

ENVIRONMENTAL PROTECTION

MARINE MANAGEMENT

The Delegation of Functions (Regional Marine Plan for the Scottish Marine Region for the Orkney Islands) Direction 2020

Given - - - - 2020

Coming into force - - 2020

The Scottish Ministers give the following Direction in exercise of the powers conferred by sections 12 and 13 of the Marine (Scotland) Act 2010^(a) and all other powers enabling them to do so.

By virtue of section 12(4) of that Act this Direction is given with the consent of Orkney Islands Council being the public authority to which this Direction applies.

In accordance with section 12(2A)^(b) of that Act the Scottish Ministers are satisfied that there would be difficulty in nominating another person as described in section 12(2) of that Act in relation to the regional marine plan to which this Direction applies.

In accordance with section 13(1) of that Act the Scottish Ministers have published this Direction in such a manner as they considered most likely to bring it to the attention of persons likely to be interested in or affected by it.

Citation, commencement and application

1.—(1) This Direction may be cited as the Delegation of Functions (Regional Marine Plan for the Scottish Marine Region for the Orkney Islands) Direction 2020.

(2) This Direction comes into force on [DATE] 2020.

(3) This Direction applies only in relation to the regional marine plan for the Scottish marine region for the Orkney Islands.

Interpretation

2. In this Direction—

“the Act” means the Marine (Scotland) Act 2010,

“the Delegate” means the delegate designated in paragraph 5 of this Direction,

“the designated functions” means the delegable functions designated in paragraph 3(1)(a),

(a) 2010 asp 5. Section 12 was amended by section 27 of the Islands (Scotland) Act 2018 (asp 12).

(b) Section 12(2A) was inserted by section 27 of the Islands (Scotland) Act 2018 (asp 12).

“the marine region” means the Scottish marine region for the Orkney Islands(a),
“the Plan” means the regional marine plan for the Scottish marine region for the Orkney Islands,
“the public authority” means Orkney Islands Council, and
“SPP” means a statement of public participation as defined in paragraph 2 of schedule 1 of the Act.

Designated functions

3.—(1) The Scottish Ministers hereby—

- (a) designate all of the delegable functions in relation to the Plan referred to in section 12(7) of the Act which would (apart from this Direction) be exercisable by the Scottish Ministers, and
- (b) direct that the designated functions, instead of being so exercisable, are to be exercisable by the Delegate acting on behalf of the Scottish Ministers.

(2) Sub-paragraph (1)(b) is subject to any provision to the contrary made by this Direction or contained in a direction given by the Scottish Ministers under section 14 of the Act.

Delegate

4. Scottish Ministers hereby designate Orkney Islands Council as the Delegate for the purposes of this Direction.

Statement of reasons for designating a public authority in preference to a group of persons

5. In accordance with section 12(5)(a) of the Act, the Scottish Ministers’ statement of reasons setting out the grounds for designating the public authority in preference to a group of persons is as follows—

- (a) the public authority has experience in the development of a non-statutory marine plan for the Orkney Islands,
- (b) the public authority has experience in consulting with a wide range of stakeholders,
- (c) the public authority has experience in terrestrial planning, having responsibility for preparing and publishing the Orkney Local Development Plan(b),
- (d) the public authority has a general duty to take all such actions as it considers necessary or desirable for or in connection with the promotion of development, and the provision, maintenance, operation and improvement of port and harbour services and facilities, in, and in the vicinity of, the Scapa Flow area or the Wide Firth, Shapinsay Sound area under the Orkney County Council Act 1974(c),
- (e) the public authority has regulatory functions in relation to marine fish farming under the Town and Country Planning (Scotland) Act 1997(d), and
- (f) there are no other persons willing to be part of the delegate, as described in section 12(2) of the Act.

Consultation

6.—(1) The public authority must consult on the exercise of its designated functions in relation to the marine region with—

(a) The Scottish marine region for the Orkney Islands is designated in article 8 of the Scottish Marine Regions Order 2015 (SSI 2015/193)
(b) In accordance with Part 2 of the Town and Country Planning (Scotland) Act 1997 c.8.
(c) 1974 c.xxx.
(d) 1999 c.8.

- (a) representatives of persons with an interest in—
 - (i) the protection and enhancement of the marine region,
 - (ii) the use of the marine region for recreational purposes,
 - (iii) the use of the marine region for commercial purposes, and
 - (b) any other persons that the Scottish Ministers consider appropriate.
- (2) The public authority must have regard to any representations made under sub-paragraph (1).

