

# **Consultation on Amendments to Permitted Development Rights for Fin Fish and Shellfish Developments**

**May 2017**

## **1. Overview**

1.1 Permitted development rights (PDR) 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.

1.2 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. The Scottish Government committed to a review of PDR for fish farms which commenced in 2015.

1.3 This consultation asks for responses regarding a number of proposed changes to PDR for fish and shellfish farms.

## **2. Why We Are Consulting**

2.1 The Capacity Working Group (CWG), part of the restructured Ministerial Group for Sustainable Aquaculture, was established in 2013 to work with the Scottish Government to effect improvements to the planning and consenting process. The Scottish Government have consulted with industry, statutory planning consultees and local authorities through the CWG, accessing their expertise during the process.

2.2 A number of suggested improvements to PDR were identified; including to both existing PDR legislation and guidance. There has been a particular focus to improve the PDRs relevant for shellfish farmers. Desired legislative changes to PDR are described in sections 6,7 and 8. Improvements to guidance will be taken forward separately.

2.3 The purpose of this consultation paper is to seek views on whether these legislative changes should be introduced.

## **3. What happens next?**

3.1 Following the consultation, all responses will be analysed to help us finalise the amending Order. We would envisage the new permitted development Order would be introduced after the summer 2017.

### **Responding to this Consultation**

3.2 We are inviting responses to this consultation by 28 July 2017.

3.3 Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/marine-scotland/rights-for-finish-and-shellfish-developments>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 28 July 2017.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) to:

[fishfarmreview@gov.scot](mailto:fishfarmreview@gov.scot)

### **Handling your response**

3.4 If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

3.5 If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

3.6 All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

3.7 Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

3.8 Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

### **Comments and complaints**

3.9 If you have any comments about how this consultation exercise has been conducted, please send them to Jill Barber [ [jill.barber@gov.scot](mailto:jill.barber@gov.scot) ]

### **Scottish Government consultation process**

3.10 Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

3.11 You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

3.12 Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

3.13 Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

3.14 While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

## 4. Current Regulatory Framework

4.1 Fish Farm developments (fin fish and shellfish) are regulated by the Town and Country Planning (Scotland) Act 1997.

4.2 Since 1 April 2007 fish farm developments have been subject to local authority planning in the same way as terrestrial developments. Freshwater fish farm developments have always been under local authority control. All development requires planning permission. However, certain forms of development benefit from 'permitted development rights'. The types of development that can be considered as 'permitted development', and the qualifying criteria are set out in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, usually referenced to as the 'GPDO'.

4.3 Permitted development rights (PDR) 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) (Fish Farming) (Scotland) Amendment (No. 2) Order 2012 – the '2012 Orders'.

4.4 The 2012 Orders split PDR for fish farms into different classes and include:

- the placing or assembly of certain equipment within the area of an existing fish farm, including the installation of replacement or additional fish pens (Class 21A);
- the replacement or relocation of existing feed barges (Class 21B);
- the replacement of existing top nets or their supports (Class 21C);
- the installation of temporary equipment (Class 21D);
- the placing or assembly of long lines (Class 21E); and
- change of fish species use (Class 21F).

## 5. Proposals

5.1 The following proposed changes to PDR include both changes to existing PDRs and the introduction of new PDRs. The proposals are being put forward having undertaken a review of the operation of existing PDRs. Proposals have been discussed with the Scottish Government's Capacity Working Group and separately with shellfish stakeholders. **A draft amendment Order, The Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment Order 2017, is attached at Annex A.**

5.2 A screening report for Strategic Environmental Assessment was prepared and SEA consultees (Scottish Natural Heritage, Historic Environment Scotland and the Scottish Environmental Protection Agency) provided comment. It is considered that the proposed amending Order will not have significant environmental impacts and it has been determined that a strategic environmental assessment is not required.

5.3 A business regulatory impact assessment and equality impact assessment are attached in Annexes B and C.

## 6. Modifications to Existing Class of PDR

N.b It will be clarified in the guidance that any changes to equipment will be expected to meet the requirements of the [technical standard for Scottish finfish aquaculture](#) and may need to demonstrate this as part of another consent.

