POLICY NOTE

THE ENVIRONMENTAL AUTHORISATIONS (SCOTLAND) AMENDMENT REGULATIONS 2026

SSI 2026/55

The above instrument was made in exercise of the powers conferred by section 18 and schedule 2 of the Regulatory Reform (Scotland) Act 2014. The instrument is subject to negative procedure.

Summary Box

Under the current regulatory framework for fish farming, responsibility for the regulation of fish farm environmental discharges differs between 0-3 nautical miles and 3-12 nautical miles.

Between 0-3 nautical miles, responsibility lies with the Scottish Environment Protection Agency (SEPA), under The Environmental Authorisations (Scotland) Regulations 2018. Between 3–12 nautical miles the regulation of fish farm environmental discharges currently falls under the marine licensing regime, administered by Marine Directorate - Licensing Operations Team (MD-LOT) on behalf of Scottish Ministers

The primary purpose of these Regulations is to identify SEPA as the responsible authority for the regulation of fish farm discharges between 3-12 nautical miles, to ensure the activity is appropriately regulated in the most efficient manner possible.

These Regulations also makes a number of additional amendments to both The Environmental Authorisation (Scotland) Regulations 2018 ("EASR") and the Environmental Authorisations (Scotland) Amendment Regulations 2025 (the 2025 Regulations), which correct technical details in the text.

Policy Objectives

The intention of the Regulations is to identify SEPA as the responsible authority for the regulation of fish farm discharges between 3-12 nautical miles, to ensure the activity is appropriately regulated in the most efficient manner possible.

Under the current consenting framework, responsibility for the regulation of fish farm environmental discharges differs between 0-3 nautical miles and 3-12 nautical miles.

Between 0-3 nautical miles, responsibility lies with the Scottish Environment Protection Agency (SEPA). SEPA previously regulated this area under The Water Environment (Controlled Activities) (Scotland) Regulations 2011. In November 2025 SEPAs regulatory powers, out to 3 nautical miles were reformed and are now set out in the framework provided in The Environmental Authorisations (Scotland) Regulations 2018 ("EASR") as amended by The Environmental Authorisations (Scotland) Amendment Regulations 2025.

Between 3–12 nautical miles the regulation of fish farm environmental discharges currently falls under the marine licensing regime, administered by Marine Directorate - Licensing Operations Team (MD-LOT) on behalf of Scottish Ministers, as set out under The Marine (Scotland) Act 2010.

Identification of SEPA as the lead body for regulation of fish farm environmental discharges from 3 – 12 nautical miles will allow continued pooling of expertise, alongside associated monitoring and reporting regimes (including requirements for ongoing inspection, sample processing and environmental reporting) which will make most effective use of existing public resources and avoid duplication of resource between MD-LOT and SEPA, and ensure environmental impacts of proposed developments are robustly assessed.

It will also will result in a consistent approach to the regulation of this activity between 0-12 nautical miles. Such regulation will be in a manner that is already well understood by businesses, regulators and other stakeholders from experience of the consenting processes between 0-3 nautical miles.

These Regulations also insert provision in schedule 11 (waste management activities) of EASR to ensure that the required authorisation conditions in paragraph 7(metal contamination) of schedule 5 (transitional and savings provision) of EASR continue to apply to that activity, and insert an additional provision into schedule 23 (transitional and savings provisions) of the 2025 Regulations so that the previous transitional provision in relation to the general binding rules for the storage and application of fertiliser provided for by the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2021 will have effect under the 2025 Regulations until 1 January 2027.

These Regulations also make a number of minor additional amendments to EASR, which correct technical details in the text of both instruments and ensure the better functioning of those regulations.

Lastly, the Regulations makes necessary amendments consequential to the amendment of EASR by the 2025 Regulations, and to correct two minor errors made by the 2025 Regulations.

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 Environmental Authorisations (Scotland) Regulations Amendment Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

These Regulations seeks to amend both EASR and the 2025 Regulations, which are broadly aligned with similar community or national-level regulation in the EU.