Exercise of designated functions

7. The Delegate must exercise the designated functions subject to the terms and conditions set out in the schedule.

St Andrew's House,
Edinburgh
2020

Authorised to sign by the Scottish Ministers

SCHEDULE

Paragraph 7

Terms and conditions

Performance

1. The Delegate must remain informed of all relevant issues pertinent to its marine planning functions so as to ensure that effective marine planning is delivered in full.

Reporting on performance and progress

2. The Delegate must submit to the Scottish Ministers a report on their performance and progress, commencing on a date no later than 6 months from the date on which this Direction is given and, thereafter, at least every 6 months from that date until such time as the Plan has been published.

Preparation of a draft statement of public participation

3. Where the Scottish Ministers have decided that a SPP should be prepared the Delegate must prepare a draft SPP and submit it to the Scottish Ministers for approval within the period of 6 months from the date on which this Direction is given.

Publication of statement of public participation

4. Where the Scottish Ministers have decided that the SPP should be published the Delegate must, as soon as practicable after that decision is made, publish the SPP in such manner as it considers is most likely to bring it to the attention of interested persons.

Revision of statement of public participation

5.—(1) Where the Scottish Ministers have decided that the SPP should be revised the Delegate must revise the SPP.

(2) The Delegate must submit the SPP, as revised, to the Scottish Ministers for their approval.

(3) Where the Scottish Ministers have approved the SPP, as revised, the Delegate must publish the revised SPP as soon as practicable after approval.

Consultation

6. Following the decision of the Scottish Ministers to publish a consultation draft of the Plan the Delegate must—

- (a) publish the consultation draft of the Plan in such manner as it considers appropriate, and
- (b) take such further steps as it considers appropriate to secure that the proposals contained in the consultation draft are brought to the attention of interested persons.

Independent investigation

7.—(1) Following the publication of a consultation draft of the Plan the Scottish Ministers and the Delegate must, acting jointly, consider and make a decision as to whether to appoint an independent person to investigate and report upon the proposals contained within the draft.

(2) In the event of a disagreement between the Scottish Ministers and the Delegate as to whether to appoint an independent person under sub-paragraph (1) the final decision made under that sub-paragraph rests with the Scottish Ministers.

(3) The Scottish Ministers and the Delegate must, acting jointly, publish any report of an independent person.

Preparation of the Plan

8.—(1) The Delegate must prepare and submit to the Scottish Ministers for their approval the Plan, together with any supporting information which may be required by the Scottish Ministers, within 4 years of the date on which this Direction is given.

(2) The Delegate must, when preparing the Plan, have regard to matters which the Scottish Ministers consider relevant, to include Integrated Coastal Zone Management(a) and any Inshore Fisheries Management Plans(b), National Planning Framework(c) and Scottish Government planning circulars which cover any part of the marine region.

(3) In sub-paragraph (1) “supporting information” means—

- (a) a business and regulatory impact assessment,
- (b) a Child Rights and Wellbeing Impact Assessment, in terms of the Children and Young People (Scotland) Act 2014(d),
- (c) an equality impact assessment, in terms of regulation 5 of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012(e),
- (d) a strategic environment assessment, in terms of the Environmental Assessment (Scotland) Act 2005(f),
- (e) an island communities impact assessment, in terms of section 8 of the Islands Scotland Act 2018(g),
- (f) any other relevant information, assessments or reports, including any report setting out any modifications which have been made to the proposals published in the consultation draft for the Plan.

Publication of the Plan

9. As soon as reasonably practicable following the decision of the Scottish Ministers to publish the Plan, the Delegate must publish the Plan, together with statements of each of the following—

- (a) any modifications that have been made to the proposals published in the consultation draft for the plan,
- (b) the reasons for those modifications,
- (c) if any recommendations made by any independent person appointed under paragraph 11 of schedule 1 of the Act have not been implemented in the Plan, the reasons why any such recommendations have not been implemented.

Amendment of Plan

10. When such a request is made by the Scottish Ministers, the Delegate must amend the Plan.

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- (a) See the Scottish Government’s Planning Circular 1/2015: The relationship between the statutory land use planning system and marine planning and licensing, page 12.
 - (b) Inshore Fisheries Management Plans are developed by Regional Inshore Fisheries Groups (RIFGs). For more information, see Scotland’s National Marine Plan and the Scottish Government website: <https://www2.gov.scot/Topics/marine/Sea-Fisheries/InshoreFisheries/rifgs>.
 - (c) See the Scottish Planning Policy for more information.
 - (d) 2014 asp 8.
 - (e) S.S.I. 2012/162.
 - (f) 2005 asp 15.
 - (g) 2018 asp 12.

Compliance

11. In the event that the Delegate is not able to comply with this Direction, the Delegate must, as soon as practicable, notify the Scottish Ministers of that fact and the reasons for the non-compliance.