

Consultation on the relaxation of Planning Controls for Digital Communications Infrastructure

August 2016

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Foreword

World class digital connectivity is vital to Scotland's economy and is a priority for the Scottish Government. A reliable and modern network is essential for business, in the delivery of public services, and in contributing to a low carbon environment. Digital connectivity takes on greater significance in Scotland, helping to address some of the disadvantages of physical distance between places and supporting strong, connected communities. Whilst telecommunications is a reserved matter for the UK Government, the Scottish Government has set out its ambition for the availability of world class digital connectivity across the country. Improved mobile connectivity is an integral part of delivering that ambition and we have been working closely with the UK mobile network operators. Operators have demonstrated a clear commitment to maximising mobile network coverage, but collectively we recognise that coverage gaps will still remain once commercial rollout is complete. We have committed to using the powers available to Scottish Ministers, including through the planning system, to improve the case for sustainable investment in all forms of digital infrastructure in Scotland. This is an issue in which we all have an interest – we would welcome your views on how best to achieve our ambitions.

Introduction

1. The Planning System has a role to play in supporting and enhancing digital connectivity. National Planning Framework 3¹ highlights the importance of digital infrastructure across towns and in cities and, in particular, in our more remote rural and island areas. Scottish Planning Policy² sets out the Scottish Government's support for development which helps deliver world class digital connectivity.
2. Within the development management system, a wide range of electronic communications infrastructure already benefits from 'permitted development rights' (PD rights) which establish the principle of development, and remove the need to apply for planning permission. Such PD rights have a role to play in helping to incentivise development to support Scottish Government policy objectives. For example, they can improve certainty of outcome for developers, and can help to reduce timescales for securing any necessary permissions or approvals. PD rights also help to free up resources within planning authorities.
4. This consultation invites views specifically on the expansion of certain existing PD rights for Electronic Communications Code Operators ('ECCOs'), as well as on the introduction of new PD rights for the construction or installation of new ground based masts for ECCOs, subject to a prior approval procedure. These proposals form part of the Scottish Government's response to recommendations made in recently published independent research³, and set out in the Mobile Action Plan⁴ published by the Scottish Government on 12 June 2016. Following the Independent Review of Planning,⁵ a separate - but related - workstream is being progressed in tandem with this consultation which will look at extending permitted development rights more generally.
5. Also set out in the Mobile Action plan is the Scottish Government's commitment to working with all stakeholders to develop new Planning for Telecommunications Advice. That advice will replace the current Planning Advice Note: 62 (Radio Communications⁶), and is intended to sit alongside any new legislation. It will set out the expectations for the different parties'

¹ <http://www.gov.scot/Publications/2014/06/3539>

² <http://www.gov.scot/Publications/2014/06/5823>

³ *Research on Permitted Development Rights and Planning Guidance for Electronic Communications Infrastructure* <http://www.gov.scot/Resource/0050/00501354.pdf>

⁴ <http://www.gov.scot/Topics/Economy/digital/Publications/SgMAP>

⁵ <http://www.gov.scot/Topics/Built-Environment/planning/Review-of-Planning>

⁶ <http://www.gov.scot/Publications/2001/09/pan62/pan62->

roles within the development management process, as well as agreed best practice for the siting and design of electronic communications infrastructure; the advice will also provide information on the different development types and how they function. In the meantime, further information on digital infrastructure, including illustrations of ‘typical’ development types, can be seen in Chapter 4 and Annex F of the research.

Proposed amendments to the General Permitted Development Order

Current legislation:

- The Town and Country Planning (General Permitted Development) Scotland Order 1992, as amended, ‘the GPDO.’
 - Class 20, Part 67.

6. Currently, Class 67 of Schedule 1 to the Town and Country Planning (General Permitted Development) Scotland Order 1992⁷ as amended (‘the GPDO’) grants a Scotland wide planning permission for certain development by ECCOs. Class 67(1) specifies the grant of planning permission, Class 67(2) sets out those restrictions on the grant of permission, and Class 67(3) to (6) sets out the conditions attached to the permission. In proposing the following changes, we are also taking the opportunity to consolidate Class 67 and to generally bring this up to date. A consultative draft consolidated Class 67 is included in this consultation at Annex A.
7. Other parties, such as community groups, who are not ECCO, and so not subject to the benefits and obligations of the Electronic Communications Code, are also engaged in providing communications infrastructure, such as masts and antennas. They do not benefit from Class 67 PD rights, though may engage with companies who do. The research concluded that Class 67 PD rights should not extend beyond ECCO (Recommendation 6).

⁷ There is no published up to date version of the Order or of Class 67. The original and amending statutory instruments can be viewed on the www.legislation.gov.uk web site. Annex G of Revision No.1 of the Consolidated Circular on Non-Domestic Permitted Development Rights (Circular 2/2015) summarises the existing Class 67 PD rights: <http://www.gov.scot/Publications/2015/11/2264/downloads>

8. Consultees are encouraged to consider the detailed draft legislation in Annex A, including the definitions (for example of 'buildings and 'land') in the interpretations section, and in the Glossary (Annex F) as well as the policy intentions set out in this paper when making a response.

Q.1 Do you agree Class 67 PD rights should continue to apply only to Electronic Communications Code Operators?

Please give reasons for your answer.

Class 67 General Conditions

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Class 67 (19)-(23)

9. At present some general conditions apply to Class 67 PD rights:
- Requirements to give 28 days' advance notice to the planning authority of the installation of antennas or equipment housing (or in an emergency, as soon as possible after the emergency begins), including a description of the equipment, its location and, for antennas, declaration of compliance with the relevant International Commission on Non-Ionising Radiation Protection (ICNIRP) guidelines;
 - Equipment located on buildings must minimise the effect on the external appearance of the building as far as practicable (this does not apply to the use of land and buildings for moveable structures installed in an emergency); and
 - Requirements for removing equipment when it is redundant or when time periods for apparatus installed in an emergency expire, and requiring restoration of the land or buildings.
10. We intend to broadly retain the general conditions outlined in paragraph 9 above, subject to changes to clarify the time periods for removing equipment installed under Class 67 PD rights.
11. The conditions on giving notice are also being amended so that:
- No notice is required where antennas and/or equipment housing are part of a development requiring prior approval (see section on 'New Ground Based Masts' below);

- It is clear that all Class 67 PD rights used in an emergency must be notified as soon as possible (see paragraphs 17–18 on emergency works).

12. Finally, we have taken the opportunity to clarify the conditions on the removal of equipment and restoration of land such that:

- Apparatus and other structures installed or constructed under Class 67 PD rights are to be removed once the need for the development ceases, with an additional absolute time limit for PD carried out in an emergency;
- In all cases, such land, buildings or other structures affected shall be restored to its condition before the development took place, or to any other condition as may be agreed in writing between the planning authority and the developer.

Q.2 Do you agree with the proposed update to the general conditions for Class 67 PD rights?

Please give reasons for your answer.

Designated Areas

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Class 67(2)

13. Currently, PD rights in Class 67 are subject to a broad restriction in certain areas set out in Class 67(2)(a). Within these areas only certain Class 67 PD rights apply, including: emergency development; two small antennas on a building; and certain works relating to telegraph polls, overhead lines and changes to existing ground based masts.

14. The current list of ‘designated areas’ in Class 67 is:

- Conservation Areas
- Category A Listed Buildings and their settings
- Scheduled Monuments and their settings
- Historic Gardens and Designed Landscapes
- Historic Battlefields

- Sites of Special Scientific Interest (SSSI)
- National Parks
- National Scenic Areas
- European Sites (e.g. special protection areas and special areas of conservation)

15. Some of these areas have their own consent procedures which apply irrespective of any grant of planning permission. For example, works affecting Category A listed buildings and schedule monuments require Listed Building Consent and Scheduled Monuments Consent respectively, though this requirement does not extend to proposals affecting the setting of such buildings and monuments. Operators are also subject to the requirements of the UK wide Electronic Communications Code (Conditions and Restrictions) Regulations 2003⁸. These Regulations include a range of requirements to notify planning authorities and other bodies of proposals to construct or install equipment in different circumstances and with different levels of control applying in light of responses received. Such additional controls should be borne in mind when commenting on proposals throughout this paper for extending Class 67 PD rights for specific types of development, such as masts, equipment housing and other apparatus on buildings, in Class 67 designated areas.

