

2021 No. 98

EXITING THE EUROPEAN UNION

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Order 2021

Made - - - - - *22nd February 2021*

Laid before the Scottish Parliament *24th February 2021*

Coming into force - - - *25th March 2021*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2)(b) of the Town and Country Planning (Scotland) Act 1997(a) and all other powers enabling them to do so.

Citation, commencement and application

1.—(1) This Order may be cited as the Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Order 2021 and comes into force on 25 March 2021.

(2) This Order applies only to land specified in schedule 1.

Interpretation

2.—(1) In this Order—

“building” includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building,

“developer” means the Scottish Ministers or a person carrying out the development on their behalf,

“development” means development carried out, or proposed to be carried out, as the case may be, pursuant to the planning permission granted by article 3(1),

“engagement parties” means the persons and bodies specified in schedule 3,

“European site” has the meaning given in regulation 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994(b),

“goods” includes animals and plants,

(a) 1997 c.8. Section 30(2)(b) was amended by section 54(3)(b) of the Planning etc. (Scotland) Act 2006 (asp 17). 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).

(b) S.I. 1994/2716.

“goods vehicle” means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted,

“hard surfacing” includes any artificial surfacing and may be permeable or porous,

“reinstatement plan” means a plan detailing the reinstatement works and a method statement and timetable for carrying out the reinstatement works,

“reinstatement works” means the cessation of the use, and the removal of all buildings, for which planning permission is granted by article 3(1)(a) and (b) on a site and the restoration of the site to its condition before such development commenced, except as specified in a reinstatement plan approved by the Scottish Ministers,

“relevant approval” has the meaning given in article 4(1)(a),

“relevant owners and occupiers” means, in respect of a development—

- (a) those owners of the land adjacent to the site, and
- (b) those occupiers of the land adjacent to the site, or to roads that will be used by vehicles travelling to and from the site that are likely to be affected by the development,

“safety hazard area” means an area notified to the local planning authority—

- (a) by the Health and Safety Executive for the purposes of paragraph 3 of schedule 5 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(a), or
- (b) by the Office for Nuclear Regulation for the purposes of paragraph 3A of that schedule,

“site” means the land on which a developer proposes to implement, or implements, as the case may be, the planning permission granted by article 3(1),

“site operator” means, in respect of a site, the person whose name is notified in writing from time to time to the Scottish Ministers as responsible for site operations,

“waste hierarchy” means the waste hierarchy set out in Article 4(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste(b).

(2) Except when a contrary intention appears, any reference in this Order to the height of a building shall be construed as a reference to its height when measured from ground level,

(3) For the purposes of paragraph (2), “ground level” means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.

(4) Any requirement of this Order—

- (a) on a developer to engage with engagement parties in respect of a development, or
- (b) to publish a document,

includes such use of hard copy, electronic means (including social media), or other forms of communication as the site operator or developer considers appropriate.

Grant of planning permission for a limited period

3.—(1) Subject to the provisions of this article and regulation 64 of the Conservation (Natural Habitats, &c.) Regulations 1994, planning permission is granted for—

- (a) the making of a material change in the use of any buildings or other land for the purpose of or in connection with—
 - (i) any activity that forms part of, or is incidental to, functions required to be carried out by or on behalf of the Scottish Ministers in connection with vehicles (in particular goods vehicles) and goods entering or exiting, or that are about to enter or exit, Great Britain, including—

(a) S.S.I. 2013/155, as relevantly amended by S.I. 2014/469.

(b) OJ L No. 312, 22.11.2008, p.3.

