

Final Business and Regulatory Impact Assessment

1. Title of Proposal

The Relaxation of Planning Controls for Digital Communications Infrastructure

2. Purpose and intended effect

2.1 Background

Legislative changes made by:

Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017; and

Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No.3) Regulations 2017.

This legislation relates to changes to Class 67 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO). The GPDO grants a general planning permission across Scotland for certain developments, which removes the need to apply for planning permission. This permission is often referred to as permitted development rights (PD rights) and is subject to certain limitations and conditions. Class 67 specifically provides PD rights for electronic communications code operators regarding their electronic communications networks.

Class 67 has been subject to a number of changes since its introduction, the most recent being in 2014. The Scottish Government considered, however, that with the increasing importance of digital connectivity, the changing nature of technology and changes to PD rights in other parts of the UK, a further look at Class 67 PD rights, with a view to both current and, where possible, future needs, was necessary.

To this end the Scottish Government commissioned 'Research on Permitted Development Rights and Planning Guidance for Electronic Communications Infrastructure'. This research, conducted by Bidwells LLP and FarrPoint Ltd made recommendations for further specific changes to extend Class 67 PD rights and identified scope for potential additional changes, subject to further consideration.

A public consultation between 10 August and 4 November 2016 sought views on some specific proposals for changes to PD rights and on what further PD rights might be added.

The proposals included a new prior approval procedure for PD rights new ground based masts. Associated with that procedure is an application fee.

2.2 Objective

The Scottish Government's aim is to have a proportionate, efficient and effective planning system that contributes to the overall objective of increasing sustainable economic growth. Part of this is ensuring that we have an appropriate level of planning control; in particular applications for planning permission are not required unnecessarily.

The proposed amendments to the GPDO set out revised Class 67 PD rights which for extend the existing PD rights.

2.3 Rationale for Government intervention

World class digital connectivity is vital to Scotland's economy and is a priority for the Scottish Government. We have committed to using the powers available to Scottish Ministers, including through the planning system, to improve the case for sustainable investment in all forms of digital infrastructure in Scotland. By further relaxing planning controls the proposed changes can help to incentivise development, for example by improving certainty of outcome for developers and reducing timescales. PD rights can also help to free up resources within planning authorities.

3. Consultation

3.1 Within Government

The Scottish Government has had a continuing engagement and dialogue with stakeholders to inform the draft legislation, including meetings with colleagues in Transport Scotland and the Scottish Government Legal Directorate.

During the public consultation we engaged with the following bodies:

- Scottish Environment Protection Agency;
- Scottish Natural Heritage;
- Historic Environment Scotland; and
- Scottish Futures Trust.

3.2 Public Consultation

The proposals for change to Class 67 PD rights were subject to full public consultationⁱ for 12 weeks from 10 August to 04 November 2016. This was accompanied by the draft legislation, 'The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016', a Partial Business Regulatory Impact Assessment and a Partial Equality Impact Assessment.

3.3 Business

We received 38 responses including 8 from the Telecom Industry businesses and business trade organisations. The consultation asked specific questions on the impact of the changes on business and on the Partial BRIA that was published along with the consultation.

As well as the written consultation we met representatives from mobile network operators and other firms in the industry.

3.4 Business responses to the consultation by Issue

A) Electronic Communication Code Operators

When asked if Class 67 PD rights should continue to only apply to Electronic Communication Code Operators (ECCOs) and business respondents were in favour of the status quo, as, amongst other things, ECCOs are authorised by Ofcom and are subject to their regulations and powers of intervention.

B) General Conditions

When asked if the general conditions for class 67 PD rights should be updated all business respondents were in favour as the changes were in line with current practice and would provide clarity and safeguards.

C) Category A Buildings and Scheduled Monuments

When asked if Category A listed buildings and scheduled monuments should be removed from the general area based restrictions on Class 67 PD rights business was in favour stating that it would remove duplication of controls as Category A buildings and scheduled monuments are subject to other control regimes. Such designations also have their own, separate consent regime

D) 6 Emergency Works

When asked if the time period for emergency works should be extended from 12 to 18 months, all businesses that responded were in favour of the proposal stating that in many cases there were complex issues that could not be dealt with within the current time period.

E) Small Antenna on Buildings

The proposal to extend Class 67 PD rights to small antenna on buildings, including dwelling house was welcomed by the majority of businesses welcomed the proposals to ensure that PD rights would encompass small cells which are becoming more prevalent.

One respondent indicated that an approach to small cell systems taken in England would be more appropriate, including PD rights for the ancillary apparatus to go on buildings and other structures as well as the small antenna itself.

