



LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

19th Meeting, 2017 (Session 5)

Wednesday 21 June 2017

The Committee will meet at 10.00 am in the James Clerk Maxwell Room (CR4).

1. **Post-legislative scrutiny of the Disabled Persons' Parking Places (Scotland) Act 2009:** The Committee will take evidence from—

Humza Yousaf, Minister for Transport and the Islands, Scottish Government;

George Henry, Head of Road Policy, and Sharon Wood, Senior Road Policy Officer, Transport Scotland.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No.3) Regulations 2017 (SSI 2017/187);

The Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188);

The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017 (SSI 2017/189).

3. **Work programme (in private):** The Committee will consider its work programme.

LGC/S5/17/19/A

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The papers for this meeting are as follows—

Agenda item 1

Note by the Clerk

LGC/S5/17/19/1

PRIVATE PAPER

LGC/S5/17/19/2
(P)

Agenda item 2

Note by the Clerk

LGC/S5/17/19/3

Agenda item 3

PRIVATE PAPER

LGC/S5/17/19/4
(P)

Local Government and Communities Committee

19th Meeting 2017 (Session 5), Wednesday 21 June 2017

**Post-Legislative Scrutiny of the Disabled Persons' Parking Places (Scotland)
Act 2009 – Note by the Clerk**

Purpose

1. This paper provides background information on the Committee's post-legislative scrutiny of the Disabled Persons' Parking Places (Scotland) Act 2009.

Background

2. At its meetings on 1 and 8 February 2017, the Committee agreed its approach to its post-legislative scrutiny of the Disabled Persons' Parking Places (Scotland) Act 2009.
3. On 6 February 2017, the Committee launched a call for written views from all interested individuals and organisations on how they feel the Act is working. The call for views ran until 20 March 2017 and the Committee received 17 submissions in total. The written submissions can be viewed at the following link:

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103556.aspx>

Local Government and Communities Committee Consideration

4. At its meeting on 8 February 2017, the Committee agreed to hold an initial scene-setting evidence session with a number of organisations. At its meeting on 29 March 2017, the Committee took evidence from representatives from Aberdeen City Council, the Scottish Disability Equality Forum and the Mobility and Access Committee for Scotland.
5. The Official Report (substantially verbatim transcript) of the meeting on 29 March 2017 can be found at the following link:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10878&mode=pdf>

6. Following the evidence session on 29 March 2017, the Committee agreed to hold further evidence sessions with supermarkets and private car park operators. At its meeting on 17 May 2017, the Committee took evidence from Tesco and

NCP. The Official Report (substantially verbatim transcript) of the meeting can be found at the following link:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10954&mode=pdf>

7. At its meeting on 24 May 2017, the Committee took evidence from representatives from Fife Council, North Ayrshire Council and Police Scotland. The Official Report (substantially verbatim transcript) of the meeting can be found at the following link:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10971&mode=pdf>

8. At its meeting on 31 May 2017, the Committee took evidence from Jackie Baillie MSP, the Member who introduced the Disabled Persons' Parking Places (Scotland) Bill in 2008. The Official Report (substantially verbatim transcript) of the meeting can be found at the following link:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10993&mode=pdf>

9. At its meeting on 21 June 2017, the Committee will take evidence from the Minister for Transport and the Islands. The Minister wrote to the Committee on 30 March 2017 responding to the Committee's call for views and the response is attached at **Annexe A**.

Next Steps

10. Following the evidence session with the Minister on 21 June 2017, the Committee will consider the evidence received before deciding on its next steps as part of its post-legislative scrutiny of the Disabled Persons' Parking Places (Scotland) Act 2009.

Written Submission from the Scottish Government

Dear Bob

I welcome the opportunity to respond to the Local Government and Communities Committee's call for written evidence on the Disabled Persons' Parking Places (Scotland) Act 2009.

Disabled persons' parking places play a crucial role in enabling disabled people to carry out day-to-day activities that non-disabled people can take for granted, and it is vital that these parking places are enforced by local authority parking attendants or Police Scotland. These parking spaces support blue badge holders to lead independent lives by improving accessibility to and from their homes when accessing shops, services and facilities.

