

IronsideFarrar

**Research Project:  
Review of Prior  
Notification and Approval  
Procedures for  
Agricultural and Forestry  
Private Ways**

March 2016

Report prepared by:  
IronsidesFarrar  
111 McDonald Road  
Edinburgh  
EH7 4NW

The opinions expressed in this report are those of the author.

Report commissioned by:  
Planning and Architecture Division  
Area 2H South  
Victoria Quay  
Edinburgh  
EH6 6QQ

Tel: 0131 244 7825  
e-mail: [DMprocedures@gov.scot](mailto:DMprocedures@gov.scot)  
web: <http://www.gov.scot/Topics/Built-Environment/planning>

© Crown Copyright 2016

Applications for reproduction of any part of this publication should be addressed to:  
Planning and Architecture Division, Directorate for Local Government and  
Communities, Area 2H (South) Victoria Quay, Edinburgh, EH6 6QQ

This report is published electronically to limit the use of paper, but photocopies will be provided on request to Planning and Architecture Division.

# Contents

1	Executive Summary	4
2	Introduction	6
3	Literature Review	9
4	Stage 1 Outputs and Analysis	13
5	Stage 2 Outputs and Analysis	18
6	Conclusions	26
7	References	29
Appendix A	Record of Organisations Responding	30
Appendix B	Planning Authority Questionnaire	31
Appendix C	Stakeholder Questionnaires	36

# 1 Executive Summary

## 1.1 Executive Summary

Agricultural and forestry private ways benefit from permitted development rights (PDR) under Classes 18 and 22 respectively of the Town and Country Planning (General Permitted Development) Order (Scotland) 1992, provided they meet Class requirements. The Scottish Government considered that the system did not provide adequate protection against inappropriate development and, following a period of research and public consultation around these PDR, the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 2014 was introduced and came into effect on the 15th of December 2014. Whilst the 2014 Order retained the existing PDR under Classes 18 and 22, it introduced an additional level of control through a prior notification and prior approval process.

In December 2015 the Scottish Government appointed Ironside Farrar to undertake a Review of Prior Notification and Approval Procedures for Agricultural and Forestry Private Ways. The aim of this research project was to review and report on the implementation in practice of the 2014 Order by planning authorities and to establish the views of the agriculture and forestry industries and environmental groups on its operation and effectiveness. The study commenced with a literature review and was followed by the collation of data on the quantity, handling and outcome of prior notifications and prior approvals since the introduction of the legislation. Questionnaires were subsequently distributed and followed up with phone interviews to gather opinions on resource implications, perceptions regarding the effectiveness of the Order, and whether any unintended consequences had arisen since the introduction of the Order in December 2014.

The following conclusions emerged from the research:

- Scotland's 34 planning authorities had received some 279 prior notifications since December 2014, 78% of which were for forestry private ways and 22% for agricultural ways. The planning authorities exercised the power to request prior approval on 13 occasions, totalling 5% of those prior notifications received. Prior approval provides further scrutiny of the proposals by key agencies and an additional level of environmental control that would not otherwise have been actioned, an outcome welcomed by the environmental groups and SNH;
- There was a mixed response from planning authorities on the quality of prior notifications submitted but strong agreement that those submitted for forestry private ways were usually of a higher quality and that forestry industry has a wider understanding of the procedure;
- Of the 19 planning authorities (where data is available) that received prior notifications, 12 of these (63%) on average handled prior notifications within the required 28-day period. Nevertheless, of those authorities a number still take more than 28 days to handle specific prior notifications. This issue is a critical one for those in the forestry and agriculture industries, as delays to operations were seen by stakeholders as one of the unintended consequences of the 2014 Order;
- From a planning authority perspective, the new procedure allows scrutiny over private ways that may not have otherwise been possible. It has not had a significant effect on planning authority resources due to the limited number of applications received and the occurrence of only two cases of enforcement action to date. It was, however, considered by two planning

authorities to have created a level of workload that can be confusing and complex for some developers;

- Staff time and resources constituted the main cost to developers as there is no application fee. It was noted that few applicants consulted with external specialists, the majority were in house. In addition, indirect financial implications were experienced by forestry applicants as a result of prior notification handling delays;
- There are similarities and a level of duplication between the prior notification process and other forestry procedures. Although applicants acknowledged a number of benefits and noted that the prior notification process is not onerous, the forestry industry generally still consider it unnecessary and consider that it results in a double handling of applications. Representatives from ConFor and UKFPA stated that their members were strongly of the view that there are no benefits to the 2014 Order;
- The environmental groups consider that further steps could be taken to protect the rural environment from undesirable tracks, but acknowledge that the new procedure had resulted in a welcome further scrutiny of agricultural and forestry private ways. In some instances, it was considered by the environmental groups that certain developments currently dealt with through prior notification would be more appropriately dealt with via a planning application;
- Both the environmental groups and SNH consider that SNH's guidance document should be more widely promoted by local authorities and Scottish Government as a useful reference for both the applicant and the planning profession. There was a broad consensus that the Scottish Government guidance needs to be more comprehensive and user friendly, specifically to clarify the requirement for, and level of information required for a prior notification. These revisions would address the apparent inconsistencies in the way that prior notifications are handled and requirements are interpreted by planning authorities. The FCS produced a briefing note in November 2015 to help identify and outline how the alignment of information required by different consenting regimes might best be done to the mutual benefit of all stakeholders.

## 2 Introduction

### 2.1 Introduction

2.1.1 The Scottish Government appointed Ironside Farrar to deliver the Review of Prior Notification and Approval Procedures for Agricultural and Forestry Private Ways. The aim of the research was to review and report on The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 2014 ('the 2014 Order'), with a focus on the implementation of these changes and how the legislation is working in practice.

### 2.2 Background to the Research Project Review

2.2.1 Private ways for agricultural or forestry uses benefit from permitted development rights (PDR) under Classes 18 and 22 respectively of the Town and Country Planning (General Permitted Development) Order (Scotland) 1992 provided they meet certain criteria and requirements set out within these classes. Commonly referred to as tracks or hill tracks, an application for planning permission is not usually required whereas tracks for other purposes (e.g. sporting or recreational) are required to obtain consent through a planning application. The Scottish Government felt that the system did not provide adequate protection against inappropriate development and following a period of research and public consultation around these PDR, the 2014 Order was introduced and came into effect on the 15th of December 2014. Whilst the 2014 Order retained the existing PDR under Classes 18 and 22, it introduced an additional level of control through a prior notification and approval process.

2.2.2 In order to benefit from PDR the 2014 Order requires adherence to the following prior notification procedure before commencing the construction or alteration of agricultural or forestry private ways. From the developer's perspective the prior notification process involves the following:

- The developer must, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the authority is required in respect of the design, manner of construction or route of the private way; and
- The application is to be accompanied by a description of the proposed development, including the proposed design and manner of construction, details of the materials to be used and a plan indicating the route of the private way.

2.2.3 The developer should thereafter not commence development before either:

- The planning authority provides a written notice identifying that prior approval is not required; or,
- 28 days have expired following the date on which the application was received by the planning authority and during that time the authority has not given notice to the applicant of their determination that prior approval is required; or,
- The applicant has received such approval from the planning authority.

2.2.4 The above noted procedure enables planning authorities to request changes to the design, siting and appearance of such developments in order to minimise their impact on the environment where required. This approach was seen by the Scottish Government as striking a balance between meeting the needs of rural businesses whilst protecting Scotland's environment, amenity and heritage.

## 2.3 Aim and Objectives

2.3.1 The aim of the research project is to review and report on the implementation in practice of the 2014 Order by planning authorities. The objectives set by the Scottish Government were to:

1. Gather information on the numbers, handling and outcome of prior notifications and approvals for agricultural and forestry private ways since the introduction of the legislation in December 2014. Gather information on enforcement action taken or considered in connection with private ways to which the new requirements apply.
2. Gather and analyse information on stakeholder's experience of the implementation in practice of the 2014 Order, including the resource implications for the different parties, stakeholders' perceptions regarding the effectiveness of the 2014 Order and whether they consider any unintended consequences have arisen.

