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Marine Scotland

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

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INTRODUCTION

1. This Circular explains the provisions of the [Town and Country Planning \(General Permitted Development\) \(Scotland\) Amendment Order 2018](#) (the Order) which came into force on 1 July 2018.
2. The Order amends [the Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992](#) (GPDO), following a review of permitted development rights for finfish and shellfish developments introduced in 2012.
3. The Order applies to both fresh water and marine farms and to finfish and shellfish sites. The Order applies to all sites, including those which have been granted planning permission through the Scottish Government Audit and Review process. Further information on the Audit and Review process can be found at <http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18716/fish-farm/fish-farm>. It also applies to sites which were granted planning permission under the Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011.
4. Whilst generally PD rights can only apply to lawful farms, a fish farm will not lose the ability to enjoy PD rights if the only reason it could be considered to be unlawful is a past failure to prior notify of changes to the planning authority which no longer require such prior notification under the 2018 Order.

BACKGROUND

PRIOR NOTIFICATION, PRIOR APPROVAL & WITHDRAWAL OF PD RIGHTS

5. Permitted development rights (PDR) are granted so that some types of development can be carried out without the need to submit an application for planning permission.
6. Although many permitted development rights concern development of a non-contentious nature there are some which could fall within the descriptions of Schedules 1 or 2 of [The Town and Country Planning \(Environmental Impact\)\(Scotland\) Regulations 2017](#).
7. The provisions of the GPDO are such that;
 - a) Schedule 1 development is not permitted development. Such developments always require the submission of planning application and an Environmental Statement
 - b) Schedule 2 development does not constitute permitted development unless the planning authority has adopted a screening opinion to the effect that EIA is not required
8. Fish farms are identified in Column 1 of Schedule 2 in the 2017 EIA Regulations. It is important to note any change or extension to authorised Schedule 2 developments also fall within the scope of the 2017 EIA Regulations.

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

- a) the corresponding thresholds and criteria applied to the development as changed or extended are met or exceeded, **and**;
- b) where the thresholds are met or exceeded, the change or extension may itself have significant adverse impacts on the environment;

or

the application concerns the development to be located wholly or in part in a 'sensitive area' as described in regulation 2(1) of the EIA Regulations¹.

10. The process of establishing whether a change or extension is a schedule 2 development is shown in Figure 1.

¹ "sensitive area" means any of the following:—

- (a) a site of special scientific interest;
- (b) land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004(12);
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(13);
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage(14);
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(15);
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A(16) (national scenic areas);
- (g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) (making of designation orders) of the National Parks (Scotland) Act 2000(17); and
- (h) a marine protected area;

