

# **Proposed programme for reviewing and extending permitted development rights (PDR) in Scotland**

**Strategic Environmental Assessment  
Draft Post Adoption Statement**

**October 2020**



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# **Proposed programme for reviewing and extending permitted development rights (PDR) in Scotland**

## **Strategic Environmental Assessment Draft Post Adoption Statement**

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## REVISIONS TABLE

	Date	Changes
<b>First Published</b>	<b>October 2020</b>	
<b>Revision 1.0</b>	<b>May 2021</b>	<b>As per changes 1.1 -1.3 below</b>
<b>Revision 2.0</b>	<b>May 2022</b>	<b>As per changes 2.1 -2.2 below</b>

Revision/Changes	Details
Change 1.1	Paragraph 6.1.2 – minor alteration to text from ‘we recognise that we will need to’ to ‘we recognise the need to’.
Change 1.2	Paragraph 7.1.2 and supporting table – text updated to reflect latest changes to the proposed phasing of the work programme.
Change 1.3	Appendix A heading amended to read ‘A.1’
Change 1.4	‘Appendix A:2 Phase 1 finalised Regulations’ inserted - setting out those ways in which the finalised regulations take into account the comments received on the Consultation draft Phase 1 proposals and the Update to the 2019 Sustainability Appraisal.
Change 2.1	Paragraph 7.1.2 and supporting table - text updated to reflect latest changes to the proposed phasing of the work programme. Table removed.
Change 2.2	‘Appendix B:1 Phase 2 proposals’ inserted

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# 1. Proposed programme for reviewing and extending permitted development rights (PDR) in Scotland

## 1.1. Introduction

- 1.1.1 The Scottish Government set out its proposed work programme for reviewing and extending permitted development rights (PDR) (referred to as “the proposed programme”) in November 2019. The proposed programme was the first step in an iterative and ongoing policy process which has been, and will continue to be, informed by a Sustainability Appraisal (SA) incorporating Strategic Environmental Assessment (SEA) requirements<sup>1</sup>. The SA was undertaken by independent consultants LUC commissioned by the Scottish Government.
- 1.1.2 A Sustainability Appraisal Report setting out the potential environmental, social and economic effects arising from the proposed programme was consulted on alongside the proposed programme from 5 November 2019 – 28 January 2020. The SA report considered broad options for changes to PDR across a range of development types.
- 1.1.3 This draft Post Adoption Statement sets out how the views gathered on the environmental, social and economic considerations incorporated within the Sustainability Appraisal have been taken into account in finalising the work programme and in progressing more detailed proposals for changes to PDR. Further information on the phasing of the work programme and the considerations taken into account is highlighted in section 4.2 of this draft Statement. This draft Statement will continue to be updated as detailed proposals for the expansion of PDR are progressed. We will give consideration to whether any further appraisal or assessment is required at each step of the iterative policy process.

## 1.2. Background

- 1.2.1 PDR remove the need to apply for planning permission. These typically relate to minor, uncontroversial developments or changes associated with an existing development. PDR cover situations where it would be very unlikely for a planning permission application to be refused, where standardised conditions are likely to be used, and therefore, where consideration on the principle of the development by a planning authority on an individual basis is unlikely to add value to the process. On this basis, PDR can help remove the need for unnecessary applications for planning permission and therefore reduce the burden on both applicants and planning authorities.

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<sup>1</sup> The Sustainability Appraisal incorporates SEA requirements under the Environmental Assessment (Scotland) Act 2005.

- 1.2.2 When proposing changes to PDR for a particular development type the Scottish Government has to consider what is granted planning permission, what limitations (if any) should be placed on that permission, and what conditions (if any) should apply to its use.
- 1.2.3 The proposed work programme set out options for changes to PDR across the development types listed below. The November 2019 consultation also sought views on the proposed phasing and timing of work to progress more detailed proposals for changes to PDR for the individual development types. The results of this consultation are further discussed in sections 4 and 5 of this Statement.

Development types included in the November 2019 consultation:

- digital communications infrastructure
- agricultural developments, including measures which could further support the delivery of affordable homes in rural areas
- micro-renewables, including a range of domestic and non-domestic renewable energy developments
- peatland restoration
- hill tracks (private ways)
- electric vehicle charging infrastructure
- developments relating to active travel
- town centre changes of use
- householder developments
- district heating and supporting infrastructure
- energy storage (non-domestic)
- energy storage (domestic)
- defibrillator cabinets
- habitat pond creation
- allotments and community growing schemes
- snow sports

## 2. Strategic Environmental Assessment and the Sustainability Appraisal Process

- 2.1.1 The Environmental Assessment (Scotland) Act 2005 (the ‘2005 Act’) requires public bodies in Scotland to carry out SEA on their plans, programmes and strategies. SEA is a way of examining plans, programmes and strategies as they develop to identify any significant effects they may have on the environment – both positive and negative. This process ensures that environmental considerations are taken into account during their development. SEA also aims to build in mitigation measures to avoid or minimise any potentially significant adverse effects on the environment, and looks for opportunities to enhance environmental performance. SA takes into account environmental, social and economic effects. In this document the term ‘SA’ should be taken to mean ‘SA incorporating the requirements of SEA<sup>2</sup>’.
- 2.1.2 The SA process began with the submission of a Scoping Report to the SEA Gateway in February 2018. Comments on the Scoping Report were received from the three statutory SEA consultation authorities – Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (now NatureScot) and Historic Environment Scotland (HES). These helped inform the development of the Sustainability Appraisal.
- 2.1.3 Consultation on the SA report and the proposed work programme took place between 5 November 2019 and 28 January 2020. In total 113 responses were received, of which 61 were from groups or organisations and 52 from individual members of the public. Respondents included public sector organisations, and planning and other professionals from a range of private and third sector organisations. The 52 responses from individuals included 16 ‘campaign plus’ responses where respondents had adapted standard text on domestic cycle storage produced by Spokes (a third sector campaign group included in the 61 group respondents).
- 2.1.4 The aim of the SA was to provide a frontloaded, strategic level assessment to inform the iterative programme for the review and expansion of PDR in Scotland. In particular, it identified a range of potential mitigation measures to minimise any identified negative effects, as well as enhance any positive ones. As individual components of the work programme are developed further and as additional detail emerges, we will continue to give consideration as to whether any further appraisal or assessment is required. We will also update this draft Statement where relevant.
- 2.1.5 In the meantime, this draft Statement sets out:
- how the environmental, social and economic considerations have been integrated into the iterative programme for expanding PDR;