### 6.1 Class 21A – placement, relocation or installation of a cage

Class 21A currently allows;

- replacing of an existing finfish pen, in the same or a different location, with a finfish pen of the same size, colour and design.
- relocation of an existing finfish pen; or
- installing an additional finfish pen

Sections 2, 3 and 4 set the conditions of use of PDR under this class. Section 4 (b) requires that the developer must apply to the authority to determine as to whether prior approval is required. This condition will be referenced as 'prior notification' from here within. The developer is currently required to provide prior notification for all changes under this class – including replacement of a 'like for like' fin fish pen in the same location.

- We do not consider that replacement or relocation of a fin fish cage should be subject to the restrictions of sections 2 & 3 which do not permit development under this class with respect to cages with a circumference greater than 100m or fish farms of greater than 15,000 square metres. We propose that sites of any size should be able to replace or relocate cages of any size within an existing farm boundary by PDR.
- We consider that the requirement for prior notification for finfish pens replaced, in the same location, with a finfish pen of the same size, colour and design, should be removed. Replacing of pens is considered a normal operational requirement for fish farms and it is expected that fish pens will be replaced over time, in line with normal wear and tear or to meet other operational requirements.

**Question 1 – Do you agree that the cage size and area restrictions which prevent PDR use for replacement or relocation of an existing cage should be removed?**

**Question 2 – Do you agree that prior notification should not be required for fin fish pens replaced, in the same location, with a finfish pen of the same size, colour and design?**

### 6.2 Class 21C – replacement of top net or support

Class 21C allows the placing or assembly of equipment within the area of an existing fish farm for the purpose of (a) replacing an existing top net or support with a top net or support of the same size, colour and design; or (b) replacing an existing top net or support for a top net with a top net or support of a different size, colour and design.

Section 2 sets the conditions for use of PDR under Class 21C. This currently includes the requirement of prior notification.

- We consider that the requirement for prior notification for the placing or assembly of equipment within the area of an existing fish farm, for the purpose of replacing an existing top net or support with a top net or support of the same size, colour and design, be removed.
- Prior notification for changes which are not 'like for like' should remain

**Question 3 – Do you agree that prior notification should not be required for the purpose of replacing an existing top net or support with a top net or support of the same size, colour and design?**

PDR is not permitted by Class 21C where the equipment to support the top net is to be greater in height than 2.5 metres. Removal of the limit will allow some flexibility in accommodating innovation of cage equipment and supports in the future.

- We propose that this restriction is removed. It is considered that the height of the support to the top net will be assessed and permitted at the planning stage.
- Alternatively, should a change in support net structure height be required, in order to allow for any potential environmental impacts to be screened (especially any visual impacts), we propose any changes which are not 'like for like' should require prior notification.

**Question 4 – Do you agree that the limit for use of PDR of 2.5 metres for equipment to support the top net should be removed from this class of PDR?**

### 6.3 Class 21E – placing a long line

We consider that class 21E is updated to give similar provisions to long line operators as those afforded to fin fish operators under Class 21A

- We suggest Class 21E should allow the replacement of an existing long line, in the same or a different location, with a long line of the same size, colour and design within an existing farm boundary.
- There should be no requirement for prior notification for a long line replaced, in the same location, with a long line of the same size, colour and design (as also recommended for fin fish cages above).
- Lines are replaced on a cyclical basis in line with the shellfish production cycle and it should be expected that lines will be replaced throughout a shellfish farms operational life.
- Prior notification should be required for placing a line in a different location.

**Question 5 – Do you agree that shellfish farms should be able replace existing long lines, in the same or a different location, with a long line of the same size, colour and design as those already on site?**

**Question 6 - Do you agree that replacement of long lines which are 'like for like' and placed in the same location should be permitted without prior notification?**

### **Additional Lines**

Class 21E allows the placing or assembly of a long line for use in shellfish farming within the area of an existing fish farm. Development is not currently permitted under this class where the surface areas of the waters covered by the long line together with the original equipment be either - (a) more than 500 square metres greater; or (b) more than 10% greater, than the surface area of the waters covered by the original equipment.

