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Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on the Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026 (draft)



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Contents

Introduction	1
About the instrument	2
Consideration by the DPLR Committee	4
Consideration by the Net Zero, Energy and Transport Committee	5
Conclusion	8

Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport and the Cabinet Secretary for Climate Action and Energy, with the exception of matters relating to just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.



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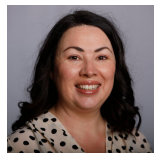
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Introduction

1. The Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026 (draft) was laid before the Scottish Parliament by the Scottish Government on 16 January 2026. It is subject to the affirmative procedure, which means it cannot be made unless it has been approved by a resolution of the Parliament.
2. It is for the Net Zero, Energy and Transport Committee, as lead committee, to decide whether or not to recommend approval. On 15 January, the Cabinet Secretary for Climate Action and Energy lodged Motion [S6M-20459](#), proposing that the Committee recommend the draft regulations be approved.

About the instrument

3. This instrument amends the [Conservation \(Natural Habitats, &c.\) Regulations 1994](#) and the [Conservation of Habitats and Species Regulations 2017](#) (“the Habitats Regulations”) as they apply to offshore wind activity in the Scottish inshore region (0-12 nautical miles).
4. The purpose of this instrument is to give more flexibility in how environmental compensation can be provided, so Scotland can expand offshore wind projects while still meeting nature protection duties.
5. Offshore wind projects in Scotland must go through environmental assessments to make sure they do not harm protected nature sites. These assessments are part of the Habitats Regulations, which apply across the UK.
6. Currently, if a project might damage a protected site and there is no alternative option, it can only be approved if compensation is put in place. This has been understood to mean that compensation must be ‘like-for-like’, meaning it must directly support the same species or habitat affected by the project. However, the policy note says there are only a few like-for-like options that can meet the evidence requirements of the current rules. It says this creates challenges for Scotland’s (and the UK’s) offshore wind ambitions as there may not be compensation that targets the exact feature impacted.
7. The instrument updates the rules so that a wider range of compensatory measures can be used, as long as they support the wider network of protected marine areas. To achieve this, the instrument:
 - Introduces more flexibility by allowing ‘wider measures’ as compensation. These are actions that benefit the UK Marine Protected Area (MPA) network as a whole, rather than just the specific feature affected. For example, wider measures could support a similar habitat or species or address bigger pressures facing the MPA network.
 - Defines the UK MPA network as including the UK/national site network, Sites of Special Scientific Interest, Ramsar sites (where these fall within the UK marine area), and areas designated as Marine Protected Areas.
 - Changes the compensation rules so that compensatory measures for offshore wind must benefit the UK MPA network in a way that is reasonably proportionate to the actual or predicted harm to the relevant European site or European offshore marine site.
 - Introduces a compensation hierarchy, which Ministers must follow when choosing compensatory measures. Like-for-like measures would still be considered first, but wider measures can be chosen if they provide a greater ecological benefit to the MPA network.
8. A UK Statutory Instrument (SI) will make similar changes for the Scottish offshore region (beyond 12 nautical miles). The Committee recently received [a letter about this instrument](#) from the Cabinet Secretary for Climate Action and Energy.

9. This SSI requires Scottish Ministers to publish guidance, which they must consider when securing compensation for offshore wind in the inshore region. (The UK SI will impose similar duties for the offshore region.) The instrument and its guidance must be reviewed before 30 April 2031, and at least every five years after that.

Consideration by the DPLR Committee

10. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament’s standing orders.
11. The DPLR Committee considered the instrument on 27 January 2026 and reported on it in its [12th report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

Consideration by the Net Zero, Energy and Transport Committee

12. At its meeting on 17 February, the Net Zero, Energy and Transport Committee took evidence on the instrument from:

- Gillian Martin, Cabinet Secretary for Climate Action and Energy, Scottish Government
- Joel Hankinson, Head of Energy Act Implementation, Offshore Wind Directorate, Scottish Government
- David Moffat, Solicitor, Scottish Government.

13. The evidence taken at the meeting can be read in full in the Official Report, which is available here:

[Read the Official Report - 17 February 2026](#)

14. In her opening remarks, the Cabinet Secretary told the Committee that under current Habitats Regulations, projects affecting protected sites must secure compensatory measures targeted specifically at the impacted habitat or species. However, she noted that, in practice, only a limited range of measures can be evidenced to this standard which limits offshore wind development and risks progress on climate and energy security. She explained that this instrument introduces a more flexible approach but with strong safeguards, adding that the instrument will enable offshore wind to grow at the scale needed to meet Scotland's net zero targets and deliver economic opportunities, while also supporting long term benefits for marine biodiversity.

15. The Cabinet Secretary explained that the instrument allows compensatory measures that strengthen the wider UK MPA network, rather than focusing only on the specific feature affected. It includes additional safeguards, such as a compensation hierarchy, that favours like-for-like actions but allows broader alternatives when they are appropriate and offer greater ecological benefits. She further stated that Scottish Ministers will publish guidance on how to use the legislation and hierarchy, and will review them regularly to keep the system strong, transparent, and responsive to new evidence. This guidance is being developed with the UK Government and key stakeholders to ensure it reflects scientific knowledge and industry experience.