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<sup>2</sup> The draft report incorporates requirements under Section 18(3) of the Environmental Assessment (Scotland) Act 2005 setting out the information that should be included in the SEA Post Adoption Statement.

- how the Sustainability Appraisal Report has been taken into account;
- how the opinions of consultees have been taken into account;
- the reasons for choosing the programme as adopted, in light of the other reasonable alternatives considered; and
- the measures to be taken to monitor the significant environmental effects arising from implementation.

### 3. Integration of environmental, social and economic considerations in developing the work programme

3.1.1 This section explains how key environmental, social and economic considerations were identified and how these were taken into account in developing the iterative work programme.

#### 3.2. Appraisal process

3.2.1 A series of SA objectives and supporting criteria were developed and these were used to appraise options for PDR. The objectives were developed taking into account national environmental, social and economic objectives relevant to each of the appraisal topics. The Scottish Government also established a Virtual Review Group (VRG) consisting of key stakeholders with knowledge and expertise on the different development types. The VRG were involved from Scoping stage through to informing the appraisal.

3.2.2 The SA identified the likely significant positive and negative environmental, social and economic effects, as well as whether effects would be temporary or permanent, and whether they would arise in the short, medium or long term.

3.2.3 The SA also made recommendations on measures to address any significant adverse effects identified as part of the appraisal.

#### 3.3. Conclusions and recommendations of the assessment

3.3.1 **Digital communications infrastructure** The SA has identified significant positive effects in relation to the economy and population and human health. This reflects the support for network improvements which are important to Scotland's digital economy. Key areas of potential but reversible significant negative effects include cultural heritage, particularly from development affecting sites designated for their cultural heritage importance, and potential landscape impacts from new or enlarged masts.

3.3.2 **Town Centre changes of use** The SA identified significant positive economic effects in relation to changes allowing town centres to respond to changing eating, shopping and working patterns. Significant positive cumulative effects are also noted in relation to climatic factors, reflecting the reduced need to travel, and population and human health through providing local services and facilities in an accessible location. There is the potential for negative effects including 'bad neighbour' effects and poor diet associated with an increased number of take-away restaurants. Mixed significant effects could occur for cultural heritage reflecting the positive role of keeping historic buildings in use, but the potential impacts from physical changes to buildings.

- 3.3.3 **Agricultural developments** The majority of potential PDR changes are identified as having a significant positive effect on supporting the rural economy. Potential significant negative effects are identified in terms of cultural heritage and potential landscape impacts from larger scale developments, and potential impacts on flood risk from increased run-off.
- 3.3.4 **Micro-renewables (domestic and non-domestic)** Changes were identified as having significant minor positive long term effects on reducing greenhouse gas emissions through use of low carbon energy sources, and supporting climate change adaptation through resilience of the energy supply network. Changes could give rise to significant positive cumulative effects by improving the efficiency of the planning system, removing the requirement to apply for planning permission for a wide range of domestic and non-domestic renewables.
- 3.3.5 **Non-domestic solar energy** The potential for significant negative effects on the safe operation of aerodromes and technical sites was identified in circumstances where there are cumulative effects from glint and glare from several solar developments in the same area.
- 3.3.6 **District heating and supporting infrastructure** Potential significant negative effects were identified in terms of cultural heritage.
- 3.3.7 **Energy storage (non-domestic)** Significant but reversible negative effects were identified in terms of cultural heritage and landscape.
- 3.3.8 **Habitat pond creation** Introducing PDR for the creation of ponds for wildlife purposes could have significant positive permanent effects on biodiversity, flora and fauna.
- 3.3.9 **Peatland restoration** Potential significant permanent positive effects were identified in terms of biodiversity, the water environment, reducing greenhouse gas emissions, climate adaptation, soils and the landscape.
- 3.3.10 **Allotments and community gardens** Developments which support activities on these sites include change of use of land, fencing, buildings, access and water. Introducing PDR to cover these development types was considered to have significant long term positive effects in terms of social, population and human health.
- 3.3.11 **Householder developments** There are mixed minor effects across most PDR changes and minor positive effects on population and human health where PDR allow people to improve their living environment, although there could also be negative effects from impacts on the amenity of neighbouring properties. Significant positive effects are also identified in relation to the efficient operation of the planning system reflecting the potential number of planning applications avoided. Significant negative effects are identified on cultural heritage, arising from the changes across all types of development.
- 3.3.12 **Electric vehicle charging** Significant negative effects are identified on cultural heritage although these effects are reversible. Significant positive effects are identified in relation to climate change and air quality from indirect support for reducing vehicle emissions.

