

# Partial/Final/Review Business and Regulatory Impact Assessment

## **Title of Proposal**

The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2014

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2014

## **Purpose and intended effect**

### **Objective**

- Amendment Order; To introduce a requirement for prior notification and approval for agricultural and forestry tracks across Scotland, striking a balance between the needs of rural businesses and protecting Scotland's environment, amenity and heritage.
- Amendment Regulations; To amend regulations so that no fee will be payable for prior notification and approval in relation to agricultural and forestry private ways, commonly referred to as tracks or 'hill tracks'.

### **Background**

Currently, agricultural and forestry tracks private ways can be constructed and upgraded under permitted development rights, meaning that provided they meet certain criteria a planning application is not required to be submitted and approved. Private ways constructed for other purposes (eg sporting and recreational) do not benefit from such permitted development rights.

Introducing prior notification and approval for agricultural and forestry private ways will maintain a degree of certainty for developers by retaining the existing permitted development rights, whilst enabling planning authorities to require changes to the design, siting and appearance of such developments in order to minimise their impact on the environment and local amenity.

The fee for prior notification and approval of agricultural and forestry private ways will be set at zero.

### **Rationale for Government intervention**

Having examined the evidence and arguments for and against restricting permitted development rights for private ways, it is considered that the present system does not provide adequate protection against inappropriate development.

The introduction of prior notification and approval for agricultural and forestry tracks across Scotland will therefore assist the achievement of the following National Performance Framework outcomes:

- **Environment:** by introducing proper controls and effective enforcement measures to avoid inappropriate tracks causing permanent or long term damage to the environment.
- **Environmental Impact:** introducing a requirement for prior notification and approval for agricultural and forestry private ways will allow planning authorities to require changes to the design, siting and appearance of tracks in order to minimise their impact on the environment.
- **Sustainable places:** Private ways which are poorly sited, designed or constructed can impact on visual amenity. By their very nature such developments tend to be on high open ground. They may be visible for many miles and can introduce a man-made feature into wild landscapes. New controls will provide an opportunity for the planning authority to require changes to the siting, design, etc. of a private way to minimise the impact on amenity and any associated effects on tourism and associated rural businesses.

## Consultation

### Within Government

Proposals have been developed with input from the Forestry Commission, Scottish Natural Heritage, National Park Authorities, COSLA and Heads of Planning.

### Public Consultation

The Scottish Government's 2011 Consultation on Non-Domestic Permitted Development<sup>1</sup> invited views on proposals to review permitted development, including for hill tracks. Analysis of the 2011 consultation suggested support for amending permitted development in relation to such tracks.

Following that consultation, the Scottish Government consulted in 2012<sup>2</sup>, including on detailed proposals to remove Permitted Development Rights for new agricultural and forestry private ways. Responses to that consultation were split between those in favour of the proposal and those supporting the status quo.

In 2013-2014 the Minister for Local Government and Planning and Scottish

<sup>1</sup> Consultation on Non-Domestic Elements of the Town And Country Planning (General Permitted Development) (Scotland) Order 1992.

<sup>2</sup> <http://www.scotland.gov.uk/Publications/2012/03/8498>

Government officials met with and received views from stakeholder representatives including Scottish Environment LINK, Ramblers Scotland, Mountaineering Society of Scotland, Scottish Land and Estates, National Farmers Union, Confor, Scottish Natural Heritage, National Park Authorities, COSLA and Heads of Planning.

### **Business**

The Scottish Government's 2012 consultation paper received 178 individual responses, 29% of which came from Business and Trade organisations including 36 individual responses from rural businesses specifically concerned with forestry, agriculture and estate management etc.

Following that consultation, further evidence and information were provided to the Scottish Government by both business interests and environmental groups. Confor, Scottish Land and Estates, and NFU Scotland together with wider stakeholders attended a roundtable meeting convened by the Minister for Local Government and Planning in August 2014.

### **Options**

Option 1 – Do nothing

Option 2(a) – Introduce prior notification and approval for agricultural and forestry private ways; retain existing fees structure.

Option 2(b) – As above but with additional legislation to amend the fees structure such that the associated fee for the prior notification and approval of agricultural and forestry private ways is initially set at zero.