In terms of the Committee's questions regarding the 2009 Act, my response below is focusing on questions one and three:

- ***Do you think the Act has achieved its aims of preventing disabled persons' parking places being used by those who are not entitled to?***

There is general agreement amongst local authorities on the principles and primary aim of the 2009 Act, and section 2 of the Act prevents local authorities from designating disabled persons' parking places as advisory bays.

In the Scottish Ministers' 2015/16 annual report on the performance of local authorities in fulfilling their duties under the Act, I noted that some progress has been reported in relation to off-street disabled persons' parking places located in publically controlled car parks, such as hospitals, schools, housing, train stations and in Council run facilities.

However, the information required to be reported by local authorities may not highlight the full extent of what work is still to be undertaken, in achieving the aims of the 2009 Act.

- ***Any other issues relating to the Act which you wish to bring to the attention of the Committee?***

Since the introduction of the 2009 Act, a number of local authorities now have or are in the process of gaining Decriminalised Parking Enforcement (DPE) powers, which allow them to take direct action where disabled persons' parking places are being misused. Currently, 16 out of 32 local authorities have these powers, with a further

two Councils expecting to gain these powers in May 2017. In local authority areas without DPE powers, Police Scotland is reliant on these authorities to meet their duties under the Act to enable police officers to tackle instances of misuse.

Under the 2009 Act, Scottish Ministers' statutory responsibility relates to the preparation and publication of an annual report on the performance of local authorities. However, it has become clear from the responses and information provided by local authorities that their statutory obligations in providing enforceable disabled persons' parking places are placing considerable demands on their resources.

Furthermore, the information that local authorities are required to provide to Ministers on their performance appears to be limited, and therefore may not enable the public to fully understand how local authorities have performed in all aspects of their duties in the reporting year.

As part of our commitment to improving parking practices in Scotland, we are launching a public consultation on parking on 31 March 2017. The consultation will seek views about the enforcement of disabled persons' parking places, and in particular, what opportunities there are to deal with the misuse of advisory disabled persons' parking places in off-street car parks.

My officials will continue to support local authorities on this issue and will be setting up a stakeholder group with parking managers from all local authorities in Scotland to explore how we can resolve some of the issues relating to the Disabled Persons' Parking Places (Scotland) Act 2009.

I hope that this is helpful.

Humza Yousaf
Minister for Transport and the Islands

Local Government and Communities Committee

19th Meeting, 2017 (Session 5), Wednesday 21 June 2017

Subordinate Legislation

Overview of instruments

1. The following instruments, subject to negative procedure, are being considered at agenda item 2 today's meeting:
 - The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 3) Regulations 2017 (SSI 2017/187);
 - The Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188);
 - The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017 (SSI 2017/189).

Procedure

2. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.
3. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Background

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 3) Regulations 2017 (SSI 2017/187)

4. These Regulations amend the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 to increase certain planning fees. The policy note for this instrument is attached at **Annexe A**.

5. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2017/187/made>.
6. An Equality Impact Assessment is available at:
http://www.legislation.gov.uk/ssi/2017/187/pdfs/ssiegia_20170187_en.pdf.
7. A Business and Regulatory Impact Assessment is available at:
http://www.legislation.gov.uk/ssi/2017/187/pdfs/ssifia_20170187_en.pdf.
8. There has been no motion to annul this instrument.

Delegated Powers and Law Reform Committee Consideration

9. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 13 June 2017 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

The Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188)

10. These Regulations amend the Building (Procedure) (Scotland) Regulations 2004, the Building (Scotland) Regulations 2004, the Building (Fees) (Scotland) Regulations 2004 and the Building (Forms) (Scotland) Regulations 2005. The policy note for this instrument is attached at **Annexe B**.
11. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2017/188/made>.
12. A Business and Regulatory Impact Assessment is available at:
http://www.legislation.gov.uk/ssi/2017/188/pdfs/ssifia_20170188_en_001.pdf.
13. There has been no motion to annul this instrument.