- 3.3.13 No significant positive or negative effects are identified for the options to expand PDR relevant to **snow sports, defibrillator cabinets, energy storage (domestic), or development relating to active travel.**
- 3.3.14 **Possible cumulative and synergistic effects** between all of the development types included in the Proposed Work Programme were also assessed. Several potential changes to PDR were identified as having the potential for significant negative impacts on biodiversity, flora and fauna. PDR for wildlife ponds and peatland restoration could result in potential significant net positive effects for this topic. A number of potential changes will act together to support policies to reduce greenhouse gas emissions and to support adaptation to a changing climate, which combine to give a significant positive effect. Similarly, several potential changes will assist in improving air quality.
- 3.3.15 A number of potential PDR changes relate to changes in the size and scale of development types that could significantly increase flood risk. Several potential changes to PDR could have potential significant negative impacts on cultural heritage, with several having particular potential to affect Conservation Areas and undesignated historic townscapes, although this could be mitigated by restricting PDR in these areas. Significant positive effects are identified from options which support the rural and urban economy. Several potential changes to PDR will combine to provide benefits in terms of population, living environment and health. Several options could combine to have potentially significant negative cumulative impacts on safety at aerodrome or technical sites, however this can be mitigated either through appropriate restrictions on PDR in the vicinity of these sites, or alternatively through a more detailed evidence base to inform any future proposals in this respect.
- 3.3.16 The above findings and comments received as part of the SA consultation were taken in account when finalising the work programme and have informed, and will continue to inform, the development of detailed proposals for individual development types.

## 4. How the opinions expressed have been taken into account

### 4.1. The responses received

4.1.1 The Sustainability Appraisal was issued for consultation alongside the proposed work programme and views were invited on five questions. One question invited opinions on the work programme itself, three focused on the Sustainability Appraisal and one question invited any other views on the SA. All questions were open-ended/ free text.

4.1.2 In total 113 responses were received, of which 61 were from groups or organisations and 52 from individual members of the public. The total number of responses includes comments received from the three statutory SEA consultation authorities through the SEA Gateway. An analysis of responses to the consultation was conducted by Craigforth, an independent social research consultancy, and published in October 2020<sup>3</sup>. All published responses can be found at the Scottish Government's Consultation hub<sup>4</sup>.

4.1.3 Responses varied in their focus across the consultation - some focused primarily, or exclusively, on specific development types including responses which provided significant detail on issues relating to the extension of PDR for these development types. Other respondents commented across a broader range of development types.

### 4.2. Comments on the proposed programme for reviewing and extending permitted development rights (PDR) in Scotland

#### Consultation responses

4.2.1 The first consultation question sought views on the proposed work programme. A total of 101 respondents addressed Question 1, including 57 organisation respondents and 44 individuals. Of these respondents, 30 expressed broad support for the proposed work programme, 44 provided comments which criticised aspects of the proposed work programme and 27 did not express a clear view on the work programme as a whole.

4.2.2 Most of the respondents expressing broad support for the work programme raised some issues or suggested amendment to the programme; overall, 81 respondents (40 organisations and 41 individuals) raised issues or concerns, or suggested amendments to the work programme. For most respondents, these suggestions related to specific development types, however, a number of common themes were also evident across these responses.

4.2.3 A range of respondents used Question 1 as an opportunity to express their support for the grouping and phasing of development types, while some

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<sup>3</sup> <http://www.gov.scot/isbn/9781839609312>

<sup>4</sup> <https://consult.gov.scot/local-government-and-communities/reviewing-and-extending-pdr/>

respondents objected to any extension of PDR. These respondents suggested that existing PDR are already extensive and recent additions to PDR have not had a significant positive impact on pressures for local authorities. Some individuals also suggested that the work programme did not give sufficient emphasis to the rights of communities affected by development.

- 4.2.4 Some respondents also made suggestions on specific development types which should be prioritised as part of phase 1 of the work programme, including EV charging infrastructure and active travel, allotments and community growing schemes, and habitat pond creation.
- 4.2.5 Others suggested that it was unclear how the selection of specific development types and the phasing of the work programme related to specific findings set out in the SA report. This included a public body suggesting that prioritisation of the work programme to support the rural economy does not appear to have been subject to any assessment or consideration of alternatives.
- 4.2.6 Some respondents highlighted other development types which they felt should be considered for PDR such as:
- aspirations for the delivery of affordable rural homes;
  - development which supports the rural economy;
  - collective self-build or mutual home ownership cooperative developments on land identified for affordable housing through Local Place Plans;
  - enabling succession of farm ownership; and homes on new entrant small holdings/farms.
- 4.2.7 A number of respondents raised concerns regarding the potential extension of PDR to designated areas, wild land areas and heritage locations. It was suggested that potential benefits for climate policy and digital infrastructure, for example, do not warrant permitting development that could cause unacceptable harm to these locations.
- 4.2.8 Some third sector respondents saw a need to expand the work programme to incorporate a review of the General Permitted Development (Scotland) Order (GPDO) as a whole. This included a suggestion that the GPDO includes development types that could hinder Scotland's net-zero emissions targets and that should be subject to greater scrutiny.

#### SG response

- 4.2.9 Following the consultation the proposed work programme has been revised taking into account a number of considerations, including:
- The impact of the Coronavirus pandemic on the Scottish economy and society and the enforced delay in taking forward work on amendments to PDR due to the need to divert staff resource to tackle the emergency;

- Informed by the SA findings, the potential contribution that amendments to PDR for particular development types could make to the delivery of Scottish Government priorities and strategic outcomes – and in particular the potential contribution to economic and social recovery from the pandemic; and
- Feedback from the consultation responses on the proposed work programme and the Sustainability Appraisal.