Option 3 – Remove Permitted Development Rights for agricultural and forestry tracks.

### **Sectors and groups affected**

The prior notification and approval procedure will apply to the formation or alteration of agricultural and forestry private ways and will introduce new administrative requirements falling to agricultural and forestry landowners / developers before permitted development can take place.

Some additional administrative requirements will also fall to relevant planning authorities in administering the notification and approvals process.

There is very little information on the number of new tracks constructed in Scotland

each year, although it is understood from published information by environmental groups that there is concern regarding the number of tracks being created or extended under PDR<sup>3</sup>. Extension and enlargement of existing tracks, for example converting a footpath into a fully surfaced road can also raise environmental and visual amenity issues.

Forestry tracks are already covered by EIA(Forestry) regulations and all projects over set thresholds are assessed by Forestry Commission Scotland. This ranges from 200-500 determinations per year.

The forestry sector also constructs a large number of small scale access tracks associated with the management of tree felling and replanting activities. These tracks are generally below the scale threshold for EIA(Forestry) regulations and have not been subject to screening under EIA. The number of these tracks constructed is estimated at 3-5,000 projects per year, however it is not clear within this how many such projects meet the criteria for Permitted Development and therefore how many would be caught by the prior notification and approval procedure.

## **Benefits**

### Option 1 – Do nothing

No new administrative costs falling to agricultural and forestry landowners / developers. No additional administrative requirements falling to Planning Authorities.

### Option 2(a) – Introduce prior notification and approval for agricultural and forestry private ways; retain existing fees structure.

This option strikes a balance between 'do nothing' and full removal of permitted development rights.

As prior notification and approval procedures are already in place for certain forestry and agricultural development, it is anticipated that landowners and developers will be familiar with the process.

### Option 2(b) – As above but with additional legislation to amend the fees structure such that the associated fee for the prior notification and approval of agricultural and forestry private ways is initially set at zero.

Benefits are as per option 2(a) above, however in addition no fee will be payable for prior notification and approval procedures in respect of agricultural and forestry private ways, therefore no additional direct upfront financial costs will fall to developers.

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<sup>3</sup> "Track Changes: Tracks constructed under Permitted Development Rights: the need for planning control. A report for Scottish Environment Link by Dr Calum Brown, October 2013. <http://www.scotlink.org/wp/files/documents/TrackChanges-LINK-HillTracksReport1.pdf>

### Option 3 – Remove Permitted Development Rights for agricultural and forestry tracks

This option was proposed in the Scottish Government's 2012 consultation paper and would require a full planning application to be submitted in future for agricultural and forestry tracks. This option attracted support from environmental groups and some local authorities who welcomed the increased controls this would bring.

## **Costs**

### Option 1 – Do nothing

No new administrative costs falling to agricultural and forestry landowners / developers. No additional administrative requirements falling to Planning Authorities.

### Option 2(a) – Introduce prior notification and approval for agricultural and forestry private ways; retain existing fees structure

The costs of prior notification fall into two parts; the application fee, and the preparation costs. Currently the fee for existing prior notification and approval required in connection with certain agricultural and forestry permitted development is set at £78. Without changes to the Fees Regulations that fee would also apply in future to any new prior notification and approvals introduced in connection with agricultural and forestry operations.

There will also be indirect administrative costs falling to the developer, for example in the preparation of the information required to form part of the notification and associated administrative costs falling to the planning authority. However, we are of the view that some of the work required will in many cases already be undertaken to meet other existing legislative obligations and best practice<sup>4</sup>.

There will however be some increased cost to the forestry sector where prior notification is required for the first time. Forestry Commission Scotland considers that the mapping and specifying of projects can cost around £200 on average, however this impact can be reduced by linking the prior notification with existing approvals processes for forestry projects, such as forestry plans and felling licence. This will offer developers the option to submit a single application and notification rather than always having to contact two authorities to be able to proceed with a project involving a forestry track.

Finally, there will be additional administrative requirements falling to planning authorities. The number of notifications will vary across local authorities, and is likely to be concentrated around Dumfries and Galloway, Scottish Borders and

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<sup>4</sup> Constructed Tracks in the Scottish Uplands; Scottish Natural Heritage (revised 2013)  
<http://www.snh.org.uk/pdfs/publications/heritagemanagement/constructedtracks.pdf>

Argyll and Bute, where around half of forestry projects currently take place.

