

Permitted Development Rights:
non-domestic solar panels and
domestic air source heat pumps
consultation – Impact Assessments

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Partial Business and Regulatory Impact Assessment

Title of Proposal

Permitted Development Rights for non-domestic solar panels and domestic air source heat pumps.

Purpose and intended effect

Background

Since 2008 there has been a push within the planning system for greater permitted development rights for renewable energy generation technology. Permitted development rights exist for non-domestic solar panels up to 45kw electricity or 50kw thermal. Permitted development rights for air source heat pumps exists for domestic air source heat pumps where they are sited 100m from the nearest neighbours curtilage and is subject to prior notification to the planning authority on siting and design. Those conditions were applied to ensure noise emissions could be suitably controlled in the absence of an agreed noise threshold and measurement methodology. Since permitted development rights were implemented in Scotland, England and Wales have introduced permitted development rights that are based (for noise) on a connection to installer standards administered by the Microgeneration Certification Scheme. In 2014 the UK Government released its solar strategy to increase non-domestic permitted development rights for non-domestic solar panels to 1 megawatt (instead of 45kw) and introduced consequent permitted development rights for such development on 15 April 2015.

For air source heat pumps and solar panels Scottish Ministers want to ensure that there is parity in permitted development rights between Scotland and England, in recognition that the companies manufacturing and installing these products have a business base often in both countries. Reducing the differences between the extent of permitted development rights will reduce the bureaucratic burdens of operating across the two countries.

Objective

To provide enhanced permitted development rights for non-domestic solar panels and domestic air source heat pumps.

Rationale for Government intervention

- To ensure parity with the permitted development rights regime of other UK administrations.
- To reflect energy policy reserved to the UK Parliament.
- To meet commitments made to the Japanese consulate.
- To meet commitments made to the Scottish Parliament.
- To support the national outcome for sustainable places by providing a less constrained business environment for the installation of the technology which can assist in reducing resources associate with heating and powering buildings.
- To support the national outcome for the environment by providing a less costly and more certain framework for deploying renewable energy installations, helping property owners reduce the greenhouse gas emissions from their buildings.
- To reduce a financial and procedural burden to make installation more attractive and thus support sustainable economic growth across Scotland.

Consultation

Within Government

Air Source Heat Pumps

Climate Change and Low Carbon

Home Energy Efficiency Programmes for Scotland (Housing)

Environmental Quality

Public Health Division

Building Standards

Welsh Government Planning and Environmental Health departments.

Solar Panels

Transport Scotland

Aviation

Both Technologies

Legal

Input of these directorates has confirmed that European Commission notification under the Technical Standards Directive will be required. Further, the divisions have supported in principle the provision of permitted development rights for the technologies with comments around what measures and safeguards may be required.

Public Consultation

The Scottish Government consulted in 2010/11 on permitted development rights for microgeneration equipment including air source heat pumps and solar panels.

In preparing the proposals for consultation informal engagement has occurred between the Planning and Architecture Division, some environmental health officers, the Energy Saving Trust and one installer of the technology. Whilst there is some in principal support, concerns remain around noise impacts of air source heat pumps. The UK Government has considered the need to revise the noise threshold for air source heat pump installations under permitted development rights and concluded that no revision was required. That was based on a study which reported that of 52 responding local authorities in England, the majority of local authorities did not receive an increase in complaints to planning or environmental health following the introduction of the permitted development rights for air source heat pumps (Permitted Development Rights for Wind Turbines and Air Source Heat Pumps on Domestic Properties: One Year Review:

<http://www.microgenerationcertification.org/about-us/news-and-events/192-pdrwtashpreview>).

A period of formal public engagement will be undertaken in advance of the legislation being finalised.

As required by the Environmental Assessment (Scotland) Act 2005 (the 2005 Act) screening was undertaken in January 2015 to determine the likelihood of significant environmental effects from proposals within the consultation document. This process involved seeking the views of the Statutory Consultation Authorities (Scottish Environment Protection Agency (SEPA) Scottish Natural Heritage (SNH) and Historic Environment Scotland (HES)), on the likelihood of significant impacts. Taking into account the views expressed, it is the opinion of the Scottish Government that significant environmental effects from proposals within the consultation document are not likely to occur. The screening report can be viewed [here](#).

The results of the formal public consultation will be provided in the final Business and Regulatory Impact Assessment. The results of the consultation will inform the finalised set of proposals.

Business

Previous engagement with business was undertaken in 2011 on non-domestic permitted development rights for microgeneration equipment including air source heat pumps and solar panels.

We will engage with businesses and relevant umbrella organisations during the consultation and will report the results of meetings or workshops in the final Business and Regulatory Impact Assessment. The results will inform the finalised set of permitted development rights.

Options

We do not consider that a non-regulatory approach is appropriate in the circumstances of amending regulations and as such have not included it as an option.

Option 1: Do Nothing. This option would mean that the current regulations would remain in place and significantly differing permitted development rights would exist between Scotland and England and Wales for the technologies. As commitments have already been made to ensure parity with the permitted development rights regime of other UK administrations we do not consider this to be a viable option

Options for the individual technologies:

Solar

Domestic building solar panels are already provided for by existing domestic permitted development rights in Scotland, so the solar options relate only to non-domestic buildings.