16. In the meantime, we welcome views specifically on whether the current list of designated areas could be reduced, for example in view of these additional controls. In any designated areas removed from the list in Class 67, the restrictions and conditions in Class 67(3) to (24) would apply as appropriate.

Q3.(a) In view of the controls in place outwith the planning system, should Category A listed buildings and scheduled monuments be removed from the general area based restrictions on Class 67 PD rights?

Q3.(b) Are there any other Class 67 designated areas which can be removed from the general area based restrictions?

Please give reasons for your answers.

Q.4 Do you have any other comments on the Class 67 designated areas in light of the proposals set out in this paper?

⁸ The UK Government are in the process of amending these 2003 regulations.

Extension of Existing Class 67 Permitted Development Rights

Emergency works

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Class 67(1)(a), (b), (c) and (19)-(24)

17. Currently Class 67 PD rights allow equipment to be installed in an emergency for a period of up to 12 months. In some instances, this bypasses certain restrictions (including those for Class 67 designated areas) and conditions that would otherwise apply on the basis that the emergency - and the equipment - will be for a temporary period. Annex G of Circular 2/2015⁹ contains guidance on what may constitute an 'emergency' in this context.

18. In line with Recommendation 1 of the research, we propose increasing the time period for emergencies from 12 months to 18 months. All Class 67 PD to be carried out in an emergency must be notified to the planning authority as soon as possible, so that planning authorities can monitor the time limit for removal and restoration. Where Class 67 PD rights are used in an emergency, the use of the land or buildings will cease and any apparatus or structure installed or constructed must be removed 18 months from when the use started or when the need for the development ends, whichever of these two is the earlier.

Q.5 Do you agree with proposals to extend the time period for emergency works from 12 to 18 months?

Please give reasons for your answer.

⁹ Circular 2/2015, the Consolidated Circular on Non-Domestic Permitted Development Rights <http://www.gov.scot/Publications/2015/11/2264/downloads#res489640>

Small antenna on buildings

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Class 67(2) and (14)- (23)

19. Currently Class 67 PD rights allow 2 small antennas¹⁰ on a dwellinghouse and its curtilage, and 8 small antennas on other buildings, whereas in the Class 67 designated areas up to 2 small antennas are allowed on all buildings. Various additional restrictions apply within different Class 67 designated areas regarding the location of small antennas.

20. The research has highlighted that ‘small cells’ are a likely feature of future infrastructure – i.e. antennas to boost capacity of networks in particular locations. The research did not however make any precise recommendation as to what PD rights would be needed to support ‘small cells’ in future. Respondents may wish to consider in particular the definitions of ‘small antenna’ and ‘building’ (see Glossary), as well as question 17(b) on ‘Apparatus on buildings’.

21. In light of Recommendation 4 of the research, we are proposing to:

- Retain the existing Class 67 PD rights for up to two small antennas on a dwellinghouse in Class 67 designated areas and up to 8 small antennas on other buildings outside Class 67 designated areas;
- Increase Class 67 PD rights to allow up to 4 small antennas across a dwellinghouse and its curtilage outside designated areas;
- Increase Class 67 PD rights to allow 4 small antennas on buildings (other than dwellinghouses) in European Sites, SSSIs and Historic Battlefields.
- Remove the restriction that small antennas are not to be located on parts of a dwellinghouse or its curtilage that face on to a road in European Sites and SSSIs (this is already the case in Historic Battlefields).

Q.6 Do you agree with the proposed extension of Class 67 PD rights for small antenna on buildings, including dwellinghouses?

Please give reasons for your answer.

¹⁰ These small antennas on dwellings and buildings and planning controls would not affect the ability to install satellite dishes for domestic use under other PD rights (TV aerials are generally regarded as not requiring any planning permission).

Alterations and replacements of existing ground based masts

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Class 67(2)(e), (4), and (19) – (23).

22. Currently, Class 67 grants PD rights for the alteration or replacement of existing ground based masts – including within the Class 67 designated areas - provided:
- for existing masts up to 50 metres in height, the height of the original structure is not exceeded by more than 5 metres;
 - for existing masts over 50 metres in height, the original mast height is not increased by more than 15%;
 - altered or replacement masts do not exceed the width of the original by one third or by one metre, whichever is the larger; and
 - a replacement mast is no more than 4 metres from the existing mast.
23. Recommendation 2 of the research proposes a number of relaxations to the above restrictions. In light of this recommendation, we propose that in future PD rights should apply to the alteration or replacement of existing ground based masts, including in Class 67 designated areas, as follows:
- Where the existing mast is 20 metres in height or less, it can be increased by a maximum of 5 metres plus 10% of the original height of the structure;
 - For masts above 20 metres up to 50 metres in height and those over 50 metres in height the existing 5 metre and 15% thresholds for height increases respectively will continue to apply;
 - The limit on the distance between the original and a replacement mast will be increased to 6 metres;
 - The current width limitations will remain;
 - Clarification that height and width constraints do not include the antennas themselves; and
 - New requirements for prior approval (see below) would not apply to the alteration or replacement of existing masts.

Q.7 Do you agree with the proposed increase in height allowed for altered or replaced ground based masts under Class 67 PD rights?

Please give reasons for your answer.

Q.8 Do you agree with the proposed increase in the maximum distance allowed between the original and replacement ground based masts under Class 67 PD rights?

Please give reasons for your answer.

Q.9(a) Should the current width restriction of one third the original or one metre (whichever is the larger) for alterations to ground based masts be increased?

Q9(b) What should the new restriction be?

New Class 67 Permitted Development Rights

New ground based masts

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Class 67(2), (3), (7), and (17) to (24)

24. Currently there are no Class 67 PD rights for new ground based masts in Scotland, though such rights have existed in some parts of the UK for at least 20 years. Recommendation 3 of the research proposes the introduction of new Class 67 PD rights - outside the Class 67 designated areas - for the construction or installation of new ground based masts up to 25m, subject to an approval mechanism on the siting and appearance of the development.

25. The proposed height restriction of 25m in Class 67(3) is intended to include any plinth or supporting structure for the mast and any apparatus (other than antennas – see paragraph 44). Detailed proposals for a 'prior approval' mechanism for new masts are set out in paragraphs 27 to 31 below.

Q.10(a) Do you agree with proposals to introduce PD rights for new ground based masts outside the Class 67 designated areas?

b) do you agree the proposed height restriction of 25m?

c) do you agree a prior approval should be required on siting and appearance?

Please give reasons for your answers (including any alternative proposals).

Q.11(a) Is there scope to introduce Class 67 PD rights for new ground based masts within any, or all, of the Class 67 designated areas?

b) if yes, within which of the Class 67 designations should such PD rights apply?

Please give reasons for your answer.

c) Should any conditions (e.g. prior approval) and/or restrictions (e.g. on height) apply?

If so, what should these be?

Prior Approval for new ground based masts

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Article 3 (inserting new articles 7ZA, 7ZB, 7ZC and 7ZD to the GPDO) and Class 67(24)

26. The research has recommended that Class 67 PD rights for new ground based masts should be subject to a condition requiring the Planning Authority's approval of the detailed siting and appearance of the mast. There are a variety of existing mechanisms in place both within Scotland and elsewhere in the UK for prior notification / approval procedures for different classes of PD, and we have drawn on elements of these in the proposals below:

Prior approval for new ground based masts

27. The following prior approval process is proposed:
- i. The developer submits an application for prior approval to the Planning Authority
 - ii. The Planning Authority publishes the application for prior approval on its website; and, carries out neighbour notification.
 - iii. The Planning Authority consults statutory consultees (see paragraph 28) as appropriate.
 - iv. Consultees, including the public, have a minimum of 14 days to make representations.
 - v. The Planning Authority has 40 days to determine whether to grant prior approval, taking into account any representations received regarding siting and appearance.
 - vi. The developer may appeal a decision to refuse prior approval, or may appeal against non-determination of the application after the 40 day period. Any such appeal would be to the Scottish Ministers.
 - vii. The developer has 3 years to complete the development.