Delegated Powers and Law Reform Committee Consideration

14. The Delegated Powers and Law Reform Committee will consider this instrument at its meeting on 20 June 2017. Prior to considering the instrument, the Committee wrote to the Scottish Government on 8 June 2017 and asked:

There appears to be an error in regulation 2A(7) of the Building (Procedure) (Scotland) Regulations 2004, as inserted by regulation 2(3) of this instrument. Some words appear to be omitted within the definition of “legible in all material respects”, which expression is used in the inserted new regulation 2A(2)(b). Is corrective action proposed?

15. The Scottish Government responded to the Committee in the following terms:

The Scottish Government accept that the word “sent” ought to have been included (after the word “if”) in the definition of “legible in all material respects” in inserted regulation 2A(7). However, this error is not considered to have a material impact on the operation of the regulations as there is no doubt as to the intended meaning of the provision. No corrective action is considered to be required at this time. The Government will keep the possibility of an amendment to correct this drafting error under review when considering future regulations in this area.

16. Further to this response, the Scottish Government has subsequently confirmed to the Delegated Powers and Law Reform Committee that it will lay an amending instrument in due course. As instrument SSI 2017/188 comes into force on 1 July 2017, any amending instrument laid by the Scottish Government would breach the 28 day rule therefore both instruments would be reported on by the Delegated Powers and Law Reform Committee. The Committee is likely to publish its report on SSI 2017/188 on 20 June 2017 and its report on the amending instrument following its meeting on 27 June 2017. **The amending instrument will be considered by the Local Government and Communities Committee at a meeting following the summer recess.**

The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017 (SSI 2017/189)

17. This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the 1992 Order”). The 1992 Order grants planning permission for classes of development described in schedule 1 of that Order. The policy note for this instrument is attached at **Annexe C**.
18. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2017/189/made>.
19. An Equality Impact Assessment is available at:
http://www.legislation.gov.uk/ssi/2017/189/pdfs/ssiegia_20170189_en.pdf.
20. A Business and Regulatory Impact Assessment is available at:
http://www.legislation.gov.uk/ssi/2017/189/pdfs/ssifia_20170189_en.pdf.
21. There has been no motion to annul this instrument.

Delegated Powers and Law Reform Committee Consideration

22. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 13 June 2017 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

23. The Committee is **not required** to report on negative instruments, but should it wish to do so, the deadline for reporting on the three instruments is **14 September 2017**.
24. **The Committee is invited to consider the above instruments and whether it wishes to report on any issues to the Parliament in relation to them.**

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS AND DEEMED APPLICATIONS) (SCOTLAND) AMENDMENT (No. 3) REGULATIONS 2017

SSI 2017/187

1. The above instrument was made in exercise of the powers conferred by section 252 of the Town and Country Planning (Scotland) Act 1997. The instrument is subject to negative procedure.

Policy Objectives

2. The instrument amends the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 with regard to the application fee for a determination as to whether prior approval is required in relation to permitted development (PD) rights.

3. The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017 – which is also before Parliament - includes changes to PD rights for electronic communications infrastructure (e.g. communication masts, antennas and street cabinets). PD rights are a planning permission granted in legislation, which removes the need to apply for planning permission, provided the developer complies with any restrictions and conditions attached to the PD rights.

4. As part of these amendments a form of prior approval is introduced for ground based masts in certain circumstances. This means that while the masts in question are considered acceptable in principle in planning terms, the planning authority has the right to approve the siting or appearance of the mast, and can refuse this.

5. The form of prior approval in this case has requirements around publicity and consultation beyond that in other prior approval procedures associated with PD rights in Scotland. This means higher costs for planning authorities, and so a higher fee for prior approval is being put in place for these specific PD rights.

6. The issue of the PD rights and prior approval is discussed in the policy note for the changes in the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017.

Consultation

7. A public consultation paper was issued on 10 August 2016 and ran until 4 November 2016. Views were sought on draft legislation based mainly on research recommendations, and on what further extensions to PD rights might be appropriate, particularly in designated areas where additional restrictions on PD rights apply. The consultation paper sought views on a proposed fee of £150 in relation to prior approval.

8. There were 38 responses to the consultation from the communications industry, planning authorities, heritage bodies, individuals, agencies and government (such as the Ministry of Defence, Scottish Natural Heritage and Historic Environment Scotland), and some consultants and wider business interests.

