

EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AVIAN INFLUENZA) (SCOTLAND) AMENDMENT ORDER 2008

2008 No. 74

1. The above instrument was made in exercise of the powers conferred by sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997. The instrument is subject to negative resolution procedure.

Policy Objectives

Current Arrangements

2. S.S.I. 2007/135 – The Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2007 introduced Part 25A, Class 72A to Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”), and granted planning permission for certain development which is necessary for housing poultry and other captive birds to protect them from avian influenza. It was intended as a temporary measure following the outbreak of avian influenza in Suffolk on 3rd February 2007. The permitted development rights in Class 72A expire on 26 March 2008.

3. These permitted development rights were seen as a precautionary measure in case of disease outbreaks, supporting a prompt introduction of higher biosecurity measures to reduce risk of further disease spread. In the event of an outbreak, unless this exemption from normal planning rules is brought into force, there is a risk that bird keepers in the areas at risk would be unable to comply with their legal obligations under the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006 and the Avian Influenza (H5N1 in Wild Birds) (Scotland) Order.

4. The following are links to the 2007 Amendment Order and Associated Executive Note:

http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070135_en_1 - 2007 Amendment Order

http://www.opsi.gov.uk/legislation/scotland/ssi2007/en/ssien_20070135_en.pdf - Executive note

Proposed Changes

5. Recent incursions of avian influenza (Suffolk in February 2007, Norfolk in November 2007, Dorset in January 2008) highlight the continuing ongoing risk of outbreaks. We will therefore be considering, as part of our wider review of the GPDO, the issue of having permanent permitted development rights with regard to avian flu. In the meantime, however, it is considered prudent that we at least extend the current provisions in this regard for another 12 months. This measure is not related to an expectation that avian influenza is likely to hit Scotland in the immediate future but a matter of further enhancing our ability to respond quickly and effectively should it occur.

6. The Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2008 (the 2008 Amendment Order) extends the permitted development rights in Class 72A to 26 March 2009.

7. Class 72A currently requires that any development permitted under this Class must be removed and the land restored to its previous condition, or a condition agreed with the planning authority, “on or before the relevant date”. The “relevant date” refers the date on which the use of the buildings permitted by this class ceases to be necessary for the purposes of protecting poultry or other captive birds from avian influenza, or, as currently drafted, the 26 March 2008, whichever is the earlier. As well as extending that March 2008 time limit, the 2008 Amendment Order amends Class 72A so that removal and restoration must occur “on or as soon as practicable after the relevant date”. This is to recognise that the removal of some structures erected under Class 72A and restoration of the land could conceivably be required on the very last day and that it may not be possible to meet the deadline as currently drafted.

8. Aside from these two changes, the permitted development rights in Class 72A remain as introduced in 2007.

Consultation

9. No public consultation has been undertaken on extending these permitted development rights, although this instrument has been prepared in consultation with colleagues in the Scottish Government’s Rural Directorate and Rural Payments and Inspections Directorate. Any permanent permitted development rights in this regard would be the subject of public consultation as part of the wider review of the GPDO.

Financial Effects

10. Regulatory Impact Assessment attached.

Directorate for the Built Environment
February 2008

FINAL REGULATORY IMPACT ASSESSMENT

Title of Proposal

Amendment to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO) in relation to the temporary protection of poultry and other captive birds during an outbreak of avian influenza.

Purpose and Intended Effect of Measure

Objective

The Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2008 amends existing permitted development rights granting a temporary planning permission for structures to house captive birds during an outbreak of avian influenza.

It extends the period within which these permitted development rights can be exercised for a further 12 month period. The current permitted development rights in this regard – introduced by The Town and Country (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2007, are time limited to 26 March 2008.

Also, the current permitted development rights require structures erected to be removed and the land restored to its previous condition, or other condition agreed with the planning authority, “on or before the relevant date”. The relevant date is the earlier of (a) 26th March 2008 (to be changed to 2009); or (b) the date on which the use of the buildings permitted by this class ceases to be necessary for the purposes of protecting poultry or other captive birds from avian influenza. This requirement will be altered to “on or as soon as practicable after the relevant date”, to allow a reasonable period for potentially extensive structures to be removed and the land restored, rather than, for example, on the final day of the buildings being necessary.

