

2012 No. 131

TOWN AND COUNTRY PLANNING

The Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment Order 2012

<i>Made</i>	- - - -	<i>26th April 2012</i>
<i>Laid before the Scottish Parliament</i>		<i>30th April 2012</i>
<i>Coming into force</i>	- -	<i>1st June 2012</i>

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

Citation and commencement

1. This Order may be cited as the Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment Order 2012 and comes into force on 1st June 2012.

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

2.—(1) The Town and Country Planning (General Permitted Development) (Scotland) Order 1992(b) is amended in accordance with paragraph (2).

(2) After Part 6 (agricultural buildings and operations) of Schedule 1 (classes of permitted development) insert—

“PART 6A

Fish Farming

Class 21A

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

(a) replacing an existing finfish pen, in the same or a different location, with a finfish pen of—

(i) the same size, colour and design; or

(a) 1997 c.8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1992/223 as relevantly amended by S.S.I. 2011/139.

- (ii) **a different size, colour or design;**
 - (b) relocation of an existing finfish pen; or**
 - (c) installing an additional finfish pen.**
- (2) Development is not permitted by this class in respect of any tank or cage which—
- (a) is circular and has a circumference greater than 100 metres; or
 - (b) is not circular and is greater than 796 square metres in area.
- (3) Development is not permitted by this class if—
- (a) the area of the existing fish farm is greater than 15,000 square metres;
 - (b) as a result of the replacement or installation of finfish pens, the surface area of the waters covered by the equipment comprising the fish farm as altered or extended 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;
- (4) Development is permitted by this class subject to the following conditions—
- (a) any biomass contained within a fish pen mentioned in paragraph (1) must not, taken together with other biomass contained within the area of the existing fish farm, exceed the maximum amount of biomass permitted to be contained within that area under the terms of any existing permission, consent or licence under which the fish farm operates;
 - (b) 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 finfish pen; and
 - (ii) if the finfish pen is an additional finfish pen or is to be located in a different place from the finfish pen it replaces, its location;
 - (c) the application is to be accompanied by—
 - (i) a description of the proposed finfish pen, including details of its size, colour and design;
 - (ii) where the finfish pen 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 finfish pen is an additional finfish pen, 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.

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

Class 21B

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

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

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

- (a) where the feed barge is—
 - (i) to be relocated;
 - (ii) to be located in a different place to the feed barge it replaces; or
 - (iii) of a different size, colour or design to the feed barge it replaces,

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, as the case may be, in respect of the size, colour or design of, or the location of, the feed barge;
- (b) the application is to be accompanied by—
 - (i) a description of the proposed feed barge, including details of its proposed size, colour and design;
 - (ii) where the feed barge 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 feed barge is to be in a different place to the feed barge it replaces, both a description of the location of that feed barge and of the proposed location of the replacement feed barge;
 - (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;
- (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.

Class 21C

(1) 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 for a top net 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 or design.**

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

- (a) no equipment to support the top net is to be greater in height than 2.5 metres;
- (b) 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—
 - (i) in respect of the size of the proposed equipment to support the top net; and
 - (ii) where the top net or support is of a different colour or design than the existing top net or support, in respect of the colour or design of the proposed top net or support;
- (c) the application is to be accompanied by—
 - (i) a description of the proposed equipment, including details of its size and where the top net or support is of a different colour or design than the existing top net or support, its colour or 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 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.

Class 21D

(1) The placing or assembly of any equipment within the area of an existing fish farm required temporarily in connection with the operation of the fish farm.

(2) Development is not permitted by this class—

- (a) in respect of any equipment described in paragraph (1) of any other class within this Part;
- (b) if the surface area of the waters which would be covered by the proposed equipment is greater than 1% of the surface area of the waters covered by the equipment comprised in the fish farm; or
- (c) in respect of any equipment (or equipment used for the same or equivalent purpose) which has been removed from the area of the existing fish farm within the preceding 12 months.

