

## **EXECUTIVE NOTE**

### **DRAFT : The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007**

The above Order is to be made in exercise of the powers conferred on the Scottish Ministers by sections 26(6A), (6C), (6D) and (6I) of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) and section 58 of the Planning etc (Scotland) Act 2006 (“the 2006 Act”). The instrument is subject to affirmative resolution procedure.

### **Policy Objective**

#### **Introduction**

The purpose of this Order is to make provision to apply to extend statutory planning controls to marine fish farms out to the territorial limit i.e. 12 nautical miles. This is the first time that local authority planning powers have been extended into the marine environment. New and modifications to existing finfish and shellfish farm developments will be subject to statutory planning controls from the commencement of the new provisions on 1 April 2007. The provisions introduced by the 2006 Act to extend planning controls to existing fish farms will also come into force on 1<sup>st</sup> April 2007.

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

#### **Policy Objectives**

The intention to introduce planning controls over marine fish farming was first announced by the then Scottish Office Minister Lord Sewel in November 1997 as part of HM Government’s response to the Report of the Scottish Salmon Strategy Task Force. However, as the statutory planning system does not extend into the marine environment, primary legislation was required to fulfil this commitment. Enabling provisions in section 24 of the Water Environment and Water Services (Scotland) Act 2003 were introduced to provide the legislative framework.

As the detail of the policy developed, it became apparent that further powers were required to allow existing farms to be brought into the planning system. These, and other powers extending planning controls to the 12 nautical mile limit and clarifying the role of the National Parks, are introduced into the 1997 Act by section 3 of the 2006 Act.

In bringing forward these provisions the Executive has been mindful of the policy aim of seeking consistency with the terrestrial planning system except in circumstances where there was a demonstrable need due to the nature of the marine environment. Although new fish farms and modifications to existing fish farms will be subject to local authority planning control, the review of existing farms will be undertaken by Ministers.

## **The Changes**

The Order amends primary and secondary legislation to allow for a robust and workable statutory planning system for fish farm developments in the marine environment. The principal changes are to-

- (a) apply selective provisions of, and amend, the Town and Country Planning (Scotland) Act 1997 for the purposes of marine fish farming;
- (b) amend the Town and Country Planning (General Development Procedure) (Scotland) Order 1992, as amended to introduce revised statutory consultation arrangements for fish farming with regard to the marine historic environment and community councils;
- (c) amend the Environmental Impact Assessment (Scotland) Regulations 1999 in consequence of the extension of the planning regime to the marine environment. The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 are amended to exclude fish farming developments within relevant marine waters from assessment under these Regulations;
- (d) designate marine planning zones for relevant planning authorities for marine fish farming purposes only; and
- (e) introduce transitional arrangements where an application for a development consent from the Crown Estate or works licence from Shetland or Orkney Islands Council has not been determined before planning controls have come into force.

## **Consultation**

Under section 26(6H) of the Town and Country Planning (Scotland) Act 1997, as amended, before making an order under subsection 26(6C), the Scottish Ministers (a) must consult every planning authority and the Scottish Environment Protection Agency (SEPA) and (b) may consult such other persons as they think fit. Although these provisions were not commenced at the time, Ministers consulted a wide range of stakeholders through a formal 12-week consultation exercise in 2004-5. Those consulted included SEPA, all planning authorities, bodies representing the fish farming industry and amenity / environmental groups, other regulators plus all registered finfish and shellfish farmers in Scotland. A total of 49 responses were subsequently received with a summary of responses published in June 2005. There has been continued discussion with key stakeholders on the detail of the changes through a specially convened planning sub-group of the Highland and Islands Aquaculture Forum (HIAF).

A separate consultation was held in 2005-6 on the definition of the marine planning zones. The terms of the consultation reflected those above.

## **Financial Effects**

The Regulations have no financial impacts on the Scottish Executive. Details of the potential impact on local government and business are contained in the attached Regulatory Impact Assessment.

