Circular 2/2024: Non-Domestic Permitted Development Rights

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Scottish Government
Riaghaltas na h-Alba

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Introduction

1. This circular consolidates, updates and replaces certain guidance on non-domestic permitted development rights (PDR). Scottish Government Planning Circulars 2/2015 and 2/2011 are hereby revoked.

Permitted Development

2. Permitted development rights (“PDR”) refer to those forms of development which are granted planning permission through legislation, meaning they can be carried out without a planning application having to be submitted to (and approved by) the local authority. In doing so, PDR can provide certainty to developers and save the time and expense associated with applying for planning permission. They can also reduce burdens on planning authorities, allowing them to focus resources on more complex and strategic cases.

3. The title of the legislation containing PDR is the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as “the GPDO”. Article 3 of the GPDO grants planning permission for development specified in Schedule 1 to the GPDO. The Schedule is organised into a series of "classes". Each class specifies the type (or types) of development for which planning permission is granted. Most classes of PDR are subject to conditions and limitations.

4. These limitations and conditions may, for example, specify the maximum size or scale of what is permitted, restrict or dis-apply the rights in certain locations (e.g. conservation areas, National Scenic Areas etc.). A limited number of classes are subject to a condition requiring the developer to notify the planning authority, and provide certain details, before development is carried out (see Annex A). Development contrary to any limitation or condition is not permitted. In practice, this means that development of a description in Schedule 1 to the GPDO can be undertaken without the need for a planning application but only provided that it complies with all the limitations and conditions attached.

5. The fact that a particular development may benefit from PDR does not remove any requirements to comply with other legislation. For example, any engineering works in the vicinity of the water environment will need to comply with the Water Environment (Controlled Activities) Scotland Regulations 2011. Similarly, any waste material will need to be managed in accordance with the Waste Management Licensing (Scotland) Regulations 2011.

6. There are a number of development types that are specifically excluded from the GPDO and which do not benefit from PDRs. Article 3(4) provides that development cannot be carried out under the GPDO if it would be contrary to a planning condition attached to a planning permission. Article 3(4A) further establishes that PDR associated with a building or use do not apply if that building or use is unlawful.

7. Other restrictions apply to certain developments, including:

- Development, other than development permitted by Parts 9, 11, 24 and Class 31 of Schedule 1, that requires or involves the formation, laying out or material widening of an access to an existing trunk or classified road or creates an obstruction to the view of any vehicular traffic;
- Laying or construction of a notifiable[1] pipeline, except where this is being done by a public gas transporter in accordance with Class 39 of Schedule 1;
- Demolition of a building except in certain circumstances; and,
- Where an Environmental Impact Assessment (EIA) is required. Please see paragraphs 10 to 12 below.
- Where a development; (a) is likely to have a significant effect on a European site (as defined in The Conservation (Natural Habitats &c.) Regulations 1994[2]), either alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site, PDR do not apply unless approval is first obtained under these Regulations. Please see paragraphs 13 to 15 below.

Directions restricting permitted development – Article 4 Directions

8. The GPDO contains provisions, set out in article 4 of the GPDO, allowing planning authorities or Scottish Ministers to make directions (commonly known as Article 4 Directions) removing PDR for particular types of development or classes of development. For example, Article 4 Directions limiting householder permitted development are often associated with conservation areas.

9. The process to be followed, particularly whether the approval of Scottish Ministers is required can vary depending on the content and scope of the direction. Different procedures apply to directions restricting development in respect of minerals under Classes 54 (development relating to mineral explorations) or 56 development related to mining), which are covered by article 7 of the GPDO.

Environmental Impact Assessment

10. Most classes of PDR[3] are subject to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. PDR do not apply to 'Schedule 1 development' as defined in those 2017 Regulations, consequently an application for planning permission would be required for such development.

[1] 'Notifiable pipeline' means a pipeline used for dangerous liquids such as oil, ammonia, etc or gases such as natural gas. These have to be notified to the Health and Safety Executive prior to construction work.
[2] S.I. 1994/2716
[3] Article 3(10) of the GPDO specifies which PDR are not covered by the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 – though this is usually because EIA requirements under other legislation apply.

11. PDR would only apply to 'Schedule 2 development' under those 2017 Regulations where the proposal had been screened by the planning authority, or by Scottish Ministers, and, respectively, the resulting screening opinion or screening direction indicated that no EIA was required. Where screening concluded that EIA was required, then a planning application accompanied by an EIA report would be required.

12. More guidance on EIA can be found in Planning Circular 1/2017: Environmental Impact Assessment regulations.

The Conservation (Natural Habitats &c.) Regulations 1994

13. Article 3(1) of the GPDO applies The Conservation (Natural Habitats &c.) Regulations 1994 to PDR. Under these 1994 Regulations, a separate written approval would be required from the planning authority for development covered by PDR which:

a) is likely to have a significant effect on a European site in Great Britain or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of the site.

14. In such cases an 'appropriate assessment' would be required to inform the decision to approve the proposal or not. More information on 'appropriate assessment' can be found at Habitats Regulations Appraisal (HRA) | NatureScot.

15. 'European sites' and 'European offshore marine site' are defined in those 1994 regulations. In many cases these 'European sites' are underpinned by designation as a Site of Special Scientific Interest (see paragraphs 18 below).

Other Consents and Approvals

16 Other additional consents or legislative requirements may apply to development even where PDR grant planning permission. The following paragraphs cover the main ones, but are not exhaustive. It is the responsibility of the developer to ensure that they comply with statutory requirements and have all the consents and permissions necessary to carry out their development.

17. Where appropriate, development will need to comply with Building Standards requirements, and may need a building warrant. Please see information on: Building standards

18. Sites of Special Scientific Interest (SSSIs) are those areas of land and water that we consider best represent our natural heritage with regard to certain aspects, such as flora and fauna. Certain works in SSSI will require a consent from NatureScot. See: Sites of Special Scientific Interest (SSSIs) | NatureScot.

19. Under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, works for the demolition of a listed building or for its alteration or extension in

any manner which would affect its character as a building of special architectural or historic interest will require listed building consent. Planning authorities will be able to confirm whether a property is located in a conservation area. Historic Environment Scotland's website has information about listed buildings

20. Under that same Act, demolition of a building in a conservation area will require conservation area consent (CAC). There is a direction exempting certain demolition in a conservation area from the requirement for CAC[4].

21. Requirements under the Ancient Monuments and Archaeological Areas Act 1979 may also apply to works, for example Scheduled Monument Consent – see : What is Scheduled Monument Consent? | Historic Environment Scotland.

22. If you intend to carry out any activity which may affect Scotland's water environment, you must abide by regulations and, if necessary, obtain an authorisation to proceed. For further information on this and the Water Environment (Controlled Activities) (Scotland) Regulations 2011, see Water | Scottish Environment Protection Agency (SEPA).

Further guidance

23. Detailed guidance on some individual classes of the GPDO is contained in the annexes to this Circular.

[4] See Appendix 3 of Historic Environment Scotland Circular | Historic Environment Scotland

Annex A - Prior notification / prior approval

1. In most cases, permitted development rights (PDR) allow development to be carried out without reference to the planning authority – provided the relevant PDR conditions are complied with.

2. However, a small number of PDR are subject to a process known as "prior notification[5]/prior approval". Under this process, a developer must notify the planning authority, provide details of its proposed development and pay the relevant fee – as specified in Planning Circular 2/2022 The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022. The authority then has an opportunity to indicate whether specific aspects of the development are acceptable.

3. The planning authority's determination is limited to the particular matters specified in the relevant PDR class – for example, siting, design or appearance. In this sense, the process is lighter touch than a 'standard' planning application because a narrower range of considerations can be taken into account.

4. This annex provides a general explanation of how the prior notification/prior approval process works. Where relevant, annexes covering particular development types provide additional guidance on details that are specific to particular classes.

5. Please note that with regard to the PDR for electronic code operators under Class 67 (Annex G), there are two forms of prior notification/prior approval. The version for ground based masts and related equipment follows a different procedure to that described in this annex. Careful attention should, therefore, be given to such requirements as set out in Annex G and also in the following guidance: Scottish Government Planning Guidance: Digital Telecommunications.

Requirement to comply with conditions and restrictions of PDR

6. In order to benefit from PDR a person must comply with all the requirements of the relevant class as set out in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as "the GPDO" otherwise the PDR do not apply. Prior notification/ prior approval is a condition of certain classes of PDR.

7. Where the planning authority consider the proposal does not comply with the other relevant GPDO requirements, and the development would not have PDR, they must refuse to consider any related prior notification/prior approval application.

[5] The legislation refers to an application to the planning authority for their determination as to whether prior approval is required – which is abbreviated in this circular to 'prior notification'.

8. In particular, see paragraphs 10 to 12 on EIA in the main circular. For 'Schedule 1 development' in this regard, prior notification/ prior approval should not be pursued or considered. A full planning application and EIA assessment is required. For 'Schedule 2 development', prior notification/ prior approval should not be pursued or considered unless a screening opinion or direction has been issued to the effect EIA is not required.

Prior notification/ prior approval process

9. Anyone who wants to carry out development under permitted development provisions which include a condition requiring prior notification/prior approval must notify the planning authority before starting development (see 'Enforcement' below). Unless otherwise specified, the planning authority has 28 days in which to consider the notification.

10. If no request for details or indication that prior approval is required is received within the 28 day period, the developer may proceed to exercise their permitted development rights. Likewise, if the planning authority responds within the 28 day period to say prior approval is not required, the developer may proceed. In either of these cases where prior approval is not required, the developer can proceed only in accordance with the details submitted in the prior notification.

11. Where the authority responds within the 28 day period to say prior approval is required, the development cannot proceed until such time as approval is granted, and in accordance with the approval as granted.

12. So, in summary, where prior notification/prior approval is required, a developer or landowner must:

    - submit a prior notification before starting any work on the development
    - not start this work until:
        - the planning authority responds to the prior notification within 28 days to confirm that prior approval is not required; or
        - the 28 day period expires with no response from the planning authority; or
        - where the planning authority indicates prior approval is required, such approval is granted.
    - carry out the work in accordance with the details supplied in the prior notification or, where appropriate, as detailed in the prior approval.

13. The prior notification/prior approval procedure provides planning authorities with a means of regulating, where necessary, important aspects of development for which an application for full planning permission is not required by virtue of the GPDO. Provided all the GPDO requirements are met, the principle of whether the development should be permitted is not for consideration. Prior approval should only be required in cases where the authority considers that a proposal is likely to have a significant impact on its

surroundings. Many proposals notified to authorities under the GPDO will not have such an impact.

Efficient Handling of Prior Notification/ Prior Approval

14. The Scottish Ministers attach great importance to the prompt and efficient handling of notifications and any subsequent submissions of details for approval under the provisions of the GPDO. For example, undue delays could have serious consequences, for example, for agricultural and forestry businesses, which are more dependent than most on seasonal and market considerations.

15. The procedures adopted by authorities should be straightforward, simple, and easily understood. Delegation of decisions to officers will help to achieve prompt and efficient handling, and should be extended as far as possible. It is essential that authorities acknowledge receipt of each prior notification, giving the date on which it was received, so that the developer will know when the 28 day period begins.

16. Where the authority does not propose to require its prior approval it should not wait for the 28 days to expire but should inform the developer as soon as possible, to avoid any uncertainty and possible delay. Where the authority does decide that their prior approval is required and the submission of details is needed, it should write to the developer as soon as possible stating clearly and simply exactly what details are needed. Care should be taken not to request more information than is absolutely necessary.

17. There will often be scope for informal negotiations with the developer. If, as a result of discussions, the developer's original proposal is modified by agreement, he or she is not required to re-notify it formally to the authority in order to comply with the terms of the GPDO condition, but the authority should give its written approval to the modification to make it clear that the developer has authority to proceed with the modified proposals.

Time limit for consideration of a prior approval

18. Where prior approval is required, as is the case with planning applications, there is no set time limit for planning authority to issue a prior approval decision. If prior approval is not issued within 2 months then the applicant has the option, if they wish, to appeal to Scottish Ministers on the grounds of non-determination.

Decisions on prior approval

19. As noted previously a planning authority should refuse to consider an application for prior notification/prior approval where the development does not, in their opinion constitute permitted development.

20. Where the authority have indicated that prior approval is required and subsequently consider that the proposal cannot be made acceptable by changes to the relevant matters under consideration, they may refuse the application. The applicant has the right to appeal such a decision.

21. Where prior approval is required, it can be granted with or without conditions. The requirements relating to the use of conditions in planning permission[6] would apply. The applicant has the right to appeal against the conditions.

Records

22. Although there is no statutory requirement to do so, planning authorities should keep records of prior notification/prior approval cases. Data on certain notifications form part of the Planning Application Statistics returns that are submitted by planning authorities and form the basis of the Scottish Government's Official Statistics on planning applications.

Enforcement

23. The prior notification/prior approval arrangements are intended to fit in with the existing enforcement provisions in the Town and Country Planning (Scotland) Act 1997. Planning Circular 10/2009: Planning Enforcement provides guidance on planning enforcement procedures and practice.

24. Anyone wishing to carry out development under PDR to which prior notification/ prior approval applies is required to notify the planning authority - this is a condition of the planning permission deemed to be granted under these provisions. If a developer fails to notify an authority the usual enforcement action for a breach of planning control would be open to that authority.

25. Where a development has been notified and the authority has advised that prior approval is required and has requested further details, the development may not proceed until the details have been submitted and approved. It is therefore in the developer's own interests to submit the details as soon as possible. If, however, the developer proceeds without submitting details or without, or in contravention of, the authority's approval, the normal enforcement measures would again be available for use as the authority deem appropriate in the circumstances of any particular case.

[6] Planning Circular 4/1998: the use of conditions in planning permissions - gov.scot (www.gov.scot)

Annex B - Development by Statutory Undertakers

1. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as “the GPDO” grants certain statutory undertakers (and in some cases their lessees) permitted development rights (PDR) for a range of developments associated with their operational requirements. This reflects the specialised nature and operational necessity of much development by, or on behalf of, statutory undertakers.

2. There is a requirement for certain undertakings to give prior notification to a relevant planning authority and, if necessary, for the planning authority to give prior approval for such matters as the design and external appearance of buildings (for example; Classes 39 and 40, Part 13 of Schedule 1 of the GPDO). Planning authorities may consider any detrimental effect the development might have on the amenity of the neighbourhood; modifications which might be reasonably made to avoid or reduce any such effect; and whether the proposed development ought to, or could reasonably and without excessive cost, be sited elsewhere.

3. Where there is no statutory requirement to notify planning authorities, it may nevertheless be beneficial for informal arrangements to be established between planning authorities and statutory undertakers for advance notification of development proposals. There is potential for contact of this kind to be of mutual benefit. One benefit to be gained, for example, is that statutory undertakers themselves will be given timely warning of proposed development by other persons for which their services will be required and of proposed developments which might interfere with existing services provided by them. Statutory undertakers should consider informing planning authorities of proposals for permitted development which are likely to affect them significantly before the proposals are finalised.

4. In exceptional cases the authority may consider that normal planning control should apply and it will be open to them (except in the case of development under Part 11, Class 29 of the GPDO: Development under Local or Private Acts or Orders) to make and submit to the Scottish Ministers a Direction under article 4 of the GPDO.

Electricity Undertakings

5. Class 40 (Electricity Undertakings) of the GPDO provides PDR for certain development by electricity undertakers, defined as licence holders under section 6 of the Electricity Act 1989, required for the safe and efficient deployment and upgrading of electricity network infrastructure.

6. Class 40 PDR enable electricity undertakers to carry out development for the installation and replacement of electric lines, electricity substations and telecommunications lines, as well as site survey and investigation works, the erection of gates, fences, walls and other enclosures, and certain development on their operational land. Further guidance on the development permitted at Class 40 is provided below.

Electric Lines

7. Class 40(1)(a) permits electricity undertakers to install or replace electric lines provided that there is no requirement to apply to the Scottish Ministers for consent under section 37 of the Electricity Act 1989. This means that Class 40(1)(a) applies to all below ground electric lines and any above ground line electric lines listed amongst the exemptions identified at section 37(2) of the Electricity Act 1989 or within the Overhead Lines (Exemptions) Scotland Regulations 2013.

