

2018 No. 142

TOWN AND COUNTRY PLANNING

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

<i>Made</i> - - - -	<i>1st May 2018</i>
<i>Laid before the Scottish Parliament</i>	<i>3rd May 2018</i>
<i>Coming into force</i> - -	<i>1st July 2018</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2018 and comes into force on 1st July 2018.

Application

2.—(1) The amendments made by this Order do not apply to development begun before 1st July 2018.

(2) For the purposes of paragraph (1) development is to be taken to be begun on the earliest date on which any material operation (within the meaning of section 27(4) of the Town and Country Planning (Scotland) Act 1997) comprised in the development begins to be carried out.

Amendment of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

3. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992(b) is amended in accordance with articles 4 and 5.

Amendment of article 3

4. In article 3 (permitted development)(c)—

(a) after paragraph (4A)(b) insert—

“(c) in the case of a permission granted in connection with an existing fish farm, the placement or assembly of equipment forming that fish farm is unlawful.” and

(a) 1997 c.8. Section 275 was relevantly amended by section 54(16) of the Planning etc. (Scotland) Act 2006 (asp 17) and paragraph 32 of schedule 3 of the Regulatory Reform (Scotland) Act 2014 (asp 3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
(b) S.I. 1992/223 which has been relevantly amended by S.I. 1992/2084, S.S.I. 2012/131 and S.S.I. 2012/285.
(c) Article 3(4A) was inserted by S.I. 1992/2084.

- (b) after paragraph (4A) insert—
- “(4B) Paragraph (4A)(c) does not apply where—
- (a) the equipment in question is equipment of the same size, colour and design and is in the same location as the equipment which it replaces; and
 - (b) the only reason that the placement or assembly of equipment forming the existing fish farm is unlawful is that there was a failure to comply with the terms of a condition imposed by virtue of a provision mentioned in paragraph (4C).
- (4C) The provisions referred to in paragraph (4B)(b) are—
- (a) paragraph (4)(b) of Class 21A;
 - (b) paragraph (2)(a) of Class 21B;
 - (c) paragraph (2)(b) of Class 21C;
 - (d) paragraph (3)(c) of Class 21D;
 - (e) paragraph (3)(a) of Class 21E;
 - (f) paragraph (2)(a) of Class 21G;
 - (g) paragraph (2)(a) of Class 21H;
 - (h) paragraph (2)(a) of Class 21I; and
 - (i) paragraph (3)(a) of Class 21J.
- (4D) In paragraphs (4A) and (4B) “existing fish farm”, “equipment” and “fish farm” have the same meaning as for the purposes of Part 6A of Schedule 1.”

Amendment of Part 6A of Schedule 1

5.—(1) Part 6A (fish farming) of schedule 1 (classes of permitted development)(a) is amended in accordance with paragraphs (2) to (8)

(2) In class 21A—

(a) for paragraph (1)(a) substitute—

“(a) replacing an existing finfish pen (including within the area of a fallow fish farm)—

- (i) in the same location with a finfish pen of a different size, colour or design;**
- (ii) in a different location with a finfish pen of a different size, colour or design; or**
- (iii) in a different location with a finfish pen of the same size, colour and design;**

(aa) within the area of a fallow fish farm, replacing an existing finfish pen in the same location with a finfish pen of the same size, colour and design;”;

(b) in paragraph (2)—

- (i) after “by” insert “paragraph (1)(a)(i) or (ii) or (c) of”; and
- (ii) for “cage” substitute “pen”;

(c) for paragraph (3) substitute—

“(3) Development is not permitted by paragraph (1)(a)(i) or (ii) or (c) of this class if as a result of the replacement or installation of a finfish pen the surface area of the waters covered by the equipment comprising the fish farm as altered or extended—

- (a) would be greater than 15,000 square metres; or
- (b) would be—
 - (i) more than 1,000 square metres greater; or

(a) Part 6A was inserted by S.S.I. 2012/131 and amended by S.S.I. 2012/285.