Scottish Executive Development Department  
February 2007

## **Regulatory Impact Assessment**

### **1. Title of proposal**

1.1 The proposal is for a Scottish Statutory Instrument (SSI) with the title The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007.

### **2. Purpose and intended effect**

#### Objective

2.1 The Scottish Executive is seeking to extend statutory planning controls to marine fish farms in coastal and transitional waters. The planning controls will cover the marine waters, defined in the Water Environment and Water Services (Scotland) Act 2003 ("the WEWS Act") as coastal and transitional waters (i.e. out to the 3-nautical mile limit).

2.2 New finfish and shellfish farms and modifications to existing finfish and shellfish farm developments will be subject to statutory planning controls from the implementation of the new provisions on 1 April 2007. Transitional arrangements are being brought into place for fish farm applications which are with The Crown Estate, Shetlands Islands or Orkney Islands Councils on the date of commencement. Existing fish farms will be subject to separate provisions, with section 4 of the Planning etc (Scotland) Act 2007 having been commenced to enable existing farms to be subject to planning permission to operate.

#### Devolution

2.3 The Regulations apply to Scotland only. There is no parallel legislation in England, Wales and Northern Ireland.

#### Background

2.4 The intention to introduce planning controls over marine fish farming was announced by the then Scottish Office Minister Lord Sewel in November 1997 as part of HM Government's response to the Report of the Scottish Salmon Strategy Task Force.

2.5 Statutory controls for the siting of marine fish farms are to be found in "works licence" provisions in legislation such as the Zetland County Council and Orkney County Council Acts of 1974. Through such procedures, under Section 11 of the respective Acts, Shetland Islands and Orkney Islands Councils have the power to grant licences to operators seeking to construct, place, maintain, alter, renew or extend any works under, over or in designated marine areas. These provisions were introduced originally to control oil-related works, but recently they have also been used in relation to fish farming.

2.6 Outwith those limited marine areas covered by works licence provisions, there is currently in place a non-statutory "interim scheme" of regulation for authorising marine fish farms. This is expressed in the Procedure Guidance Note: *Interim*

*Scheme for the Authorisation of Marine Fish Farms in Scottish Waters*, published by the Scottish Executive in May 2000. Under the scheme, The Crown Estate invites relevant local authorities to comment on proposed marine fish farm developments. The Crown Estate uses the local authority's response to inform its judgement on whether to grant a development consent.

### Rationale for government intervention

2.7 There are three particular issues that the Executive is seeking to address by introducing statutory planning controls. These are set out below.

#### **A single Scotland-wide regime**

2.8 As mentioned in the above section on existing controls, there are currently three main control regimes, one non-statutory (The Crown Estate) and two statutory (Shetland Islands Council and Orkney Islands Council) plus a number of smaller schemes administered by harbour authorities.

2.9 The introduction of a single statutory regime would allow for consistency of approach across Scottish waters. Indeed in waters adjacent to Orkney it will allow for a single regime within those waters.

#### **Local control for marine fish farming**

2.10 As noted in *Extending Planning Controls to Marine Fish Farming*, HM Government's response to the Report of the Scottish Salmon Strategy Task Force, reflected a desire for more transparency and democratic accountability by introducing decision making closer to those affected by marine fish farm developments.

2.11 Although local authorities have had an important opportunity to comment on proposals through the interim scheme, the final decision on individual applications has rested with The Crown Estate. Bringing fish farms into the planning system will also allow planning authorities to enforce any breaches of planning control relating to such farms as the current statutory planning enforcement regime is to be applied.

#### **Perceived conflict of interest of the Crown Estate**

2.12 The 1997 policy statement was in part a response to a perceived conflict of interest for the then Crown Estate Commissioners ("The Crown Estate"), given their dual role as both landlord for, and effectively regulator of, marine fish farming developments.

2.13 Concerns had been expressed about whether in considering applications for fish farm developments, sufficient attention had been paid to potentially conflicting uses and environmental impacts (although there was not necessarily evidence that this was the case).