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

- (a) where there is a feed barge within the fish farm, any equipment placed or assembled is not to be greater in height than one half the height of any feed barge;
- (b) where there is no feed barge within the fish farm any equipment placed or assembled is not to be greater in height than 2.5 metres;
- (c) 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, design and location of the proposed equipment;
- (d) the application is to be accompanied by—
 - (i) a description of the proposed equipment, including details of its size, colour, design and proposed location;
 - (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;
- (e) 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;
- (f) 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;
- (g) the development is to be carried out within a period of three years from the date on which all approvals required in accordance with this paragraph have been given; and
- (h) any equipment must be removed at the expiry of the allowed period and notification of such removal is to be given to the planning authority in writing within 14 days after the date of removal.

(4) In this class, the “allowed period” means, in respect of any particular item of equipment, a period of three months commencing on the date on which that equipment was placed or assembled.

Class 21E

(1) The placing or assembly of a long-line for use in shellfish farming within the area of an existing fish farm.

(2) Development is not permitted by this class if the surface area of the waters covered by the long line (if placed or assembled) together with the original equipment (and any other equipment placed or assembled under this Class) would 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.

(3) 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, design or location of the proposed long line;
- (b) the application is to be accompanied by—
 - (i) a description of the proposed long line, including details of its size, colour, design and proposed location;
 - (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;
- (b) 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;

- (c) 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
 - (d) the development is to be carried out within a period of three years from the date on which all approvals required in accordance with this paragraph have been given.
- (4) For the purposes of paragraph (2) the surface area is calculated on the basis that for every one metre of linear distance (measured over the surface of the waters) covered by the long line the surface area of waters covered by that long line is one square metre.

Class 21F

(1) Development consisting of a change of use of a fish farm—

- (a) to the breeding, rearing or keeping of halibut (*Hippoglossus hippoglossus*) where the established use of that fish farm is the breeding, rearing or keeping of Atlantic salmon (*Salmo salar*);
- (b) to the breeding, rearing or keeping of Atlantic salmon (*Salmo salar*) where the established use of that fish farm is the breeding, rearing or keeping of sea trout (*Salmo trutta*) or rainbow trout (*Oncorhynchus mykiss*); or
- (c) to the breeding, rearing or keeping of sea trout (*Salmo trutta*) or rainbow trout (*Oncorhynchus mykiss*) where the established use of that fish farm is the breeding, rearing or keeping of Atlantic salmon (*Salmo salar*).

(2) In this Class, “established use” means lawful use within the meaning of section 150 of the Act.

Interpretation of Part 6A

For the purposes of this Part—

(1) The following expressions have the following meanings—

- “equipment” and “fish farming” have the meanings given in section 26(6) of the Act^(a);
- “fish farm” means a place used for the purposes of fish farming;
- “original equipment” means in relation to a fish farm, the equipment placed or assembled in respect of that fish farm pursuant to consent granted by—
 - (a) planning permission granted following an application made under Part III of the Act;
 - (b) a relevant authorisation; or
 - (c) by a combination of such planning permission and a relevant authorisation; and
- “relevant authorisation” has the meaning given in article 14(6)(c) of the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007^(b).

(2) 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.

^(a) Section 26(6) was amended to include a definition of “equipment” by section 24 of the Water Environment and Water Services (Scotland) Act 2003 (asp 3).

^(b) S.S.I. 2007/268.

(3) The height of equipment is to be measured from the surface of the water.”

St Andrew's House,
Edinburgh
26th April 2012

DEREK MACKAY
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the 1992 Order”). Schedule 1 to the 1992 Order specifies classes of development to which permitted development rights apply. Where such rights apply, an application for planning permission is not needed. This Order extends permitted development rights to the placing or assembly of certain equipment within the area of an existing fish farm. This includes the installation of replacement or additional finfish 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) and the placing or assembly of long lines (Class 21E). In addition, new Class 21F introduced by the Order extends permitted development rights to certain changes of use regarding the species of fish which are farmed.

A business and regulatory impact assessment has been prepared in relation to this Order and can be obtained free of charge from Marine Scotland, Victoria Quay, Edinburgh, EH6 6QQ.

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Development) (Fish Farming) (Scotland) Amendment
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£5.75

S5510 05/2012 325510T 19585

ISBN 978-0-11-101693-0



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