



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART III

CONTROL OVER DEVELOPMENT

Meaning of development

26 Meaning of “development”.

- (1) Subject to the following provisions of this section [^{F1}and to section 26AB], in this Act, except where the context otherwise requires, “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land [^{F2}, or the operation of a marine fish farm in the circumstances specified in section 26AA].
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—
 - (a) the carrying out of works for the maintenance, improvement or other alteration of any building being works which—
 - (i) affect only the interior of the building, or
 - (ii) do not materially affect the external appearance of the building,and are not works for making good war damage within the meaning of the ^{M1}War Damage Act 1943 or works begun after 7th December, 1969 for the alteration of a building by providing additional space in it underground;
 - (b) the carrying out by a [^{F3}roads authority (as defined by section 151(1) of the Roads (Scotland) Act 1984)] on land within the boundaries of a road of any works required for the maintenance or improvement of the road [^{F4}but , in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];

Status: Point in time view as at 01/04/2017.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any road or other land for that purpose;
 - (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;
 - (e) [^{F5}subject to subsection (2A),] the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
 - (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class;
 - (g) the demolition of any description of building specified in a direction given by the Secretary of State to planning authorities generally or to a particular planning authority.
- [^{F6}(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.]
- [^{F7}(2A) Development includes the carrying out of ^{F8} ... drainage for agriculture or of any other water management project for that purpose [^{F9}, but does not include the carrying out of irrigation work].]
- (3) For the avoidance of doubt it is hereby declared that for the purposes of this section—
 - (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;
 - (b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—
 - (i) the superficial area of the deposit is extended, or
 - (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.
 - (4) For the purposes of this Act building operations include—
 - (a) demolition of buildings,
 - (b) rebuilding,
 - (c) structural alterations of or additions to buildings, and
 - (d) other operations normally undertaken by a person carrying on business as a builder.
 - (5) For the purposes of this Act mining operations include—
 - (a) the removal of material of any description—
 - (i) from a mineral-working deposit,
 - (ii) from a deposit of pulverised fuel ash or other furnace ash or clinker, or
 - (iii) from a deposit of iron, steel or other metallic slags, and
 - (b) the extraction of minerals from a disused railway embankment.

Status: Point in time view as at 01/04/2017.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(6) Where the placing or assembly of any [^{F10}equipment] in any part of any [^{F11}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,]

for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the [^{F10}equipment] resulted from carrying out engineering operations over that land; and in this [^{F12}section]—

^{F13}
...

[^{F14c} “equipment” includes any tank, cage or other structure, or long-line, for use in fish farming;]

“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of [^{F15}sea urchin,] crustacean or mollusc);

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and

^{F16}
...

^{F13}
...

[^{F17} “nautical miles ” means international nautical miles of 1,852 metres]

[^{F18}(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.]

[^{F19}(6A) The Scottish Ministers may by order made by statutory instrument make such modifications as they consider necessary or expedient to the definitions of “equipment” and “fish farming” in subsection (6); and an order under this subsection may make different provision for different purposes and different areas.

(6B) In subsection (6A), “ modifications ” includes amendments and repeals.]

[^{F20}(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—

Status: Point in time view as at 01/04/2017.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 “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.]
- (7) Without prejudice to any regulations under this Act relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.

Textual Amendments

- F1** Words in s. 26(1) inserted (6.4.2011) by [Marine \(Scotland\) Act 2010 \(asp 5\)](#), **ss. 63(2)**, 168(1) (with s. 162); [S.S.I. 2011/58](#), art. 3(a)
- F2** Words in s. 26(1) added (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(a)**, 59(2); [S.S.I. 2007/49](#), art. 2, sch., S.S.I. 2007/139, art. 2, sch.