2.14 Bringing fish farms under planning control will remove the perceived conflict of interest from The Crown Estate and allow for any future review of such consents to be undertaken by a body without the same perceived conflict of interest.

### 3. Consultation

#### Within government

3.1 The Regulations have been the subject of consultation within the Scottish Executive. In addition, the preceding consultation paper was the subject of consultation with a number of Government departments and agencies which included:

Defence Estates  
Historic Scotland  
Ministry of Defence  
Northern Lighthouse Board  
Scottish Environment Protection Agency  
Scottish Natural Heritage  
Scottish Water

#### Public consultation

3.2 The Executive has undertaken two consultations. The Executive consulted on the principles of extending planning controls in 2000. The *Extension of Planning Controls to Marine Fish Farming: Analysis of Responses* was published in July 2001. (<http://www.scotland.gov.uk/library3/agri/mffpa-00.asp>). These response fed into the further work highlighted below.

3.3 The Executive's proposals on the introduction of a workable and robust planning system were further consulted on in a full 12 week consultation on *Extending Planning Controls to Marine Fish Farming* published in October 2004. The consultation followed discussions on the proposals with the Highlands and Islands Aquaculture Forum (HIAF) which contains representatives from regulators, environment and amenity groups plus industry groups representing smaller fish farm developers. The Executive consulted with a number of industry-representative bodies including:

Association	of	Scottish	Shellfish	Growers
British	Marine		Finfish	Association
EU	Salmon		Producers	Group
Federation	of	Scottish	Aquaculture	Producers
Federation	of		Small	Businesses
Scottish	Chambers		of	Commerce
Scottish Quality	Salmon (now the	Scottish	Salmon Producers'	Organisation)
Shetland	Salmon		Farmers	Association

3.4 A copy of the paper was also sent to all registered marine finfish and shellfish companies in Scotland.

3.5 A *Summary of Responses* was published in July 2005 (<http://www.scotland.gov.uk/Publications/2005/06/3094136/41385>). The main themes which emerged from the consultation were:

- Respondents views were polarised as to the Executive's proposal that deemed consent should be applied to existing fish farms with a valid development consent or works licence.
- There were divergent views on whether planning permissions should be time limited. A number of respondents felt that time limits should be imposed in all cases to enable ongoing review of consents and the ability to adapt to changing environments and legislation. However, others felt that time limits should only be imposed to those farms where the risk to the environment is high or the introduction of new species, equipment or substances was proposed. This would allow assessment after an agreed period of time. It was also suggested that marine developments should be afforded the same level of certainty as land-based development.
- A range of views were expressed as to the issue of associated Permitted Development Rights. A number of respondents expressed concern at allowing any such rights at all. However, others stated that moderate alteration or extension to fish farms should be allowed, but that these would have to be clearly defined.

3.6 The Executive has continued to develop this policy with stakeholders in bilateral meetings. Additionally, there have been meetings of a HIAF sub-group comprising planning authorities, the fish farming industry, regulators and amenity / environmental groups. All responses received as part of the consultation exercise were given careful consideration, and, where appropriate, the Regulations have been drafted to reflect these.

## 4. Options

4.1 With regard to new and modification of existing fish farm developments, the Executive considered two options.

### Option 1 – no change

4.2 This Option would see the non-statutory interim and statutory works licensing schemes remaining in place. There would be no effect on existing fish farming enterprises. New fish farming enterprises would still be required to apply for either a development consent or a works licence (in most of Shetland and parts of Orkney) as appropriate. Any future renewal of the consent / licence would remain with The Crown Estate or Shetland / Orkney Islands Councils, as appropriate. A consent or works licence under the current scheme is time limited, with renewals generally being required every 15 years.

4.3 The Crown Estate is owner of almost all seabed and approximately 50% of foreshore around the UK coast. It is required by statute (The Crown Estate Act 1961) to grant consent for use of foreshore and seabed in its ownership. Any permanent structure (or activity that results in equipment or moorings) on Crown foreshore or

seabed requires Crown Estate consent. The need to obtain a Crown Estate lease would remain unchanged.

