

Marine Scotland

The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2018

Guidance Document
August 2018

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INTRODUCTION

1. This Circular explains the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2018 (the Order) which came into force on 1 July 2018.
2. The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPDO), following a review of permitted development rights for finfish and shellfish developments introduced in 2012.
3. The Order applies to both fresh water and marine farms and to finfish and shellfish sites. The Order applies to all sites, including those which have been granted planning permission through the Scottish Government Audit and Review process. Further information on the Audit and Review process can be found at <http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18716/fish-farm/fish-farm>. It also applies to sites which were granted planning permission under the Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011.

9. Where a change or extension to a fish farm development meets the below criteria it will be considered a Schedule 2 development;

a) the corresponding thresholds and criteria applied to the development as changed or extended are met or exceeded, and;

b) where the thresholds are met or exceeded, the change or extension may itself have significant adverse impacts on the environment;

or

PRIOR APPROVAL

14. The purpose of prior approval is, firstly, to allow the planning authority to screen equipment changes for visual impacts in potentially visually sensitive areas and for them to be able to impose suitable mitigating conditions. This is particularly important in relation to National Scenic Areas (NSA's) which have been designated to ensure that they are protected from any inappropriate development. It is also a mechanism in addition to prior notification to allow the planning authority to screen a change for its potential environmental impacts as described in points 7-9.

15. If the planning authority considers that prior approval is required conditions may be imposed when prior approval is given. Prior approval may be withheld. There is a right of appeal against refusal of prior approval and against any conditions attached to prior approval. As is the case for planning applications, there is no set time limit for a planning authority to issue a prior approval decision. If prior approval is not issued within two months then the applicant has the option, if they wish, to appeal to Scottish Ministers on the grounds of non – determination.

16. Where an application for prior notification or prior approval is received, which the authority considers relates to schedule 2 development which may have significant effects on the environment, and those effects have not previously been identified, the authority must adopt a screening opinion.

17. Requests to the planning authority for a screening opinion can be made alongside any prior notification or application for prior approval which may be required under the particular PDR. Where the screening opinion identifies that an EIA is required – permitted development rights are withdrawn.

18. Developers may wish to establish at an earlier stage whether or not EIA and a planning application will be required. Further information on the relationship between the EIA Regulations and PDR can be found in Scottish Government Circular 3/2011.

HABITATS REGULATIONS AND APPROPRIATE ASSESSMENT

19. The Habitats Regulations require planning authorities, as a competent authority to gauge whether certain plans or projects are likely to affect Natura sites prior to their approval. Permitted development will require consideration under the Habitats Directive if it is likely to have an adverse effect on a Natura Site, in which case specific approval for the development must be sought from the relevant planning authority. This is separate and in addition to any prior notification requirement or otherwise required by the 2018 Order.

20. It is good practice for fish farms operating near to or within Natura sites to consult the planning authority at an early stage with regards to any development proposals for confirmation that a Habitats Regulations Appraisal would not be required. Operators should not assume development benefits from PDRs without first checking whether there is a likely significant effect to a Natura site.

21. Authorities undertaking a Habitats Regulations Appraisal should consult Scottish Natural Heritage (SNH) when determining likely significant effect and before concluding that an appropriate assessment is not required. Where an appropriate assessment is required, the authority must consult SNH and have regard to any

34. Existing equipment for the purposes of replacement or placement in the area of a fallow fish farm includes equipment which has been out of the water for less than 9 years. For other (existing) fish farms existing equipment includes removed equipment.

CONDITIONS UNDER WHICH EACH PDR MAY BE EXERCISED

35. Conditions, such as the above (30), of PDR are outlined throughout this guidance document. The Order includes one condition under which all PDR may be exercised. The only exception to this is Class 21F (change of use). This condition is

In the event of equipment falling into disrepair or becoming damaged, adrift, stranded, abandoned or sunk in such a manner as to cause an obstruction or danger to navigation, such works (including lighting, buoying, raising, repairing, moving or destroying the whole or any part of that equipment) as may be needed to remove the obstruction or danger to navigation must be carried out.

Reason: In the interests of navigational safety.

36. All changes in equipment will be expected to meet the requirements of 'A Technical Standard for Scottish Finfish Aquaculture' when it comes into force.