## 2.4 Research Methods

2.4.1 The following methodological approach was taken during the review, consisting of both primary and secondary research. The outputs from this research provide a detailed and robust review of the implementation in practice of the 2014 Order, based on the following stages:

**Table 1: Methodology**

<b>Stage 1</b>	<b>Desk Based Exercise</b>	<b>Purpose/Task</b>
Stage 1a	Inception and Review	Meet with Client Group to discuss and agree programme of work, main aims, strategic vision and work programme.
Stage 1b	Literature Review	Undertake a literature review to use as a baseline to inform the research project review.
Stage 1c	Desk Based Data Collection	Gather information on the numbers, handling and outcome of prior notifications/ approvals for agricultural and forestry private ways since the introduction of the legislation.
<b>Stage 2</b>	<b>Consultation</b>	<b>Purpose/Task</b>
Stage 2a	Planning Authority Consultation	Questionnaire distribution and follow up phone interviews to gather views on the resource implications, perceptions regarding the effectiveness of the Order, and whether any unintended consequences have arisen.
Stage 2b	Stakeholder Consultation	
<b>Stage 3</b>	<b>Written Report</b>	<b>Purpose/Task</b>
Stage 3a	Delivery of Draft Report	Draft report including research methodology; breakdown of outputs from Stage 1 and 2; conclusions as to the implementation in practice; and any unintended consequences.
Stage 3b	Submission of Final Report	Final written report incorporating comments received from the steering group on the draft.

## **2.5 Report Structure**

2.5.1 The report is structured as follows:

Section 3	Literature Review
Section 4	Stage 1 Outputs and Analysis
Section 5	Stage 2 Outputs and Analysis
Section 6	Conclusions



## 3 Literature Review

### 3.1 Introduction

3.1.1 This section provides a summary of the key legislative context along with the findings from the consultation process undertaken by the Scottish Government which led to the introduction of the 2014 Order. A review of the following background information was conducted:

- Permitted Development Rights under classes 18 and 22 of the Town and Country Planning (General Permitted Development) Order (Scotland) 1992
- Review of The General Permitted Development Order 1992 (Heriot Watt, Brodies, Scott Wilson Scotland Ltd)
- Consultations on Non-Domestic elements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992
- Track Changes, Tracks constructed under Permitted Development Rights: The Need for Planning Control (Dr Calum Brown, for Scottish Environmental Link)
- The Way Ahead for Constructed Private Tracks (Scottish Land and Estates)
- The relevant Scottish Government's Business and Regulatory Impact Assessment
- The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 2014
- EIA (Forestry) regulations and other Forestry Consenting regimes
- Key Natural Heritage Considerations in Track Construction (SNH Draft Guidance)

3.1.2 The initial research undertaken provided a baseline to inform the stakeholder consultation that followed.

### 3.2 Permitted Development Rights under Classes 18 and 22 of the Town and Country Planning (General Permitted Development) Order (Scotland) 1992

3.2.1 PDR for agricultural and forestry ways are set out in Classes 18 and 22 respectively of the Town and Country Planning (General Permitted Development) Order (Scotland) 1992. These PDR are granted subject to certain criteria and conditions. Private ways for uses other than forestry and agriculture do not meet the criteria for PDR under Classes 18 and 22 and a full planning application would generally be required.

### 3.3 Review of the General Permitted Development Order 1992

3.3.1 Research undertaken by Heriot Watt University and published in 2007 looked at the appropriateness of the General Permitted Development Order 1992. The review made several recommendations around PDR for agricultural and forestry private ways, with a number proposing the tightening of controls. These were based on calls for complete withdrawal of PDR for tracks and the difficulty in distinguishing uses of private vehicular ways. In addition to this, the researchers did not consider their recommendations to be an unreasonable burden to require a planning application to form a private way where there is a substantial risk to the environment and they also expected that there would be a limited number of such applications relative to those for other forms of development.

### **3.4 Consultations on Non-Domestic elements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992**

3.4.1 In 2011, partly taking into consideration the research published by Heriot Watt University, the Scottish Government sought views on sections of the General Permitted Development Order 1992 where stakeholders considered there was a need to review the provisions of PDR. This consultation included agricultural and forestry ways and there was a strong response from planning authorities and environmental groups that these should be reviewed, with several suggestions that they should be removed. There were very few responses from the development side.

3.4.2. This in turn led to a consultation in 2012 on detailed draft proposals to remove PDR for agricultural and forestry private ways and responses were highly polarised. Of those who responded from the 'Planning Authority and Local Government Bodies' category, 93% either strongly or broadly agreed that a restriction on PDR would improve the standard of tracks and address environmental concerns. There was broad opinion from environmental groups that tracks can damage the environment, and should therefore be subject to some form of consent, particularly in designated areas. The main points of concern were around:

- The perceived inadequacy of the current controls
- The wording of the current GPDO
- The impacts that hill tracks have on the natural and manmade environment

3.4.3 Awareness amongst developers had been raised and there was a strong response from organisations and individuals that the removal of PDR should not happen. A total of 80% of those in the 'Developers, business, retail and Trade Association' category were strongly against a restriction of PDR for track improvements. Both the National Farmers Union Scotland (NFUS) and Confederation of Forest Industries (ConFor) were of the opinion that the development of private ways can be crucial to rural industries and restricting PDR would overload and further complicate the planning system.

3.4.4 Overall, the majority opinion was broad or strong disagreement that the existing controls on PDR in designated areas strike the right balance relating to the formation of private roads and ways. Consequently, various amendments and alterations were suggested by respondents, many of which aligned with the recommendations in the Heriot Watt Research.

### **3.5 Track Changes, Tracks constructed under Permitted Development Rights: The Need for Planning Control (Dr Calum Brown, for Scottish Environmental Link)**

3.5.1 This report was commissioned by Scottish Environmental Link in 2013 in response to the Government's request for further evidence of the damage done by tracks under the current legislative framework. It provides a number of case study examples showing the damage that can be caused by tracks. The report concluded that the most complete and justifiable solution was to remove permitted development rights from all tracks. Three other options were considered but not seen to address many of the problems associated with the then current legislation:

- Remove permitted development rights from all tracks except those for forestry
- Explicitly exclude tracks for field sports from PDR
- Introduce prior notification

### **3.6 The Way Ahead for Constructed Private Tracks**

3.6.1 In March 2014, Scottish Land and Estates produced this report as a formal response to Scottish Environmental Link's 2013 report 'Track Changes'. Scottish Land and Estates made it clear that they consider there to be no advantage to further regulation of PDR around forestry and agricultural ways. This was due to the difficulties experienced around private ways being

largely practical and, in their view, it is unlikely that planning authorities would be able to cope with the additional workload or have the necessary expertise to resolve practical problems.

- 3.6.2 Scottish Land and Estates stated that the best way to ensure all private ways are built to the highest standard is to give maximum help and advice to applicants. They believed this could be done through SNH's 'Sharing Good Practice' initiative and by making guidance/training events as far reaching as possible.

### **3.7 Scottish Government Business and Regulatory Impact Assessment**

- 3.7.1 The Business and Regulatory Impact Assessment outlined the rationale behind the 2014 Order and presented an appraisal of the following four options:

- Do nothing
- Introduce prior notification and approval for agricultural and forestry private ways; retain existing fees structure
- As above but with additional legislation to amend the fees structure such that the associated fee for the prior notification and approval of agricultural and forestry private ways is initially set at zero
- Remove Permitted Development Rights for agricultural and forestry tracks

- 3.7.2 Having taken into account views from stakeholders, it was recommended that a prior notification and approval procedure for agricultural and forestry private ways should be introduced, with the fee set at zero. This option was seen as having no direct upfront financial costs but there would be indirect administrative costs falling to the developer whilst preparing the required information. It was anticipated that some of the work required will, in many cases, already have been undertaken to meet other existing legislative obligations and best practice.

