning process to inform adequate and ecologically robust mitigation measures. This in turn will improve the quality of the information coming into the examination stage of an application.

However, it will be critical to ensure that offshore wind developments are capable of remaining aligned with any future reforms to environmental assessment more broadly to retain a consistent approach as far as is possible across all types of development.

The regulations may also make provision about the compensatory measures that can be provided for any adverse environmental effects of offshore wind projects on protected sites.

Alongside the Secretary of State, this will give regulation-making powers to Scottish Ministers in relation to the Scottish inshore area; to Welsh Ministers for offshore wind infrastructure projects below 350 megawatts in the Welsh inshore area; and to the Department of Agriculture, Environment and Rural Affairs in the Northern Irish inshore area. In the offshore area, the Secretary of State will develop regulations which respect the current role of Devolved Administration Ministers in consenting offshore wind projects.

Any risk of a regulatory gap will be mitigated by consultation to ensure policies are aligned and joined up across boundaries. The Government recognises that consistency across regimes is essential. Where regulations are made by different authorities, for example by the Scottish Government for the Scottish inshore area and the Secretary of State for the Scottish offshore, those regulations will need to work together and therefore authorities must consult each other prior to making any such regulations. This requirement to consult will only apply to the new regulations made by the power taken to amend assessments of the environmental impacts of offshore wind and associated infrastructure in relation to the protected sites.

Why are we taking these powers?

Offshore wind farm developers are required to provide information to the public authority to inform a Habitats Regulations Assessment or an assessment of impact on a Marine

Conservation Zone. The British Energy Security Strategy committed to reforming this process to support the accelerated deployment of offshore wind whilst maintaining environmental protections.

The primary focus of the proposed environmental assessment reform is to tailor the existing processes for assessing the impact of offshore wind infrastructure projects on protected sites. Specifically, it will streamline inefficient elements of the existing process, such as the assessment of mitigation and how discrepancies between data and evidence provided by developers, statutory consultees and stakeholders are resolved, which otherwise can delay the consenting process. Together with the powers described below, these changes will potentially reduce Statutory Nature Conservation Body resources spent on examination of well-understood mitigation measures, and consequently accelerate the formal consenting process and subsequent decision-making.

Stakeholders are broadly supportive of streamlining of the current environmental assessment of protected sites processes for offshore wind, provided that environmental protections are retained (including use of the mitigation hierarchy); that a reformed process is easily understood and clear to follow; that all designated sites including Marine Conservation Zones are assessed properly and that cross-government environmental assessment policy proposals align.

How do we intend to use these powers?

Government intends to use these powers to move the assessment of mitigation measure effectiveness to an earlier stage in the environmental assessment of protected sites process.

The current process means that mitigation measures cannot be considered in the Habitats Regulations Assessment process by the public authority until the appropriate assessment stage, where the detailed environmental assessment is undertaken.

This proposed change would move assessment to an earlier stage, so that they are “deemed” as assessed or discounted from the appropriate assessment, thereby shortening the overall Habitats Regulations Assessment process.

This proposed change will also require assessment of impacts on Marine Conservation Zones to be considered and potential compensatory measures to be identified and agreed during the pre-application period rather than during the examination phase as currently.

Government also wishes to consider a broader approach to compensatory measures for offshore wind developments. At present, compensatory measures should be ‘like-for-like’, meaning they are targeted at providing benefit to the specific habitat or species that is being impacted. To support accelerated deployment, where like-for-like measures are not possible, Government intends, to consider enabling developers to provide broader measures that improve wider marine ecosystems but are not targeted at specific impacted habitats, species or protected sites. Government is also considering enabling developers to undertake work already identified by Government to improve the condition of protected species and habitats.

This would substantially increase the number of measures available to developers and also accelerate marine recovery for some sites.

Consent decisions and compensatory measures will remain subject to advice from Statutory Nature Conservation Bodies. This approach should make it quicker for Statutory Nature Conservation Bodies to identify measures and will allow us to take decisions about relative environmental priorities.

Strategic Compensatory Measures: enable measures to be taken or secured to compensate for adverse environmental effects on the integrity of any site within the national site network, and for adverse effects on the conservation objectives of a protected marine area , as a result of one or more offshore wind infrastructure projects.