37. PDR development is required to be carried out within a period of three years from the date on which all approvals required are given. Planning authority guidance with regards to consultation during consideration of whether prior approval is required and whilst condition PD rights is provided within this document.

FEES

38. The existing prior notification fee (£78 in 2018) will apply to the prior notification of fish farm PDRs.

CHANGES PERMITTED WITHOUT PRIOR NOTIFICATION (QUICK LOOK UP)

39. The following changes may be made by an operator, other than at a 'fallow fish farm', without prior notification to the planning authority;

- x replacement of an existing finfish pen in the same location with a pen of the same size, colour and design
- x replacement of top net or support where that equipment is to be of the same size, colour and design
- x An operator may replace a long line with a long line of the same, size colour and design without providing prior notification to the planning authority.
- x replacement of an existing mooring in the same location with a mooring of the same size colour and design (where that location is not within a European site or nature conservation MPA only)
- x Change of use; mussels or pacific or native oyster cultivation to scallops;

- x Change of use; scallops or pacific or native oyster cultivation to mussels;
- x Change of use; pacific oyster, mussel or scallop cultivation to native oyster.
- x Replacement of a fin fish pen net with a fin fish pen net of the same size colour and design
- x Replacement of a trestle in the same location with a trestle of the same size, colour and design without prior notifying the planning authority

40. All other changes described in this document require prior notification and consideration of whether prior approval from the planning authority is required.

41. Where any proposed changes are likely to alter the centre point of a fish farm the operator should contact Scottish Government's Fish Health Inspectorate prior to

- (i) more than 1,000 square metres greater; or
- (ii) 10% greater,

than the surface area of the waters covered by the original equipment.

44. All development under this class is subject to the condition that there is no increase in the consented biomass.

45. All development under this class requires prior notification to the planning authority. Information to be provided with prior notification is described in 2018 Order. PD must be exercised in accordance with the determination of the planning authority.

46. If proposed changes under this class are likely to alter the position or change the benthic footprint of the existing farm then this may require authorisation from SEPA under the Controlled Activities Regulations (CAR) and also may involve a re-run of the modelling. In these cases, we would advise prior discussions with SEPA's local office operational staff to ascertain if the proposals will require a re-run of the modelling and would be capable of being authorised under CAR.

47. Relocation and replacement of cages may require consultation with Scottish Natural Heritage, particularly in designated landscapes such as National Scenic Areas or cases where the Planning Authority deems there to be a risk resulting in significant impacts on a Priority Marine Feature.

48. Examples of PDR under Class : 1A:

(a) MARINE SALMON FARM A would like to add a 100m cage to their existing site. The existing site consists of 12 x 100m cages.

Current equipment = 9552m²

New equipment = 10348m²

Increase in area = 796m²; this is 8% greater.

Prior notification should be made to local authority. State size, colour, design and location of cage. Also provide planning boundary for site.

(b) MARINE SALMON FARM B would like to add a 90m cage to their existing site. The existing site consists of 10 x 90m cages.

Current equipment = 6450m²

New equipment = 7095m²

Increase in area = 645m²; this is 10% greater.

Prior notification should be made to local authority. State size, colour, design and location of cage. Also provide planning boundary details for site.

Eg 



▲ A feed barge can be repositioned
to make the site more symmetrical
if adding a single cage under PDR

CLASS 21AA – REPLACING AN EXISTING FINFISH PEN IN THE SAME LOCATION WITH A FINFISH PEN OF THE SAME SIZE, COLOUR AND DESIGN

49. This class allows operators to place or assemble equipment within the area of an existing fish farm for the purpose of replacing an existing finfish pen in the same location with a pen of the same size, colour and design.

50. This type of development can take place without prior notification to the planning authority [other than where the fish farm is a fallow fish farm]

CLASS 21B - REPLACING OR REPOSITIONING A FEED BARGE AT A FINFISH FARM

51. An operator may replace or reposition an existing feed barge, provided that-

prior notification is given to the planning authority as to its size, colour, design and, if relevant, new position and the PDR is exercised in accordance with its determination

52. The replacement or reposition of a barge under this PDR includes the subsequent required replacement or reposition of associated equipment, such as moorings and anchors and repositioning of feed pipes.