28. The proposed statutory consultees for the purposes of Class 67 prior approval are:

- i. The relevant airport authority where development is within 3km of an aerodrome;
- ii. SNH where development may affect an SSSI;

- iii. HES where development may affect a World Heritage Site, Historic Garden and Designed Landscape, Royal Park or Palace a Scheduled Monument or its setting, a Category A Listed Building or its setting, or an Historic Battlefield.
29. The prior approval covers the new mast and any associated equipment housing or other permitted development installed with the new ground based. Prior approval would not apply where Class 67 PD rights are exercised in an emergency. Ground based mast authorised via prior approval may subsequently be altered or replaced under Class 67 PD rights, subject to the specified restrictions and conditions.
30. The Scottish Government has committed to working with all parties to progress new Planning for Digital Communications Advice, to replace the current Planning Advice Note: 62 (Radio Communications). It is our intention that this new advice will sit alongside any new Class 67 PD rights and will clearly set out agreed best practice for the siting and design of new masts; and, the expectations for the different parties' roles within the development management process, including the new prior approval procedures and their associated information requirements.

Q.12 (a) Do you agree with the proposed mechanism for prior approval of new ground based masts?

b) In particular, do you agree with the proposed publicity requirements, including neighbour notification and on-line publication?

c) Do you agree with the proposed list of statutory consultees for the purposes of Class 67 prior approval?

Q.13 Please explain your answers and any suggestions for alternative requirements. Do you have any further comments on the proposed prior approval process for new ground based masts?

Fee for prior approval of new ground based masts

31. Currently the fee for prior notification/ approval under other Classes of development within the GPDO is £78¹¹, however none of the existing notification / approval procedures included the publicity or consultation provisions outlined above. Currently, the corresponding fee for an

¹¹ With the exception of the fee for hill tracks which is currently set at £0.

application for planning permission for a new mast is £401. Planning fees generally are under consideration as part of the Review of the Planning System in Scotland. In the meantime we are proposing a fee of £150 for prior approval for ground based masts.

Q.14 Do you agree with the proposed fee of £150 for prior approval for new ground based masts?

Please give reasons for your answer.

Ground based equipment housing

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Class 67(2), (5)-(7) and (19)-(24)

32. We are interested in views on whether PD rights for ground based equipment housing would be appropriate in some or all of the Class 67 designated areas and what restrictions and conditions should apply to such rights.

33. Class 67 PD rights also include PD rights for development ancillary to equipment housing, such as security equipment, fences, handrails and ramps (see Class 67(1)(c) and the interpretation section in the draft amendment order in Annex A), and these PD rights are also restricted in Class 67 designated areas. So, any extension of Class 67 PD rights for ground based equipment housing in designated areas would need PD rights for such ancillary development.

Q.15(a) What should the Class 67 PD rights be for ground based equipment housing (and development ancillary to such equipment housing) within the various Class 67 designated areas?

Q.15(b) Please explain your answer, including any proposed conditions and restrictions on such PD rights.

Apparatus on buildings

Consultation Draft legislation:

- The Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016
 - Class 67(2), (8)-(15) and (17)-(23).

34. In line with existing and proposed Class 67 PD rights elsewhere in the UK, we propose increasing the current Class 67 PD rights to allow up to five antenna systems located more than 15m above ground level on a building outside Class 67 designated areas (currently PD rights allow up to four such systems).

Q.16 Do you agree with the proposed increase in Class 67 PD rights to allow up to five antenna systems on a building outside Class 67 designated areas?

Please give reasons for your answer.

35. Existing PD rights for apparatus (other than small antennas) on buildings outside the Class 67 designated areas are set out in sub-paragraphs (8) to (15) of the draft amendment order (see Annex A). They include restrictions on sizes of equipment housing, antennas, numbers of antenna systems and heights above the building. In some instances a distinction is made between apparatus located above and below 15 metres in height. These provisions set limits on installing new apparatus under PD, but allow for replacement or alteration of existing equipment where the latter already exceeds these limits¹².

36. We propose to clarify that - where existing apparatus on a building is larger or is present in greater quantities than allowed under PD rights, and has the necessary planning permission - such existing apparatus can be altered or replaced provided it does not get any larger or the quantity does not increase. This is in line with other Class 67 PD rights for equipment housing.

37. The research has also indicated (Recommendation 4) that there is scope to extend Class 67 PD rights for the construction, installation, alteration or replacement of electronic communications apparatus on buildings within

¹² e.g. a new antenna installed less than 15m above ground level could only be up to 0.9m (horizontal limit), but if an existing antenna at that level were 1.5m it could be replaced with one up to 1.5m.

the Class 67 designated areas. The research found that stakeholders generally were supportive of development on existing buildings to reduce the need for new ground based masts. Currently Class 67 PD rights for apparatus on buildings in these areas are limited primarily to small antennas and emergency development. The research suggested further work was required in establishing what additional Class 67 PD rights may be appropriate.

38. We welcome views as to what additional PD rights might apply in any or all of the Class 67 designated areas for apparatus on buildings.

39. As indicated previously (paragraph 33), there are also PD rights for development ancillary to apparatus consisting of equipment housing; therefore, any increase in PD rights for equipment housing in Class 67 designated area would need to include PD for such ancillary development.

Q.17 What additional PD rights should apply to apparatus on buildings in Class 67 designated areas? Please explain your answer – including any different restrictions and/or conditions that might apply in different Class 67 designated areas.

Q.18(a) Are any changes required to current PD rights for apparatus on buildings and structures to further support deployment of ‘small cell’ technology in future? (Paragraph 20 of the consultation refers).

Q.18(b) If yes, what particular PD rights are needed? Please give reasons for your answer.

Miscellaneous

Supporting equipment for ground based masts

40. The research (Recommendation 5) concludes that further work is required to scope any additional PD rights that may be appropriate for supporting equipment for ground based masts (where there is no alteration to the mast itself). We welcome examples of the type of development involved (e.g. equipment housing, fences, security equipment or other) as well as the circumstances in which additional PD rights may be appropriate.

Q.19(a) Is there scope to extend PDR for supporting equipment (ground based masts)?

Q19(b) If yes, please describe the type of development involved and the circumstances in which additional PD rights should apply (for example, should these apply within the Class 67 designated areas)?

Underground equipment in Class 67 designated areas

41. We have taken the opportunity to clarify that Class 67 PD rights for underground equipment apply in Class 67 designated areas – Class 67(2)(d) refers.

Development ancillary to equipment housing

42. We have added to Class 67(1)(c) such that the Class 67 PD rights for development ancillary to the construction, installation and use of equipment housing, also include that ancillary to the alteration and replacement of equipment housing.

43. We have refined the restrictions in Class 67(2) to (18) so that they do not apply to development permitted under Class 67(1)(b) (the use of land in an emergency and for the positioning of moveable structures on that land) on the basis that development is temporary (maximum 18 months) and subject to conditions on restoring the land, building or structure involved.

Masts and Antennas

44. We also intend clarifying that the constraints on the height and width of masts when constructed, installed, altered or replaced do not include the antennas on the mast (Class 67(4)(b) refers).

Q.20 Do you have any further comments on the proposed miscellaneous changes to Class 67?

Q.21 Do you have any comments on any other aspects of the proposed Class 67 PD rights?

Strategic Environmental Assessment

45. We consider that the changes contained in the draft Amendment Order are likely to have only minimal impacts on the environment. We are also inviting views on the potential for additional Class 67 PD rights and will formalise our view on the potential for environmental effects in accordance with the Environmental Assessment (Scotland) Act 2005 once the Amendment Order has been fully defined, and in light of the consultation responses.

Q.22 Do you have any comments or information relevant to the SEA aspects of this issue? If so, please elaborate.

Partial Business and Regulatory Impact Assessment (Annex B)

46. Comments are invited on the Partial Business and Regulatory Impact Assessment set out in Annex B.

Q.23 Do you agree with the conclusions of the partial BRIA, in particular regarding the anticipated benefits of the proposed changes? Do you have any further comments or information to support the final BRIA?

Partial Equalities Impact Assessment Record (Annex C)

Q.24 In relation to the partial Equality Impact Assessment, please tell us about any potential impacts, either positive or negative, you feel the proposals in this consultation document may have on any particular groups of people.

Q.25 In relation to the partial Equality Impact Assessment, please tell us what potential there may be within these proposals to advance equality of opportunity between different groups and to foster good relations between different groups.

Children's Rights and Wellbeing Impact Assessment (CRWIA)

47. We have considered the issue of a CRWIA and having screened the proposals concluded such an assessment is not required in this instance.

