

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

Amendments to Permitted Development Rights and Changes of Use to Finfish and Shellfish Developments by introduction of The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2018

Purpose and intended effect

Objectives

1. To fulfil a Scottish Government commitment to review the operation of permitted development rights (PDR) for fish farms
2. To provide greater operational flexibility to fish farm operators to replace and upgrade equipment
3. To introduce the application of PDR to fish farms which for good husbandry and environmental reasons have looked to fallow and removed equipment for a time limited period [and which otherwise would have always required planning permission to re-establish]

Background

4. Fish farm “development” is the placing or assembly of equipment in any part of any waters.
5. Due to the nature of the aquatic environment and the operational aspects of a fish farm, a fish farm which is assembled in freshwater or marine waters will require regular and routine maintenance, cleaning, upgrading (to take account of changing farming practice and innovation within the sector), replacement and relocation of equipment over its lifetime.
6. At the end of a fish farming cycle a fish farm is required to fallow for a minimum of 6 weeks in order to break disease and parasite cycle. Some operators chose to fallow for longer periods, or cycle between fish farming locations. This is positive both in terms of the environment and fish health; and is something which we would wish to enable and to encourage as best practice.
7. Currently the removal of equipment from a fish farm will result in planning permission being spent. New planning permission is required to reinstate or replace equipment, unless permitted development rights exist.
8. Permitted development rights for fish farms were introduced by The Town and Country Planning (General Permitted Development) (Fish Farming)(Scotland) Amendment Order 2012 and the Town and Country Planning (General Permitted Development)(Scotland) Amendment (No. 2) Order 2012. The consultation paper for the 2012 Order noted that there would be opportunity to review the operation of PDR in light of experience and to consider whether to relax the requirements for prior notification.

9. A review of PDR for fish farms commenced in 2015. Feedback from stakeholders expressed frustration at the application of a planning system, perceived to be designed to meet terrestrial requirements. In response Scottish Government commissioned the Independent Review of Aquaculture Consenting which was published in 2016. This review recommended exploring an alternative consenting system and amending the current definition of development with regards to aquaculture, amongst other recommendations.

10. The Scottish Government explored the possibility of amending the definition of development through the Planning Bill in tandem with the PDR review. Amendment of the definition of development is not considered a viable option. The Scottish Government has committed to considering the options around an alternative consenting regime.

Rationale for Government intervention

11. Apart from the legislative requirement for changes to be made, without changes to current permitted development for fish farms, fish farms will remain restricted with regards to the removal and replacement of some equipment [a requirement of operation] and require full planning permission to do so with full associated costs.

12. Without change, prior notification will be required to operate all PDR – including the replacement of equipment which is like for like – which has demonstrated to be an unnecessary administrative burden for both local authorities and fish farmers.

13. Without change, fish farms which wish to fallow for a longer period than is required, and potentially move equipment elsewhere, will also continue to require a new planning permission where equipment is removed and intended to be replaced. This will remain a disincentive to site rotation and result in valuable equipment being left on site to avoid planning permission becoming spent. The wider potential environmental benefits of extended fallowing periods would also be lost.

14. Intervention also allows the opportunity for certain PDR to be extended to shellfish operators, which are already afforded to fin fish operators, and level the playing field for the benefit of all.

Consultation

Within Government

15. Consultation took place with the former Ministerial Group for Sustainable Aquaculture (MGSA) Capacity Working Group (CWG) to inform policy development and proposals to take forward to public consultation. The Capacity Working Group includes the majority of stakeholders involved in the planning process public bodies Scottish Natural Heritage, Marine Scotland and Scotland's Environment Protection Agency .

Public Consultation

16. A public consultation took place in May 2017 for 12 weeks. A total of 29 responses were received from a mixture of local authorities (5), industry (7), public body (4) and others (13).

Business

17. Consultation took place with Trade Associations representing finfish and shellfish growers and prominent individual companies through the CWG prior to official public consultation.

Next Steps

18. The opinions expressed at the CWG and the responses from the consultation exercise have fed into a final set of proposals prepared as an Amendment Order to the Town and Country Planning (General Permitted Development) (Scotland Order) 1992.

Options

Option 1 – Do Nothing

19. The current legislation is not operating as expected and is not commensurate to a modern aquaculture sector. Providing prior notification for changes which are 'like for like' on a fish farm has proven costly and time consuming. It has also not been done on a consistent basis across the council areas. The current legislation does not currently require all equipment which may be required to be replaced on a fish farm. This is in addition to problems experienced with planning permission become spent unintentionally and a continued perceived financial risk for operators. Furthermore, with expansion of shellfish farming in Scotland, it is considered that the legislation could further benefit shellfish farmers. Keeping the status quo will keep an overly bureaucratic process and continue to disadvantage shellfish farmers. Doing nothing is not considered an option.

Option 2 – Make the Change

Sectors and groups affected

20. Marine and freshwater finfish farmers and shellfish farmers, local authorities as planning consultees.

Benefits

21. Currently, fish farm planning applications cost £183 for each 0.1 hectare of the surface area of the marine waters plus £63 for each 0.1 hectare of the sea bed enclosed by the mooring, subject to a maximum of £18,270.