#### Option 2 – New and modified fish farms to require planning permission.

4.4 Under this proposal, all new or modifications to existing fish farms would be required to apply for planning permission from the relevant planning authority from the date of introduction of the provisions. Fish farms will be subject to the statutory provisions of the planning system. Once granted, planning permission would be permanent. The permanent permission would assist with investor confidence in the fish farming industry.

4.5 The Order also introduces transitional arrangements for fish farm applications which are currently with The Crown Estate, Shetland or Orkney Islands Councils. These bodies will be able to determine consent applications before them on the date of commencement within two years.

### **5. Costs and benefits**

#### Sectors and groups affected

##### Regulatory authorities

5.1 The Regulations bring the control of the siting of marine fish farms within the ambit of Scottish planning authorities. They will become the relevant authorities for the purposes of environmental impact assessment. This will amend the local authorities' role in that for such authorities, except Shetland and Orkney Islands Councils, their role will be placed on a statutory footing. For Shetland and Orkney Islands Councils there will be a change in the statutory regime under which such decisions are being made.

5.2 Although all planning authorities will be given these powers, due to the nature of the marine fish farming industry, only those on the west coast or Northern Isles will be affected by these Regulations in practice. Currently those authorities consist of: Argyll and Bute; Dumfries and Galloway; Highland; North Ayrshire; Orkney Islands; Shetland Islands and Western Isles. In addition, through provisions contained in the Planning etc. (Scotland) Act 2006 there will be an impact on the role of Loch Lomond and the Trossachs National Park Authority.

5.3 In practical terms, the role of The Crown Estate as a relevant authority will be removed except in relation to its role in the transitional period. The roles of both Scottish Natural Heritage and the Scottish Environment Protection Agency will remain unchanged.

##### Fish Farming Industry

5.4 The annual production survey of finfish and shellfish farms in Scotland for 2005 was carried out by Fisheries Research Services (FRS), an agency of the Scottish Executive, which indicates that there are around 280 active marine salmon and 332 active shellfish farms in Scotland. There are also a small number of sites



where other marine species such as char, halibut, sea trout, cod and haddock are farmed.

### Finfish Farming

5.5 Currently, virtually all marine fish farming production takes place in the inshore waters of the west coast and Western / Northern islands, where the most favourable operational conditions for marine aquaculture are to be found. Shetland is the most important salmon growing region in Scotland and has been the largest producer since 1996. It currently accounts for 30 per cent of Scottish output followed by the South West region (basically Argyll & the Inner Hebrides apart from Skye) (26%), North West Highlands (25%) and Western Isles (15%). By contrast Orkney produces around 4% of the output.

5.6 Annual tonnage figures for individual fish farms range from under 100 tonnes to over 2,000 tonnes though there has been a recent move towards larger units. A typical salmon farm would operate with saltwater cages (rather than tanks) and produce several hundred tonnes of salmon and employ around 3-5 people.

5.7 The best estimate is that in 2004 there were about 8,500 full and part-time jobs dependent, either directly or indirectly, on salmon growing and salmon processing in Scotland. Of these just over half (4,500) were located in the Highlands & Islands. The estimated market value of output was circa £270 million for farmed finfish in 2005.

5.8 With regard to the structure of the market, it is dominated by a number of key players. A total of six companies have around 80% of the market: three firms have more than a 10% share whilst one firm has more than a 20% market share.

### Shellfish Farming

5.9 Concentrating on mussels and oysters (pacific and native) but also including queens and scallops, shellfish farming shows a similar distribution to marine fish farms. Mussel growing is concentrated in Shetland and the west coast around Argyll. Mussels are generally grown on weighted ropes suspended from buoyed lines or rafts with scallops, which may also be grown in this way, or on the seabed with the area concerned simply being designated by buoys. Oysters may be cultivated either on trays placed below the low water mark or in net bags suspended from ropes.