DRAFT – 20 JULY 2016

 SCOTTISH STATUTORY INSTRUMENTS

2016 No.

TOWN AND COUNTRY PLANNING
**The Town and Country Planning (General Permitted
Development) (Scotland) Amendment (No. 2) Order 2016**

<i>Made</i> - - - -	2016
<i>Laid before the Scottish Parliament</i>	2016
<i>Coming into force</i> - -	2016

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⁽¹³⁾ and all other powers enabling them to do so.

Citation and commencement

This Order may be cited as the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2016 and comes into force on [].

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

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992⁽¹⁴⁾ is amended in accordance with articles 3 and 4.

After article 7 insert—

“Notification of an application for prior approval under class 67

7ZA.—(1) A planning authority must give notice in accordance with this article that an application has been submitted under sub-paragraph (24)(a) of class 67 (development by electronic communications code operators) of schedule 1.

(2) Notice under paragraph (1) is to be given where there are premises situated on neighbouring land to which the notice can be sent to the owner, lessee or occupier of such

⁽¹³⁾ 1997 c.8. Section 275 was relevantly amended by paragraph 32 of Schedule 3 of the Regulatory Reform (Scotland) Act 2014 (asp 3). 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).

⁽¹⁴⁾ S.I. 1992/223.

premises, by sending a notice addressed to “the Owner, Lessee or Occupier” to such premises.

- (3) The notice to be given under paragraph (2) must—
- (a) state the date on which the notice is sent;
 - (b) state the name of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent;
 - (c) include any reference number given to the application by the planning authority;
 - (d) include a description of the development to which the applicant relates;
 - (e) include the postal address of the land to which the development relates, or if the land in question has no postal address, a description of the location of the land;
 - (f) state how the application and other documents submitted in connection with it may be inspected;
 - (g) state that representations may be made to the planning authority with regard to the siting and appearance of the proposed development and include information as to how and by which date such representations may be made (being a date not earlier than 14 days after the date on which the notice is sent); and
 - (h) be accompanied by a plan showing the situation of the land to which the application relates in relation to neighbouring land.
- (4) In this article “neighbouring land” has the same meaning as in article 7A(4).

7ZB. When the planning authority is in receipt of an application submitted under sub-paragraph (24)(a) of class 67 of schedule 1 which conforms to all of the requirements of sub-paragraph (24)(b) they must publish the information described in article 7ZA(3)(a) to (g) by means of the internet on their website until such time as they have determined the application.

7ZC. Before determining an application submitted under sub-paragraph (24)(a) of class 67 of schedule 1 the planning authority—

- (a) must consult—
 - (i) Scottish Natural Heritage or Historic Environment Scotland, or both, in the circumstances specified in paragraphs 2(a) and 17 of schedule 5 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013⁽¹⁵⁾; and
 - (ii) where the proposed development would be located within 3 kilometres of the perimeter of an aerodrome, the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate;
- (b) must give not less than 14 days’ notice to any authority, person or body required to be consulted that the planning authority is to give consideration to the siting and appearance of the development described in the application; and
- (c) must allow the period of 14 days referred to in paragraph (b) to elapse.

7ZD. When determining an application submitted under sub-paragraph (24)(a) of class 67 of schedule 1 the planning authority must take into account any representations they receive before the expiry of the period referred to in article 7ZC(b).”.

In schedule 1 (classes of permitted development)—

in sub-paragraph (2)(f) of class 2B (alterations to dwellinghouses) of Part 1⁽¹⁶⁾, after “6H(1)” insert “, 67(1)”;

in sub-paragraph (2)(f) of class 4A (alterations to flats) of Part 1ZA⁽¹⁷⁾, after “6H(1)” insert “, 67(1)”;

⁽¹⁵⁾ S.S.I. 2013/155. Paragraph 17 was inserted by S.S.I. 2015/237.

⁽¹⁶⁾ Part 1 was substituted by S.S.I. 2011/357.

for Part 20 (development by telecommunications code system operators)(¹⁸) substitute—

“Development by electronic communications code operators

Class 67

(1) Development by or on behalf of an electronic communications code operator for the purpose of the operator’s electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of—

- (a) the construction, installation, alteration or replacement of any electronic communications apparatus;
- (b) the use of land in an emergency for a period not exceeding 18 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on land for the purposes of that use; or
- (c) development involving the construction, installation, alteration or replacement of structures, equipment or means of access which are ancillary to and reasonably required for the construction, installation, alteration, replacement or use of equipment housing.

Development not permitted: National Parks etc

(2) Development is not permitted by sub-paragraph (1)(a) or (c) if it would be located in a national scenic area, National Park, conservation area, historic garden or designed landscape, site of special scientific interest, historic battlefield or European Site, or on a Category A listed building or a scheduled monument or within the setting of such a building or monument, unless the development—

- (a) would consist of the installation, alteration or replacement of a small antenna and would result in there being no more than—
 - (i) two small antennas or, if greater, the number of small antennas present immediately before alteration or replacement of a small antenna—
 - (aa) on a building located in a national scenic area, National Park, conservation area, historic garden or designed landscape, or on a Category A listed building or a scheduled monument or on a building within the setting of such a building or monument; or
 - (bb) on a dwellinghouse located in a site of special scientific interest, a European Site or a historic battlefield;
 - (ii) 4 small antennas or, if greater, the number of small antennas present immediately before alteration or replacement of a small antenna on a building (other than a dwellinghouse) located in a site of special scientific interest, a European Site or a historic battlefield;
- (b) would consist of the installation, alteration or replacement of a small antenna on a dwellinghouse or within the curtilage of a dwellinghouse and—
 - (i) the highest part of the antenna would not be higher than the highest part of the roof of any dwellinghouse on which it would be installed;
 - (ii) it would be in a national scenic area, National Park, conservation area, historic garden or designed landscape, within the curtilage of a Category A listed building which is not a dwellinghouse or within the curtilage of a scheduled monument and would be on a part of the dwellinghouse, or within a part of the curtilage of a dwellinghouse, which does not front a road;

⁽¹⁷⁾ Part 1ZA was inserted by S.S.I. 2011/357.

⁽¹⁸⁾ Class 67 was amended by S.S.I. 2001/266, S.S.I. 2003/2155, S.S.I. 2011/357 and S.S.I. 2014/142.

- (iii) it would be on a part of a dwellinghouse which is a category A listed building or within the curtilage of such a dwellinghouse and that part of the dwellinghouse or the curtilage would not front a road;
- (c) would consist of the installation, alteration or replacement of telegraph poles or the installation of overhead lines on telegraph poles, or would be ancillary to such development;
- (d) would consist of the installation, alteration or replacement of apparatus under land; or
- (e) would be development permitted by virtue of sub-paragraph (4) or would be ancillary to such development.

Development not permitted: ground based apparatus

(3) Development is not permitted by sub-paragraph (1)(a) if it would consist of the construction or installation of a ground based mast and the height of—

- (a) the mast;
- (b) any apparatus attached to the mast (other than an antenna); and
- (c) any plinth or other structure constructed for the purpose of supporting the mast,

when measured together would exceed 25 metres.

(4)(a) Development is not permitted by sub-paragraph (1)(a) if it would consist of the alteration or replacement of an existing ground based mast—

- (i) not exceeding 20 metres in height where the height of the mast as altered or replaced would exceed a height calculated by adding together—
 - (aa) the height of the original mast;
 - (bb) 10% of the height of the original mast; and
 - (cc) 5 metres;
- (ii) exceeding 20 metres in height but not exceeding 50 metres in height where the height of the mast as altered or replaced would exceed the height of the original mast by more than 5 metres;
- (iii) exceeding 50 metres in height where the height of the mast as altered or replaced would exceed a figure calculated by adding 15% to the height of the original mast;
- (iv) where any increase in the width of the mast would exceed one metre or, if greater, one third of the width of the original mast;
- (v) where any replacement mast would be situated more than 6 metres from the location of the original mast; and
- (b) for the purposes of this sub-paragraph, the height or width of a ground based mast is to be calculated by adding together the height or width (as the case may be) of—
 - (i) the mast;
 - (ii) any apparatus attached to the mast (other than an antenna); and
 - (iii) any plinth or other structure constructed for the purpose of supporting the mast.

(5) Development is not permitted by sub-paragraph (1)(a) if it would consist of the construction or installation of ground based equipment housing and would exceed 3 metres in height or 90 cubic metres in volume.