22. Addition of new PDR classes will reduce the requirement for submission of full planning applications and ensure that an adequate amount of equipment is covered by PDR.

23. Removal of prior notification in instances of 'like for like' changes, such as replacement of cage nets on fish farms, will reduce time spent on assessing changes

of equipment which were already approved at the planning stage. The current prior notification fee is £78. Government agencies and regulators are statutory consultees to the planning process. They will benefit through not having to consider minor developments where their advice is not required and/or of not material significance..

24. Prior notification will remain a requirement for changes which are not 'like for like' in addition to changes which could affect Natura sites (for example replacement of moorings in areas with protected benthic features). The prior notification process allows local authorities to consider whether prior approval may be required. Where prior approval is required a screening opinion for environmental impacts must be given. Where that screening suggests that an Environmental Impact Assessment (EIA) is required, PDR is withdrawn. This ensures that PDR is not carried out to the detriment of the environment. However the inclusion of new classes of PDR allows the opportunity for some development to take place by PDR.

25. By introducing a definition of fallow fish farm (where all equipment is removed with exception of outer moorings marking the area of a fish farm) and changes the definition of existing equipment (equipment is to be considered existing where by no more than 9 years have passed since it was removed) operators will have increased operational flexibility and the potential ability to replace equipment for up to 9 years after its removal. As highlighted above where equipment assembly suggests that EIA is required, PDR is withdrawn – this is an overriding process, therefore an operator is not automatically entitled to replace equipment.

26. Extending permitted development rights to trestle shellfish farmers will mean that operators who already have planning permission and who wish to change their configuration or add extra equipment, will save both t monetary costs and the time involved (which can be anything from 2 months to 6 months for minor changes) in obtaining formal planning permission. That is, the operator will only need to give the planning authority **prior notification** in some instances, that they are doing so.

Costs

27. There will be no new costs. There will be a reduction in current costs as outlined above. The requirement for prior notification will be relaxed for like for like changes, reducing the requirement to fill in and process forms.

Scottish Firms Impact Test

Competition Assessment

28. Those affected by the proposals are companies engaged in fish farming (either finfish or shellfish). The proposals do not alter the existing barriers to entry to the fish farming sector; although they do reduce the regulatory overhead (including the finance and staffing overhead) involved in making changes to the equipment installed on a site. To the extent that the proposals affect competition they are likely to favour smaller operators in that the existing cost of making changes is disproportionately larger to them than to their national and multi-national competitors.

Test run of business forms

29. Not applicable.

Legal Aid Impact Test

30. The proposals do not create any new procedure or right of appeal to a court or tribunal, amend any existing procedures or rights of appeal or make any change of policy or practice which may lead people to consult a solicitor.

Enforcement, sanctions and monitoring

31. Monitoring and sanctions are in respect of unauthorised developments and other breaches of planning legislation. These remain unchanged (there is no addition burden), with the exception of the introduction of an obligation to alert the local authority to the falling of a site and removal of equipment. This is a requirement for the local authority to enforce PDR and the timelines associated where a farm is deemed to no longer exist post equipment removal.

Implementation and delivery plan

Post-implementation review

32. The proposals will be introduced by an amending Order made under sections 30, 31 and 275 of the Town and Country Planning Act 1997 (as amended by the Planning etc (Scotland) Act 2006). The enforcing authority will be the local authority, as planning authority for the area. Planning authorities have been involved in the preliminary consultations giving rise to the proposals and are included again in the formal consultation process.

33. The proposals do not have to be managed post-implementation. Neither do they require an implementation plan (although permitted development guidance will be updated). However a commencement date of 1 July has been established in Order for adjustment to the amending Order. Once the Order has been made fish farm operators will benefit from a more relaxed regulatory regime, which still protects the environment. The effectiveness of the Order will be reviewed in three years' time (July 2021) .

Summary and recommendation

- **Summary costs and benefits table**

Option	Total benefits per annum: economic, environmental, social	Total costs per annum: economic, environmental, social policy and administrative
1 – Do Nothing	Economic - there are no economic benefits to maintaining the status quo; Environmental - the status quo delivers high and	Economic – Industry has to pay fees amounting to £183 per 0.1ha of water surface area plus £63 per 0.1ha of seabed each time an operator wishes to alter the configuration of a farm or add or change

	robust levels of environmental protection; Social - high and robust levels of development control.	equipment; Environmental - none; the status quo delivers high and robust levels of environmental protection Social - the regulatory cost of making minor changes to equipment, etc, is a potential deterrent to job creation.
2 – Make the Change	Economic - reduced monetary cost to industry. Prior notification fee removed in some cases (£78). Environmental - high and robust levels of environmental protection are maintained; Social - more operational flexibility	Economic – No additional costs. Environmental - none, pre-conditions attaching to changes ensure that existing levels of protection are maintained; Social - none, pre-conditions attaching to changes ensure that existing levels of control are maintained

34. In summary, changes to current PDR will allow greater operational flexibility for shellfish and fish farm operators and go some way to addressing perceived complications with the definition of development for the aquaculture sector. We intend to proceed with the amendments (Option 2).

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland .

Signed:

Date: 1 May 2018

Minister's Name: Kevin Stewart MSP

Ministers Title: Minister for Local Government and Housing