- 3.7.3 There would also be associated administrative costs falling to the planning authority but the regulations would not create any additional need for enforcement or monitoring of planning control, as there is currently a requirement for planning authorities to monitor development within their area.

### **3.8 EIA (Forestry) Regulations and other Forestry Consenting Regimes**

- 3.8.1 Under the Environmental Impact (Forestry) (Scotland) Regulations 1999, the construction of forestry roads is considered to require an EIA if the proposed works are likely to have a significant effect on the environment. The regulations therefore require all projects within a sensitive area to be screened for EIA. In addition, there is a 1-hectare threshold for screening where no part of the site is within a sensitive area.

- 3.8.2 Where EIA is required, forestry development remains permitted development i.e. a planning application is not required, but adherence to the prior notification and approval procedures is still required.

- 3.8.3 The Forestry Commission Scotland (FCS) produced a briefing note in November 2015 to help identify and outline how the alignment of information required by different consenting regimes might best be done to the mutual benefit of all stakeholders.

- 3.8.4 For forestry private ways, there is scope for and the applicant may choose to align their prior notification application with the forestry approval procedures administered by FCS for Forest Plans, felling licences, EIA Forestry determinations and woodland creation projects. Equally, there is scope for FCS and planning authorities to align the consideration of information required for prior notification and forestry approval processes. This is encouraged by Scottish Government guidance as a means through which more efficient handling of applications can be

achieved, whilst reducing the need for duplication of information. However, it should be noted that there is no statutory procedure to do so under PDR. There is no opportunity to align agricultural procedures as there is no equivalent to the FCS approval.

### **3.9 Key Natural Heritage Considerations in Track Construction**

3.9.1 Scottish Natural Heritage (SNH) produced draft guidance highlighting the key considerations to take into account in relation to the natural heritage when planning and designing a track in the countryside. It identifies the type of information that should be provided with a prior notification for agricultural and forestry ways under the following headings:

- General
- Planning the Route of the Proposed Track
- Designing the Proposed Track
- Track Construction
- Construction Materials
- Natural Heritage and Wildlife Surveys

## 4 Stage 1 Outputs and Analysis

### 4.1 Desk Based Data Collection

4.1.1 Information was gathered on prior notifications for agricultural and forestry private ways by interrogating the online planning portals of the 34 Planning Authorities, which comprise the 32 local authorities and 2 National Park Authorities within Scotland. Information was gathered in accordance with the requirements as set out in Stage 1 of the Invitation to Tender.

### 4.2 Prior Notifications received since December 2014

4.2.1 The number of prior notifications received by each of the planning authorities is outlined in Table 2. The table shows a breakdown of how many were agricultural and how many were forestry prior notifications and the number of prior notifications rejected as either incomplete or on the grounds that the proposed track did not meet the criteria for permitted development rights.

**Table 2: Record of Prior Notifications**

	Online Data					
	Questionnaire Data					
-	No Record Online					
	Local Authority	Total	Agricultural	Forestry	Rejected as Incomplete	Rejected as not meeting PDR criteria*
1	Aberdeen City	-	-	-	-	-
2	Aberdeenshire	15	8	7	2**	2
3	Angus	2	1	1	-	-
4	Argyll & Bute	58	2	56	-	1
5	Cairngorms NP ***	7	2	5	0	0
6	Clackmannanshire	0	0	0	0	0
7	Dumfries & Galloway	36	5	31	0	0
8	Dundee City	0	0	0	0	0
9	East Ayrshire	5	1	4	0	0
10	East Dunbartonshire	-	-	-	-	-
11	East Lothian	1	1	0	0	0
12	East Renfrewshire	1	0	1	0	0
13	Edinburgh, City of	0	0	0	0	0
14	Eilean Siar (Western Isles)	2	2	-	-	-
15	Falkirk	1	1	-	-	-
16	Fife	1	-	1	-	-

	Local Authority	Total	Agricultural	Forestry	Rejected as Incomplete	Rejected as not meeting PDR criteria*
17	Glasgow City	0	0	0	0	0
18	Highland	65	17	48	27**	0
19	Inverclyde	-	-	-	-	-
20	Loch Lomond NP	32	6	26	0	2
21	Midlothian	0	0	0	0	0
22	Moray	-	-	-	-	-
23	North Ayrshire	4	0	4	0	0
24	North Lanarkshire	-	-	-	-	-
25	Orkney Islands	-	-	-	-	-
26	Perth & Kinross	19	8	11	3**	3
27	Renfrewshire	-	-	-	-	-
28	Scottish Borders	24	6	18	0	0
29	Shetland Islands	-	-	-	-	-
30	South Ayrshire	1	-	1	-	-
31	South Lanarkshire	2	-	2	-	-
32	Stirling	7	2	5	-	-
33	West Dunbartonshire	2	-	2	-	-
34	West Lothian	1	-	1	-	-
	<b>TOTAL</b>	<b>279</b>	<b>60</b>	<b>219</b>	<b>32</b>	<b>8</b>
	<b>% Breakdown</b>	<b>100%</b>	<b>22%</b>	<b>78%</b>	<b>11%</b>	<b>3%</b>

\* For example, private ways for sporting or recreational uses.

\*\* Of the prior notifications received and rejected as incomplete, both were agricultural in Aberdeenshire; 13 were forestry and 14 were agricultural in Highland; and all 3 were forestry in Perth and Kinross. It was noted by Highland Council that none of the incomplete forestry applications were submitted by the Forestry Enterprise Scotland and the applications they submit are generally very good and have the information required to make the application valid.

\*\*\*The Cairngorms National Park Authority has been consulted on prior notifications by its constituent planning authorities, therefore these will be included in respective planning authorities Responses. The calculated totals have been adjusted to take this in to account.

### 4.3 Prior Approvals

4.3.1 Of the prior notifications received, listed in Table 2 above, 13 (5%) resulted in prior approval being required. The reasons for Prior Approval are outlined below in Table 3.

**Table 3: Record of Prior Approvals**

<b>Local Authority</b>	<b>Type</b>	<b>Reason for Prior Approval Requirement</b>
Aberdeenshire	Agricultural	Further details of the works proposed.
Aberdeenshire	Agricultural	Details of siting and the construction method.
Highland	Agricultural	Further details required – site layout plan showing the location and extent of proposed borrow pits in relation to access track, the amount of material to be extracted and method of reinstatement, proposed cross drainage locations and cross sectional plans of the track.
Highland	Agricultural	Further details on how the track is to be constructed. Historic Scotland require formal consultation as the track is located within a Scheduled Monument.
Highland	Agricultural	Unknown
Highland	Forestry	Unknown
Loch Lomond NP	Forestry	Insufficient information as the EIA consent had not been granted by FCS.
Loch Lomond NP	Forestry	Required further scrutiny as it was in a sensitive landscape area i.e. confirmation of the width of the track, amended copy of the CMS, scope of works of the Landscape Clerk of Works and there had been a forest plan amendment which had led to the removal of mitigating tree cover.
Loch Lomond NP	Forestry	Required further details of the finished width, source of the stone, confirmation of whether it was a temporary or permanent track, details of drainage and water course crossing.
Perth & Kinross	Forestry	Insufficient/incomplete detail to allow determination within the 28-day statutory period.
Perth & Kinross	Forestry	Insufficient/incomplete detail to allow determination within the 28-day statutory period.
Perth & Kinross	Forestry	Insufficient/incomplete detail to allow determination within the 28-day statutory period.
Scottish Borders	Forestry	Unresolved issues relating to archaeological implications arising from the proposal, which would have had consequences for a Scheduled Ancient Monument. A revised prior notification was submitted addressing the issue.

#### **4.4 Average Timescales**

- 4.4.1 The average timescales for handling prior notifications, and where appropriate prior approvals, by each planning authority are outlined in Table 4.