4.2.10 As a result of these multiple and interconnected considerations a number of changes to the proposed work programme have been made. These include:

- The retention of digital communications infrastructure, agricultural developments and peatland restoration in phase 1 of the programme (to be taken forward as a priority with a view to laying regulations in Parliament before the end of 2020). This reflects the positive contribution that each can make to economic recovery (particularly in fragile and remote rural areas), the importance to society and day to day life of good digital connectivity, and the potential significant positive effects on climate change of changes to PDR for peatland restoration and digital communications. Mitigation of the potential negative impacts of changes to PDR for these development types will form an important component of the detailed proposals for change for each of these types.
- The movement of changes to PDR for development related to active travel from phase 2 into phase 1 to be taken forward as a priority over the remaining months of 2020. This reflects the significant increase in levels of walking and cycling witnessed during the pandemic and a desire to capitalise on this, to maximise the positive impacts for human health and climate via reduced greenhouse gas emissions.
- The movement of PDR for town centre changes of use from phase 3 to phase 2. This reflects the recognition that changes to our town centres are likely to be accelerated by the effects of the Coronavirus pandemic and the important role that changes to PDR here may play in enabling adjustments which will encourage vitality in town centres. In addition, we consider that any potential changes to PDR in this area should be informed by the conclusions of the Town Centre Action Plan Expert Review Group, which is due to report to Ministers later in 2020.
- The movement of consideration of changes to PDR for hill tracks (private ways) from phase 1 to phase 3 and for micro-renewables from Phase 1 to a later phase. This largely reflects the range of development types within the micro-renewables category, the complexity of the issues around these development types and the recognition that more time will be need to fully explore how changes to PDR might most effectively maximise positive impacts and mitigate the potential negative impacts arising.

- In addition, in light of recommended support for the tourism sector from the report of the Advisory Group on Economic Recovery, Planning and Architecture Division undertook to engage with snow sports operators. Subject to views on whether the options covered in the Sustainability Appraisal have potential to support economic recovery, it was proposed to address this as part of Phase 1. Discussions with the sector did not however provide a clear basis for a proposition in Phase 1.

4.2.11 Where the consultation responses suggested additional development types for PDR these have been noted but are not currently being considered for inclusion in the work programme. This is because either the suggestions received were not considered to be suitable for the granting of PDR and/ or because inclusion would require significant additional work to identify and assess the likely environmental, social and economic impacts and are not considered a priority at this time.

### 4.3. Comments on the Sustainability Appraisal

4.3.1 Three questions invited comments specifically on the SA. Corresponding views and comments received have been summarised in the sections that follow.

Question 2. What are your views on the accuracy and scope of the information described in the SA report?

#### Consultation responses

- 4.3.2 A total of 74 respondents addressed Question 2, including 40 organisation respondents and 34 individuals. Of these 74 respondents, 20 expressed broad support for the SA baseline, 18 provided comments which criticised aspects of the accuracy and scope of information described or offered suggestions as to how this could be improved, and 36 did not give a clear overall view. Most of those expressing broad support raised some issues; overall, 59 respondents (27 organisations and 32 individuals) offered suggestions regarding the information described in the SA.
- 4.3.3 Most of the issues or suggestions raised related to specific development types. However, a number of common themes were also evident across these responses. It should be noted that these common themes, and the great majority of points relating to specific development types, were raised in relation to the SA baseline as a whole, or were raised specifically in relation to the environmental baseline. Relatively few respondents raised issues specifically related to the social and economic baselines.
- 4.3.4 Some were of the view that some of the information set out in the SA is 'generic' rather than specifically related to the development types under consideration, and based on assumption and broad assessment. These respondents wished to see more detailed information provided for consultation as the work programme progresses, including more qualitative consideration of impacts. It was suggested that the Post Adoption Statement should be the mechanism by which key SA findings and evidence are taken forward to inform the ongoing work programme.
- 4.3.5 Some respondents suggested that aspects of the evidence base as set out in the SA includes out of date sources. This included comments from other public bodies, private sector and third sector respondents. Some also noted that references to legislation and wider policy objectives should be kept under review to ensure they remain current.
- 4.3.6 Additional comments included ones such that further information on cultural heritage should be included under each development type; that the environmental baseline should recognise the pressure on biodiversity across Scotland, not only in designated areas; and that further development of the environmental, social and economic baselines was required to support consideration of 'reasonable alternatives' to the extension of PDR.

- 4.3.7 Some third sector respondents referred to specific designations which they considered had been omitted from the environmental baseline set out in the SA, for example Special Landscape Areas.
- 4.3.8 Several respondents suggested that the environmental, social and economic baselines do not include sufficient consideration of the potential impact of PDR on flood risk.
- 4.3.9 Finally, a range of individual and specific points were made concerning specific data to be updated or included in the baseline, including information on the quality of place and the economic impact of flooding..

#### SG response

- 4.3.10 Where respondents have suggested that specific data sources could be updated and/ or have suggested additional sources of information, these comments have been noted and will be taken into account, where relevant, as future work is progressed. The proposed work programme was the first step in an iterative and ongoing policy process which has been, and will continue to be, informed by the Sustainability Appraisal (SA). We will also give consideration to whether any further appraisal or assessment is required at each step of the iterative policy process.

#### Question 3. What are your views on the predicted effects set out in the SA report?

#### Consultation responses

- 4.3.11 A total of 81 respondents provided an answer at Question 3, including 45 organisation respondents and 36 individuals. Of these 81 respondents, 13 expressed broad support for the predicted effects set out in the SA, 44 provided comments which criticised aspects of the predicted effects (the majority being individuals, including 16 campaign plus responses), and 24 did not express a clear overall view.
- 4.3.12 Several common themes were evident across the responses. A number of respondents raised concerns regarding potential cumulative effects of extending PDR, and felt that further consideration of these effects, and how they can be assessed, is required. Concerns regarding cumulative effects were primarily related to landscape and biodiversity, particularly in designated areas. However, some respondents also referred to potential cumulative effects in relation to flood risk. This was a particular concern in relation to householder developments but is also noted below in relation to other specific development types.
- 4.3.13 In addition to these specific issues, some respondents raised concerns regarding how predicted effects are described throughout the SA and associated appendices. This included some suggesting that, where predicted effects are significantly negative, or are uncertain, consideration should be given to whether these development types are suitable for PDR.
- 4.3.14 Others suggested that greater consistency is required in the language used to ascribe value to predicted effects, and that use of 'reversible' should be

better qualified. Some also commented that they had difficulty reading between the main SA report and appendices to assess the significance of predicted effects.

