



Energy Act 2023

2023 CHAPTER 52

PART 13

OFFSHORE WIND ELECTRICITY GENERATION, OIL AND GAS

CHAPTER 1

OFFSHORE WIND ELECTRICITY GENERATION

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).

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- (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;
 - (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;

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- (d) in the case of regulations made by DAERA—
 - (i) section 23 of the Marine Act (Northern Ireland) 2013;
 - (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—

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- (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.
- (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.

Commencement Information

II S. 293 in force at 26.12.2023, see s. 334(3)(j)

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