

EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AVIAN INFLUENZA) (SCOTLAND) AMENDMENT ORDER 2007 SSI/2007/135

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

Policy Objectives

2. This Order adds a new Part 25A to Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”). It grants planning permission for certain development which is necessary for housing poultry and other captive birds to protect them from avian influenza.

3. Following the outbreak of avian influenza in Suffolk on 3rd February 2007, the Department for Environment, Food and Rural Affairs (Defra) introduced various restrictions including on the movement of poultry and other captive birds. Defra also introduced a compulsory requirement to house or otherwise isolate domestic birds from wild birds in the Protection and Surveillance Zones, 3km and 10km around the infected premises respectively, but also in the Restriction Zone which covers large parts of Suffolk and Norfolk. Similar requirements were made by the Scottish Executive Environment and Rural Affairs Department (SEERAD) in Scotland last year when the Cellardyke swan was found. The Executive and Defra have both previously issued detailed guidance advising all bird keepers on how they can prepare for any housing or separation requirements in any part of the country if there were to be a disease outbreak.

4. Defra have lifted the protection zone in Suffolk, however, they have recommended that the Department for Communities and Local Government (DCLG) should continue with the temporary permitted development rights in England and DCLG have agreed.

5. This Order amending the GPDO in Scotland is laid in response to the outbreak of avian influenza in Suffolk. It is a precautionary measure in case, despite the measures taken in England, this outbreak of avian influenza should spread to Scotland. More widely, it allows better preparation for an increased threat of avian influenza from any source in future. In that event, unless this exemption from normal planning rules is brought into force, there is a risk that bird keepers in the areas at risk would be unable to comply with their legal obligations under the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006 and the Avian Influenza (H5N1 in Wild Birds) (Scotland) Order . The Order will apply throughout Scotland because of the increased nationwide risk of avian influenza and the fact that the Executive is encouraging all bird keepers to make preparations to house their birds if necessary.

6. There is an existing provision in the GPDO (Part 6 of Schedule 1) which grants various general permissions for farmers to carry out certain development but provides insufficient help in the present circumstances. The need to comply with a prior approval procedure, the fact that they grant permission for structures intended to be permanent, and the fact that Part 6 does not cover provision for zoo, game and other birds, make the existing

rights inflexible in situations where there is an immediate need to build temporary structures that will house birds.

7. This measure is not related to an expectation that avian influenza is likely to hit Scotland in the immediate future but a matter of further enhancing our ability to respond quickly and effectively should it occur. In addition to minimising risk of disease spread preplanning now by poultry keepers will support the welfare of any birds that are required to be housed.

8. Any development permitted by the Order is temporary - and must be removed before 23rd March 2008 (12 months from the expected coming into force date of the Order) or the date when the buildings cease to be needed to protect birds from avian influenza, whichever is sooner. The provisions include requirements to return the land to its previous condition or to a condition agreed with the planning authority. There will be a duty on the developer to notify the planning authority of any development under the new provisions. This measure is intended to ensure that any future disputes about what was or was not erected under these temporary powers can be avoided. In the event that we were in the midst of an avian influenza outbreak at 23 March 2008, an amendment Order extending the time period would be made.

10. The provisions will apply in all areas, including Conservation Areas, National Scenic Areas and National Parks, although these provisions do not in themselves override any requirements relating to Sites of Special Scientific Interest, Special Protection Areas and Special Areas of Conservation or other requirements associated with European Directives which may arise in individual cases.

Consultation

11. Due to the potential urgency of this matter, no public consultation has been undertaken, although this instrument has been prepared in consultation with colleagues in SEERAD and the Scottish Executive Health Department.

Financial Effects

12. Regulatory Impact Assessment attached.

Scottish Executive Development Department
March 2007

FINAL REGULATORY IMPACT ASSESSMENT

Title of Proposal

Amendment to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – Temporary protection of poultry and other captive birds.