(6) Development is not permitted by sub-paragraph (1)(a) if it would consist of the alteration or replacement of ground based equipment housing which would result in the equipment housing exceeding—

- (a) 3 metres in height or, if greater, the height of the equipment housing before the proposed alteration or replacement; or

- (b) 90 cubic metres in volume or, if greater, the volume of the equipment housing before the proposed alteration or replacement.

(7)(a) Development is not permitted by sub-paragraph (1)(a) if it would consist of—

- (i) the construction, installation, alteration or replacement of ground based apparatus where the ground or base area of the development would exceed 1.5 square metres unless it would be—

- (aa) a public call box;
- (bb) apparatus which does not project above the surface of the ground;
- (cc) equipment housing; or
- (dd) an antenna;

- (ii) the construction or installation of ground based apparatus and the apparatus would exceed a height of 15 metres above ground level;

- (iii) the alteration or replacement of ground based apparatus and would result in the apparatus exceeding the height of the apparatus before the proposed alteration or replacement or, if greater, a height of 15 metres above ground level; and

- (b) in this sub-paragraph “ground based apparatus” does not include ground based masts and in heads (ii) and (iii) does not include equipment housing.

Development not permitted: building based apparatus

(8) Development is not permitted by sub-paragraph (1)(a) if it would consist of the construction or installation on a building or other structure of equipment housing and the equipment housing would exceed 3 metres in height or 30 cubic metres in volume.

(9) Development is not permitted by sub-paragraph (1)(a) if it would consist of the alteration or replacement on a building or other structure of equipment housing and the equipment housing would exceed—

- (a) 3 metres in height or, if greater, the height of the equipment housing before the proposed alteration or replacement; or
- (b) 30 cubic metres in volume or, if greater, the volume of the equipment housing before the proposed alteration or replacement.

(10) Development is not permitted by sub-paragraph (1)(a) if it would consist of the installation on a building or other structure (other than a ground based mast) of an antenna system the whole of which would be located more than 15 metres above ground level and—

- (a) any individual antenna would exceed 6 metres in height or 1.3 metres when measured horizontally;
- (b) there would be more than 5 antenna systems (other than small antennas) on the building or structure; or
- (c) the antenna system and its supporting apparatus would exceed 6 metres in height.

(11) Development is not permitted by sub-paragraph (1)(a) if it would consist of the alteration or replacement of an antenna system on a building or other structure (other than a ground based mast) and the whole of the antenna system would be located more than 15 metres above ground level and—

- (a) any individual antenna would exceed 6 metres in height or 1.3 metres when measured horizontally or, if greater, the height or width of that individual antenna before alteration or replacement;
- (b) the antenna system and its supporting apparatus would exceed 6 metres in height or, if greater, the height of the antenna system and its supporting apparatus before alteration or replacement.

(12) Development is not permitted by sub-paragraph (1)(a) if it would consist of the installation on a building or other structure (other than a ground based mast) of an antenna system any part of which would be located fewer than 15 metres above ground level and—

- (a) any individual antenna would exceed 3 metres in height or 0.9 metres when measured horizontally;
- (b) there would be more than 4 antenna systems (other than small antennas) on the building or structure; or
- (c) the antenna system and its supporting apparatus would exceed 6 metres in height.

(13) Development is not permitted by sub-paragraph (1)(a) if it would consist of the alteration or replacement of an antenna system on a building or other structure (other than a ground based mast) and any part of the antenna system would be located fewer than 15 metres above ground level and—

- (a) any individual antenna would exceed 3 metres in height or 0.9 metres when measured horizontally or, if greater, the height or width of that individual antenna before alteration or replacement;
- (b) the antenna system and its supporting apparatus would exceed 6 metres in height or, if greater, the height of the system and its supporting apparatus before alteration or replacement.

(14) Development is not permitted by sub-paragraph (1)(a) if it would consist of the construction or installation on a building or other structure (other than a ground based mast) of apparatus (other than equipment housing or an antenna system) and—

- (a) the height of the apparatus (including the height of any equipment housing on which it would be mounted) would exceed 6 metres; or
- (b) the apparatus would exceed two metres measured horizontally.

(15) Development is not permitted by sub-paragraph (1)(a) if it would consist of the alteration or replacement on a building or other structure (other than a ground based mast) of apparatus (other than equipment housing or an antenna system) and—

- (a) the height of the apparatus (including the height of any equipment housing on which it would be mounted) would exceed 6 metres or, if greater, the height of the apparatus (including the height of any equipment housing on which it is mounted) before alteration or replacement;
- (b) when measured horizontally the apparatus would exceed two metres or, if greater, the horizontal measurement of the apparatus before the proposed alteration or replacement.

Development not permitted: small antennas on dwellinghouses

(16) Development is not permitted by sub-paragraph (1)(a) if it would consist of the construction, installation, alteration or replacement of any apparatus on a dwellinghouse or within the curtilage of a dwellinghouse and the apparatus—

- (a) would not be a small antenna; or
- (b) would be a small antenna and—
 - (i) the number of small antennas on that dwellinghouse or within the curtilage of the dwellinghouse would, when added together, exceed 4;
 - (ii) would be installed on a dwellinghouse and the highest part of it would be higher than the highest part of the roof on which it would be installed;

Development not permitted: small antennas on buildings which are not dwellinghouses

(17) Development is not permitted by sub-paragraph (1)(a) if it would consist of the installation, alteration or replacement of a small antenna on a building other than a dwellinghouse and it would result in the presence of more than 8 small antennas on the building.

Development not permitted: access tracks

(18) Development is not permitted by sub-paragraph (1)(c) if it would consist of the construction of an access track of more than 50 metres in length.

Conditions

(19)(a) Development under sub-paragraph (1)(a) consisting of the construction or installation of one or more antennas or of equipment housing, other than development notified under sub-paragraph (20) or development to be carried out in connection with the construction or installation of a ground based mast, is permitted subject to the condition that the developer must give notice in writing to the planning authority of the intention to carry out the development at least 28 days before development is to commence; and

- (b) the notice to be given under head (a) must include—
 - (i) a detailed description of the development;
 - (ii) a plan showing the location of the development; and
 - (iii) in the case of development consisting of the installation of one or more antennas, an ICNIRP declaration.

(20) Development under sub-paragraph (1)(a) or (c) which is carried out in an emergency or development under sub-paragraph (1)(b) is permitted subject to the condition that the developer must, as soon as possible after the emergency arises, give notice in writing to the planning authority which meets the requirements of sub-paragraph (19)(b).

(21) Development under sub-paragraph (1)(a) or (c) is permitted subject to the condition that if the development, or any part of it, is on a building it must, so far as is practicable, be sited so as to minimise its effect on the external appearance of the building.

(22) Development under sub-paragraph (1)(a) or (c) is permitted subject to the condition that it must be removed from the land, building or structure on which it is situated—

- (a) if it was carried out in an emergency, 18 months from the use commencing or, if earlier, when the need for that use ceases; or
- (b) in any other case, as soon as it is no longer needed for electronic communication purposes,

and such land, building or structure must be restored to its condition before the development took place, or to any other condition as may be agreed in writing with the planning authority.

(23) Development under sub-paragraph (1)(b) is permitted subject to the condition that when the period of 18 months referred to in sub-paragraph (1)(b) expires or, if earlier, when the need for the use ends, it must be removed from the land and the land must be restored to its condition before the development took place, or to any other condition as may be agreed in writing with the planning authority.

(24)(a) Development under sub-paragraph (1)(a) or (c) which would—

- (i) consist of the construction or installation of a ground based mast;
- (ii) be associated with the construction or installation of that mast and would—
 - (aa) consist of the construction or installation of apparatus; or
 - (bb) be development ancillary to the construction, installation or use of equipment housing,

is permitted subject, except in case of emergency, to the condition that before commencing the development the developer must obtain the prior approval of the planning authority in respect of the siting and appearance of the development and comply with the requirements of heads (b) to (e);

- (b) an application for approval must—
 - (i) contain—
 - (aa) a written description of the proposed development;

- (bb) the postal address of the relevant land or, if the relevant land has no postal address, a description of its location; and
 - (cc) the name and address of the developer and, where an agent is acting on behalf of the developer, the name and address of that agent; and
- (ii) be accompanied by—
- (aa) a plan sufficient to identify the relevant land and showing the situation of that land in relation to the locality and in particular in relation to neighbouring land;
 - (bb) such other plans and drawings as are necessary to describe the development to which it relates;
 - (cc) where the application relates to an antenna, an ICNIRP declaration; and
 - (dd) any fee required to be paid;
- (c) the development described in the application for approval may not commence unless and until the planning authority notifies the developer that prior approval is granted;
 - (d) the development must, unless the planning authority otherwise agree in writing, be carried out in accordance with the details approved by the planning authority; and
 - (e) the development is to be carried out within a period of 3 years beginning on the date on which the planning authority approves the details.

