

Final Business and Regulatory Impact Assessment

Title of Proposal

Permitted Development Rights Review – Phase 2

Purpose and intended effect

Permitted development rights (PDR) refer to those forms of development which are granted planning permission through national legislation, meaning they can be carried out without a planning application having to be submitted to (and approved by) the local authority. Specifically, PDR are contained within the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”).

The Scottish Government is currently undertaking a review of PDR in Scotland. This review involves taking forward new and extended PDR for a wide range of development types. Through Phase 2 of the programme, we are introducing changes to PDR, as well as the Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO)¹, that are intended to help support:

- The rollout of electric vehicle (EV) charging infrastructure.
- The resilience and recovery of city, town and local centres.
- Operational development at Scottish ports

The Phase 2 measures:

- Increase the scale of EV chargers that may be installed under PDR, broaden the locations where PDR apply and extend the scope of the PDR to include associated apparatus and equipment.
- Provide greater flexibility to change the use of certain buildings and place furniture outside specified hospitality premises.
- Align port operators’ PDR with those of airports.

The Phase 2 measures have been informed by a public consultation carried out in summer 2022 (details below) as well as a sustainability appraisal incorporating Strategic Environmental Assessment (SEA) requirements, which was subject to public consultation in November 2019. They are also accompanied by an update to the sustainability appraisal and draft SEA Post Adoption Statement.

By removing the need to seek planning permission before carrying out specified forms of development, PDR and the UCO can help to provide greater certainty for applicants and save time and money associated with preparing a planning application. In doing so, this can help to promote wider Scottish Government objectives – including those related to EV charging, centres and ports.

Consultation

Within Government

The proposals have been informed by targeted engagement with Transport Scotland, Historic Environment Scotland (HES), National Parks, NatureScot and the Scottish Environment Protection Agency (SEPA). Discussions were also held with representatives from the Scottish

¹ The UCO groups various uses of land/buildings into a series of separate classes and provides that a change between uses in the same class does not constitute development requiring planning permission.

Futures Trust, Heads of Planning Scotland (HOPS), the Society of Chief Officers of Transport in Scotland (SCOTS), COSLA, the Law Society of Scotland, Scottish Property Federation, Scottish Grocers Federation and the UK Major Ports Group (UKMPG).

Public Consultation

In November 2019 we consulted on a proposed work programme for reviewing and extending PDR in Scotland along with a Sustainability Appraisal. This included early versions of proposals for extending PDR in relation to existing PDR for EV charging infrastructure and changes of use in centres. The ports proposals did not form part of the original PDR work programme; the Sustainability Appraisal has been updated to reflect this and other changes to the proposals since the original appraisal.

A three month public consultation on the Phase 2 proposals was carried out between May and August 2022, during which the public and other stakeholders were able to comment on the measures. The Phase 2 package was broadly well-received with support expressed for the majority of proposals; many respondents made specific comments on points of detail – including where they agreed with the proposals in-principle. An [independent analysis](#) of the consultation responses has been carried out, it contains a detailed summary of respondents' views on each of the Phase 2 consultation proposals.

Business

Engagement has been undertaken with businesses before, during and after the public consultation. This includes speaking to a number of hospitality businesses, electric vehicle charge point developers, port operators and airports.

Refinement of measures

In light of the consultation feedback and stakeholder engagement, we have made some amendments to the final Phase 2 package:

Change	Summary Reason
Not taking forward a PDR for parties other than local authorities to install on-street EV chargers at this time.	The regulatory landscape governing the installation of on-street charging equipment (including the provision of relevant utility connections) is complex and delivery models continue to evolve. In this context, potential issues around inclusive access require further consideration before a new PDR that would apply to parties other than local authorities is introduced.
Not taking forward a PDR for the conversion of existing petrol filling stations to EV charging hubs at this time.	Potential issues related to safety, decommissioning and decontamination require further consideration before a new PDR of this nature is introduced.
Clarifying that the PDR for EV infrastructure in off-street car parks includes the apparatus/equipment necessary for chargers to function – and that this aspect of the PDR applies within designated areas (as per consultation, PDR for solar	To ensure the equipment that is necessary for EV chargers to function can also be installed under PDR.

canopies and associated equipment would not apply in designated areas).	
Not including class 3 (food and drink) uses within the new merged use class (class 1A) but instead introducing a new PDR authorising a change of use from class 1A to class 3, unless the relevant premises is adjacent to a dwelling.	To reflect potential impacts on residential amenity.
Applying the new PDR for outdoor furniture to pubs/bars, as well as class 3 premises.	To ensure benefits of the new PDR apply to wider range of hospitality premises.