Purpose and Intended Effect of Measure

Objective

To grant temporary permitted development right for the erection of temporary buildings, or the extension of existing buildings, for housing of poultry and other captive birds to protect them from Avian Influenza.

Background

In response to the confirmation of avian influenza there is an expectation that poultry will be required to be housed in the immediate area surrounding the infected premises. This is a specific requirement of the Avian influenza Directive for the 3km Protection Zone surrounding an infected premises but it is likely to be introduced over a wider area as a precautionary measure.

While there is no expectation that avian influenza is likely to hit Scotland in the immediate future, it is considered important to further enhance our ability to respond quickly and effectively should it occur. In addition to minimising risk of disease spread pre-planning now by poultry keepers will support the welfare of any birds that are required to be housed.

Certain types of development are already permitted without the need for planning permission. These permitted development rights are set out in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO). Part 6 grants various general permissions for farmers to carry out certain development. However, the limitation of those rights, especially the need to comply with prior approval procedures, the fact that they grant permission for structures intended to be permanent, and the fact that they do not cover provision for zoo, game and other birds, make the existing rights inflexible in the current situation where there may be an immediate need to build temporary buildings to house birds.

This Order grants the right to carry out temporary and reversible works to shelter poultry and other captive birds from contact from wild birds. These provisions are designed to ensure that farmers and poultry owners have the ability to provide adequate shelter to house birds unaffected by avian flu without needing to seek planning permission from the planning authority.]

Rationale for Government Intervention

This measure is being introduced to deal with the possibly urgent requirement to restrict the potential contact between domestic poultry (and other captive birds) and wild birds by allowing urgent additional provision for birds in affected areas to be housed. Failure to

introduce the Order could have a detrimental impact on farmers and poultry owners given the potential implications for disease spread and the welfare of the birds themselves given that accommodation for free range birds is not generally designed for 24 hour a day living.

Consultation

We have not undertaken any formal consultation on our proposals because of the need to act urgently and the temporary nature of the measure. However, we know that industry are supportive of this approach given the support it provides their own contingency planning considerations

We have consulted with the Scottish Executive Environment and Rural Affairs Department and Scottish Executive Health Department on our proposals and they are in full agreement with the measure.

Options

We considered two options:

Option 1 - **Do nothing** – Require planning permission to erect buildings to shelter birds from avian flu.

Option 2 - **Allow temporary permitted development rights to erect/extend buildings without the need for planning permission** – This would grant farmers and poultry owners' temporary additional permitted development right for the erection of temporary buildings, or the extension of existing buildings, for housing of poultry and other captive birds to protect them from Avian Influenza.

Option 2 is the Executive's preferred option

Costs and Benefits

Sectors and groups affected

The groups that will be most affected are primarily farmers and planning authorities who might need to take enforcement action if temporary buildings are not removed within 12 months.

Race equality assessment

None of the options has a race impact.

Health impact assessment

Avian flu is primarily a disease of birds and the public health implications are currently negligible except for those who work very closely with infected birds. However, option 2 would allow bird keepers in certain areas near to the infected premises to comply with their legal obligations to house their birds to prevent contact with wild birds. This would limit the risk of further infection should the virus be circulating in the wild bird population.

Rural considerations

Option 2 would allow the most flexibility to farmers to ensure that they deal with any requirement to bring birds in doors by erecting or extending buildings to help protect birds from avian flu.

Breakdown of costs and benefits

As this is a temporary right for farmers, it is impossible to estimate the exact or approximate costs or benefits at this stage as we do not know to what extent this exceptional right will be used. In general, granting this right will create more benefits than costs for both farmers and poultry owners and to planning authorities who might otherwise have to deal with an influx of planning applications or requests for prior approval.

Economic Benefit

Option 1 – there would be no benefit from this option which would require farmers to submit planning applications which would need to be consulted upon before determination by planning authorities. The whole process would take weeks.