Option 2(b) – as above but with additional legislation to amend the fees structure such that the associated fee for the prior notification and approval of agricultural and forestry private ways is initially set at zero.

Indirect and administrative costs as above, however this option would see the fee for prior notification and approval process for agricultural and forestry private ways initially set at zero. Consequently there are no direct up front financial costs falling to the developer.

Option 3 – Remove Permitted Development Rights for agricultural and forestry private ways

The full costs of preparing and submitting a planning application would apply, as would the associated advertisement and publicity costs. Currently the fee required in connection with a planning application for agricultural and forestry development is £202.

In addition, there would be additional uncertainty for developers arising from the removal of permitted development rights, meaning that planning applications would be required to consider the principle of the development as well as the siting, design and construction of the hill track.

### **Scottish Firms Impact Test**

Proposals have been developed with input from the relevant developer representative bodies, including Scottish Land and Estates, NFU Scotland and Confor. We also met with and discussed proposals face to face with Forestry industry representatives at a Forestry and Timber Industry Regional Event in Stirling on 14th October 2014. Further telephone interviews were offered, however only one such interview was taken up by the UK Forestry Products Association.

The forestry sector carries out the vast majority of small scale track construction across Scotland, mainly associated with the management of tree felling and replanting activities. Concerns expressed by forestry industry representatives included concerns that proposals will significantly increase the number of contacts required with local government. It was considered important by some that the requirement for prior notification is integrated with existing forestry approvals processes administered by Forestry Commission Scotland in order to help minimise the impact on the industry.

There was a consensus within industry that the introduction of prior notification and approval is however preferable to introducing requirement for full planning permission.

In relation to agricultural tracks, NFU Scotland has welcomed the decision not to require a planning application and to adopt a Prior Notification process for hill tracks,

commenting “Prior Notification already applies to agricultural buildings, and appears to function well.”

### **Competition Assessment**

Using the Competition & Markets Authority Competition Filter questions we have concluded that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

### **Test run of business forms**

Prior notification and approval procedures are already in place for certain types of agricultural and forestry development. No new forms will be introduced.

### **Legal Aid Impact Test**

The 2012 consultation confirmed that these changes are not expected to impact on the Legal Aid Fund.

### **Enforcement, sanctions and monitoring**

The regulations 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.

### **Implementation and delivery plan**

It is proposed that legislation is introduced before parliament with an entry into force date by the end of the 2014 calendar year. We will develop guidance to accompany the regulations in discussion with stakeholders.

### **Post-implementation review**

We will review the implementation in practice of the regulations after 12 months.

### **Summary and recommendation**

Having taken into account views from stakeholders including we recommend the introduction of a requirement for prior notification and approval as the option which strikes the right balance between meeting the needs of rural businesses whilst protecting Scotland's environment, amenity and heritage.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1 Do Nothing	No new administrative costs falling to developers. No additional administrative procedures falling to planning authorities.	Inadequate protection for the environment against inappropriate development.
<u>2(a) prior notification &amp; approval for agricultural and forestry private ways; retain existing fees structure.</u>	The introduction of proper controls and effective enforcement measures to avoid inappropriate tracks damaging the environment.	Preparation costs falling to developers. In addition a fee of £78 would be charged to the developer for the prior notification and approval process. Additional administrative requirements will also fall to planning authorities.
<u>2(b) as above but the associated fee for the prior notification &amp; approval of agricultural and forestry private ways set at zero.</u>	As above.	As above, however no fee will be payable by the developer.
<u>3 Option 3 – Remove Permitted Development Rights for agricultural and forestry tracks</u>	The introduction of full controls and effective enforcement measures to avoid inappropriate tracks damaging the environment.	<p>The full costs of preparing and submitting a planning application would apply, as would the associated advertisement and publicity costs. Currently the fee required in connection with a planning application for agricultural and forestry development is £202.</p> <p>The costs of advertisements and publicity would vary depending on the individual application.</p> <p>Additional uncertainty for</p>

		developers.
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**Declaration and publication**

*I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.*

**Signed:****Date:****Minister's name****Minister's title****Scottish Government Contact point:**