8. The term 'electric line' is defined at section 64(1) of the Electricity Act 1989. In broad terms, this definition covers any line used for the carrying of electricity for any purpose and includes its supports, such as pylons or wooden poles, and any other wires, cables or tubes carried or suspended in association with the electric line.

9. Class 40(1)(a) also permits electricity undertakers to construct shafts and tunnels and to install or replace electricity substation infrastructure (see below) reasonably necessary in connection with an electric line.

10. Works for the installation and replacement of electric lines permitted under Class 40(1)(a) are subject to conditions set out at Class 40(3)(a) and (b). These set out that any conditions relating to the height, design or position of an installed electric line should apply when it is replaced. They also require the removal of electric lines and the reinstatement of land following temporary diversions.

Electricity Substations

11. Electricity substations are needed to convert electricity into different voltages and regulate the flow of current. Class 40(1)(a) permits electricity undertakers to install or replace substation infrastructure reasonably necessary in connection with an electric line. This substation infrastructure includes feeder pillars, service pillars, transforming stations, switching stations and the chambers used to house such electrical apparatus.

12. Class 40(1)(a) does not apply to electricity substation infrastructure housed in a chamber which would exceed 3 metres in height or would have an overall capacity exceeding 45 cubic metres, however.

13. The Class 40(1)(a) PDR also do not apply in cases where electricity substation infrastructure is housed in a chamber with an overall capacity exceeding 29 cubic metres and would be located within 5 metres of a dwelling or within certain areas designated for their heritage or scenic value. These areas include National Scenic Areas, National Parks, conservation areas, historic gardens or designed landscapes, historic battlefields, World Heritage Sites, the curtilage of a listed building and the site of a scheduled monument.

Communications Lines

14. Communications lines are incorporated into electricity networks to ensure electrical safety and to monitor the operation of the network. They allow communication between substations and end points so that faults can be anticipated, and circuits can be switched off if necessary.

15. Class 40(1)(b) permits electricity undertakers to install any communications line which connects any part of an electric line to any electrical plant or building. Class 40(1)(b) also permits the supports needed for such communications lines. These PDR do not apply, however, in cases where communications lines are installed in National Scenic Areas or Sites of Special Scientific Interest. These PDR also do not apply where the communications line installed would exceed 1,000m in length or would be carried on a support exceeding 15m in height.

16. Class 40 (1)(ba) permits electricity undertakers to replace any communications line which connects any part of an electric line to any electrical plant or building. Class 40(1)(ba) also permits the supports needed for replacement communications lines. These PDR are subject to a condition included at Class 40(3)(ba) specifying that the dimensions, location and number of supports for the replacement communications line should be the same, or less impactful, than the original.

Site Investigations

17. Site investigation works are required to collect information on, assess and report potential hazards or constraints associated with projects for the upgrading and expansion of electricity networks. They are critical for understanding potential environmental impacts and informing project design and mitigation.

18. Class 40(1)(c) permits electricity undertakers to carry out works for the purpose of survey or investigation, as well as the installation of any plant or machinery reasonably necessary in connection with such works.

19. These PDR are subject to a condition at Class 40(3)(c) that, on the completion of the development or at the end of a period of six months from the beginning of that development (whichever is sooner), any such plant or machinery shall be removed, and the land shall be restored as soon as reasonably practicable. The land must be restored to its condition before the installation took place, or to such condition as may have been agreed in writing between the planning authority and the developer.

Gates, Fences, Walls and Other Means of Enclosure

20. The Electricity Safety, Quality and Continuity Regulations 2002 place a number of requirements on the delivery of electricity network infrastructure to ensure public safety. Part III of these Regulations specify that substations are enclosed where necessary to prevent, so far as is reasonably practicable, danger or unauthorised access. These regulations also specify that any part of an electricity

substation, which is open to the air and contains live equipment, which is not encased, is enclosed behind a fence or wall not less than 2.4m in height.

21. Class 40(1)(ca) therefore permits electricity undertakers to erect, construct, maintain, improve or alter a gate, fence wall or other means of enclosure for the purposes of ensuring the safety and security of electricity network infrastructure.

22. These PDR are subject to a general limitation included in article 3(5)(a) of the GPDO on development that creates an obstruction to the view of persons using any road used by vehicular traffic. Limitations included at Class 40(2)(ba) also restrict the erection or construction of any such gates, fences, walls or enclosures exceeding 3 metres in height, and improvement or alteration works that would cause any such gate, fence, wall or enclosure to exceed its former height or 3 metres above ground level.

Development on 'Operational Land'

23. Class 40(1)(d) to (f) permits electricity undertakers to carry out certain development on their operational land. In this context, 'operational land' is defined at sections 215 and 216 of the Town and Country Planning (Scotland) Act 1997.

24. Class 40(1)(d) to (f) permits a range of development on operational land including the extension or alteration of buildings and the erection of new buildings for the protection of plant or machinery. These PDR are subject to certain limitations and conditions detailed below.

25. Class 40(1)(d) permits electricity undertakers to extend or alter buildings on their operational land. Limitations at Class 40(2)(c) restrict these PDR where the height, cubic content or floor area of the original building would be exceeded by certain thresholds, with lower thresholds applying in conservation areas and National Scenic Areas.

26. Class 40(1)(e) permits electricity undertakers to erect buildings solely for the protection of plant or machinery on their operational land. These PDR do not apply to such buildings exceeding 15 metres in height, however. In cases where such a building would exceed 3m in height, Class 40(3)(d) also requires electricity undertakers to undertake a prior notification/prior approval process with the planning authority on the siting, design and external appearance of the building. Annex A provides a general overview of the prior notification/ prior approval process. Prior notification applications under Class 40(3) must be accompanied by:

- a written description of the proposed development and the materials to be used;
- a plan indicating the site; and
- any fee required to be paid.

Such development shall be carried out–

(a) where approval has been given by the planning authority, within a period

of five years from the date on which approval was given;

(b) in any other case, within a period of five years from the date on which the planning authority were given the information in the prior notification.

27. Class 40(1)(f) permits electricity undertakers to carry out any other development in, on, over or under their operational land. Limitations at Class 40(2)(e) restrict these PDR where such development would include the erection of a building, or the reconstruction or alteration of a building where its design or external appearance would be materially affected. These PDR are also limited in cases where the installation of additional or replacement plant or machinery would be greater than 15m in height or would exceed the height of any plant or machinery to be replaced.

Sewerage Undertakings

28. Class 43A covers sewerage development undertaken by a sewerage authority or by a person authorised under section 3A of the Sewerage (Scotland) Act 1968. The class covers development both under and over ground.

29. Class 43A(2) requires planning authorities to be notified of the proposed works (both above and/or underground) and their location not less than 28 days prior to the commencement of works. Good practice would be for early liaison between the sewerage authority and the planning authority. Planning authorities should have information on environmentally sensitive sites, archaeological sites and proposals for development etc., which would be essential to the sewerage authority in planning their works.

30. PDR under Class 43A cover any development not above ground level which involves the provision, improvement, maintenance or repair of a sewer, outfall pipe or sludge main or any associated apparatus. Above ground, PDR allow certain works subject to the following restrictions:

Type of development	Restrictions
Control kiosk for a pump station or monitoring station	Dimensions of the kiosk do not exceed; 6 cubic metres total volume; 2 metres in height; 3 metres in width; and, 1 metre in depth.
Sewer pipe supported on pillars or truss above ground to maintain a gradient	1 metre in height
Raised manhole covers or sampling chamber	1 metre in height 1 metre in width
Vent pipe	3 metres in height
Concrete head wall for sewer discharge pipes	1.5 metres in height 1.5 metres in length 0.5 metres in depth

Annex C - Solar Panels

1. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as "the GPDO" contains permitted development rights (PDR) for solar panels attached to non-domestic buildings (Class 6J) and within the curtilage of non-domestic buildings (Class 6N). This annex contains guidance on both. Guidance on solar canopies situated in parking areas is contained in Annex D.

Building-mounted solar panels

2. Class 6J allows the installation of solar panels (either PV (photovoltaic) for the generation of electricity or solar thermal for the generation of heat) and associated equipment such as mounting brackets, cabling etc, on the exterior walls and roofs of non-domestic buildings.

3. These PDR provide that no part of the panels and associated equipment installed is to protrude more than 1m from the surface of the building.

4. The PDR allow the installation of solar panels on buildings within a conservation area subject to the restriction that they cannot be located either on the front elevation or on a side elevation which fronts a road. 'Principal elevation' along with side and rear elevation is defined in the interpretation section of Part 1B of the GPDO.

5. The term "principal elevation" is used to identify the front of the building. The "rear elevation" is the elevation opposite the principal elevation. "Side elevations" link the principal and rear elevation. The "fronting a road" is a way of determining if the side elevation is in the public domain.

6. The PDR do not apply to any building which is;

    - listed or within the curtilage of a listed building,
    - within 3km of an aerodrome or technical site[7].
    - within a National Scenic Area,
    - within a historic garden or designed landscape within a National Park, or

[7] Technical site:

(a) any area within which is sited or is proposed to be sited equipment operated by or on behalf of NATS Holdings Limited, any of its subsidiaries or such other person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000 for the provision of air traffic services, particulars of which have been furnished by the Scottish Ministers or the Civil Aviation Authority to the planning authority or authorities for the area in which it is situated, or

(b) any area within which is sited or is proposed to be sited equipment operated by or on behalf of the Secretary of State for Defence for the provision of air traffic services, particulars of which have been furnished by the Secretary of State for Defence to the planning authority or authorities for the area in which it is situated.

- within a World Heritage Site.

7. Any development carried out under the provisions of class 6J is subject to a condition, set out at Class 6J(3), that the panels and equipment must be removed as soon as is reasonable practicable if the equipment is no longer required or if it becomes incapable of generating either electricity or heat depending on the type of panels installed.

Ground-mounted solar panels

8. Class 6N allows the installation, alteration or replacement of free standing solar panels (either photo voltaic or solar thermal) and associated equipment within the curtilage of a non-domestic building.

9. The cumulative surface area covered by the solar panels and equipment under this PDR must not exceed 12 square metres. There are no restrictions on the arrangement of the panels etc or how many separate panels may be installed at different locations within the curtilage of the building, providing the total area does not exceed this limit.

10. Class 6N(2)(b) sets out that, if the building is located in a conservation area, panels and equipment cannot be installed in the front curtilage of the building. Front curtilage for the purposes of this class is defined at Class 6N(4) as meaning that part of the curtilage forward of the principal elevation of the building. As with Class 6J above principal, side and rear elevations are defined in the interpretation section of Part 1B (see paragraphs 4 and 5 above)

11. The PDR do not apply to solar panels situated;

    - within the curtilage of a listed building,
    - within 3km of an aerodrome or technical site,
    - within a National Scenic Area,
    - within a historic garden or designed landscape
    - within a National Park, or
    - within a World Heritage Site.

12. Any development carried out under the provisions of Class 6N is subject to a condition, set out at Class 6N(3), that the panels and equipment must be removed as soon as is reasonably practicable if the equipment is no longer required or if it becomes incapable of generating either electricity or heat depending on the type of panels installed.

Annex D - Solar canopies and related equipment

1. The PDR for solar canopies, necessary battery storage and equipment in qualifying parking areas are intended to strike a balance between maximising the use of these spaces for the generation of electricity to help meet climate change targets, whilst maintaining reasonable planning controls to address issues, such as local amenity and built heritage considerations.

2. Unless otherwise stated, references in this Annex to definitions of terms, such as qualifying parking area, are to definitions for the purposes of Class 9M.

3. Class 9M sets out the PDR for solar canopies and related equipment, including an element of battery storage, in a qualifying parking area.

4. A qualifying parking area is defined as an area whose primary use is the lawful parking of vehicles and where parking takes place on a hard surface. This means that the parking area could be used for other activities, but it is primarily a parking area for vehicles. This definition includes parking areas with soft surfaced areas, such as landscaping, provided vehicles are parked on a hard surface.

Grant of Planning Permission

5. Class 9M(1)(a) grants planning permission in a qualifying parking area for (i) a solar canopy, and (ii) equipment (including equipment housing) necessary for operation of the solar canopy.

6. A solar canopy is defined as solar photovoltaics supported by a qualifying canopy structure and the qualifying canopy structure and connecting cabling.

7. A qualifying canopy structure is defined as a structure which supports solar photovoltaics, which is both open on one or more sides and allows one or more vehicles to be parked underneath it.

8. Class 9M(1)(b) grants planning permission in a qualifying parking area for (i) battery storage which is wholly or primarily associated with the operation of a solar canopy permitted under this class, and (ii) equipment (including equipment housing) necessary for operation of the battery storage.

9. Battery storage is defined here as the equipment and apparatus for the storage of energy which is converted from electricity and is stored for the purpose of its future reconversion into electricity.

10. The intention is that whilst the battery storage is to support the use of the solar canopies in providing electricity for various uses, this does not rule out their use for other purposes when storage capacity is available.

Limitations on Class 9M PDR

11. There are various limitations on the PDR under Class 9M, which relate to particular areas, distances from other development and the size of equipment.

Limitation on PDR in designated and other areas

12. Class 9M (2)(e) contains a limitation such that PDR under Class 9M do not apply at all in the following areas:

(i) sites of archaeological interest,
(ii) National Scenic Areas,
(iii) historic gardens or designed landscapes,
(iv) historic battlefields,
(v) conservation areas,
(vi) National Parks,
(vii) World Heritage Sites,
(viii) the curtilage of a listed buildings

Limitation on PDR for development on or near buildings

13. Class 9M(2)(a) contains a number of limitations, again relating to any development under Class 9M, regarding its proximity to other development. The Class 9M PDR do not apply:

(i) Within 5 metres of a road,
(ii) Within the curtilage of a dwellinghouse, or a building containing one or more flats,
(iii) Within 10 metres of the curtilage of a dwellinghouse or a building containing one or more flats,
(iv) Within 3 kilometres of the perimeter of an aerodrome or technical site[8] .

14. There is also a further limitation under Class 9M(2)(f) removing these PDR from development that would take place on the roof of a building, or on the top level of an open top multi-storey car park.

Limitation on the size of development

15. Class 9M(2)(b) allows for a solar canopy to be up to 4 metres in height whilst any other development under new Class 9M cannot be above 3 metres in height.

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[8] Technical site:

(a) any area within which is sited or is proposed to be sited equipment operated by or on behalf of NATS Holdings Limited, any of its subsidiaries or such other person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000 for the provision of air traffic services, particulars of which have been furnished by the Scottish Ministers or the Civil Aviation Authority to the planning authority or authorities for the area in which it is situated, or

(b) any area within which is sited or is proposed to be sited equipment operated by or on behalf of the Secretary of State for Defence for the provision of air traffic services, particulars of which have been furnished by the Secretary of State for Defence to the planning authority or authorities for the area in which it is situated.

The heights here are measured from the level of the surface used for the parking of vehicles.

16. Given the definition of ‘solar canopy’, this means that cabling can be included on a canopy structure which is up to 4 metres in height.

17. There are two sets of limits on the cubic capacity of equipment set out in Class 9M (2)(c) and (d). Firstly, a limit on any individual battery storage unit or piece of equipment (including equipment housing but excluding a solar canopy or cabling) of 29 cubic metres in size. This applies to any battery storage or any equipment, including equipment housing, under Class 9M other than a solar canopy or cabling.

18. Secondly (Class 9M(2)(d)), there is a limit of 58 cubic metres in size for the combined size of all battery storage units and all pieces of equipment (including equipment housing but excluding cabling) relating to battery storage, as specified in Class 9M(1)(b).

19. Where equipment housing includes development under Class 9M(1)(a)(ii) relating to solar canopies alongside any development under Class 9M(1)(b), then that equipment housing counts towards this cumulative limit.

Conditions on illumination of development and on the removal of redundant development

20. There are two different sets of conditions in Class 9M(3). Firstly, those relating to any illumination forming part of development under Class 9M. Secondly, those relating to the removal of redundant equipment and the reinstatement of land.