16. She told the Committee that the instrument applies to Scotland's inshore region and has been designed to align closely with the corresponding instrument brought forward by the UK Government for offshore waters. She explained that the guidance will apply across both inshore and offshore areas to support a consistent, joined-up approach.

17. In relation to governance, the Cabinet Secretary explained that decisions will continue to sit within the normal consenting process, based on the Habitats Regulations and the compensatory requirements of each application. Developers must still set out their own compensation plans, beginning with like-for-like

measures at the top of the hierarchy, and can add wider measures where needed. These plans will be analysed by the Marine Directorate's licensing operations team, with advice from NatureScot, and Ministers will take decisions in the usual way. She said developers can also apply to the Marine Recovery Fund, which will support larger, strategic projects across Scotland.

18. The Cabinet Secretary noted that data from the Scottish marine energy research programme (ScotMER) will be used to assess the impact of compensatory measures, and that knowledge will be shared across the four nations. She also highlighted that pressures on biodiversity extend beyond individual projects and may require broader, long-term measures, including work on invasive species and seabird protection.
19. Scottish Government Official, Joel Hankinson, added that there will be two routes for strategic compensation under the new regime: developers can continue to propose their own measures through the standard consenting process, or compensation can be delivered through a Government-led Marine Recovery Fund with its own governance structure. He also informed the Committee of a UK-wide five-year review cycle of the legislation and the proposed establishment of a technical advisory group to guide strategic compensation and future research needs. He noted that this is still being developed at this stage and the Scottish Government would return with further information in due course.
20. The Cabinet Secretary also emphasised that Ministers will remain responsible for the final decisions in line with the compensation hierarchy, adding that the system will be reviewed every five years, allowing adjustments to be made where needed and ensuring that the overall approach continues to function in line with environmental requirements. The Cabinet Secretary highlighted that the impact of compensatory measures will be analysed as part of the wider review of how the system is working.
21. In response to concerns about the divided views in the Scottish Government's consultationⁱ and how these might be reconciled, the Cabinet Secretary acknowledged that while some environmental NGOs remain cautious, it is essential for them to be involved as their expertise will help shape and test the compensatory measures across all tiers of the hierarchy. She explained that the hierarchy is still being developed and that any future changes, whether to individual actions within it or to the overall approach, will be made in consultation with all stakeholders. Joel Hankinson, added that a series of research projects is under way to examine possible compensatory measures, and that this work will continue and expand over time, with ongoing engagement from those who understand the marine environment best.
22. Members also raised concerns about negative impacts on fishing communities and how the measures in this instrument could affect the sector. The Cabinet Secretary said she did not expect a situation in which compensation for a development in one part of the UK would lead to restrictions on fishing activity elsewhere, noting that all conditions linked to compensatory measures will be considered by the Marine Directorate's licensing operations team. She explained that the fishing industry has already been involved in shaping the approach and will continue to have

ⁱ [Responses to the consultation](#) showed strong support from the offshore wind sector, while environmental NGOs and the fishing sector were generally opposed to the proposals.

opportunities to provide detailed knowledge on fishing activity, species and local conditions. She stressed the importance of marine spatial planning to ensure that all marine industries can co-exist and said that fishing representatives can make submissions on individual cases through the normal consenting process. On the question of negative impact, she said the policy note highlights the potential for effects on fisheries, but the Government will work to minimise this and ensure that the Marine Directorate takes full account of impacts across the sector when decisions are made.

23. When asked about the role of NatureScot in relation to the instrument, the Cabinet Secretary said that NatureScot is preparing for the new responsibilities and is structuring its operations to ensure it has the required expertise. Joel Hankinson added that NatureScot and the other statutory nature conservation bodies have been closely involved in developing the policy and discussing how the governance arrangements will work. He said the technical advisory group that will support the policy is still being designed, but there is an expectation that NatureScot will have a clear role within that structure.

Conclusion

24. Following the conclusion of evidence taking, the Cabinet Secretary moved motion [S6M-20459](#) in her name -

That the Net Zero, Energy and Transport Committee recommends that the Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026 [draft] be approved.

25. During the formal debate, Douglas Lumsden MSP reiterated concerns about potential negative impacts on fishing communities. He said he felt the governance arrangements are not yet clear enough and was worried that compensation opportunities in Scotland could be used up by projects elsewhere in the UK. He also raised concerns that the Scottish fishing fleet could be affected by developments far away while only receiving limited forms of compensation, such as marine litter removal. He argued that if fishermen's livelihoods are affected, they should receive proper financial compensation, and he hoped that future legislation would address that. The Cabinet Secretary responded that the governance framework will be set out once the instrument is passed and the compensation framework and hierarchy will be developed with stakeholders.
26. The motion was agreed to by division: For 5, Against 0, Abstentions 2. (For 5 (Michael Matheson MSP, Bob Doris MSP, Monica Lennon MSP, Mark Ruskell MSP, Kevin Stewart MSP), Against 0, Abstentions 2 (Edward Mountain MSP, Douglas Lumsden MSP)).

Recommendation

27. The Net Zero, Energy and Transport Committee recommends to the Parliament that the Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026 [draft] be approved.