9. As regards the proposed fee, many respondents felt unable to comment, though industry respondents who commented were content with the fee. Planning authorities tended to view the proposed fee as inadequate given the procedural requirements involved.

10. Having considered the responses, we have revised our proposed fee to £300.

11. An analysis of the consultation response, including a list of the respondents (other than those who requested anonymity) has been published and is available via the following Link: <https://beta.gov.scot/publications/consultation-relaxation-planning-controls-digital-communications-infrastructure-analysis-responses/>.

Impact Assessments

12. We have done an Equality Impact Assessment (EqIA) for the overall package of changes to PD rights. We have also screened it as regards a Children's Rights and Welfare Impact Assessment, but concluded no such assessment was necessary.

13. The EqIA concluded there were no significant or differential impacts on particular equality groups. The assessment is attached.

Financial Effects

14. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of the changes is considered to be positive for business, removing the need to apply for planning permission for certain developments and, where prior approval is required for a new ground based mast, reducing the costs of

processing applications (e.g. with a lower fee than for an application for planning permission).

Scottish Government
Local Government and Communities Directorate
31 May 2017

POLICY NOTE

**THE BUILDING (MISCELLANEOUS AMENDMENTS) (SCOTLAND)
REGULATIONS 2017**

SSI 2017/188

1. The above instrument was made in exercise of the powers conferred by sections 1, 8(8), 33, 36, 38 and 54(2) of the Building (Scotland) Act 2003. The instrument is subject to negative procedure.

Background

2. The SSI amends the Building (Scotland) Regulations 2004 which prescribe functional standards to apply to the design, construction or demolition of a building, the provision of services, fittings or equipment in or in connection with a building, and the conversion of a building.
3. The SSI also makes amendments to the Building (Procedure) (Scotland) Regulations 2004, the Building (Fees) (Scotland) Regulations 2004 and the Building (Forms) (Scotland) Regulations 2005.
4. The Building (Miscellaneous Amendments) (Scotland) Regulations 2017 will come into force on 1 July 2017.

Policy Objectives

5. The SSI is required to implement changes to building standards procedures for the digital processing of building warrant applications and completion certificate submissions. This includes allowing documents to be transferred by downloading from a website.
6. The SSI is required to include a new description of building and work that does not require a building warrant into schedule 3 to regulation 5 of building regulations. New Type 23A covers detached single-storey buildings used for shelter or sleeping in connection with recreation. The type has a number of limitations which include a maximum floor area of 30 square metres, minimum distance to a boundary or other buildings, and maximum floor area of any gallery or galleries. A building warrant would be required if the limitations are not met.
7. Although the new Type 23A does not require a building warrant, construction must meet the requirements of standards 1.1, 3.17 to 3.22 and 4.4 of schedule 5 as provided for by changes to regulation 9 of the building regulations. These cover building structure, combustion appliances and pedestrian protective barriers at changes in level.

8. The SSI is required to implement changes to building warrant related fees. These include increases to fixed fees and the incremental fee steps that relate to the value of the work, and fees for work or a conversion done without a building warrant. Also increases to the discounts that apply when using an approved certifier of design or construction.
9. The changes should generate £3.5 million additional fee income. The key features are –

Application type	Change to Fee
Application for building warrant with a minimum value of up to £5,000	Increase the minimum fee from £100 to £150.
Application for building warrant with a value of £5,001 and up to £10,000	Increase the incremental step by £4 (£15 to £19).
Application for building warrant with a value of £10,001 or more up to £20,000	Increase the incremental step by £4 (£15 to £19).
Application for building warrant with a value of £20,001 or more up to £100,000	Increase the incremental step by £3 (£60 to £63).
Application for building warrant with a value of £100,001 or more up to £500,000	Increase the incremental step by £3 £100 to £103).
Application for building warrant with a value of £500,001 or more up to £1,000,000	Increase the incremental step by £3 £175 to £178).
Application for building warrant with a value of £1000,001 or more	Increase the incremental step by £3 (£250 to £253).
Application for a conversion only	Increase the fixed fee from £100 to £150.
Application to extend the validity of a building warrant (beyond 3 years)	Increase the fixed fee from £50 to £100.
Application for amendment to building warrant (value of additional work up to £5,000)	Increase the minimum fee from £50 to £100.
Application for amendment to building warrant for conversion or demolition only	Increase the fixed fee from £50 to £100.
Application for a building warrant to demolish only	Increase the fixed fee from £100 to £150.
Applications for late building warrants	Increase fee from 125% to 200% of the normal BW fee.
Application for late warrant for demolitions only	Increase fee from £125 to £200.
Submission of a completion certificate where no warrant was obtained for construction of a building or the provision of services, fittings or equipment	Increase fee from 125% to 300% of the normal BW fee.
Submission of a completion certificate where no warrant was obtained for demolition or conversion	Increase fee from £125 to £300.

