

## **POLICY NOTE**

### **THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT AND USE CLASSES) (SCOTLAND) MISCELLANEOUS AMENDMENT ORDER 2023**

**SSI 2023/35**

The above instrument (“the Order”) was made in exercise of the powers conferred by sections 26(2)(f), 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997. The instrument is subject to negative procedure.

The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”) and the Town and Country Planning (Use Classes) (Scotland) Order 1997 (“UCO”).

The GPDO grants planning permission for specified types of development, meaning development can take place without a planning application having to be submitted to and granted by the planning authority. These grants of planning permission under the GPDO are referred to as permitted development rights (“PDR”). PDR are typically subject to specific conditions and limitations to protect amenity and to control the impacts of the development which they permit. The UCO groups together various land uses into separate use classes. Changes of use within a single class do not constitute development for planning purposes and so planning permission is not required.

The amendments made by the Order form part of the Scottish Government’s phased programme to review and extend PDR in Scotland. The Order relates to Phase 2 of that review programme.

#### **1. Policy Objectives**

The Scottish Government is carrying out a review of PDR as part of its wider planning reform programme. The review is being taken forward in phases, with each phase considering the potential for new and extended PDR for specific development types. The Order relates to the second phase of the review; the measures it provides for 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.

Further information on the rationale for and intended effect of the changes is set out below.

#### **1A. Electric Vehicle Charging Infrastructure**

The need to consider changes to existing planning controls on EV charging infrastructure reflects: the role EVs can play in helping to address climate change; the substantial growth in EV ownership that is forecast in the coming years; and the increased need for charging equipment (including larger high power chargers) associated with forecasted levels of EV ownership. The public consultation which ran from 11 May to 3 August 2022 set this out in further detail and sought views on several proposals for change.

Having considered the responses to the consultation, the Order amends existing classes 9E and 9F of the GPDO, which currently include PDR for, respectively, wall mounted electrical outlets for EV charging and for EV charging upstands (a pillar from which the EV charging cable extends). The Order also introduces a new class 9M with PDR for solar canopies for the primary purpose of EV charging, and battery storage and equipment (including equipment housing) necessary for the operation of a solar canopy. The changes extend PDR, whilst retaining an acceptable level of planning control, to help address climate change.

In summary, the changes will:

- Remove the current limitation regarding specified areas<sup>1</sup> in classes 9E and 9F, so that in future the PDR in these classes will apply in such areas.
- Grant additional PDR under class 9F for taller upstands and for equipment (including equipment housing) necessary for the operation of EV charging upstands. The new PDR for taller upstands will not apply within the curtilage of a dwellinghouse or of a building containing a flat or flats (“dwellings”); in such locations the previous height limit will continue to apply.
- Remove conditions in classes 9E and 9F on the size, location, illumination of nameplates on wall mounted chargers and upstands; add a new condition on lighting and illumination regarding the class 9F PDR; amend the reinstatement conditions where development permitted under these classes is subsequently removed, and clarify the definition of the parking areas, ‘qualifying parking areas’, to which these PDR apply.
- Introduce new class 9M PDR for solar canopies, whose primary purpose is EV charging, and battery storage and equipment (including equipment housing) necessary for the support of a solar canopy. These apply in ‘qualifying parking areas’, based on a different definition from that for classes 9E and 9F.
- Apply certain requirements regarding class 9M, namely: certain size and locational requirements, and, in particular, that the PDR will not apply in certain specified areas, or within the curtilage of a dwelling. These new class 9M PDR are also subject to conditions on removal of redundant development, reinstatement of the property and on lighting and illumination.
- Clarify that local authority PDR (class 30) cover the provision of EV chargers and associated infrastructure.

#### Class 9E – Wall Mounted Chargers for EV

Article 5(a) of the Order amends class 9E such that:

- A. The term ‘areas lawfully used for off-street parking’ will be replaced by ‘qualifying parking areas’, defined as the curtilage of dwellings or areas with hard surfaces used primarily for lawful off-street parking (article 5(a)(i) and (c)).

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<sup>1</sup> Sites of archaeological interest; national scenic areas; historic gardens and designed landscapes; historic battlefields; conservation areas; National Parks and World Heritage Sites.