21. Class 9M (3)(b) sets out a requirement where any lighting or illumination forms part of the development. Such lighting or illumination must be directed towards the surface used for the parking of vehicles, and it must only illuminate the immediate area of the development.

22. Under Class 9M(3)(a), development is permitted subject to the following conditions that if development is no longer needed for the generation of electricity, then, as soon as reasonably practicable:

a. it must be removed; and.

b. the land on which the development was mounted or into which the development was set must be reinstated.

23. That reinstatement must be made, so far as reasonably practicable, to either:

i) its condition before that development was carried out, or,

ii) in accordance with a restoration plan agreed in writing with the planning authority.

Prior notification/prior approval

24. Class 9M(4) includes a prior notification/ prior approval procedure. This applies to development under Class 9M(1)(b), i.e., (i) battery storage which is wholly or primarily associated with the operation of a solar canopy permitted under this class, and (ii) equipment (including equipment housing) necessary for operation of the battery storage.

25. In this case, the planning authority has an opportunity to control the siting and design of battery storage and related equipment specified in Class 9M(1)(b) at or within a qualifying parking area. This is, along with the cumulative size limit on such development, to help address amenity issues regarding such development. In addition, we are aware that some concerns have been expressed about potential safety issues related to battery storage generally as regards, in particular, fire risks. This provision would allow the planning authority to control, for example, the location of the battery storage at a site or within a site.

26. See Annex A for guidance on prior notification/prior approval. In the case of Class 9M, the prior notification application must be accompanied by:

- a written description of the proposed development;
- a plan or plans indicating the location of the site of the proposed development and location of the proposed development within the site plan showing the location of the site; and
- any fee required to be paid.

Completion of development

27. Under Class 9M(4) (e) the development must be completed within 3 years of the date on which prior approval is given or, if prior approval is not required, the date on which the information required to be submitted with the prior notification was given to the planning authority.

Annex E - Electric vehicle charging in qualifying parking areas

1. Classes 9E and 9F of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as “the GPDO” grant planning permission in qualifying parking areas for, respectively, wall mounted electric vehicle (EV) chargers and EV charging upstands and related equipment.

2. These permitted development rights (PDR) can apply in the domestic or non-domestic context. With regard to the domestic context, EV charging could also be installed using the general householder PDR – please refer to the Scottish Government’s Planning Circular 1/2024 on Householder Permitted Development Rights.

3. A qualifying parking area in this context means an area which—

(a) has—
(i) as its primary use lawful off-street parking, and
(ii) a hard surface, or

(b) is within the curtilage of a dwellinghouse or a building containing one or more flats.

Class 9E – Wall Mounted EV Chargers

4. Class 9E permits the installation, alteration or replacement, within a qualifying parking area, of an electrical outlet mounted on a wall for recharging electric vehicles.

5. These PDR do not apply where the electrical outlet and its casing would exceed 0.5 cubic metres, or would face onto and be within 2 metres of a road.

6. The PDR are subject to a condition relating to the removal of equipment and the reinstatement of the wall on which it was mounted.

7. Specifically, when the development is no longer needed as a charging point for electric vehicles:

(a) the development must be removed as soon as reasonably practicable; and

(b) the wall on which the development was mounted or into which the development was set must be reinstated—

(i) as soon as reasonably practicable, and so far as reasonably practicable, to its condition before that development was carried out, or

(ii) in accordance with a restoration plan agreed in writing with the planning authority.

Class 9F – EV Charging Upstands and Related Equipment

8. Class 9F permits the installation, alteration or replacement, within a qualifying parking area, of:

a) an upstand with an electrical outlet mounted on it for recharging vehicles,

(b) equipment (including equipment housing) necessary for the operation of such an upstand.

9. The PDR do not apply if the upstand and the outlet (including its casing) would—

(a) exceed 2.7 metres in height from the level of the surface used for the parking of vehicles;

(b) if located within the curtilage of a dwellinghouse, or of a building containing one or more flats, exceed 1.6 metres in height from the level of the surface used for the parking of vehicles;

(c) be within 2 metres of a road; or

(d) result in more than one upstand being provided for each parking space.

10. In addition, development is not permitted by this class where any piece of equipment, (including equipment housing) other than an upstand would—

(a) exceed 29 cubic metres,

(b) exceed 3 metres in height from the level of the surface used for the parking of vehicles,

(c) be within 5 metres of a road,

(d) be within the curtilage of a dwellinghouse, or a building containing one or more flats,

(e) be within 10 metres of the curtilage of a dwellinghouse or a building containing one or more flats.

11. Conditions apply to these PDR. Firstly, any lighting or illumination forming part of the development must be directed towards the surface used for the parking of vehicles, and only illuminate the immediate area of the development.

12. There are also conditions relating to the removal of redundant equipment and the reinstatement of the land.

13. Specifically, where the development is no longer needed as a charging point for electric vehicles, the development must be removed as soon as reasonably practicable. In addition, the land on which the development was mounted or into which the development was set must be reinstated. This reinstatement must be as soon as reasonably practicable. It must also be, so far as reasonably practicable, to its condition before that development was carried out, or in accordance with a restoration plan agreed in writing with the planning authority.

Annex F - Peatland restoration

Introduction

1. Class 20A specifies permitted development rights (PDR) for peatland restoration projects.

2. There are multiple reasons for preserving and restoring peatlands, ranging from carbon sequestration to ecosystem services that support climate adaptation and resilience. In addition to the obvious benefit of their potential to store carbon, these vital ecosystems, when restored, can enhance biodiversity, reduce flooding and improve water quality.

3. The 2020 update to the Scottish Government's Climate Change Plan[9] sets a target to see restoration of at least 250,000 hectares of degraded peatland by 2030. The full range of economic and environmental benefits provided by peatland restoration are also noted in the Scottish Government's Biodiversity Strategy and the Climate change- national adaptation plan.

4. This guidance is intended to assist those pursuing peatland restoration projects (restorers) and planning authorities in processing cases through planning requirements. It sets out the basic planning conditions and restrictions as regards peatland restoration PDR, including related prior notification/prior approval procedures – see also Annex A.

5. The guidance also refers to some of the other considerations that may apply in specific cases and which have separate statutory requirements. In some cases, the planning authority will be the relevant body, however, submitting information required by the prior notification/prior approval procedure does not cover all the statutory requirements that might apply. A restorer should consider what requirements may apply, and can check with the planning authority and, where relevant, other bodies, such as Scottish Forestry, to consider how best to approach any approval or screening procedures that may apply to a project.

Permitted Development Rights (PDR) – General

6. Permitted development rights is the term given to a grant of planning permission in legislation. This removes the need to apply to the planning authority for planning permission. Such PDR are often subject to conditions and limitations specified in the legislation. Such limitations may, for example, limit the scale of development authorised by the PDR or, as is the case for Class 20A, require the approval of certain aspects of a development before it can begin.

7. In addition, requirements under other legislation may apply – see paragraphs 35 to 51 below.

[9]Securing a green recovery on a path to net zero: climate change plan 2018 – 2032 update securing-green-recovery-path-net-zero-update-climate-change-plan-20182032/

Peatland Action/ Peatland Code

8. Scottish Government funding for peatland restoration is administered largely through Peatland ACTION, including direct delivery partners, namely Forestry and Land Scotland, the two Scottish National Park Authorities, and Scottish Water. As part of their work in authorising funding, Peatland ACTION officers carry out an assessment of projects to ensure compliance with legislative requirements and good practice.

9. Further guidance on Peatland ACTION support and good practice can be found at: nature.scot/climate-change/nature-based-solutions/peatland-action-project.

10. There is also an International Union for Conservation of Nature (IUCN) mechanism – the Peatland Code – for validating schemes seeking private funding. The Peatland Code[10] is a voluntary certification standard for UK peatland projects wishing to market, through the sale of verified carbon credits, the climate benefits of peatland restoration.

11. To access these voluntary carbon markets buyers need to be given assurance that the climate benefits being sold are real, quantifiable, additional and permanent. The Peatland Code is the mechanism through which such assurances can be given. The Peatland Code is currently a standard for verifying the abatement of greenhouse gas emissions, and is not a general code for restoration good practice. It can require projects to demonstrate how they have planned their restoration in line with best available guidance, such as from Peatland ACTION, as well as other specific guidance on peatland restoration and archaeology available from statutory agencies for the historic environment.

12. Restorers may be pursuing one, both or neither of these support mechanisms.

PDR – the grant of Planning Permission for Peatland Restoration

13. Class 20A grants planning permission for the carrying out on peatland of works for the restoration of that peatland[11]. This includes works for the stabilisation, revegetation and re-profiling of bare peat and related drainage works, and the extraction of peat from within a peatland site for the sole purpose of the use of such peat in the restoration of peatland within that peatland site.

14. In this context:

> "re-profiling" means changing the surface of the peatland to reduce water runoff and encourage revegetation by spreading turves across the bare surface,
>
> "revegetation" means by planting, applying locally won turves or seeding with peatland plants,

[10] Introduction to the Peatland Code peatlandprogramme.org/funding-finance/peatland-code

[11] The area of such works, i.e. above 2 hectares, may qualify as 'major development' in the planning hierarchy, but PDR still apply.

"stabilisation" means re-establishment of vegetation by seeding and the introduction of pre-grown seedlings (known as plug plants) with the use of temporary protective coverings, including a plant mulch or manufactured stabilisation product or fertilisers.

15. Drainage works in this context can include structures to block ditches, flood land or divert watercourses. Such structure would normally be of soil, peat, locally won stone, (or other inert material), vegetation, timber, plastic or wooden dams.

16. The grant of planning permission does not extend to works for the formation or alteration of a private way (often referred to as a hill track). Class 27[12] PDR grant planning permission for works within the boundary of an existing private way for the maintenance or improvement of that private way.

17. Class 14[13] PDR for temporary buildings and uses can be used in conjunction with Class 20A PDR during the course of restoration operations.

18. The Class 20A grant of planning permission is subject to conditions requiring the restorer to submit a 'peatland restoration scheme' to the planning authority, in what is often referred to as a prior notification/ prior approval process.

Prior notification/ Prior approval

19. The prior notification/ prior approval process allows a planning authority to consider whether a proposal requires closer scrutiny and approval of some aspects (in this case a peatland restoration scheme) of a proposal which is subject to PDR. This process must be gone through before the restoration works can begin. Annex A provides a general overview of prior notification/prior approval.

20. Firstly, the restorer would need to seek a view from the planning authority as to whether the authority's prior approval is required – the prior notification stage. In doing so, the restorer must submit:

(i) a peatland restoration scheme (see paragraphs 28 to 33 below),

(ii) a map showing the location of the peatland site to be restored,

(iii) the relevant fee required to be paid,

21. The restorer should use their Peatland Restoration Scheme (PRS) to describe the works to be carried out and to demonstrate that they have considered any relevant planning impacts that may arise and, if appropriate, how their proposals mitigate such impacts – see paragraphs 28 to 33.

22. Once the PRS is submitted, where, for example, the planning authority consider it clear that the restorer has adequately identified any relevant issues with

[12] Class 27 of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO).
[13] Class 14 of Schedule 1 of the GPDO.

their project and suitably addressed them in the PRS, then the planning authority may decide that their prior approval is not required. In that case, the restorer can be allowed to proceed in accordance with the PRS as submitted, without the need to wait beyond the 28 days for prior approval.

23. Where the planning authority indicates their prior approval is required, they can give or refuse it or grant it with conditions. Other than attaching conditions, the planning authority cannot amend the PRS itself.

24. However, a restorer could agree in writing with the planning authority changes to the scheme (e.g. to obtain prior approval without necessarily starting the whole prior notification/ prior approval process again). Where a restorer later wishes to depart from the PRS as submitted (where no prior approval is required) or as approved, they can do so only with the written agreement of the planning authority.

25. As noted in paragraphs 8 to 12, proposed peatland restoration projects specifically may be subject to separate assessment and scrutiny outwith the planning process. For example, if financial support has been sought through Peatland ACTION or as part of the registration process under the Peatland Code. In such cases, that wider scrutiny may assist the planning authority in reaching a timely decision as to whether their prior approval is required, and subject to that, whether or not it should be granted – see paragraph 30 on providing information in this regard.

26. As indicated, compliance with these planning requirements does not necessarily mean a project can go ahead; and other legislative or legal considerations may apply in specific cases - see paragraphs 5 and 35 to 51.

27. Where the planning authority is the relevant body for such other approvals and screening, the restorer should consider getting these before entering the prior notification/prior approval process. This could avoid the prior notification/prior approval process moving to the prior approval stage due merely to a separate approval or screening being required that might have a bearing on prior notification prior approval.

<u>Peatland restoration schemes</u>

28. As indicated, Class 20A specifies that a PRS has to be prepared and submitted to the planning authority as part of the prior notification/prior approval process before works can begin. The purpose of the PRS is to set out the works to be undertaken in the restoration project and it is intended to highlight any issues, and mitigation, that may be relevant to the planning authority's consideration as to whether their prior approval is needed and, if so, whether it should be granted. From Class 20A:

29. "peatland restoration scheme" means a scheme setting out the work to be carried out to restore peatland within an area of peatland identified by the scheme and including details in respect of—

(a) any measures to mitigate—

(i) impacts of the proposed development on archaeology,

(ii) the risk of contamination or flooding as a result of the development on the peatland site,

(iii) the impacts of the proposed development on soil, and

(b) the removal, felling, lopping or topping of any trees,

30. In addition to the above, the PRS should include:

- the date, or latest date by when restoration works will be completed on the peatland site; and
- information on any engagement with regard to funding under Peatland ACTION or registration under the Peatland Code, in order to assist the planning authority's decision making.

31. "peatland site" is the area identified in the peatland restoration scheme as the area of peatland to be restored in accordance with that scheme,

32. It may be that some of the issues mentioned in paragraph 29 (a) and (b) above are not relevant to a specific proposal, for example that mitigation is not required or no trees are to be removed, felled, lopped or topped. In those instances, the PRS should indicate the restorer's thinking as to why this is the case. It may be that particular locations or works raise other potential impacts of concern that should be mitigated, and so covered in the PRS. For example, where a project is proposed in or near a World Heritage Site.

33. Please note that since the PDR were introduced, amendments to the Forestry (Exemptions) (Scotland) Regulations 2019 mean separate requirements for a felling permission apply in relation to peatland restoration projects under these PDR – see paragraphs 35 to 39 below.

Time limit on PDR

34. The restorer has 10 years from when prior approval is given to complete the works specified in the PRS. It is important that restorers include in their PRS the date, or latest date, by when restoration works will be completed – otherwise a planning authority may feel compelled to proceed to the prior approval stage merely to impose this time limit.

Trees

35. Where peatland restoration involves tree felling, it is the responsibility of the restorer(s) to comply with:

- The Forestry and Land Management (Scotland) Act 2018
- The Felling (Scotland) Regulations 2019

- The Forestry (Exemptions) (Scotland) Regulations 2019.

36. Legislative compliance requires the restorer(s) to apply for felling permission from Scottish Forestry.

37. Any tree felling without restocking will be assessed against the Scottish Government's Policy on the Control of Woodland Removal.

38. Where peatland restoration involves deforestation or afforestation, the restorer(s) will also need to consider compliance with the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017[14] (the Forestry EIA Regulations) by contacting Scottish Forestry. This is a separate consideration from any requirement for environmental impact assessment under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (the Planning EIA Regulations) – see following section on environmental impact assessment.

39. Further guidance on woodland removal is available online at Scottish Forestry - Woodland removal

Environmental Impact Assessment

40. As with most other classes of permitted development, the grant of planning permission by Class 20A is subject to environmental impact assessment (EIA) requirements under articles 3(8) to (9) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – see paragraphs 10 to 12 of the main circular.

41. Whilst the schedules to the Planning EIA Regulations[15] are to be interpreted widely, they do not specifically refer to 'peatland restoration' as a project to which Planning EIA applies. However, peat extraction falls within the scope of the Planning EIA Regulations.

42. Planning EIA is automatically required in relation to peat extraction where the surface area of the extraction site is over 150 hectares – as identified in Schedule 1(19) of the Planning EIA Regulations. Other peat extraction proposals must be screened by the planning authority to determine whether Planning EIA is required – as identified in Schedule 2(2) of the Planning EIA Regulations.