F) Alteration and Replacement of Existing Ground Based Masts

It was proposed that there should be a relaxation to some of the restrictions relating to the alteration or replacement of existing ground based masts. Business generally welcomed the proposed changes as they would allow for greater flexibility to increase the size of masts and install replacement masts, which would increase coverage and increase the capacity for mast sharing.

The majority of planning authorities agreed with the proposals with some suggesting

that there should be a flat rate of 7 metres instead of a percentage of the height of the original mast.

G) New Ground Based Masts

There are currently no Class 67 PD rights for new ground based masts in Scotland, whereas such rights have existed in some parts of the UK for at least 20 years. It is proposed that PD rights should be introduced for new ground based masts outside the Class 67 designated areas¹. It was also proposed that there should be a height restriction of 25 metres and that there should be a prior approval requirement on the siting and appearance of the masts.

Mobile Network Operators were in favour of having PD rights with no prior approval for new ground based masts under 15 metres and PD rights and prior approval for masts from 15 metres to 25 metres.

Mobile Network Operators recommended that where prior approval is required, but no decision has been issued by the planning authority within 40 days, then the developer can proceed in accordance with the plans submitted and therefore prevent delays.

Planning authorities commented that 40 days was an inadequate deadline for processing and that it should be extended.

A couple of businesses consider bigger masts as the best way to rollout infrastructure and that the existing planning application process is appropriate and effective.

H) Fee for Prior Approval for Ground Based Masts

The current fee for prior approval is £78, while the current fee for planning permission for a new mast is £401. We proposed that a fee of £150 be set for prior approval for ground based masts.

The majority of business agreed with the proposal as the fee was reasonable.

However the majority of planning authorities opposed the change stating that a move from planning permission to prior approval would result in less income but that there would not be an equivalent reduction in workload as they felt there was not much difference in the amount of work relating to assessing prior approval and planning permission.

It was suggested that there should be a separate Scottish Government consultation on planning fees.

¹ This refers to various designations which Class 67 specified have additional restrictions on these PD rights: conservation areas, sites of special scientific interest, European/ Natura sites, national scenic areas, historic battlefields, historic gardens and designed landscapes, category A listed buildings and scheduled monuments and the settings of such buildings and monuments.

I) Ground Based Equipment Housing

There was consideration as to whether PD rights for ground based equipment housing would be appropriate in some or all Class 67 designated areas.

The business response was fairly consistent in that it would be beneficial to have PD rights for equipment housing such as street cabinets and ancillary development such as bollards, fences, hand rails and mountings in designated areas.

Planning authorities felt it would be beneficial to have a mixture of PD rights and prior approval.

J) Apparatus on Buildings in Designated Areas

Currently the Class 67 PD Rights allow for up to four antenna systems located more than 15 metres above ground level on a building outside Class 67 designated areas. It is proposed that the PD rights be increased to allow up to five antenna systems in line with elsewhere in the UK.

All business respondents and the majority of planning authorities were in favour of the proposal as it would provide more flexibility given the differences that exist in current technology and the need to future proof for new technology.

Existing PD rights for apparatus, other than small antennas, include restrictions on sizes of equipment housing, antennas, numbers of antenna systems and heights above the building.

It is proposed that where existing apparatus on a building is larger or is in greater quantities than allowed under PD rights and has the necessary planning permission that such existing apparatus can be altered or replaced provided it does not get any larger or the quantity does not increase.

Business supported the replacement proposal as it would simplify the PD rights. It was also suggested that the roll out to satisfy demands over the next decade would be facilitated by classifying small cell antenna as de minimis or they should be PD without prior approval.

K) Miscellaneous Changes

Research has suggested that further work is required to scope additional PD rights that may be appropriate for supporting ground based masts.

Industry responses suggested that it would be beneficial if PD rights were allowed for: back-up power supplies, cabinets and ancillary developments in all areas and for poles at existing sites for satellite antennas as part of the connection to the wider communication network.

It was also suggested that it would be beneficial to define 'moveable structures', to provide PD rights for access tracks to mast sites and to allow PD rights for any

change to existing sites, subject to minimising visual impact and the removal of redundant equipment.

3.5 Other Responses

Other respondent groups had concerns about the impact of extended PD rights on amenity and the environment, especially around any further extension of PD rights in the various designated areas where Class 67 PD rights are more restricted.

3.6 Direct Engagement with Business

Officials had discussions with representatives from Wireless Infrastructure Group, Arqiva, Three, CTIL, Vodafone and BT (EE (now part of BT) during the public consultation. Virgin Media, Telefonica/O2 were also offered discussions. These focussed on some of the detail in the consultation package.

The mobile network operators were concerned about the nature of the prior approval process and the intended provision of an appeal if applications were not determined within a specified period, rather than being able to proceed in the absence of a decision (now altered since the consultation version).