Background

The existing permitted development rights in relation to temporary housing of captive birds were introduced in 2007 in response to the confirmation of an outbreak of avian influenza in Suffolk and the expectation that poultry would be required to be housed in the immediate area surrounding the infected premises. This is a specific requirement of the Avian influenza Directive for the 3km Protection Zone surrounding an infected premises but is likely to be introduced over a wider area as a precautionary measure.

While the outbreak in 2007 was contained, and there is no expectation that avian influenza is likely to hit Scotland in the immediate future, it is considered important to further enhance our ability to respond quickly and effectively should it occur. In addition to minimising risk of disease spread, pre-planning now by poultry keepers will support the welfare of any birds that are required to be housed.

Prior to the changes introduced in 2007, certain types of development are already permitted without the need for planning permission. These permitted development rights are set out in

the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO). Part 6 grants various general permissions for farmers to carry out certain development. However, the limitation of those rights, especially the need to comply with prior approval procedures, the fact that they grant permission for structures intended to be permanent, and the fact that they do not cover provision for zoo, game and other birds, make the existing rights inflexible where there is an outbreak of avian flu, where there may be an immediate need to build temporary buildings to house birds.

The Town and Country (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2007 granted the right to carry out temporary and reversible works to shelter poultry and other captive birds from contact from wild birds. These provisions were designed to ensure that farmers and poultry owners had the ability to provide adequate shelter to house birds unaffected by avian flu without needing to seek planning permission from the planning authority.

We will be considering, as part of our wider review of the GPDO, the issue of having permanent permitted development rights with regard to avian flu. In the meantime, however, it is considered prudent that we at least extend the current provisions in this regard for another 12 months.

Rationale for Government Intervention

This measure is being introduced to deal with the possibly urgent requirement to restrict the potential contact between domestic poultry (and other captive birds) and wild birds by allowing urgent additional provision for birds in affected areas to be housed. Failure to extend the life of the permitted development rights introduced last year could have a detrimental impact on farmers and poultry owners given the potential implications for disease spread and the welfare of the birds themselves given that accommodation for free range birds is not generally designed for 24 hour a day living.

Consultation

We have not undertaken any formal consultation on our proposals because we are temporarily extending an existing provision. However, we know that industry are supportive of this approach given the support it provides their own contingency planning considerations. We will consider a permanent provision in this regard as part of our wider review of the GPDO.

We have consulted with Scottish Government's Rural Directorate and Rural Payments and Inspections Directorate on our proposals and they are in full agreement with the measure.

Options

We considered two options:

Option 1 - **Do nothing** – in effect return to requiring an application for planning permission to be made before buildings could be erected to shelter birds from avian flu.

Option 2 - **Allow a further 12 month extension to the existing temporary permitted development rights to erect/extend buildings without the need for planning permission** –

This would grant farmers and poultry owners' temporary additional permitted development rights for the erection of temporary buildings, or the extension of existing buildings, for housing of poultry and other captive birds to protect them from Avian Influenza. The one change however from the 2007 Amendment Order is that any development permitted by Class 72A has to be removed and the land used for it restored "as soon as practicable on or after the relevant date" rather than on or before the relevant date.

Option 2 is the Scottish Government's preferred option.

Costs and Benefits

Sectors and groups affected

The groups that will be most affected are primarily farmers and planning authorities who might need to take enforcement action if temporary buildings are not removed "as soon as practicable on or after the relevant date".

Race equality assessment

None of the options has a race impact.

Health impact assessment

Avian flu is primarily a disease of birds and the public health implications are currently negligible except for those who work very closely with infected birds. However, option 2 would allow bird keepers in certain areas near to the infected premises to comply with their legal obligations to house their birds to prevent contact with wild birds. This would limit the risk of further infection should the virus be circulating in the wild bird population.

Rural considerations

Option 2 would allow the most flexibility to farmers to ensure that they deal with any requirement to bring birds in doors by erecting or extending buildings to help protect birds from avian flu.

Breakdown of costs and benefits

As this is a temporary right for farmers, it is impossible to estimate the exact or approximate costs or benefits at this stage as we do not know to what extent this exceptional right will be used. In general, extending the life of these rights will create more benefits than costs for both farmers and poultry owners and to planning authorities who might otherwise have to deal with an influx of planning applications or requests for prior approval.

Economic Benefit

Option 1 – there would be no benefit from this option which would require farmers to submit planning applications which would need to be consulted upon before determination by planning authorities. The whole process would take weeks.