43. Whilst Class 20A PDR permit peat extraction, this is specifically only for the purposes of relocation for restoration purposes within the peatland restoration site.

[14] Where a felling permission has previously been granted and an area of woodland clear felled, that area is still considered woodland (e.g. where restocking of woodland is a condition of felling permission), and Forestry EIA requirements therefore still a potential consideration where peatland restoration involves a change from woodland to peatland.

[15] Planning Circular 1/2017: Environmental Impact Assessment regulations - gov.scot (www.gov.scot) – this contains guidance on aspects of the Planning EIA Regulations, including screening

Such operations are likely to be significantly different in scale and considerably smaller in impact than those relating to commercial peat extraction.

44. For the purposes of Planning EIA screening, as a guide, rather than the whole peatland restoration site area itself, it would be important to consider the likely cumulative area, within that site, from which peat is likely to be moved in order to facilitate peatland recovery and restoration elsewhere within the site. This is typically at most between 5% to 20% of the total restoration site area.

45. Although it has to be considered on a case by case basis, it would most likely be the impacts of any relocation of peat within the site that would be considered where Planning EIA screening is required. It should also be borne in mind that the intended restoration itself should result in overall positive effects for the environment within the site and indeed more widely.

46. Where Planning EIA screening is required, PDR do not apply until screening has been undertaken and the opinion is that Planning EIA is not required. Where PDR apply, this is subject to the prior notification/prior approval process.

47. Where Planning EIA is required, i.e. for Schedule 1 projects and those Schedule 2 projects where screening concludes Planning EIA is required, an application for planning permission would be needed.

48. Where Planning EIA is not required under the Planning EIA Regulations, and the project includes afforestation or deforestation, then requirements under the Forestry EIA Regulations may yet apply. In such circumstances, restorers would need to approach Scottish Forestry.

49. More guidance is available online regarding screening procedures and other statutory requirements under both the Planning EIA Regulations and the Forestry EIA Regulations.

Designated areas and Other Consent Regimes

50. In addition to the preceding section on EIA requirements, see Paragraphs 13 to 22 of the main circular on issues relating Conservation (Natural Habitats &c.) Regulations 1994 and other consents and regulations, some of which are specific to certain land designations.

51. Sites, such as National Parks, National Scenic Areas, World Heritage Sites, historic battlefields, sites of archaeological interest and the settings of scheduled monuments and of listed buildings, rather than having their own consent requirements, are more dependent on the controls in planning legislation, i.e. in this case, the requirements in the PDR. This should be borne in mind when preparing 'peatland restoration schemes' and considering the need for, and granting of, prior approval for schemes in such areas.

Annex G - Development by Electronic Communications Code Operators

Introduction

1. Class 67 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as "the GPDO" sets out permitted development rights (PDR) for certain works carried out by or on behalf of an electronic communications code operator for the purposes of the operator's electronic communications network or carried out in accordance with the electronic communications code (see paragraph 3 below).

Context

2. Planning has an important role to play in strengthening digital communications capacity and coverage across Scotland and PDR for Class 67 have been substantially amended in recent years. The purpose of these changes has been to support a range of existing communication services and facilitate new services to help Scotland become a world class digital economy, in line with Scottish Planning Policy.

Permitted development under Class 67

3. Class 67(1) sets out PDR for development by or on behalf of an electronic communications code operator, for the purpose of the operator's electronic communication network in, on, over or under land controlled by that operator or in accordance with the electronic communications code. The apparatus to which PDR refer is 'electronic communications apparatus' as defined in the Communications Act 2003[16].

Limitation on PDR in designated areas

4. There are a number of limitations on PDR which apply in certain areas (designated areas), and these are set out in Class 67(2). Subject to exceptions, PDR under Class 67 will not apply in:

- National Scenic Areas,
- National Parks,
- conservation areas,
- historic gardens or designed landscapes,
- Sites of Special Scientific Interest,
- historic battlefields,
- European Sites (including Special Protection Areas and Special Areas of Conservation),
- World Heritage Sites
- the settings[17] of Category A listed buildings, and

[16] The Communications Act 2003, see paragraph 2 in Schedule 3A and section 405: Communications Act 2003. [Note: the text of Schedule 3A may need to be accessed through the drop down menu of 'outstanding changes' on this web version of the 2003 Act.]

• the settings of scheduled monuments.

5. There are, however, a number of circumstances specified in Class 67(2) in which development under this class may be permitted in the above areas. These include:

- development carried out in an emergency,
- the installation, replacement or alteration of small cell systems or Regulation 2020/1070 small cell systems on buildings or other structures (other than in conservation areas or on dwellinghouses and in their curtilage),
- the installation, replacement or alteration in a conservation area, of up to two small cell systems or Regulation 2020/1070 small cell systems —
  - on a building or other structure, or
  - on a dwellinghouse and within its curtilage[18],
- development consisting of a 'link antenna'[19] within the compound of an existing ground based mast.
- development that involves the installation of new telegraph poles, the replacement or alteration of existing telegraph poles, the installation of new overhead lines on telegraph poles, or development that is ancillary to such development.
- development (subject to limitations and requirements described in paragraphs 17 to 31 below) that involves the replacement or alteration of an existing ground based mast or the installation of additional equipment on an existing ground based mast, or development which is ancillary to such development. Further information on what constitutes 'ancillary' development in this context is provided in paragraphs 6 to 9 below,
- development consisting of the alteration or replacement of apparatus generally where the size and number of pieces of apparatus is the same or smaller and the location of apparatus is the same or substantially the same (unless specific restrictions in Class 67(2) apply, e.g. alterations to ground based masts).
- development consisting of the construction, installation, alteration or replacement of ground based equipment housing which would not exceed 2.5 cubic metres in volume.
- development consisting of the construction, installation, alteration or replacement on a building of equipment housing which would not exceed 2.5 cubic metres in volume.

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[17] Historic Environment Scotland guidance on 'Managing Change in the Historic Environment: Setting' - Managing change in the historic environment

[18] The maximum of two small antennas applies across a dwellinghouse and its curtilage (e.g. not two on the dwellinghouse and two in the curtilage), and there are additional locational restrictions in this regard.

[19] A 'link antenna' consists of a satellite antenna on a separate structure (up to four metres in height) and ancillary equipment where this is all located within the compound of an existing ground based mast – where such a compound has been established by a grant of planning permission or prior approval.

- development permitted by virtue of Class 67 (10) which consists of the construction, installation, alteration or replacement of 'other apparatus' (e.g. back up power generators, maintenance ladder or fencing) on a building (other than a ground based mast) or would be ancillary to such development,
- the installation, alteration or replacement of development of an antenna (other than small cell system or Regulation 2020/1070 small cell system) on a building (other than a ground based mast) and the whole of the antenna up to 1.3 metres dish size, or the aggregate size of all dish antennas on the building would not exceed 10 metres, or in the case of antenna (other than a dish antenna) there would be no more than 5 antenna systems on the building.
- development which would consist of the construction or installation of apparatus under land and would not be located in a historic battlefield or World Heritage Site

Ancillary development related to telegraph poles and ground based masts

6. As noted above, Class 67(2)(e) and (g) provide that PDR for certain works associated with telegraph poles and ground based masts, including development which 'is ancillary to such development', apply in designated areas.

7. The Scottish Government considers that, in respect of Class 67, ancillary development means the installation of equipment providing necessary support to the primary activities or operation of an electronic communications code system. This includes, but is not necessarily restricted to, such items as equipment housing[20], other ground based apparatus and associated cabling.

8. It may be necessary to have such ancillary equipment in place either prior to the installation, replacement or alteration of telegraph poles or ground based masts under PDR, or subsequent to such development.

9. Planning authorities should bear in mind that ancillary development does not necessarily need to be adjacent, or visually linked, to a telegraph pole or existing ground based mast to serve an ancillary purpose. Planning authorities should take into account any supporting evidence that the proposed development is ancillary to development involving telegraph poles or ground based masts, and therefore that the PDR under Class 67 are applicable. Operators are also encouraged to provide such evidence when giving notice, where required under Class 67(15), to the planning authority of their intention to start development.

Telegraph poles

10. PDR apply to various development related to telegraph poles, namely the installation of new telegraph poles, the replacement or alteration of existing poles, the installation of new overhead lines on such poles and work which is ancillary to

[20] For example; cabinets to house Digital Subscriber Line Access Multiplexer (DSLAM's) and Primary Cross Connection Points (PCP's).

such development. These PDR apply in designated areas. See paragraphs 34 and 35 on general limits on ground based apparatus.

New Ground based masts

11. Class 67(3) covers the PDR for the construction or installation of a new ground based mast[21] up to 30 metres in height above ground level and located outside designated areas. These PDR are subject to a prior notification/ prior approval procedure (paragraphs 68 to 98 below). While new ground based masts within the specified parameters in PDR should generally be acceptable in principle in planning terms, the planning authority can impose a requirement for prior approval with regard to the siting and/ or appearance of a specific proposal.

12. In calculating the height of a mast in accordance with the PDR in Class 67(3), add together the height of the plinth or supporting structure, the mast itself and any apparatus (including antennas) on it contributing to the height and subtract from that total the height of the antenna to the extent that it protrudes above the top of the mast – i.e. it is not simply the height of the structure without the antennas on it.

13. The intention is to allow a new mast slightly above 30 metres in height where antennas protrude above the top of the mast element. This may require supporting rods that exceed the limit of 30 metres to attach such antennas. But to avoid allowing supporting rods which add excessively to the height of the new structure, these rods can only extend above the height of the mast element by, at most, the height of the antenna.

14. For example, with heights:

Plinth = 1 metre

Mast element = 29 metres

Antenna on the top of the mast = 1 metre

Supporting rod = 1 metre

i) If the supporting rod holds the antenna such that the bottom of the antenna is 1 m clear of the top of the mast element, the mast is not PD: overall height of the structure is 1m + 29m + 1m + 1m = 32m. Subtracting the extent to which the antenna protrudes above the mast is 32m – 1m = 31m.

ii) If the rod holds the antenna such that the bottom of the antenna is flush with the top of the mast element it is permitted development – i.e. in this case the supporting rod is not adding to the overall height of the structure, so the latter is 1m + 29m + 1m = 31m. Subtracting the extent to which the antenna protrudes above the mast is 31m – 1m = 30m.

[21] A “ground based mast” means a mast constructed or installed either directly or on a plinth or other structure constructed or installed for the purpose of supporting the mast. “mast” means a structure erected by or on behalf of an electronic communications code operator for the support of one or more antennas and includes any mast, pole, tower or other similar structure.

15. Once a new ground based mast has been constructed or installed under PDR, the other PDR in relation to such masts will apply thereafter.

16. New ground based masts above the height limit or in a designated area would require an application for planning permission. The 30 metres limit under PDR does not mean new masts significantly above this height, for which an application would be required, are unacceptable. Taller masts can improve coverage, reduce the need for more, smaller masts (e.g. due to wider coverage and allowing multiple operators to share) and can be the difference between service coverage being viable in a remote area and not. Also, in more rural locations, taller masts can address topographical challenges and the need for direct line of sight transmission dishes to link to the wider network ('backhaul').

Alteration and replacement of ground based masts

17. Class 67(4) specifies the PDR for the replacement or alteration of an existing ground based mast or the installation of apparatus on such a mast. There are limitations on the increase of the overall height and/or width of the structure (i.e. the mast and any other apparatus – other than antennas - attached to it) and the repositioning/ replacement of the mast being no more than 6 metres from the original mast, i.e. the mast as first installed.

18. Class 67(19) subjects the PDR for the alteration or replacement of ground based masts (including the installation of apparatus on the mast) to a condition on minimising the visual and environmental impact as far as practicable (see paragraph 57 to 59).

19. Under Class 67(2)(g), these PDR for the replacement or alteration of an existing mast, or work ancillary to such development, apply in designated areas.

20. Where the existing mast has a height of 30 metres or less, it can be increased up to 50% of the height of the original mast.

21. Where the existing mast has a height of more than 30 metres it can be increased up to 50 metres in height. Where the existing mast is over 50 metres in height, an increase up to the height of the original mast plus 20% of its heights is permitted development.

22. The height of the original mast, the existing mast and the resulting mast after any alteration or replacement is calculated by adding: the height of the mast; any apparatus (other than antennas) on it that adds to the height of the structure; and any plinth or other structure required for the purposes of supporting the mast. Here, it is the height of the overall structure without any antennas that matters. This is different from the calculation for new ground based masts installed under PDR – see paragraph 14.

23. The overall width of the structure can be increased by up to either:

- 2 metres; or
- one half of the width of the original mast,

whichever is the greater.

24. The width of the structure is measured horizontally at the widest point of the original structure (though this does not include any plinth or other structure required for the purposes of supporting the mast). When calculating this point it should be borne in mind that the width of the original structure includes any apparatus (other than antennas) attached to the original mast. The widest part of the structure is not therefore necessarily at the foot of the mast, and may be at some distance above ground level. The resulting structure, after alteration or replacement, is measured in the same way.

25. In effect, the limits on these PDR for altering masts do not include the antennas that may contribute to the height and width of the overall structure.

Safeguarded areas

26. Safeguarding maps for planning authorities are issued by the Civil Aviation authority, the Secretary of State for Defence and the Met Office. These maps identify safeguarded areas around aerodromes, technical sites, meteorological technical sites and military explosive storage areas[22]. Where an existing ground based mast is to be increased in height and/or replaced under PDR in a safeguarded area, under Class 67(16) the developer must first notify the relevant body, which is:

- Where a safeguarding map has been issued by the CAA, the owner or operator of the aerodrome or technical sites identified on the map;
- Where a safeguarding map is issued by the Secretary of State for Defence, the Secretary of State for Defence; and
- Where the safeguarding map is issued by the Met Office, the Met Office.

27. Planning authorities can advise developers whether a site is within a safeguarded area and which body should be so notified.

28. In this case, the notice to the relevant body must include:

i) the date on which the notice is sent;

(ii) the name and address of the developer and, where an agent is acting on behalf of the developer, the name and address of that agent;

[22] For the purposes of this Annex, aerodromes, technical sites, meteorological technical sites and military explosive storage areas have the same meanings as in the Town and Country Planning (Safeguarded Aerodromes, Technical Sites, Meteorological Technical Sites and Military Explosives Storage Areas) (Scotland) Direction 2016.

(iii) the postal address of the land to which the development relates or, if the land has no postal address, a description of the location of the land;

(iv) a description of the development to which the notice relates, including its siting, appearance and dimensions (including the height of any mast and the height of any apparatus attached to the mast to the extent that it would protrude above the highest part of the mast); and

(v) a grid reference (to at least 6 figures each of Eastings and Northings) and the elevation height of the site (to an accuracy of 0.25 metres above Ordnance Datum.

29. Such notice must be given at least 28 days before development is to commence. Where development is carried out in an emergency, notice must be given as soon as possible after the emergency arises.

30. It will be for the developer and the relevant body to resolve any issues arising for the potential impact of the exercise of these PDR.

31. Similar requirements apply to PDR for new ground based masts in safeguarded areas and link to the prior notification/ prior approval procedure (paragraphs 77 to 80).

Ground based equipment housing

32. Class 67(5) and (6) place limitations on PDR for development involving ground based equipment housing. The PDR allow the installation or construction of ground based equipment housing provided it does not exceed 3 metres in height or 90 cubic metres in volume. PDR further allow the replacement or alteration of such equipment housing provided that after the replacement or alteration either:

- the equipment housing does not exceed 3 metres in height or 90 cubic metres in volume; or

- if the equipment housing being replaced or altered exceeds either or both of the above limits, the equipment housing as replaced or altered is no greater in height or volume than the equipment housing it replaces or alters.

33. In designated areas PDR allows for the construction, installation, alteration or replacement of ground based equipment housing which would not exceed 2.5 cubic metres in volume.

Other ground based apparatus

34. Class 67(7) places limitations on PDR for development involving the installation, alteration or replacement of ground based apparatus. Class 67(7)(a)(i)

specifies that for ground based apparatus, with exceptions[23], the ground or base area of the structure must not exceed 1.5 square metres. Where existing apparatus already exceeds this limit, it can be altered or replaced up to the existing ground or base area.