- (ii) 10% greater,
than the surface area of the waters covered by the original equipment.”; and
- (d) omit paragraph (5).
- (3) After Class 21A insert—
 - “**Class 21AA**
 - (1) The placing or assembly of equipment within the area of an existing fish farm (other than a fallow fish farm) for the purpose of replacing an existing finfish pen in the same location with a finfish pen of the same size, colour and design.**
 - (2) Development is permitted by this class subject to the condition that in the event of the 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.”.
- (4) In class 21C—
 - (a) in paragraph (2)—
 - (i) after “Development” (where that first occurs) insert, “described in paragraph (1)(a) within the area of a fallow fish farm or development described in paragraph (1)(b)”;
 - (ii) omit sub-paragraphs (a) and (aa); and
 - (iii) in sub-paragraph (b)(ii) omit “where the top net or support is of a different colour or design than the existing top net or support,”; and
 - (b) after paragraph (2) insert—
 - “(3) Development is permitted by this class subject to the condition that in the event of the 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.”.
- (5) In class 21E—
 - (a) for paragraph (2) substitute—
 - “(2) Development is permitted by this class subject to the limitation that only one additional line may be placed or assembled within the area of the fish farm by virtue of this class for every 6 long lines comprised in the original equipment relating to that fish farm.”; and
 - (b) in paragraph (3)—
 - (i) after “Development” (where that first occurs) insert, “other than where the development in question is the replacement of an existing long line in the same location with a long line of the same size, colour and design and is not within the area of a fallow fish farm,”; and
 - (ii) omit sub-paragraph (f); and
 - (c) after paragraph (3) insert—
 - “(3A) Development is permitted by this class subject to the condition that in the event of the 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.”; and
 - (d) omit paragraph (4).
- (6) In class 21F after paragraph (1)(b) omit “or” and after paragraph (1)(c) insert—

- “(d) to the breeding, rearing or keeping of scallop (*Aequipecten opercularis* or *Pecten maximus*) where the established use of that fish farm is the breeding, rearing or keeping of—
 - (i) mussel (*Mytilus*);
 - (ii) Pacific oyster (*Crassostrea gigas*); or
 - (iii) native oyster (*Ostrea edulis*);
- (e) to the breeding, rearing or keeping of mussel (*Mytilus*) where the established use of that fish farm is the breeding, rearing or keeping of—
 - (i) scallop (*Aequipecten opercularis* or *Pecten maximus*);
 - (ii) Pacific oyster (*Crassostrea gigas*); or
 - (iii) native oyster (*Ostrea edulis*); or
- (f) to the breeding, rearing or keeping of native oyster (*Ostrea edulis*) where the established use of that fish farm is the breeding, rearing or keeping of—
 - (i) mussel (*Mytilus*);
 - (ii) scallop (*Aequipecten opercularis* or *Pecten maximus*); or
 - (iii) Pacific oyster (*Crassostrea gigas*).”.

(7) After class 21F insert—

“Class 21G

(1) The placing or assembly of equipment within the area of an existing fish farm for the purpose of—

- (a) replacing an existing mooring in the same location with a mooring of—**
 - (i) the same size, colour and design; or**
 - (ii) a different size, colour or design;**
- (b) relocation of a mooring; or**
- (c) installing an additional mooring.**

(2) Development, other than where the development in question is the replacement of an existing mooring in the same location with a mooring of the same size, colour and design and that location is not within a European site or a nature conservation MPA, is permitted by this class subject to the following conditions—

- (a) the developer must before beginning the development apply to the planning authority for a determination as to whether the prior approval of the authority is required in respect of—
 - (i) the size, colour and design of the mooring; and
 - (ii) its location;
- (b) the application is to be accompanied by—
 - (i) a description of the proposed mooring, including details of its size, colour and design;
 - (ii) where the mooring is an additional mooring, a description of its proposed location;
 - (iii) a description of the area of the existing fish farm, including details of the coordinates of the anchorage or mooring point used in relation to the fish farm; and
 - (iv) any fee required to be paid;
- (c) the development is not to be commenced before the occurrence of one of the following—
 - (i) the receipt by the applicant from the planning authority of a written notice of their determination that their prior approval is not required;

- (ii) the expiry of a period of 28 days following the date on which the application was received by the planning authority without the planning authority giving notice to the applicant of their determination that, or the extent to which, such approval is required; or
- (iii) the applicant has (or to the extent required has) received such approval from the planning authority;
- (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) to the extent to which prior approval is required, in accordance with the details approved;
 - (ii) to the extent to which prior approval is not required, in accordance with the details submitted with the application; and
- (e) the development is to be carried out within a period of three years from the date on which all approvals required in accordance with this paragraph have been given.

(3) All development is permitted by this class subject to the condition that in the event of the 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.

(4) In this class “nature conservation MPA” means an area designated as a nature conservation marine protected area by a designation order made by the Scottish Ministers under section 67 of the Marine (Scotland) Act 2010(a).