As noted above, Government intends to agree a list of approved compensatory measures and to consider a broader approach than the current 'like-for-like' requirement. This power establishes a legal mechanism to use strategic compensatory measures to discharge, where required, obligations to compensate for the environmental effects of offshore wind farm development(s) on the national site network (Special Areas of Conservation and Special Protection Areas) and/or on nationally designated sites such as Marine Conservation Zones in English, Welsh and Northern Irish waters and Marine Protected Areas in Scottish waters. The Marine Recovery Fund would be a delivery mechanism for compensatory measures approved by Government. Alternatively, developers could deliver strategic compensatory measures through a collaborative approach, recognising that the scale of offshore wind delivery is likely to exceed the ability of developers to provide sufficient compensation on an individual project specific basis.

Why are we taking these powers?

As the speed of deployment increases, the environmental impacts of offshore wind developments on our protected marine areas and the national site network are becoming increasingly difficult to avoid, reduce and mitigate. In these circumstances, there is likely to be an increase in the number of cases where the public authority determines that the objective of an offshore wind project meets the derogation requirements and should receive consent, provided sufficient compensatory measures are provided.

The types of measures that work at sea are harder to identify or less certain than those on land due to the relatively less developed knowledge base and dynamic nature of the marine environment. Consideration needs to be given to alternative ways to compensate for adverse environmental effects.

Compensatory measures for offshore wind farm developments are currently proposed by individual applicants. Consenting delays can occur if compensatory measures have not been discussed and agreed sufficiently early in the process. Evidence underpinning the measures often requires extensive discussion between the applicant, Government departments and the Statutory Nature Conservation Bodies for which there is limited time during the examination of an application for consent. This can lead to unclear conclusions and the need for further consultation and discussion leading to delays in the granting of consents.

As offshore wind farms increase in number it is likely that it will become progressively more difficult to identify and deliver suitable compensatory measures on a project-by-project basis and/or within individual site envelopes. A strategic approach to deliver compensatory measures has been a priority area of consideration for Government and offshore wind industry expert groups.

Government envisages that Strategic Compensatory Measures will be delivered across projects and organisations. This could include measures delivered by a group of developers but could also be measures that can only be delivered by Government (e.g., enhanced management of existing Marine Protected Areas or the designation of new Marine Protected Areas).

How do we intend to use these powers?

Government proposals to enable the delivery of Strategic Compensatory Measures will dovetail with those of the Marine Recovery Fund and the reform of assessments of the impacts of offshore wind on protected sites. These powers will ensure that developers understand unambiguously whether Strategic Compensatory Measures will be suitable for their projects; which Strategic Compensatory Measures they should consider for inclusion in a 'without prejudice' compensation plan drafted prior to submission of their development proposal; whether these Strategic Compensatory Measures can be delivered (and obligations to compensate for a specific impact discharged) through the Marine Recovery Fund; and the extent to which conditions imposed on a developer under their consent (for example, delivery, monitoring and/or success of Strategic Compensatory Measures) would be discharged upon payment into the Marine Recovery Fund.

Government intends that the new powers in relation to Strategic Compensatory Measures will enable developers to discharge obligations to compensate for specific impacts with strategic measures, including when delivered through payment into the Marine Recovery Fund.

Government intends for Strategic Compensatory Measures to account for and apply across the differing legislative regimes that underpin the need to compensate for impacts to marine protected sites in relation to offshore wind infrastructure projects. Strategic Compensatory Measures delivered in a different jurisdiction to where the offshore wind project causing the impact is located, will have to follow any procedural requirements applicable within the Devolved Administration in which they are delivered.

The total environmental benefits of Strategic Compensatory Measures could exceed those required by individual projects. In such cases, the additional benefits could be used to

compensate for future projects if appropriate or used to create environmental headroom and thereby reduce the likelihood that future projects will trigger the need for further compensatory measures.