The amendment proposed to include regulation of environmental discharges from fish farms from 3-12 nautical miles are not considered to be in conflict with Scottish Government's EU alignment policy, as they simply transfer responsibility for regulation for the activity from Scottish Ministers to SEPA. This amendment will not reduce or alter regulatory standards.

Consultation

The Scottish Government sought public and stakeholders' views on proposals to identify SEPA as the lead body for regulation of fish farm environmental discharges from 3 – 12 nautical miles through a 12-week public consultation. Key stakeholders with a known interest in the issue were contacted directly to alert them to the consultation.

The consultation did not seek views on the technical amendments to EASR or the 2025 Regulations, which correct technical details in the text of those regulations. These technical amendments do not have any substantive impact on the intended operation of the legislation, and were considered at the time of the original laying and the 2025 amendment.

Of the 27 respondents, 19 indicated their agreement with the proposals to identify SEPA as the responsible authority for the regulation of fish farm environmental discharges between 3-12 nautical miles and 8 indicated that they were not in agreement. Additional comments on the proposal were provided by 26 of the respondents.

The most common reason for supporting the proposals in the consultation was to ensure consistency across the 0-12 nautical mile area and reduce duplication in the process, with most of the respondents agreeing that SEPA are best placed to carry out this function.

Of those who disagreed, references were made to whether SEPA had sufficient resource to take on responsibility for regulating fish farm environmental discharges between 3-12 and nautical miles, SEPA's inexperience of working in the offshore environment, and that the Marine Directorate would already have experience in this area. These concerns were fully considered and Scottish Government responses to these have been included in the consultation report[1].

Having reviewed the comments made and seeking further input from respondents where necessary, Scottish Ministers have decided to enact the proposals to identify SEPA as the responsible authority for fish farm discharges between 3-12 nautical miles.

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[2], it includes:

Aquaculture Sector
Community Groups
Environmental/Animal Welfare Groups
Fisheries Groups
Individuals
Local Authorities
Other Marine Organisations

[1] https://www.gov.scot/isbn/9781806436552
[2] https://consult.gov.scot/marine-directorate/regulation-of-fish-and-shellfish-farm-deposits/

Other Public Bodies

Impact Assessments

Relevant impact assessments and impact assessment screenings were undertaken and published alongside the consultation paper[3]. 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:

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. Salmon farming businesses themselves suggested the policy would have negative impacts, citing SEPAs need for additional resourcing, the precautionary nature of SEPAs assessment methods, and suggesting MD-LOT would be better placed to regulate the activity.

Whilst noting the salmon farming sectors objection to the proposal, and considering all responses to the public consultation, it is determined that identifying SEPA as the single lead body for the regulation of fish farm environmental discharges from 0 – 12 nautical miles is considered to be the most effective way of regulating this activity and supporting the sustainable development of the sector. It will allow best use of existing expertise, alongside established monitoring and reporting regimes (including requirements for ongoing inspection, sample processing and environmental reporting) which will make the most effective use of existing public resources and avoid duplication of resource between MD-LOT and SEPA. It is also considered that SEPA's existing charging mechanisms are suitable to ensure that cost recovery for regulatory activity can be achieved.

The Regulations should not introduce significant additional costs on business. The main change is that a licence for discharges will be required from SEPA, instead of MD-LOT. While there was broad consensus that SEPA is best placed to lead, and will make most efficient use of public resources, it was also recognised that it was difficult to predict how fish farming from 3 – 12 nautical miles may develop in future and absolute costs. The charging scheme for regulating this activity will be based on SEPA's current charging scheme. SEPA would be responsible for developing and consulting on any changes to its fees and cost structures where required, and subject to the approval of Scottish Ministers

Scottish Government
Marine Directorate

3 February 2026

[3] https://www.gov.scot/publications/regulation-fish-shellfish-farm-deposits-consultation/