35. Class 67(7)(a)(ii) and (iii) deal with the height of apparatus. Class (7)(a)(ii) limits the height permitted for apparatus installed under PDR to 15 metres above ground level. Where existing apparatus is being altered or replaced Class 67(7)(a)(iii) limits the height of the altered or replacement apparatus to the height of the existing apparatus or 15 metres above ground level, whichever is the greater. These limits do not apply to ground based masts (Class 67(3) and (4)) or ground based equipment housing (Class 67(5) and (6)).

Development on a building or other structure

36. Developers should be aware of the condition set out in Class 67(18), that any apparatus installed, altered or replaced, on a building[24] (other than a ground based mast) under the PDR granted by Class 67(1)(a), and any development ancillary to equipment housing carried out under the PDR granted by Class 67(1)(c), shall, as far as is practicable, be sited so as to minimise its effect on the external appearance of the building (see paragraph 57). This includes 'small antennas' and 'small cell systems'.

37. In some instances, the carrying out of works for the alteration of a building which affect only the interior of the building or do not materially affect its external appearance do not constitute development requiring planning permission. In the event of any question of planning enforcement, it would be for the planning authority, in the first instance, to consider such a question in the circumstances of the case.

Electronic communications apparatus on a building or other structure (other than a ground based mast)

38. Class 67(10) sets out a general height limitation on PDR for the installation of apparatus on a building or other structure, other than a ground based mast. Equipment housing has its own specific height limit in this regard. Equipment housing and other apparatus also have other restrictions, detailed below, other than in relation to height.

39. Class 67(10)(a) permits the installation of apparatus subject to limitations on the height of the apparatus itself – namely up to either 10 metres or, in the case of alteration or replacement, up to the existing height of the apparatus, if greater than 10 metres.

[23] The exceptions are; a public call box; any apparatus which does not project above the surface of the ground; equipment housing; any kind of antenna; or a ground based mast.

[24] 'Building' includes any structure other than plant or machinery or gate, wall, fence or other means of enclosure

40. Class 67(10)(b) deals with the extent to which the apparatus can protrude above the highest part of the building – namely 8 metres where the building is 15 metres or more in height and 6 metres where it is below 15 metres in height. Again, where the existing apparatus already protrudes beyond these limits, it can be altered or replaced up to the extent to which it currently protrudes above the highest part of the building.

41. In designated areas the PDR allows for the construction, installation, alteration or replacement of apparatus on buildings permitted by virtue of Class 67(10). This is subject to a prior notification/prior approval requirement where the development is to be located in a conservation area, a historic garden or designed landscape or within the setting of a category A listed building or a scheduled monument.

Equipment housing on a building

42. Class 67(8) and (9) cover, respectively, the construction or installation and replacement or alteration of equipment housing on a building. These provisions are very similar to those of Class 67(5) and (6) relating to ground based equipment housing, with the only difference being in respect of the volume of the equipment housing. The PDR allow the installation or construction of equipment housing on a building provided the housing does not exceed 3 metres in height or 30 cubic metres in volume. PDR further allow the replacement or alteration of equipment housing on a building provided that the housing as replaced or altered either:

- does not exceed 3 metres in height or 30 cubic metres in volume, or
- if the equipment housing being replaced or altered exceeds either or both of the above limits, the housing as replaced or altered is no greater in height or volume than the equipment housing it replaces or alters.

Small cell systems or Regulation 2020/1070 small cell systems

43. Other than in conservation areas, and on dwellinghouses and in their curtilages, there are no limits on the installation of small cell systems[25] on buildings and other structures.

44. Class 67(13) limits PDR for the installation of electronic communications apparatus on, or within the curtilage of, a dwellinghouse to small cell systems permitting up to 4 small cell systems in total across the dwellinghouse and its curtilage. The small cell systems must not be installed so that they would protrude above the highest part of the roof of the dwellinghouse. In conservation areas the total number of small antennas on dwellinghouses and in their curtilage is two, and a further restriction that they are not located where they would front a road applies.

[25] 'Small cell system' means a small antenna and any apparatus which is ancillary to that antenna.

Dish antennas and antenna systems on buildings and other structures (other than dwellinghouses and their curtilages)

45. Class 67(11) and (12) set out PDR in relation to dish antennas and antenna systems on buildings and other structures (other than dwellinghouses and in their curtilages) and distinguish respectively between such apparatus located below a height of 15 metres and such apparatus located above that height. These restrictions do not apply to small cell systems or Regulation 2020/1070 small cell systems or to antennas installed on ground based masts.

46. When installing a dish antenna on a building or structure the maximum size of dish antenna that can be installed is 1.3 metres when measured in any dimension. PDR do not apply if the aggregate size of all the antennas which would be on the building or other structure would exceed 10 metres.

47. If existing dishes on a building or other structure exceed the above limits, they can be altered or replaced up to their existing size or aggregate size.

48. When installing an antenna system on a building or other structure PDR only apply if, as a result, there would be no more than 5 such systems on the building or structure at whatever heights. Again, if what already exists on the building or structure exceeds these limits, antenna systems can be altered or replaced up to the existing level. An antenna system is defined in the GPDO for the purposes of Class 67 as: ‘a set of antennas installed on a building or structure and operated in accordance with the electronic communications code’.

49. This PDR is subject to a prior notification/prior approval requirement in circumstances where the development is to be located in a conservation area, a historic garden or designed landscape, the setting of a category A listed building or a schedule monument, on a historic battlefield or in a World Heritage Site.

Access tracks

50. Class 67(14) permits the construction of an access track of no more than 50 metres in length which is ancillary to equipment housing.

Conditions on Class 67 PDR

<u>Notification and declaration requirements</u>

51. Under Class 67(15), where development consists of the construction or installation of one or more antennas or of equipment housing, or the alteration or replacement of a ground based mast, PDR is subject to the condition that the developer is required to give written notice to the relevant planning authority. This must be given at least 28 days before the start of development, unless development is carried out in an emergency, when the developer must give written notice to the planning authority as soon as possible after the emergency arises. This provision does not apply to development falling within Class 67 (23) or 67(23B).

52. The notification must consist of a detailed description of the apparatus, and a plan indicating its proposed location. The description should include specifications such as purpose, dimensions, materials and colour, and the location plan should show the layout of the apparatus.

53. This information is primarily intended to ensure planning authorities are aware of antenna installations in their area and potentially large developments such as equipment housing. Planning authorities may wish to provide comment to the operator on proposals notified in this way, but there is no statutory requirement in Class 67 for such comments to be taken on board by an operator. However, an operator may wish to consider comments from the planning authority when considering compliance with other conditions and limitations such as the conditions on minimising the impacts (see paragraphs 57 to 59), or when considering what constitutes the setting of a scheduled monument or category A listed building.

54. Class 67(15) sets out a further requirement where the development involves the construction or installation of one or more antennas. A declaration that the proposed equipment and installation is designed to be in full compliance with ICNIRP[26] public exposure guidelines on radiofrequency radiation[27] has to be submitted along with the notification required under Class 67(15). An example of the format of this declaration is given at the end of this annex.

55. Other legislation also governs the activities of electronic communications code operators. The Electronic Communication Code (Conditions and Restrictions) Regulations 2003, include provisions for such operators to give advance notice of works to, for example, planning authorities and/or Scottish Natural Heritage in certain circumstances, and set out what such parties can do in response. Notifications should be clear about the legislation under which they are being made.

Safeguarded areas

56. Please see the paragraphs of this annex regarding the alteration and replacement of ground based masts (paragraphs 26 to 31) or the installation of new ground based masts (paragraphs 77 to 80) in safeguarded areas under PDR and the requirements specified in conditions as regards notifying the relevant body.

Minimising the impact of development under these PDR

57. Class 67(18) and (19) contain conditions on minimising the impact of development carried out under PDR. Apparatus installed, constructed, altered or replaced under Class 67(1)(a) or development ancillary to equipment housing described in Class 67(1)(c) on a building (other than a ground based mast) must, as far as practicable, be sited to minimise the effect of the development on the appearance of the building.

[26] International Commission on Non-ionising Radiation Protection

[27] The radiofrequency public exposure guidelines of the International Commission on Non-Ionising Radiation Protection, as expressed in EU Council recommendation of 12 July 1999 (1999/519/EC) on the limitation of exposure of the general public to electromagnetic fields (0Hz to 300 GHz)

58. Similarly permitted development consisting of the alteration or replacement of a ground based mast is subject to the condition that the visual and environmental impact of the development is minimised as far as is practicable.

59. ‘As far as is practicable’ can relate to a number of issues, such as: the technological requirements of the equipment; interference issues (e.g. the presence of trees or overhead power lines); the availability of alternative locations (e.g. site acquisition issues), the structural limitations of masts, the need for and availability of underground services.

Removal of equipment

60. Class 67(20) and (21) impose conditions requiring the removal of development carried out under these PDR. Any development carried out under Class 67 PDR in an emergency must be removed as soon as the need for the development ends, subject to a maximum of 18 months from development commencing. Where development is carried out under Class 67(1)(a) and (c) in the normal course of events, i.e. not in an emergency, then the development must be removed once it is no longer needed for electronic communications purposes.

61. In any event, when the development is removed, the land or building must be restored to its condition before development took place or to any other condition agreed upon in writing with the planning authority.

The Conservation (Natural Habitats &c.) Regulations 1994

62. PDR generally are subject to regulations 60 to 63 of the Conservation (Natural Habitats &c.) Regulations 1994 (The Habitats Regulations). In effect these add another condition to Class 67 PDR and others potentially requiring an appropriate assessment to be carried out and consent obtained from the planning authority in relevant cases adversely affecting European Sites i.e. not just development in a European Site.

63. This consent under the Habitats Regulations is in addition to any prior approval procedure in Class 67. Consequently, for example, even if prior approval is granted, is not required, or the planning authority does not issue a decision on prior approval within the 56 day period, development, in relevant cases, would not be authorised without the consent under the Habitats Regulations.

64. Most European Sites in Scotland are also sites of special scientific interest (SSSI). The Nature Conservation (Scotland) Act 2004 contains additional requirements as regards approval of works affecting a SSSI. These include requirements to obtain consent from SNH for any operation that is likely to damage the features of a SSSI, including those allowed under permitted development - unless this has been specifically approved by the local authority in accordance with requirements of the 2004 Act.

Work carried out in an emergency

65. Although there is no statutory definition of what would constitute emergency development under Class 67, the definition of "emergency works" given in the electronic communications code may be helpful as a general guide in the context of development by electronic code system operators. The electronic communications code is now in Schedule 3A of the Communications Act 2003[28].

66. Class 67(1) (b) grants PDR for the temporary use of land in an emergency to station and operate moveable apparatus. 'Moveable' in this context does not necessarily mean the apparatus or other structure is not installed or attached in some way (e.g. it does not have to be on wheels) – the idea is it is not a permanent structure. PDR under Class 67(1)(a) and (c) can be used in an emergency, but the restrictions in Class 67(2) to (13) will apply.

67. There are exemptions from and specific provision in certain of the conditions where PDR under Class 67(1)(a), (b) or (c) is carried out in an emergency: there is no requirement for prior approval (see paragraph 72) and notices must be served as soon as possible after an emergency arises rather than a specified time period in advance of development (see paragraphs 29 and 51). Such emergency permitted development has separate requirements as regards the timescales for removal of the works (see paragraphs 60 and 61), and for Class 67(1)(b) PDR the conditions on limiting impacts do not apply (see paragraphs 57 to 61).

Prior notification/ prior approval – new ground based masts

68. The PDR for new ground based masts are subject to a condition in Class 67(23)(b) that the developer must first apply to the planning authority for a determination as to whether its prior approval is required with regard to the siting and appearance of the development. The procedures in this regard under Class 67(22) and (23) differ from those for other classes of PDR. There are, for example, requirements for: advance notice to be served on any other owners and any agricultural tenants of the land by the developer (Class 67(22)(b)); for consultation (article 7ZC) and neighbour notification (article 7ZA) by the planning authority; a different period for the procedure (56 days for a decision on whether prior approval is required and within which such approval is to be granted or refused if prior approval is required - Class 67(23)(d)); and a different fee applies here compared to other, similar procedures.

69. Another significant difference is that even where the planning authority respond that their prior approval is required, if no decision on whether or not to grant that prior approval is given within the 56 day period (or within any agreed extension - see below) the developer can proceed in accordance with the submitted details (Class 67(23)(f)(ii).

[28] The Communications Act 2003: Communications Act 2003 - Schedule 3A paragraph 51. [Note: the text of Schedule 3A may need to be accessed through the drop down menu of 'outstanding changes' on this web version of the 2003 Act.]

70. The planning authority and the developer can agree a longer period than the statutory 56 period within which decisions have to be made – Class 67(23)(d).

71. This procedure applies to (Class 67(23)(a)) the construction or installation of a ground based mast[29], including the development associated with the construction or installation of the mast which would consist of the construction or installation of apparatus or be development ancillary to the construction, installation or use of equipment housing permitted under Class 67(1)(a) or (c). That is, all the permitted development that will be on the new mast site is to be included in the application.

72. This prior approval requirement does not apply to a ground based mast being installed under Class 67 in an emergency (i.e. temporarily) – Class 67(23)(a).

73. In the event an application for a determination is made for a ground based mast which does not comply with the Class 67 PDR, e.g. such as the height limits or restriction on such development in a designated area, then the application should be returned explaining why it is not being accepted.

Pre-application notices to site owners and agricultural tenants

74. Prior to making an application for a determination as to whether the prior approval of the planning authority is required, the developer must send a notice to anyone other than the applicant who is the owner of the land on which the development would be located and any agricultural tenant of that land (Class 67(22)(b)).

75. In the event that there are known to be owners or agricultural tenants, but the developer cannot identify them, despite having taken reasonable steps to do so, they should indicate in their application that this is the case, including a description of what steps they took (see paragraph 81(h)).[30]

76. Class 67(22)(c) sets out the required content of the notice to any other site owners and agricultural tenants:

(i) the date on which the notice is sent;

(ii) the name and address of the developer and, where an agent is acting on behalf of the developer, the name and address of that agent;

(iii) the postal address of the land to which the development relates or, if the land has no postal address, a description of the location of the land;

(iv) a description of the development to which the notice relates, including its siting, appearance and dimensions (including the height of any mast and the

[29] Although 'link antenna' falls with the definition of 'ground based mast', the prior notification and prior approval procedure does not apply where a 'link antenna' is being installed in relation to an existing ground based mast. Any 'link antenna' would need to be included where it was part of a proposal for a new ground based mast.

[30] Unlike applications for planning permission, there is no requirement for planning authorities to publish notices in newspapers in such circumstances.

height of any apparatus attached to the mast to the extent that it would protrude above the highest part of the mast); and

(v) a statement that the developer is to apply to the planning authority in whose area the land to which the development relates would be located for a determination as to whether the prior approval of the authority will be required as to the siting and appearance of the development;

(vi) the name and address of the planning authority to which the application referred to in head (v) is to be made;

(vii) a statement that the application will be available for public inspection at the offices of the planning authority;

(viii) a statement that written representations may be made to the planning authority with regard to the siting and appearance of the development; and

(ix) information as to how representations may be made and the period within which they may be made, being a period of 21 days beginning on the day after the day on which the notice is sent.

Pre-application Notices - Safeguarded Areas

77. As indicated in paragraph 56, there are issues with mast related development in safeguarded areas. In such cases, before applying for a determination as to the need for prior approval, the developer must notify the relevant body for the safeguarded area (Class 67(22)(d)).

78. The notice to the relevant body must include the information contained in Class 67(22)(c) for notices to owners – see paragraph 76 - and a grid reference (to at least 6 figures each of Eastings and Northings) and the elevation height of the site (to an accuracy of 0.25 metres above Ordnance Datum).

79. This gives the relevant body an opportunity to make any representations to the planning authority within the timescale for prior notification and prior approval.

80. In an emergency, while the prior approval procedure does not apply, the developer should still advise the relevant body that a ground based mast is being erected for a temporary period, supplying the information specified in Class 67(16)(b)(aa) – i.e. the more limited information that would be notified for an increase in height or replacement of an existing ground based mast – see paragraph 28. This is allow an opportunity to consider any concerns arising from even the temporary presence of such apparatus.