Government wishes to address the role of Statutory Nature Conservation Bodies in resolving discrepancies in data between developers, statutory consultees and stakeholders that can lead to delays in the consenting process. By generating a list of approved compensatory measures at both plan and project level, any such discrepancies in agreement on the efficacy of compensatory measures will be addressed before applications are submitted for consideration. This too should reduce discussion and delay during statutory timescales.

Taken together, moving the environmental assessment forward in the process, and making a list of approved compensatory measures available should also have the effect of improving the quality and clarity of information included in developers' applications, with evidenced advice from Statutory Nature Conservation Bodies on the effectiveness of well-understood mitigation measures considered prior to the appropriate assessment.

These changes will provide a strong incentive for developers to take appropriate steps to mitigate their environmental impact at the earliest possible stage and to agree well-evidenced solutions with Statutory Nature Conservation Bodies prior to submitting applications for consent.

Marine Recovery Fund: a power to make provision for the establishment, operation and management of a marine recovery fund or funds

A Marine Recovery Fund is a fund which will consist of amounts paid in respect of offshore wind infrastructure projects and out of which payments may be made to deliver measures to compensate for the adverse environmental effects of one or more offshore wind projects. It would be an optional framework through which developers could discharge a condition of their consent to compensate for adverse environmental effects on a protected site or sites which cannot be avoided or mitigated. Sufficient financial contributions to a Marine Recovery Fund would enable Government, or a delegated authority, to deliver approved Strategic Compensatory Measures.

This will not remove the option for developers to deliver Strategic Compensatory Measures collaboratively across projects without a Marine Recovery Fund or to deliver individual project compensation.

In order for a Marine Recovery Fund to deliver Strategic Compensatory Measures on behalf of offshore wind developers the Secretary of State will have powers to make provision for the establishment, operation and management of a Marine Recovery Fund.

While powers for the establishment, operation and management of a Marine Recovery Fund are conferred on the Secretary of State, operation and management of the funds may be delegated to other bodies including in the Devolved Administrations. For England possible options under consideration are Defra Arm's Length Bodies or an external third-party operator.

Why are we taking these powers?

The Marine Recovery Funds will provide an efficient method for delivering compensatory measures which are becoming increasingly difficult to identify at the individual project level. The Marine Recovery Funds will need to secure Strategic Compensatory Measures over multiple financial years given the 25–30-year lifespan of offshore wind farms and due to ongoing operational requirements, such as monitoring and enforcement.

Commercial, competition and other project management information sensitivities can limit the opportunities for developers themselves to easily deliver strategic compensatory measures in collaboration with other developers. The Marine Recovery Funds are intended to be an optional route for wind farm developers to choose to pay into to discharge their compensation obligations where appropriate measures are available and can be delivered without further input from the developers.

We intend for approved Strategic Compensatory Measures delivered by a Marine Recovery Fund to include those that can only be delivered by Government or with Government involvement or will be easier to deliver centrally.

The ability to pay into a Marine Recovery Fund to meet obligations associated with the Habitats Regulations and Marine and Coastal Access Act, and corresponding Devolved Administration legislation should speed up the consent process for individual projects. The approval process of Strategic Compensatory Measures that a Marine Recovery Fund will deliver will provide confidence to the decision maker, whilst ensuring that environmental protections are in place through compensatory measures being agreed and delivered via a Marine Recovery Fund operator and/or Government as appropriate.

How do we intend to use these powers?

Government intends to use these powers to make provision for more detailed regulations needed to ensure the efficient functioning of an Marine Recovery Fund.

For example, we expect the power to be used to make provision to enable the Marine Recovery Fund to:

- raise/collect the financial contributions from developers;
- allow the Secretary of State (or relevant body to whom functions have been delegated) to receive payments from developers;
- spend the funds on agreed measures with or through partners;
- monitor and enforce the measures (protection of the measures); and
- delegate these functions to other bodies as required.

Future regulations will also be used to confirm how payment amounts for Strategic Compensatory Measures will be set, as well as to clarify at what point in the consenting process a payment into the Marine Recovery Fund can be made.

Territorial extent of the measures

Government recognises the key role of the Devolved Administrations in delivering the United Kingdom's offshore wind ambition and their existing role in the consenting process.

