

CLASS 67 PERMITTED DEVELOPMENT RIGHTS FOR ELECTRONIC COMMUNICATIONS CODE OPERATORS.

THE CHANGES

Introduction

1. Stakeholders should study closely the new version of Class 67 contained in the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017 (Scottish Statutory Instrument 2017/189). A new version of Annex G to Circular 2/2015, Consolidated Circular on Non-Domestic Permitted Development Rights, will be issued shortly, setting out what the new version of Class 67 does.
2. The amendment Order has been laid before Parliament and is due to come into effect on 31 July 2017. This note highlights what will change from that date. In particular, new ground based masts up to 25 metres in height and which are outside designated¹ areas will be subject to permitted development (PD) rights subject to a new form of prior approval procedure (see below).

Changes in relation to Designated Areas

- a) **Category A listed buildings and scheduled monuments**, which have their own consent regimes, are to be removed from the list of designated areas in which Class 67 PD rights are more restricted. However, **the settings of such buildings and monuments** are to remain as areas where additional restrictions on PD rights apply (as the consent regimes for these buildings and monuments do not extend to their settings). [Class 67(2)]
- b) **World Heritage Sites (WHS)** are to be added to the list of designated areas in which additional restrictions apply to PD rights. Much of the area covered by a WHS designation is likely to be subject already to other designations in which such restrictions apply. [Class 67(2)]
- c) PD rights for **'small cell systems'** on buildings and other structures - this relates to 'small antennas' and any ancillary apparatus on buildings and other structures. This will not apply in conservation areas (or in relation to dwellinghouses and their curtilages generally). In conservation areas existing PD rights are retained for 'small antennas' on dwellinghouses and in their curtilages and on other buildings. [Class 67(2)(a) to (c) and (13)]

¹ Prior to the changes these 'designated areas' are: national scenic areas, National Parks, conservation areas, historic gardens and designed landscapes, site of special scientific interest, historic battlefields, European Sites and Category A listed buildings and scheduled monuments and the settings of such buildings or monuments. The changes will mean category A listed buildings and scheduled monuments are not included, but their settings still are and World Heritage Sites are added to the list.

d) PD rights for a **'link antenna'**, i.e. a satellite antenna, ancillary apparatus and supporting structure up to 4 metres in height alongside an existing ground based mast. This will apply provided the latter has a compound established around it by a grant of planning permission, or, in future, by prior approval, and the link antenna is within that compound. Although a pole supporting an antenna would normally be a new ground based mast by definition, we have exempted this 'link antenna' from requirements for prior approval where it is installed in relation to an existing ground based mast (so where the 'link antenna' is included as part of a new ground based mast development it should be included with all the other elements for the new ground based mast in the application for a determination on the need for prior approval). [Class 67(2)(f) and (23)(a)]

e) PD rights in designated areas for the **alteration and replacement of apparatus** with no increase in size or numbers and where its location is the same or substantially the same (i.e. where changes have lesser or no greater impact than existing apparatus). These do not apply where PD rights in designated areas specify different limits on the presence of apparatus – e.g. altering and replacing ground based masts, small cell systems. [Class 67(2)(h)]

3. The PD rights existing prior to these changes for emergency development, telegraph poles and lines and development ancillary to poles and lines and ground based masts will remain for designated areas. [Class 67(2)(d), (e) and (g)]

Changes outside designated areas

4. The following changes apply outside designated areas:

a) PD rights for **new ground based masts** up to 25 metres in height outside designated areas, subject to conditions regarding prior approval (see paragraphs 8 to 17 below) by the relevant planning authority. [Class 67(3)(a) and (b) and (22) to (23) and new articles 7ZA to 7ZD]

b) Removal of the restrictions on **'small antennas'** on buildings (other than dwellinghouses and in their curtilages).

c) Increased PD rights for **'small antennas'** on dwellinghouses and in their curtilages and no restrictions on other buildings . [Class 67(13)]

d) No restrictions on **'small cell systems'** (other than on dwellinghouses and in their curtilages). The limits on ground based equipment housing outside designated areas would apply where a street cabinet was needed in relation to a 'small cell system'.

