POLICY NOTE

THE TOWN AND COUNTRY PLANNING (MARINE FISH FARMING) (SCOTLAND) AMENDMENT ORDER 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 26(6C) and (6D) of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"). The instrument is subject to affirmative procedure.

Summary Box

Marine planning zones set out the spatial limits for local authorities responsibilities for planning controls, under the 1997 Act, of marine fish and shellfish farms in Scottish waters.

The purpose of this Order is to extend the boundaries of existing marine planning zones from 3 nautical miles out to the territorial limit i.e. 12 nautical miles, except in instances where a section of a marine planning zone meets the boundary of another marine planning zone, or where a section of a marine planning zone meets the Scottish Adjacent Waters Boundaries.

This will align marine planning zones to the definition of 'development' for fish farming under the 1997 Act, allowing planning applications for development of fish farms located between 3 and 12 nautical miles to be submitted to a relevant planning authority.

Policy Objectives

The intention is to resolve an existing gap in planning regulations which prevent fish and shellfish farm developers from seeking planning permission for developments between 3 -12 nautical miles.

In 2007 the definition of "development" in the 1997 Act was amended to include fish and shellfish farming out to 12 nautical miles, meaning that any proposed marine fish or shellfish farm located between 0-12 nautical miles requires planning permission from the relevant planning authority.

However, the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 ("the 2007 Order") only designated Scotland's marine planning zones out to 3 nautical miles. In practice, this means that there is no designated planning authority to which a developer may submit an application for a farm located between 3-12 nautical miles.

When the marine planning zones were first designated in 2007, it was considered highly unlikely that applications for planning permissions between 3-12 nautical miles would be lodged in the near future. It was therefore noted in "Planning Circular 1/2007: Planning

Controls for Marine Fish Farming"[1] that the Scottish Executive would monitor the situation, with further work envisaged during subsequent years to extend the marine planning zones out to 12 nautical miles.

There is now growing interest within the fish and shellfish farming sector to develop farms beyond 3 nautical miles from the coast, with developments in technology making farms in this region feasible.

The current designation of planning authorities to consider applications for planning permission for fish and shellfish farm developments do not align with the requirements of the planning system in respect of fish farm development between 3-12 nautical miles from the Scottish coast, and this legislative gap should now be removed.

In bringing forward these provisions to extend marine planning zones out to 12 nautical miles the existing legislative gap will be closed and ensure appropriate assessment of proposed developments within the 0-12 nautical mile zone across Scotland, under a planning process that is already well understood by businesses, regulators and other stakeholders.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

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.

The Scottish Government sought public and stakeholders' views on proposals to extend marine planning zones through a 12-week public consultation. Key stakeholders with a known interest in the issue were contacted directly to alert them to the consultation.

Of the 53 respondents, 40 indicated their agreement with the proposals to extend marine planning zones out to 12 nautical miles, 11 indicated that they were not in agreement and 2

[1] https://www.gov.scot/publications/scottish-planning-series-planning-circular-1-2007-planning-controls-marine/pages/4/

respondents neither agreed or disagreed with the proposals. Additional comments on the proposal were provided by 39 respondents.

A number of respondents who agreed with the proposals commented that they would close a regulatory gap, ensure developments were appropriately assessed under existing regulations and allow farms to be located further from the shore in line with developments in aquaculture equipment technology.

Of those who disagreed references were made to impact on regulator capacity, appropriate assessment of developments between 3 – 12 nautical miles and impacts on other marine sectors. These concerns were fully considered and Scottish Government responses to these have been included in the consultation report[2].

The consultation also sought views on the proposed extended marine planning zone boundaries as presented in accompanying maps.

Of the 53 respondents, 40 indicated their agreement with the proposed marine planning zones boundaries, 11 indicated that they were not in agreement and 2 respondents did not answer the question. Additional comments on the maps were provided by 28 respondents.

Having reviewed the comments made and seeking further input from respondents where necessary, no amendments to the proposed boundaries presented in the consultation have been made.

As a result of that consultation Scottish Ministers have decided to enact the proposals to extend marine planning zones.

A full list of those consulted and who agreed to the release of this information is included in the consultation report published on the Scottish Government website[3], it includes:

Local Authorities
Aquaculture regulators and statutory consultees
Aquaculture businesses
Fisheries organisations
Marine navigation bodies
Environmental NGOs
Members of the public

Impact Assessments

Relevant impact assessments and impact assessment screenings were undertaken and published alongside the consultation paper[4]. Following the consultation updates were made to the Business and Regulatory Impact Assessment, Childs Rights and Wellbeing Impact Assessment and Island Communities Impact Assessment Screening

Following screening the following full impact assessments were scoped out:

[2] https://www.gov.scot/isbn/9781836915560
[3] https://consult.gov.scot/marine-scotland/marine-planning-zones-proposals-to-extend/
[4] https://www.gov.scot/publications/proposals-extend-marine-planning-zones-out-12-nautical-miles-impact-assessments/

Equalities Impact Assessment
Fairer Scotland Duty (FSD) Assessment
Strategic Environment Assessment
Island Communities Impact Assessment

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on businesses is that finfish and shellfish farm developers will be able to submit planning applications for development of farms between 3 - 12 nautical miles, following the same process for applications between 0 - 3 nautical miles.

It is also considered that the extension of planning authorities boundaries out to 12 nautical miles will ensure fisheries interests, other marine users and wider stakeholder groups can engage with the planning process for proposed fish and shellfish farm developments between 3 - 12 nautical miles, as is the case for proposed developments in the 0 - 3 nautical mile zone.

The Order will not introduce additional costs on businesses.

Scottish Government
Marine Directorate

April 2025