- (aa) recording vehicles entering or exiting the site,
 - (bb) providing, reviewing, checking, endorsing and approving customs declarations, permits and other documents relating to vehicles and goods,
 - (cc) examining, seizing and detaining goods,
 - (dd) inspecting vehicles and goods for any other lawful purpose,
 - (ee) storing or holding goods carried in vehicles,
 - (ff) checking vehicles to ensure compliance with the conditions imposed by this Order (“border processing”),
 - (ii) the associated stationing of vehicles,
 - (iii) carrying out repairs to vehicles, where an examiner appointed pursuant to section 66A of the Road Traffic Act 1988(a) has—
 - (aa) examined the vehicle on the site,
 - (bb) determined, pursuant to section 69(1) of that Act(b) (power to prohibit driving of unfit vehicles), that owing to any defects in the vehicle, it is, or is likely to become, unfit for service, and
 - (cc) prohibited the driving of the vehicle on a road,
 - (b) the construction, installation, provision, operation, maintenance, improvement or alteration, decommissioning or removal of any buildings, and the carrying out of any works and earth modelling, required or provided in connection with the use of the site pursuant to sub-paragraph (a), including but not limited to the provision of—
 - (i) facilities for drivers of vehicles,
 - (ii) facilities for persons engaged in border processing,
 - (iii) roads and other means of access,
 - (iv) any main, pipe, cable or other apparatus for the provision of water, gas, electricity or other services,
 - (v) any foul water and surface water drainage systems,
 - (vi) hard surfacing,
 - (vii) lighting,
 - (viii) landscaping,
 - (ix) noise attenuation measures,
 - (x) security and reception facilities,
 - (c) reinstatement works.
- (2) Planning permission is granted by paragraph (1) subject to—
- (a) article 4,
 - (b) the conditions specified in schedule 2, and
 - (c) such other conditions as the Scottish Ministers may specify in a relevant approval.
- (3) This Order does not permit—
- (a) schedule 1 development, as defined in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017(c), unless the Scottish Ministers have directed under regulation 6(4) or 6(6) that the development is exempt from the requirements of those Regulations, or

(a) 1988 c.52. Section 66A was inserted by section 9(1) of the Road Traffic Act 1991 (c.4) and amended by Good Vehicles (Licensing of Operators) Act 1995 (c.23).

(b) Section 69 was amended by section 12 of the Road Traffic Act 1991 (c.4).

(c) S.S.I. 2017/102.

- (b) schedule 2 development, as defined in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, unless the Scottish Ministers have—
 - (i) made a screening direction under regulation 7(4) of those Regulations that the development is not EIA development, or
 - (ii) directed under regulation 6(4) or 6(6) that the development is exempt from the requirements of those Regulations.
- (4) Planning permission is granted by paragraph (1) subject to the requirement that—
 - (a) on the date falling 5 years after the date which is notified in terms of paragraph 25(b) of schedule 2 (the “notified date”), any use of the land so authorised is discontinued, and
 - (b) the developer shall carry out the reinstatement works specified in the reinstatement plan approved by the Scottish Ministers under Part 5 of schedule 2 before the date falling 6 years after the notified date.

Relevant approvals

- 4.—(1) No development on any site may commence unless—
- (a) a developer has made a written submission to the Scottish Ministers for approval for the use of the land and the operations comprised in the development (“relevant approval”),
 - (b) the Scottish Ministers have ascertained that the development is not likely to have a significant effect on a European site or European offshore marine site, either alone or in combination with other plans or projects, and
 - (c) the developer has obtained the relevant approval.
- (2) A submission made under paragraph (1)(a) must include—
- (a) the name of the developer by whom the submission is made and the name of the site operator,
 - (b) a plan, reproduced from or based on an Ordnance Survey map, drawn to an identified scale, which shows the location and boundary or the site to which the submission relates,
 - (c) a plan showing the maximum extent (in terms of height and area) and general layout of, and the means of access to, the development,
 - (d) details of any planning permission (including planning permission granted by another development order) that the developer proposes to rely on,
 - (e) a document confirming that the owners and occupiers of the site have been notified of the developer’s intention to make a submission under paragraph (1)(a),
 - (f) a document identifying any other land in the vicinity of the site of which the developer is the owner,
 - (g) if the developer considers that it is likely to cease to need the planning permission granted by article 3(1)(a) and (b) on or by a date substantially earlier than when the planning permission would cease, that earlier date,
 - (h) an analysis of the likely environmental effects of the development,
 - (i) a screening report under the Conservation (Natural Habitats, & c.) Regulations 1994, and for the purposes of this sub-paragraph—
- “screening report” means a report which includes an appraisal of whether the development, either alone or in combination with other plans or projects, is likely to have a significant effect on a European site or a European offshore marine site,
- (j) a report which—
 - (i) summarises—
 - (aa) the methods used to engage with the engagement parties regarding the development,