5.10 The Scottish Shellfish Farm Production Survey 2005 indicated that 182 companies actively produced shellfish for the table or for on-growing. Primarily production is of mussels with a total value at first sale for all species in the region of about £6 million. It also indicated that the industry is dominated by micro and small businesses, although there is a continued growth towards larger companies contributing significantly to the production of all species. However, with reference to the market structure, no firm has more than a 10% market share. This is reflected in the levels of employment which indicated that the shellfish industry employed 162 full-time and 239 part-time or casual workers during 2005.

## Benefits

5.11 Benefits of Option 1 include:

- There would be no additional costs to developers above what they would currently incur;
- The continuance of a well understood scheme.

5.12 Benefits of Option 2 include:

- Developments would be considered in a plan-led regulatory framework, allowing for the full consideration of development proposals within the planning context;
- The perceived conflict between the dual roles of the Crown Estate as regulator and landlord will be nullified;
- Single regulatory regime for the siting of new marine fish farms across Scottish waters;
- Shore based facilities could be considered within the same planning application;
- Opportunity for permanent planning permissions,
- Fulfilment of Ministerial commitment and satisfying the policy objective of subjecting marine fish farm proposals to a more effective, transparent and democratically accountable system of regulation at a local level.
- New EIA provisions allowing developers to seek a Screening Direction from Ministers.

5.13 It should be recognised that the extension of the planning system will not duplicate or replace other consent measures; for example discharge consents under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 or other licences.

## Costs

### Costs for Businesses

5.14 Many elements of the current system for the siting of marine fish farms will be retained from either the non-statutory interim scheme or works licence regimes. For example the need for environmental impact assessment is retained but with slight modification.

5.15 However, there are a number of changes from the current regimes which will lead to additional costs to business. These are listed below:

- **Planning Application Fee**

5.16 Currently most fish farms developments do not attract a fee for the processing of the application for consent. However, as with all terrestrial applications for planning permission, applications for new fish farms and modifications to existing fish farm developments will attract a fee. The fee structure is defined in legislation and has been amended through these Regulations.

5.17 The range of fees for this will be dependent on the size of the fish farm based on the amount of the surface area of cages. For an average sized farm the following are indicative costs and are based on a site cost of £145 per 0.1 ha of the surface area of the marine waters which is to be used in relation to the placement or assembly of any tank, cage or other structure, or long-line and £50 for each 0.1 hectare of the sea bed area of the marine waters extending beyond the surface area to be used in relation to other development, subject to a maximum of £14,500.

5.18 A 'typical' marine pen site might be either composed of **square** pens or **round** pens, and the balance appears to be *almost* 50:50 in Scotland at the present time.

- A 'typical' square pen farm might be comprised of some 12 @ 24x24 m cages:
- A 'typical' round pen farm might be comprised of some 20 @ 70 m cages.
- A typical shellfish farm might comprise 8 @ 200 m longlines.

<b>Farm type</b>	<b>Average size (ha)</b>	<b>Indicative cost (£)</b>
Finfish - square	3.4	2,500
Finfish - round	7.6	4,600
Shellfish	2	1,000

5.19 Issues regarding the setting of a maximum level have been considered. There is no set formula for setting the maximum level [more info required]

- **Costs of EIA**

5.20 The Regulations do not change the thresholds or criteria under which EIA will be considered for fish farms. Therefore no additional class of farms which currently do not require to be considered under the EIA process will be required to be considered under the EIA Regulations. For those developments where an environmental statement is required no additional costs will be incurred in the preparation of the statement. However, there will be some minor additional costs in relation to the publication of the report. These will be incurred to bring the consideration of EIA for marine fish farming in line with the terrestrial planning system but also recognising the need for specific measures relating to the marine environment. Additional numbers of copies will be required to be provided to the relevant authority.

5.21 This cost increase will not apply to any shellfish farms or those farms where an environmental statement is not required.

- **On-going costs**

5.22 There may be additional costs relating to the implementation of any conditions attached to the planning permission granted. The scope of any additional costs is difficult to assess as this will be a matter for the planning authority in each case.