This change, which will also apply to class 9F, is to clarify the areas to which PDR apply. Namely, that the areas involved must be established, not merely temporary, parking areas whilst recognising that the curtilage of dwellings, to which some of the PDR applies, may not necessarily have car parking as a primary use or a hard surface.

- B. The list of specified areas to which the current class 9E PDR do not apply will be removed, allowing the PDR to be exercised in qualifying parking areas within those specified areas (article 5(a)(ii)). Current PDR conditions on the size of wall mounted chargers and their location on a building are retained. Where, for example, a planning authority felt that PDR would undermine the basis for an area being designated for built heritage or environmental sensitivities, they do have powers to promote directions to restrict PDR in their area, or part of their area.
- C. The conditions on the size, number and location of nameplates on the electrical outlet and restrictions on illumination in that regard will be removed (article 5(a)(ii)). This is to streamline the legislation in light of the limited impact of these conditions, which apply only to the wall mounted charger. The PDR relate only to the wall charger which is of limited size and therefore any nameplates or illumination on it will be of limited impact.
- D. The conditions on the restoration of land and buildings (once redundant development, originally permitted by class 9E, is removed as required) will be replaced (article 5(a)(iii)). The change allows a restoration plan to be agreed between developer and planning authority, rather than a requirement merely to reinstate property as nearly as practicable to what it was before the development. The latter would still apply in the absence of an agreed restoration plan. A degree of flexibility will therefore be applied to allow for better outcomes regarding restoration. This approach will also apply to class 9F and new class 9M.

#### Class 9F – Upstands for EV charging

Article 5(b) of the Order amends class 9F such that:

- A. The term ‘areas lawfully used for off-street parking’ will be replaced by ‘qualified parking areas’ (article 5(b)(i) and (c)). See entry A in the above section on class 9E changes.
- B. The class 9F PDR will be extended to include equipment (including equipment housing) necessary for the operation of an upstand (article 5(b)(i)).
- C. The maximum height for an upstand will be 2.7 metres above the parking surface (Article 5(b)(ii)), except within the curtilage of dwellings, where the current limit of 1.6 metres will continue to apply. The current restriction on upstands within 2 metres of a road, and those which would result in more than one upstand being provided for each parking space will continue to apply.
- D. Limitations will apply to the new PDR for equipment (including equipment housing) necessary to the operation of an upstand, to avoid road safety issues and minimise impacts on public amenity (article 5(b)(iii)).

- E. The list of specified areas to which the class 9F PDR do not apply will be removed, allowing the PDR to be exercised in qualifying parking areas within those areas (article 5(b)(iv)). The change will also apply to the PDR as it relates to equipment and equipment housing.
- F. The conditions on the size number and location of nameplates on an upstand and restrictions on illumination are removed (article 5(b)(iv)).

A new condition on lighting or illumination forming part of the development permitted by class 9F will apply (article 5(b)(v)). This is in view of the larger scale of development now permitted.

- G. The conditions on the restoration of land and buildings (once redundant development permitted by class 9E is removed as required) will be replaced (article 5(b)(vi)). See entry D in the above section on class 9E changes.

#### Class 9M – Solar Canopies for EV Charging

- A. Article 7(1) of the Order introduces class 9M, which contains PDR for the installation, alteration or replacement within a qualifying parking area of: (a) a solar canopy, and (b) battery storage and equipment (including equipment housing) necessary for the operation of a solar canopy.
- B. ‘Qualifying parking area’ in class 9M has a different meaning from that in classes 9E and 9F, in that it does not include the curtilage of dwellings (class 9M(5)).
- C. Class 9M (2)(a) to (e) contain size and locational limitations on the exercise of these PDR, to avoid potential road safety issues and minimise the visual and other impacts of the development. Given the potential scale of development under this class, Class 9M PDR do not apply within the curtilage of dwellings or the areas specified in 9M (2)(d). The additional control on class 9M development in relation to proximity to aerodromes, reflects current requirement in relation to the general PDR for solar panels on non-domestic buildings.
- D. Class 9M(3) and (4) contain conditions on the removal of redundant equipment that was permitted by class 9M, and reinstatement of the property, and on any lighting or illumination forming part of the development permitted under class 9M .
- E. Class 9M(5) sets out interpretation for various terms used in the new class. This includes definitions of ‘qualifying parking area’ and ‘solar canopy’ (e.g. such canopies must be primarily for the purpose of recharging of vehicles, which does not rule out any surplus electricity being used for other purposes).