Application procedure

81. The application for a determination as to whether prior approval is required must include the information in Class 67(23)(c), namely:

(a) the name and address of the developer and, where an agent is acting on behalf of the developer, the name and address of that agent;

(b) a description of the development to which the application relates, including its siting, appearance and dimensions (including the height of any mast and the height of any apparatus attached to the mast to the extent that it would protrude above the highest part of the mast);

(c) the postal address of the land to which the development relates or, if the land has no postal address, a description of the location of the land;

(d) a plan sufficient to identify the land on which the development would be located and showing the situation of that land in relation to neighbouring land[31];

(e) other plans and drawings which are necessary to describe the development to which the application relates, showing in particular the dimensions, appearance and position of development on the site;

(f) where the application relates to an antenna, an ICNIRP declaration;

(g) any fee required to be paid; and

(h) where relevant, evidence of compliance with the requirements on notifying any other owners and/ or agricultural tenants or the relevant body as regards development in a safeguarded area.

82. The planning authority should notify the developer as soon as possible whether the application has been validly made, i.e. in accordance with the list in Class 67(23)(c). Given the nature of this particular form of prior approval procedure, it is important that the date when a valid application was received by the planning authority is identified – in order to calculate the 56 day period.

83. Even where the application is made in accordance with the statutory requirements, the planning authority, if requiring prior approval, can ask for further information necessary to determine whether prior approval should be granted. However, information beyond that required by Class 67(23)(c) requested by or submitted to the planning authority does not affect the start and end of the 56 day period (or any agreed extension to that period) within which a decision must be given to the applicant.

84. It is always better, therefore, if developers and planning authorities can identify in advance of an application any particular information requirements, which should be proportionate to the development and proposal site. Planning authorities should consider setting out in guidance any additional information they will need in particular circumstances. The good practice planning guidance on rolling out this infrastructure should form the basis for pre-application discussions or guidance on information requirements.

[31] “neighbouring land” is defined in article 7A(4) of the GPDO.

85. The planning authority is required to carry out neighbour notification. This is essentially the same as for an application for planning permission[32]. Where there are premises on neighbouring land to which such notice can be sent, the planning authority are to send a notice addressed to "the Owner, Lessee of Occupier" to such premises.

86. Under article 7ZA(3) of the GPDO, the notice must:

(a) state the date on which the notice is sent;

(b) state the name of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent;

(c) include any reference number given to the application by the planning authority;

(d) include a description of the development to which the application relates;

(e) include the postal address of the land to which the application relates, or if the land has no postal address, a description of the location of the land;

(f) state how the application and other documents submitted in connection with it may be inspected;

(g) state that representations may be made to the planning authority with regard to the siting and appearance of the development and include information as to how representations may be made and the period within which they may be made (which must be not less than 14 days beginning with the day after the day on which the notice is sent); and

(h) be accompanied by a plan showing the situation of the land to which the application relates in relation to neighbouring land.

87. Under Article 7ZC, the planning authority has to make the information described in (b) to (g) of paragraph 86 above available on its web site until the application has been dealt with. They must also make the application available at an office of the planning authority. Clearly the specific arrangement in this regard should be reflected in the neighbour notification (point (f) in paragraph 86).

88. Where an application relates to a proposal in the area of Cairngorm National Park, Article 7ZB requires the planning authority to notify the Park Authority of the application with 5 days of its receipt.

89. Article 7ZD sets out various requirements for planning authorities to consult other bodies where certain criteria are met, and the time periods for responses.

[32] There are no requirement for newspaper notices in relation to this procedure under Class 67.

90. Article 7ZE includes a requirement to consider representations received within the specified timescales for statutory consultees. This should also in practice also cover responses to the planning authority arising from the notices issued by the developer prior to making the application - which have a set limit of 21 days for responses.

Decisions

91. The planning authority has 56 days beginning with the date of receipt of a valid application to give the developer their decision as to whether their prior approval is required, and, where it is required, to give the developer a decision as to whether or not it is granted. The planning authority and the developer can agree a longer period than the 56 days, and the references to the 56 day period in the following paragraphs on Decisions should be read as including any such period.

92. In the event the planning authority does not notify a decision as regards the need for prior approval within the 56 day period, then the developer can proceed in accordance with the plans as submitted (Class 67(23)(d)(iii)).

93. Where the planning authority gives their decision within the 56 day period that its prior approval is required, but does not give the developer a decision on whether or not to grant such approval within the same 56 day period, the developer can proceed in accordance with the details as submitted (Class 67(23)(d)(ii)(bb)).

94. In the event that an application is called in by the Cairngorm National Park Authority, then the 56 day period, or any extended period agreed between the planning authority and the developer, will start again from the date of call-in (Class 67(23)(e)).

95. Class 67(23)(f) allows the planning authority to agree to changes to the details that are approved or, where the developer can proceed without prior approval being granted, to the details as submitted. The expectation is that this is akin to the powers planning authorities have to agree non-material changes to applications for planning permission without the need for a new application.

96. Class 67(23)(g) specifies that development must be started within a 3 year period from the date of a grant of prior approval or, where the developer can proceed without a grant of prior approval, from the date the planning authority receives a valid application for a determination on the need for prior approval.

97. Conditions can be attached to a grant of prior approval. As well as the usual tests for conditions (necessity, related to planning, related to the development, precise, enforceable and reasonable in all other respects),it should be noted that the use of other PDR cannot be restricted by condition in a grant of prior approval in the way they can be with a condition on a grant of planning permission. The developer will have a right of appeal against refusal of prior approval or against conditions attached to grant of prior approval.

98. If prior approval is not required, the planning authority should inform the developer without delay. Similarly, where prior approval is required, the planning authority should inform the developer of that as soon as possible and include any request for further information needed to decide on whether to grant prior approval – bearing in mind the effect of not issuing a decision one way or another within 56 days or any extended period agreed (see paragraph 83).

Prior Notification/Prior approval – 'other apparatus' on buildings, antennas (not small cell systems) and underground apparatus

99. In certain circumstances, before beginning development the developer must apply to the planning authority as to whether prior approval will be required in respect of:

- the siting and visual impacts of the construction or installation of apparatus, permitted by virtue of Class 67 (10) on a building and which would be located in a conservation area, a historic garden or designed landscape, or within the setting of a category A listed building or a scheduled monument.

- the siting, design and appearance of the installation of dish and other antennas (other than small cell systems or Regulation 2020/1070 small cell systems) on buildings (other than ground based masts) and which would be located in a conservation area, a historic garden or designed landscape, within the setting of a category A listed building or a scheduled monument, on a historic battlefield or in a World Heritage Site.

- the impact of the proposed development of underground apparatus which is to be located in a conservation area, a historic garden or designed landscape, the curtilage of a category A listed building, or a site of archaeological interest.

100. Such prior notification applications must be accompanied by

- a written description of the proposed development,
- details of the design and the materials to be used,
- a plan indicating the location,
- the dimensions of the proposed development,
- any fee required to be paid.

101. Development may not commence before the occurrence of one of the following-

- the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required
- where the planning authority has given the applicant notice within 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval
- the expiry of 28 days following the date on which the application was received by the planning authority without the planning authority making any

determination as to whether such approval is required or notifying the applicant of their determination.

102. The development must, except to the extent that the planning authority otherwise agree in writing, be carried out—

(i)where prior approval is required, in accordance with the details approved, or

(ii)where prior approval is not required, in accordance with the details submitted with the application,

The development is to be carried out—

(i)where approval has been given by the planning authority, within a period of 3 years from the date on which approval was given,

(ii)in any other case, within a period of 3 years from the date on which the planning authority were given the application and all the accompanied documentation, as referred to above.

103. Where a development has been notified and the authority have given notice that prior approval of the authority is required, the development cannot proceed until that approval is given. It is therefore in the developer's own interests to submit the details as soon as possible. If however, the developer proceeds without submitting details or without, or in contravention of, the authority's approval, the normal enforcement measures would again be available for use as the authority deem appropriate in the circumstances of any particular case.

Form of ICNIRP Declaration

Declaration of Conformity with ICNIRP Public Exposure Guidelines ("ICNIRP Declaration")
[Operator name]
[Operator address]
[Operator address]
[Operator address]
[Operator address]

Declares that the proposed equipment and installation as detailed in the attached planning application/notification under Class 67(3) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 at:

(Address)……
……
……
……
……..

is designed to be in full compliance with the requirements of the radiofrequency (RF) public exposure guidelines of the International Commission on Non-ionizing Radiation Protection (ICNIRP), as expressed in EU Council recommendation of 12 July 1999* "on the limitation of exposure of the general public to electromagnetic fields (0Hz to 300 GHz)".
* Reference: 1999/519/EC

Date …….
Signed…….
Name……..
Position……..

Annex H – Agricultural and Forestry Buildings

1. Class 18 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as “the GPDO” provides permitted development rights (PDR) for agricultural buildings with a ground area of up to 1,000 square metres (or 465 square metres for buildings within certain designated areas[33]). Buildings erected, extended or altered under Class 18 may not exceed 12 metres in height (reduced to 3 metres in height where the development is within 3 kilometres of the perimeter of an aerodrome). Larger buildings require an application for planning permission, thus ensuring that the effect on the landscape can be fully considered. Agricultural buildings may not be erected, extended or altered under Class 18 within historic battlefields. PDR also do not apply if any part of the building is within 25 metres of a trunk or classified road.

2. Class 18 also provides for a "cordon sanitaire", which excludes permitted development for the construction, extension or use of buildings for housing pigs, poultry, rabbits or animals bred for their skin or fur or for the storage of slurry or sewage sludge within 400 metres of a "protected building". A "protected building", as defined in Class 18, is any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is apt; but does not include:
    i. a building within the agricultural unit;
    ii. a dwelling or other building on another agricultural unit which is used for or in connection with agriculture.

3. Planning authorities should exercise particular care when considering planning applications for houses and other new "protected buildings" within 400m of established livestock units to minimise the potential for future problems of nuisance.

4. For agricultural developments, there is a requirement that the development is on agricultural land used for an agricultural purpose and at least 0.4 hectares in size. The provisions in Class 18 make it clear that separate parcels of land cannot be taken into account in calculating the existing threshold of 0.4 hectares, above which permitted development applies. An exception is made in the following areas:

    “ Argyll and Bute District Council, Badenoch and Strathspey District Council, Caithness District Council, Inverness District Council, Lochaber District Council, Orkney Islands Council, Ross and Cromarty District Council, Shetland Islands Council, Skye and Lochalsh District Council, Sutherland District Council, and Western Isles Council.”

5. In practice, this now relates to the planning authority areas of Orkney Islands, Shetland Islands and Western Isles Councils plus relevant parts of Argyll and

[33] For the purposes of Class 18, a designated area means a National Scenic Area, a National Park, a World Heritage Site, a historic garden or designed landscape, the curtilage of a category A listed building, a site of archaeological interest or conservation area.

Bute and Highland Council areas. In these areas, the 0.4 hectares may be calculated by adding together the areas of separate parcels of land.

6. Class 22 of the GPDO establishes similar PDR for forestry buildings. The restrictions differ somewhat; there is no restriction on the maximum size or height of the building other than a height restriction of 3 metres where the building is within 3 kilometres of an aerodrome. The development must be for forestry purposes on forestry land but there is no minimum area of land. The development must not be within 25 metres of a trunk or classified road. As forestry uses do not involve the keeping of livestock or storage of slurry, there is no ‘cordon sanitaire’ provision.

Prior notification/prior approval

7. Prior notification/prior approval arrangements apply to:

    a) the erection of new agricultural and forestry buildings; and
    b) the "significant extension" or "significant alteration" of existing agricultural and forestry buildings which are permitted development under Classes 18 and 22 of Schedule 1 to the GPDO.

8. Prior notification arrangements also apply to agricultural and forestry private ways, which are the subject of a separate annex.

9. "Significant extension" and "significant alteration" mean any extension or alteration which would result in:
    a) the cubic content of the original building being exceeded by more than 10% (20% in the case of agricultural buildings); or
    b) the height of the building exceeding the height of the original building.

10. Annex A provides a general overview of the prior notification/ prior approval. The following paragraphs cover elements of prior notification/prior approval specific to Class 18 PDR for agricultural buildings.

11. Prior notification of development consisting of the erection of a building or the significant extension or significant alteration of a building must be accompanied by:

    i) a written description of the proposed development and the materials to be used;
    ii) a plan indicating the site; and
    iii) any fee required to be paid.

12. Such development shall, except to the extent that the planning authority otherwise agree in writing, be carried out-

    (a) where prior approval is required, in accordance with the details approved;
    (b) where prior approval is not required, in accordance with the details submitted with the prior notification;

Such development shall be carried out:

(a) where approval has been given by the planning authority, within a period of five years from the date on which approval was given;
(b) in any other case, within a period of five years from the date on which the planning authority were given the information required to accompany the prior notification.

13. Development consisting of the significant extension or the significant alteration of a building, may be carried out only once in respect of that building.

Annex I – Agricultural and forestry private ways

The definition of a private way

1. A private way is defined in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as "the GPDO" (article 2(1)) as meaning a road or footpath which is not maintainable at the public expense. 'Road' in this instance is further defined as having the meaning set out in section 151 of the Roads (Scotland) Act 1984. The definition of a road is;

> *'any way (other than a waterway) over which there is a public right of passage (by whatever means) and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof'.*

2. The Town and Country Planning (Scotland) Act 1997 (as amended) defines footpath as having the meaning set out in section 47 of the Countryside (Scotland) Act 1967. The definition is:

> 'a way over which the public have the following, but no other, rights of way, that is to say, a right of way on foot with or without a right of way on pedal cycles.'

3. It should also be noted, for clarity, that although private ways are commonly referred to as 'tracks' or 'hilltracks', these terms are not used in either Class 18 or 22 of the GPDO and have no definition in planning terms.

Permitted Development Rights (PDR) for agricultural and forestry private ways

4. In addition to PDR for agricultural buildings, Class 18 of the GPDO provides PDR for agricultural private ways. These PDR are granted subject to certain criteria and conditions. In summary these are:

- The private way must be on agricultural land,[34] comprised in an agricultural unit;
- The area of agricultural land must be at least 0.4 hectares;[35]
- It must be necessary for an agricultural use or purpose which is being carried out on that land;
- Schedule 1 development under the EIA Regulations[36] is not permitted development. Schedule 2 development does not constitute permitted development unless the planning authority has adopted a screening opinion or the Scottish Ministers issued a screening direction to the effect that EIA is not required;

[34] Agricultural land is defined for this purpose as land that is in use for agriculture and which is so used for the purposes of a trade or business. Gardens are specifically excluded.
[35] The area of 0.4 hectares must be one piece of land except in certain planning authority areas (Argyll & Bute, Highland, Orkney, Shetland and the Western Isles) where it can be calculated by adding together the area of separate parcels of land.
[36] The Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 2017, S.S.I. 2017/102

- No part of the development can be within 25m of the metalled portion of a trunk or classified road;
- Before construction or alteration of a private way, prior notification must be given to the relevant planning authority;
- The development must be carried out in accordance either with the details provided in the prior notification, **or** where prior approval has been issued in accordance with the details and requirements of that prior approval; and.
- The development must be completed within 3 years of the date on which prior approval is given or, if prior approval is not required, the date on which the information required to be submitted with the prior approval was given to the planning authority.

5. PDR for forestry private ways are set out in Class 22 of the GPDO. PDR is granted subject to certain criteria and conditions. These are very similar to the criteria and conditions that apply to agricultural private ways, although there is no minimum area of land required. Different EIA regulations and procedures apply. Where EIA is required under the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017[37], the development remains permitted development (i.e. a planning application is not required, but the prior notification/prior approval procedure must still be followed). Consent may be required under those Forestry EIA Regulations.