Options

Option 1 - Do Nothing

No changes to current PDR or the UCO. Unless development is covered by PDR (or not development by virtue of the UCO), an application for planning permission would continue to be required.

Option 2 – Phase 2 measures set out in public consultation

Through the Phase 2 consultation, views were sought on the following potential measures:

- EV Charging Infrastructure
 - Removing the restriction in designated areas for upstands and wall mounted charging points in off-street parking areas.
 - Increasing the height limit for EV charging upstands in off street parking areas.
 - Extending PDR to cover solar canopies, equipment housing and battery storage related to EV charging upstands in off-street parking areas outside designated areas.
 - Introducing PDR for the conversion of existing petrol filling stations to EV charging hubs.
 - Introducing PDR for on-street EV charging infrastructure.
 - Updating local authority PDR to reflect emerging delivery models for EV charging infrastructure which might involve private sector.
- Centres
 - Merging various use classes, thereby providing greater flexibility to change the use of buildings without planning permission being required.
 - Introducing PDR to allow the conversion of buildings in specified use to workspace.
 - Introducing PDR for furniture to be placed outside specified premises serving food and drink.
- Port Development
 - Aligning port operators' PDR with those of airports to ensure a level playing field between English and Scottish ports, with respect to PDR.

Option 2A – Phase 2 measures refined following consultation

In light of the feedback received through the public consultation and further stakeholder engagement, the final Phase 2 measures will:

- EV Charging Infrastructure
 - Remove the restriction in designated areas for EV charging upstands and wall mounted chargers in off-street parking areas.
 - Increase the maximum height limit for EV charging upstands in off street parking areas.
 - Extend PDR to include the apparatus and equipment (and its housing) that is necessary to allow EV chargers in off-street parking areas to function – including within designated areas.
 - New PDR for solar canopies and supporting apparatus, including battery storage, associated with EV chargers in off-street parking areas (outside designated areas).
 - Clarify that local authority PDR cover the provision of EV chargers (all locations).
- Centres
 - Create a new merged class (class 1A) combining uses previously falling within class 1 (shops) and class 2 (financial and professional services).
 - Introduce a new PDR providing for a change of use from class 1A to class 3, unless the premises in question is adjacent to a dwelling.
 - Introduce a new PDR providing for a change of use from class 1A or class 3 to workspaces falling within class 4 – subject to a 300sqm floorspace cap.
 - Introducing PDR for furniture to be placed outside specified premises serving food and drink.
- Port Development
 - Align port operators' PDR with those of airports to ensure a level playing field between English and Scottish ports.

Sectors and groups affected

The measures grant planning permission for specified forms of development (or provide that specified changes of use are not development for planning purposes). The effect is to allow relevant development to be carried out without a planning application needing to be submitted to and approved by the local authority. Key parties affected are:

- Developers, operators and landowners able to carry out development without preparing a planning application;
- Planning authorities no longer having to handle and determine planning applications for relevant development types; and
- Members of the public potentially affected by developments carried out under PDR (impacts, whether positive or negative, will depend on the nature of development).

Benefits

Granting planning permission through new or extended PDR (or providing that changes of use do not constitute development through UCO amendments) can help to provide greater certainty for developers. Such measures will avoid developers having to go to the time and expense of submitting a planning application. Financial savings (per development) will be associated with the lack of an application fee and the costs of preparing associated documentation, drawings and reports. Other than application fees (which are set by national legislation), these costs are

very development- and context-specific and so cannot be robustly quantified. As of 1 April 2022², fees for the following types of development are:

- Change of use of building (other than to residential use): £600 per 100sqm of floorspace for first 4,000sqm; thereafter £300 per 100sqm up to maximum of £150,000
- Erection, alteration or replacement of plant or machinery: £500 per 0.1ha of site area for first 5ha, thereafter £250 per 0.1ha up to maximum of £150,000
- Construction of buildings and structures: £600 per 100sqm of floorspace for first 4,000sqm; thereafter £300 per 100sqm up to maximum of £150,000³

In addition to savings linked to lack of planning application fee and cost of preparing planning application documents, there are savings associated with the time taken to obtain planning permission. Notwithstanding time preparing application materials, [planning application statistics](#) indicate that in 2020-21 the average time taken to determine applications for local non-householder development was 12.4 weeks. In 2021-22 the equivalent duration was 13.5 weeks. Although we do not have sufficient evidence to quantify time based savings, the planning application statistics indicate they could be substantial.