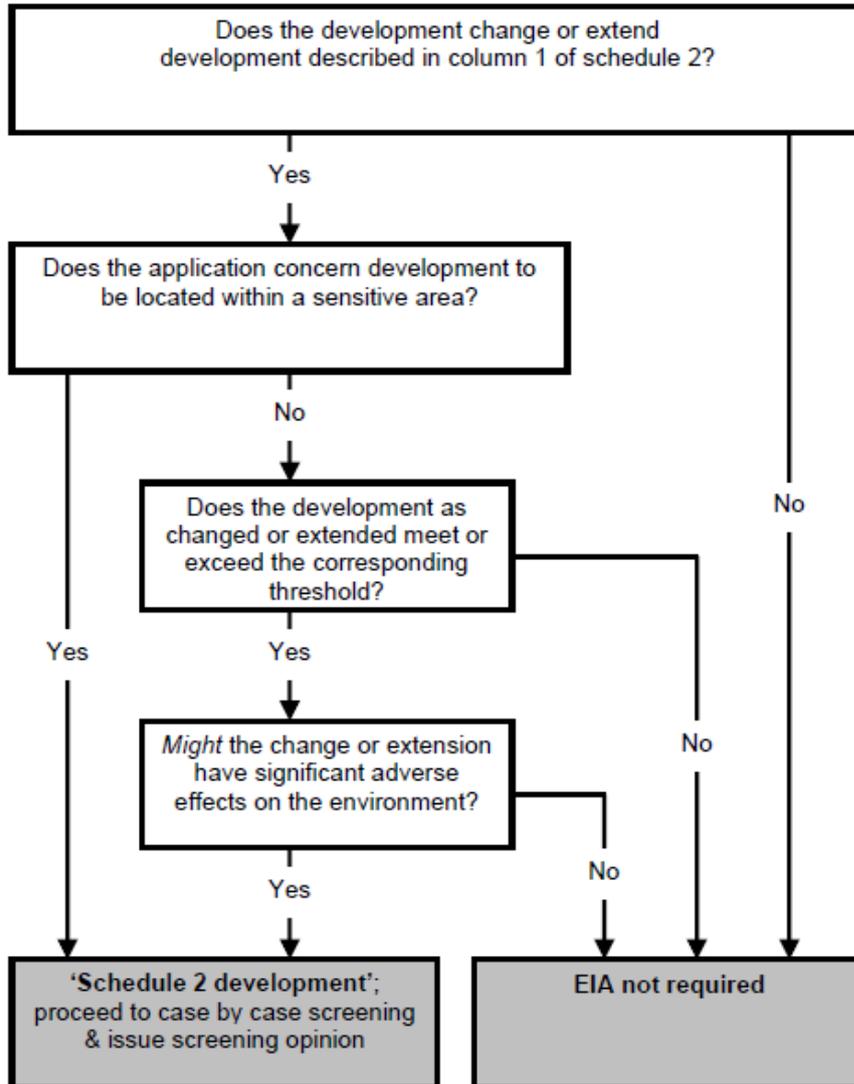


Figure 1 : Establishing whether a change or extension is a schedule 2 development.

PRIOR NOTIFICATION

11. A number of PD rights require an operator to give formal prior notification to the planning authority before exercising PD rights. Following prior notification, development may be permitted without prior approval. Alternatively a decision may be issued that requires the development to gain prior approval before being carried out. Prior notification and prior approval are distinct processes.

12. The information to be provided in writing at the time of prior notification is specific to each class of PDR. Confirmation that written prior notification has been received should be given within 7 days. The planning authority has 28 days from receipt of the prior notification to issue a determination as to whether its prior approval is required to the exercise of the PDR. If a determination is not issued within 28 days, then the operator is can proceed with the development by law.

13. The planning authority may request additional information to supplement the details provided at the time of prior notification. Failure to provide documentation in a timely manner may result in an automatic requirement for prior approval.

PRIOR APPROVAL

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

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

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

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

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

HABITATS REGULATIONS AND APPROPRIATE ASSESSMENT

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

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

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

22. Where, following that assessment, the authority cannot conclude that the plan would not adversely affect the integrity of any European site(s), permitted development would no longer apply and a new planning application would be required.

SUMMARY OF CHANGES TO PERMITTED DEVELOPMENTS RIGHTS INTRODUCED BY THE 2018 ORDER

23. A summary of changes to permitted development rights introduced by the 2018 Order is given below. Where a class is not listed permitted development rights and guidance remains unchanged.