**Table 4: Average Timescales**

	<b>Online Data *</b>
	<b>Questionnaire Data</b>
-	<b>No Record Online</b>

<b>Local Authority</b>	<b>Number of PN Received</b>	<b>Number of PA Required</b>	<b>Average Timescale PN</b>	<b>Average Timescale PA</b>	<b>PN's handled within 28 days</b>	<b>PN's handled outwith 28 days</b>
Aberdeenshire	15	2	23.7 days	52 days	14	1
Angus	2**	-	35 days	N/A	1	0
Argyll & Bute	58	-	-	N/A	-	-
Cairngorms NP	7	0	17 days***	N/A	N/A	N/A
Dumfries & Galloway	36	0	16.4 days	N/A	Unknown	Unknown
East Ayrshire	5	0	28 days	N/A	Unknown	Unknown
East Lothian	1	0	21 days	N/A	1	0
East Renfrewshire	1	-	27 days	N/A	1	0
Eilean Siar (Western Isles)	2	-	26 days	N/A	1	1
Falkirk	1	-	93 days	N/A	0	1
Fife	1	-	69 days	N/A	0	1
Highland	65**	4	25.5 days	25.5 days	32	17
Loch Lomond NP	32	3	35 days	13 weeks	18	14
North Ayrshire	4	0	14 days	N/A	4	0
Perth & Kinross	19**	3	21 days	21 days	19	0
Scottish Borders	24****	1	28 days	24 days	10	11
South Ayrshire	1	-	15 days	N/A	1	0
South Lanarkshire	2	-	15 days	N/A	2	0
Stirling	7	-	34 days	N/A	1	6
West Dunbartonshire	2	-	156 days	N/A	0	2
West Lothian	1	-	34 days	N/A	0	1

\* This is a snapshot of what has been recorded and available on the local authorities' websites. Where the timescale has been identified online, it has been worked out manually using the date that the application was validated and the date that the application was determined.

\*\* Total including withdrawn application(s).

\*\*\* The Cairngorms National Park Authority have provided its constituent Local Planning Authorities with comments in an average of 17 days.

\*\*\*\* One application still pending consideration at the time of data collection.



- 4.4.2 Of the 19 planning authorities (where data is available and recorded in Table 4) that received prior notifications, 12 of these (63%) meet the 28-day timescale for handling. However, of those planning authorities that are meeting the target, when the figures are averaged out, there remain a number of individual prior notifications where handling exceeds the statutory 28-day period.
- 4.4.3 Where the 28-day timescale has not been met, only one local authority, Aberdeenshire, provided a reasons for this. The one application that was handled outwith the 28 days was held up pending submission of additional information and a site visit.

#### **4.5 Enforcement Action**

- 4.5.1 Through the circulated questionnaires planning authorities were asked if they were aware of any instances of enforcement action being taken or considered where:
- Ways have not been constructed in accordance with the contents of the prior notification or prior approval.
  - Ways have not been subject to prior notification or prior approval.
- 4.5.2 East Ayrshire Council and Scottish Borders Council were the only planning authorities to report enforcement action to date.
- 4.5.3 In a particular case in the East Ayrshire Council area, it was noted that stone, removed from the temporary access roads associated with the construction of the overhead line route had been taken to farms in the vicinity where the stone was stockpiled and some of the material used by landowners to re-surface or alter farm tracks. In this case the landowners required approval to undertake works however, as they had failed to seek approval the works undertaken were unauthorised. The landowners involved were contacted, and advised to cease all works until relevant consents were granted (East Ayrshire Council, Planning Committee 18 December 2015, Compliance Monitoring Update of Major Developments in East Ayrshire).
- 4.5.4 In the Scottish Borders, a complaint was made to the Council regarding damage to a public road by a heavy goods vehicle carrying materials between two sites which transpired to be for the construction of a private agricultural way. At the time of the questionnaire survey the complaint was under investigation.
- 4.5.5 More generally, it was noted by one respondent that it may be too soon to report on enforcement action as many private ways, although the prior notification process has been completed, have not yet been constructed.

# 5 Stage 2 Outputs and Analysis

## 5.1 Planning Authority Consultation

5.1.1 A detailed questionnaire was sent to the Heads of Development Planning of all 34 planning authorities in Scotland, of which 16 have responded (listed in Appendix A). The consultation was, in part, to cross check the information obtained during Stage 1 but to also gain the planning authorities' views on:

- The quality of prior notifications submitted;
- Whether sufficient information/detail is supplied in the initial notification;
- The general awareness of the applicant regarding the new process;
- Benefits and drawbacks of the new process.

## 5.2 Quality of Prior Notifications Submitted

5.2.1 Planning authorities' views on the quality of prior notifications submitted were generally mixed. Just over half of respondents felt that the quality of information initially provided tends to be inadequate and does not allow an assessment of the proposal. Location plans and the specification of works to be undertaken were noted in particular as often lacking appropriate detail. These respondents stated that further information had to be requested at the registration stage.

5.2.2 In contrast, just under half of respondents felt that the overall quality of submissions is usually sufficient to make an assessment, although it was noted that quality does vary. It was stated by a number of respondents that those prior notifications submitted for agricultural sites are usually of a poorer quality than those submitted for forestry sites. In particular, it was noted that those prior notifications submitted by Forest Enterprise Scotland were generally of a high quality (including location/site plans and a detailed description of works proposed/Construction Method Statement), particularly those that engaged in pre-application discussion with the Council.

## 5.3 General Awareness

5.3.1 From a planning authority perspective, the general awareness and familiarity amongst applicants with the 2014 Order varies significantly. There were a number of respondents that felt the levels of familiarity with the procedures and requirements are poor as evidenced by the submitted information. It is worth noting that one respondent felt that the new procedures are very complicated to explain, which adds to the lack of thorough understanding amongst applicants.

5.3.2 There was also a perception however that those that have applied and have had some engagement with the procedural change will now be familiar with the process. It was commented by the majority of respondents that applicants and agents for forestry private ways appear to be more aware of the process than those for agricultural ways. There appears to be a better understanding within the forestry industry, one respondent stating that positive engagement by the Forestry Commission Scotland has contributed to this awareness.

## 5.4 Benefits and Drawbacks from a Planning Authority Perspective

5.4.1 There was a broad consensus from the planning authorities that the prior notification process allows scrutiny over private ways that may not have otherwise been possible. This results in a

thorough assessment of proposals and enables, where necessary, intervention to request changes to proposed development. One planning authority noted that the new prior notification procedure has increased its awareness of tracks claimed to be built for agricultural and forestry uses but constructed for other purposes e.g. to support sporting or recreational uses.

- 5.4.2 It was considered by two planning authorities that the new process has created a level of workload that can be confusing and complex for developers. It was also considered that additional costs associated may increase the likelihood of unauthorised works.
- 5.4.3 It was noted by one planning authority that a disproportionate number of relatively minor proposals have been caught up in the process, in particular those related to forestry ways. Many of these cases are located within commercial forests and present few, if any, planning issues.

## **5.5 Stakeholder Consultation**

5.5.1 Consultation with an agreed set of stakeholders or their representative bodies, listed in Appendix A, was undertaken to gain an insight into their experience of the implementation in practice of the 2014 Order. The following two questionnaires were prepared:

- Questionnaire A for a stakeholder representative to complete on behalf of its members – designed to capture feedback received by members on the prior notification and approval processes. A total of 6 questionnaires were completed and returned by stakeholder representatives.
- Questionnaire B to be completed by members – designed to capture direct experiences of individual applicants/agents. A total of 10 questionnaires were completed and returned by applicants.

5.5.2 These questionnaires were followed up with phone interviews, where necessary, and a summary of the feedback received is outlined below.

## **5.6 Preparing a Prior Notification**

5.6.1 A common response relating to costs incurred when preparing a prior notification was around internal staff time and resources. Respondents referred to the procedure as administratively more complex regarding time spent gathering required information, producing supporting drawings and completing the application form, then subsequent liaison with the planning authority on any issues.

5.6.2 A total of 70% of applicants stated that there was no need to engage with specialist consultants or seek external assistance. Of those that did engage with specialists, the majority were in house. Examples of this included the procurement of CAD drawings by civil engineers or specialist design input. Of those that engaged externally, costs incurred for professional fees ranged between £500 and £1000 depending on the situation and length of correspondence with each planning authority.