- 4.3.15 Specific points raised at Question 3 in relation to social effects include a number of respondents questioning the extent to which the SA has considered mental health impacts associated with increased flood risk, similar comments were also received in relation to economic effects linked to financial impacts.
- 4.3.16 Some third sector and individual respondents raised concerns regarding the potential for PDR to undermine local community and authority influence on planning. This included reference to PDR contradicting the principle of a 'plan-led' approach to development, to removing the ability of local communities to influence decisions affecting their local area, and reducing planning authority income. Mixed comments were received in relation to agricultural development PD proposals. A third sector respondent suggested that extending PDR for change of use of agricultural buildings to residential housing is not consistent with a plan-led approach to delivery of new housing, and could place greater pressure on rural services and infrastructure. A public sector respondent suggested that conversion to housing should be excluded from PDR, raising concerns around standards of accommodation and impact on privacy and amenity. In contrast, some private sector respondents suggested that the SA did not give sufficient consideration to the positive social and economic effects of extending PDR for agricultural developments in terms of improving existing housing for farming families and local communities and supporting farm succession.
- 4.3.17 In relation to active travel, some were concerned that extending PDR could lead to delivery of lower quality active travel developments that may not work for all users, and will not deliver objectives for increased use of active travel.
- 4.3.18 In relation to allotments and community growing schemes, it was suggested that controls may be required to ensure PDR does not lead to proliferation of buildings on allotments, negatively impacting on amenity.
- 4.3.19 In relation to town centre changes of use, several respondents raised concerns that extending PDR for town centres may undermine plan-led approaches to town centre regeneration, suggesting that a coordinated and collaborative approach has been shown to be more effective in improving the economic and social viability of town centres.
- 4.3.20 In relation to domestic and non-domestic energy storage, some private sector respondents referred to positive economic effects in terms of encouraging investment in battery storage.
- 4.3.21 Several planning/ other professional and third sector respondents raised concerns regarding the extent to which information set out in the SA takes sufficient account of potential impacts on Scotland's historic and cultural heritage. These respondents expressed a view that historic and cultural heritage is relevant to the environmental, social and economic baselines and should be referenced by each.

## SG response

- 4.3.22 The comments received have been taken into account in finalising the work programme and will continue to inform the development of detailed draft proposals for individual development types where relevant. The proposed work programme was the first step in an iterative and ongoing policy process which has been, and will continue to be, informed by the Sustainability Appraisal (SA). We will also give consideration to whether any further appraisal or assessment is required at each step of the iterative policy process. Further information on the detailed proposals for individual development types, including any additional assessment undertaken, is contained in the appendices to this report.

## Question 4. What are your views on the findings and the proposals for mitigation and monitoring of effects set out in the SA report?

### Consultation responses

- 4.3.23 A total of 75 respondents provided an answer at Question 4, including 40 organisation respondents and 35 individuals. Of these 75 respondents, 6 expressed broad support for mitigation and monitoring proposals, 23 provided comments which criticised aspects of mitigation and monitoring, and 46 did not express a clear overall view.
- 4.3.24 Some common themes were evident, including a number of the themes discussed previously such as monitoring cumulative impact, and on mitigating effects on cultural heritage and other environmental receptors. This included concerns regarding the lack of mitigation proposals specifically to address increased flood risk. However, respondents also raised general issues and concerns regarding proposals for mitigation and monitoring which did not relate to specific development types.
- 4.3.25 Some respondents, including other public bodies, felt that information provided on mitigation proposals was very limited and incomplete. Some also noted that proposals did not include detail on implementation mechanisms, which were seen as a key factor in the effectiveness of proposals. It was suggested that mitigation mechanisms should be outlined more comprehensively in the Post Adoption Statement, and should remain a key aspect of discussions for individual work streams.
- 4.3.26 Similar concerns were raised in relation to proposals for monitoring, which were also described as limited and incomplete. This included comments from planning authorities, other public bodies and third sector respondents. It was suggested that the SA as a minimum should indicate how existing monitoring regimes could contribute to monitoring the effects of PDR. Some respondents again suggested that further detail should be included in the Post Adoption Statement.
- 4.3.27 Some respondents also expressed concern regarding what was seen as over-reliance on good practice guidance to mitigate the effects of PDR. Some planning authorities suggested that good practice could have limited mitigation benefits if it cannot be implemented or enforced, although other

respondents suggested specific aspects of good practice guidance as having a potential role in the approach to mitigation.

- 4.3.28 Concerns were also raised regarding the potential benefits of prior notification/approval as a means of mitigating the effects of extending PDR. This included suggestions that this 'intermediate' approach may cause confusion for applicants, and can undermine the benefits of extending PDR in relation to streamlining the planning process and reducing burden on planning authorities. Some third sector respondents referred to evidence from monitoring the use of the new prior notification process as having highlighted issues with this approach.
- 4.3.29 Specific points raised at Question 4 in relation to mitigation of social effects included comments that the SA includes little reference to mitigation of the impact on a plan-led system and provision of public services (in relation to agricultural developments). In addition, respondents suggested that prior notification submissions in relation to micro-renewables may need to include a supporting assessment of impacts on the host community.
- 4.3.30 In relation to the mitigation of economic effects, some respondents noted that they did not anticipate significant negative economic impacts that would require mitigation.