5.23 Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Conditions applied to the granting of the permission may have been attached in relation to concerns coming out of planning considerations of the development or arise as mitigation measures arising from the EIA or appropriate assessment process. Scope exists for the developer to appeal against such conditions where they are considered inappropriate.

#### Costs for Regulators

5.24 The main regulators for the new regime will be the planning authorities although there will be some additional role for the Scottish Ministers. Again any additional costs will fall on the following local authorities where marine fish farming is currently considered to be viable – Argyll and Bute, Dumfries and Galloway, Highland, North Ayrshire, Orkney, Shetland and Western Isles. This will be a new, or revised for Orkney and Shetland Islands Councils, statutory regime for planning authorities. The statutory planning system contains three major elements: development management, development planning and enforcement – there are potentially differing impacts on these elements.

- **Development Management**

5.25 Since 1998 local authorities have played an important role in considering applications for such developments either through the interim scheme administered by the Crown Estate or, for the Northern Isles councils, under works licence legislation contained in the Orkney County Council or Zetland County Council Acts of 1974 as relevant. In addition, the Executive has sought to promote a strategic approach to the consideration of marine aquaculture. Local authorities have therefore gained valuable experience in dealing with applications for marine fish farms. Under the interim scheme it should be noted that local authorities have not been receiving a fee for the work undertaken in considering applications for development consent.

- **Enforcement**

5.26 Provisions are contained in Planning legislation for sanctions where there are breaches of planning control. This will be an extended rather than a new role for planning authorities in that enforcement already forms a part of a planning authority's role. In considering any enforcement action, the planning authority, with regard first of all to the Development Plan, should consider whether the breach of control would unacceptably affect public amenity or the use of land and buildings meriting protection in the public interest.

5.27 However, it is not possible to assess what any additional costs for the provisions relating to enforcement as it is for planning authority to consider what enforcement action is commensurate with the breach of planning control to which it relates.

- **Development Planning**

5.28 Planning authorities will for the first time be required to prepare development plans for the areas designated to them in the marine environment. However, the cost may be mitigated by work that some local authorities will already have undertaken in advance of the statutory controls. For example, National Planning Policy Guideline 13: *Coastal Planning* suggests that in areas where the potential for new or expanded fin and shell fish farms is recognised, planning authorities should consider the preparation of non-statutory Framework Plans. A number of these plans have been prepared and they are likely to form the basis of the local authorities' statutory plans.

#### Costs for Consultees

5.29. With particular reference to consultation on planning applications and environmental impact assessments, a number of bodies will have their statutory roles extended to include marine fish farming developments. These will include relevant community councils, District Salmon Fishery Boards, Scottish Environment Protection Agency, Scottish Natural Heritage and Scottish Water.

5.30 Except for Scottish Water and community councils, the new provisions will mirror those already in place under the current regimes. We therefore envisage no significant additional costs. Scottish Water's role as a statutory consultee for environmental impact assessments under the planning regime is extended. On average Scottish Water will be asked to consider an additional 12-15 environmental statements per year.

5.31 With regard to community councils, the Regulations provide for them to come to an agreement with the planning authority as to whether they wish to be consulted on fish farming developments. Community councils already play an important role in the consideration of applications for planning permission. For the siting of marine fish farms they have not held such a statutory role. However, Shetland Islands Council already routinely consults the relevant community council on marine fish farm applications.

#### Summary of costs and benefits

5.32 The measures being introduced by the Order do not introduce any new or significant costs for the competent authorities. However, the provisions included will ensure that the competent authorities have the powers required to fulfil their statutory roles.

## **6. Small / Micro Firms Impact Test**

6.1 In advance of the 2004 public consultation exercise, the Executive prepared an options paper which was discussed with a wide range of key stakeholders including trade representatives of small businesses in the fin fish and shellfish sectors. As noted at paragraphs 2.5-2.6, the provisions contained in this Order replace similar consent regimes. Therefore we do not envisage that the impact of

these provisions will be significant or complex. Further meetings have been held with representatives of such businesses throughout the consultation process.