Option 2 – Farmers and the poultry industry will benefit from the continued scope to put up buildings quickly. Without such buildings if there are any further outbreaks of avian flu, it is possible that hundreds of thousands or even millions of birds would have to be slaughtered. The potential financial losses involved if this were necessary have not been calculated.

Environmental Benefit

Option 1 – there would be no environmental benefits from this option

Option 2 – there would be benefits if birds were protected from the risk of avian flu.

Social Benefits

Option 1 – there would be no social benefits from this option.

Option 2 – there would be no social benefits from this option.

Economic Costs

Option 1 – maintaining the current arrangements of requiring planning permission for buildings would potentially have a considerable cost for farmers and poultry owners who did not have the flexibility to put up buildings quickly. If as a result birds were slaughtered the impact to the economy particularly the farming industry would potentially be considerable.

Option 2 – the buildings will be permitted for up to 12 months and removed as soon as practicable thereafter. Should this not happen, planning authorities would need to take enforcement action. Such action should not impose significant additional costs on planning authorities. The costs of enforcement action on the developer would be associated with what it cost to restore the site, which the developer should do anyway in accordance with the conditions of the new permitted development rights. If the developer refuses to comply with an enforcement action he may be prosecuted and subject to fines and would still incur the costs of removal of the development. If a developer wishes to erect permanent structures it would be open to them to apply for planning permission.

Environmental Costs

Option 1 – there would be a loss of captive birds including ornamental birds.

Option 2 – Potentially there might be some visual impact from temporary buildings.

Social Costs

Option 1 – there are no social costs under this option.

Option 2 – there are no social costs under this option.

Small Firms' Impact Assessment

Creating additional permitted development rights should benefit small firms by allowing them to act quickly to put up temporary buildings to protect birds.

Legal Aid Impact Test

The provisions do not create any new legal procedures and exist within the existing legislative framework of the Town and Country planning system. The freedom to develop allowed under the new provisions is temporary and for the duration of emergency circumstances only. Existing planning enforcement procedures will apply where breaches of planning control arise and anyone subject to those procedures has a right of appeal to the Scottish Ministers.

Competition Assessment

No effects on competition have been identified. The measure should benefit firms, who will be able to exercise this exceptional right to erect buildings to protect birds from the spread of avian flu. The use of this planning permission to erect additional temporary housing for birds is only one of a number of options which those responsible for the keeping of poultry and other captive birds may use where they are required to house birds under avian influenza legislation.

Enforcement and Sanctions

This measure will not create any new burdens on planning authorities. Where a developer carries out development not permitted by the GPDO planning authorities will have the same enforcement powers as they have to deal with development in breach of planning controls. Developers who do not comply with the condition to remove temporary buildings “as soon as practicable on or after the relevant date” could face possible enforcement action from the planning authority under existing provisions covering breaches of planning control. Enforcement action would basically require that development which was in effect unauthorised would have to be removed. Failure to comply could ultimately result in prosecution and fines or to the planning authority entering the land carrying out the necessary works and billing the responsible party.

This is a deregulatory measure – specifically it extends the life of an existing deregulatory measure. If someone carried out the development specified in the new legislation prior to its coming into force and without applying for and receiving planning permission, they could be subject to such planning enforcement action. This new legislation removes the need to obtain planning permission, but only allows development on a temporary basis and if this condition is breached, then enforcement provisions may be brought to bear by the planning authority.

Implementation and Delivery Plan

The new provisions will require to be laid before Parliament and will come into force 21 days thereafter. The Scottish Government’s Rural Directorate, Rural Payments and Inspections Directorate and the Directorate for the Built Environment will take steps to inform site operators and planning authorities respectively that the temporary PD rights will be extended for a further 12 month period.

Post-Implementation Review

The temporary buildings will only be granted planning permission for a maximum of 12 months. Farmers who have not removed their buildings after 12 months will be in breach of

planning permission. We will rely on advice from the Scottish Government's Rural Directorate about how long the measure should last.

Summary and Recommendation

The extension for a further 12 month period of a temporary additional permitted development right to allow farmers and poultry owners to erect temporary buildings to house birds is a precautionary measure to deal with the risk of a further spread of avian flu.

Option 2 is therefore the preferred option.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed STEWART STEVENSON

Date 3rd MARCH 2008

Stewart Stevenson MSP, Minister for Transport, Infrastructure and Climate Change