Example of PDR under Class 21B:

MARINE SALMON FARM C would like to reposition an existing feed barge to accommodate a new finfish pen.

Prior notification should be made to local authority. State size, colour, design and proposed location of feed barge. Also provide planning boundary details for site.

CLASS 21C – REPLACING TOP NETS AND SUPPORTS

53. An operator may replace an existing top net or support with a top net or support of the same size, colour or design or of a different size, colour or design, provided that prior notification is given to the planning authority where the size, colour or design of the new netting is to be different than that already permitted on site.

54. Development is permitted under this class without prior notification where changes to the top net or supports are 'like for like' or of the same size, colour and design other than where the fish farm is a fallow fish farm.

55. Where changes to the equipment in use are proposed the planning authority should have regards to visual impacts and potential increases to net area (and therefore entanglement risks) and exercise discretion in determining whether to consult with Scottish Natural Heritage.

78. Prior notification to the planning authority is required for all secondary net structures to allow for consideration of prior approval and associated environmental screening where necessary.

79. Some net structures, such as wrasse hides, are seen to be de minimis changes. It is good practice for an operator to consult with the planning authority where any uncertainty remains.

80. Addition of secondary net structures, such as anti-predator nets are associated with entanglement risks. This may be of concern, particularly in cases located within or close to designated sites with a seal or piscivorous bird feature. The planning authority should exercise discretion in determining whether Scottish Natural Heritage should be consulted following prior notification from the operator and under consideration of whether prior approval is required.

authority. For example, SEPA has no interest in changes to top netting or a feed barge but will have if additional or new style cages are being deployed. Adopting a discrete approach to consultation will ensure that agencies and regulators are not burdened with the registration and case handling demands of issues that are of no consequence to them.

87. Some PDRs could result in impacts on the natural heritage which have not been considered by the Local Authority previously. The Local Authority should exercise discretion in determining the likely significance of any potential impacts, particularly in relation to Priority Marine Features.

88. Farm operators are also responsible for ensuring that they comply with all necessary obligations prior to making any change.

89. The following table may be used as consultation guidance for planning authorities for each Class. However it should be noted that consultation is at the local authorities discretion.

90. Class 21F is not included in the table below as prior notification to the local authority is not a requirement. However, an operator must consult Scottish Government's FHI with regards to any species change proposal and FHI may alert the planning authority to ensure obligations under Habitats Regulations have been considered.

			their marine licence]	
21H Fin Fish Pen Nets	No	If within or affecting natura sites and NSAs or MPAs. Yes where advice on entanglement risk envisaged	No	No
21I Secondary Net Structures	No	If within or affecting natura sites and NSAs or MPAs Yes where advice on entanglement risk envisaged	No	No
21J Trestles	No	If within or affecting natura sites and NSAs or MPAs	Yes [for info/ FHI site details]	Yes
Fallow Fish Farm	Yes [to ensure CAR up to date where necessary]	Yes [?]	Yes [FHI/ authorisation checks]	Yes [for notification purposes]

INABILITY OR FAILURE TO COMPLY WITH CONDITIONS

91. If an operator is unable to comply with the prescribed conditions they will be required to obtain formal planning consent for the changes they propose to make.

92. It is for the planning authority to consider what, if any, enforcement action to take should it appear that equipment deployed in exercise of a PDR does not meet the conditions of the Order.

FURTHER ADVICE

93. It is for the planning authority to consider what, if any, enforcement action to take should it appear that equipment deployed in exercise of a PDR does not meet the conditions of the Order.

94. Further advice on siting and design can be found in the Scottish Government's Planning Advice Note (PAN) 45 and, from SNH, Marine Aquaculture and the Landscape: The siting and design of marine aquaculture developments in the landscape, available at www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/publication-detail/?id=113.

95. The prior notification forms available from the e-planning website are in the process of being updated to reflect the changes introduced by the Order. The guidance will also be updated to reflect the changes. In the meantime local authorities have produced a standard prior notification form which is available to download from their respective websites.

ENQUIRIES

96. Any enquiries about this guidance document should be addressed to Aquaculture Planning, Marine Scotland, Victoria Quay, Edinburgh, EH6 6QQ, Email; fishfarmreview@scotland.gsi.gov.uk