Interpretation

(1) In this Part—

“antenna system” means a set of antennas installed on a building or other structure and operated in accordance with the electronic communications code;

“apparatus” means electronic communications apparatus;

“electronic communications apparatus”, “electronic communications service” and “electronic communications code” have the same meaning as in the Communications Act 2003⁽¹⁹⁾;

“existing mast” means a mast with attached electronic communications apparatus;

“ground based mast” means a mast constructed on the ground either directly or on a plinth or other structure constructed for the purpose of supporting the mast;

“ICNIRP declaration” means a declaration by the developer that the antenna is designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionising Radiation Protection, as expressed in EU Council recommendation of 12th July 1999 (1999/519/EC, OJ L 1999, 30.7.1999) on the limitation of exposure of the general public to electromagnetic fields (0Hz to 300GHz)⁽²⁰⁾;

“land controlled by an operator” means land occupied by the operator in respect of which either under the Lands Clauses Acts he would be enabled to sell the land to the promoters of an undertaking or he holds a lease granted for a term of not fewer than 10 years;

“mast” means a structure erected by or on behalf of an electronic communications code operator for the support of one or more antennas including any mast, pole, tower or other similar structure;

“neighbouring land” means an area or plot of land which, or part of which, is conterminous with or within 20 metres of the boundary of the land on which development which is the subject of an application made under sub-paragraph (24)(a) is located;

⁽¹⁹⁾ 2003 c.21.

⁽²⁰⁾ OJ L 199, 12.7.1999, p.59.

“public call box” means any kiosk, booth, acoustic hood, shelter or similar structure which is erected or installed for the purpose of housing or supporting a public telephone and at which call box services are provided (or are to be provided) by an electronic communications code operator;

“small antenna” means an antenna which—

- (a) operates on a point to multi-point basis or area basis in connection with an electronic communications service;
- (b) may be described as a femtocell, picocell, metrocell or microcell antenna;
- (c) has, in two-dimensional measurement, a surface area of 5,000 square centimetres or less; and
- (d) has a volume of 50,000 cubic centimetres or less,
and any calculation for the purposes of heads (c) and (d) is to include any power supply unit or casing, but does not include any mounting, fixing, bracket or other support structure.

(2) For the purposes of sub-paragraph (1)(c), development which is ancillary to and reasonably required for the construction, installation, alteration, replacement or use of equipment housing includes security equipment, perimeter walls, fences, handrails, steps and ramps, other than on land within a site of special scientific interest.”.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2016

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”). The 1992 Order grants planning permission for classes of development described in schedule 1 of that Order.

Article 3 of this Order inserts new articles 7ZA to 7ZD into the 1992 Order. Those articles impose obligations on planning authorities with regard to applications for prior approval made by electronic communications code operators.

Article 4 of this Order inserts a new class 67 into schedule 1 of the 1992 Order, which grants permitted development rights for development by electronic communications code operators, subject to limitations and conditions.

Partial Business and Regulatory Impact Assessment

Title of Proposal

The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016

Purpose and intended effect

Objectives

The Scottish Government's aim is to have a proportionate, efficient and effective planning system that contributes to the overall objective of increasing sustainable economic growth. Part of this is ensuring that we have an appropriate level of planning control, in particular applications for planning permission are not required unnecessarily. The purpose of this consultation is to seek views on proposed amendments to Class 67 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO). The GPDO grants general planning permission across Scotland for certain developments for which it removes the need to apply for planning permission. Class 67 specifically provides permitted development rights for electronic communications code operators²¹. This permission is often referred to as permitted development rights (PD rights) and is subject to certain limitations and conditions.

The proposed amendments to the GPDO set out various extensions and amendments to Class 67.

Background

Class 67 has been subject to a number of changes since its introduction, the most recent being in 2014. The Scottish Government consider, however, that with the increasing importance of digital connectivity, the changing nature of technology and changes to PD rights in other parts of the UK, a further look at Class 67 PD rights, with a view to both current and, where possible, future needs, is necessary.

²¹ Those Ofcom have decided can access the Electronic Communications Code (Schedule 2 to the Telecommunications Act 1984) in the rollout and operation of electronic communications infrastructure - <http://stakeholders.ofcom.org.uk/telecoms/policy/electronic-comm-code/> .

To this end the Scottish Government commissioned 'Research on Permitted Development Rights and Planning Guidance for Electronic Communications Infrastructure'²². This research, conducted by Bidwells LLP and FarrPoint Ltd made recommendations for further specific changes to extend Class 67 PD rights and identified scope for potential additional changes, subject to further consideration.

Rationale for Government Intervention

World class digital connectivity is vital to Scotland's economy and is a priority for the Scottish Government. We have committed to using the powers available to Scottish Ministers, including through the planning system, to improve the case for sustainable investment in all forms of digital infrastructure in Scotland. By further relaxing planning controls the proposed changes can help to incentivise development, for example by improving certainty of outcome for developers and reducing timescales. PD rights can also help to free up resources within planning authorities.

Consultation

- **Within Government**

We have consulted with colleagues in Scottish Government Legal Directorate and those with policy interests in natural heritage and built heritage issues as well as with the Scottish Futures Trust and Transport Scotland.

- **Public Consultation**

The draft legislation will be subject to public consultation and this draft BRIA will form part of that consultation.

In addition, comments will also be sought directly from key stakeholders including within the Telecommunications industry, as well as with Scottish Natural Heritage, Historic Environment Scotland and the National Parks Authorities, COSLA and Heads of Planning Scotland.

- **Business**

A number of businesses and business organisations were invited to comment and to submit views to inform the research recommendations, as were planning authorities and statutory and other

²² "Research on Permitted Development Rights and Planning Guidance for Electronic Communications Infrastructure : <http://www.gov.scot/Topics/Built-Environment/planning/Roles/Scottish-Government/Guidance/ResPdrEci>

bodies with interests in the built heritage, natural heritage and the environment.

We will undertake further engagement with business to seek their views on the draft BRIA. Relevant comments will be incorporated into the final BRIA.

Options

Option 1 – Do nothing

Option 2 – Implement the proposed amendments to the GPDO.

- **Option 2a) We are also inviting views through the consultation paper on the scope to expand PDR in certain ‘designated’ areas, including for new ground based masts.**

Sectors and groups affected

PD rights mainly affect directly developers, landowners, community groups and planning authorities. Landowners and developers may include individual persons as well as business interests. Where PD rights encourage development, then the wider public can also experience any associated benefits and/or any negative impacts of the development itself.

Benefits

Option 1

There would be no additional benefits associated with option 1

Option 2

Extending PD rights will help to improve certainty of outcome for developers, and can help to reduce timescales for securing any necessary permissions or approvals. By removing more proposals from the planning application process, the proposals will also help free up resources for Planning Authorities. Where prior approval is required, these benefits may be offset in part by the need to submit an application for prior approval.

In addition, extending PD rights could encourage development and improve digital connectivity, with benefits for businesses and the general public.

The research has identified 405 planning applications for ‘telecommunications development’ in the period 2013-14 and 2014-15. Of these it is not clear how many would be removed from the planning application process as a direct result of the proposals.

In sampling 75 such applications in 2013-14 and 78 in 2014-15, the

researchers noted a split between types of development as follows: Alteration or replacement of existing ground based masts 15%; installation of new ground based masts 21%; installation, alteration or replacement of rooftop apparatus 8%; and equipment housing 56%. Extrapolating these figures suggests in the two year period being considered there were around 85 applications for ground based masts. The industry suggests that for the most part they make applications for masts around 15 metres height as that has been the norm established by PD rights in England and, prior to 2001, in Scotland. We expect that, if these numbers and trends continue, the vast majority of these masts would in future go through a prior approval process, if the draft legislation is implemented in the format consulted on, with benefits to industry arising from the increased certainty derived from PD rights. It is difficult to predict however, what the level of activity as regards new ground based masts will be once PD rights are in place.

