

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT ORDER 2017

SSI 2017/189

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

Policy Objectives

2. 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 a greater significance in Scotland, helping to address some of the disadvantages of physical distance between places and supporting strong, connected communities.

3. Whilst telecommunications is a reserved matter for the UK Government, planning controls on such infrastructure are a devolved matter.

4. The Scottish Government wants to ensure Scotland has planning controls that strike an appropriate balance between facilitating the rollout of such infrastructure and ensuring appropriate controls on development to protect amenity and the environment. With the increasing use and importance of such technology, it is important to review planning controls in this area.

5. Electronic communications code operators (i.e. parties licensed by Ofcom to use the Electronic Communications Code in the rollout of their communications networks) benefit from permitted development (PD) rights for elements of their infrastructure. PD rights grant planning permission in legislation, removing the need to apply for planning permission, provided the developer complies with the conditions and restrictions in the PD rights.

6. The SSI replaces the current class 67 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO). It also adds some new articles to the GPDO covering a new procedure for prior approval which applies to the PD rights for new ground based masts.

7. The main changes to the PD rights incorporated in the legislation are summarised in the annex to this note.

8. The amendment made by article 6(c) implements an undertaking given to the Delegated Powers and Law Reform Committee in relation to the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126).

Consultation

9. Scottish Government commissioned research on 2015 from FarrPoint Ltd and Bidwell LLP to consider extensions to these PD rights. The Scottish Government then consulted publicly (10 August 2016 to 4 November 2016) on specific legislative proposals in light of the research and sought views on further extensions to PD rights, particularly in designated areas¹. PD rights are more restricted in the latter and the research indicated more PD rights in such areas could be possible without making specific recommendations.

10. During the consultation exercise, officials spoke to Historic Environment Scotland and Scottish Natural Heritage about the proposals, and to communications industry representatives, including on issues relevant to the Business and Regulatory Impact Assessment (BRIA).

11. There were 38 responses to the consultation from the communications industry, planning authorities, heritage bodies, individuals, agencies and government (such as MOD and SNH and HES), and some consultants and wider business interests.

12. The communications industry and business and individuals generally were in favour of further PD rights to promote the infrastructure and so services and the benefits they bring. Other groups, while recognising the need for such infrastructure and services, had concerns about possible impacts on the historic, built and natural environments or on their activities (e.g. MOD regarding new masts in safeguarded areas around certain of their facilities) if planning controls were relaxed. There was no consistency as regards what might be acceptable by way of extending PD rights in designated areas.

13. We have revised our proposals in light of the responses. An analysis of the consultation response, including a list of the respondents (other than those who requested anonymity) has been published and is available via the following Link:

<https://beta.gov.scot/publications/consultation-relaxation-planning-controls-digital-communications-infrastructure-analysis-responses/>

Impact Assessments

14. We have done an Equality Impact Assessment (EqIA) for this legislation. We also screened it as regards a Children's Rights and Welfare Impact Assessment, but concluded no such assessment was necessary. The proposals were screened for strategic environmental assessment, but the conclusion was that the changes were not likely to have significant environmental effects, and no assessment was required.

15. The EqIA concluded there were no significant or differential impacts on particular equality groups. The assessment is attached to this note.

¹ Currently: conservation areas, historic battlefields, category A listed buildings and scheduled monuments and the settings of such buildings and monuments, National Parks, national scenic areas, sites of special scientific interest and European Sites – see items (e) and (l) of the annex to this note regarding changes to this list.

Financial Effects

16. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of the changes is considered to be positive for business, removing the need to apply for planning permission for certain developments and, where prior approval is required for a new ground based mast, reducing the costs of processing applications (e.g. with a lower fee than for an application for planning permission).

Scottish Government

Local Government and Communities Directorate

31 May 2017

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Summary of changes to PD rights.