Farms which utilise long lines usually gain permission for lines of equal length. This creates an even footprint for the farm and is visually pleasing. The current area restriction often results in permission for a line which is less than equal in length to those currently on site and has led to limited uptake of PDR.

- We consider that the additional long lines be permitted under PDR on a scaled basis and that the current area based restriction be removed.
- Farms of up to and including 6 long lines should be permitted an additional long line of the same size, colour and design as existing lines, within the existing area of the farm.
- Farms consisting of 7 or more long lines should be permitted two additional long lines of the same size, colour and design as existing lines, within the existing area of the farm.
- Prior notification for addition of lines should remain. It is envisaged this this will allow councils to consider visual impacts, carrying capacity of the water body and any other potential environmental impacts.
- Permitted additional lines would be based on the original farm size and available for use once.

**Question 7 - Do you agree with the change from the current area limits described above to a scaled line approach which uses lines of equal length to those currently on site?**

**Question 8 – Do you agree with the chosen scaled approach to addition of long lines[ less than or equal to 6 lines = 1 additional long line, 7 or more = up to 2 additional long lines]?**

### 6.4 Class 21F – Change of Use (Species)

Class 21F permits change of use of a fish farm from;

- salmon farming to halibut farming
- sea trout or rainbow trout farming to salmon farming
- salmon farming to sea trout or rainbow trout farming

The change of use of species of a shellfish farm has not previously been considered under PDR. We are of the opinion that shellfish farms should also have a right to change the species being farmed. This is subject to the condition that there would be

no change in associated farming equipment – this would require full planning permission. **Other requirements, such as notification to Marine Scotland’s fish health inspectorate and authorisation for a change in species remain.**

We consider that Class 21F should be amended to allow change of use for shellfish species to include;

- Mussel farming to scallop farming
- Mussel farming to oyster farming
- Scallop farming to mussel farming
- Pacific or native Oyster farming to scallops
- Scallop farming to pacific or native oyster farming
- Pacific oyster farming to native oyster farming

**Question 9 – Do you agree that shellfish farms should be able to change the species farmed under PDR as described above, with the caveat that no change in equipment is permitted under this class?**

## **7. Proposed New Class of PDR**

The following new classes have been identified for inclusion in PDR. All new classes will be subject to the same condition introduced by The Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment (No.2) Order 2012 regarding equipment which falls into disrepair. This ensures there are protections in place to allow the removal any equipment that becomes an obstruction or danger to navigation.

### **7.1 21G – New Class – Moorings & Anchors**

As part of a fish farms operation, mooring parts and associated equipment may be replaced from time to time or removed from the water for inspection. This is a requirement necessary to ensure site integrity and containment. Mooring equipment is currently not covered by PDR. We propose that a mooring PDR class should be included in the Order that only applies to changes to moorings and anchors where there are no associated changes to surface equipment under a different class or consent.

- Farms should be able to replace a mooring or anchor with a mooring or anchor of the same size and design, in the same location. This should not require prior notification *unless* a farm is located within a European site\* or a nature conservation Marine Protect Area (Habitats Regulation Appraisal will be required in such instances).
- Farms should be permitted to replace a mooring or anchor of a different size and design, in the same location. Prior notification is required.
- Farms should be permitted to relocate a mooring or anchor with the area of the existing mooring area. Prior notification is required.
- Farms should be permitted to add an additional mooring(s) within the area of the existing mooring area. Prior notification is required.

\* European site as defined by Amendment of the Conservation (Natural Habitats, &c.) Regulations 1994 – also known as Natura sites.

**Question 10 - Do you agree that fish farms should be able to replace a mooring or anchor with a mooring or anchor of the same size and design, in the same location, without prior notification (European sites and ncMPA will require prior notification)?**

**Question 11 – Do you agree that farms should be able to replace a mooring or anchor with a mooring or anchor of a different design in the same location, and that farms should be permitted to relocate a mooring or anchor within its boundary, with the condition of prior notification?**

#### 7.2 21H – New Class (cage nets)

As with top nets and supports (Class 21C), cage nets are frequently changed as part of operational requirements of a fish farm. This includes for net cleaning purposes, repairs and general maintenance and in line with increases in fish size/containment requirements.