5.6.3 It was stated by 7 out of 10 forestry applicants in responding to the questionnaire that no direct upfront costs were incurred as there is no fee relating to the prior notification process. However, they all noted that there was an indirect financial burden due to the impact on internal staff time and resources required to prepare a prior notification as well as operational delays on projects. This is explored further within in the Unintended Consequences section of this report (5.11).

## 5.7 Planning Authority Handling of Prior Notifications

5.7.1 There was a broad view amongst those from the industry and environmental groups that there is a lack of general awareness of and consistency in the handling of prior notifications by planning authorities. Applicants have found that prior notification requirements are not set out clearly and there has often been an uncertainty with both applicants and planning authorities as to the actual requirements. This can be particularly difficult for applicants working across a wide geographic range involving a number of different authorities. Comments regarding confusion and variation with what is required included the following:

- Whether prior notification is required at all;
- Planning authorities incorrectly requesting a fee, involving extra communication and time to resolve;
- Specific and inconsistent site/ location plan requirements between each planning authority;
- Delayed responses from planning authorities and delayed issuing of decision notices;
- Request for additional information which when challenged was in fact not necessary;
- Uncertainty over which aspects of forestry operations are subject to the prior notification requirements;
- Lack of clarity on what constitutes prior approval compared to a need for full planning permission and the approach taken by planning authorities on this issue;
- When it comes to the validation of prior notifications a lack of clarity as to what is actually required to meet the regulations or a difference of interpretation in that respect.

5.7.2 The environmental groups expressed concern around the level of scrutiny given to each prior notification, commenting that the 28-day period may not be enough time to assess the information submitted thoroughly. They noted that a number of validated applications viewed online contained maps that have no scale or reference to the OS system making it difficult to comment on aspects of siting and construction. In addition, they felt that applicants broadly provide insufficient detail around construction techniques and use generic statements such as “will follow SNH guidelines”. Their general impression is that applicants are often not at all familiar with what is required to construct a robust, non-intrusive and durable track in upland situations and that the SNH guidance should be strongly promoted by local authorities and the Scottish Government. It should be noted that the environmental groups did not comment on any forestry tracks as to date they consider none have been of sufficient concern.

5.7.3 The environmental groups stated that the listing of prior notifications on planning authorities’ websites is variable and some do not actually list them at all, for example Perth and Kinross Council. Perth and Kinross Council stated that prior notifications are not recorded publically online as it is not a statutory requirement. It was noted that Angus Council and Scottish Borders Council do not allow public comment on their online portals. This was a particular concern for environmental groups, describing the process as having a democratic deficit as there is not opportunity for full public scrutiny which is normally available as part of a planning application process.

5.7.4 The most common issue reported on by the environmental groups was the way in which local authorities interpreted applicants’ justification for agricultural use. For example, there were noted occasions where applicants simply used the fact that the land formed part of a registered agricultural holding as proof that the track proposed was for agricultural purposes. On some occasions it was noted that planning authorities did not seek further evidence of the intended agricultural purpose of track.

5.7.5 It should be noted, however, that there has been a positive reaction from FCS regarding liaison with planning authorities encouraging a good working relationship between involved parties around the legislation. It was noted by a representative from FCS that it may be useful for FCS to advise planning authorities on the merits of proposed forestry tracks where the authority might otherwise consider that the track does not meet PDR requirements and consider the application non compliant, thus strengthening the planning process.

## **5.8 Scottish Government Guidance on the 2014 Order**

5.8.1 A total of 78% of applicants consulted with the Scottish Government's guidance on the 2014 Order before undertaking the prior notification process. The consensus from applicants was that the guidance does not provide enough information on what would be considered a complete application and that there is confusion as to how much detail is required. It is considered that the guidance needs to be more comprehensive and user friendly to ensure continuity across planning authorities tasked with administering the documents – again inconsistencies around planning authorities' requirements was mentioned by a number of respondents. One respondent from the forestry industry believed that, if the guidance was more comprehensive, it would "give the planning authorities the confidence not to always take the most cautious approach which seems to be causing unnecessary delays". It was noted by the NFUS representative that it is still taking time for the process to filter through to its members.

5.8.2 There is uncertainty amongst applicants regarding the categories of work that require prior notification, for example it was noted that there is a lack of clarity about what constitutes maintenance and therefore does not require prior notification. Because of this, one respondent considered that those in the industry may choose to be unaware of the 2014 Order, stating that "most people will be pressing on with repairs regardless of the Order – in most circumstances commercial factors mean that they cannot wait for the wheel of bureaucracy to turn". This is a major concern for the environmental groups who state that it is unknown whether tracks continue to be constructed without going through a prior notification or planning process. A particular example was noted at an estate where an existing track was recently constructed to improve access in a National Scenic Areas. No documentation was submitted to the planning authority or relevant national park authority, despite the land being in a designated area, where such an alteration or improvement would require a full planning application to be submitted.

5.8.3 In addition, one applicant from the forestry industry said that it would be useful if there was guidance on the circumstances that may lead a planning authority to request an application for prior approval. This was also mentioned by the environmental groups stating that there is a lack of specific guidance on what circumstances would lead to a local authority moving from the prior notification stage to the prior approval stage.

5.8.4 Only one respondent, a forestry applicant, had a positive comment regarding the Scottish Government Guidance, describing it as thorough and lengthy.

5.8.5 FCS produced a briefing note in November 2015 to help identify and outline how the alignment of information required by different consenting regimes might best be carried out to the mutual benefit of all stakeholders. FCS's intent is that it will help deliver well designed and considered forestry private ways which comply with best practice and meet the intentions and requirements of separate planning legislation and EIA regulations.

## **5.9 Levels of Duplication with Other Consenting Regimes**

5.9.1 The majority of respondents from the forestry industry stated that there were similarities and a level of duplication between the new prior notification procedures and the Forestry EIA determination regulations and UK Forestry Standard (and associated guidelines). Forestry

private ways submitted as part of a forestry consent application are administered through Forestry Commission Scotland and subject to consultation with the planning authority, as a statutory consultee. It was felt by forestry stakeholders that the introduction of the prior notification procedure can cause duplication and 'double handling' of applications.

- 5.9.2 The preparatory work for submitting a prior notification was not described as particularly onerous by applicants in the forestry industry as it can often be the duplication of work already undertaken, and the level necessary was described as lower than EIA thresholds. It was felt by the majority of applicants from the forestry sector that it does incur a level of staff time and cost (for both the applicant and the planning authority) which one respondent considered puts further pressure on resources which are already stretched.
- 5.9.3 It was suggested by one applicant that where Forestry Commission Scotland have determined that a private way is necessary for forestry operational purposes in accordance with Forestry EIA thresholds, prior notification should not be required. It was also noted by a number of those in the forestry industry that Forestry EIA consent and prior notifications last for 5 and 3 years respectively and that these should both be aligned to 5 years.
- 5.9.4 A representative from the NFUS considered the process to be onerous for those in the agricultural sector as they are generally less familiar with the 2014 Order. It was considered to have more of a natural fit with the forestry sector. It was further noted that there is a reluctance amongst agricultural applicants to engage with external agents, partially due to costs which in turn contributes to the lower quality of prior notifications from the agricultural sector as reported by planning authorities.