Class	Amendment
21A – Fish – Fin Fish Pens	<p>Removal of finfish pen size and area restrictions to allow 'like for like' pen replacement in the same location.</p> <p>Removal of prior notification requirement for replacement with finfish pen which is 'like for like' (unless fish farm fallow) in the same location [separation into a new class 21AA] only.</p> <p>Removal of finfish pen size and area restrictions to allow replacement of finfish pen in a different location with a finfish pen of the same size colour or design and relocation of existing cage within existing farm boundary</p>
21C – Fish – Top Nets and Supports	<p>Removal of prior notification requirement for replacing a top net or support with a top net or support of the same size, colour and design only.</p> <p>Removal the height restriction for top net and supports (2.5m).</p>
21E – Shellfish – Long Lines	<p>Amended to allow the replacement of a long line of the same size colour and design in the same or different location permitted</p> <p>Prior notification to be required for placing a long line in a different location within the farm boundary.</p> <p>Replacement of lines in the same location with a line which is 'like for like' should not require prior notification, unless the fish farm is defined as fallow. All other changes require prior notification.</p> <p>Provision to allow addition of long line(s) on a scaled basis of 1 additional line permitted per 6 originally on site.</p>
21F – Fish and Shellfish – Change of Use (species)	<p>Extension of change of species to shellfish farms to include;</p> <p>mussels or pacific or native oyster cultivation to scallops</p> <p>scallops or pacific or native oyster cultivation to mussels</p> <p>pacific oyster, mussel or scallop cultivation to native oyster</p>

21G – Aquaculture Sites - Moorings (New)	<p>New class to allow replacement, relocation and addition of moorings under PDR</p> <p>Prior notification required for ‘like for like’ replacements in European protected sites and nature conservation Marine Protected Areas only (as this will trigger appropriate assessment)</p> <p>Prior notification required for all other changes which are not ‘like for like’</p> <p>Relocation and addition of a mooring requires prior notification.</p> <p>n.b This class relates to changes where the surface equipment position is to remain the same. Changes to surface equipment are dealt with under other classes of PDR.</p>
21H – Fish – Finfish Pen Nets (New)	<p>New class to allow replacement of cage nets under PDR</p> <p>Like for like changes do not requires prior notification.</p> <p>Changes in colour and design require prior notification (No changes to net volume/ size).</p>
21I – Fish – Secondary cage structures (New)	<p>New class to allow addition of secondary structures to the cage, including but not limited to, sea lice skirts, predator nets and false bottoms.</p> <p>Addition of secondary net structure requires prior notification.</p>
21J – Shellfish – Trestles (New)	<p>Rights extended to allow replacement, relocation and addition of trestles</p> <p>Like for like changes do not require prior notification</p> <p>Addition of trestles requires prior notification and is limited to up to 10% of original farm for farms of up to 2ha.</p>
Aquaculture Sites – Change to the definition of boundaries	<p>Interpretation of boundaries changed to define the area of an existing fish farm as the area described in the existing planning consent and in relation to any other fish farm the area if which 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.</p>
Definition of fallow fish farms and existing equipment	<p>Introduction of definition for fallow fish farm. Whereby a fallow fish farm is to be treated as an existing fish farm for the purposes of PDR where a fish farm which has</p> <p>a) removed equipment, with exception of 1 of more moorings before 1 July b) removed equipment after 1 July with the exception of 3 or more moorings</p> <p>for a period of up to 9 years and ‘existing equipment’ is to be treated as including the removed equipment in relation to the placement of equipment under PDR for a period of up to 9 years.</p>

THE PLANNING BOUNDARY

24. All equipment changes must be accommodated within the permitted planning boundary. Any equipment deployed out with the planning boundary, purportedly in exercise of PDR, will constitute a breach of planning control.

25. The 2018 Order amends the definition of boundaries to

“(a) in relation to a 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

(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”

26. This change means that the area of an existing fish farm will be the area which is described in the planning consent, allowing operators to make the most use of their consent under PDR.

27. Any planning conditions given in the original planning consent must be adhered to.

FALLOW FISH FARMS AND EXISTING EQUIPMENT

28. The 2018 Order introduces definitions for “fallow fish farm” and “existing equipment” for the purposes of PDR. The term fallow fish farm is applicable to both fish farms and shellfish farms.

29. A fallow fish farm should be considered an existing fish farm for the purposes of PDR where;

- prior to 1 July equipment has been removed with the exception of at least one mooring or more
- on or after 1 July equipment has been removed with the exception of at least three moorings or more

30. The requirement for three moorings or more is to ensure that an existing farm area is maintained for which PDR applies. This maintains the areas which is open for the placement of equipment. In reality, if a farm wished to fallow and remove equipment, four outer moorings will be required to enable the replacement of equipment in its previous position. A ‘fallow fish farm’ will be considered an existing fish farm for the purposes of PDR for up to 9 years following the removal of equipment.