The overall extent of savings to business will ultimately depend on how many developments come forward under PDR (or UCO provisions) that would previously have been subject to a planning application. This is difficult to forecast, not least because planning application data held centrally is not broken down with sufficient 'granularity' to indicate how many applications there have previously been for the types of development for which PDR/UCO measures are being considered.

By removing more development proposals from the planning application process, the Phase 2 measures will also reduce administrative burdens on planning authorities – allowing them to focus resources elsewhere, including the determination of major planning applications. Although fewer planning applications would (all things being equal) lead to a reduction in fee income, no new prior approval mechanisms (involving authorities processing applications for such approval) are being introduced.

The proposed measures are intended to, amongst other things:

- Encourage the rollout of EV charging infrastructure, in doing so helping to reduce vehicle emissions and tackle climate change.
- Promote the resilience, regeneration and recovery of city, town and local centres.
- Support operational development at ports.

To this extent, there will be benefits to the general public – particularly EV users and those who live in, work in or visit centres.

Costs

The proposed changes will result in savings for both applicants (who will no longer have to pay to prepare applications for planning permission) and planning authorities (who would no longer have to determine said applications). However, initially, savings may be partially offset by some indirect costs to business in ascertaining whether or not development proposals are covered by PDR, and in complying with planning enforcement were any work inadvertently carried out which subsequently transpires not to benefit from PDR. However, such costs are anticipated to

² See the Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022- which do include limited powers for fees to be waived in certain cases.

³ £300 if proposed building or structure does not exceed 50sqm; £600 per 0.1ha up to maximum of £150,000 where no buildings are proposed to be created

be minimal and short-term and will naturally dissipate as parties become familiar with the changes.

The non-financial costs associated with projects carried out under PDR or UCO would depend on the specific nature and characteristics of the works (e.g. changes of use) that come forward. There may be localised impacts on amenity (e.g. visual appearance, noise, odours) – including in locations such as conservation areas. In some cases, such effects will continue to be controlled through either non-planning regimes (e.g. environmental health, licensing and consenting under Roads legislation) or conditions/limitations placed on the new PDR. Authorities also retain the option of promoting article 4 directions where the potential localised effects of PDR are considered to be particularly problematic. In the case of the UCO, our decision not to include class 3 uses in the new merged class was partly due to concerns about potential impacts on residential amenity, which were acknowledged in the Phase 2 consultation document and confirmed by many of those who responded.

Scottish Firms Impact Test

We have engaged with firms/ organisations in relevant sectors about our proposals; these discussions helped to inform the refinement of the final measures taken forward.

Competition Assessment

We do not consider that the Phase 2 measures would negatively impact on competition. It is considered that the measures would not limit the number or range of suppliers, the ability of suppliers to compete, suppliers' incentives to compete or the choices and information available to consumers.

Consumer Assessment

We do not consider that the proposed Phase 2 measures would negatively impact on consumers. It is considered that the measures would not affect the quality, availability or price of any goods or services in a market, affect the essential services market, such as energy or water, involve storage or increased use of consumer data, increase opportunities for unscrupulous suppliers to target consumers, impact the information available to consumers on either goods or services or their rights in relation to these, or affect routes for consumers to seek advice or raise complaints on consumer issues.

Test run of business forms

No new forms to be introduced.

Digital Impact Test

It is considered that the proposed measures would not be impacted by changes to processes brought about by digital transformation. Regulation of the technology used in the developments is not a matter for planning.

Legal Aid Impact Test

It is considered that the proposed changes will not give rise to increased use of legal processes or create new rights or responsibilities which would impact on the legal aid fund.

Enforcement, sanctions and monitoring

Planning authorities have a range of enforcement tools to deal with breaches of planning control. See [Planning Circular 10/2009](#) for further information.