## **5.10 Effectiveness of the 2014 Order**

- 5.10.1 Stakeholder perceptions regarding the effectiveness of the 2014 Order varied. The environmental groups considered that the legislative change is a step in the right direction but that there are still a number of problems that allow some undesirable tracks to 'slip through the net'. It was also stated that it may be too soon to review the 2014 Order fully as in many cases the consented tracks have not yet been constructed. Where the power to request prior approval has been exercised by planning authorities, the environmental groups consider (through the cases they have seen) that it has resulted in thorough examination and the involvement of key agencies e.g. SNH and Scottish Environment Protection Agency (SEPA). SNH stated that the new procedure results in more informed decision making and allows proposals to be improved. However, they did note that as part of the 2014 Order planning authorities are not required to consult with any key agencies and they would encourage local authorities to consult with SNH if the proposal meets any of the criteria set out in SNH's 'Planning for Development – Service Statement'.
- 5.10.2 There were mixed responses from applicants regarding the effectiveness of the 2014 Order, with benefits and disadvantages both noted. Two applicants from the forestry industry consider there to be no benefits to the 2014 Order and it was stated by the majority of those respondents from the forestry industry that the prior notification process is an unnecessary requirement. The representatives from ConFor and UKFPA stated that their members were strongly of the view that there are no benefits to the 2014 Order. It was seen as a duplication of the Forestry EIA procedure and it was questioned as to whether there is a need for both procedures.

Despite this, the following benefits were acknowledged by respondents:

- Potential to control inappropriate development in rural areas;
- Protect the environment and landscape from unnecessary damage;

- A uniform, consistent and pragmatic approach to the construction or upgrading of tracks within agricultural and forestry sectors;
- The requirement for detailed project planning;
- Will flag up contentious roads/tracks.

## **5.11 Unintended Consequences**

5.11.1 There have been a number of unintended consequences noted by respondents regarding the implementation in practice of the legislation. These are outlined in Table 5 alongside any suggestions given in questionnaire responses to address these matters.

Unintended Consequence	Implications	Example in Practice	Stakeholder Suggestions as to how to Address
<p><b><i>Delays and Operational Challenges for Forestry Stakeholders</i></b></p>	<ul style="list-style-type: none"> <li>• More complicated when attempting to plan projects in advance due to the 28-day response/ determination period;</li> <li>• Can reduce the ability to be flexible when budgeting and juggling a number of programmes simultaneously;</li> <li>• It is more difficult to be reactive to budget surplus as prior notification has to be in place. Other jobs are not done as prior notification will take precedence;</li> <li>• Financial disadvantage;</li> <li>• Further pressure on a resource which is already stretched;</li> <li>• Delays can lead to tracks degrading which could have environmental impacts.</li> </ul>	<ul style="list-style-type: none"> <li>• It can be difficult to determine at an early stage where to position appropriate ‘temporary tracks’ to facilitate harvesting operations. As the harvesting operations progress, the preferred location of temporary tracks becomes more apparent and the timely processing of applications would result in harvesting operations proceeding without delay. If the application process is lengthy, or delayed, this can result in the suspension of work on the site, which has significant implications for all concerned.</li> <li>• The process can be onerous when a problem occurs e.g. one respondent stated to replace a small stretch of forest road or construct a turning circle during harvesting could have previously been dealt with in 24 hours and now takes around 2 months.</li> </ul>	<ul style="list-style-type: none"> <li>• Forestry should be removed from the legislation;</li> <li>• Prior notification should not be required where EIA determination has been submitted.</li> <li>• If forestry ways remain subject to the legislation, it should be reviewed in order to ensure that the requirement for notification is more focussed on longer tracks in more these sensitive areas which are currently unaffected by development;</li> <li>• There needs to be a consistent approach to interpretation and implementation by planning authorities.</li> </ul>
<p><b><i>Consent given without evidence of forestry or agricultural need or requirement</i></b></p>	<ul style="list-style-type: none"> <li>• Private ways may be justified to planning authorities and given consent via the prior notification process without clear evidence of forestry or agricultural operational need or requirement;</li> <li>• Role and expertise of Forestry Commission Scotland can be undermined where they have not been consulted on forestry prior notifications.</li> </ul>	<ul style="list-style-type: none"> <li>• Planning authorities are inconsistent in liaising with FCS to determine the forestry need and do not always have forestry expertise;</li> <li>• Using the fact that the land is on a registered agricultural holding as proof of agricultural use for every activity undertaken.</li> </ul>	<ul style="list-style-type: none"> <li>• Improved guidance and training for planning authorities;</li> <li>• Planning authorities should ask for more precise information in the form of justification/ evidence on intended use;</li> <li>• Combine the forestry planning system with prior notification applications;</li> <li>• Planning authorities should liaise with FCS to determine the forestry need.</li> </ul>
<p><b><i>Variable record of Prior Notifications online</i></b></p>	<ul style="list-style-type: none"> <li>• No scope for public involvement on some planning authority websites e.g. Angus Council, Scottish Borders Council and Perth and Kinross Council</li> </ul>	<ul style="list-style-type: none"> <li>• Members of the public may be unable to comment or unaware of prior notifications as a number of planning authorities do not accept comments or list prior notifications only when they have been fully dealt with, allowing no scope for public involvement.</li> </ul>	<ul style="list-style-type: none"> <li>• The Scottish Government should try to achieve a standardised system across planning authorities;</li> <li>• There should be the opportunity for public scrutiny and comment at an early stage;</li> <li>• Initial decisions should be left with FCS as they already liaise with planning authorities on forestry applications.</li> </ul>



**Table 5:** Unintended Consequences

# 6 Conclusions

## 6.1 Conclusions

6.1.1 The General Permitted Development (Scotland) Amendment (No.2) Order 2014 was introduced as a means to enable planning authorities to regulate aspects of agricultural and forestry development for which an application for full planning permission is not required in order to minimise their impact on the environment. This is seen by Scottish Government as striking the right balance between meeting the needs of rural businesses whilst protecting Scotland's environment, amenity and heritage.

6.1.2 This report presents findings from the review of the implementation in practice of the 2014 Order by planning authorities. The research presented in Chapters 3-5 can be summarised in a series of conclusions. It was particularly important to look at stakeholder perceptions of the effectiveness of the 2014 Order as well as their experience of the implementation in practice in line with the findings within the Scottish Government's Business and Regulatory Impact Assessment (BRIA).

## 6.2 Prior Notifications Received

6.2.1 Scotland's thirty-four planning authorities received some 279 prior notifications since December 2014, 60 (22%) of which were for agricultural private ways and 219 (78%) for forestry private ways.

6.2.2 The planning authorities that received the most significant number of prior notifications were:

- Highland (65)
- Argyll and Bute (58)
- Dumfries and Galloway (36)
- Loch Lomond and the Trossachs National Park (33)
- Scottish Borders (24)
- Perth and Kinross (19)
- Aberdeenshire (15)

6.2.3 A total of 32 (11%) of the submitted prior notifications were rejected as incomplete and a further 8 (3%) rejected as not meeting PDR criteria.

## 6.3 Request for Prior Approval

6.3.1 The planning authorities have exercised the power to request prior approval on 13 occasions, totalling 5% of those prior notifications received. In all of these occasions, further information had been requested and allowed further scrutiny of the proposals by key agencies before the development went ahead.

6.3.2 Prior approval provides an additional level of environmental control that would not have been otherwise actioned. Prior approval was therefore welcomed by the environmental groups and SNH who consider the process particularly important as, for example, designations may be missed by local authority planning staff that do not have the required expertise.

## **6.4 Quality of Prior Notifications**

- 6.4.1 There was a mixed response on quality of prior notifications submitted but strong agreement that those submitted for forestry private ways were usually of a higher quality and those in the forestry industry have wider general awareness of the procedure. It was noted by the NFUS representative that it is still taking time for the process to filter through to its members. This was thought to be a result of the fact that the prior notification process has more of a natural fit with the forestry sector and there is an understood reluctance of those in the agricultural sector to engage with external specialists/ agents in prior notification preparation and submission.

## **6.5 Timescales for Handling Prior Notifications**

- 6.5.1 Of the 19 planning authorities (where data is available and recorded in Table 4) that received prior notifications, on average 12 (63%) are meeting the 28-day timescale for handling.
- 6.5.2 Of those planning authorities that are meeting the target, there remain a number of individual prior notifications which exceed the statutory 28-day period. This issue is a critical one for those in the forestry and agriculture industry, as delays to operations were seen by stakeholders as one of the unintended consequences of the 2014 Order
- 6.5.3 The limited information supplied by the planning authorities precludes the drawing of more detailed observations on this issue. Those authorities that had significantly longer timescales (Falkirk, Fife and West Dunbartonshire) had handled only one or two prior notifications.