The key features of the Town and Country Planning (General permitted Development) (England) Order 2015¹ are:

- Limited to microgeneration output (45 kilowatts) for all solar thermal equipment not on a roof
- Limited to microgeneration output (50 kilowatts) for all solar photovoltaic equipment not on a roof
- Limited to 1 megawatt output for all solar photovoltaic equipment on a roof and walls
- Wall mounted equipment not to protrude more than 20 centimetres
- Wall mounted equipment not to be within 1 meter of the junction of the wall with another wall or roof of the building
- Up to 20 centimetre protrusion of the equipment from a pitched roof

- Up to 1 metre protrusion of the equipment from a flat roof (excluding chimneys)
- Not closer than 1 meter to the edge of the flat roof
- No installation on a sloping roof or wall fronting a highway in article 2(3) land (which includes areas such as conservation areas, World Heritage Sites, National Parks, Areas of Outstanding Natural Beauty, and the Broads)
- No installation on the site of a scheduled ancient monument
- No installation on a listed building or within the curtilage of a listed building
- Equipment to be sited to minimise its effect on the appearance of the building and amenity of the area
- Equipment to be removed as soon as reasonably practical when no longer needed
- Roof mounted solar photovoltaic equipment that exceeds microgeneration capacity is subject to the developer seeking a view from the planning authority whether its prior approval on design or external appearance is required, in particular with regard to glare on occupiers of neighbouring land. This process is subject to a fee and application processing time. Where prior approval is required the development is to be in accordance with approved details, where it is not required the development is to accord with the details the developer submitted to the planning authority in asking for its view

Option 2: Adopt all of the provisions from England, modifying only where there are differences in supporting regulations (Areas of Outstanding Natural Beauty don't apply in Scotland for example).

We do not believe this to be the most suitable option as we question in a planning sense the need for a 1 megawatt cap on generating capacity (difficult to enforce as the capacity cannot be ascertained by looking at an installation) and the requirement for the prior approval step.

Option 3: Adopt some of the provisions from England.

We believe this to be the most suitable option. The generating capacity of a solar or indeed any other installation is not a primary concern of the planning system. A more pressing matter for the planning system is the impact of the development on the appearance of a building and place. This can be controlled through physical dimension and location limitations which can be readily verified on the ground.

We acknowledge that solar panels can cause reflections of sunlight (glare). We are of the view that this will change through the course of a day and over the course of a year depending on the particular position of the solar panel in relation to the sun at any given time. Reflections can be caused by any reflective surface including water bodies and the windows of buildings. Planning does not routinely seek glare assessments from such installations. Indeed, existing permitted development rights for solar panels on domestic buildings do not account for glare and we are not aware of significant complaint about glare as a result. We do not intend to add the burden of glare assessment into the proposed permitted development rights.

Option 4: Remove the microgeneration output limit from current permitted development rights for solar panels on non-domestic buildings in Scotland.

We do not believe this to be the most suitable option as it would leave flat roof installations limited to the height of an existing parapet wall, and not all flat roofed buildings have a

parapet wall. This would be a significant difference to the approach in England.

This option would also leave in place a 3 kilometre exclusion zone around airports where the rights would not apply. This covers many urban areas in Scotland and was originally intended as a means by which aerodrome safeguarding for glare could be protected. The domestic permitted development rights do not include the exclusion zone and we are not aware of significant concerns about glare as a result.

Air Source Heat Pumps

Permitted development rights for air source heat pumps on domestic property already exist in Scotland so the options seek to amend those existing rights.

The options do not consider air source heat pumps in non-domestic situations because a much greater range of heating demand and consequent scale or number of air source heat pumps would be likely to be required. Finding a suitable set of meaningful thresholds for those situations would be challenging.

A key matter is also dealing with the noise created by air source heat pumps. The Microgeneration Certification Scheme does not apply to non-domestic properties. A different means of managing the noise emissions would be required and has not been investigated at this point. We are aware that the Microgeneration Certification Scheme 42 decibel target external noise threshold (measured 1 meter from a neighbouring habitable room window) is greater than the noise limit applied as a condition of some planning permissions for air source heat pumps in Scotland. However, there are a range of limits, starting at no limit, which is not suggestive that any other single limit than that within the Microgeneration Certification Scheme would be more or less satisfactory to all planning authorities across Scotland.

We are aware that in less urban and rural areas of Scotland, background noise levels can be lower than in more urban areas. The Microgeneration certification scheme approach to air source heat pumps assumes a 40 decibel level of background noise. Whilst this may result in a noticeable increase in background noise for neighbours, the scheme is designed to result in an indoor noise level of the neighbouring home of around 30 decibels, which accords with World Health Organisation guidance on sleep.

The key features of the Town and Country Planning (General permitted Development) (England) Order 2015 are:

- Air source heat pump must comply with Microgeneration Certification Scheme Planning Standards or equivalent standards
- No installation where that would result in more than one air source heat pump, including flats
- No installation where there is already a wind turbine present on or within the grounds of the building, including flats
- The outdoor compressor housing (the box within which the machinery sits) is not to exceed 0.6 cubic metres
- No part of the air source heat pump to be within 1 meter of the site boundary (curtilage)
- No installation on a pitched roof
- No installation closer than 1 meter of the edge of a flat roof
- No installation on the site of a scheduled ancient monument
- No installation on or within the curtilage of a listed building
- Not on a wall or roof fronting a highway in a conservation area or World Heritage Site

- No installation nearer to a highway than the existing building within a conservation area or World Heritage Site
- No installation on a building wall fronting a highway
- No installation on a building wall above the ground storey level.
- Air source heat pump to be for heating only
- Siting to minimise its effect on the amenity of the area
- Removal of the air source heat pump as soon as practical when no longer needed

Option 5: Adopt all the provisions from England

We do not consider this to be the preferred approach as we would want to ensure that the permitted development rights have a good fit with those already in place for development of domestic properties in Scotland.

