

## POLICY NOTE

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

SSI 2020/437

The above instrument (“the Order”) was made in exercise of the powers conferred by sections 26(2)(f), 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997. The instrument is subject to negative procedure.

#### **Purpose of the instrument.**

The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”). The GPDO is a general development order granting planning permission for certain classes of development. The Order amends the GPDO to provide new and extended permitted development rights relating to five development types: digital telecommunications infrastructure, agriculture, peatland restoration, active travel and aquaculture.

#### **Policy Objectives**

Permitted development rights (PDR) refer to those forms of development which are granted planning permission nationally through the GPDO, meaning they can be undertaken without having to make an application to the planning authority in the usual way. They may be subject to specific conditions and limitations to protect amenity and to control the impacts of the development to which they relate.

The Scottish Government is taking forward a phased programme to review and extend PDR in Scotland. The Order relates to Phase 1 of that programme, the provisions of which introduce new and extended PDR for the five development types set out below.

#### 1. Digital Telecommunications Infrastructure

The changes introduced by the Order are intended to assist in enhancing and rolling out vital and improved digital communications (e.g. 5G) for all regions of Scotland. The key provisions of the Order are:

- Increasing the height permitted for new masts outside designated areas, subject to prior approval (article 16 of the Order);
- Increasing the changes to height and width that are permitted for existing masts  
Increasing the size and number of antennas permitted outside designated areas in certain circumstances (article 16 of the Order);
- Introducing PDR for antennas in designated areas, subject to prior notification and to a determination on prior approval in certain designated areas (article 16 of the Order);
- Introducing PDR for small cell systems and Regulation 2020/1070 small cell systems.  
This measure implements Article 57(1) of Directive (EU) 2018/1972 of the European

Parliament and Council establishing the European Electronic Communications Code (recast) (OJ No L 321, 17.12.2018, p. 36-241) (articles 5 and 16 of the Order)<sup>1</sup>;

- Introducing PDR for new equipment cabinets on the ground and on buildings, in designated areas (article 16 of the Order);
- Introducing PDR for other apparatus on buildings in designated areas, subject to a determination on prior approval (article 16 of the Order); and
- Introducing PDR for underground equipment in certain designated areas subject to a determination on prior approval (article 16 of the Order).

## 2. Agricultural (and Forestry) Developments

The changes introduced by the Order are intended to help support agricultural development and economic diversification, as well as the provision of new homes in rural areas. The key provisions of the Order are:

- Increasing (outwith specified designated areas) the maximum size of new agricultural buildings that may be erected under class 18 of the GPDO from 465sqm to 1,000sqm (article 10 of the Order);
- Increasing the scale of extensions or alterations to existing agricultural buildings that may be undertaken without prior notification/approval by amending the definitions of “significant extension” and “significant alteration” for the purposes of Part 6 of Schedule 1 to the GPDO (article 13(b) of the Order);
- Introducing PDR for the conversion of agricultural buildings to residential use (new class 18B) and flexible commercial use (new class 18C), subject to various conditions and limitations (article 11 of the Order);
- Introducing PDR for the conversion of forestry buildings to residential use (new class 22A) and flexible commercial use (new class 22B) subject to various conditions and limitations (article 15 of the Order); and
- Dis-applying certain householder PDR where residences are developed under new class 18B or 22A (article 6 of the Order).

## 3. Peatland Restoration

The changes introduced by the Order are intended to clarify the planning position with respect to peatland restoration projects and to facilitate the delivery of projects that will provide significant benefits in terms of carbon capture, biodiversity and water management. The provisions of the Order (article 12) introduce PDR for peatland restoration projects, subject to a determination on prior approval by the planning authority of the peatland restoration scheme. Guidance to planning authorities and applicants will be prepared clarifying how they are expected to consider proposals – depending on whether projects have been subjected to scrutiny and approved for Scottish Government funding for peatland restoration.

## 4. Active Travel

The changes introduced by the Order are intended to facilitate the use of bikes, adaptive bikes, cargo bikes and e-bikes, by enabling secure, covered storage at people’s homes, their workplaces and transport and commercial destinations. The measures contribute to Scottish

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<sup>1</sup> A “Regulation 2020/1070 small cell system” is a small cell system to which Commission Implementing Regulation (EU) 2020/1070 (OJ No L 234, 21.7.2020, p. 11–15) applies and which meets the conditions and requirements set out in that Regulation.

Government's climate change objectives by encouraging the use of active travel for everyday journeys, thus reducing greenhouse gas emissions and improving health and wellbeing. The key provisions of the Order will:

- allow householders in houses to erect a shed up to 1.5 metres in height, 2.5 metres width and 1.2 metres depth in their front or side gardens (article 7 of the Order). Permitted development rights already exist for the erection of a shed or outbuilding in rear gardens of houses;
- allow residents of flats to erect a shed of the same dimensions in the private garden of their flat, including to the front of the building (article 8 of the Order);
- allow the installation of communal bike stores within the curtilage of industrial, office and commercial buildings (or at the rear of a building within a conservation area) (article 9 of Order);
- allow the installation of communal bike stores to the rear of blocks of flats (article 9 of Order); and
- allow the installation of communal bike stores on public roads (article 9 of Order).