#### SG response

- 4.3.31 The SA makes recommendations for a number of potential mitigation measures, where applicable, for each development type. Examples include, but are not limited to, i) imposing conditions or restrictions on the extension of particular PDR, ii) redefining distance thresholds for particular PDR by establishing minimum distances beyond which effects from particular development types are unlikely to be significant, and iii) retaining or requiring prior notification/prior approval.
- 4.3.32 Where recommendations have been made these will be taken into account as more detailed proposals are progressed. Next steps are discussed further in section 7 of this statement.
- 4.3.33 Further information on monitoring is set out in section 6 below.

## **5. Reasons for selecting the Proposed programme for reviewing and extending permitted development rights (PDR) in Scotland**

- 5.1.1 The 2005 Act requires that the Scottish Government identify, describe and evaluate the likely significant effects on the environment of any reasonable alternatives to the draft plan, taking into account its objectives and geographical scope.
- 5.1.2 The SA identified 16 broad categories of development for possible changes to PDR. Options for each development type were then developed through an iterative process in discussion with the three SEA Consultation Authorities (SEPA, SNH and HES), and the VRG.
- 5.1.3 For each development type, the options assessed typically were:
- no change to current PDR (where applicable);
  - alteration of current PDR for a development type for example by amending restrictions in designated areas, and/ or thresholds relevant to the scale/ size of development;
  - creating new PDR for a development type in designated areas, non-designated areas, and/ or introducing size/scale restrictions of receptors.
- 5.1.4 An alternative approach was used in relation to changes of use in town centres. The SA instead focused on the sustainability effects of changes that would result from the addition or loss of 13 typical town centre uses. This allowed for the likely significant impacts to be more clearly identified.
- 5.1.5 With regards to the prioritisation of PDR for the different development types, this has been informed by the SA report.
- 5.1.6 An update on the current phasing of the work programme is outlined in section 7 of this draft Statement. It should be noted that this is provisional and may change as a result of other priorities and emerging evidence.

## 6. Monitoring

- 6.1.1 Section 19 of the 2005 Environmental Assessment (Scotland) Act requires the Responsible Authority to monitor significant environmental impacts arising as a result of the implementation of the plan, programme or strategy. The purpose of the monitoring is to identify any unforeseen adverse effects at an early stage and to enable appropriate remedial action to be taken.
- 6.1.2 We recognise the need to consider appropriate monitoring of the impacts, including those on the environment, for changes for each development type, as well as looking at the wider cumulative effects of changes across development types. This could involve various approaches and combinations of these, such as liaison with planning authorities, developers and statutory bodies, as well as commissioning research. In addition, there are a wide range of existing programmes in place at the national and local level to monitor environmental status and assess performance against established environmental indicators, many of which are of relevance to the work programme. For example, State of Nature reports, annual greenhouse gas emission reporting, as well as planning statistics<sup>5</sup>. We will continue to review and update monitoring arrangements as each phase of the work programme is progressed.

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<sup>5</sup> <https://www.gov.scot/collections/planning-statistics/>

## 7. Next steps

- 7.1.1 The proposed work programme outlined our intention to conduct further public consultation on specific proposed changes for each development type and to consider whether any further appraisal or assessment is required at each step of the iterative policy process.
- 7.1.2 The most recently proposed phasing of the programme was outlined in the Phase 1 consultation. Please note that the prioritisation of development types beyond Phase 2 is under review and may be subject to change. Further information on Phase 1 proposals and on the further appraisal undertaken is set out in Appendix A. Further information on Phase 2 proposals can be found in Appendix B.

## Appendix A.1: Phase 1 proposals

The proposals in the Phase 1 work programme include changes to PDR specifically related to:

- agricultural and forestry development
- developments relating to active travel
- digital communications infrastructure
- peatland restoration

We published our Update to the 2019 Sustainability Appraisal<sup>6</sup> alongside the consultation draft Phase 1 proposals<sup>7</sup>. This builds on the findings included in the 2019 SA report, taking into account the comments received. It also considers those new aspects of the Phase 1 proposals which were not previously assessed or which require more detailed assessment.

The Update also outlines any new or additional mitigation measures identified in relation to these development types. A summary of these is provided below.

In relation to **farm sheds** and in light of comments received regarding impacts where sheds are used to house livestock, the Update acknowledges the potential for negative impacts on **air quality** where PDR leads to an intensification of livestock production. The draft Phase 1 proposals retain the existing prior approval/notification process that applies to the erection of an agricultural building under PDR (or significant alteration or significant extension of an existing one). The proposals would also retain the existing restriction on the use of buildings erected under PDR for housing certain livestock or for the storage of slurry or sewage where it is within 400m of a protected building.

In relation to **polytunnels**, some respondents to the 2019 consultation considered that the impact of polytunnels could be more significant and less temporary than was suggested in the SA. The proposals set out the intention to prepare new guidance clarifying those PDRs under which polytunnels may be erected or provided, and how polytunnels should be treated where a planning application (or prior approval) is required. A specific PDR for polytunnels is not proposed at this time.

With regard to **farm steading conversions**, some respondents expressed concern regarding the SA findings generally in relation to flood risk, in particular where PDR could lead to an increase in people living in areas of flood risk. The Phase 1 consultation proposes that the relevant PDRs would be subject to a prior notification/prior approval process in respect of flood risk.

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<sup>6</sup> <https://www.gov.scot/isbn/9781800041356>

<sup>7</sup> <https://www.gov.scot/isbn/9781800041257>

On **digital communications infrastructure**, comments received to the 2019 SA highlighted concerns related to impacts on cultural and historic heritage, as well as carbon rich soils. The 2019 SA identified a number of mitigation measures in relation to each type of digital communications infrastructure development. We consider these to remain valid. However, in addition to these, and based on the comments received, the draft Phase 1 proposals confirm our intention to publish guidance on siting and design of digital communications infrastructure which will help ensure the mitigation of potential negative effects identified in relation to the natural and built environment. Further controls will also be considered as part of the prior approval mechanism discussed in the consultation paper.

