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# Marine Scotland

## Permitted Development Rights for Fish Farming

### Guidance Document

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## Introduction

1. This circular explains the provisions of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GDPO) as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Orders of 2012 and 2018 together with The Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Amendment Order 2020. This is as a consequence of reviews/amendments to permitted development rights (PDR) for finfish and shellfish developments which were originally introduced in 2012. The various Orders can be found via the links below:

[The Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992](#)

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

[The Town and Country Planning \(General Permitted Development\) \(Fish Farming\) \(Scotland\) Amendment \(No. 2\) Order 2012](#)

[The Town and Country Planning \(General Permitted Development\)\(Scotland\) Amendment Order 2018](#)

[The Town and Country Planning \(General Permitted Development and Use Classes\) \(Scotland\) Amendment Order 2020](#)

2. The GDPO as amended applies to both freshwater and marine farms and to finfish and shellfish 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 via the Scottish Government webpage on planning permission for fish farm developments available [here](#). It also applies to sites which were granted planning permission under [The Town and Country Planning \(Marine Fish Farms Permitted Development\) \(Scotland\) Order 2011](#).

3. Whilst generally permitted development rights can only apply to lawful farms, a fish farm will not lose the ability to enjoy permitted development 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 as a consequence of amendments made under the 2018 Order.

## Background

### **Prior notification, prior approval and withdrawal of permitted development rights**

4. Permitted development rights are granted so that some types of development can be carried out without the need to submit an application for planning permission.

5. 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 \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) (The '2017 EIA Regulations').

6. 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 an Environmental Impact Assessment (EIA) is not required.

7. 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.

8. 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 2017 Regulations<sup>1</sup>.

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<sup>1</sup> "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;

(c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994;

(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;

(e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;

(f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A (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; and

(h) a marine protected area;

9. The process of establishing whether a change or extension is a schedule 2 development in accordance with the requirements as detailed within the 2017 EIA Regulations is shown in Figure 1.