- We consider that replacement of a cage (or pen) net should be permitted with a net of the same or different colour and design.
- 'Like for Like' changes should not require prior notification .
- Changes in the depth/ size or volume of the net will not be permitted under this class.

#### 7.3 21I – Secondary cage structures

Fish farms on occasion require use of secondary net structures (fixed to the main cage or pen) which may not have been considered at the planning stage. Examples include additions of sea lice skirts, wrasse hides, predator nets and false bottoms. Addition of secondary structures may change with fish health requirements on site.

- We consider that secondary net structures should be permitted within PDR, with the requirement of prior notification.

**Question 12 – Do you agree that replacement of cage net with a cage net of the same size, colour and design, should be permitted by PDR without prior notification?**

**Question 13 – Do you agree that secondary net structures should be permitted by PDR with the requirement of prior notification to the local authority?**

#### 7.4 21J – New Class (trestles)

PD currently has a class for operators farming shellfish using long lines. In order to benefit other methods of farming within the shellfish sector we consider that PDR should be extended to trestle sites. Trestles are commonly used in shellfish farming in Scotland.

- This class will allow the placing or assembly of additional trestles within the area of an existing shellfish (trestle) farm and allow for:
  - i) replacement of a trestle in the same location, of the same size, colour and design. Prior notification is not required.
  - ii) relocation of an existing trestle within an existing farm boundary. Prior notification is required.
  - iii) installation of additional trestle(s), where the additional trestles are of the same size, colour and design of existing equipment.
    - The number of additional trestles permitted should be limited to 10% of the original farm.
    - Prior notification for additional trestles is required.

**Question 14 – Do you agree that trestle sites should be permitted to replace trestles with trestles of the same design without prior notification?**

**Question 15 – Do you agree that relocation of a trestle within an existing farm boundary should be permitted with the condition that the local authority receives prior notification?**

**Question 16 – Do you agree with the additional trestle limits set by this class PD and the requirement for prior notification?**

## **8. Boundaries**

### **8.1 Interpretation of Part 6A - Boundaries**

The Order currently states that for the interpretation of 6A:

“The area of an existing fish farm or of equipment of a fish farm, is the area which, if the anchorage or mooring points used in relation to that fish farm or equipment were to be connected by straight lines, would be enclosed by such imaginary lines.”

There may be cases where the area described on a planning consent is greater than the area enclosed by the mooring points described above. We believe that the interpretation in 6A should be amended so that the area of an existing fish farm is defined as the area described in the existing planning consent. This will allow operators to make the most use of their consent under PDR. Where the area of the farm has not been previously described, the seabed area should be taken as the area enclosed by the mooring points as described above.

**Question 17 – Do you agree with the above approach?**

## 9. Considerations Not Taken Forward – For Information and Comment

### 9.1 Placement of cages greater than 100m or more than one cage

PDR currently allows the addition of a fin fish pen under class 21A. There are several conditions to this class and industry have voiced that there has been very little use of this PDR. Industry have requested that larger and duplicate cages be permitted to be used. We do not intend to take this forward as addition of two cages will almost certainly trigger scoping under EIA. The triggers for EIA screening of a fish farm are:

“(a) the installation resulting from the development is designed to produce more than 10 tonnes of dead fish weight per year;  
(b) where the development is situated in marine waters, the development is designed to hold a biomass of 100 tonnes or greater; or  
(c) the proposed development will extend to 0.1 hectare or more of the surface area of the marine waters, including any proposed structures or excavations”.

This applies to extensions to existing farms as well as new farms. Given that the current PDRs specifically state that there should be no increase in biomass (to avoid triggering (a) or (b)) the main concerns would be an increase in surface area triggering EIA screening under category c. This would be any increase in surface area over 0.1 hectares or 1000 square meters.

The surface area of a 100m cage is 797 square meters so 2 x 100m cages would trigger EIA screening. The Order could be amended to permit addition of one 110m cage which would just fall under the 0.1 hectare limit. The industry have voiced that this retains the same problems as the existing PDR and it is therefore considered that this would not be a useful amendment.