#### Class 30 – Electric Vehicle Charging Points and Associated Infrastructure

- A. Article 11 of the Order amends the PDR in class 30 (the erection or construction and the maintenance, improvement or other alteration by a local authority) of the GPDO to clarify it covers electric vehicle charging points and associated infrastructure.

## **1B. Centres**

In summary, the Order introduces new PDR (and amendments to the UCO) that will provide greater flexibility to change the use of certain buildings and place furniture outside specified premises. As set out in the Phase 2 public consultation, the measures are intended to help promote the resilience, regeneration and recovery of Scotland's centres. The consultation document recognised that the challenges facing city, town and local centres are long-standing, complex and have been exacerbated by the Covid-10 pandemic. In that context, it underlined that the planning system is not the only mechanism with the potential to support Scotland's centres, and that PDR and UCO changes form part of a wider approach spanning several policy areas.

### Use Classes Order

Article 13 of the Order amends the UCO to replace use class 1 (shops) and use class 2 (financial, professional and other services) with class 1A (shops, and financial, professional and other services). New use class 1A brings together those uses previously falling within use classes 1 and 2 of the UCO into a single class. The effect of doing so is that changes of use that would previously have involved a change between use classes 1 and 2 no longer constitute development for planning purposes. Such changes of use can therefore be carried out without an application for planning permission. This new use class is intended to provide greater flexibility to change the use of buildings and/or for buildings to have multiple concurrent uses. The GPDO includes PDR granting planning permission for certain changes of use between various use classes, including use class 1 and use class 2. Unlike the UCO, using PDR for changes of use between classes means that these can be permitted in one direction only and subject to condition. Articles 4, 6, 8(a), (b) and (d), 9 and 10 of the Order make consequential changes to the GPDO to reflect that use classes 1 and 2 will be replaced by use class 1A.

### New PDR for provision of class 3 food and drink premises

Article 8(c) of the Order inserts new class 11A into the GPDO. This new PDR provides for a change of use of a building (or part of a building) to use class 3 (food and drink) from a use within class 1A (shops and financial, professional and other services). Class 11A also provides PDR for betting shops, pay day loan shops and hot food takeaways to change to class 3 use.

Class 11A does not apply to buildings (or parts of buildings) that are in close proximity to dwellings. Specifically, class 11A(2) disapplies the PDR if:

- Any part of a dwelling is located directly above part of a building that would change to class 3; or
- A dwelling is located within 1 metre of a building (or part of a building) that would change to class 3. This measurement does not include any communal access (i.e. a communal passage, stairwell or landing).

The restriction provided for by class 11A(2) should not be taken as implying that changes of use to use class 3 adjacent to or directly below dwellings are inherently unacceptable in planning terms. Rather, it recognises that such changes of use may have impacts on residential amenity (e.g. as a result of cooking odours) that ought to be considered through a planning application and may require mitigation, for example through the provision of flues or ventilation systems.

### New PDR for provision of small-scale class 4 workspaces

Article 8(c) of the Order also inserts new class 11B into the GPDO. This new PDR class provides for a change of use of a building (or part of a building) to class 4 (business) from a use within class 1A (shops, and financial, professional and other services) or class 3 (food and drink). Class 11B also provides PDR for betting shops, pay day loan shops and hot food takeaways to change to class 4 use. Class 11B PDR apply to buildings whose floorspace does not exceed 300 square metres; it also applies to “building units” up to 300 square metres within larger buildings (e.g. tenement buildings with shop, restaurant and takeaway units at ground floor). So, a building over 300 square metres could have multiple 'qualifying building units' within it which could change to Class 4 use.

### New PDR for outdoor furniture

Article 7(1) inserts new class 9L into the GPDO. This new PDR class provides for the placement of furniture on a public road (including the pavement) adjacent to class 3 (food and drink) premises, pubs and bars. What constitutes furniture for the purposes of class 9L PDR is specified in sub-paragraph 9L(3). Sub-paragraph 9L(2) makes clear that although the GPDO grants planning permission for development covered by class 9L, it does not disapply separate controls on obstructions to roads under section 59 of the Roads (Scotland) 1984. Relevant licensing controls will also continue to apply.