Some non-mobile operators were concerned about prior approval undermining the public's faith in planning controls and so increasing concerns about new masts. New PD rights for small cell systems were also a significant issue, as well extending PD rights generally assisting industry in rollout and reducing costs.

No specific savings or figures were quantified beyond the general benefits in reductions in uncertainty and speeding up decisions.

3.7 Conclusions form the Consultation

In light of the consultation responses we have considered amending the consultation draft legislative proposals. The main differences are as follow:

- Amending the prior approval procedure so that there is a 56 day procedure and in the absence of a decision on prior approval from the planning authority, the developer can proceed on the basis of the plans submitted;
- Increasing the fee for prior approval form the consultation version from the suggested £150 to £300 on the basis the processing involved is comparable with an application for planning permission.
- Introducing PD rights for small cell systems on buildings and other structures, other than in conservation areas.
- Simplifying and extending the PD rights for equipment on buildings outside designated areas.
- Not proceeding with extending PD rights for underground development in designated areas at this time (further consideration of possible impacts would be required).
- Added requirement for developer to notify the body responsible (e.g. MOD, airport operator or NATS) for a safeguarded area in which they propose a new mast or changes to the height or location of an existing ground based mast.

4. Options

The following options were considered:

Option 1: 'Do nothing'.

This would mean maintaining the current position.

Option 2: Implement the proposed amendments to the GPDO in the consultation paper.

Option 3: Implement revised amendments to the GPDO in light of the consultation responses

5. Sectors and groups affected

PD rights mainly affect directly developers, landowners, community groups and planning authorities. Landowners and developers may include individual persons as well as business interests. Where PD rights encourage development, then the wider public can also experience any associated benefits and/or any negative impacts of the development itself.

6. Benefits and Costs

6.1 Benefits

Option 1 'Do nothing'.

There would be no additional benefits associated with option 1.

Option 2: Implement the proposed amendments to the GPDO.

Extending PD rights will help to improve certainty of outcome for developers, and can help to reduce timescales for securing any necessary permissions or approvals. By removing more proposals from the planning application process, the proposals will also help free up resources for Planning Authorities. Where prior approval is required, these benefits may be offset in part by the need to submit an application for prior approval.

The fee for prior approval would be less than that for an application for planning permission.

Extending PD rights could encourage development and improve digital connectivity, with benefits for businesses and the general public.

Research has identified 405 planning applications for 'telecommunications development' in the period 2013-14 and 2014-15. Of these it is not clear how many would be removed from the planning application process as a direct result of the proposals.

In sampling 75 such applications in 2013-14 and 78 in 2014-15, the researchers noted a split between types of development as follows: alteration or replacement of existing ground based masts 15%; installation of new ground based masts 21%; installation, alteration or replacement of rooftop apparatus 8%; and equipment housing 56%. Extrapolating these figures suggests in the two year period being considered there were around 85 applications for ground based masts.

The industry suggests that for the most part they make applications for masts around 15 metres high as that has been the norm established by PD rights in England and, prior to 2001, in Scotland.

We expect that, if these numbers and trends continue, the vast majority of these masts would in future go through a prior approval process, if the draft legislation is implemented in the format consulted on, with benefits to industry arising from the increased certainty derived from PD rights.

See Also paragraphs A) to K) in section 3.4 above.

It is difficult to predict however, what the level of activity as regards new ground based masts will be once PD rights are in place.

Option 3: Implement revised amendments to the GPDO in light of the consultation responses

As Option 2, but with additional benefits to industry of:

- extended PD rights for apparatus on buildings outside designated areas;
- more certainty as regards the time period for decisions on prior approval for PD rights for new masts;
- new PD rights for 'small cell systems' in most areas

Again, we have no precise data on cost savings arising from further extensions to PD rights or from the savings in administrative costs to industry of the altered prior approval process.

The increase in the fee for prior approval to £300 would be in excess of the proposed £150 in the consultation, but still less than the £401 fee for applications for planning permission for plant and machinery.

6.2 Costs

Option 1 'Do nothing'.

There would be no additional costs associated with option 1.

Option 2: Implement the proposed amendments to the GPDO.

Generally the proposals will extend existing PD rights or create new PD rights, and should therefore give rise to cost savings.

It has been suggested that, certainly initially, savings may be partially offset by some indirect costs to business in ascertaining whether or not development is permitted development, and in complying with planning enforcement were any work inadvertently carried out which subsequently transpires not to benefit from PD rights. However, such costs are anticipated to be minimal and short-term and will naturally fall away as developers become familiar with the changes.

Several planning authorities felt that the costs associated with PD were underestimated.