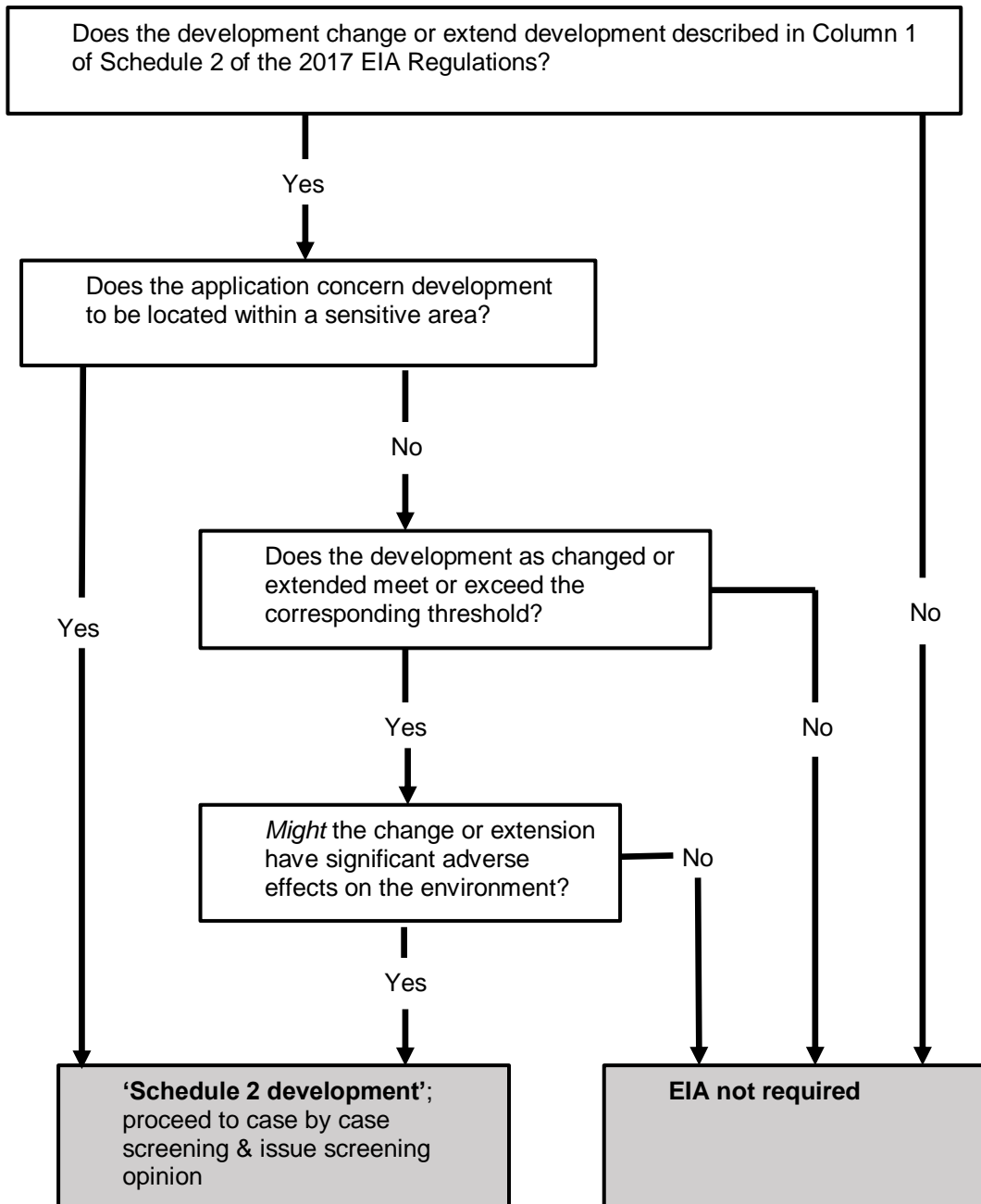


Figure 1 : Establishing whether a change or extension is a schedule 2 development as detailed within the 2017 EIA Regulations.

## **Prior notification**

10. A number of permitted development rights require an operator to give formal prior notification to the planning authority before exercising such 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.

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

12. 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**

13. In certain cases, the planning authority may decide it is necessary to call in the application for prior approval. This may be 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 paragraphs 7-9.

14. The planning authority may also call in an application for prior approval in certain other circumstances. One example may be if prior notification for permitted development in accordance with the requirements of Class 21A is made where the installation of larger size replacement cages is proposed. The situation may dictate that prior approval is required to allow further consideration to take place, in collaboration with statutory consultees as appropriate, to ensure that any potential impacts of the development are sufficiently considered.

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 class of permitted development rights. 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 an EIA and a planning application will be required. Further information on the relationship between the EIA Regulations and permitted development rights can be found in [Scottish Government Planning Circular 1/2017](#).

## **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 European 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 European site, in which case specific approval for the development must be sought from the relevant planning authority. **Note:** This is separate and in addition to any prior notification requirement or otherwise required by the GDPO (as amended).

20. It is good practice for fish farms operating near to or within European 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 European site.

21. Authorities undertaking a Habitats Regulations Appraisal should consult NatureScot when determining likely significant effects and before concluding that an appropriate assessment is not required. Where an appropriate assessment is required, the authority must consult NatureScot 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 development rights introduced by the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Amendment Order 2020

23. Since the most recent Scottish Government guidance document on permitted development rights for fish farming (August 2018), further changes have been introduced by the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Amendment Order 2020. These changes, which are detailed below, only relate to Class 21A – the remaining classes of permitted development remain unchanged.

Class	Amendment
21A – Fish – Fin Fish Pens	<ul style="list-style-type: none"> <li data-bbox="515 775 1414 1032">• In situations which are not 'like for like', to increase the maximum size of a replacement or additional pen for which development is permitted under this class from 100 metre circumference for a circular pen (796 square metres in area for a non-circular pen) to 200 metre circumference for a circular pen (3182 square metres in area for a non-circular pen).</li> <li data-bbox="515 1066 1414 1290">• To increase the maximum surface area of the waters which may be covered by the equipment comprising the fish farm as altered or extended following the installation of an additional or replacement pen to be no more than 1,100 square metres greater than the surface area of the waters covered by the original equipment.</li> <li data-bbox="515 1323 1414 1509">• Development is now not permitted if the surface area of the waters covered by the equipment comprising the fish farm as altered or extended following the installation of an additional or replacement pen is 20,000 square metres or more (amended from 15,000 square metres or more).</li> </ul>

### 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 planning boundary is defined (for fish farms other than fallow fish farms) as:

“(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. The definition 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. Definitions are provided 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 2018 equipment has been removed with the exception of at least one mooring or more;
- on or after 1 July 2018 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 2018 fish farms which ‘fallow’ as defined by the GDPO as amended 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 2018 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 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 are expected to meet the requirements of [A Technical Standard for Scottish Finfish Aquaculture](#).