Option 6: Adopt the principles of the provisions from England but apply them in a way that is consistent with existing approaches to permitted development rights in Scotland.

This is the preferred approach because it allows the principles behind the permitted development rights to be applied in Scotland in a way which meets existing concepts for permitted development on domestic properties. Mainly this would mean incorporating the air source heat pumps within the concept of allowing development that does not extend the floor area of a dwelling to take place where it has a protrusion from the external surface of the building of no more than 1 meter.

We understand that air source heat pumps operate most effectively when the connecting pipe runs to the buildings are as short as possible to minimise heat loss. Encouraging the heat pumps to be sited on or immediately adjacent to the building is consistent with maximising the efficiency of the units and in line with decisions already taken about the acceptability of visual impacts of small development within 1 meter of the building.

Sectors and groups affected

Air Source Heat Pumps

Sectors and Groups likely to be affected: Home owners, landlords, private and social domestic tenants, commercial property owners and tenants, renewable energy technology manufacturers, renewable energy technology installers, renewable energy advisory services, Councils in Scotland, planning consultants. The Equalities Impact Assessment has flagged that there may be impacts for those people who spend prolonged periods of time at home, this could include children and young people, older people, some disabled people, and some ethnic groups.

Options impact:

Do Nothing (Option 1) – Property owners and landlords continue to be liable for planning application fee and associated costs. Perceived planning barrier and actual time cost to installation remain. Variability of planning conditions applied to installations across the country makes success of product design and initial installation proposal less certain for manufacturers and installers. Those spending prolonged periods at home will continue to have the chance to comment on proposals prior to installation so the very local impacts can be understood and mitigated where necessary.

Domestic and non-domestic microgeneration certification scheme compliant (Options 5 and 6) – owners, installers and manufacturers can readily identify the compliance thresholds using existing methodology. Neighbours, including people in groups likely to spend prolonged periods at home, of the technology in urban situations likely to be well protected from noise nuisance but in rural situations the situation is less clear. However the UK Government's paper: 'Permitted Development Rights for Wind Turbines and Air Source Heat Pumps on Domestic Properties: One Year Review' does not suggest a significant increase in complaints following the adoption of the Microgeneration Certification Scheme as the basis for noise management within the permitted development rights. More informally the Welsh Government is not aware of any complaints about the noise results having utilised the given compliance thresholds. Councils in Scotland would not be able to apply locality specific noise thresholds or other installation criteria for installations made under the permitted development rights, which may lead to installations the council may not have otherwise have approved through its planning function. Noise nuisance remains an enforcement option for councils through the Environmental Health function, in rural areas there may be more call for noise nuisance investigation given the low existing background noise, although this outcome is not recognised, informally, by the Welsh Government.

Non-Domestic Solar Panels:

Sectors and groups likely to be affected: Home owners, landlords, private and social domestic tenants, commercial property owners and tenants, renewable energy technology manufacturers, renewable energy technology installers, renewable energy advisory services, Councils in Scotland, planning consultants. The Equalities Impact Assessment has flagged that there may be impacts for those people who spend prolonged periods of time at home, this could include children and young people, older people, some disabled people, and some ethnic groups.

Home owners and tenants could be affected by glare. Option 2 (adopt all provisions from England) provides for large scale roof mounted solar and more limited wall mounted solar panels but with a procedural step of considering the design and external appearance, with an emphasis on glare, of the installations that would exceed microgeneration output capacity. Option 3 (adopt some of the provisions from England) and Option 4 (remove the output limit from the existing non-domestic permitted development rights for solar panels in Scotland) would permit installations of solar panels in excess of microgeneration output capacity on walls and roofs and would not include the step of design and external appearance consideration by the planning authority. This step is not required for solar panel installations on domestic property (which are not limited by generating capacity). We are not aware of significant concerns around glare having resulted from the existing permitted development rights and do not feel that increasing the area of coverage of solar panels on a building would significantly alter the situation.

In addition the addition of the planning authority step of considering design and external appearance builds into the process a time and cost penalty that permitted development rights are intended to remove (in principle at least).

An alternative mitigation for glare would be the application of a threshold for the level of reflectivity for the installation. This is not applied to any other type of permitted development right that might cause reflections of light. It would also be difficult to enforce because a reflectivity threshold does not mean no reflection, so looking at an installation will not reveal whether it is sufficiently reflectivity reduced. We are not aware of a standard of reflectivity which is universally applicable that would mitigate glare concerns. In addition the reflectivity standard is not applied to existing domestic or non-domestic permitted development rights and we are not aware of significant concerns around glare affecting the trunk road network or neighbours as a result.

General benefits

Air Source Heat Pumps

Home owners – no planning application and associate fees for installing air source heat pumps. Certainty about what installations will be acceptable.

Businesses – no planning application and associate fees for installing air source heat pumps. Certainty about what installations will be acceptable.

Installers – Certainty about what heat pumps will not require planning permission, quicker time scale from quote to installation.

Manufacturers – able to design products to fit the permitted development rights to gain market advantage. Reduced regulation would bring the technology more in line with other technologies such as ground source heat pumps meaning people are not dissuaded from choosing the technology on the grounds of regulatory hurdles. Consistency of approach across Scotland to noise thresholds for compliant products.