We have also committed to providing guidance to accompany the new legislation, which should further reduce the likelihood of any such errors.

Where PD rights are extended to cover new ground based masts, it is proposed this will require a prior approval, for which there will be a fee. The consultation sought views on an appropriate level of fee.

There may also be less tangible costs where development is allowed without an application for planning permission being considered which gives rise to impacts on visual and environmental amenity, with associated impacts on businesses which rely on such amenity. However, the proposals include a requirement for prior approval of the siting and external appearance for new ground based masts, providing for planning authority control over the most potentially intrusive of developments allowed under PD rights.

See Also paragraphs A) to K) in section 3.4 above.

Option 3: Implement revised amendments to the GPDO in light of the consultation responses

As Option 2, but with additional costs associated with:

- administering the additional notification of bodies associated with 'safeguarded areas'.
- Retention of existing planning controls on underground development in designated areas.

It is difficult to predict the extent of these costs. However, the notification costs arise from not having to do an application for planning permission, and such an application would incur more significant costs. As regards underground development in designated areas, the costs in that regard will remain the same as currently.

7. Scottish Firms Impact Test

The main companies rolling out this infrastructure operate nationally and internationally: BT, EE, O2/ Telefonica, Virginmedia, Vodafone. Wireless Infrastructure Group (headquartered in Scotland) and Arqiva. We have engaged with these companies prior to, during and after the public consultation.

Generally, any increase in permitted development rights to help facilitate the rollout of their infrastructure is seen as positive to the industry. A draft Business and Regulatory Impact Assessment accompanied the Scottish Government's consultation paper. The outcomes of the responses and discussions have fed into the development of legislation.

8. Competition Assessment

The proposals are not expected to impact significantly more on some firms than others nor restrict new entrants to the market. The legislation does not place any additional burden, over and above what is already in place, on businesses. Indeed, it is expected that there will be a net benefit to business.

9. Test run of business forms

The Scottish Government does not propose introducing any new forms as a result of this legislation.

10. Legal Aid Impact Test

This section has been discussed with colleagues in the access to justice team who are content that the legal aid implications have been given due consideration.

It is not envisaged that there will be any significant impact on the legal aid fund.

11. Enforcement, sanctions and monitoring

The Amendment Order does not change the existing powers and mechanisms in relation to enforcement of breaches of planning control, whether in relation to, for example, a grant of planning permission by the planning authority, by PD rights or where developers proceed without the necessary planning permission.

12. Implementation and Delivery Plan and Post-implementation Review

Reaction to how the changes have worked in practice and any particular areas of concern or uncertainty are likely to become quickly apparent through representations made by planning authorities, community bodies and business.

We intend to consider further extensions to Class 67 PD rights in this area, though such changes will be subject to strategic environmental assessment. There will be opportunities to consider further amendments to this legislation in light of the impact of the current changes.

13. Summary and recommendation

The Scottish Government proposes to amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 to remove the need for planning permission for certain Electronic Communication developments and to extend Class 67 PD rights to these developments.

A 'do nothing' approach would mean that the proposed amendments to Class 67 PD rights would not be made and that appropriate levels of planning control for applications would not be in place.

Option 2 to implement specific, proposed amendments to the GPDO was consulted on.

Option 3. To implement amendments revised in light of the consultation responses is recommended.

13.1 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 benefit	No costs.
2. Implement the proposed amendments to the GPDO and fee for prior approval	Improved certainty for businesses, allowing them to plan expansions and roll-out, with greater confidence. Reduced costs for business where applications for planning permission are no longer required or are replaced by applications for prior approval. Reduced timescales for small-scale works. Fewer planning applications to planning authorities allowing them to concentrate on other applications which may be more significant or controversial in terms of their scale and impact.	Indirect administrative cost to planning authorities in handling queries in relation to PD rights in the short-term. Potential increase in enforcement work due to misunderstanding of new PD rights in the short-term.
3. Implement the proposed amendments to the GPDO and fee for prior approval revised in light of consultation responses	As for Option 2 except: i) increased certainty regarding timescales for prior approval applications;	As option 2 except: i) increased fee for prior approval, but still less than the current fee for an application for planning permission, which prior approval replaces.

	<p>ii) some further extensions to PD rights for small cell systems and apparatus on buildings.</p> <p>iii) no new PD rights for underground development in designated areas.</p>	<p>ii) Administrative cost regarding notification of authorities in relation to proposals relating to new or taller or replacement ground based masts under PD rights in 'safeguarded areas'.</p>
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14. 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:

Kevin Stewart

Date: 25/05/2017

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ⁱ <https://consult.scotland.gov.uk/planning-performance/planning-controls-for-digital-communications/>