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 the conditions under which PDR may be exercised is provided within this document.

## Fees

38. A prior notification fee will apply to the prior notification of fish farm PDRs. This is currently set at £78 though may be subject to change.

## 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 Marine Protected Area (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 to the local planning authority who will undertake consideration of whether their prior approval is required prior to the development taking place.

41. Where any proposed changes are likely to alter the centre point of a fish farm the operator must contact Scottish Government's Fish Health Inspectorate (FHI) ([ms.fishhealth@gov.scot](mailto:ms.fishhealth@gov.scot)) 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 proposed installation of additional or replacement cages, long lines or trestles must also be reported to the FHI.

## **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, if circular, would have a circumference greater than 200 metres; or if not circular, would be greater than 3182 square metres in area; and
- The replacement or installation of a pen results in:
  - the surface area of waters covered by the equipment comprising the fish farm as altered or extended being equal to or greater than 20,000 square metres OR
  - The surface area of the waters covered by the equipment comprising the fish farm as altered or extended
    - (i) increasing by more than 1,100 square metres; or
    - (ii) increasing by more than 10%,
 than the surface area of the waters covered by the original equipment.

44. **Note:** All development under this class is subject to the condition that there is no increase in the consented biomass. Following any application of PDR under this Class at a specific site, if any increase in biomass is required it must be ensured that the necessary amendment of any permissions, consents and licences under which the fish farm operates has taken place to accommodate such a change prior to any increase in biomass being made at that site.

45. All development under this class requires prior notification to the planning authority. The initial information to be provided with prior notification is described within the GDPO (as amended) and further information may be requested by the planning authority on a case by case basis. Permitted development 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 it must be ensured that such changes continue to comply with the requirements of the Controlled Activities Regulations (CAR). Discussion between the operator and the Scottish Environment Protection Agency (SEPA) may be helpful to determine whether any additional information is expected to be required to support the proposed change. It is strongly advised that such discussions take place in advance of submitting prior notification to the planning authority.

47. Relocation and replacement of cages may require consultation with NatureScot, particularly in designated landscapes such as National Scenic Areas (NSAs), protected marine areas or cases where the Planning Authority deems there to be a risk resulting in significant impacts on a Priority Marine Feature (PMF).

48. Where prior notification is received for the addition or replacement of a finfish pen and the new pen is of a circumference greater than 120m (circular pens) or of a surface area greater than 1146 square metres (for non-circular pens), the planning authority are strongly encouraged to consult with Marine Scotland Science (MSS) as to the suitability of the equipment/infrastructure and

whether prior approval may be required.

49. For the avoidance of doubt, permitted development rights conferred by the Order for this class of development can be used on more than one occasion provided that the conditions, including those relevant to the size of the new equipment and the surface area of the waters covered by the equipment, are adhered to. A prior notification fee is payable in respect of each individual application submitted to determine whether prior approval for the proposed development is required.

### **Class 21AA – Replacing an existing finfish pen in the same location with a finfish pen of the same size, colour and design**

50. 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.

51. 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**

52. 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.

53. 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.

### **Class 21C – Replacing top nets and supports**

54. 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 to that already permitted on site.

55. 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.

56. 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 mesh size (and therefore entanglement risks) and exercise discretion

in determining whether to consult with NatureScot. In determining whether to contact NatureScot any existing agreements and/or guidance documents relating to the use of top nets should be taken account of.

### **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.

### **Class 21E – Placing or assembly of a long line for use in shellfish farming within the area of an existing fish farm**

59. 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

60. 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 NatureScot in this instance.

61. 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 lines of the original farm.

## **Class 21F – Change of use (change of species)**

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

63. 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).

64. 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.

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

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

## **Class 21G – Mooring replacement, relocation and installation**

67. 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.