On **developments relating to active travel**, the Update considers likely environmental effects as a result of new proposals relating to on-street cycle and scooter storage. The Update found these to have positive impacts for **climatic factors, air quality** and **population and human health**, as well as potential for negative impacts on **cultural heritage**.

Finally, in relation to **peatland restoration**, we consider that the findings of the 2019 SA remain valid.

# Appendix A.2: Phase 1 finalised Regulations

## Introduction

The text below sets out those ways in which the finalised regulations<sup>8</sup> take into account the comments received in response to the Phase 1 consultation proposals and the Update to the 2019 Sustainability Appraisal, which are available via the following links:

- [Permitted development rights - phase 1 priority development types: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/development-rights/phase-1-priority-development-types)
- [Permitted development rights - extension and review: sustainability appraisal update - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/development-rights/extension-and-review-sustainability-appraisal-update)

The Phase 1 Consultation took place between 1 October and 12 November 2020 and it sought views on proposals for changes and extensions to PDR for four development types: *digital telecommunications infrastructure, agricultural developments, peatland restoration, and developments relating to active travel*. The final number of submissions received was 119, of which 61 were from groups or organisations and 58 from individual members of the public.

The analysis of responses to the Phase 1 Consultation is available online at:

- [Permitted Development Rights \(PDR\) - review and extension: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/development-rights/extension-and-review-sustainability-appraisal-update)

Responses varied in their focus across the consultation. Most responses received addressed only a single development type (71 of 119 respondents answered questions under one development type, most commonly those related to 'Active Travel'). Relatively few respondents answered questions across all four development types (19 of 119 respondents). Seven respondents provided comment on the Update to the 2019 Sustainability Appraisal. Overall, public bodies welcomed the Update to the 2019 Sustainability Appraisal, however several public bodies and planning professional respondents felt that the Update did not identify potential cumulative, secondary or synergistic assessment or otherwise considered that further detail could have been provided. Further detail on the comments received and how these have been taken into account are included below.

## Digital Telecommunications Infrastructure

In response to concerns about the potential impact on cultural heritage of extending PDR for antenna systems on buildings in designated areas the finalised regulations make this subject to a determination on prior approval of the visual impact. Other controls on PDR in areas designated for their natural heritage and the future

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<sup>8</sup> The Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Amendment Order 2020

publication of updated good practice guidance on siting, design and installation were considered sufficient to address any concerns in other designated areas. It was decided to proceed with introducing PDR for equipment housing cabinets on the ground and on buildings up to a 2.5 cubic metre size limit in designated areas without a requirement for prior approval. This was because the current industry approach to siting and design, supported by new good practice guidance, was considered to be sufficient to address any negative impacts on cultural heritage. In response to concerns about the potential impact on cultural heritage of extending PDR for other apparatus on buildings, the finalised regulations make this subject to a determination on prior approval in areas designated for their cultural heritage. Similarly, a decision was taken not to introduce PDR for underground equipment in World Heritage Sites and Historic Battlefields, and to make PDR subject to a determination on prior approval in other areas designated for their cultural heritage.

### **Agricultural (and Forestry) Developments**

In response to concerns about the potential visual and landscape impacts of buildings up to 1,000sqm being permitted under class 18, the finalised regulations provide that the previous maximum ground area (465sqm) will continue to apply in certain designated areas. The regulations provide that new classes 18B, 18C, 22A and 22B only apply to buildings that were in agricultural/forestry use before 5 November 2019. The consultation proposal to also apply these PDR to buildings erected after that date (where they have been in continuous use for 10 years) was not taken forward. This reflects concerns that the introduction of the new PDR for the conversion of agricultural (and forestry) buildings – in conjunction with existing class 18 PDR – could incentivise landowners to erect new agricultural buildings with the sole intention of converting them to homes or commercial premises at a later date. In the light of health and safety considerations, the regulations dis-apply the grant of planning permission by new classes 18B, 18C, 22A and 22B where buildings are situated in military explosives storage areas or safety hazard areas. In response to concerns about the potential impact on the long-term viability of crofting, the regulations do not grant planning permission for conversion of agricultural buildings to residential use on croft land. With regard to new PDR for the conversion of buildings to commercial use (class 18C and class 22B), the consultation proposed that prior notification/approval would only be required above a 150 sqm threshold. This was not taken forward on the basis that conversions below that limit can have impacts that ought to be considered through prior notification/approval, and to provide consistency with the PDR for residential conversions

### **Peatland Restoration**

In response to concerns about the potential impact of projects that were not in receipt of Scottish Government funding (and hence had not been subject to scrutiny) through the Peatland Action programme, the regulations provide that PDR for peatland restoration schemes is subject to prior notification/approval of the peatland restoration scheme. Furthermore, in response to concerns that the grant of PDR for peatland restoration schemes would impact on the delivery of sustainable forest management (because any felling or woodland removal required as part of a scheme

would no longer require a felling permission) it is proposed that changes will be made in 2021 to the Forestry (Exemptions) (Scotland) 2019 regulations. The effect of this is intended to ensure that any felling considered necessary to deliver a peatland restoration scheme under PDR will still require a felling permission (and consequent revisions to a Forest Plan) to ensure that the potential impacts of woodland removal and timber extraction are fully considered. In the meantime the removal and felling of trees must be included in peatland restoration schemes submitted to the prior notification/ prior approval process. In addition, to provide clarity on the sorts of operations that are permitted as part of peatland restoration schemes, several definitions and exclusions have been included in the Order.