## **6.6 Duplication with other Consenting Regimes**

- 6.6.1 It was anticipated in the BRIA that some of the work required will have in many cases already been undertaken to meet other existing legislative obligations and best practice requirements. The research found that there were similarities and a level of duplication between the prior notification process and other forestry procedures.
- 6.6.2 This suggests that the prior notification process is not unduly onerous for forestry applicants. In contrast, it was considered to be significantly more onerous for those in the agricultural sector who operate smaller more marginal businesses, are less familiar with the process and unlikely to seek assistance from specialist agents.
- 6.6.3 Although acknowledging a number of benefits that the new procedure brings around the control of inappropriate development in rural areas, respondents from the forestry industry considered the prior notification process to be an unnecessary requirement and that it resulted in the double handling of applications. It was suggested that where a Forestry EIA has been carried out, a prior notification should not be required due to the duplication of work.
- 6.6.4 From the environmental groups perspective, there are still further steps that could be taken to protect the rural environment from undesirable tracks but it was considered that the new procedure had resulted in a welcome further scrutiny of agricultural and forestry private ways.

## **6.7 Guidance**

- 6.7.1 The stakeholders noted that the guidance document produced by SNH should be promoted by local authorities and Scottish Government as a useful reference for both the applicant and the planner.
- 6.7.2 There was a broad consensus that the Scottish Government Guidance needs to be more comprehensive and user friendly as there is confusion and lack of clarity as to the level of detail

required for a prior notification and whether a prior notification is actually required at all. As a result, there appears to be inconsistencies in the way that prior notifications are handled and interpreted by planning authorities.

## **6.8 Financial Costs**

- 6.8.1 The BRIA stated that, from a planning authority perspective, there would be administrative costs but there should not be any additional need for enforcement or monitoring of planning control, as there is currently a requirement for planning authorities to monitor development within their area. The research found that the 2014 Order has not been administratively onerous from a planning authority perspective due to the relatively small number received.
- 6.8.2 East Ayrshire Council and Scottish Borders Council were the only planning authorities to report the need for enforcement action in two specific cases but it was thought that it may be too soon to report on the enforcement issue more generally.
- 6.8.3 The BRIA concluded that there should be no upfront financial costs for developers. The research found that the main cost to developers was through staff time and resources rather than direct financial costs through a planning fee or seeking external consultant expertise.

## **6.9 Unintended Consequences**

- 6.9.1 The BRIA acknowledged that there would be indirect administrative costs falling to the developer whilst preparing the required information. The research found that there have been wider financial implications experienced – delays to projects and operational challenges were noted by a number of forestry stakeholders as a consequence of the 2014 Order. This has had a degree of financial burden for a number of applicants in the forestry industry, although specific costs are unknown.
- 6.9.2 From an environmental group perspective, despite the legislative change issues still remain that allow the construction of undesirable tracks. The suggestions given as to how to address these issues focussed mainly around a standardised recording of prior notifications online thus giving the opportunity for public scrutiny at an early stage and strengthening and encouraging consultation between planning authorities and key agencies e.g. SNH, SEPA. It was also stated by the environmental groups that it may be too soon to review the 2014 Order fully as in many cases the consented tracks have not yet been constructed. In some instances, the environmental groups considered that developments being dealt with through the prior notification process would be more appropriately dealt with through a more thorough planning application process.

## 7 References

Brown, C (2013) Track Changes, Tracks constructed under Permitted Development Rights: The Need for Planning Control, Scottish Environment Link.

East Ayrshire Council (2015) Planning Committee 18 December 2015, Compliance Monitoring Update of Major Developments in East Ayrshire, Report by Head of Planning and Economic Development Economy and Skills. Available at: <http://docs.east-ayrshire.gov.uk/CRPADMMIN/2012%20AGENDAS/PLANNING%20COMMITTEE/18%20DECEMBER%202015/Compliance%20Monitoring%20Update%20of%20Major%20Developments%20in%20East%20Ayrshire%20-%20December%202015.pdf>

Heriot-Watt University School of the Built Environment, Brodies LLP and Scott Wilson Scotland Ltd (2007) Review of the General Permitted Development Order 1992, Final Report, Scottish Executive Social Research, Edinburgh.

Forestry Commission Scotland (2015) Briefing Note 3 – Prior Notification of Forestry Tracks/ Private Ways [online]. Available at: <http://scotland.forestry.gov.uk/images/corporate/pdf/briefing-note-3.pdf>

Scottish Government (2011) Consultation on Non-Domestic elements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 [online]. Available at: <http://www.gov.scot/Publications/2011/03/21151708/15>

Scottish Government (2012) Consultation on Non-Domestic elements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992; Analysis of Responses [online]. Available at: <http://www.gov.scot/Publications/2012/01/5253/17>

Scottish Government (2014) Business and Regulatory Impact Assessment: The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2014. Edinburgh.

Scottish Government (2015) Circular 2/2015: Consolidated Circular on Non-domestic Permitted Development Rights [online]. Available at: <http://www.gov.scot/Resource/0048/00489640.pdf>

## **Appendix A Record of Organisations Responding**

### **Local Authority**

- Aberdeenshire
- Cairngorms National Park
- Clackmannanshire
- Dumfries and Galloway
- Dundee City
- East Ayrshire
- East Lothian
- East Renfrewshire
- Edinburgh, City of
- Glasgow City
- Highland
- Loch Lomond and the Trossachs National Park
- Midlothian
- North Ayrshire
- Perth and Kinross
- Scottish Borders

### **Stakeholder**

#### **Agricultural and Forestry**

- Forestry Commission Scotland
- National Farmers Union Scotland
- Confederation of Forest Industries
- Forest Enterprise Scotland
- Scottish Land and Estates
- Scottish Woodlands Ltd
- EGGER Forestry
- Fyne Forestry Limited
- RTS Ltd
- United Kingdom Forest Products Association

#### **Environmental Groups**

- Scottish Natural Heritage
- Scottish Environment Link (representing Association for the Protection of Rural Scotland, Ramblers Scotland, Cairngorms Campaign, National Trust for Scotland, North East Mountain Trust, RSPB Scotland, Scottish Campaign for National Parks, Scottish Wild Land Group).

## Appendix B Planning Authority Questionnaire

### Independent Review of Prior Notification and Approval Procedures for Agricultural and Forestry Private Ways

#### Planning Authority Questionnaire

Please find below a questionnaire relating to your experiences of the General Permitted Development (Scotland) Amendment (No. 2) Order 2014 that came into effect on the 15th of December 2014. The Order requires that – prior to the formation, or alteration, of agricultural or forestry private ways – the developer or landowner must apply to the relevant planning authority for a decision on whether the prior approval is needed before development can begin. The answers provided will form the base of this research which aims to review the implementation in practice of the 2014 Order by planning authorities.

Please email completed questionnaires to [nikki.mcauley@ironsidefarrar.com](mailto:nikki.mcauley@ironsidefarrar.com) by **Monday 1<sup>st</sup> February**.