Status: Point in time view as at 01/04/2017.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F3** Words in s. 26(2)(b) substituted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 7 para. 20(2)** (with s. 111); S.S.I. 2006/268, art. 3(d)
- F4** Words in s 26(2)(b) inserted (1.8.1999) by S.S.I. 1999/1, **reg. 47**
- F5** Words in s. 26(2)(e) inserted (30.9.2003) by Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 (S.S.I. 2003/341), regs. 1, **2(a)** (with reg. 5)
- F6** S. 26(2AA)(2AB) inserted (6.2.2007 for specified purposes, 12.12.2008 for specified purposes) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(b)**, 59(2) (with s. 3(2)(3)); S.S.I. 2007/49, art. 2, sch., S.S.I. 2008/411, art. 2(2)(3)(a)
- F7** S. 26(2A) inserted (30.9.2003) by Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 (S.S.I. 2003/341), regs. 1, **2(b)** (with reg. 5)
- F8** Words in s. 26(2A) omitted (31.3.2011) by virtue of The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209), reg. 1(2), **sch. 11 para. 1(a)** (with reg. 54, sch. 11 para. 5)
- F9** Words in s. 26(2A) inserted (31.3.2011) by The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209), reg. 1(2), **sch. 11 para. 1(b)** (with reg. 54, sch. 11 para. 5)
- F10** Word in s. 26(6) substituted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by Water Environment and Water Services (Scotland) Act 2003 (asp 3), **ss. 24(2)(a)(i)**, 38(1); S.S.I. 2007/50, art. 2
- F11** Words in s. 26(6) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(c)(i)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F12** Word in s. 26(6) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(c)(ii)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F13** Words in s. 26(6) repealed (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(c)(iii)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F14** Words in s. 26(6) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by Water Environment and Water Services (Scotland) Act 2003 (asp 3), **ss. 24(2)(a)(iii)**, 38(1); S.S.I. 2007/50, art. 2
- F15** Words in s. 26(6) inserted (1.4.2007) by Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (S.S.I. 2007/268), arts. 1(1), **8(2)** (with art. 14(3))
- F16** Words in s. 26(6) repealed (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by Water Environment and Water Services (Scotland) Act 2003 (asp 3), **ss. 24(2)(a)(iv)**, 38(1); S.S.I. 2007/50, art. 2
- F17** Words in s. 26(6) added (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(c)(iv)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F18** S. 26(6AA) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(d)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F19** S. 26(6A)(6B) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by Water Environment and Water Services (Scotland) Act 2003 (asp 3), **ss. 24(2)(b)**, 38(1); S.S.I. 2007/50, art. 2
- F20** S. 26(6C)-(6J) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(e)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.

Modifications etc. (not altering text)

- C1** S. 26(1) extended (1.8.1999) by S.S.I. 1999/1, **reg. 44**
- C2** S. 26(1) applied (with modifications) (1.4.2007) by Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (S.S.I. 2007/268), arts. 1(1), **14(2)** (with art. 14(3))

Status: Point in time view as at 01/04/2017.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Marginal Citations

M1 1943 c. 21.

[^{F21} **Marine fish farms: circumstances referred to in section 26(1)**

26AA

- (1) The circumstances to which section 26(1) refers are—
- (a) that the marine fish farm is being operated after—
 - (i) the date which is the appropriate date in respect of that fish farm, or
 - (ii) if earlier than that date, the date on which planning permission is granted, or an application for planning permission is refused, under section 31A, and
 - (b) that the operation involves the use of equipment which was placed or assembled in waters at a time when that placing or assembly did not constitute development under this Act.
- (2) For the purposes of subsection (1)(a), the appropriate date in respect of a fish farm is whichever is the later of—
- (a) a date prescribed by the Scottish Ministers for the purposes of this subsection, and
 - (b) the date on which any authorisation which—
 - (i) relates to the operation of that fish farm, and
 - (ii) is in effect at the date of commencement of section 4 of the Planning etc. (Scotland) Act 2006 (asp 17), ceases to have effect.
- (3) In this section and in section 31A—
- “authorisation” means—
- (a) a consent for fish farming issued by the Crown Estate Commissioners [^{F22}or a relevant person] ,
 - (b) a licence granted under section 11 of the Orkney County Council Act 1974 (c.xxx), or
 - (c) a licence granted under section 11 of the Zetland County Council Act 1974 (c.viii),
- “equipment” has the same meaning as in section 26(6), ^{F23}...
- “marine fish farm” means a fish farm situated in any part of any waters referred to in paragraphs (b) and (c) of section 26(6). [^{F24}; and
- “relevant person”, in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that property or those rights or interests.]