## **1C. Port Development**

The Scottish Government committed in March 2021 to consider whether port operators' PDR were fit for purpose and whether amending them could support the objectives of both the Scottish and UK Government for Green Freeports. Building on this, the Phase 2 public consultation set out the Scottish Government's intention to ensure a level playing field between Scottish and English ports by aligning port operators' PDR (class 35) with those of airport operators (class 44).

To that end, article 12 of the Order amends class 35 to widen the scope of development that can be undertaken under this class and who can undertake it. Specifically, the Order:

- permits development in connection with the provision of services and facilities.
- provides for development to be undertaken by the statutory undertaker's agent.
- requires the developer to notify the planning authority before carrying out development under Class 35 unless it is of a specified description.

These changes apply to all ports in Scotland; not just those designated as Green Freeports.

## **2. Consultation**

The provisions of the Order were the subject of a public consultation which ran from 11 May to 3 August 2022. An independent analysis of the responses to the Phase 2 consultation was published in February 2023.

Public consultation on Phase 1 measures ran from 1 October to 12 November 2020. An independent analysis of the responses to this consultation was published in December 2020.

An earlier consultation on the overall PDR review programme and its associated sustainability appraisal ran from 5 November 2019 to 28 January 2020. A summary of the responses to that consultation was published on 30 September 2020.

The text below sets out where proposals have not been taken forward or where the provisions or the Order differ substantively from what was consulted on.

## **2A. Electric Vehicle Charging Infrastructure**

In light of the consultation responses, the dimensions for upstands and equipment (including equipment housing) and battery storage in relation to development covered by classes 9F and 9M, are slightly larger than was proposed. These changes reflect the practical considerations associated with rolling out this sort of infrastructure.

The proposal to disapply the new class 9F PDR for additional equipment (including equipment housing) in specified areas has not been included in the Order. This was on the basis that in the absence of such equipment, PDR for an upstand alone would be of limited practical use.

The consultation paper also sought views on the potential implications of introducing PDR for parties other than local authorities to install on-street EV chargers and PDR for petrol stations to convert to EV charging forecourts. Further consideration will be given to the issues raised by such measures before any PDR are brought forward.

## **2B. Centres**

The Phase 2 consultation sought views on a merged use class bringing together use classes 1, 2 and 3. It recognised that the effect of doing so would be to take any changes of use falling within a merged class out of the scope of planning control (as such changes would not comprise development), meaning the planning system would not be able to mitigate associated impacts. The consultation gave the specific example of where a retail unit (class 1) located below a flat changes to a restaurant (class 3). Taking account of the consultation responses and the concerns expressed about potential impacts on residential amenity, rather than merging use classes 1, 2 and 3 as proposed, the Order instead:

- Merges use classes 1 and 2 into new use class 1A (see article 13); and
- Introduces a new PDR providing for a change of use from class 1A (and betting shops, pay day loan shops and hot food takeaways) to class 3 – unless the relevant unit is adjacent to or directly below a dwelling (see article 8).

The consultation proposed a new PDR for outdoor furniture adjacent to class 3 premises. In light of the feedback received, new class 9L also applies to pubs and bars.

## **2C. Port Development**

The Order requires that developers carrying out development under the amended class 35 notify rather than “consult” the relevant planning authority. In light of the consultation responses, this is considered a clearer and more proportionate requirement.

## **3. Impact Assessments**

The following assessments have been carried out and are published alongside this SSI:

- Business and Regulatory Impact Assessment (BRIA)
- Equality Impact Assessment (EqIA)
- Island Communities Impact Assessment (ICIA)

- Children's Rights and Wellbeing Impact Assessment (CRWIA) - screening
- Fairer Scotland Duty - screening

A Sustainability Appraisal incorporating Strategic Environmental Assessment (SEA) requirements was undertaken and published in November 2019. Through this process, the potential environmental, social and economic effects of the proposed programme of changes to PDR has been considered. A draft Post Adoption Statement and some additional assessment of Phase 2 proposals that were not considered as part of the 2019 Sustainability Appraisal were published alongside the May-August 2022 consultation. The draft Post Adoption Statement will be updated to reflect the final Phase 2 measures.

#### **4. Financial Effects**

A BRIA has been completed and is published alongside this SSI. The BRIA highlights that by removing the need to apply for planning permission for various forms of development, the Phase 2 measures will provide greater certainty for applicants and save time and money associated with preparing a planning application. The BRIA did not quantify these savings.

Scottish Government  
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