



## **Biodiversity Considerations and Developer Responsibilities in Relation to the New and Extended Permitted Development Rights for Agricultural and Forestry Buildings**

*This guidance note, produced by the CIEEM Scotland Policy Group, highlights relevant statutory biodiversity considerations and developer responsibilities in relation to development progressed under the Permitted Development Rights for agricultural and forestry buildings, in particular, having regard to potential impacts upon bats and breeding birds.*

On 1 April 2021, the Scottish Government introduced new and extended Permitted Development Rights (PDR) for the change of use of agricultural and forestry buildings to residential or commercial use. These PDR have expanded the range and scale of development that prospective developers are now able to progress without the need for a planning application. These rights are nevertheless limited by specific conditions, including the requirement for formal notification to the Local Planning Authority in advance of any works taking place.

The processing of planning applications has always provided Local Planning Authorities with an opportunity to assess any potential impacts from development upon biodiversity and to consider whether any mitigation may be required. However, the new and extended PDR relating to agricultural and forestry buildings do not impose any requirements on developers to provide any detail on the impacts of their proposals upon biodiversity, nor is there a requirement on planning authorities to consider these matters within their review of proposals referred to them under the Prior Notification process. Instead, in these cases, the protection of biodiversity relies solely upon other existing statutory provisions. That does mean that, regardless of changes in the planning system, developers still need to be aware of their legal obligations and should ensure that their proposals do not illegally disturb or damage Protected Species or their habitat.

### **The new and extended Permitted Development Rights for Agricultural and Forestry Buildings**

In April, the Scottish Government amended permissions for agricultural buildings under Permitted Development Rights (PDR) as outlined in these two documents:

<https://www.transformingplanning.scot/media/2163/phase-1-pdr-explanation-of-changes.pdf>

<https://www.gov.scot/publications/planning-circular-2-2015-consolidated-circular-non-domestic-permitted-development-rights-updated-2021/> (Annexes H and I)

Anyone who intends to carry out development in relation to agricultural and forestry buildings under these permitted development rights must meet the conditions set out and must also notify the

planning authority in advance of development. This is a formal process known as Prior Notification<sup>1</sup>. As the term suggests, this process cannot be applied retrospectively.

### **Statutory Obligations - Bills and Legislation**

All development, including under permitted development rights, must comply with all relevant legislation and regulations. Wildlife legislation is complex and spread across several different Acts. Therefore, early discussions with Local Authorities and NatureScot's Licensing Team as part of the Prior Notification process, is invaluable and can identify where protected species licences may be required. ALGE and CIEEM members can provide advice and support in the Prior Approval process for developers and LPAs.

There is no change to the protection of European protected species as a result of the UK's EU Exit. Find out more on [EU Exit information](#) at NatureScot and through this [guidance note](#) on applications related to European protected species.

#### **Key pieces of legislation include:**

- [Wildlife and Countryside Act 1981](#) with amendments detailed in the [Wildlife and Natural Environment \(Scotland\) Act 2011](#)
- [Protection of Wild Mammals \(Scotland\) Act 2002](#)
- [Nature Conservation \(Scotland\) Act 2004](#)
- [The Conservation \(Natural Habitats Etc\) Regulations 1994](#) and [amendments in relation to Scotland only](#)
- [Wild Mammals \(Protection\) Act 1996](#)
- [Protection of Badgers Act 1992](#)
- [Deer \(Scotland\) Act 1996](#)

Protected species that might be affected by building conversions now falling under PDR would include but are not limited to: bats (all species protected under Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)), barn owls, swallows and others that may be indirectly affected by ancillary works needed for conversions. Examples include drainage works (which may affect species such as otter or water vole) or by noise or vibration arising from conversion works (e.g., badger).

Change of use of an agricultural building to residential, could also lead to a permanent significant increase in disturbance in the vicinity of the building (people, dogs etc.), and would lead to more intensive management of the curtilage. This could lead to impacts through loss of nesting/foraging habitat & disturbance for species that are strongly associated with farmed landscapes. An example of a localised species that could be impacted would be Chough (within designated sites and out with) as agricultural buildings form a significant proportion of their nesting habitat.

It is important to note that licenses will not be issued for the purpose of development actions that would otherwise be an offence in relation to wild birds<sup>2</sup>. If proposed development activities may result in disturbance of nesting birds, or damage nests if undertaken during the breeding season, they should be delayed until after the season is over.

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<sup>1</sup> The Prior Notification procedure provides planning authorities with a means of assessing, as required, specifically defined aspects of new development for which full planning permission is not required by virtue of the General Permitted Development Order.

<sup>2</sup> <https://www.nature.scot/professional-advice/protected-areas-and-species/licensing/species-licensing-z-guide/birds-and-licensing>

Designated sites are also protected from some types of development activity. Legislation for Sites of Special Scientific Interest (SSSIs) specifies that private owners or occupiers of SSSIs must seek permission from NatureScot to carry out any activity listed on its Operations Requiring Consent list. These lists identify any activities that are likely to damage the natural features for which the site is designated. Permitted Development activities are not excluded from this requirement.<sup>3</sup>

### **Local Authorities' 'Biodiversity Duty' (Under the Nature Conservation Act 2004)**

In addition to developers, Local Authorities must also be aware of their duties and responsibilities with respect to biodiversity, which are required in law.

Under Section 1 of the Nature Conservation (Scotland) Act 2004, every public body has a duty to: *“further the conservation of biodiversity so far as is consistent with the proper exercise of those functions”*.

Regulation 9 of The Conservation of Habitats and Species Regulations 2017 states that the *“a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.”* This means that competent authorities must have regard to the Directives in making decisions in relation to planning functions.

As part of the Prior Notification process, Local Authorities can advise developers of their potential obligations under nature conservation legislation and signpost them to [NatureScot licensing](#) to seek appropriate derogation licences from NatureScot. Local Authorities must consider their biodiversity duty throughout the Prior Notification process. Whilst it cannot be a requirement of any approval through the notification process, Local Authorities should engage with the developer to encourage biodiversity enhancement e.g. landscaping, bird boxes (e.g. barn owl and swift boxes) and other possible enhancement measures. The use of informative notes can be an effective mechanism for reminding developers of their obligations and also to suggest appropriate mitigation. Developers must be reminded of the risks of breaching nature legislation, particularly if surveys have not been undertaken and/mitigation plans put in place.

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<sup>3</sup> <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-areas/national-designations/sites-special-scientific-interest-sssis-consents>