### **Active Travel**

Changes made to the Active Travel proposals following the consultation were a minor increase in the size of the bike stores permitted in the curtilage of a house or flat and the introduction of some additional restrictions on the siting of stores to address potential concerns about road safety and residential amenity. It was decided not to restrict the materials or colours of bike stores, including in conservation areas, because the potential impacts on amenity were considered to be minor. It was also decided, following comments received, to increase the permissible size of communal bike hangars on the public road and not to restrict their numbers in a street block. Instead control over siting and numbers of stores will be left to the Roads Authority, which will require separate authorisation for any communal storage structures placed on the roadway. Consideration by the Roads Authority was also considered sufficient to address any concerns about pedestrian access.

### **Aquaculture**

In addition to the above development types, the finalised regulations also include new provision on aquaculture PDR. Using the criteria set out in Schedule 2 of the Environmental Assessment (Scotland) Act 2005, it was determined that the proposed aquaculture changes were considered unlikely to have significant environmental effects. The SEA consultation authorities agreed with this view hence it was concluded that a Strategic Environmental Assessment was not required for this aspect of the regulations.

### **The Update to the 2019 SA appraisal**

The comments received have been taken into account in finalising the regulations. Where comments and suggestions regarding the content of the assessment have been made (including those relating to cumulative effects), we are satisfied that the overall findings of the assessment remain valid except where indicated otherwise. Phase 1 was part of an iterative and ongoing policy process which has been, and will continue to be, informed by the Sustainability Appraisal (SA).

## Appendix B.1: Phase 2 proposals

The proposals in the Phase 2 work programme include changes to PDR specifically related to:

- electric vehicle charging infrastructure
- changes of use in centres
- port development

We published our Phase 2 Update to the 2019 Sustainability Appraisal ('the Phase 2 Update') as an annex to the consultation draft Phase 2 proposals. This again builds on the findings included in the 2019 SA report, taking into account the comments received. It also considers new aspects of the Phase 2 proposals which were not assessed previously.

Potential changes to the existing PDR for **EV charging** were identified and assessed in the 2019 SA. Classes 9E and 9F of the GPDO provide PDR for wall-mounted chargers and charging upstands located in areas lawfully used for parking; they are subject to conditions/limitations related to the scale and location of the apparatus permitted. Local authorities also have general PDR related to their functions (Class 30).

The options considered - namely no change in PDR, increasing the volume and scale of outlets in all/some areas, and the removal of development restriction within 2m of a road - were found to have broadly significant positive effects on climate change and air quality through increased uptake of electric vehicles. We consider these findings remain valid. The 2019 SA identified potential for significant negative effects on cultural heritage, and recommended this could be alleviated by retaining the restrictions which provide that the current PDR for certain EV charging infrastructure (Class 9E and 9F) do not apply in certain specified areas (e.g. conservation areas, National Parks etc). One respondent considered the SA overstated the potential negative impacts of EV charging infrastructure on cultural heritage. While the Phase 2 proposals include removal of the current restriction of Class 9E and 9F PDR in the specified areas mentioned previously, the PDR would continue to be limited to areas lawfully used for off-street parking, thereby localising and minimising adverse effects on cultural heritage. The Phase 2 consultation does not propose to remove the restriction on development within 2m of a road.

Comments received on the original PDR work programme also highlighted the potential for solar energy to be deployed alongside EV charging infrastructure. Phase 2 proposals therefore include extending PDR to allow the development of **solar canopies** with charging stations in relation to PDR for EV charging upstands in areas lawfully used for off-street parking – currently Class 9F. The Phase 2 Update concluded that potential negative effects on the setting of heritage, landscape and cultural assets would be localised given that the PDR will be restricted in certain specified areas.

The Phase 2 Update concluded that the proposed PDR for the **conversion of petrol filling stations to charging forecourts** is considered likely to lead to minor positive effects on material assets and soils where the proposals lead to removal of petrol tanks and reduced areas of contamination.

On **town centre changes of use**, comments received on the 2019 SA highlighted concerns related to potential impacts on residential amenity associated with noise and air quality. It was also suggested that the SA should consider potential effects on human health as a result of changing vulnerability to flooding associated with change of use. The 2019 SA identified a number of significantly positive effects and cumulative effects in relation to climatic factors and population and human health, as well as the potential for negative impacts associated with ‘bad neighbour’ effects and increased take-away restaurants. The Phase 2 proposals include amending the use classes order (UCO) to bring together a greater range of uses into a broader merged class, the effect of which would be to allow additional changes of use to take place without a planning application being required. The Phase 2 consultation makes clear that bad neighbour uses should not be included in a new merged use class, if such a proposal were taken forward. Overall, we consider the 2019 SA findings remain relevant for the Phase 2 PDR and UCO proposals that could result in a loss/gain of particular uses. It is noted that changes of use which do not constitute development by virtue of the UCO are not subject to planning control and, unlike PDR, cannot be subject to conditions and limitations.

In regards to a new PDR for **outdoor furniture**, the Phase 2 Update determined there to be minor negative effects, associated with poorly-sited furniture, for both cultural and historical assets as well as for disabled people. Potential positive effects for increased sense of place, and subsequently centre viability, were also identified.

The proposed PDR changes for **port development** were not identified in the original work programme, and are assessed for the first time in the Phase 2 Update. The Phase 2 Update considers the likely environmental effects as a result of an alignment to the measures introduced in England by the UK Government. Additional developments, thought by the UK Government to now be enabled through the PDR amendment, could not be fully established however. As such, no new or additional impacts have been identified on society or the environment. It is however acknowledged that, if this opportunity is not taken to align Scottish and English PDR for ports development, any potential benefits arising for example through increased certainty and clarity for developers may not be realised.



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