The Scottish Government does not monitor the number of planning applications made for air source heat pumps so a direct monetary identification of the planning application fee saved cannot be made. However, information is available about the number of applications to the Renewable Heat Incentive scheme (operated by the UK Government). In Scotland for the 6 months between April and September 2014 there were 403 applications to the scheme for domestic properties. This means there was an average of 67 applications to the scheme per month.

Air source heat pumps when presented to the planning authority as an application only for the installation of the unit (as opposed to units being included as an element of other development proposals) would be considered as a 'Local' planning application. The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2014ⁱⁱ sets out the fees for a variety of applications to the planning authority. It is for the planning authority to determine the fee category that the proposal best fits. For the purposes of this assessment it is taken that applications for air source heat pumps would be processed for fee allocation under part 7(a) of the schedule to the 2014 regulations. This puts the planning application fee at £202.

Assuming that all of the applications involving air source heat pumps to the Renewable Heat Incentive scheme result in planning applications being made to the relevant planning authority in Scotland that would be an application rate of approximately 804 per year. In reality this will be somewhat less as the application rate will not be constant each month and some proposals will benefit from existing permitted development rights.

If the planning application rate was 804 per year, the planning application fee saving would be:

$$804 \times £202 = £162,408.$$

In making a planning application it is not just the fee for the application where monetary cost is incurred. Applications must be accompanied by site plans as well as elevational drawings. In some cases noise reports are required up front. These plans and accompanying information will commonly be supplied on a consultancy basis for which costs will vary. However it is likely, and this was borne out in the BRIA for previous permitted development rights, that the planning application fee is not the major monetary cost associated with the submitting of a planning application.

This is a saving that can be passed on to customers. The cost is that the planning authorities are losing the fee income (but also the necessity to consider the planning applications so the impact should be neutral). There is a broader cost probably more keenly felt by smaller firms offering planning consultancy services in that they will lose the income stream from preparing planning applications for air source heat pumps. **It is not known what the likely impact of that loss of income stream would be and we would appreciate comments on this.**

Of the 403 applications to the Renewable Heat Incentive Scheme 133 were for on-grid and 270 off-grid. Those off-grid properties are most likely to be rural, and those on-grid most likely to be urban. Approximately 67% of applications to the scheme are for rural properties and 33% urban.

Fuel poverty can occur in urban and rural situations but heat pump technology has most benefit in terms of reducing heating costs where the alternative heating fuel is not mains (grid) gas. Therefore the cost benefits of air source heat pumps will be particularly noticeable in rural areas. In terms of the monetised savings, that could mean that £108,813 is released in rural areas.

In non-domestic situations for the 10 months between November 2011 and September 2014 there were five applications to the Renewable Heat Incentive scheme across the whole of Great Britain, and a figure for Scotland alone is not available. Whilst this does not mean that significantly more planning applications for non-domestic air source heat pumps have not been made it is not possible at this time to quantify the number of planning applications made.

If the applications to the scheme are a reliable proxy for the number of planning applications made for air source heat pumps and accepting the principle that the planning application fee is not the principal cost in making the planning application, it does not seem that the financial benefit of permitted development rights to applicants would be the most significant action that could be taken to increase uptake of the technology in the non-domestic sector.

However, it is noteworthy that it is likely for non-domestic uses the planning application would fall under Section 5 of the fee schedule of the 2014 The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations which would make the fee £401 for each 0.1 hectare. That size would likely be sufficient for most air source heat pump installations and for smaller premises/businesses the application fee could be a barrier to uptake of the technology.

Solar Panels

Businesses – there would be no planning application and associated fees for larger solar panel installations. Therefore it would be possible for businesses to collect government tariff payments from solar without costs for planning applications.

Installers – there could be a shorter period from quote to installation.

Manufacturers – potentially there could be greater numbers of solar panels ordered as the ‘micro-generation’ restriction on permitted development would effectively be lifted.

Figures for solar photovoltaic panel installation in Scotland, based on those installations registered for the Feed-in Tariff schemeⁱⁱⁱ (which will under record the total number of installations as not all will be registered for the scheme) state that there were 35,261 domestic installations registered. For non-domestic there were 831 registered installations. The non-domestic sector is clearly the smaller market share in terms of Feed-in Tariff. The Feed-in Tariff is not open to solar thermal schemes so does not record how many of those installations there are.

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2014^{iv} sets out the fees for a variety of applications to the planning authority. It is for the planning authority to determine the fee category that the proposal best fits. For the purposes of this assessment it is assumed that applications for solar panels applied to non-domestic properties fall within Section 10(c) of the schedule to the regulations. This makes applications £202 for each 0.1 hectare of the site area, subject to a maximum of £2,016.

There are a variety of ways in which individual solar installations will be made up in terms of area of panel coverage. However, it is likely that a 1 megawatt solar array would be very large indeed and 0.1ha is equivalent to 1000 square metres, which is an area just under 32x32 metres, representing a large building. On that basis this assessment will assume the lowest fee level of £202.

Had all of the Feed-in Tariff registered installations not been subject to the planning application fee then the saving would have been $831 \times £202 = £167,862$.

In making a planning application it is not just the fee for the application where monetary cost is incurred. Applications must be accompanied by site plans as well as elevational drawings. In some cases noise reports are required up front. These plans and accompanying information will commonly be supplied on a consultancy basis for which costs will vary. However it is likely, and this was borne out in the BRIA for previous permitted development rights, that the planning application fee is not the major monetary cost associated with the submitting of a planning application.