6. For completeness, the criteria and conditions that apply in respect of PDR to forestry private ways are:

- The private way must be on land used for forestry purposes;
- It must be necessary for a forestry use or purpose (which includes afforestation) which is being carried out on that land;
- No part of the development can be within 25m of the metalled portion of a trunk or classified road;
- Before construction or alteration, prior notification must be given to the relevant planning authority;
- The development must be carried out in accordance either with the details provided in the prior notification, **or** where prior approval has been issued in accordance with the details and requirements of that prior approval; and
- The development must be completed within 3 years of the date on which prior approval is given or, if prior approval is not required, the date on which the information required to be submitted with the prior approval was given to the planning authority.

7. Additional restrictions may also apply depending on the location of the private way:

- If the developer is proposing to construct a private way for vehicular use (i.e. a road rather than a footpath) and any part of the development falls within a National Scenic Area[38], permitted development rights do not apply (except for forestry tracks which are part of an approved afforestation scheme);

[37] S.S.I. 2017/113

[38] The Town and Country Planning (Restriction of Permitted Development) (National Scenic Areas) (Scotland) Direction 1987

- Where a development; (a) is likely to have a significant effect on a European site (as defined in The Conservation (Natural Habitats &c.) Regulations 1994[39]), either alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site, a further approval must be obtained under these 1994 Regulations.
- PDR may be restricted or removed by conditions attached to a planning consent or by an Article 4 Direction.

8. It should be noted that, in the case of forestry development, there are PDR for 'borrow pits' to be formed on land held or occupied in connection with the forestry land for the purposes of obtaining materials to form the private way. Essentially, this means no further approval is required for operations to obtain the materials required for the work. This applies only to the extraction of materials for forming a private way and not to the extraction of materials for any other operations or works.

9. Private ways for other uses do not meet the criteria for permitted development rights under Classes 18 and 22 of the GPDO. It is for the relevant planning authority to determine which planning procedures apply to any other private ways, however a full planning application would generally be required.

Prior notification/ prior approval for construction or alteration of agricultural or forestry private ways

10. Prior notification/ prior approval is required when a person intends to exercise their PDR to construct or alter a private way for agricultural or forestry uses.

11. Both Classes 18 and 22 of the GPDO set out rights for the 'formation, alteration or maintenance' of private ways, however prior notification and approval procedures are only required for the 'formation or alteration' of a private way. Prior notification is not required for 'maintenance' of agricultural or forestry private ways.

12. The distinction between 'alteration' and 'maintenance' may sometimes be difficult to determine. 'Maintenance' work could include routine repairs to private ways such as filling potholes or clearing drainage channels or replacing culverts in line with recommendations and guidance by Scottish Environment Protection Agency (SEPA) to comply with good practice. Work such as resurfacing to provide a materially different road surface (for example replacing loose gravel with tarmacadam), or to widen or extend a track, would generally be considered an 'alteration'.

13. Developers and/or landowners are strongly advised to check with the relevant planning authority where they are unsure whether any proposed development is 'maintenance' or 'alteration' of a private way. Planning authorities should consider setting out in guidance what they consider to be covered by the respective terms.

[39] S.I. 1994/2716

14. Prior to the formation, or alteration, of agricultural or forestry private ways[40] the developer or landowner must apply to the relevant planning authority for a decision on whether the prior approval of the planning authority is needed before development begins. This process is known as *'prior notification'*. See Annex A for guidance on prior notification/ prior approval procedure and associated decisions. In this case of prior approval for private ways, the relevant matters to the design, manner of construction or route of the private way.

15. The prior notification must be accompanied by:

- a description of the proposed development, including the proposed design and manner of construction and details of the materials to be used;
- a plan indicating the route of the private way; and
- any fee required to be paid.

16. Development consisting of the formation or alteration of a private way must, except to the extent that the planning authority otherwise agree in writing, be carried out:

(a) to the extent to which prior approval is required, in accordance with the details approved;

(b) to the extent to which prior approval is not required, in accordance with the details submitted with the prior notification.

Development to be carried out within 3 years

17. The proposed development has to be carried out within 3 years of the date on which approval is given. Where the planning authority does not give notification as to whether prior approval is required or not within the 28 day period following submission of the application then the development must be carried out within 3 years from the date the prior notification application was received.

18. Separate arrangements apply to development relating to private ways for any other purposes, including sporting and recreational use. It is for the relevant planning authority to determine which planning procedures apply to any other private ways, however a full planning application would generally be required.

19. Finally, there are opportunities for alignment of planning procedures with other relevant consenting regimes. For forestry private ways, for example, the applicant may decide to align their prior notification/ prior approval application with the forestry approval procedures administered by Scottish Forestry.

20. Prior approval allows the planning authority to consider the proposed design and manner of construction of the private way, the details of the materials to be used and the route, and to request any amendments they consider necessary to these details in the context of its setting. Where amendments are considered necessary it is expected that the planning authority will require that the private way is constructed or altered in accordance with the amended details that they approve. For forestry

[40] These private ways are commonly referred to as tracks or hill tracks, although the legislation applies to all agricultural and forestry tracks regardless of location or elevation.

private ways, as a matter of good practice the PA should consider consulting Scottish Forestry and take any comments or views expressed by Scottish Forestry into account.

21. Provided all other relevant GPDO requirements, including the necessity for, and use of, the track for agricultural or forestry purposes, are met, the principle of whether the development should be permitted need not be considered since this has already been established

Alignment with existing procedures

22. There are opportunities for aligning planning procedures with other relevant consenting regimes. This is especially true in relation to forestry private ways where there are existing and long-established statutory consultation procedures for forestry projects, including tracks, as well as the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 which cover amongst other things, forestry roads, tracks, quarries and borrow-pits.

23. Accordingly, where an applicant so wishes, prior notification for forestry private ways should be considered by the relevant planning authority alongside Scottish Forestry decisions on EIA determinations or consent, as well as approval of Forest Plans, Felling Licences or Woodland Creation applications.

24. In most circumstances, it is expected that where the planning authority are satisfied that sufficient information is supplied through the aligned notification process, further information would not be required and the need for prior approval would be minimised.

25. For those applications where the planning authority is of the view that prior approval may be required, consultation between the planning authority, Scottish Forestry and the applicant at an early stage (i.e. prior to the formal decision as to whether or not prior approval is necessary) should be considered. Screening and scoping of substantial forestry projects is routine between applicants, Scottish Forestry and other statutory consultees, including planning authorities, and, as such, provides a good opportunity for initial discussion.

26. Long-term conservation objectives will often be served best by ensuring that farming and forestry are able to function successfully. Therefore, in operating the controls, planning authorities should always have full regard to the operational needs of the farming and forestry industries; to the need to avoid imposing any unnecessary or excessively costly requirements; and to the normal considerations of reasonableness. However, they will also need to consider the visual effect of the development on the landscape and the desirability of preserving ancient monuments and their settings, known archaeological sites, the settings of listed buildings, and sites of recognised or designated nature conservation value.

Alignment of planning and forestry procedures

27. For forestry private ways, the applicant may decide to align their prior notification application with the forestry approval procedures administered by Scottish Forestry for Forest Plans, felling licences, EIA Forestry determinations, and

woodland creation projects. Further information along with more detailed guidance on how this can be undertaken can be obtained from Scottish Forestry.

28. Aligning processes provides opportunity for more efficient handling of applications and reduces the need for duplication of information. Planning authorities may use the forestry approval procedures, on which they are routinely consulted by Scottish Forestry, to better understand the forestry context and purpose of the activities proposed, as well as the standards required for Scottish Forestry approval. In this way authorities can seek to minimise the need for further formal scrutiny and prior approval processes.

29. Aligning processes does not however remove the need to comply with the legal requirements to submit a prior notification and to obtain either prior approval, or the planning authority's agreement that prior approval is not required.

Enforcement

30. If a private way, or an alteration to an existing private way, is proposed as being for an agricultural or forestry use, but this turns out not to be the case, then enforcement action may be taken.

Annex J – Conversion of agricultural and forestry buildings to residential use

Introduction

1. Classes 18B and 22A contain permitted development rights (PDR) for the change of use, and certain building operations to effect the change of use, from use as an agricultural or forestry building respectively to use as a dwelling.

2. Building operations are only permitted by Classes 18B and 22A to the extent that they are reasonably necessary to convert the existing building to use as a dwelling. They are limited to:

- the installation or replacement of doors, roofs and exterior walls;
- the installation or replacement of water, drainage, sewerage, electricity, gas or other services;
- partial demolition to the extent necessary to carry out the installation or replacement of doors, roofs and exterior walls; and
- the provision of access to the dwelling and of a hard surface for parking of vehicles ancillary to the enjoyment of the dwelling.

3. The installation or replacement of doors, roofs and exterior walls or of water, drainage, sewerage, electricity, gas or other services is only permitted to the extent reasonably necessary for the building to function as a dwelling.

4. Consideration of what works are 'reasonably necessary' will be a matter of fact and degree in any individual case and should be considered in accordance with the various restrictions set out in the respective classes.

5. The purpose of these provisions is to support the conversion of buildings: they do not allow for a complete demolition and erection of a new building on the footprint of the existing building. Nor are they intended to permit such extensive demolition and rebuilding works as to create what, in effect, would constitute a new building. The existing building needs to be capable of being converted to residential use for Classes 18B and 22A to apply.

6. The partial demolition of any building should therefore be minimised and generally confined to work essential to make the building suitable for use as a dwelling. While partial demolition is only permitted to the extent it is reasonably necessary to carry out the operations specified above, it is recognised that in some cases doing so could enhance the design and appearance of the proposed conversion. It should also be noted that (with the exception of guttering and pipes for drainage or sewerage, flues and aerials) development carried out under Class 18B or 22A may not have the effect of extending the external dimensions of the building at any given point. For the avoidance of doubt, demolition of the existing building and erection of a replacement does not fall under this PDR and will require a planning application.

7. Both classes also permit the provision of access to the dwelling and of a hard surface for vehicle parking incidental to the enjoyment of the dwelling. Consideration should be given to the utilisation of existing access routes and hard standing wherever possible.

8. The change of use includes the land within the curtilage of the building.

9. Any consent granted under these PDR do not affect any obligations to comply with other legislative requirements such as, but not restricted to, building standards. Where dwellings are to be connected to private water or sewerage supplies are to be undertaken, appropriate permissions should be sought[1]. More information on private water supplies may be sought from the relevant local authority and the Scottish Government's website: about new-private-water-supply/.

Limitations

10. There are a number of limitations common to both classes.

11. Development is only permitted if the use of the existing building on 4 November 2019, or if not used on that date the most recent use of the building before that date, was:

- For Class 18B, as a building solely for used for an agricultural purpose as part of an agricultural unit, or;
- For Class 22A, as a building solely used for the purposes of forestry.

12. Development is not permitted if the building is or was constructed after 4 November 2019. This date is specified because the Scottish Government published its intention to take forward PDR for conversion of agricultural buildings on 5 November 2019. This cut-off is intended to prevent situations where an agricultural or forestry building could be constructed (including under the provisions of classes 18 or 22 (see Annex E)) and, within a short period following construction, subsequently be removed from such use and converted to a residential use under Class 18B or 22A.

13. The cumulative number of separate residential units that can be developed by virtue of these classes is restricted to a maximum of five. For the purposes of class 18B the cumulative total applies to a building or buildings on the "original" agricultural unit, which is defined as the agricultural unit which the building formed part of on 4 November 2019. For Class 22A, where there is no forestry equivalent of an agricultural unit, the maximum of five relates to the total number of residential units within an individual building.

14. Both classes permit the change of use of a single building to one or more separate residential units contained within a building. Neither class permits the partial change of use of a building creating a mixed use of the resulting building.

[1] Where the property is to be connected to a private water supply, advice should be sought from the environmental health department of the local authority who is responsible for regulating these supplies and must hold a register. For connections to existing private water supplies, permission from the person responsible for this supply is required. In all cases, it is important to ensure that there is an adequate supply of water under all climatic conditions that can be treated to meet drinking water standards which are necessary to protect human health. The responsibility for ensuring that water supplied from a private water supply meets the relevant standards falls to the owners and users of those supplies.

15. The total floor space of any individual residential unit developed under the provisions of either class cannot exceed 150 square metres. It should be borne in mind that partial change of use of a building would not be permitted under either class; a building greater than 150 square metres could not be converted into a single residential unit but could accommodate more than one residential unit of 150 square metres or smaller each.

16. The PDR set out in Classes 18B and 22A do not apply to listed buildings, nor do they apply to buildings situated on croft land[2]. Furthermore, the PDR do not apply to development within:

- The curtilage of a listed building,
- A site of archaeological interest,
- A safety hazard area, or
- A military explosives storage area.

Interaction with other permitted development rights

17. A number of the PDR generally available to householders under part 1 of the Schedule to the GPDO do not apply to dwellings created by virtue of Class 18B or 22A. The following PDR do not apply, meaning that a planning application would need to be made and express consent granted for any such works:

- Class 1A (Single storey ground floor extensions),
- Class 1B (ground floor extensions of more than one storey),
- Class 1C (installation of a porch),
- Class 1D (enlargement of the roof),
- Class 3A (ancillary buildings – sheds, garages, etc),
- Class 3D (decking and raised platforms),

Prior notification and approval

18. Anyone who wants to carry out development under either Class 18B or Class 22A provisions is required to apply to the planning authority for a determination as to whether the prior approval of the authority is required - this is a condition of the planning permission granted under these provisions. This is referred to as ‘prior notification’. The prior notification submitted to the planning authority must be accompanied by:

- A written description of the development, including a description of any building operations and materials to be used
- A scaled plan showing the location of the development
- Any other scaled plans and drawings as are necessary to describe the development
- Any fee to be paid

19. Applicants should be aware that prior notification/approval must be sought before any work has commenced. If any development for which prior notification is required is commenced before submitting the prior notification, or where prior approval is required, before that approval is issued, the permitted development rights do not apply and a planning application is required instead.

[2] Defined in article 2 of the GPDO by reference to section 12(3) of the Crofters (Scotland) Act 1993

20. The change of use under either class extends to the land within the curtilage of the building that is the subject of the application. To enable the planning authority to determine the prior notification (and if required, consider prior approval), scaled plans and drawings describing the development should clearly indicate the extent of the curtilage associated with the building. Similarly the plans should clearly indicate any proposed access and areas of hard standing and the location of any proposed septic tanks and other services.

21. The prior approval procedure provides planning authorities with a means of regulating, where necessary, important aspects of new development for which full planning permission is not required by virtue of the GPDO. Provided all the GPDO requirements are met, the principle of whether the development should be permitted is not for consideration. Those matters which the planning authority may consider in determining any requirement for prior approval are:

- The design or external appearance of the building.
- The provision of adequate natural light in all habitable rooms of the building.
- The impacts of the proposed development on transport.
- Access to the dwelling.
- The impacts of noise on residents or occupiers of the building if used as a dwelling.
- Risks to occupiers of the proposed dwelling from contamination from the site.
- The risk of flooding of the site.

22. To enable the planning authority to reach a view on these matters, it may – depending on the location and nature of the proposed conversion – be in the developer’s interest to provide supporting information that goes beyond the minimum set out at paragraph 18. This could include, but is not restricted to, an agricultural holding number, contaminated land survey, flood risk assessment or noise assessment. In the absence of sufficient information to reach a view on the prior notification application, prior approval may be delayed or refused. Applicants are therefore encouraged to discuss the likely provision of information prior to the submission of a prior notification.

23. Applicants are encouraged to consider providing such information at the initial notification stage to enable planning authorities to consider such matters as early in the process as possible and to minimise the potential requirement for applications to be subject to prior approval.

24. Upon receipt of a prior notification, the planning authority has 28 days to decide whether or not their prior approval is required. If no indication that prior approval is required is received within the 28 day period, the development permitted by the class may proceed provided that the development is in accordance with the details submitted with the application.

25. Where the authority gives notice that their prior approval is required, the development cannot proceed unless and until that approval is given. It is therefore in the developer's own interests to submit the above details and any relevant supporting information as soon as possible. Doing so will assist the planning

authority in reaching a view as to the need for prior approval and – subject to that – whether or not prior approval can be granted. If the developer proceeds without submitting details or without, or in contravention of, the authority's prior approval (if required) the normal enforcement measures would be available to the authority as it deems appropriate in the circumstances of any particular case.