- (bb) the information provided to the engagement parties and when it was provided to them, and
- (cc) the outcome of engagement with each engagement party, and
- (ii) includes—
 - (aa) a statement of the period given to each engagement party to make representations about the development, being not less than 21 days and beginning with the date on which they were invited to make such representations, and
 - (bb) copies of the representations received from engagement parties,
- (k) an assessment of the traffic impacts of the development,
- (l) an assessment of the impacts of the development on any part of the site which is shown as safeguarded on a safeguarding map for the purposes of the Town and Country Planning (Safeguarded Aerodromes, Technical Sites, Meteorological Technical Sites and Military Explosives Storage Areas) (Scotland) Direction 2016(a),
- (m) a statement from the Health and Safety Executive and the Office of Nuclear Regulation (as appropriate) in respect of the development where the site or any part of it is in, or includes, a safety hazard area,
- (n) a statement including—
 - (i) a description of the development,
 - (ii) a summary of the planning history of the site,
 - (iii) identification of the national and local planning policies relevant to the site and the development, and
 - (iv) an assessment of any other material considerations which are relevant to the determination of the submission and which are, in the opinion of the developer, important to that determination.

(3) Where the Scottish Ministers are in receipt of a submission made under paragraph (1)(a) and they consider they have not been provided with sufficient information to determine whether to give the relevant approval, they must within the period of 21 days beginning with the date of receipt of the submission notify the developer of what further information or documents they require.

(4) Where a condition in schedule 2 requires the approval of the Scottish Ministers to be obtained in respect of any document or other matter, such approval may only be granted in relation to a site in respect of which a relevant approval has been obtained.

(5) Approval of any document or other matter pursuant to a condition of a relevant approval (including a condition in schedule 2) may be given subject to such further conditions as the Scottish Ministers consider appropriate in relation to the subject matter of the approval.

(6) Before approving any document or other matter pursuant to a condition of a relevant approval (including a condition in schedule 2), the Scottish Ministers may engage with such engagement parties as the Scottish Ministers consider appropriate.

(a) Contained in Planning Circular 2/2003 “Safeguarding of aerodromes, technical sites, meteorological technical sites, and military explosives storage areas”, available at www.gov.scot/publications/ or by contacting Scottish Government Planning and Architecture Division, Area 2H, Victoria Quay, Edinburgh, EH6 6QQ.

(7) For the purposes of this article “European offshore marine site” has the meaning given in regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017^(a).

St Andrew’s House,
Edinburgh
22nd February 2021

AILEEN CAMPBELL
A member of the Scottish Government

(a) S.I. 2017/1013.

SCHEDULE 1

Article 1(2)

Land to which this Order applies

1. Subject to paragraphs 2 and 3, the land to which this Order applies is land situated within the local authority area of Dumfries and Galloway and the whole of the area of which is within 15 miles of either—

- (a) the Port of Cairnryan, or
- (b) Loch Ryan Port.

2. This Order does not apply to any land which is, or forms part of—

- (a) a National Park as designated by an order made under section 6 of the National Parks (Scotland) Act 2000(a),
- (b) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997(b),
- (c) a conservation area as designated under section 61 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(c),
- (d) a historic garden or designed landscape which is included in the inventory of gardens and designed landscapes compiled and maintained under section 32A of the Ancient Monuments and Archaeological Areas Act 1979(d) (“the 1979 Act”),
- (e) a site of special scientific interest, having the same meaning as in section 58(1) of the Nature Conservation (Scotland) Act 2004(e),
- (f) a historic battlefield included in the inventory of battlefields compiled and maintained under section 32B of the 1979 Act,
- (g) a European site,
- (h) a World Heritage Site included in the list kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage(f).

3. This Order does not apply to any land which contains—

- (a) a listed building or the curtilage of a listed building listed under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,
- (b) a scheduled monument within the meaning of the 1979 Act,
- (c) ancient woodland contained in the Ancient Woodland Inventory(g).

(a) 2000 asp 10.

(b) 1997 c.8. Section 263A was inserted by section 50 of the Planning etc. (Scotland) Act 2006 (asp 17) and amended by section 51 of the Planning (Scotland) Act 2019 (asp 13).

(c) 1997 c.9. Sections 1 and 61 were amended by schedule 3 of the Historic Environment Scotland Act 2014 (asp 19).

(d) 1979 c.46. Sections 32A and 32B were inserted by section 11 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3) and amended by paragraphs 37 and 38 of schedule 3 of the Historic Environment Scotland Act 2014 (asp 19).

(e) 2004 asp 6. The definition of “site of special scientific interest” was inserted by section 37(4) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

(f) See command paper 9424.