e) Allow one additional **'antenna system'** on buildings outside designated areas (currently under PD rights buildings can have up to 4 antenna systems

when located more than 15 metres above ground level – this will be extended to 5). [Class 67(12)(b)]

f) Extend PD rights for the **overall height of apparatus on buildings** (equipment housing on buildings still has its own height limit on PD rights) - e.g. currently the maximum height of apparatus on a building is 6 metres but in future apparatus will be able to protrude above the highest part of a building by 8 metres for buildings of 15 metres or more in height. [Class 67(10)]

g) Replace **size restrictions on antennas** (other than small antennas or small cell systems) on buildings. Controls will apply on the size of dish antennas, individually and in aggregate, and numbers of antenna systems. [Class 67(11) and (12)]

h) Removal of the general **restriction that applies to apparatus** (other than equipment housing) limiting it to 2 metres measured horizontally.

i) Where restrictions apply on the size or amount of apparatus allowed, we have provided for the **alteration or replacement of apparatus** where the apparatus to be altered or replaced exceeds the new PD limits (i.e. if more or bigger apparatus is already on the building than is permitted under new PD rights²). The apparatus can be altered or replaced provided it does not become bigger or more numerous than what exists). [Class 67(6), (7), (9), (10)(a)(ii) and (b)(iii), (11)(a)(ii) and (b)(ii), (12)(a)(ii)(bb) and (b)(ii)]

All Areas

5. The following changes apply within and outside designated areas:

a) Amend PD rights for **existing ground based masts** up to 20 metres in height to allow an increase by a maximum of 7 metres on the height of the original mast (where such masts are over 20 metres or over 50 metres in height the limits on increase in height of 5 metres and 15% respectively will remain), and allow replacement ground based masts to be up to 6 metres from the location of the original mast (currently the maximum is 4 metres) – these changes to apply in all areas. [Class 67(4)]

b) Add **conditions requiring developers to give advance notification** to the relevant authority of the use of PD rights for new ground based masts and the alteration or replacement of ground based masts where development is in a 'safeguarded area' (see paragraphs 6 to 7 below). [Class 67(16) and (22)(d)]

c) Extend the time period for **emergency PD rights** (applies in all areas) from 12 months to 18 months. [Class 67(1)(b) and (20) and (21)]

² Such existing apparatus, beyond what PD rights would allow, would need to have been properly authorised e.g. granted planning permission by the planning authority.

d) Amend and clarify the **general conditions on these PD rights** on serving advance notice of PD, minimizing the impact of PD and removing equipment when it is redundant or after an emergency, and restoring the land or buildings to their original condition or a condition agreed with the planning authority. [Class 67(15) to (21)]

Alteration and replacement of ground based masts in a ‘safeguarded area’

6. In light of concerns from NATS and the MOD about increases in height or changes in the location of existing ground based masts under PD rights in safeguarded areas around airports and various technical sites, there will be a new condition on developers to notify the relevant authority (e.g. The Secretary of State for Defence, the airport operator, the Met Office or NATS) before exercising these PD rights (or, in the case of an emergency, as soon as possible after the emergency arises). [Class 67(16)]

7. Planning authorities have the relevant safeguarding maps identifying these safeguarded areas and can advise a developer whether a location is within a safeguarded area and which body is responsible for the site to which the safeguarding map applies.

PD Rights for New Ground Based Masts and Prior Approval

8. Prior to the changes, a new ground based mast would require an application for planning permission. Having PD rights with prior approval requirements means that such new masts (in this case up to 25 metres in height) are acceptable in principle, but the planning authority can consider the siting and appearance of a proposal and refuse to grant approval.

9. Before undertaking development therefore, the developer has to apply to the planning authority for a determination as to whether the prior approval of the planning authority is required. [Class 67(23)(b)]

10. Before applying, developers must also notify the site owners, any agricultural tenants of the site and, where the site is within a specified safeguarded area around, for example, an airport, radar station, or certain MOD sites, they must notify the relevant authority for that safeguarded area (e.g. MOD or the airport operator). The notice must, amongst other things, inform these parties that an application has been made, to which planning authority and how to make representations. [Class 67(22)(b) to (d)]

11. Unlike other prior approval regimes in the Scottish PD rights, this one includes requirements on the planning authority for neighbour notification, placing information on planning authority web sites and consultation with Scottish Natural Heritage and Historic Environment Scotland. [Articles 7ZA to 7ZE]

12. Another difference with this prior approval procedure is that the planning authority has 56 days from when an application for a determination is made within which to indicate if its prior approval is required and, if it is, to issue a decision on whether it is granted or not. **Where no such indication is given or, having indicated prior approval is required, where no decision is made within that time period, the developer can proceed on the basis of the details submitted with the application for a determination.**

13. A similar approach is already in place in England and Wales. The belief is that this procedure gives greater certainty as to when a decision will be forthcoming to assist network planning and rollout.