31. From 1 July fish farms which ‘fallow’ as defined by the Order must notify the planning authority of the location of remaining moorings and the date on which the last item of equipment was removed.

32. It would be good practice for operators with ‘fallow fish farms’ as defined prior to 1 July to alert the planning authority of their existence.

33. All permitted development at a fallow fish farm requires prior notification. No equipment must be placed in the water without contacting the planning authority.

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

CONDITIONS UNDER WHICH EACH PDR MAY BE EXERCISED

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

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

Reason: In the interests of navigational safety.

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

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

FEES

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

CHANGES PERMITTED WITHOUT PRIOR NOTIFICATION (QUICK LOOK UP)

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

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

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

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

41. Where any proposed changes are likely to alter the centre point of a fish farm the operator should contact Scottish Government's Fish Health Inspectorate prior to the change taking place as is required by the conditions of Aquaculture Production Business authorisation. Such changes could include changes to the position of moorings, cages, long line or trestles within the permitted planning boundary. Any additional cages, long lines or trestles must also be reported to the Fish Health Inspectorate.

DESCRIPTION OF PERMITTED DEVELOPMENT RIGHTS

CLASS 21A - REPLACEMENT, RELOCATION OR INSTALLATION OF AN ADDITIONAL FINFISH PEN

42. This class allows operators to place or assemble equipment within the area of an existing fish farm for the purpose of;

- Replacing an existing fin fish pen;
 - in the same location with a finfish pen of a different size, colour or design;
 - in a different location with a finfish pen of a different size colour and design;
 - in a different location with a finfish pen of the same size, colour and design
- Relocation of an existing finfish pen;

and

- the installation of an additional finfish pen.

43. Conditions are such that, with the exception of the replacement of finfish pens with a finfish pen of the same size, colour and design in a different location and the relocation of an existing fin fish pen, development is not permitted by this class

- Where the new pen(s), if circular, would have a circumference greater than 100 metres; or if not circular, would be greater than 796 square metres in area; and
- The result of the replacement or installation of pens alters or extends the surface area of waters covered by the equipment compromising the fish farm would be greater than 15,000 metres OR would be —

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

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

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

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

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

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

48. Examples of PDR under Class 21A:

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

Current equipment = 9552m²

New equipment = 10348m²

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

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

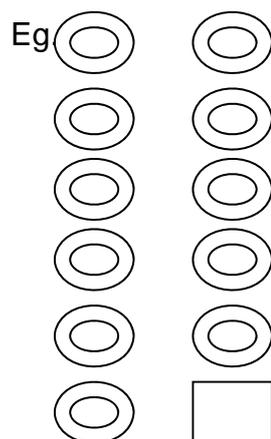
(b) MARINE SALMON FARM B would like to add a 90m cage to their existing site. The existing site consists of 10 x 90m cages.

Current equipment = 6450m²

New equipment = 7095m²

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

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



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

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

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

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

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

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

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

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

Example of PDR under Class 21B:

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

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

CLASS 21C – REPLACING TOP NETS AND SUPPORTS

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

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

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

56. Example of PDR under Class 21C:

MARINE HALIBUT FARM A would like to change the colour of their top nets by replacing the current black top nets with grey ones.

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

CLASS 21D - DEPLOYING EQUIPMENT TEMPORARILY (EXCLUDING FISH PENS) AT A FINFISH FARM.