### 9.2 Cleaner fish

It is common for cleaner fish (wrasse and lumpsuckers) to be held alongside the main production species for the purposes of biological control. Planning permission may be required for holding additional species; this will be dependent on the wording of the initial planning permission. We do not consider amending PD rights will address this uncertainty and will consider providing further guidance in the updated planning circular.

### 9.3 Class 21D – Temporary Equipment

The Capacity Working Group (CWG) and other relevant stakeholders were consulted on potential changes to temporary equipment. This included increasing the maximum timescale of placing equipment (currently set at 3 months) and an amendment to allow for one off placement of a long line for spat collection.

We did not receive any evidence of temporary equipment that could be used under this class. For this reason there will be no amendment to timescales under this PDR.

It was also concluded during pre-consultation that PDR for a temporary spat line within the planning boundary of an already existing shellfish farm would not be of use.

**Question 18 – Do you have any comments on the above considerations that you would like noted?**

9.4 Timescales

As part of normal operations of a farm, equipment will regularly be removed and replaced. During fallow periods, equipment will be removed for maintenance and not be replaced until the farm is stocked again. Depending on the stocking and fallowing plans of the operator, equipment may be out of the water for a period of time ranging from several months to several years. Existing conditions for fish farm PD require that the development is to be carried out within 3 years of obtaining all relevant approvals required under the class (i.e. following prior notification). In cases where prior notification is not required, it is for the local authority to determine whether the time period equipment is removed for is reasonable for operational purposes. Where operators intend to remove equipment for a longer period of time it is good practice to consult the local authority planning department in advance of any removal operations taking place or as soon as possible afterwards. We do not consider that amending PD rights will address any associated uncertainty.

Removal of all equipment from a fish farm (including sub surface equipment such as moorings) will result in the existing development consent being “spent” and planning permission will be required to place either the same, different or additional equipment in future.

We will consider providing further guidance in the updated circular.

**2017 No.**

**TOWN AND COUNTRY PLANNING**

**The Town and Country Planning (General Permitted Development)  
(Scotland) Amendment Order 2017**

<i>Made</i> - - - -	2017
<i>Laid before the Scottish Parliament</i>	2017
<i>Coming into force</i> - -	2017

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(1) 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 2017 and comes into force on [ ] 2017.

**Application**

2.—(1) The amendments made by article 3 do not apply to development begun before [ ] 2017.

(2) For the purposes of this article 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.—(1) Part 6A(2) (fish farming) of Schedule 1 (classes of permitted development) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992( ) is amended in accordance with paragraphs (2) to ( ).

(2) In regulation 2 (interpretation) in the definition of “European site” in paragraph (d) after “birds” insert, “or Article 4(1) or (2) of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds”.

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

- (3) In class 21A—
- (a) in paragraph (2) after “Development” insert , “described in paragraph (1)(c)”;
  - (b) in paragraph (3)—
    - (i) after “Development” insert “described in paragraph (1)(c);
    - (ii) in sub paragraph (a) omit “replacement or”; and
    - (iii) in sub paragraph (b) omit “replacement or”;
  - (c) in paragraph (4)(b)—
    - (i) at the beginning insert—
      - “other than where the development in question is the replacement of an existing finfish pen in the same location with a finfish pen of the same size, colour and design,”; and
    - (ii) for sub-paragraph (ii) substitute—
      - “(ii) its location;”.
- (4) In class 21C—
- (a) omit paragraph (2)(a); and
  - (b) in paragraph (2)(b)
    - (i) for “the development” substitute, “development described in paragraph (1)(b)”;
    - (ii) in sub-paragraph (ii) omit “where the top net or support is of a different colour or design that the existing top net or support,”.
- (5) In class 21E—
- (a) for paragraph (2) substitute—
    - “(2) Where in relation to a fish farm the original equipment consists of—
      - (b) 7 or more long-lines, no more than 2 additional long-lines; and
      - (c) 6 or fewer long-lines, only one additional line,
 may be placed or assembled within the area of that fish farm by virtue of this class.”; and
  - (b) in paragraph (3)(a) at the beginning 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,”.
- (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*); or
    - (ii) pacific or native oyster (*Crassostrea gigas* or *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 scallop (*Aequipecten opercularis* or *Pecten maximus*);
  - (f) to the breeding, rearing or keeping of [pacific or native oyster (*Crassostrea gigas* or *Ostrea edulis*) where the established use of that fish farm is the breeding, rearing or keeping of scallop (*Aequipecten opercularis* or *Pecten maximus*);
  - (g) 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 pacific oyster (*Crassostrea gigas*);or
  - (h) 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 mussels ([*Mytilus*]).”.

