

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT (No. 2) ORDER 2014

SSI 2014 No. 300

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS AND DEEMED APPLICATIONS) (SCOTLAND) AMENDMENT (No. 2) REGULATIONS 2014

SSI 2014 No. 301

1. The above Order is made in exercise of the powers conferred on the Scottish Ministers by sections, 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so. The associated Regulations are made in exercise of the powers conferred on Scottish Ministers by section 252 of that Act and all other powers enabling them to do so. Both the Order and the Regulations are subject to negative resolution procedure.

Introduction

2. The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO)

3. Article 3 makes changes to classes 18 and 22 contained in Schedule 1 to the principal Order. Class 18 covers permitted development rights for certain development on agricultural land including the formation and alteration of private ways. Class 22 covers similar permitted development rights in relation to forestry operations.

4. Article 3(2) introduces a new paragraph (4A) into Class 18. The effect of the new paragraph is to introduce a requirement for a developer, before starting work in respect of the formation or alteration of a private way (commonly referred to as a track or hilltrack), to make a prior notification application to the planning authority.

5. The developer is to apply to the planning authority for a determination as to whether prior approval is required from the authority in respect of the design, manner of construction or route of the private way. The developer must also submit certain information to the relevant planning authority. The planning authority must then consider whether its approval is required in respect of these matters. The private way must then be formed or altered, as the case may be, in accordance with the details submitted or, where approval required, the approved details.

6. Article 3(3) makes similar provisions in respect of private ways formed or altered under the provisions of Class 22.

7. The Regulations amend paragraph 13 of the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) 2004.

8. The amendment establishes that the fee payable in respect of applications for prior approval (currently £78) in relation to development under schedule 1 of the GPDO does not apply in respect of applications newly introduced by the changes made to the GPDO by the Order; i.e. there is no fee for an application to determine if prior approval is required for formation or alteration of a private way for agricultural or forestry purposes.

Policy Context

Permitted development and the GPDO

9. The Scottish Government believes that a well-functioning planning system is essential to achieving its central purpose of increasing sustainable economic growth. An effective, efficient and proportionate planning system which is focused on outcomes will deliver benefits to the wider economy.

10. Considering minor uncontroversial types of development is not an effective or efficient way of regulating development. Requiring planning applications, where the planning system can add little, or no, value imposes unnecessary costs and causes delays to development. However, if permitted development rights are set too widely then there is a risk of inappropriate development taking place.

11. The Town and Country (General Permitted Development) (Scotland) Order 1992, as amended is the primary means by which permitted development rights (PDR), an exemption from the need for a planning application, is conferred. The order grants planning permission for a variety of works and uses provided that the development complies with the limitations and conditions set out.

12. The Scottish Government considers that PDR should :
- maintain effective control of developments which, because of environmental consequences or relationship with other uses, need to be subject to specific planning control, and
 - be wide enough to cover, in an appropriate way, those developments which in general do not damage amenity and therefore do not require an application for planning permission

The situation in regard to agricultural and forestry private ways

13. Scotland has more areas of wild land and scenic beauty, but also less control over construction of tracks on that land, than other parts of UK. Farm and forestry businesses would not be disadvantaged compared to their English and Welsh counterparts where prior notification/approval is already required for hill track development.

14. Concern has been expressed that the number and scale of tracks has increased in recent years. The Scottish Government consulted in 2012 on proposed amendments to the GPDO, including the removal of permitted development rights for private ways. A decision was taken to retain the status quo at that time and to review the situation thereafter.

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

16. Introducing a requirement for prior notification and approval for agricultural and forestry private ways would allow planning authorities to be able to require changes to the design and, siting of tracks in order to minimise their impact. Introducing the requirement across the whole country, rather than selected areas will avoid confusion over whether or not permission is required.

17. Prior notification and approval procedures are already in place for buildings and other structures under both class 18 (agriculture) and class 22 (forestry).

18. The aim of the changes is therefore to ensure that PDR granted by the GPDO remains proportionate in that it balances the need to control the impact of development on the environment and amenity with the need to consider the costs and demands imposed on landowners and developers.

Consultation

19. The Scottish Government's 2011 Consultation on Non-Domestic Permitted Development¹ 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.

20. The Scottish Government consulted again in 2012², including on detailed proposals to remove Permitted Development Rights for new hill tracks. Responses to that consultation were split between those in favour of the proposal and those supporting the status quo.

21. In 2013-2014 we 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.

Financial Implications

22. A Business and Regulatory Impact Assessment is attached. Having considered various options, it was concluded that the proposed approach strikes the right balance between meeting the needs of rural businesses whilst protecting Scotland's environment, amenity and heritage.

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

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

Equalities Impact Assessment

23. An Equalities Impact Assessment is attached. The changes to permitted development rights are not expected to have a negative impact on any groups or persons.

Strategic Environmental Assessment

24. The amendments to the GPDO were considered under the Environmental Assessment (Scotland) Act 2005 in order to identify if a Strategic Environmental Assessment (SEA) was required. It was determined that the amendments to the GPDO would not have significant environmental effects and an SEA was not required.

Scottish Government