Costs

Option 1

There would be no additional costs associated with option 1.

Option 2

Generally the proposals will extend existing PD rights or create new PD rights, and should therefore give rise to cost savings. It has been suggested that, certainly initially, savings may be partially offset by some indirect costs to business in ascertaining whether or not development is permitted development, and in complying with planning enforcement were any work inadvertently carried out which subsequently transpires not to benefit from PD rights. However, such costs are anticipated to be minimal and will naturally fall away as developers become familiar with the changes. We have also committed to providing guidance to accompany the new legislation, which should further reduce the likelihood of any such errors.

Where PD rights are extended to cover new ground based masts, it is proposed this will require a prior approval, for which there will be a fee. The consultation seeks views on an appropriate level of fee.

There may also be less tangible costs where development is allowed without an application for planning permission being considered which gives rise to impacts on visual and environmental amenity, with associated impacts on businesses which rely on such amenity. However, the proposals include a requirement for Prior approval of the siting and external appearance for new ground based masts, providing for planning authority control over the most potentially intrusive of developments allowed under PD rights.

Option 2a)

In seeking views on further extensions to PD rights in designated areas, we are also seeking views on any safeguards required to protect the environment, amenity and heritage.

Costs by sector

Developers – The proposals will extend existing PD rights or create new PD rights, and will therefore give rise to cost savings.

Public sector – planning authorities will not receive any fee income for development that takes place under PD rights, except where there is an associated fee for any prior approval. There may initially be some additional administrative burden arising initially due to unfamiliarity with the new procedures though this should decrease with time.

Scottish Firms Impact Test

Competition Assessment

The proposals are not expected to impact significantly more on some firms than others nor restrict new entrants to the market. The legislation does not place any additional burden, over and above what is already in place, on businesses. Indeed, it is expected that there will be a net benefit to business.

Test run of business forms

No new forms will be introduced as a result of this legislation therefore there is no requirement for a test run. The draft legislation does not require the applicant to submit a form, simply stating the information that has to be submitted. Prior approval already exists for certain PD rights so existing (non-statutory) forms could be adapted should there be a need to do so.

Legal Aid Impact Test

We do not believe that the proposed regulations would create any additional pressures on legal aid resources.

Enforcement, sanctions and monitoring

The Amendment Order would not create any additional need for enforcement or monitoring of planning control, as there is currently a requirement for planning authorities to monitor development within their area.

Post-implementation review

Reaction to how the changes have worked in practice and any particular

areas of concern or uncertainty are likely to become quickly apparent through representations made by planning authorities, community bodies and business.

Summary and recommendation

Benefits

- Improved certainty for businesses, allowing them to plan expansions and roll-out, with greater confidence.
- Reduced costs for business where applications for planning permission are no longer required or are replaced by applications for prior approval. Reduced timescales for small-scale works.
- Fewer planning applications to planning authorities allowing them to concentrate on other applications which may be more significant or controversial in terms of their scale and impact.

Costs

- Indirect administrative cost to planning authorities in handling queries in relation to PD rights. Anticipated to be minimal and likely to decrease over time.
- Potential increase in enforcement work due to misunderstanding of new PD rights. Anticipated to be minimal and decrease over time.

Declaration and publication

I have read the business and regulatory impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been/will be assessed with the support of businesses in Scotland.

KEVIN STEWART MSP

Minister for Local Government and Housing

PARTIAL EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.	Consultation on the relaxation of Planning Controls for Digital Communications Infrastructure	
Minister	Minister for Local Government and Housing	
Lead official	David Reekie	
Officials involved in the EQIA	name	team
Directorate: Division: Team	Directorate for Local Government & Communities: Planning & Architecture Division: Development Management Branch	
Is this new policy or revision to an existing policy?	Revision to existing	

Screening**Policy Aim**

This consultation invites views specifically on the further expansion of certain existing PD rights for Electronic Communications Code Operators (ECCOs), as well as on the introduction of new PD rights for the construction or installation of new ground based masts for ECCOs, subject to a prior approval procedure.

The consultation includes draft legislation setting out a number of proposed refinements and amendments to Class 67 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1997 (GPDO). Class 67 grants permitted development rights for electronic communications code operators to carry out works or operations associated with providing that electronic communications code operators network. The purpose is to remove the need for certain developments to be subject to unnecessary costs and delays while retaining appropriate control over such development.

This work contributes to the delivery of the following National Outcomes;
National Outcome 1 – We live in a Scotland that is the most attractive place for doing business in Europe.
National Outcome 10 - We live in well-designed sustainable places where we are able to access the amenities and services we need.

Who will it affect?

There will primarily be a reduction of some procedural and financial burdens on planning authorities and electronic communications code operators. There will be benefits for the wider community in improved access to digital technology such as broadband.

What might prevent the desired outcomes being achieved?

While the planning system can seek to contribute to delivering an improved telecommunications network by addressing unnecessary delay and uncertainty within the planning system, other factors which planning has no control over may impact on development.

Stage 1: Framing

Results of framing exercise

There will be potential benefits of the policy on each of the protected characteristics through improved access to electronic communications. There may however be some potential negative impact on older people and disabled people as they are less likely to have access to or have the skills for using the internet.

The proposals will affect all businesses seeking approval of a relevant planning application proportionately.

Extent/Level of EQIA required

Further information and views are being sought through public consultation. Subject to consultation responses, we believe that we have sufficient information to understand the needs of the target audience.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic²³	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	While it is considered that there will be potential benefits of the policy on each of the protected characteristics through improved access to electronic communications, there may however be some potential negative impact on older people as they are less likely to have access to or have the skills for using the internet.	Previous EqIA undertaken for National Planning Framework (NPF 3) identified that the Scottish Government Digital Strategy may impact negatively on older people	We do not have up to date evidence that there is in fact a negative impact – will seek views during public consultation.
DISABILITY	There may be some potential negative impact on disabled people as they are less likely to have access to or have the skills for using the internet.		No evidence available – will seek views during public consultation
SEX			No evidence available – will seek views during public consultation
PREGNANCY AND			No evidence available – will

MATERNITY			seek views during public consultation
GENDER REASSIGNMENT			No evidence available – will seek views during public consultation
SEXUAL ORIENTATION			No evidence available – will seek views during public consultation
RACE			No evidence available – will seek views during public consultation
RELIGION OR BELIEF			No evidence available – will seek views during public consultation

How to respond

Responding to this Consultation

We are inviting responses to this consultation by Friday 4th November 2016.

Please respond to this consultation online at <https://consult.scotland.gov.uk/planning-performance/planning-controls-for-digital-communications>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the close date.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) to:

By e-mail to: PlanningandCommunications2016@gov.scot

By post to: Alan Cameron
Scottish Government
Planning & Architecture Division
Area 2H- South
Victoria Quay
EDINBURGH
EH6 6QQ

Handling your response

If you respond using Citizen Space, you will be automatically directed to the Respondent Information Form at the start of the questionnaire. This will let us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** attached to the end of this document as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to cara.davidson@gov.scot

By post to: Cara Davidson
Scottish Government
Planning & Architecture Division
Area 2H- South
Victoria Quay
EDINBURGH
EH6 6QQ

Scottish Government consultation process

Consultation is an essential part the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>

Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>)

After a consultation is closed we publish all responses where we have been given permission to do so.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy

- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Annex E

CONSULTATION - RELAXATION OF PLANNING CONTROLS FOR DIGITAL COMMUNICATIONS INFRASTRUCTURE

RESPONDENT INFORMATION FORM & LIST OF QUESTIONS

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response.
Please indicate your publishing preference:

- Publish response with name
 Publish response only (anonymous)
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes No

LIST OF QUESTIONS

(Comment boxes are not intended to limit the amount of text)

Q1. Do you agree Class 67 PD rights should continue to apply only to Electronic Communications Code Operators?

Yes No

Please give reasons for your answer.

Comments

Q2. Do you agree with the proposed update to the general conditions for Class 67 PD rights?

Yes No

Please give reasons for your answer.

Comments

Q3.(a) In view of the controls in place outwith the planning system, should Category A listed buildings and scheduled monuments be removed from the general area based restrictions on Class 67 PD rights?