14. The legislation sets out the specific requirements for notices by developers, consultation and publicity requirements on planning authorities and the content of applications for a determination on the need for prior approval.

15. The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 3) Regulations 2017 introduce a £300 fee for an application for a determination on the need for prior approval in relation to construction or installation of a ground based mast.

16. New ground based masts installed under these PD will be eligible for PD rights masts on alteration and replacement.

17. The PD rights for new ground based masts will not apply in designated areas.

Measuring Ground Based Masts

New ground based masts

18. With regard to the PD rights for new ground based masts, the intention is that the overall height of the mast element, any apparatus on it and any plinth or structure supporting the mast should be calculated and then the height of any antenna, to the extent it protrudes above the top of the mast, should then be deducted. As long as the result is 25 metres or less, the PD rights apply. [Class 67(4)(a)]

19. So, for example, while supporting rods attaching the antenna can extend beyond a height of 25 metres, they can only do so if the height of the overall structure minus the height of any part of the antenna which is higher than the mast is no more than 25 metres.

Existing ground based masts

20. With the alteration or replacement of an existing ground based mast, the measurement is different. Here the issue is comparing the overall height of the structure (without the antennas) as originally installed with the overall height after alteration or replacement has taken place.

21. So, if the original ground based mast consisted of a 1 metre high plinth, 25 metres mast element and supporting rods of 2 metres on top of the mast element, i.e. 28 metres (excluding the antennas themselves), this overall structure can be increased to 33 metres and then the antennas added to the supporting rods on top of the mast.

22. With such alteration or replacement, other than allowing more of an increase for smaller existing ground based masts, the only change to how height is calculated is that the antennas themselves will not be included.

Small Antennas and Small Cell Systems

23. With the large increases in the number of users of, and in the numbers and sizes of data transactions being carried out on, mobile services, capacity as well as coverage is an issue. The industry sees more use of small antennas as a way to ensure capacity levels in an area can meet demand – they may also help to some extent with coverage issues. As well as shops and offices, they are also looking to put them on structures like lampposts.

24. ‘Small cell systems’ therefore include the ‘small antenna’ and any ancillary apparatus. Prior to these changes, PD rights placed restrictions on the numbers of ‘small antennas’ on buildings. There will be no limits on the numbers or locations on buildings and other structures of ‘small cell systems’ and ‘small antennas’ other than in conservation areas and in relation to dwellinghouses and their curtilages.

25. There will be increases on PD rights for ‘small antennas’ on dwellinghouses and their curtilages outside conservation areas. Inside conservation areas:

i) there are no PD rights for small cell systems; and

ii) PD rights for ‘small antennas’ on dwellinghouses and in their curtilage and on other buildings are essentially the same as before these changes come into force.

26. It has been indicated that ‘small cell systems’ on, for example, lampposts may need ground based equipment housing. While there are already PD rights for ground based equipment housing outside designated areas that could apply, there are no new PD rights in this package for the installation of such apparatus in designated areas for small cell systems.

Development already commenced

27. The Order provides that the changes it contains do not apply to development started prior to the coming into force of the Order.

28. In general terms, after the coming into force date, there is nothing to prevent applicants continuing with an application for planning permission even though PD

rights become available, or pursuing PD rights with an application for a determination on the need for prior approval.

STAGE 2 PD RIGHTS – STRATEGIC ENVIRONMENTAL ASSESSMENT

29. The Scottish Government is considering making further changes to Class 67 PD rights. However, as these would mostly apply to designated areas, the intention is to subject such proposals to strategic environmental assessment. This will help refine the package of PD rights and any related restrictions and conditions.

30. The sorts of things being considered for inclusion in this second stage are further PD rights for:

- i) new ground based masts in designated areas,
- ii) stand-alone street cabinets or those associated with small cell systems in designated areas;
- iii) for more apparatus on buildings in designated areas; and
- iv) for underground development in designated areas.

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