



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(iii) the definitions of “coastal water” and “transitional water” are repealed, and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