(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 is permitted by this class subject to the following conditions—

- (a) 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;
- (b) 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, 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) if the mooring is an additional mooring or is to be located in a different place from the mooring it replaces, its location;
- (c) 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 to be relocated, a description of both its current location within the area of the existing fish farm and its proposed location;
  - (iii) where the mooring is an additional mooring, a description of its proposed location;
  - (iv) 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
  - (v) any fee required to be paid;
- (d) 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
  - (iii) to the applicant of their determination that, or the extent to which, such approval is required; or
  - (iv) the applicant has (or to the extent required has) received such approval from the planning authority;

- (e) 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
  - (f) 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) In this class—
- “mooring” includes an anchor; and
- “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( ).

### **Class 21H**

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

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

(2) Development is permitted by this class subject to the following conditions—

- (a) 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;
- (b) other than where the development in question is the replacement of an cage net with a cage net of the same size, colour and design, 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 cage net;
- (c) the application is to be accompanied by—
  - (i) a description of the proposed cage 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;
- (d) 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;
  - (iii) to the applicant of their determination that, or the extent to which, such approval is required; or
  - (iv) the applicant has (or to the extent required has) received such approval from the planning authority;

- (e) 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
- (f) 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.

**Class 21I**

**(1) The placing or assembly of equipment within the area of an existing fish farm of 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; 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.
- (7) In this class, “secondary net structure” means a net structure including a sea lice skirt, predator net, or wrasse hide, which is secondary to a main containing cage 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 this class if the placing or assembly of a trestle would result in more than a 10% increase in the number of trestles which are located within the existing shellfish farm when compared with the number of trestles which comprise original equipment in relation to that shellfish farm.

(3) Development is permitted by this class subject to the following conditions—

- (a) 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;
- (b) 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 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) if the trestle is an additional mooring or is to be located in a different place from the mooring it replaces, its location;
- (c) 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 fish 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 fish farm, including details of the coordinates of the anchorage or mooring point used in relation to the fish farm; and
  - (v) any fee required to be paid;
- (d) 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;

- (e) 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
  - (f) 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.”
- (8) In the interpretation section of Part 6A—
- (a) in paragraph (1) after the definition of “fish farm” insert—
    - ““fish farm development” means the placing or assembly of any equipment in marine waters for the purposes of fish farming (“equipment” and “fish farming” having the same meaning as in section 26(6) of the 1997 Act) and any material change of use of equipment so placed or assembled;
    - “marine waters” means the waters described in paragraphs (b) or (c) of subsection (6) of section 26 of the 1997 Act;”;
  - (b) for paragraph (2) substitute—
    - “(2) The area of an existing fish farm means,—
      - (a) in relation to a fish farm where fish farming development is permitted in terms of—
        - (i) planning permission granted following an application made under Part III of the Act;
        - (ii) a relevant authorisation; or
        - (iii) by a combination of such planning permission and a relevant authorisation,
 the area within which such fish farming development is permitted in terms of that planning permission or relevant authorisation, or combination of such planning permission and relevant authorisation; and
      - (b) in relation to any other fish farm, the area which, if the anchorage or mooring points used in relation to that fish farm were to be connected by straight lines, would be enclosed by such imaginary lines.”

A member of the Scottish Government

St Andrew’s House,  
Edinburgh

2017

**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 3

## **ANNEX B**

### **BUSINESS AND REGULATORY IMPACT ASSESSMENT**

#### **Title of Proposal**

Amendments to Permitted Development Rights and Changes of Use to Finfish and Shellfish Developments.

