



# Planning etc. (Scotland) Act 2006

## 2006 asp 17

### PART 3

#### DEVELOPMENT MANAGEMENT

##### *Meaning of development*

### 3 Meaning of “development”

(1) In section 26 of the principal Act (meaning of “development”)—

- (a) at the end of subsection (1) add “, or the operation of a marine fish farm in the circumstances specified in section 26AA”,
- (b) after subsection (2) insert—

“(2AA) The Scottish Ministers may in a development order specify any circumstances, or description of circumstances, in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage as is so specified.

(2AB) The development order may make different provision for different purposes.”,

(c) in subsection (6)—

(i) for the words “inland waters, transitional water or coastal water” substitute “waters which—

- (a) are inland waters,
- (b) not being inland waters, are landward of the baselines from which the breadth of the territorial sea adjacent to Scotland is measured, or
- (c) are seaward of those baselines up to a distance of 12 nautical miles,”

(ii) for the word “subsection” where it second occurs substitute “section”,

(iii) the definitions of “coastal water” and “transitional water” are repealed, and

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(iv) at the end add—

““nautical miles” means international nautical miles of 1,852 metres”,

(d) after that subsection insert—

“(6AA) Where the making of any material change in the use of equipment so placed or assembled for that purpose would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the making of any such material change was development of that land.”, and

(e) after subsection (6B) insert—

“(6C) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of, or in connection with, the application of this Act to—

- (a) any such placing or assembly as is mentioned in subsection (6) in waters described in paragraph (b) or (c) of that subsection; or
- (b) any material change in the use of equipment placed or assembled in those waters.

(6D) Any order under subsection (6C) may in particular provide that a planning authority specified in the order is to be the planning authority for the purposes of such an application of this Act despite the placing or assembly being something done, or the material change of use being made, outwith the district of the authority.

(6E) But in the application of subsections (6C) and (6D) to a case where, by virtue of paragraph (a) of section 10(1) of the National Parks (Scotland) Act 2000 ([asp 10](#)) the planning authority is a National Park authority, the reference in subsection (6D) to the district of the authority is to be construed as a reference to the National Park.

(6F) And the Scottish Ministers may direct that subsections (6C) and (6D) are to apply to a case where—

- (a) by virtue of paragraph (b) of that section 10(1), a National Park authority is to be treated as the planning authority, or
- (b) by virtue of paragraph (c) of that section 10(1), a National Park authority is to have certain functions in relation to planning.

(6G) For the purposes of any such application as is provided for in—

- (a) paragraph (a) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be” in subsection (6D) there is to be substituted “National Park authority specified in the order is to be treated as”,
- (b) paragraph (b) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be the planning authority” in subsection (6D) there is to be substituted

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“National Park authority specified in the order is to have functions in relation to planning”.

- (6H) Before making an order under subsection (6C), the Scottish Ministers—
- (a) must consult—
    - (i) every planning authority, and
    - (ii) the Scottish Environment Protection Agency, and
  - (b) may consult such other persons as they think fit.
- (6I) An order under subsection (6C) may (without prejudice to the generality of that subsection)—
- (a) modify any enactment, instrument or document,
  - (b) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (c) provide for the delegation of functions,
  - (d) make different provision for different purposes and different areas.
- (6J) For the purposes of the exercise by a National Park authority of any planning functions which it has by virtue of subsections (6C) and (6D) in respect of waters described in paragraph (b) or (c) of subsection (6), any reference in section 9 of the National Parks (Scotland) Act 2000 (asp 10) (general purposes and functions of National Park authority) to the National Park itself is to be construed as including a reference to those waters.”.
- (2) A development order under section 26(2AA) of that Act does not affect any operations begun before it is made.
- (3) A certificate under section 151 of that Act (certificate of lawfulness of proposed use or development) is of no effect if—
- (a) subsection (2) of section 26 of that Act is, by virtue of a development order under subsection (2AA) of that section, disapplied in respect of any operations,
  - (b) at the date the development order comes into force the certificate is in force in respect of the operations, and
  - (c) before that date no such operations have been begun.
- (4) In section 275 of that Act (regulations and orders)—
- (a) in subsection (4), for the words “and (6A)” substitute “, (6A) and (6C), 31A”, and
  - (b) in subsection (5A), after the words “26(6A)” insert “or (6C)”.