The permitted development rights outlined above will not apply to listed buildings or their curtilage.

## 5. Aquaculture

The changes introduced by this Order extend an existing class of permitted development to enable the replacement of existing finfish cages with larger size alternatives as a non-lethal solution to mitigate seal predation. This is required as a matter of urgency due to the impending introduction of measures set out within the Animals and Wildlife (Scotland) Act 2020 from 1 February 2021 and also new requirements on exporting nations which are being introduced by US authorities on 1 January 2023. These events will seriously impact on the use of the seal deterrent measures which are currently employed by the aquaculture finfish sector in Scotland.

To minimise disruption to this vital sector, the changes will facilitate the proposed cage replacement to take place with the minimum regulatory burden and maximum speed.

Due to the urgency of this need and the lack of Parliamentary time in advance of the elections to the Scottish Parliament in 2021, the necessary amendments have been included within this wider Order despite not being part of Phase 1 of the programme to review and extend PDR in Scotland. To avoid losing this window of opportunity, these specific amendments have been subject to different consultation requirements as detailed in the relevant section below.

The key provisions of the Order are:

- To increase the maximum size of a replacement or additional pen for which development is permitted under this class from 100 metre circumference for circular pens (796 square metres in area for non-circular pens) to 200 metre circumference for circular pens (3182 square metres in area for non-circular pens) (article 14(a) and (b) of the Order);
- To make amendments such that development is 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 (article 14(c) of the Order); and
- 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 (article 14(d) of the Order)

## **Consultation**

The provisions of the Order relating to digital telecoms, agriculture, peatland restoration and active travel were the subject of a [public consultation](#) which ran from 1 October 2020 to 12 November 2020. A report published on 18<sup>th</sup> December 2020 summarises the responses to the October 2020 consultation and is available at: <https://consult.gov.scot/planning-architecture/programme-reviewing-extending-pdr/>. An [earlier consultation](#) on Scottish Government's wider programme for extending PDR and its associated sustainability appraisal ran from 5 November 2019 to 28 January 2020. A [summary of the responses](#) to that consultation was published on 30 September 2020.

The key provisions of this amending Order relevant to fish farming are made in exercise of the powers conferred by section 30 of the Town and Country Planning (Scotland) Act 1997. There is no legal requirement to consult on these changes, however, had this change not been required urgently, we would normally have carried out a public consultation. On balance, the need to avoid missing the window of opportunity available to include these provisions within this amending Order, is more pressing.

Notwithstanding this, assurance on the proposals was sought via consultation with appropriate regulatory authorities and local planning authorities with aquaculture interests. Responses provided were generally content with the proposals and, where any concerns were expressed, appropriate mitigating options will be explored. We will continue to engage with relevant stakeholders on the measures and if passed, in their implementation.

The text below sets out where proposals have not been taken forward or where the provisions of the Order differ from what was consulted on.

### 1. Digital Telecommunications Infrastructure

In response to concerns about the potential impact on cultural heritage of extending PDR for antenna systems on buildings in designated areas it was decided to make this subject to a determination on prior approval of the visual impact. Other controls on PDR in areas designated for their natural heritage and the publication of updated good practice guidance on siting, design and installation were considered sufficient to address any concerns in other designated areas.

It was decided to proceed with introducing PDR for equipment housing cabinets on the ground and on buildings up to a 2.5 cubic metre size limit in designated areas without a requirement for prior approval because the current industry approach to siting and design, supported by new good practice guidance, was considered to be sufficient to address any negative impacts on cultural heritage.

In response to concerns about the potential impact on cultural heritage of extending PDR for other apparatus on buildings it was decided to make this subject to a determination on prior approval in areas designated for their cultural heritage. Similarly a decision was taken not to introduce PDR for underground equipment in World Heritage Sites and Historic Battlefields and to make permission subject to a determination on prior approval in other areas designated for their cultural heritage.

## 2. Agricultural (and Forestry) Developments

In response to concerns about the potential visual and landscape impacts of buildings up to 1,000sqm being permitted under class 18, the Order provides that the previous maximum ground area (465sqm) will continue to apply in certain designated areas.

The Order provides that new classes 18B, 18C, 22A and 22B only apply to buildings that were in agricultural/forestry use before 5 November 2019. The consultation proposal to also apply these PDR to buildings erected after that date (where they have been in continuous use for 10 years) was not taken forward. This reflects concerns that the introduction of the new PDR for the conversion of agricultural (and forestry) buildings – in conjunction with existing class 18 PDR – could incentivise landowners to erect new agricultural buildings with the sole intention of converting them to homes or commercial premises at a later date.