Option 2 – Farmers and the poultry industry will benefit from the scope to put up buildings quickly. Without such buildings if there are any further outbreaks of avian flu, it is possible that hundreds of thousands or even millions of birds would have to be slaughtered. The potential financial losses involved if this were necessary have not been calculated.

Environmental Benefit

Option 1 – there would be no environmental benefits from this option

Option 2 – there would be benefits if birds were protected from the risk of avian flu.

Social Benefits

Option 1 – there would be no social benefits from this option.

Option 2 – there would be no social benefits from this option.

Economic Costs

Option 1 – maintaining the current arrangements of requiring planning permission for buildings would potentially have a considerable cost for farmers and poultry owners who did not have the flexibility to put up buildings quickly. If as a result birds were slaughtered the impact to the economy particularly the farming industry would potentially be considerable.

Option 2 – the buildings will be permitted for up to 12 months. The expectation is that they would be removed within this period. Should this not happen, planning authorities would need to take enforcement action. Such action should not impose significant additional costs on planning authorities. The costs of enforcement action on the developer would be associated with what it cost to restore the site, which the developer should do anyway in accordance with the conditions of the new permitted development rights. If the developer

refuses to comply with an enforcement action he may be prosecuted and subject to fines and would still incur the costs of removal of the development. If a developer wishes to erect permanent structures it would be open to them to apply for planning permission.

Environmental Costs

Option 1 – there would be a loss of captive birds including ornamental birds.

Option 2 – Potentially there might be some visual impact from temporary buildings.

Social Costs

Option 1 – there are no social costs under this option.

Option 2 – there are no social costs under this option.

Small Firms' Impact Assessment

Creating additional permitted development rights should benefit small firms by allowing them to act quickly to put up temporary buildings to protect birds.

Legal Aid Impact Test

The provisions do not create any new legal procedures and exist within the existing legislative framework of the Town and Country planning system. The freedom to develop allowed under the new provisions is temporary and for the duration of emergency circumstances only. Existing Planning enforcement procedures will apply where breaches of planning control arise and anyone subject to those procedures has a right of appeal to the Scottish Ministers.

Competition Assessment

No effects on competition have been identified. The measure should benefit firms, who will be able to exercise this exceptional right to erect buildings to protect birds from the spread of avian flu. The use of this planning permission to erect additional temporary housing for birds is only one of a number of options which those responsible for the keeping of poultry and other captive birds may use where they are required to house birds under avian influenza legislation.

Enforcement and Sanctions

This measure will not create any new burdens on planning authorities. Where a developer carries out development not permitted by the GPDO planning authorities will have the same enforcement powers as they have to deal with development in breach of planning controls. Developers who do not comply with the condition to remove temporary buildings within 12 months could face possible enforcement action from the planning authority under existing provisions covering breaches of planning control. Enforcement action would basically require that development which was in effect unauthorised would have to be removed. Failure to comply could ultimately result in prosecution and fines or to the planning authority entering the land carrying out the necessary works and billing the responsible party.

This is a deregulatory measure. If someone carried out the development specified in the new legislation prior to its coming into force and without applying for and receiving planning permission, they could be subject to such planning enforcement action. This new legislation removes the need to obtain planning permission, but only allows development on a temporary basis and if this condition is breached, then enforcement provisions may be brought to bear by the planning authority.

Implementation and Delivery Plan

The new provisions will require to be laid before parliament and will come into force 21 days thereafter. SEERAD and SEDD will take steps to inform site operators and planning authorities respectively of the new provisions.

Post-Implementation Review

The temporary buildings will only be granted planning permission for 12 months. Farmers who have not removed their buildings after 12 months will be in breach of planning permission. We will rely on advice from SEERAD about how long the measure should last.

Summary and Recommendation

The introduction of a temporary additional permitted development right to allow farmers and poultry owners to erect temporary buildings to house birds is a precautionary measure to deal with the risk of a further spread of avian flu.

Option 2 is therefore the preferred option.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed

Date

Des McNulty MSP, Deputy Minister for Communities