#### **4 Marine fish farms**

- (1) After section 26 of the principal Act insert—

**“26AA Marine fish farms: circumstances referred to in section 26(1)**

- (1) The circumstances to which section 26(1) refers are—

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- (a) that the marine fish farm is being operated after—
    - (i) the date which is the appropriate date in respect of that fish farm, or
    - (ii) if earlier than that date, the date on which planning permission is granted, or an application for planning permission is refused, under section 31A, and
  - (b) that the operation involves the use of equipment which was placed or assembled in waters at a time when that placing or assembly did not constitute development under this Act.
- (2) For the purposes of subsection (1)(a), the appropriate date in respect of a fish farm is whichever is the later of—
- (a) a date prescribed by the Scottish Ministers for the purposes of this subsection, and
  - (b) the date on which any authorisation which—
    - (i) relates to the operation of that fish farm, and
    - (ii) is in effect at the date of commencement of section 4 of the Planning etc. (Scotland) Act 2006 (asp 17), ceases to have effect.
- (3) In this section and in section 31A—
- “authorisation” means—
- (a) a consent for fish farming issued by the Crown Estate Commissioners,
  - (b) a licence granted under section 11 of the [Orkney County Council Act 1974 \(c.xxx\)](#), or
  - (c) a licence granted under section 11 of the [Zetland County Council Act 1974 \(c.viii\)](#),
- “equipment” has the same meaning as in section 26(6), and
- “marine fish farm” means a fish farm situated in any part of any waters referred to in paragraphs (b) and (c) of section 26(6).”.
- (2) After section 31 of that Act insert—

*“Planning permission in respect of operation of marine fish farm*

### **31A Planning permission in respect of operation of marine fish farm**

- (1) This section applies to planning permission for the operation of a marine fish farm which involves the use of such equipment as is referred to in section 26AA(1)(b).
- (2) Any planning permission is to be granted by the Scottish Ministers.
- (3) Without prejudice to the generality of subsection (2), planning permission may be granted under that subsection as respects a class of development.
- (4) Any planning permission granted by virtue of subsection (3) is to be granted by order, the class of development in question being specified in the order.
- (5) Planning permission may be granted either unconditionally or subject to conditions or limitations.

- (6) The conditions or limitations which may be imposed include conditions or limitations specified in any authorisation which is at the time of imposition in effect in relation to the fish farm.
- (7) The principal matters to be taken into account by the Scottish Ministers in coming to a decision as to whether to grant planning permission are the likely impact of the development on—
  - (a) any European site within the meaning of regulation 10 of the Conservation (Natural Habitats & c.) Regulations 1994 ([S.I. 1994/2716](#)), and
  - (b) the environment generally.
- (8) The Scottish Ministers may by regulations make provision—
  - (a) specifying those cases where an application for planning permission must be made,
  - (b) as to the form of such an application,
  - (c) specifying documents and information which require to accompany such an application,
  - (d) as to consultation in connection with such an application, and
  - (e) as to any other matters concerning procedure on such an application.”.

## **5 Hierarchy of developments for purposes of development management etc.**

After section 26AA of the principal Act (inserted into that Act by section 4 of this Act) insert—

### **“26A Hierarchy of developments**

- (1) For the purposes of the planning Acts, a development belongs to one of the following categories—
  - (a) the first (designated under section 3A(4)(b)), to be known as “national developments”,
  - (b) the second, to be known as “major developments”, and
  - (c) the third, to be known as “local developments”.
- (2) The Scottish Ministers are by regulations to describe classes of development other than national developments and assign each class to one or other of the categories mentioned in paragraphs (b) and (c) of subsection (1).
- (3) But the Scottish Ministers may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.
- (4) Different provision may be made under subsection (2) for different areas.
- (5) Regulations under subsection (2) are not made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.