57. An operator may deploy any equipment on a temporary basis (excluding fish pens and equipment permitted by another PDR), provided that;

- prior notification is given to the planning authority as to size, colour, design and position of the equipment and the PDR is exercised in accordance with its determination;
- deployment of the temporary equipment does not increase the total surface area of the waters covered by permanent equipment by more than 1%;
- if a feed barge is present on the site, the height of the temporary equipment does not exceed 50% of the height of any feed barge. Feed barge height is measured from the surface of the water to the top of the feed barge (not including any appendages) and should be the height taken when the feed barge is empty i.e. at its maximum height above the water.
- if no feed barge is present, the height of the temporary equipment may not exceed 2.5m;
- that each item of equipment may be deployed for no longer than a three month period, with a 12-month period between each 3 month deployment.

58. Additionally, the operator must notify the planning authority when temporary equipment has been removed, within 14 days of removal taking place.

59. Example of PDR under Class 21D

MARINE SALMON FARM B would like to add a generator shed on site between March and May to power underwater lights.

This is permitted under PDR Class 21D, assuming that the generator shed is no more than 2.5m high or half the height of the tallest feed barge on site. The equipment could be situated on site between 1st March and 31st May but would not be able to be returned to site (under this PDR) until 1st June the following year as there has to be a 12 month period between deployment. Prior notification should be made to local authority. State size, colour, design and location of new equipment. Also provide planning boundary details for site.

CLASS 21E – PLACING OR ASSEMBLY OF A LONG LINE FOR USE IN SHELLFISH FARMING WITHIN THE AREA OF AN EXISTING FISH FARM

60. An operator may replace a long line with a long line of the same, size colour and design without providing prior notification to the planning authority, except where the farm in question is a fallow fish farm

61. Where an operator wishes to replace a long line in a different location prior notification to the planning authority is required. Relocation of long lines may potentially allow lines to be placed closer to the edge of the consented area which may affect the area of benthic impact. The planning authority should consider the risk posed to any priority marine features and should exercise discretion in determining potential significance seek to consult with Scottish Natural Heritage in this instance.

62. An operator may place or assemble one additional long line of the same size, colour and design as those already on site for every 6 long line of the original farm.

63. Example of PDR under Class 21E

SHELLFISH FARM A would like to add two x 200m long-lines on site. They currently have permission for 14 x 200m longlines.

Prior notification should be made to local authority. State size, colour, design and location of long-lines. Planning boundary details for site must be provided. The planning authority may require prior approval and will wish to consult statutory consultees on carrying capacity (MSS).

CLASS 21F – CHANGE OF USE (CHANGE OF SPECIES)

64. Operators wishing to utilise this class of PDR **must** consult SEPA (where changes to any associated CAR license are required – for example the existing licence does not list the species to be farmed).

65. The operator **must** also apply to the Scottish Government's Fish Health Inspectorate (FHI) prior to making any changes to species held on site. Changes to the aquaculture species to be held on site must be notified at least 30 days in advance of any proposed change (or as specifically stipulated in the conditions of Aquaculture Production Business authorisation.)

66. An operator may change the use of their farm from that of production of Atlantic salmon to production of either sea trout (and the reverse), rainbow trout (and the reverse) or halibut.

67. The 2018 Order introduces change of use (production species) for shellfish farmers. An operator may change the use of their farm from;

- mussels or pacific or native oyster cultivation to scallops;
- scallops or pacific or native oyster cultivation to mussels;
- pacific oyster, mussel or scallop cultivation to native oyster.

68. The class does not permit any changes to farm equipment. Any species changes must be accommodated within the equipment permitted on site.

69. Example of PDR under Class 21F

MARINE SALMON FARM A would like to change species from Atlantic salmon to halibut.

Operator must consult with Scottish Government Fish Health Inspectorate where an amendment to authorisation is required **PRIOR** to exercising PDR. Operator should ensure that CAR licence is modified **PRIOR** to exercising the PDR. No prior notification to planning authority required.

CLASS 21G – MOORING REPLACEMENT, RELOCATION AND INSTALLATION

70. Class 21G allows an operator to place or assemble equipment within the area of an existing fish farm for the purpose of replacing a mooring in the same location with a mooring of the same or a different size, colour or design.

71. An operator may also relocate an existing mooring or install an additional mooring with the existing planning boundary.