Yes No

Q3.(b) Are there any other Class 67 designated areas which can be removed from the general area based restrictions?

Please give reasons for your answer.

Comments

Q4. Do you have any other comments on the Class 67 designated areas in light of the proposals set out in this paper?

Comments

Q5. Do you agree with proposals to extend the time period for emergency works from 12 to 18 months?

Yes No

Please give reasons for your answer

Comments

Q6. Do you agree with the proposed extension of Class 67 PD rights for small antenna on buildings, including dwellinghouses?

Yes No

Please give reasons for your answer.

Comments

Q7. Do you agree with the proposed increase in height allowed for altered or replaced ground based masts under Class 67 PD rights?

Yes No

Please give reasons for your answer.

Comments

Q8. Do you agree with the proposed increase in the maximum distance allowed between the original and replacement ground based masts under Class 67 PD rights?

Yes No

Please give reasons for your answer.

Comments

Q9.(a) Should the current width restriction of one third the original or one metre (whichever is the larger) for alterations to ground based masts be increased?

Yes No

Q9(b) What should the new restriction be?

Comments

Q10. Do you agree with proposals to introduce PD rights for new ground based masts outside the Class 67 designated areas?

Yes No

a) do you agree the proposed height restriction of 25m?

Yes No

b) do you agree a prior approval should be required on siting and appearance?

Yes No

Please give reasons for your answers (including any alternative proposals).

Comments

Q11.(a) Is there scope to introduce Class 67 PD rights for new ground based masts within any, or all, of the Class 67 designated areas?

Yes No

b) if yes, within which of the Class 67 designations should such PD rights apply? Please give reasons for your answer.

Comments

c) Should any conditions (e.g. prior approval) and/or restrictions (e.g. on height) apply?

Yes No

If so, what should these be?

Comments

Q12.(a) Do you agree with the proposed mechanism for prior approval of new ground based masts?

Yes No

b) In particular, do you agree with the proposed publicity requirements, including neighbour notification and on-line publication?

Yes No

c)Do you agree with the proposed list of statutory consultees for the purposes of Class 67 prior approval?

Yes No

Q13. Please explain your answers and any suggestions for alternative requirements. Do you have any further comments on the proposed prior approval process for new ground based masts?

Comments

Q14. Do you agree with the proposed fee of £150 for prior approval for new ground based masts?

Yes No

Please give reasons for your answer.

Comments

Q15.(a) What should the Class 67 PD rights be for ground based equipment housing (and development ancillary to such equipment housing) within the various Class 67 designated areas?

Comments

Q15(b) Please explain your answer, including any proposed conditions and restrictions on such PD rights.

Comments

Q16. Do you agree with the proposed increase in Class 67 PD rights to allow up to five antenna systems on a building outside Class 67 designated areas?

Yes No

Please give reasons for your answer.

Comments

Q17.(a) What additional PD rights should apply to apparatus on buildings in Class 67 designated areas? Please explain your answer – including any

different restrictions and conditions that might apply in different Class 67 designated areas.

Comments

Q18(a) Are any changes required to current PD rights for apparatus on buildings and structures to further support deployment of 'small cell' technology in future? (Paragraph 20 of the consultation refers).

Yes No

Q18(b) If yes, what particular PD rights are needed? Please give reasons for your answer.

Comments

Q.19(a) Is there scope to extend PDR for supporting equipment (ground based masts)?

Yes No

Q.19(b) If yes, please describe the type of development involved and the circumstances in which additional PD rights should apply (for example, should these apply within the Class 67 designated areas)?

Comments

Q.20 Do you have any further comments on the proposed miscellaneous changes to Class 67?

Comments

Q.21 Do you have any further comments on any other aspects of the proposed Class 67 PD rights?

Comments

Q22. Do you have any comments or information relevant to the Strategic Environmental Assessment (SEA) aspects of this issue? If so, please elaborate.

Comments

Q23. Do you agree with the conclusions of the partial Business and Regulatory Impact Assessment (BRIA), in particular regarding the anticipated benefits of

the proposed changes? Do you have any further comments or information to support the final BRIA?

Comments

Q.24 In relation to the partial Equality Impact Assessment, please tell us about any potential impacts, either positive or negative, you feel the proposals in this consultation document may have on any particular groups of people.

Comments

Q.25 In relation to the partial Equality Impact Assessment, please tell us what potential there may be within these proposals to advance equality of opportunity between different groups and to foster good relations between different groups.

Comments

Glossary

Building	For the purposes of PD rights this includes any structure or erection or part of a building, but does not include plant and machinery or gates, walls and fences and other means of enclosure.
Category A Listed Buildings and their settings	Top level of buildings designated for special architectural or historic interest. Authorisation required for demolition or alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. No specific controls on setting. (S1 of Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997).
Class 67 designated areas	Those areas of land specified as having particular restrictions on Class 67 PD rights – listed in paragraph 14.
Class 67 PD rights	The planning permission granted under Class 67 of part 20 of Schedule 1 to the GPDO, for electronic communications code operators to roll out their infrastructure.
Conservation Areas	Areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance (S61 of Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997).
Curtilage	The area of ground and associated buildings immediately surrounding, for example, a house or dwelling. With a house in a street, this would usually be the garden. With larger houses with estates, it would not include surrounding fields for example or buildings with separate purposes.

Electronic Communications Code	This is a set of obligations and rights which apply under the Telecommunications Act 1984
Electronic Communications Code Operator (ECCO)	Parties, approved by Ofcom, eligible to use the Electronic Communications Code in relation to the rollout of electronic communications infrastructure.
Emergency	<p>There is no statutory definition for Class 67 and the term needs to be interpreted in the circumstances of each case. Our guidance does refer to a definition in the Electronic Communications Code "emergency works" ... means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause-</p> <p>(a) danger to persons or property, (b) the interruption of any service provided by the operator's network or, as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or (c) substantial loss to the operator or, as the case may be, the undertaker, and such other works as in all the circumstances it is reasonable to execute with those works".</p>
European Sites	Special area of conservation; certain sites designated under Directive 92/43/EEC; sites designated under Directive 79/409/EEC.
GPDO	The Town and Country Planning (General Permitted Development) (Scotland) Order 1992
Historic Battlefields	An inventory of such battlefields as appear to Ministers to be of national importance ("battlefield" - an area of land over which a battle was fought or on which any significant activities

	relating to a battle occurred (whether or not the battle was fought over that area). (S32B of Ancient Monuments and Archaeological Areas Act 1979)
Historic Gardens and Designed Landscapes	Gardens and designed landscapes as appear to Ministers to be of national importance and included on the inventory of such sites. They have to be grounds which have been laid out for artistic effect and, in appropriate cases, include references to any buildings, land, or water on, adjacent, or contiguous to such grounds. No specific consent regime is attached. (S32A of Ancient Monuments and Archaeological Areas Act 1979).
ICNIRP declaration	A declaration by the developer that the antenna is designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionising Radiation Protection, as expressed in EU Council recommendation of 12th July 1999 (1999/519/EC, OJ L 1999, 30.7.1999) on the limitation of exposure of the general public to electromagnetic fields (0Hz to 300GHz).
Land	In planning legislation this includes land covered with water and any building (as defined above).
National Parks	Aims of national parks: <ul style="list-style-type: none"> - to conserve and enhance the natural and cultural heritage of the area, - to promote sustainable use of the natural resources of the area, - to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public, and - to promote sustainable economic and social development of the area's communities.

National Scenic Areas

Areas designated on the basis of outstanding scenic value in a national context and desirability of safeguarding or enhancing its character or appearance.

Scheduled Monuments and their settings

Consent is required for, amongst other things works resulting in destruction, demolition, damage to monument, alteration of or addition to a monument. Nothing about setting. (S1 of Ancient Monuments and Archaeological Areas Act 1979).

Small antenna

(a) operates on a point to multi-point or area basis in connection with an electronic communications service;
(b) may be variously referred to as a femtocell, picocell, metrocell or microcell antenna;

(c) does not, in any two dimensional measurement, have a surface area exceeding 5,000 square centimetres;
and

(d) does not have a volume exceeding 50,000 cubic centimetres,

and any calculation for the purposes of heads (c) and (d) is to include any power supply unit or casing, but excludes any mounting, fixing, bracket or other support structure.



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St Andrew's House
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