Government also recognises the benefits of consistency as far as possible across Administrations' waters and is working closely with the Devolved Administrations to ensure the provisions will work for each of them in order to support increased offshore wind capacity whilst protecting the marine environment.

Government's view is that the primary purpose of these provisions is energy generation, and they also make provision affecting the seabed and sub-marine cabling. As energy generation is a reserved legislative matter in relation to Scotland and Wales, and seabed and sub-marine cabling is reserved in relation to Northern Ireland, the Government intends to legislate across the United Kingdom to avoid an inconsistent regulatory regime or a legislative gap where the United Kingdom Government has not legislated but the devolved legislatures do not have the legislative competence to do so.

For Strategic Compensatory Measures, Government intends to legislate in such a way that respects the relevant appropriate authority's existing duty to agree and secure compensatory measures. In addition to projects consented by the Department for Business, Energy and Industrial Strategy Secretary of State, this will include:

- Welsh Ministers for projects up to 350 megawatts in Welsh inshore and offshore waters;
- Northern Irish Ministers in Northern Irish inshore waters; and
- Scottish Ministers for Scottish inshore developments over 1 megawatt and offshore developments over 50 megawatts.

Government will continue to work closely with the Devolved Administrations to ensure that strategic compensatory measures are not limited across borders.

For the Marine Recovery Fund, Government's intention is to delegate operational delivery functions to relevant parties in the Devolved Administrations to ensure Ministers retain a role in delivering measures for projects they consent. We will work collaboratively on this approach, as well as on regulations for environmental assessments, as policy develops to avoid creating additional regulatory burdens and to provide consistency for developers across the United Kingdom.

On environmental assessments, the Secretary of State will make regulations in respect of English inshore marine area and all United Kingdom offshore areas. In the Scottish, Welsh and Northern Irish inshore marine areas, the relevant devolved legislature will have regulation-making powers to amend environmental assessments for those projects which they consent. Any risk of a regulatory gap will be mitigated by consultation requirements to ensure policies are aligned and joined up across boundaries.

Next steps and delivering the Offshore Wind Environmental Improvement Package beyond the Energy Bill

Government will continue to work closely with industry and other stakeholders as it develops the regulations for the environmental assessment of offshore wind on protected sites and the Marine Recovery Fund, as well as the wider Offshore Wind Environmental Improvement Package. This will include ensuring that provisions and future requirements are aligned with legislation being brought forward via the Energy Bill to support the accelerated deployment of offshore wind.

In addition to legislative provisions provided through the Energy Bill, Government is proposing to introduce a requirement to deliver Offshore Wind Environmental Standards, formally called nature-based design standards in the British Energy Security Strategy, through the National Policy Statement and will continue to explore the most effective policy mechanism to deliver a strategic monitoring approach.

Offshore Wind Environmental Standards

Offshore Wind Environmental Standards aim to reduce the overall environmental impact of a development, through providing clear guidance to developers on best practice to incorporate into the design, construction, operation and decommissioning of offshore wind farms. This should enable some environmental impacts to be scoped out at an earlier stage of the process, and potentially reduce the amount of mitigation and/or compensatory measures subsequently required. This should also help to minimise the time a project spends on environmental examinations and ensure the decision maker can make an informed consenting decision.

Offshore Wind Environmental Standards will not remove the need for all mitigation measures or the need to follow the mitigation hierarchy but will provide consistency for developers and reduce the time spent meeting tailored requirements for individual projects.

Government will continue to work closely with industry and stakeholders as the Offshore Wind Environmental Standards are developed and expects to consult on potential standards in 2023.

Strategic monitoring

Strategic monitoring will enable the collection of new evidence to improve our understanding of the environmental impacts of offshore wind, which would allow for a greater understanding of cumulative environmental impacts. We envisage that some site-specific monitoring would still be required to validate certain predictions made within environmental assessments.

We are working with stakeholders to identify possible opportunities for strategic monitoring. Following responses from the 'Opportunity to Comment', this includes looking at the breadth and scope of monitoring within the marine space. In considering how strategic monitoring could be delivered, we will take account of similar approaches employed in other countries to determine best practice and design an approach that works for our regulatory regimes. Engagement across wider stakeholder groups will continue as policy thinking develops.

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