(g) Available at <https://map.environment.gov.scot/sewebmap/> or by contacting Scottish Natural Heritage, Great Glen House, Leachkin Road, Inverness, IV3 8NW.

Conditions

PART 1

General

Operator and exclusions

1. Development may only be carried out by or on behalf of the Scottish Ministers.
2. A building on the site may only be removed if the Scottish Ministers have agreed to its removal in writing.
3. The site must not be used for the storage of fuel or for refuelling, other than as ancillary to the use of the site pursuant to article 3(1).
4. The site must not be used for the stationing of vehicles carrying—
 - (a) Category I/II nuclear material as defined in regulation 3 of the Nuclear Industries Security Regulations 2003(a), or
 - (b) High Consequence Dangerous Goods as defined in section 1.10.3.1 of Annex A to the edition of the European Agreement concerning the International Carriage of Dangerous Goods by Road published in 2019(b).

Development (construction, operation and reinstatement phases)

5. Any artificial lighting must be arranged so the main beam angle of each installation is directed downward and away from the closest boundary so as to minimise light spill.
6. Any fire hydrants and emergency water supplies must be kept in good repair and any defects must be repaired as soon as practicable.
7. Any surface water and foul water drainage system must be kept in good repair.
8. Temporary structures collecting sewage that are not attached to mains sewers must be emptied regularly.
9. Development must not adversely affect any ancient woodland contained in the Ancient Woodland Inventory.
10. There must be no net increase in the rate or volume of surface water discharge from the site.
11. Surface water discharged from the site must not adversely affect the quality of receiving water bodies.
12. Subject to condition 13, the height of any building (other than an existing building) must not exceed 15 metres.
13. The height of any gate, fence, wall or other means of enclosure erected or constructed, other than noise attenuation measures, must not exceed 4.5 metres.
14. No building other than plant, machinery, gates, fences, walls or other means of enclosure, or noise attenuation measures, may be erected or extended within 25 metres of the boundary of the curtilage of any residential dwelling.

(a) S.I. 2003/403 as relevantly amended by S.I. 2016/795.

(b) Copies can be obtained at <http://www.unece.org/trans/danger/publi/adr/adr2019/19contentse.html>

15. Where there is a risk of groundwater contamination, hard surfacing must not be made or porous materials.

16. Where a condition in Parts 2 to 5 of this schedule requires the publication of any document, reasonable steps must be taken to ensure the document is available to persons likely to have an interest in the matters to which the document relates.

Stationing of vehicles

17. The stationing of vehicles is only permitted on hard surfacing.

18. When stationed, a vehicle must not have its engine idling without the express authority of the site operator.

PART 2

Construction

19. No works of construction may commence until a construction management plan for the development has been submitted to and approved by the Scottish Ministers. The plan must comprise details of policies and procedures to be complied with in connection with the construction of the development in relation to—

- (a) engagement with relevant owners and occupiers, including complaints handling,
- (b) application of best practicable means to minimise noise, vibration and emissions to air,
- (c) application of best practicable means to minimise the adverse effect of lighting on the amenity of relevant owners and occupiers, ecological receptors and road users,
- (d) sourcing, placing, managing and storing of construction materials, including, where appropriate, the stripping, storage and re-spreading of soil,
- (e) management of waste in accordance with the waste hierarchy,
- (f) pollution prevention and control,
- (g) preventing damage to trees to be retained on the site, or trees immediately adjacent to any works on the site,
- (h) management of construction traffic, including measures to prevent the deposit of mud and construction materials on the highway,
- (i) the management of invasive species, and
- (j) where appropriate, the appointment and retention of a suitably qualified archaeologist, arboriculturist, ecologist or ordnance specialist to oversee works,

and references to “the CMP” in the following paragraphs of this Part are to that plan as approved by the Scottish Ministers from time to time.

20. A copy of the CMP must be kept on the site at all times.

21. A non-technical summary of the CMP must be published.

22. Construction works must be undertaken in compliance with the CMP.

23. The CMP and the published non-technical summary of the CMP must be kept under review and updated as necessary throughout all construction works.

24. Prior notification of the intended commencement of development must be given to the Scottish Ministers and the planning authority, and such notification must include—

- (a) the address and location of the development (including a site plan in the form prescribed by article 4(2)(b)),
- (b) the name and address of the owner of the site,

- (c) a description of the development, and
- (d) the date on which it is intended that any material operation (as defined in section 27(4) of the Town and Country Planning (Scotland) Act 1997) will first be carried out.