- a) The introduction of PD rights for new ground based communication masts up to 25m in height outside designated areas, subject to conditions regarding prior approval (see paragraphs 2-6 below) by the relevant planning authority.
- b) The introduction of new PD rights for ‘small-cell systems’; this would relate to small antennas and ancillary apparatus on buildings and other structures (see paragraphs 7-8 below).
- c) Allow one additional ‘antenna system’ on buildings outside designated areas (currently under PD rights buildings can have up to 4 antenna systems when located more than 15m above ground level – this will be extended to 5).
- d) Extend PD rights for apparatus on buildings outside designated areas, including fewer specific controls on certain antennas and some increases in height limits (e.g. currently the maximum by which apparatus can exceed the height of a building is 6m but in future this will be 8m for buildings above 15m in height).
- e) Remove Category A Listed Buildings and Scheduled Monuments, which have their own consent regimes, from the list of designated areas in which these PD rights are more restricted, whilst retaining their settings as designated areas (as the consent regimes for these buildings and monuments do not extend to their settings).
- f) Allow under PD rights existing ground based masts under 20m in height to increase by a maximum of 7m (currently the maximum is 5m), and allow replacement ground based masts to be up to 6m from the original mast (currently the maximum is 4m) – this would apply in all areas. Taller masts allow more coverage and sharing of infrastructure. With replacement masts an increased distance makes it easier to erect a replacement while the original mast is still operating.
- g) Increased PD rights for ‘small antennas’ on dwellinghouses and other buildings in all areas, except conservation areas (see paragraphs 7-8 below).
- h) Increased PD rights for the alteration and replacement of apparatus with no increase in size or numbers or significant changes in location in all areas (i.e. where changes have lesser or no greater impact than existing apparatus).

i) Extend the time period for emergency PD rights (applies in all areas) from 12 months to 18 months. This to allow flexibility in maintaining services, for example, where a new site may have to be identified and developed for a base station.

j) Amend and clarify the general conditions on these PD rights on minimizing the impact of PD and removing equipment when it is redundant or after an emergency, and restoring the land or buildings to their original condition or a condition agreed with the planning authority.

k) Additional PD rights for a 'link antenna', i.e. a satellite antenna and supporting structure up to 4m in height alongside an existing ground based mast, provided the latter has an established compound around it. This is primarily for remote sites to connect into the wider communications network (sometimes called 'backhaul').

l) Adding World Heritage Sites to the list of designated areas in which additional restrictions apply to these PD rights. Much of the area covered by a WHS designation will be subject to other designations in which such restrictions already apply. This change will cover some areas of WHS which are not so underpinned.

1. Most of these changes are extending existing PD rights to allow more flexibility. Two of the more significant changes relate to PD rights for new masts and new PD rights for 'small cell systems'.

PD Rights for New Ground Based Masts and Prior Approval

2. Currently a new ground based mast would require an application for planning permission. While such applications have a high approval rating, the mobile network operators have indicated that to rollout a network they need more certainty around decision making, particularly around timescales. Having PD rights with prior approval requirements means that such new masts (in this case up to 25m in height) are acceptable in principle, but the planning authority can consider the siting and appearance of a proposal and, if necessary, refuse to grant approval.

3. Unlike other prior approval regimes in the Scottish PD rights, this one has requirements for neighbour notification, placing information on planning authority web sites and consultation with Scottish Natural Heritage and Historic Environment Scotland. Developers must also notify the site owners and, where the site is within a specified safeguarded area around, for example, an airport, radar station, or certain MOD sites, they must notify the relevant authority for that safeguarded area (e.g. MOD or the airport operator). The notice informs these parties that an application has been made, to which planning authority and how to make representations.

4. Another difference is that the planning authority has 56 days from when an application is made within which to indicate if its prior approval is required and, if it is, to issue a decision on whether it is granted or not. Where no such indication is given or, having

indicated prior approval is required, where no decision is made within that time period, the developer can proceed on the basis of the submitted application details.

5. A similar approach is already in place in England and Wales. The mobile operators indicate this is needed to give greater certainty as to when a decision will be forthcoming to assist network planning and rollout.

6. These PD rights for new ground based masts will not apply in designated areas.

Small Antennas and Small Cell Systems

7. With the large increases in the number of users of, and in the numbers and sizes of data transactions being carried out on, mobile services, capacity as well as coverage is an issue. The industry sees more use of small antennas as a way to ensure capacity levels in an area can meet demand – they may also help to some extent with coverage issues. As well as shops and offices, they are also looking to put them on structures like lampposts. With the latter, some of the ancillary apparatus (antenna links to the wider communications system and supporting electronics) will also need PD rights, as they cannot be located inside the structure (as they can with shops and offices).

8. ‘Small cell systems’ therefore include the ‘small antenna’ and any ancillary apparatus. PD rights currently exist for small antennas on buildings. The changes in this SSI mean that four (rather than the current two) small antennas would be PD on dwellinghouses and buildings within their garden area, while on other buildings and structures small cell systems will be PD. The exception to this is conservation areas – where we believe further work would be needed on the potential impact before PD rights for such apparatus could be increased.

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Local Government and Communities Directorate

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