## **7. Competition assessment**

7.1 Information on the identity and characteristics of the affected markets can be found in paragraphs 5.4 to 5.10 above.

7.2 On the basis of a Competition Filter Test, the provisions in the Regulations that affect businesses are generally unlikely to have a negative impact on competition. These provisions will apply equally to all new fin and shellfish farms. It is recognised that for finfish farms there is a concentration of market share in a number of larger companies. This is not the same for shellfish farms where there is no overall market dominance by a small number of firms.

7.3 When considering the effects on differing firms, for both finfish and shellfish farms, the main additional cost is likely to arise from the application fee. However, this is based on the size of site and is therefore relevant to the size of development and is therefore proportionate. This may however lead to the penalising of new firms as this fee is likely to be the main additional cost to the industry. Those farms currently in existence will not be required to pay such a fee on entering the planning system.

## **8. Enforcement, sanctions and monitoring**

8.1 Option 1 will lead to the continuation of the non-statutory development consent and works licensing regimes, as appropriate.

8.2 The proposals in Option 2 will be enforced through the statutory planning system. New developments and modifications to existing fish farms will be required to apply for planning permission. It will initially be for planning authorities to assess such applications within their designated area. There will also be a role for the Scottish Ministers as part of their statutory role in the planning process.

8.3 In relation to sanctions, carrying out development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control. The planning system has a wide range of statutory enforcement powers where there is a breach of such control. The sanctions against non-compliance are in line with these except in certain instances. However, there are some practical changes due to the nature of the marine environment.

## **9. Implementation and delivery plan**

### Implementation of the Regulations

9.1 The Regulations will be laid before Parliament in February 2007 with a coming into force date of 1 April 2007.

## Guidance for businesses and enforcers

9.2 The Regulations will be accompanied by a Circular which will provide a statement of Scottish Executive policy and contain guidance on policy implementation through these legislative and procedural changes.

9.3 In addition, the Executive will publish a Scottish Planning Policy (SPP) on Planning for Fish Farming. SPPs provide statements of Scottish Executive policy on nationally important land use and other planning matters.

9.4 Both of these documents will be published in line with the coming into force of the Regulations and are designed for use by both regulators and businesses.

9.5 Local authorities have gained valuable experience in dealing with applications for marine fish farms. However, we recognise that there will be scope for providing local authorities with guidance on the new controls.

9.6 Work has already started in addressing skills shortages in the planning profession, through the Planning Development Programme (PDP). This funding will be used for a programme of training for local authority planning practitioners and elected members, to improve performance in a range of key areas. These are likely to include development economics, effective enforcement, design and strategic environmental assessment. The funding will also be used to support and encourage better engagement between planners and local people.

9.7 The programme is being delivered by a Planning Development Manager based with the Improvement Service and will be supported by a stakeholder group. As a part of this work a skills and knowledge audit will be undertaken. The PDP will help address any skills gaps identified by the audit that inhibit planners and elected members from carrying out their functions.

## **10. Post-implementation review**

10.1 Should the status quo be retained (Option 1) the current regimes will remain in place but would not be subject to review in the short-term.

10.2 For Option 2, the Executive is committed to ensuring that this legislation and associated guidance are, and remain, fit for purpose. In line with Scottish Executive guidance we will review the effectiveness of the legislation and guidance through a review Regulatory Impact Assessment within 10 years of the legislative framework coming into force. We envisage the review will therefore take place before spring 2017.

## **11. Summary and recommendation**

11.1 The Regulations will ensure that there is robust and workable statutory controls over the siting of marine fish farms across all Scottish waters. Specifically, the SSI provides for effective local democratic control. The measures provided in the SSI do not introduce any new or significant costs to the competent authorities or for the fish farming industry.

11.2 In view of the above, it is recommended that the Regulations are introduced into Scottish law.

**12. Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.*

**Signed** .....

**Date** .....

Des McNulty MSP  
Deputy Minister for Communities  
Scottish Executive

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