26. Consideration of natural light is intended to avoid the provision of dwellings whose habitable rooms (i.e. bedrooms and living rooms) have no windows or are likely to be unreasonably dark. This should in most cases be apparent from the description of development and accompanying drawings. Although this will be a matter of planning judgement rather than technical compliance, planning authorities may wish to seek views from colleagues in building standards in this regard.

27. As noted above, a number of the conditions and limitations that apply to Class 18B (relate to the agricultural unit within which the building is located (e.g. the cumulative maximum number of dwellings that may be developed). Accordingly, in relation to prior notifications under Class 18B, the provision of the relevant agricultural holding number by the developer will assist in the identification of the site and help the planning authority to determine whether a proposal complies with relevant limitations.

28. Subject to the normal criteria governing their use - and insofar as they relate to the matters specified in Class 18B and 22A - conditions may be attached to the grant of prior approval. Similarly, consideration may be given to the use of planning obligations or other legal agreements, subject to the relevant tests in Scottish Government Planning circular 3/2012. Matters which are not relevant to prior approval decisions under Class 18B and 22A (e.g. provision of education facilities) should not be the subject of conditions or planning obligations. In operating these controls, planning authorities should always have full regard to the need to avoid imposing any unnecessary or excessively costly requirements; and to the normal considerations of reasonableness.

Completion of development

29. Where prior approval is not required the development must be carried out in accordance with the plans and description submitted to the planning authority. Where prior approval has been required and granted, the development must be carried out in accordance with the details approved. In all cases, the development is to be carried out within three years of the date from which all approvals have been issued, or the date on which the 28 day period expired if no decision was issued before that date.

Annex K – Conversion of agricultural and forestry buildings to flexible commercial use

Introduction

1. Classes 18C and 22B contain permitted development rights (PDR) for the change of use, and certain building operations to effect the change of use, from use as an agricultural or forestry building respectively to use as a flexible commercial use **or** a flexible commercial use permitted by this class to another flexible commercial use. Where a change of use of a building to flexible commercial use has been made under the provisions of either Class 18C or 22B, the use of the building is considered to be 'sui generis' and does not sit within any of the use classes specified within the schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997.

2. 'Flexible commercial use' means, for the purposes of Classes 18C and 22B any of the following, including a combination of any of the following, classes of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended);

- Class 1 (Shops)
- Class 2 (financial, professional and other services)
- Class 3 (food and drink)
- Class 4 (business)
- Class 6 (storage or distribution)
- Class 10 (non-residential institution)

3. Building operations are only permitted by Classes 18C and 22B to the extent that they are reasonably necessary to convert the existing building to use as a flexible commercial use. They are limited to:

- the installation or replacement of doors, windows, roofs and exterior walls;
- the installation or replacement of water, drainage, sewerage, electricity, gas or other services;
- partial demolition to the extent necessary to carry out the installation or replacement of doors, windows, roofs and exterior walls; and
- the provision of access to the building and of a hard surface for parking of vehicles ancillary to the enjoyment of the building.

4. The installation or replacement of doors, windows, roofs and exterior walls or of water, drainage, sewerage, electricity, gas or other services is only permitted to the extent reasonably necessary for the building to function as a flexible commercial use.

5. Consideration of what works are 'reasonably necessary' will be a matter of fact and degree in any individual case and should be considered in accordance with the various restrictions set out in the respective classes.

6. The purpose of these provisions is to support the conversion of buildings: they do not allow for a complete demolition and erection of a new building on the footprint of the existing building. Nor are they intended to permit such extensive demolition and rebuilding works as to create what, in effect, would constitute a new building. The existing building needs to be capable of being converted to commercial use for Classes 18C and 22B to apply.

7. The partial demolition of any building should therefore be minimised and generally confined to work essential to make the building suitable for use as a flexible commercial use. While partial demolition is only permitted to the extent it is reasonably necessary to carry out the operations specified above, it is recognised that in some cases doing so could enhance the design and appearance of the proposed conversion. It should also be noted that (with the exception of guttering and pipes for drainage or sewerage, flues and aerials) development carried out under Class 18C or 22B may not have the effect of extending the external dimensions of the building at any given point. For the avoidance of doubt, demolition of the existing building and erection of a replacement does not fall under this PDR and will require a planning application.

8. Both classes also permit the provision of access to the building and of a hard surface for vehicle parking incidental to the enjoyment of the building for the purposes of the flexible commercial use. Consideration should be given to the utilisation of existing access routes and hard standing wherever possible.

9. The change of use includes the land within the curtilage of the building.

10. Any consent granted under these PDR do not affect any obligations to comply with other legislative requirements such as, but not restricted to, building standards. Where buildings are to be connected to private water or sewerage supplies are to be undertaken, appropriate permissions should be sought[1]. More information on private water supplies may be sought from the relevant local authority and the Scottish Government's website: about new-private-water-supply/.

Limitations

11. There are a number of limitations common to both classes.

12. Development is only permitted if the use of the existing building on 4 November 2019, or if not used on that date the most recent use of the building before that date, was:

- For Class 18C, as a building solely for used for an agricultural purpose as part of an agricultural unit; or
- For Class 22B, as a building solely used for the purposes of forestry.

13. Development is not permitted if the building is or was constructed after 4 November 2019. This date is specified because the Scottish Government published its intention to take forward PDR for conversion of agricultural buildings on 5 November 2019. This cut-off is intended to prevent situations where an agricultural

[1] Where the property is to be connected to a private water supply, advice should be sought from the environmental health department of the local authority who is responsible for regulating these supplies and must hold a register. For connections to existing private water supplies, permission from the person responsible for this supply is required. In all cases, it is important to ensure that there is an adequate supply of water under all climatic conditions that can be treated to meet drinking water standards which are necessary to protect human health. The responsibility for ensuring that water supplied from a private water supply meets the relevant standards falls to the owners and users of those supplies.

or forestry building could be constructed (including under the provisions of classes 18 or 22 (see Annex E)) and, within a short period following construction, subsequently be removed from such use and converted to a flexible commercial use under Class 18C or 22B.

14. The cumulative floor space developed by virtue of these classes cannot exceed 500 square metres. For the purposes of Class 18C the cumulative total applies to a building or buildings on the "original" agricultural unit, which is defined as the agricultural unit which the building formed part of on 4 November 2019. For Class 22B, the cumulative total relates to an individual building. It should be borne in mind that partial change of use of a building would not be permitted under either class.

15. The PDR set out in Classes 18C and 22B do not apply to listed buildings. Furthermore, the PDR do not apply to development within:

- The curtilage of a listed building,
- A site of archaeological interest,
- A safety hazard area, or
- A military explosives storage area.

Prior Notification and approval

16. Anyone who wants to carry out development under either Class 18C or Class 22B provisions is required to apply to the planning authority for a determination as to whether the prior approval of the authority is required - this is a condition of the planning permission granted under these provisions. This is referred to as 'prior notification'. The prior notification submitted to the planning authority must be accompanied by:

- A written description of the development, including a description of any building operations and materials to be used.
- A scaled plan showing the location of the development.
- Any other scaled plans and drawings as are necessary to describe the development.
- Any fee to be paid.

17. Applicants should be aware that prior notification/approval must be sought before any work has commenced. If any development for which prior notification is required is commenced before submitting the prior notification, or where prior approval is required, before that approval is issued, the PDR do not apply and a planning application is required instead.

18. The change of use under either class extends to the land within the curtilage of the building that is the subject of the application. To enable the planning authority to determine the prior notification (and if required, consider prior approval), scaled plans and drawings describing the development should clearly indicate the extent of the curtilage associated with the building. Similarly, the plans should clearly indicate any proposed access and areas of hard standing and the location of any proposed septic tanks and other services.

19. The prior approval procedure provides planning authorities with a means of regulating, where necessary, important aspects of new development for which full planning permission is not required by virtue of the GPDO. Provided all the GPDO requirements are met, the principle of whether the development should be permitted is not for consideration. Those matters which the planning authority may consider in determining any requirement for prior approval are:

- The design or external appearance of the building
- The impacts of the proposed development on transport
- Access to the building
- The impacts of noise on those using the building or as a result of the development
- Risks to those using the building from contamination from the site
- The risk of flooding of the site.

20. To enable the planning authority to reach a view on these matters, it may – depending on the location and nature of the proposed conversion – be in the developer's interest to provide supporting information that goes beyond the minimum set out at paragraph 16. This could include, but is not restricted to, an agricultural holding number, contaminated land survey, flood risk assessment or noise assessment. In the absence of sufficient information to reach a view on the prior notification application, prior approval may be delayed or refused. Applicants are therefore encouraged to discuss the likely provision of information prior to the submission of a prior notification.

21. Applicants are encouraged to consider providing such information at the initial notification stage to enable planning authorities to consider such matters as early in the process as possible and to minimise the potential requirement for applications to be subject to prior approval.

22. Upon receipt of a prior notification the planning authority has 28 days to decide whether or not their prior approval is required. If no indication that prior approval is required is received within the 28 day period, the development permitted by the class may proceed provided that the development is in accordance with the details submitted with the prior notification.

23. Where the authority gives notice that their prior approval is required, the development cannot proceed until that approval is given. It is therefore in the developer's own interests to submit the above details and any relevant supporting information as soon as possible. Doing so will assist the planning authority in reaching a view as to the need for prior approval and – subject to that – whether or not prior approval can be granted. If the developer proceeds without submitting details or without, or in contravention of, the authority's prior approval (if required) the normal enforcement measures would be available to the authority as it deems appropriate in the circumstances of any particular case.

24. As noted above, a number of the conditions and limitations that apply to class 18C relate to the agricultural unit within which the building is located (e.g. the cumulative maximum floor space that may be developed). Accordingly, in relation to prior notifications under Class 18C, the provision of the relevant agricultural holding

number by the developer will assist in the identification of the site and help the planning authority to determine whether a proposal complies with relevant limitations.

25. Subject to the normal criteria governing their use - and insofar as they relate to the matters specified in Class 18C and 22B - conditions may be attached to the grant of prior approval. Similarly, consideration may be given to the use of planning obligations or other legal agreements, subject to the relevant tests in Scottish Government Planning circular 3/2012. Matters which are not relevant to prior approval decisions under Class 18C and 22B (e.g. provision of education facilities) should not be the subject of conditions or planning obligations. In operating these controls, planning authorities should always have full regard to the need to avoid imposing any unnecessary or excessively costly requirements; and to the normal considerations of reasonableness.

Completion of development

26. Where prior approval is not required the development must be carried out in accordance with the plans and description submitted to the planning authority. Where prior approval has been required and granted, the development must be carried out in accordance with the details approved. In all cases, the development is to be carried out within three years of the date from which all approvals have been issued, or the date on which the 28 day period expired if no decision was issued before that date.

Annex L – Cycle storage (non-domestic)

1. Class 9I of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as "the GPDO" enables the provision of a structure within the curtilage of a commercial building[1] for the purpose of temporary storage of pedal cycles. There are no size restrictions, and no restrictions on the location of the structure, other than:

- if the building is in a conservation area, the cycle store should not be located in the front curtilage of the building; and
- it must not obstruct clear sight of a road or footpath by the driver of a vehicle entering or leaving the curtilage of the building.

2. Class 9K of the GPDO allows for the siting of a structure within the boundaries of a public road for the temporary storage of pedal cycles, without the need for a planning application as long as it does not exceed the following dimensions:

- 1.5 metres in height;
- 2.5 metres in depth; and
- 5 metres in length.

3. The structure must also not be positioned so that it creates an obstruction to light to another building.

4. Permission from the local authority as roads authority must be obtained before the structure is erected.

[1] For the purposes of Class 9I, a commercial building means a building used for any purpose within Class 4, 5 or 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997

Annex M – Alteration/replacement of existing windows (non-domestic)

General information

1. Under planning legislation (the Town and Country Planning (Scotland) Act 1997), planning permission is required to carry out "development". The same legislation says that works which do not materially affect the external appearance of a building do not constitute development for the purposes of planning. As such, the installation of like-for-like windows will not require an application for planning permission. This is the case in all locations.

2. Even where the alteration or replacement of a window (or windows) would affect a building's external appearance, planning permission is in most cases granted by permitted development rights (PDR) under Class 7A of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as "the GPDO". These PDR apply to both non-domestic and domestic properties.

3. The effect of Class 7A PDR is that in most locations, an application for planning permission is not required to alter or replace an existing window. Some additional rules, which are explained below, apply in conservation areas. There are no PDR for replacement windows in a World Heritage Site.

4. Class 7A PDR do not apply to the creation of new windows in an existing building.

Altering or replacing windows in a conservation area

Summary

5. Class 7A PDR apply in conservation areas. However, if the building is in a conservation area you may need to notify the planning authority and submit some additional information (please see Annex A and paragraphs 10-12 below on prior approval) before altering or replacing a window; the authority then has an opportunity to consider the acceptability of the proposal. This will depend on:
    - where the window(s) to be altered or replaced is situated on the building;
    - the design of the proposed alteration or replacement and how it compares to the design of the existing window.

Elevation

6. The term "principal elevation" is used to identify the front of the building. The "rear elevation" is the elevation opposite the principal elevation. "Side elevations" link the principal and rear elevation. The "fronting a road" is a way of determining if the side elevation is in the public domain.

Window on the back of a building in a conservation area (or side of building which does not front a road

7. For windows on the rear elevation of a building or on side elevation of the building not fronting a road, there are no restrictions on the design or appearance of the replacement/altered window.

Window on the front of a property or on side elevation which fronts a road

8. Additional restrictions apply to windows situated on the principal elevation of a building and side elevations that front a road. This is because these are generally the more prominent parts of the building and therefore more sensitive to change. Depending on how similar the proposed window is to the existing one, you may need to notify the planning authority of the proposal (before the works are carried out) and submit some additional information so that they can take a view on whether the design is acceptable (please see Annex A and paragraph 10 below for more information) You will not need to submit additional information if the proposed window matches (i.e. is the same or substantially the same as) the existing window as regards:
    - Opening mechanism (e.g. sash and case).
    - The number, orientation and colour of panes within the window (e.g. six-over-six configuration).
    - The dimensions and colour of the window's frame and any astragal bars.

9. The material of the proposed and existing windows do not need to match. So if, for example, the proposed window would be the same or substantially the same as the existing one in respect of the three criteria above but the proposed window is made of a different material to the existing window, the process described below does not apply. If, however, you propose to replace existing windows with a different material and the replacement would not be the same/substantially the same as the existing one in respect of the three criteria (e.g. width of the frame) then the process below would apply. It is always advisable to check with the planning authority before starting work.

Prior approval process

10. If you intend to alter or replace a window which is: a) on a building in a conservation area; b) situated on the building's principal elevation (or side elevation that fronts a road); and c) not the same, or substantially the same, as the existing window in relation to the three criteria at paragraph 8, you will need to submit additional information to the planning authority before carrying out the works.

11. In this scenario, you must send the planning authority:
    - a plan indicating the location of the property;
    - a written description of the proposal and the materials to be used; and
    - the relevant fee.

12. It may help the planning authority to reach a view on the proposal if you submit information that goes beyond the minimum set out at paragraph 11. For example, photographs of the existing window.

Annex N – Closed circuit television (CCTV) cameras

1. Class 72, Part 25 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – also known as “the GPDO” extends permitted development rights (PDR) to include the installation, alteration or replacement on buildings or other structures (such as walls, fences or poles) of CCTV cameras for security purposes, subject to specified limits on size, numbers and positioning. The class does not apply within conservation areas or National Scenic Areas. Nor does it give PDR to poles or other structures specially constructed to hold cameras; these still require planning consent. Where CCTV cameras are being installed on a listed building or scheduled monument, they will continue to be subject to listed building consent and scheduled monument consent procedures as appropriate.

2. Up to 4 cameras are permitted on the same side of a building or structure and up to 16 cameras in total on any one building or structure, provided that they are at least 10 metres apart. Each camera must be sited so as to minimise its effect on the external appearance of the building or structure and cameras are to be removed as soon as is reasonably practicable after they are no longer required for security purposes. The field of vision of a camera should, as far as practicable, not extend beyond the boundaries of the land where it is sited or any adjoining land to which the public have access. Intrusion and inconvenience to neighbours should be limited as far as is practicable without compromising the camera’s effectiveness for security purposes.

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