Class 21H

(1) The placing or assembly of equipment within the area of an existing fish farm for the purpose of replacing an existing finfish pen net in the same location with a finfish pen net—

- (a) of the same size, colour and design; or**
- (b) of the same size but of a different colour or design.**

(2) Where the development in question is either development described in paragraph (1)(a) within the area of a fallow fish farm or development described in paragraph (1)(b), the development is permitted by this class subject to the following conditions—

- (a) the developer must before beginning the development apply to the planning authority for a determination as to whether the prior approval of the authority is required in respect of the colour and design of the finfish pen net;
- (b) the application is to be accompanied by—
 - (i) a description of the proposed finfish pen net, including details of its size, colour and design;
 - (ii) a description of the area of the existing fish farm, including details of the coordinates of the anchorage or mooring point used in relation to the fish farm; and
 - (iii) any fee required to be paid;
- (c) the development is not to be commenced before the occurrence of one of the following—
 - (i) the receipt by the applicant from the planning authority of a written notice of their determination that their prior approval is not required;

(a) 2010 asp 5.

- (ii) the expiry of a period of 28 days following the date on which the application was received by the planning authority without the planning authority giving notice to the applicant of their determination that, or the extent to which, such approval is required; or
 - (iii) the applicant has (or to the extent required has) received such approval from the planning authority;
 - (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) to the extent to which prior approval is required, in accordance with the details approved;
 - (ii) to the extent to which prior approval is not required, in accordance with the details submitted with the application; and
 - (e) the development is to be carried out within a period of three years from the date on which all approvals required in accordance with this paragraph have been given.
- (3) All development is permitted by this class subject to the condition that in the event of the 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, buoys, 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.

Class 21I

(1) The placing or assembly of equipment within the area of an existing fish farm for the purpose of installing a secondary net structure

- (2) Development is permitted by this class subject to the following conditions—
- (a) the developer must before beginning the development apply to the planning authority for a determination as to whether the prior approval of the authority is required in respect of the size, colour and design of the secondary net structure;
 - (b) the application is to be accompanied by—
 - (i) a description of the proposed secondary net structure, including details of its size, colour and design;
 - (ii) a description of its proposed location;
 - (iii) a description of the area of the existing fish farm, including details of the coordinates of the anchorage or mooring point used in relation to the fish farm; and
 - (iv) any fee required to be paid;
 - (c) the development is not to be commenced before the occurrence of one of the following—
 - (i) the receipt by the applicant from the planning authority of a written notice of their determination that their prior approval is not required;
 - (ii) the expiry of a period of 28 days following the date on which the application was received by the planning authority without the planning authority giving notice to the applicant of their determination that, or the extent to which, such approval is required; or
 - (iii) the applicant has (or to the extent required has) received such approval from the planning authority;
 - (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) to the extent to which prior approval is required, in accordance with the details approved;

- (ii) to the extent to which prior approval is not required, in accordance with the details submitted with the application;
- (e) the development is to be carried out within a period of three years from the date on which all approvals required in accordance with this paragraph have been given; and
- (f) in the event of the 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.

(7) In this class, “secondary net structure” means a net structure including a sea lice skirt or predator net which is secondary to a main containing finfish pen net.

Class 21J

(1) The placing or assembly of equipment within the area of an existing shellfish farm for the purpose of—

- (a) replacing an existing trestle, in the same or a different location, with a trestle of—**
 - (i) the same size, colour and design; or**
 - (ii) a different size, colour or design;**
- (b) relocation of a trestle; or**
- (c) installing an additional trestle.**

(2) Development is not permitted by paragraph (1)(c) of this class if—

- (a) the area of the existing shellfish farm is greater than 2 hectares; or
- (b) the installation of a trestle would result in more than a 10% increase in the number of trestles which are located within the area of the existing shellfish farm when compared with the number of trestles which comprise original equipment in relation to that shellfish farm.

(3) Development, other than where the development in question is the replacement of an existing trestle in the same location with a trestle of the same size, colour and design and is not within the area of a fallow fish farm, is permitted by this class subject to the following conditions—

- (a) the developer must before beginning the development apply to the planning authority for a determination as to whether the prior approval of the authority is required in respect of—
 - (i) the size, colour and design of the trestle; and
 - (ii) its location;
- (b) the application is to be accompanied by—
 - (i) a description of the proposed trestle, including details of its size, colour and design;
 - (ii) where the trestle is to be relocated, a description of both its current location within the area of the existing shellfish farm and its proposed location;
 - (iii) where the trestle is an additional trestle, a description of its proposed location;
 - (iv) a description of the area of the existing shellfish farm, including details of the coordinates of the anchorage or mooring point used in relation to the shellfish farm; and
 - (v) any fee required to be paid;
- (c) the development is not to be commenced before the occurrence of one of the following—