Textual Amendments

- F21** S. 26AA inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 4(1)**, 59(2); S.S.I. 2007/130, art. 2(2), sch.
- F22** Words in s. 26AA(3) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 29(2)(a)**
- F23** Word in s. 26AA(3) omitted (1.4.2017) by virtue of [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 29(2)(b)**

Status: Point in time view as at 01/04/2017.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F24 Words in s. 26AA(3) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), [Sch. 5 para. 29\(2\)\(c\)](#)

Modifications etc. (not altering text)

C3 S. 26AA applied (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), [14\(2\)](#) (with art. 14(3))

[^{F25}**26AB**Power by order to provide marine fish farming is not “development”

- (1) The Scottish Ministers may by order provide that—
 - (a) section 26(6) does not apply as respects the placing or assembly of equipment for the purpose of fish farming in waters identified in the order (the “relevant waters”),
 - (b) section 26(6AA) does not apply as respects any material change in the use of equipment so placed or assembled for that purpose, and
 - (c) the operation of a marine fish farm in the relevant waters in the circumstances specified in section 26AA is not “development” for the purposes of this Act.
- (2) An order under subsection (1) may be made only with the agreement of the planning authority (or planning authorities) for the relevant waters; and in this subsection the “planning authority” means the planning authority specified in an order under section 26(6D).]

Textual Amendments

F25 S. 26AB inserted (6.4.2011) by [Marine \(Scotland\) Act 2010 \(asp 5\)](#), [ss. 63\(3\)](#), [168\(1\)](#) (with s. 162); [S.S.I. 2011/58](#), art. 3(a)

[^{F26}**26A** Hierarchy of developments

- (1) For the purposes of the planning Acts, a development belongs to one of the following categories—
 - (a) the first (designated under section 3A(4)(b)), to be known as “national developments”,
 - (b) the second, to be known as “major developments”, and
 - (c) the third, to be known as “local developments”.
- (2) The Scottish Ministers are by regulations to describe classes of development other than national developments and assign each class to one or other of the categories mentioned in paragraphs (b) and (c) of subsection (1).
- (3) But the Scottish Ministers may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.
- (4) Different provision may be made under subsection (2) for different areas.
- (5) Regulations under subsection (2) are not made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.]

Status: Point in time view as at 01/04/2017.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F26 S. 26A inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 5, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/100, art. 2, sch.

27 Time when development begun.

- (1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—
 - (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
 - (b) if the development consists of a change in use, at the time when the new use is instituted;
 - (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).
- (2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
- (3) The provisions referred to in subsection (2) are sections 52(2), 53(6), 54(4), 58, 59 and 61.
- (4) In subsection (2) “material operation” means—
 - (a) any work of construction in the course of the erection of a building,
 - (b) any work of demolition of a building,
 - (c) the digging of a trench which is to contain the foundations, or part of the foundations, of a building,
 - (d) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (c),
 - [^{F27}(da) any placing or assembly of equipment as is mentioned in subsection (6) of section 26 in waters described in paragraph (b) or (c) of that subsection,]
 - (e) any operation in the course of laying out or constructing a road or part of a road, or
 - (f) any change in the use of any land which constitutes material development.
- (5) In subsection (4)(f) “material development” means any development other than—
 - (a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted,
 - (b) development of a class specified in paragraph 1 or 2 of Schedule 11, and
 - (c) development of any class prescribed for the purposes of this subsection.
- (6) In subsection (5) “general development order” means a development order (within the meaning of section 30(2)) made as a general order applicable (subject to such exceptions as may be specified in it) to all land in Scotland.

Status: Point in time view as at 01/04/2017.

Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F27 S. 27(4)(da) inserted (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **8(3)** (with art. 14(3))

Status:

Point in time view as at 01/04/2017.

Changes to legislation:

Town and Country Planning (Scotland) Act 1997, Cross Heading: Meaning of development is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.