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

69. 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.

70. 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**

71. 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.

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

73. A change to the fin fish pen net volume under this class of development is not a PD right.

### **Class 21I – Placing or assembly of secondary net structures**

74. 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.

75. 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.

76. 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.

77. 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 NatureScot 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**

78. 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.

79. 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.

80. 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 GDPO (as amended).

81. 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.

82. Where prior notification is received for the addition or relocation of trestles the planning authority may wish to consult with NatureScot as to whether prior approval may be required, particularly in areas where priority marine features are present or in Special Areas of Conservation (SACs), Nature Conservation Marine Protected Areas (NCMPAs), Special Protection Areas (SPAs) and National Scenic Areas (NSAs).

## **Planning authority consultation guidance**

83. Statutory consultees for fish farm development are: SEPA, MSS, NatureScot and the local District Salmon Fisheries Board (DSFB). 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. 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. However it should equally be noted that there are specific circumstances in which consultation is expressly encouraged in order to ensure that potential effects of the proposed development are sufficiently considered – further information can be found within Table 1 below.

84. 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 PMFs.

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

86. 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.

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 seek the necessary consideration from the planning authority in accordance with the Habitats Regulations where this is required – see paragraph 19 for further details. FHI may alert the planning authority to help ensure obligations under Habitats Regulations have been considered.

Table 1: Summary of classes of permitted development and examples where consultation is expressly encouraged

<b>Consultee</b>	<b>SEPA</b>	<b>NatureScot</b>	<b>MSS</b>	<b>DSFB</b>
<b>21A</b> <b>Fin Fish Pens</b>	If change to benthic footprint	Yes if within or affecting European sites, NSAs or a marine designated area or located close to sensitive PMFs  Yes where advice on landscape or visual impacts required  Larger cage sizes may require advice on use of replacement top nets/ entanglement risk	MSS FHI should be consulted where changes may affect the location of the site centre point.  MSS FHI would also encourage consultation where cage installation/replacement involves cages of size > 120m circumference (and non-circular equivalent)	Yes in relation to any proposed addition or relocation of cages
<b>21B</b> <b>Feed Barge</b>	No	If within or affecting European sites and NSAs or MPAs or specific visual impact advice required	No	No
<b>21C</b> <b>Top Nets and Supports</b>	No	Yes if within or affecting European sites, NSAs or a marine designated site.  Yes where advice on visual impact or entanglement risk required	No	No
<b>21D</b> <b>Temporary equipment</b>	No	If within or affecting European sites, NSAs or marine designated area	No	No
<b>21E</b> <b>Long lines</b>	If specific advice required	If within or affecting European sites, NSAs or marine designated areas	Yes (inc. carrying capacity advice and site centre point location)	No

<b>21G</b> <b>Moorings</b>	No	If within or affecting European 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 their marine licence]	No
<b>21H</b> <b>Fin Fish Pen Nets</b>	No	If within or affecting European sites and NSAs or MPAs.  Yes where advice on entanglement risk envisaged	No	No
<b>21I</b> <b>Secondary Net Structures</b>	No	If within or affecting European sites and NSAs or MPAs  Yes where advice on entanglement risk envisaged	No	No
<b>21J</b> <b>Trestles</b>	No	If within or affecting European sites and NSAs or MPAs	Yes [for info/ FHI site details]	Yes
<b>Fallow Fish Farm</b>	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**

87. 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.

88. 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 or the use of such equipment does not meet the conditions of the Order.

## **Further advice**

89. Further advice on siting and design can be found in the Scottish Government's Planning Advice Note (PAN) 45 and, from NatureScot, *Marine Aquaculture and the Landscape: The siting and design of marine aquaculture developments in the landscape*, available at <https://www.nature.scot/siting-and-design-aquaculture-landscape-visual-and-landscape-considerations>.

90. Prior notification forms available from the e-planning website are in the process of being updated to reflect the recent changes introduced by the 2020 Amendment 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**

91. Any enquiries about this guidance document should be addressed to Aquaculture Planning, Marine Scotland, Victoria Quay, Edinburgh, EH6 6QQ, Email; [fishfarmreview@gov.scot](mailto:fishfarmreview@gov.scot)



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