

EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT ORDER 2011

SSI 2011/357

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 1997 Act) and all other powers enabling them to do so. It is subject to the negative resolution procedure. It further amends The Town and Country Planning (General Permitted Development)(Scotland) Order 1992.

Policy Objective

A properly functioning planning system is essential to achieving the Scottish Government's central purpose of increasing sustainable economic growth. The purpose of this instrument is to increase the amount of development that can be carried out without having to apply for planning permission. This will reduce the number of applications for minor developments which in turn will enable planning authorities to devote more of their resources to more significant issues where they can add greater value, such as development planning and processing applications for larger developments. The instrument also simplifies the current rules.

In the main this Order amends permitted development rights for householders. Applications for extensions, dormer windows and other minor householder developments account for just over 40% of applications for planning permission and it is commonly felt that the planning system does not add value to many of these applications. One of the central aims of planning reform is to remove minor planning applications, such as small house extensions, from the system.

The Order also contains amendments to permitted development rights for telecommunication code system operators. As a consequence of amendments made by the Communications Act 2003 (Consequential Amendments) Order 2003, Scottish permitted development rights only apply to "land controlled by the operator". The purpose of the changes to class 67 is to enable telecommunications code system operators to carry out development on a wide range of properties, including public roads. This was the position before the 2003 Order.

There are also amendments for the permitted development rights for demolition. The Scottish Government on 25 July issued The Town and Country Planning (Demolition which is not Development)(Scotland) Revocation Direction 2011. The effect of this direction is that the complete demolition of any building is development for the purpose of the 1997 Act and is subject to the relevant planning and environmental impact assessment requirements. The purpose of the changes to class 70 is to reduce the number of cases where the developer will be required to apply to the planning authority for a determination as to whether prior approval for the method of demolition is required. Furthermore, we have changed the neighbour notification procedures in relation to demolition.

The definition for “solarPV” is inserted for the purpose of clarification in response to comments by the Subordinate Legislation Committee on the Town and Country Planning (General Permitted Development) (Non-Domestic Microgeneration) (Scotland) Amendment Order 2011 (SSI 2011/136).

Consultation

The Scottish Government consulted on the amendments to householder permitted development rights through a formal public consultation between October 2010 and January 2011. A series of workshops with stakeholders were held in November 2010. Those consulted included planning authorities, community bodies, business and professional bodies and other public bodies including Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage (SNH).

A total of 67 responses to the consultation were received, with planning authorities being the largest single group of respondents. In summary, most respondents were supportive of the proposals and felt that they were workable with minor alterations. In particular respondents welcomed the new structure and approach, the introduction of new classes (for decking and porches) and tighter controls in conservation areas. Planning authorities indicated that the regulations would reduce applications by between 5% and 40%, the variation being due to the type of applications received by authorities in different parts of the country as well as the housing stock. However, in the short to medium term, this saving may be counterbalanced to an extent by increases in queries and potentially enforcement activity.

The main concern raised by some respondents related to the visual/amenity impact (especially the cumulative impact of additions to terraced houses and flats) of the proposed Order. Whilst others were concerned about increasing urbanisation, the lack of restrictions for other designated areas (such as World Heritage Sites, National Parks and archaeological sites) as well as concerns regarding the interpretation of the terms principal elevation and site coverage.

In response to the consultation, the Order was revised:

- developments within conservation areas have been further limited
- a new class has been created to enable small access ramps to be built under permitted development
- new restrictions have been introduced to a number of classes to ensure the size of extensions are no larger than the footprint of the original house.

An analysis of the responses to the consultation was published on 5 July 2011 and is available at <http://www.scotland.gov.uk/Publications/2011/07/01125252/0>. This includes a full list of those who responded to the consultation.

The technical amendments to classes 67 (development by telecommunications code operators) and 70 (demolition of a building) have been discussed with the Heads of Planning Scotland. However no formal public consultation has taken place as these are technical amendments aimed at removing regulation.

Impact Assessments

Equality Impact Assessment (EQIA) is a tool to assist in considering how policy (by policy we mean activities, functions, strategies, programmes and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

The Scottish Government is committed to ensuring that the planning system is designed and delivered in a way that is sensitive and relevant to the diverse needs and experiences of all people living in Scotland. We consider the impact of policy on particular groups of people (whatever their age, race, gender, sexual orientation, religion or belief or whether disabled or not).

The objective of the changes to the rules relating to householder permitted development is to reduce the number of planning applications where the planning system can add no value. It is aimed at reducing unnecessary regulation but also ensuring that public and private amenity is sufficiently protected. For example, this is achieved by changing the height of development being measured from the lowest point rather than the highest point as currently done.

The intention is that the changes would benefit all householders, and in a more limited way those living in flats. Some of the responses to a consultation that closed on 14 January 2011, indicated that some neighbours would potentially be adversely impacted by developments in neighbouring houses. Our judgement, at this stage, is that these views are overstated and that any adverse impact will be outweighed by the benefits.

This policy is to change the rules which are currently in operation. It is for prospective developers to ascertain whether an application for planning permission is required to ensure that an application is submitted where necessary. Undertaking development without appropriate permission generally constitutes a breach of planning control and may result in enforcement action under planning legislation.

Partial EQIAs accompanied the public consultations undertaken in 2009 and 2010. These highlighted that whilst there is general information about differing home ownership rates and general information about participation in the planning system, there is no specific information about the application of planning rules. The consultations asked for additional evidence on the potential impacts of the proposals. Very few issues were raised, most respondents felt that the amendments would raise no specific issues for any of the equality groups.

In addition, the Scottish Government is not aware of any research or monitoring that has demonstrated that particular groups in society have a different propensity to make householder planning applications or that the rules as applied impact differently on any particular group.

As part of both consultations, we had discussions with the Scottish Disability Equality Forum (SDEF) which highlighted concerns about exclusion of access ramps from the permitted development regime. From further discussions with planning authorities it was evident that each authority took different approaches in assessing if these types of development would require the householder to submit a planning application. As a result a new class for access ramps has been developed with the support of SDEF.

The amending Order also contains a number of other technical amendments to permitted development rights for the complete demolition of buildings and for telecommunication code system operators. For those changes a formal EQIA would not be proportionate due to the lack of evidence and the technical nature of the changes.

The implementation of the Order will be monitored and a review of the legislation will be carried out after 5 years of it coming into force. As part of this review, consideration should be given to collecting information on the propensity of different groups to submit planning applications.

Financial Effects

Final Business and Regulatory Impact Assessments (BRIA) have been completed and are attached for the amendments to householder permitted development rights and the complete demolition of buildings. The impact of this amending Order helps to deregulate developments which will result in savings of time and resource for the developer and planning authority. The simplification of the conditions and limitations make understanding and interpreting the Order simpler and allow businesses and householders to be better informed of their rights.

The implementation of the Order will not impose significant costs for business or the public sector. The BRIA for householder permitted development identified that the Order could reduce the number of householder planning applications by approximately 20% per year, this equates to around 7% of all applications. The fee associated with householder applications is currently £160 and therefore the total saved by householder will be approximately £640,000. This saving may be off-set if potential developers apply to the planning authority for a Certificate of Lawful Use or Development which currently incurs a fee that is half the cost of a planning application. Planning authorities have indicated that in the short to medium term they would see an increase in enquiries and potentially enforcement activity. We are developing guidance to help mitigate these potential impact.

Scottish Government
Directorate for the Built Environment

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