

## **EXECUTIVE NOTE**

### **THE TOWN AND COUNTRY PLANNING (PRESCRIBED DATE) (SCOTLAND) AMENDMENT REGULATIONS 2010**

**S.S.I. 2010/61**

The above Regulations are to be made in exercise of the powers conferred on the Scottish Ministers by section 26AA(2)(a) of the Town and Country Planning (Scotland) Act 1997, as amended. The instrument is subject to negative resolution procedure.

#### **Policy Objective**

#### **Introduction**

The purpose of these Regulations is to amend the date prescribed in the Town and Country Planning (Prescribed Date) (Scotland) Regulations 2007 for the purposes of section 26AA(2) of the Town and Country Planning (Scotland) Act 1997, as amended.

These provisions extend to Scotland only. There are no similar provisions in England, Wales and Northern Ireland.

#### **Background**

On 1 April 2007, responsibility for new marine fish farm developments and modifications to existing developments was transferred to planning authorities by the Town and Country Planning (Scotland) Act 1997, as amended. Prior to this, the responsibility for issuing consents for developments on the West coast of Scotland and the Western Isles rested with the Crown Estate, while responsibility for issuing licences for such developments in Orkney and Shetland rested with the respective Councils under local Acts. Such consents or work licences were granted for 15 years.

One of the reasons for transferring responsibility to planning authorities was to enable permanent planning permission to be available for such developments. It was considered that, because of the fragile nature of the industry, which operates in rural and remote areas, it was important to provide permanent planning permission to boost investor confidence.

At the same time as this transfer, it was decided that Scottish Ministers would undertake a review or audit of all existing marine fish farm developments to determine whether permanent planning permission should be granted for these developments. Whether it was a “review” or an “audit” depends on what environmental assessment has already been undertaken. The assessment is principally to ensure that these farms are not having a significant impact on the environment or affecting a designated site or protected species. At the time the transfer of responsibility took place, there were 917 farms with existing consents or works licences. Because of the number of farms, each farm is to be assessed according to the expiry date of the existing consent or works licence, although Scottish Ministers are attempting to reduce the overall timescale if they can.

Following changes made by the Planning etc (Scotland) Act 2006, the operation of an existing marine fish farm – ie a fish farm in place before 1 April 2007 – requires planning permission after the ‘appropriate date’.

The Act states that the appropriate date is whichever is the **later** of:

- A date prescribed by Scottish Ministers, and
- The date on which any consent or works licence which relates to the operation of a farm ceases to have effect

This date will be different for different fish farms as it is essentially the date on which the existing consent for a fish farm expires. The date prescribed by Ministers is currently 1 April 2010.

The purpose of the prescribed date is to allow time to review farms where the authorisation has already lapsed. An initial time period, from 1 April 2007-31 March 2010, was set by the current statutory instrument to enable Scottish Ministers to build those farms where the authorisations were expiring during that period into the forward programme without those farms being in breach of planning law.

It has taken some time for the historical information to be gathered and its veracity established, which has resulted in a delay in assessing all farms where existing consents have expired between 1 April 2007 and 31 March 2010. An extension to the current prescribed date is therefore necessary. It is estimated that a further three years will be sufficient.

### **Consultation**

In view of the purpose of these Regulations, no consultation has been considered necessary.

### **Financial Effects**

The Regulations will have no financial effects on planning authorities and the Scottish Executive. No Regulatory Impact Assessment has been prepared as there are no financial implications for business.

Scottish Executive Directorate for the Built Environment  
February 2010