This is a saving that can be passed on to customers. The cost is that the planning authorities are losing the fee income (but also the necessity to consider the planning applications so the impact should be neutral). There is a broader cost probably more keenly felt by smaller firms offering planning consultancy services in that they will lose the income stream from preparing planning applications for air source heat pumps. **It is not known what the likely impact of that loss of income stream would be and we would appreciate comments on this.**

However, at nearly £168,000 this is finance that could go back to applicants. At an individual level it is likely that the planning application fee can be borne, although the smaller the business the larger, proportionately, the cost of the planning application will be relative to the financial turnover of the business.

Costs

Air Source Heat Pumps

The most concerning cost would be a reduction in the quality of the domestic noise environment for neighbours (The Scottish Government is aware of only a low level of complaint around noise from air source heat pumps which is managed by the Environmental Health service of Councils in Scotland). The Environmental Health service of Councils would not be able to comment on every installation in advance.

Planning authorities would lose the fee income associated with planning applications for solar panels, which could equate to around £163,000 per year.

Solar Panels

Although there would be visual impacts these are not thought likely to be significantly adverse (no complaints about this are known to the Scottish Government as a result of existing permitted development rights for solar panels).

Glare to road users. If mitigated by a reflectivity limit then this would add a technical barrier to product design which is not required for domestic installations.

Risks to aviators. We are not aware of complaints from the aeronautical industry about glare or protected surface penetration from solar panel installation under the existing permitted development rights. If the 3km restriction zone around an airport or technical site is retained, this will mean that many urban areas will not benefit from the permitted development rights.

Planning authorities would lose the fee income associated with planning applications for solar panels, which could equate to around £168,000 per year.

Scottish Firms Impact Test

The result of face to face engagement with businesses in Scotland will be reported in the Final Business and Regulatory Impact Assessment and will inform the final approach to regulation.

Competition Assessment Screening

Will the proposal directly limit the number or range of suppliers?

No. The provision of permitted development rights do not prevent suppliers continuing to operate and their products being subject to the planning application process should they not conform with permitted development rights.

Will the proposal indirectly limit the number or range of suppliers?

No. The provision of permitted development rights do not prevent suppliers continuing to operate and their products being subject to the planning application process should they not conform with permitted development rights. Depending on the business model of the supplier they may benefit from designing products that can comply with the permitted development rights.

Will the proposal limit the ability of suppliers to compete?

No. The provision of permitted development rights do not prevent suppliers continuing to

operate and their products being subject to the planning application process should they not conform with permitted development rights. Depending on the business model of the supplier they may benefit from designing products that can comply with the permitted development rights.

Will the proposal reduce suppliers' incentives to compete vigorously?

No. The provision of permitted development rights do not prevent suppliers continuing to operate and their products being subject to the planning application process should they not conform with permitted development rights. Depending on the business model of the supplier they may benefit from designing products that can comply with the permitted development rights.

Conclusion

Competition Assessment not required.

Test run of business forms

No new forms will be introduced.

Legal Aid Impact Test

No significant impact on legal aid anticipated.

Enforcement, sanctions and monitoring

The planning authority function of Councils in Scotland will be the first point of contact for those concerned that development does not have planning permission nor does it comply with permitted development rights.

Where permitted development rights have been accorded with but noise from air source heat pumps remain a concern, individuals can complain to the Environmental Health department of a Council in Scotland who can investigate to see if a statutory noise nuisance has occurred. If so action to resolve the nuisance (including removal of the noise making equipment) could be undertaken.

Where the permitted development rights are dependent on compliance with the Microgeneration Certification Scheme, consumers and neighbours of installations are protected by the quality assurance that the certified products and installers achieve.

The Scottish Government receives correspondence about various legislative and policy interventions that have been or are thought useful to make. This informal route provides individuals the option of informing the Scottish Government when they consider that a Scottish Government activity is not sufficiently protecting their interests.

The Scottish Government will undertake a public consultation on the proposals and make necessary amendments to the regulations in response.

The Scottish Government could commit to a review of the regulations following a specified period of time, in order to understand if the anticipated effects have in fact been realised and if any unanticipated effects have also emerged.

Implementation and delivery plan

The regulations will be implemented through an amendment to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. This is secondary

legislation within the competence of the Scottish Parliament and would be approved by a negative parliamentary procedure.

Delivery of the regulation is through product manufacturers, installers and home owners who install the equipment in accordance with the regulations. Enforcement via Councils in Scotland and potentially the Microgeneration Certification Scheme ensures delivery in accordance with the regulations.

As installations that do not require planning permission will not be registered with Councils it will not be possible to track the number of installations through the Council's planning service records. Proxy tracking may be achieved through the number of installations receiving loan payments for installation or tariff payments for electricity generation, but not all installations will take advantage of either of those incentives.

Post-implementation review

The Scottish Government could review implementation after 1 year to understand initial impacts. Otherwise stability in the permitted development rights is important and a 10 year review is appropriate.