#### **Purpose and intended effect**

- **Objectives**

To streamline and improve the operation of current permitted development rights for fin fish and shellfish developments.

- **Background**

The Scottish Government supports sustainable aquaculture development. 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.

The Scottish Government committed to a review of PDR for fish farms which commenced in 2015.

- **Rationale for Government intervention**

Fish farm development is regulated by legislation. Relaxations to the regulatory regime can only be made by amending the legislation.

#### **Consultation**

- **Within Government**

Consultation included Marine Scotland Science, Scottish Environment Protection Agency and Scottish Natural Heritage

- **Public Consultation**

The consultation will be published by the Scottish Government but it will not be targeted at individuals or bodies representing community or personal attributes or beliefs. CoSLA and local authorities will individually be consulted, as will environmental NGOs

- **Business**

Consultation took place with Trade Associations representing finfish and shellfish growers and prominent individual companies through the Ministerial Working Group for Sustainable Aquacultures Capacity Working Group.

## Options

### 1. Do nothing

The current legislation is not operating as expected. 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 – for example current Regulations stipulate that an operator must prior notify to replace a fin fish cage with a cage of the same size, colour and design, and in the same location.

In addition, 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.

### 2. Making the change

- **Sectors and groups affected**

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

- **Benefits**

Currently, fish farm planning applications cost £183 for each 0.1 hectare of the surface area of the marine waters plus £63 for each for each 0.1 hectare of the sea bed enclosed by the mooring, subject to a maximum of £18,270. 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 those 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. Government agencies and regulators are statutory consultees to the planning process. They will benefit through not having to devote effort to minor developments. The current prior notification fee is £78.

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. Protection for Natura and European sites will remain.

Furthermore, addition of new classes for cage nets and moorings will account for common practice on fish farms.

- **Costs**

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

## Scottish Firms Impact Test

- **Competition Assessment**

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; what they do is 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**

Not applicable.

## Legal Aid Impact Test

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

Monitoring and sanctions are in respect of unauthorised developments and other breaches of planning legislation. No changes are being made to existing controls, remedies and penalties.

## Implementation and delivery plan

- **Post-implementation review**

The proposals will be introduced by an amending Order made under sections 30 and 31 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.

The proposals do not have to be managed post-implementation. Neither do they require an implementation plan (although permitted development guidance will be updated). Once the Order has been made fish farm operators will benefit from a more relaxed regulatory regime, which still protects the environment.

## 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
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1	<p><b>Economic</b> - there are no economic benefits to maintaining the status quo;</p> <p><b>Environmental</b> - the status quo delivers high and robust levels of environmental protection;</p> <p><b>Social</b> - high and robust levels of development control.</p>	<p><b>Economic</b> – The shellfish 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 or add extra equipment;</p> <p><b>Environmental</b> - none; the status quo delivers high and robust levels of environmental protection</p> <p><b>Social</b> - the regulatory cost of making minor changes to equipment, etc, is a potential deterrent to job creation.</p>
2	<p><b>Economic</b> - reduced monetary cost to shellfish industry on trestle sites. Prior notification fee removed in some cases (£78).</p> <p><b>Environmental</b> - high and robust levels of environmental protection are maintained;</p> <p><b>Social</b> - more operational flexibility</p>	<p><b>Economic</b> – No additional costs.</p> <p><b>Environmental</b> - none, pre-conditions attaching to changes ensure that existing levels of protection are maintained;</p> <p><b>Social</b> - none, pre-conditions attaching to changes ensure that existing levels of control are maintained.</p>

### 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 .

[ CabSec signature and date ]

## **ANNEX C**

### **EQUALITIES ASSESSMENT**

1. The public sector equality duties for race, gender and disability require the Scottish Government to assess the equality impacts of its policies. Equality impact assessment is all about considering how the policy may impact, either positively or negatively, on different sectors of the population in different ways.
2. This policy has been so assessed. The proposal relates to the relaxation of planning control over permissible changes to installed equipment and farmed shellfish species. The beneficial exercise of the policy does not depend on, derive from or is otherwise affected by, personal attribute or belief.



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