Summary and recommendation

Summary costs and benefits table

Option		Total benefit per annum	Total cost per annum
Option 1 – Do Nothing		Current situation is maintained which is understood by applicants, authorities and third parties.	<p>Applications would continue to be required for relevant development types, with associated costs and timescales.</p> <p>Not progressing the Phase 2 measures could potentially slow the rollout of EV charging infrastructure, the recovery of our centres and high streets and port development.</p>
Option 2 – Measures set out in Phase 2 consultation	EV Charging Infrastructure	<p>New/extended PDR would reduce need for planning applications, leading to financial and time savings for applicants. However, we do not have data indicating how many planning applications the proposed measures would remove from the system or how many developments would be progressed as a result.</p> <p>Changes under consideration would support roll-out of EV charging infrastructure, helping to reduce vehicle emissions and tackle climate change.</p> <p>Fewer applications would reduce burdens on planning authorities.</p>	<p>There could be localised amenity impacts, particularly as a result of visual effects of infrastructure located in designated areas (e.g. National Scenic Areas, conservation areas) where PDR are currently restricted. Article 4 directions could be used to address this.</p> <p>On-street chargers have potential to create obstructions which could adversely affect particular groups. Consultation sought views on whether such impacts can be adequately controlled through separate consenting under Roads legislation and/or conditions attached to any new PDR.</p>
	Changes of Use in Centres	New PDR and/or changes to the UCO would reduce need for planning applications, leading to financial and time savings for applicants. However, we do not have data indicating how many planning applications the proposed measures would remove from the system or how many developments would be progressed as a result.	In the case of UCO changes under consideration, there could be localised amenity impacts where changes of use can take place without planning (by virtue of not being development). Consultation sought views on whether non-planning regimes (e.g. environmental

		<p>The enhanced flexibility provided by the measures could help businesses to diversify and respond more rapidly to changing circumstances, community needs and customer demands. To that extent, proposals may help to support the resilience and recovery of centres, and promote the establishment of 20-minute neighbourhoods. Thriving centres (and the ability of people to readily access local facilities and services) are associated with a range of social, economic and environmental benefits.</p> <p>Fewer applications would reduce burdens on planning authorities.</p>	<p>health) provide adequate control.</p> <p>Proposed UCO measures could potentially see a loss of certain uses (e.g. retail) in particular locations, leading to localised clustering rather than a diverse mix of uses.</p> <p>Furniture located on pavements outside food and drink premises have the potential to create obstructions which could adversely affect particular groups. Consultation sought views on whether such impacts can be adequately controlled through separate consenting under Roads legislation and/or conditions attached to any new PDR.</p>
	Port Development	<p>We do not have data indicating how many planning applications the proposed measures would remove from the system or how many developments would be progressed as a result.</p> <p>Alignment of port and airport PDR would ensure a level playing field between Scottish and English ports with respect to ports, helping to attract and retain investment.</p> <p>Fewer applications would reduce burdens on planning authorities.</p>	<p>Potential localised amenity impacts; these are expected to be limited as port and airport PDR are already very similar.</p>
Option 2A – Phase 2 measures refined following consultation	EV Charging Infrastructure	As per option 2	<p>As per option 2. No new issues identified following refinement of consultation proposals.</p> <p>New PDR for conversion of petrol filling stations and installation of on-street chargers are not being taken forward at this time.</p>

	Changes of Use in Centres	As per option 2	<p>As per option 2. No new issues identified following refinement of consultation proposals.</p> <p>Response to Q30 of the consultation suggested that safety and access issues associated with provision of outdoor furniture can be controlled through other regimes as necessary.</p> <p>Class 3 not included in new merged class due to localised impacts on residential amenity that could potentially arise. New PDR granting the change of use of a building from class 1A to class 3 (unless adjacent to a dwelling) taken forward instead.</p> <p>New PDR for moveable outdoor furniture applies to pubs/bars – not just class 3 premises.</p>
	Port Development	As per option 2	As per option 2. No new issues identified following refinement of consultation proposals.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Tom Arthur

Date: 8 February 2023

Minister's name: Tom Arthur

Minister's title: Minister for Public Finance, Planning and Community Wealth

Scottish Government Contact point: Tom Winter, Planning, Architecture and Regeneration Division