Summary and recommendation

We recommend that Options 3 and 6 are pursued as these meet the ambitions of reducing regulatory hurdles to the greatest extent of the options whilst supporting the approach to permitted development rights more broadly in Scotland. We do not believe that these options will cause significant reduction in residential amenity or transport safety based on information from other UK governments on air source heat pumps and the current position with regard to domestic solar panels.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1 Do Nothing	<p>Neighbours retain the ability to comment on planning applications prior to installation so the local situation is fully understood.</p> <p>Planning authorities earn planning application fees associated with planning applications.</p>	<p>Applicants have to pay the planning fee and other costs for drawing up plans etc. to satisfy the regulatory process.</p> <p>It is possible that there is unmet demand for air source heat pumps because some applicants are put off by the regulatory hurdle.</p>
Option 2: SOLAR Adopt all of the provisions from England, modifying only where there are differences in supporting regulations	<p>Planning authorities earn the fee income from the step considering prior approval.</p> <p>Companies that draw up plans and elevations benefit from the income generated from preparing supporting information for planning authority consideration of prior approval.</p> <p>Communities can comment on proposals for prior approval, where the planning authority considers prior approval is necessary and is not being refused.</p> <p>Other benefits are the same as Option 3.</p>	<p>The generating capacity cap is likely to be difficult to enforce (officer time).</p> <p>The consideration of prior approval for larger schemes has a financial and time cost for applicants and a time cost for planning authorities.</p> <p>Other costs are the same as Option 3.</p>
Option 3: SOLAR Adopt some of the provisions from England	<p>Removes as many regulatory hurdles as possible for building mounted equipment.</p> <p>Mirrors more directly the permitted development rights already existing for domestic properties in Scotland.</p> <p>Based on 831 planning applications per year a planning application fee saving of around £167,862 is possible.</p> <p>No costs would be incurred for the drawing up of supporting information for the planning application.</p>	<p>Planning authorities earn no fee income from the proposals, based on 831 planning applications per year this could be around £167,862.</p> <p>Companies drawing up planning application or prior approval consideration information lose that income stream.</p> <p>Communities have no chance to comment on proposals.</p>

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
<p>Option 4: SOLAR</p> <p>Remove the microgeneration output limit from current rights for solar panels on non-domestic buildings</p>	<p>Existing approach to roof mounted solar panels remains in place, aimed at airport safeguarding from glare.</p>	<p>Missed opportunity to broaden the scope of permitted development rights to include areas within 3 kilometres of airports.</p> <p>Inconsistent approach from England and existing domestic permitted development rights.</p>
<p>Option 5: AIR SOURCE HEAT PUMPS</p> <p>Adopt all the provisions from England</p>	<p>Anticipated same benefits to Option 6</p>	<p>Misses the opportunity to bring the permitted development rights in line with the approach to other minor development that does not extend the floor area of domestic properties.</p> <p>Otherwise, as per Option 6.</p>
<p>Option 6: AIR SOURCE HEAT PUMPS</p> <p>Adopt the principles of the provisions from England but apply them in a way that is consistent with existing approaches to permitted development rights in Scotland</p>	<p>Regulatory hurdles reduced.</p> <p>Perceived barriers caused by the uncertainty of the outcome of a planning application removed.</p> <p>Potential planning application fee savings in the region of £162,408 (based on 804 planning applications per year).</p> <p>No costs associated with drawing up information to submit with the planning application.</p> <p>Consistent approach to noise management within permitted development rights through the application of the microgeneration certification scheme.</p>	<p>Planning authorities lose fee income in the region of £162,408 (based on 804 planning applications per year).</p> <p>Communities cannot comment on proposals before they are installed.</p> <p>Microgeneration Certification Scheme noise limits may be higher than those the planning authority might have applied through the planning application process.</p>

Declaration and publication

- Sign-off for Partial Stage BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date:

Minister's name: Alex Neil MSP

Minister's title: Cabinet Secretary for Social Justice, Communities and Pensioners Rights

Scottish Government Contact point:

Simon Bonsall
Senior Planner
Area 2-H
Victoria Quay
Leith
Edinburgh
EH6 6QQ
Simon.bonsall@scotland.gsi.gov.uk

Equalities Impact Assessment

Title of Policy

Permitted Development Rights: non-domestic solar panels and domestic air source heat pumps

Summary of aims and desired outcomes of Policy

Remove the technology in more situations from the need for planning applications to be submitted.

To create parity between permitted development rights for the technology between Scotland and England.

For solar panels we aim to create parity between domestic and non-domestic permitted development rights.

Directorate: Division: Team

Directorate for Local Government and Communities: Planning and Architecture
Division: Planning Policy Team

Executive Summary

This assessment highlights that the key impacts will be people at home for extended periods. It also highlights that those impacts are uncertain and that further information about this should be sought during the consultation stage.

Background

Aims:

- To remove the requirement for planning applications to be made for non-domestic solar panels and domestic air source heat pumps in more situations than legislation allows for at this time.
- To create parity between the permitted development rights for air source heat pumps and solar panels between England and Scotland.
- To create parity between existing permitted development rights for solar technology on domestic property and on non-domestic property (which has a more constrained set of permitted development rights for the technology at present).

National Outcomes Contribution

Outcome: We live in well-designed, sustainable places where we are able to access the services and amenities we need. Permitted development rights provide a less bureaucratic route for investment in on-site solar panels and air source heat pumps.

Outcome: We value and enjoy our built and natural environment and protect it and enhance it for future generations. The application of renewable energy technologies to existing buildings can reduce Scotland's reliance on fossil fuel and centralised sources of energy which can help reduce greenhouse gas emissions.

Operational Context

The permitted development rights would become secondary legislation through the laying of a Scottish Statutory Instrument before the Scottish Parliament.