<b>1.0</b>	<b>Contact Details</b>	
<b>1.1</b>	<b>Name</b>	
<b>1.2</b>	<b>Position within Planning Authority</b>	
<b>1.3</b>	<b>Address</b>	
<b>1.4</b>	<b>Telephone</b>	
<b>1.5</b>	<b>Email</b>	

2.0 Experience to date					
2.1	How many applications for prior notification have been received since the introduction of the amended procedure?	No. relating to Agricultural ways		No. relating to Forestry ways	
2.1a	How many applications for prior notification have been declined and what were the reasons for this? E.g. <ul style="list-style-type: none"> <li>• Application not accompanied by required information</li> <li>• Did not meet criteria for permitted development rights</li> </ul>				
2.2	What are your Authority's average timescales for dealing with prior notifications?				
2.2a	<i>Where the prior notification process has not been completed within the statutory 28-day period can you outline the reason for this?</i>				
2.3	Are you aware of any instances and has enforcement action been considered or taken where ways have not been subject to prior notification or prior approval?				
2.3a	Are you aware of any instances and has enforcement action been considered or taken where ways have not been constructed in accordance with the prior notification or prior approval?				
2.4	How are the prior notifications recorded and held by your Authority?				
2.4a	<i>Are these available to view online on the Councils website?</i>				



<b>3.0</b>	<b>Consultation</b>	
<b>3.1</b>	<b>Do applicants/ agents discuss their proposals with you before submitting a prior notification application?</b>	
3.1a	<i>What is your experience of these discussions, do they assist the prior notification process?</i>	

<b>4.0</b>	<b>Prior Approval Required and Withdrawal of Applications</b>	
<b>4.1</b>	<b>How many prior notifications resulted in prior approval being required?</b>	
4.1a	<p><i>What were the reasons for prior approval being required?</i></p> <p><i>E.g.</i></p> <ul style="list-style-type: none"> <li>• <i>Further scrutiny of proposal required</i></li> <li>• <i>Insufficient/incomplete detail to allow determination</i></li> <li>• <i>Other</i></li> </ul>	
4.1b	<i>What was the average timescale for determining prior approvals?</i>	
<b>4.2</b>	<b>Have any prior notifications been withdrawn and what were the reasons for this?</b>	

<b>5.0</b>	<b>General Experience</b>	
<b>5.1</b>	<b>Can you describe the overall quality of prior notifications/prior approvals received?</b>	
<i>5.1a</i>	<i>Do you usually receive sufficient information/ detail in the initial notification?</i>	
<b>5.2</b>	<b>What implications have this procedure had on the staff resource within the Planning Authority?</b>	
<b>5.3</b>	<b>Can you describe the general awareness and familiarity of applicants/ agents regarding the new procedure?</b>	
<b>5.4</b>	<b>Does your authority provide specific guidance to applicants/ agents relative to the new procedure?</b>	
<b>5.5</b>	<b>Do you think there are benefits/drawbacks associated with the new procedure?</b>	
<b>5.6</b>	<b>Do you consider there to have been any other consequences associated with the new procedure?</b>	
<b>5.7</b>	<b>Do you consider there are changes that could be made to enhance the process? If so, please set out what these could be.</b>	
<b>5.8</b>	<b>Do you have any other general comments on the new</b>	

	procedure?	
--	------------	--

## Appendix C Stakeholder Questionnaires

### Independent Review of Prior Notification and Approval Procedures for Agricultural and Forestry Private Ways

#### Stakeholder Questionnaire A- Organisation's response on behalf of its Members

Please find below a short questionnaire relating to your members experiences of the General Permitted Development (Scotland) Amendment (No. 2) Order 2014 that came into effect on the 15th of December 2014. The Order requires that – prior to the formation, or alteration, of agricultural or forestry private ways – the developer or landowner must apply to the relevant planning authority for a decision on whether the prior approval is needed before development can begin. The answers provided below, by a stakeholder representative on behalf of its members, will form the base of this research which aims to review the Orders implementation in practice.

<b>1.0</b>	<b>Representative Contact Details</b>	
<b>1.1</b>	<b>Name</b>	
<b>1.2</b>	<b>Organisation</b>	
<b>1.3</b>	<b>Address</b>	
<b>1.4</b>	<b>Telephone</b>	
<b>1.5</b>	<b>Email</b>	

<b>2.0</b>	<b>Members Experience of Prior Notification/ Prior Approval Procedure</b>	
<b>2.1</b>	<b>What feedback has your organisation received from members regarding the implementation of the prior notification and approval processes?</b>	
<b>2.2</b>	<b>Have members made your organisation aware of any particular, or recurring, issues?</b>	
<b>2.3</b>	<b>Have members made your organisation aware of any apparent breaches of the requirements?</b>	
<b>2.4</b>	<b>Do you have any other general comments on the new procedure?</b>	

Please email completed questionnaires to [nikki.mcauley@ironsidefarrar.com](mailto:nikki.mcauley@ironsidefarrar.com) by **Monday 1<sup>st</sup> February.**

## Independent Review of Prior Notification and Approval Procedures for Agricultural and Forestry Private Ways

### Stakeholder Questionnaire B

Please find below a questionnaire relating to your experiences of the General Permitted Development (Scotland) Amendment (No. 2) Order 2014 that came into effect on the 15th of December 2014. The Order requires that – prior to the formation, or alteration, of agricultural or forestry private ways – the developer or landowner must apply to the relevant planning authority for a decision on whether the prior approval is needed before development can begin. The answers provided below, by either applicants themselves or a stakeholder representative, will form the base of this research which aims to review the Orders implementation in practice.

<b>1.0</b>	<b>Contact Details</b>	
<b>1.1</b>	<b>Name</b>	
<b>1.2</b>	<b>Organisation (if applicable)</b>	
<b>1.3</b>	<b>Address</b>	
<b>1.4</b>	<b>Telephone</b>	
<b>1.5</b>	<b>Email</b>	
<b>1.6</b>	<b>What Planning Authority area do you operate in?</b>	
		<i>Tick appropriate box/boxes [✓]</i>
<b>1.7</b>	<b>I am an Applicant</b>	
	<b>I am an Agent</b>	
	<b>My views are those of an organisation</b>	
	<b>My views represent those of a number of members of an organisation</b>	
<b>1.8</b>	<b>I work in Agriculture</b>	
	<b>I work in Forestry</b>	

<b>2.0</b>	<b>Experience of Prior Notification/ Prior Approval Procedure</b>	
<b>2.1</b>	<b>When/how did you become aware of the Scottish Government's Guidance on the 2014 Order<sup>1</sup>?</b>	
2.1a	<i>Did you consult the Scottish Government's Guidance on the 2014 Order before making an application?</i>	
2.1b	<i>Do you have any thoughts on the Scottish Government's guidance on the 2014 Order?</i>	
<b>2.2</b>	<b>Did you discuss your proposals with the Planning Authority prior to preparing and submitting your application?</b>	
<b>2.3</b>	<b>Did you require specialist assistance in preparing your application or at any subsequent stage of the Prior Notification/ Approval process?</b>	
<b>2.4</b>	<b>What costs did you incur before or during the application process?</b>	
<b>2.5</b>	<b>Can you describe the level and nature of any additional work which had to be carried out following the introduction of the new procedure?</b>	

---

<sup>1</sup> Annex F of Circular 2/2015 – Consolidated Circular on Non-Domestic Permitted Development Rights

2.6	What implications has this process had on your resources/operations?	
2.7	Can you please describe your experience of the Planning Authority's handling of the application? i.e. <ul style="list-style-type: none"> <li>• Were requirements clearly set out/ explained?</li> <li>• Level of communication between parties</li> </ul>	
2.8	Did you receive a response/ determination within 28 days?	
2.9	If prior approval was required; <ul style="list-style-type: none"> <li>• Why was this?</li> <li>• What was the outcome?</li> <li>• Was the proposed way amended from the original plan?</li> </ul>	

3.0	<b>Further Observations and Comments on the Prior Notification/ Prior Approval Procedure</b>	
3.1	Did the procedure requirements duplicate other agricultural or forestry related consenting regimes already in operation? If so, can you state what these were?	
3.1a	<i>If yes to the above question, what do you feel are the implications or opportunities arising, if any?</i>	



3.2	<b>Do you consider there are any other matters arising which affect the implementation in practice of the legislation?</b>	
3.2a	<i>If yes to the above question, could you note what these matters are? Can you suggest how these matters could be addressed?</i>	
3.3	<b>What do you consider to be the benefits of the new procedure?</b>	
3.4	<b>Do you consider there to have been any other consequences of the new procedure?</b>	
3.5	<b>Do you have any other general comments on the new procedure?</b>	

Please email completed questionnaires to [nikki.mcauley@ironsidefarrar.com](mailto:nikki.mcauley@ironsidefarrar.com) by **Monday 1<sup>st</sup> February.**