PART 3

Commencement of operational use

25. The developer must—

- (a) as soon as practicable after doing so, give notice of the completion of the development to the Scottish Ministers and the local planning authority, and
- (b) give notice of the date on which the development is to become operational to the Scottish Ministers and the local planning authority.

PART 4

Operation

26. No use other than works of construction and tests of the operation of the development may commence until an operational management plan for the development has been submitted to and approved by the Scottish Ministers. The plan must comprise details of policies and procedures to be complied with in connection with the use and operation of the development in relation to—

- (a) engagement with relevant owners and occupiers, including complaints handling,
- (b) dealing with adverse weather, incidents and protestors,
- (c) emergency response,
- (d) inspection, maintenance and repair of hard surfacing, surface and foul water drainage systems, fire hydrants and emergency water supplies,
- (e) managing traffic associated with the operation of the development, including—
 - (i) the management of vehicles moving between the site and the strategic road network (being the trunk roads for which the Scottish Ministers are the roads authority), and the provision of signage for their drivers, and
 - (ii) preventing vehicles carrying goods specified in paragraph 4 of Part 1 of this schedule from having access to, or being stationed on, the site,
- (f) pollution prevention and control,
- (g) prescribing limits on levels of noise and emissions to air that will be adhered to during the operation of the development, and monitoring and management measures to secure adherence to those levels,
- (h) managing waste and waste disposal in accordance with the waste hierarchy, and
- (i) managing and enhancing biodiversity,

and reference to “the OMP” in the following paragraphs of this Part are to that plan as approved by the Scottish Ministers from time to time.

27. A copy of the OMP must be kept on the site at all times and the use and operation of the development must be carried out in compliance with the OMP.

28. A non-technical summary of the OMP must be published.

29. The development must be operated in compliance with the OMP.

30. The OMP and the published non-technical summary of the OMP must be kept under review and updated as necessary during the use and operation of the development.

PART 5

Reinstatement

31. A reinstatement plan must be submitted to the Scottish Ministers no later than 6 months before use of the land is to discontinue in terms of article 3(4)(a).

32. Reinstatement works must not be commenced until the Scottish Ministers have approved the reinstatement plan.

33. The reinstatement works must be carried out and completed in accordance with the approved reinstatement plan.

34. A non-technical summary of the approved reinstatement plan must be published.

SCHEDULE 3

Article 2(1)

Engagement Parties

1. Scottish Fire and Rescue Service.
2. Dumfries and Galloway Council.
3. Scottish Environmental Protection Agency.
4. The Police Service of Scotland.
5. The COMAH competent authority being the competent authority within the meaning of regulation 4 of the Control of Major Accident Hazards Regulations 2015^(a) (if the site or any part of it is in, or includes, a safety hazard area).
6. Scottish Natural Heritage.
7. Historic Environment Scotland.
8. Owners of any part of the site.
9. Relevant owners and occupiers.
10. Community Councils—
 - (a) which have been established by under Part 4 of the Local Government (Scotland) Act 1973^(b), and
 - (b) whose—
 - (i) area includes the whole or part of the site, or
 - (ii) boundary at any point adjoins any part of the boundary of the site.

^(a) S.I. 2015/483.

^(b) 1973 c.65.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants temporary planning permission for development consisting of the use of land for the stationing and processing of vehicles entering or leaving Great Britain, and the provision of associated temporary facilities and infrastructure. Development permitted by this Order can only be carried out by, or on behalf of, the Scottish Ministers (the “developer”). The planning permission granted by this Order is for a limited period and use of the land as authorised by the planning permission must discontinue 5 years after the development becomes operational. All reinstatement works must be completed by 6 years after the development becomes operational.

Article 1(2) and schedule 1 specify the area to which the Order applies. Article 3 grants temporary planning permission, describing the development that is permitted, and specifies that the permission is granted subject to conditions set out in schedule 2, and other conditions as may be specified.

Article 4 requires that before any development can take place, the developer must have obtained the approval of the Scottish Ministers. Article 4 sets out what information is required in a written submission for this approval, and includes a requirement for the developer to consult the engagement parties set out in schedule 3.

A Business and Regulatory Impact Assessment has been prepared. Copies may be obtained online at www.legislation.gov.uk.

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