Development falling within the criteria and thresholds established by the rights would not require planning permission but remain required to gain non-planning consents such as a building warrant.

Development which does not meet the criteria or thresholds within the legislation will not be considered to be permitted development and requires to gain planning permission through the submission of a planning application. Although a planning application may not result in permission being granted, the fact that a development does not benefit from permitted development rights status does not mean that it cannot secure planning permission.

Engagement

As these permitted development rights impact mainly planning and climate change, relevant officials from those divisions were involved.

External engagement will be achieved through the public consultation.

The Scope of the EQIA

The likely effects of the policy and assessment of these were drawn from a discussion on the potential effects.

The discussion was based on officer knowledge, with potential sources of information highlighted for future reference.

Key Findings

Impacts are considered to be generally indirect and in all cases apply to everyone, not just those with protected characteristics. However the evidence base is weak. Amending the legislation does not remove routes of complaint for development that does not conform to the rights and environmental health impacts can be addressed by a separate regime.

Leads for information will be followed up during the public consultation.

Potential negative impacts/severity/mitigation:

Some older people, disabled people, women and those in minority ethnic communities represented in lower income groups may be at home for long periods and so could be more aware of the visual impacts of solar panels and reflections or glare from solar panels.

We do not propose additional mitigations at this stage for visual impact as we wish to promote the technology by removing the planning application process. We are content that solar technology is an appropriate technology in terms of the appearance of the built environment, although some people within and outwith protected characteristics groupings may disagree depending on their personal opinions. Solar panels are included within the '1 metre bubble' concept for development on domestic buildings that does not increase the floor space of the building. The proposals for solar technology on non-domestic buildings is in line with that approach.

We do not propose any mitigation on reflections or glare as this is not mitigated for solar panels applied to domestic properties and we are not aware of significant complaints about reflections or glare arising from installations under permitted development rights in domestic settings.

For air source heat pumps the direct negative impact identified was noise. This could have a greater bearing on older people, disabled people, women and those in minority ethnic groups represented in lower income groups. These groups may spend longer periods at home and so be more exposed to noise from air source heat pumps.

On the positive side and broadly for the same groups of people, those installing air source heat pumps could benefit from cheaper heating bills and may get an installation more quickly if the planning application step is removed. The benefit is indirect because it is dependent on how the air source heat pump is installed.

On noise, we do acknowledge that this is a potentially negative impact upon those groups identified but indeed on any neighbour to the air source heat pump. Our proposals include means by which the noise level of the air source heat pump is predicted and that method includes a maximum noise level in order for air source heat pumps to be considered to be permitted development. Noisier installations would require planning permission.

Environmental Health Officers of Councils in Scotland already have a statutory role in investigating and dealing with noise nuisance. That is unaffected by the permitted development rights and provides a safeguard against installations that meet the permitted development rights thresholds but following investigation are found to constitute a statutory noise nuisance. We are not aware that this process has been commonly applied to air source heat pump installations.

This assessment of impacts has increased awareness of the groups of people that might be adversely affected because of their length of time within the home.

Although not discussed at the time of the framing workshop, it is also considered that these same matters could be applied to children, who can be expected to spend a lot of time at home and less so to young people in education who will spend extensive

periods away from the home at their place(s) of education. The mitigation measures apply to all people and it is not considered that they require to be tailored towards young people.

Recommendations and Conclusions

It is not considered that specific engagement with equalities groups is required in advance of the public consultation. No additional mitigations have been suggested to those already being considered.

However because possible negative impacts have been identified it is considered relevant to undertake a review of the permitted development rights within three years of them coming into force.

Child Rights and Wellbeing Impact Assessment Summary

<p>CRWIA title: Permitted Development Rights: non-domestic solar panels and domestic air source heat pumps consultation.</p> <p>Date of publication: 22 June 2015</p>	
Executive Summary	<p>This Child Rights and Wellbeing Impact Assessment deals with the potential impacts of air source heat pumps on domestic buildings and solar panels on non-domestic buildings from not requiring planning permission in more situations than at present.</p>
Background	<p>Since 2008 there has been a push within the planning system for greater permitted development rights for renewable energy generation technology. Permitted development rights exist for non-domestic solar panels up to 45kw electricity or 50kw thermal. Permitted development rights for air source heat pumps exists for domestic air source heat pumps where they are sited 100m from the nearest neighbours curtilage and is subject to prior notification to the planning authority on siting and design. Those conditions were applied to ensure noise emissions could be suitably controlled in the absence of an agreed noise threshold and measurement methodology. Since permitted development rights were implemented in Scotland, England and Wales have introduced permitted development rights that are based (for noise) on a connection to installer standards administered by the Microgeneration Certification Scheme. In 2014 the UK Government released its solar strategy to increase non-domestic permitted development rights for non-domestic solar panels to 1 megawatt (instead of 45kw) and introduced consequent permitted development rights for such development on 15 April 2015.</p> <p>For air source heat pumps and solar panels Scottish Ministers want to ensure that there is parity in permitted development rights between Scotland and England, in recognition that the companies manufacturing and installing these products have a business base often in both countries. Reducing the differences between the extent of permitted development rights will reduce the bureaucratic burdens of operating across the two countries.</p>
Scope of the CRWIA	<p>This assessment focuses on the following articles of the United Nations Convention on the Rights of the Child:</p> <p>Article 23: (1) States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.</p> <p>Article 27: (1) States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.</p> <p>Accordingly the assessment also considered the following wellbeing aspects:</p>