- (i) the receipt by the applicant from the planning authority of a written notice of their determination that their prior approval is not required;
- (ii) the expiry of a period of 28 days following the date on which the application was received by the planning authority without the planning authority giving notice to the applicant of their determination that, or the extent to which, such approval is required; or
- (iii) the applicant has (or to the extent required has) received such approval from the planning authority;
- (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) to the extent to which prior approval is required, in accordance with the details approved;
 - (ii) to the extent to which prior approval is not required, in accordance with the details submitted with the application; and
- (e) the development is to be carried out within a period of three years from the date on which all approvals required in accordance with this paragraph have been given.

(4) All development is permitted by this class subject to the condition that in the event of the 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.

(5) In this class “shellfish farm” means a fish farm which is used solely for the purpose of breeding, rearing or keeping shellfish.” .

(8) In the interpretation section of Part 6A—

(a) in paragraph (1)—

(i) before the definition of “equipment” insert—

““authorised mooring” means a mooring which is original equipment or which is placed or assembled by virtue of planning permission granted by Part 6A of this Order;”; and

(ii) after the definition of “fish farm” insert—

““fallow fish farm” means a fish farm treated as forming an existing fish farm by virtue of paragraph (1A);

“finfish pen” means a tank or cage used for the purposes of fish farming other than for the breeding, rearing or keeping of shellfish (including any kind of sea urchin, crustacean or mollusc);

“mooring” includes an anchor;”;

(b) after paragraph (1) insert—

“(1A) Where—

(a) before 1st July 2018 all equipment relating to a fish farm, other than one or more moorings, has been removed; or

(b) on or after 1st July 2018 all equipment relating to a fish farm, other than three or more moorings, has been removed and the planning authority have been given notice in writing of—

(i) the date on which the last item of such equipment was removed; and

(ii) the location of the remaining moorings,

then to the extent that the remaining mooring or moorings are authorised moorings, that remaining equipment is to be treated as forming an existing fish farm for a period of 9 years after the date on which the last item of such other equipment was removed notwithstanding the removal of that equipment.

(1B) In relation to placement or assembly of equipment for the purpose of replacement or relocation of equipment—

- (a) references to existing equipment are to be treated as including the removed equipment but in relation to replacement or placement or assembly of equipment in the area of a fallow fish farm only where no more than 9 years have passed since the equipment in question was removed; and
 - (b) references to the current location of the equipment which is to be relocated are references to the location of the equipment before it is removed or relocated.”; and
- (c) for paragraph (2) substitute—

“(2) The area of an existing fish farm means in relation to—

- (a) a fallow fish farm which is treated as forming an existing fish farm by virtue of paragraph (1A)(a), the area within which fish farming development had been permitted in terms of the planning permission or relevant authorisation in accordance with which the remaining authorised mooring or moorings had been placed or assembled;
- (b) a fallow fish farm which is treated as forming an existing fish farm by virtue of paragraph (1A)(b), the area which, if the remaining authorised moorings (the location of which being as set out in the notice referred to in paragraph (1A)(b)) were to be connected by straight lines, would be enclosed by such imaginary lines;
- (c) a fish farm (other than a fallow fish farm) where fish farming development is permitted in terms of planning permission granted following an application made under Part III of the Act, the area within which such fish farming development is permitted in terms of that planning permission; and
- (d) any other fish farm, the area which, if the moorings used in relation to that fish farm were to be connected by straight lines, would be enclosed by such imaginary lines.”.

St Andrew’s House,
Edinburgh
1st May 2018

KEVIN STEWART
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the 1992 Order”). Article 4 amends article 3 of the 1992 Order to provide that, other than in the cases specified in new paragraph (4B), permitted development rights do not apply where the existing fish farm is the result of unlawful placement or assembly of equipment.

Article 5 amends Classes 21A, 21C and 21E, in particular to alter the conditions relating to the scale of permitted development and to remove the need for prior notification where there is like for like replacement of equipment. The range of changes of use permitted under Class 21F is extended. Article 5 also introduces new Classes 21AA, 21G to 21J into Part 6A of Schedule 1 to the 1992 Order. Class 21AA now deals with the like for like replacement of finfish pens in the same location previously dealt with under Class 21A. The other new classes extend permitted development rights, subject to conditions, to the placement or assembly of moorings, cage nets, secondary net structures and trestles used for the purposes of fish farming.

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