72. Development under this class, other than where the development 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 nature conservation MPA) requires prior notification to the planning authority.

73. Development must take place within the existing permitted farm boundary. Where changes to the surface equipment are desired, this must be dealt with through a separate class of PDR or by submission of planning application to the planning authority.

CLASS 21H – REPLACEMENT OF FIN FISH PEN NETS

74. This class allows an operator to replace a fin fish pen net with a fin fish pen net of the same size colour and design, and placement of associated equipment such as down ropes, without the requirement of prior notification to the local authority.

75. Development which includes the replacement of fin fish pen net with a net of a different colour or design may also permitted under this class. Where nets are to be of a different colour or design the operator must prior notify the planning authority.

76. Changes to fin fish pen net volume is not a PD right.

CLASS 21I – PLACING OR ASSEMBLY OF SECONDARY NET STRUCTURES

77. Class 21I allows an operator to place or assemble a net structure which is secondary to the main containing finfish pen net, such as sea lice skirts and predator nets.

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

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

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

CLASS 21J – REPLACEMENT, RELOCATION AND INSTALLATION OF ADDITIONAL SHELLFISH TRESTLES

81. It is recognised that trestles can be moved slightly over time by tides and that adjustments may be required to move trestles from sand banks or return them to their original location. It is not intended for this class to cover small correctional movements.

82. This class allows operators to replace, relocate and install additional trestles. All shellfish operators may replace a trestle in the same location with a trestle of the same size, colour and design without prior notifying the planning authority.

83. Operators may replace an existing trestle in the same or a different location with a trestle of a different size, colour and design. Operators may also relocate an existing trestle within the existing shellfish farm. For these changes the operator must prior notify the planning authority and provide the details outlined in the 2018 Order.

84. Operators may prior notify the planning authority of their intention to add additional trestles within the existing shellfish farms provided that the farm is smaller than 2 hectares. Trestles should be of a similar design to those already on site. The planning authority will issue a determination as to whether prior approval is required.

85. Where prior notification is received for the addition or relocation of trestles the planning authority should may wish to consult with Scottish Natural Heritage as to whether prior approval may be required, particularly in areas where priority marine features are present or in SACs, ncMPAs, SPAs and National Scenic Areas.

PLANNING AUTHORITY CONSULTATION GUIDANCE

86. Statutory consultees for fish farm development are: SEPA, Marine Scotland Science, SNH and the local District Salmon Fisheries Board. Each will have been consulted on the planning application for the farm before consent was granted. Planning authorities should consult those organisations with a direct interest in the type of PDR being exercised, however this is at the discretion of the planning

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

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

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

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

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

CONSULTEE	SEPA	SNH	MSS	DSFB
21A Fin Fish Pens	If change to benthic footprint	Yes if within or affecting natura sites, NSAs or a marine designated area. Yes where advice on visual impacts required	MSS FHI should be consulted where changes may affect the location of the site centre point.	Yes in relation to any proposed addition or relocation of cages
21B Feed Barge	No	If within or affecting natura sites and NSAs or MPAs or specific visual impact advice required	No	No
21C Top Nets and Supports	No	Yes if within or affecting natura sites, NSAs or a marine designated site. Yes where advice on visual impact or entanglement risk required	No	No
21D Temporary equipment	No	If within or affecting natura sites, NSAs or marine designated area	No	No
21E Long lines	If specific advice required	If within or affecting natura sites, NSAs or marine designated areas	Yes (inc. carrying capacity advice and site centre point location)	No
21G Moorings	No	If within or affecting natura sites, NSAs or marine designated area.	MSS FHI should be consulted where changes may affect the location of the site centre point. [MS-LOT does not require consultation for PDR of Order. Fish farms should continue to work to any conditions of	No

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

INABILITY OR FAILURE TO COMPLY WITH CONDITIONS

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

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

FURTHER ADVICE

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

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

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

ENQUIRIES

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



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