	<p>Healthy – Noise if excessive can be an annoyance or statutory nuisance. However the permitted development rights do not impact on the level of access to health services nor impact on learning support to make healthy choices.</p> <p>Nurtured – Whilst noise, glare and appearance of place have a bearing on the conditions within which a child may reside, the impacts are indirect, will be limited and apply area wide.</p> <p>If the child’s household benefits from the application of the technology then they may as a household benefit from reduced heating or household fuel costs (although this is dependent on the particular installation and how it is operated so is not a guarantee of the proposed legislative change).</p> <p>Included - Whilst noise, glare and appearance of place have a bearing on the conditions within which a child may reside, the impacts are indirect, will be limited and apply area wide.</p> <p>If the child’s household benefits from the application of the technology then they may as a household benefit from reduced heating or household fuel costs (although this is dependent on the particular installation and how it is operated so is not a guarantee of the proposed legislative change).</p>
Children and young people’s views and experiences	None specifically identified at this time but there is opportunity for this during the public consultation.
Key Findings	At this time we believe that generally the potential impacts are likely to be neutral. As the potential impacts may be experienced differently by different individuals, children, young people and adults, but not significantly by protected grouping, such as disabled people more so than other individuals.
Conclusions and Recommendations	<p>The Child Rights and Wellbeing Impact Assessment has not strongly suggested that additional measures or mitigations are required in order to safeguard or promote the United Nations Convention on the Rights of the Child or the associated wellbeing indicators for Children in Scotland.</p> <p>However we acknowledge that specific information about the impacts on children and young people as a result of the technology has not been identified at this stage and will consider pertinent information identified through the consultation in this regard.</p>
Monitoring and review	Given the nature of air source heat pumps in particular a review of the operation of the legislation after 1 year from its coming into force is recommended. Otherwise a 10 year review is appropriate.

Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to SHANARRI wellbeing indicators
<p>Town and Country Planning (General Permitted Development) (Scotland) Order 1992 Class 6J</p>	<p>Remove the need for planning applications to be submitted and approved in advance of the installation of non-domestic solar panels in a greater range of situations.</p> <p>To remove the limitation of the existing permitted development rights to microgeneration, remove the restriction of application within 3 kilometres of an aerodrome or technical site and remove the necessity for a parapet wall to be present for roof mounted solar panels to be permitted development.</p> <p>To limit the height of roof mounted solar panels to 1 meter.</p>	<p>Children and young people, in particular disabled children, who may spend long periods of time at home.</p>	<p>Article 23 (1) right to life conditions that promote dignity</p> <p>Article 27 (1) rights to an adequate standard of living for their development</p>	<p>Nurtured/Included – Whilst glare and appearance of place have a bearing on the conditions within which a child may reside, the impacts are indirect, will be limited an apply area wide.</p> <p>If the child’s household benefits from the application of the technology then they may as a household benefit from reduced heating or household fuel costs.</p>

Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to SHANARRI wellbeing indicators
<p>The Town and Country Planning (General Permitted Development) (Scotland) Order 1992</p> <p>Class 6H</p>	<p>Remove the need for planning applications to be submitted in advance of the installation of domestic air source heat pumps in a greater range of situations.</p> <p>We look to remove the restriction for the air source heat pump to be 100 metres or more from the curtilage of another dwelling, remove the requirement for the step of asking the planning authority if prior approval of the equipment is needed. We propose to link the noise prediction to the UK established microgeneration certification scheme, and to bring air source heat pumps effectively within the alterations to a dwelling house that are permitted within 1 meter of the external surface of the building.</p>	<p>Children and young people, in particular disabled children, who may spend long periods of time at home.</p>	<p>Article 23 (1) right to life conditions that promote dignity</p> <p>Article 27 (1) rights to an adequate standard of living for their development</p>	<p>Healthy – Noise if excessive can be an annoyance or statutory nuisance.</p> <p>However the permitted development rights do not impact on the level of access to health services nor impact on learning support to make healthy choices.</p> <p>Nurtured/Included – Whilst noise and appearance of place have a bearing on the conditions within which a child may reside, the impacts are indirect, will be limited and apply area wide.</p> <p>If the child’s household benefits from the application of the technology then they may as a household benefit from reduced heating or household fuel costs.</p>

Strategic Environmental Assessment

A Strategic Environmental Assessment (SEA) screening has been undertaken in accordance with the Environmental Assessment (Scotland) Act 2005 (the 2005 Act). A screening report was submitted to the SEA Gateway in January 2015 which set out the likelihood of significant environmental impacts arising from proposals within the Permitted Development Rights: non-domestic solar panels and domestic air source heat pumps consultation.

In consultation with the Statutory Consultation Authorities (Scottish Environment Protection Agency (SEPA) Scottish Natural Heritage (SNH) and Historic Environment Scotland (HES)), it is the view of the Scottish Government that significant environmental effects from proposals within the consultation document are not likely to arise, based on the proposals set out in the consultation. A formal screening determination will be issued in due course.

ⁱ <http://www.legislation.gov.uk/uksi/2015/596/contents/made>

ⁱⁱ <http://www.legislation.gov.uk/ssi/2014/214/schedule/made>

ⁱⁱⁱ <https://www.gov.uk/government/statistical-data-sets/sub-regional-feed-in-tariffs-confirmed-on-the-cfr-statistics>

^{iv} <http://www.legislation.gov.uk/ssi/2014/214/schedule/made>