

PLANNING ETC. (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 3 – Development Management

Section 3 – Meaning of “development”

44. **Subsection (1)(a)** introduces a new category of “development” into the 1997 Act, namely the operation of an existing marine fish farm in the circumstances specified in new section 26AA (introduced by section 4 of the Act).
45. **Subsection (1)(b)** inserts new provisions after the existing section 26(2) of the 1997 Act and gives the Scottish Ministers the power to specify in a development order the circumstances in which section 26(2)(a) of the 1997 Act will not apply to operations which have the effect of increasing the gross floor space of a building. Previously, under subsection (2)(a)(i) of section 26 of the 1997 Act, works which only affected the interior of a building were not considered to fall within the meaning of “development” and therefore did not require a development order. An example of operations that may have the effect of increasing the gross floor space is the installation of a mezzanine floor in a building.
46. **Subsection (1)(c)** expands the definition of “development” in section 26(6) of the 1997 Act to include fish farming within 12 nautical miles from the baselines from which the territorial sea is measured. This subsection also includes a definition of a nautical mile. Fish farming in inland waters is already subject to planning control under the 1997 Act, and those provisions are retained. The effect of the provision is that fish farms coming within the definition of development will require planning permission under the 1997 Act.
47. **Subsection (1)(d)** makes any material change of use of equipment used for marine fish farms development within the meaning of section 26 of the 1997 Act.
48. **Subsection (1)(e)** introduces new subsections (6C) to (6J) into section 26 of the 1997 Act. Subsections (6C) to (6G) allow the Scottish Ministers to make orders regarding the placing or assembly of equipment for the purpose of fish farming, or any material change of use, in waters described in section 26(6)(b) or (c) of the 1997 Act. They also make provision for the Scottish Ministers to allocate responsibility in the order to a particular planning authority or National Park authority.
49. Subsection (6H) requires that the Scottish Ministers consult SEPA and every planning authority and enables consultation with such other persons as they think fit before making any order under subsection (6C). Subsection (6I) clarifies the scope of the power to make an order under subsection (6C).
50. Subsection (6J) clarifies that any reference to the National Park in section 9 of the National Parks (Scotland) Act 2000, where the planning functions are extended to National Park Authorities by sections 26(6C) and 26(6D) of the 1997 Act, includes those waters described in paragraphs (b) and (c) of section 26(6) of the 1997 Act.

*These notes relate to the Planning etc. (Scotland) Act 2006
(asp 17) which received Royal Assent on 20 December 2006*

51. **Subsection (2)** explains that a development order made under section 26(2AA), which specifies circumstances relative to operations which have the effect of increasing the gross floor space of a building, does not retrospectively affect any operations begun before that order is made.
52. Under **subsection (3)** an existing certificate shall be of no effect if a development order is made under subsection (2AA) which specifies that the operations now fall within the meaning of development as they affect the interior of the building and will increase the gross floor space. Providing that no operations have begun before the date the development order comes into force, the certificate will be of no effect.
53. **Subsection (4)** amends section 275 of the 1997 Act relating to the Scottish Ministers' powers to make regulations and orders.