In the light of health and safety considerations, the Order dis-applies the grant of planning permission by new classes 18B, 18C, 22A and 22B where buildings are situated in military explosives storage areas or safety hazard areas – both of which are defined at **article 4** of the Order. In response to concerns about the potential impact on the long-term viability of crofting, the Order also does not grant planning permission for conversion to residential use on croft land.

With regard to new PDR for the conversion of buildings to commercial use (class 18C and class 22B), the consultation proposed that prior notification/approval would only be required above a 150 sqm threshold. This was not taken forward on the basis that conversions below that limit can have impacts that ought to be considered through prior notification/approval, and to provide consistency with the PDR for residential conversions

## 3. Peatland Restoration

In response to concerns about the potential impact of projects that were not in receipt of Scottish Government funding (and hence had not been subject to scrutiny) through the Peatland Action programme the Order provides that PDR for peatland restoration schemes is subject to prior notification/approval of the peatland restoration scheme.

Furthermore, in response to concerns that the grant of PDR for peatland restoration schemes would impact on the delivery of sustainable forest management (because any felling or woodland removal required as part of a scheme would no longer require a felling permission) it is proposed that changes will be made in 2021 to the Forestry (Exemptions) (Scotland) 2019 regulations. The effect of this is intended to ensure that any felling considered necessary to deliver a peatland restoration scheme under PDR will still require a felling permission (and consequent revisions to a Forest Plan) to ensure that the potential impacts of woodland removal and timber extraction are fully considered.

In addition, to provide clarity on the sorts of operations that are permitted as part of peatland restoration schemes, several definitions and exclusions have been included in the Order.

## 4. Active Travel

The changes made to the Active Travel proposals following the consultation were a minor increase in the size of the bike stores permitted in the curtilage of a house or flat and the introduction of some additional restrictions on the siting of stores to address potential concerns about road safety and residential amenity. It was decided not to restrict the materials

or colours of bike stores, including in conservation areas, because the potential impacts on amenity were considered to be minor.

It was also decided, following comments received, to increase the permissible size of communal bike hangars on the public road and not to restrict their numbers in a street block. Instead control over siting and numbers of stores will be left to the Roads Authority, which will require separate authorisation for any communal storage structures placed on the roadway. Consideration by the Roads Authority was also considered sufficient to address any concerns about pedestrian access.

## 5. Aquaculture

There were no significant concerns raised about the proposed changes by those consulted and no changes were made as a result.

### **Impact Assessments**

A BRIA, EQIA, CRWIA, Fairer Scotland Duty and Island Communities Impact Assessment have been completed. We have concluded that we believe the changes which are proposed are positive and do not raise significant impacts either for Businesses, Authorities, Equality Groups or Island Communities. The relevant assessments have been published alongside this SSI.

A Sustainability Appraisal (incorporating Strategic Environmental Assessment (SEA)) requirements was undertaken, considering the potential environmental, social and economic effects of the proposed programme of changes to PDR, and was published in November 2019. A draft Post Adoption Statement and some additional assessment of Phase 1 proposals that were not considered as part of the 2019 Sustainability Appraisal were published in September 2020 alongside the consultation on proposals for Phase 1 changes. An update to the draft Post Adoption Statement will be published early in 2021. In addition, a screening determination of the proposed aquaculture changes was sought and the SEA consultation authorities confirmed that no significant affects are expected.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The BRIA concludes that the proposed changes will have a positive effect on reducing the need to apply for planning permission reducing costs for businesses and the need for planning authorities to determine applications. However, in some instances the need to apply for planning permission has been replaced by the need to seek prior approval which attracts a lower fee and can be determined in a shorter timescale. Authorities have raised concerns that the prior approval process does require resourcing and that the current fee is not sufficient to cover the costs of processing. In 2019 we consulted on revising the planning fee structure and fee levels, however, that work has been put on hold due to the potential impact on businesses of raising fees during the Covid-19 Pandemic. We have indicated that we will restart that work in 2021 at which time we will look at planning fees in the round including the fee for Prior Approval.

A Business and Regulatory Impact Assessment was determined not to be required to support the proposed changes to fish farming as the changes are not considered to impose any additional costs or reduce costs on businesses or third sector organisations in all situations. The proposal does not compel businesses to make any changes to their cage sizes. It does

however put in place a mechanism which allows businesses to apply to replace a wider range of pen sizes through a more streamlined process. This aims to speed up the determination of any subsequent application, allowing for quicker installation of the replacement cages considered vital to mitigate seal predation and protect the welfare of fish.

The mechanism is already understood by local authorities, lessening any impact of the changes which will be minimised further as experience grows over time. A fee is charged for local authorities to conduct this work and there is a commitment to explore options to reconsider this fee in future if, on balance, evidence suggests that amendments are required.

Scottish Government  
Directorate for Local Government and Communities

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