10. A building warrant applicant is entitled to a discount if they provide a certificate from an approved certifier of design with their application. The SSI implements a change to allow the discount when the applicant advises in writing that they intend to submit a certificate after they have made their application but before the building warrant is granted.

Certificates	Change to Discounts
Certifiers of design	Discount retained at 10%, with discounts for up to £100,000 value of work increased by introducing minimum fixed amounts.
Certifiers of construction	Discount increased from 1% to 3% with discounts for up to £100,000 value of work increased by introducing minimum fixed amounts.

11. The SSI is also required to implement changes to forms regulations for the digitisation of building warrant and completion certificate processes and other minor textual changes.

Consultation

12. To comply with section 1(2) of the Building (Scotland) Act 2003 consultation with interested persons has been carried out. The amendments made by the Regulations were the subjects of separate public consultations. The first from 6 November 2015 to 12 February 2016 and the second from 15 November 2016 to 9 January 2017.

13. The consultations 'Regulatory Concessions for Huts and Bothies' and 'Building Warrant Fees' were notified to over 500 identified organisations and individuals, promoted on the SG Building Standards website and highlighted in the SG Building Standards e-newsletter issued to over 8,000 registered e-news recipients. The notifications included a wide range of professional organisations and institutions, construction research bodies, designers, house builders, technical specialists and those public bodies responsible for the administration and enforcement of the building standards system.

14. The consultation responses reports and the lists of those consulted are published on the Scottish Government website.

Impact Assessment

15. Business Regulatory (BRIA), Equality (EQIA) and Strategic Environmental (SEA) impact assessments have been carried out and there are no impact issues.

Financial effects

16. The BRIAs have been completed and for a detailed assessment of the financial effects, it will be necessary to scrutinise the Costs and Benefits sections within each one.

Examples of Changes to Building Warrant Fees (undiscounted and fully discounted)			
Value of Work	Project Type	Pre-2017 Fee	2017 Fee
£5,000	Alterations (house)	£100	£150
	(If certified under current schemes)	(£78)	(£60)
£20,000	Extension (small)	£400	£530
	(If certified under current schemes)	(£312)	(£350)
£50,000	Extension (large)	£580	£719
	(If certified under current schemes)	(£452)	(£449)

£120,000	House (small)	£980	£1,137
	(If certified under current schemes)	(£764)	(£841)
£500,000	House (large)	£2,880	£3,094
	(If certified under current schemes)	(£2,246)	(£2,290)
£1,000,000	Commercial	£4,630	£4,874
	(If certified under current schemes)	(£3,611)	(£3,607)
£3,000,000	Commercial (large)	£9,630	£9,934
	(If certified under current schemes)	(£7,511)	(£7,351)

**Scottish Government
Local Government and Communities Directorate
31 May 2017**

POLICY NOTE**THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT ORDER 2017****SSI 2017/189**

1. The above instrument was made in exercise of the powers conferred by sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997. The instrument is subject to negative procedure.

Policy Objectives

2. World class digital connectivity is vital to Scotland's economy and is a priority for the Scottish Government. A reliable and modern network is essential for business, in the delivery of public services, and in contributing to a low carbon environment. Digital connectivity takes on a greater significance in Scotland, helping to address some of the disadvantages of physical distance between places and supporting strong, connected communities.

3. Whilst telecommunications is a reserved matter for the UK Government, planning controls on such infrastructure are a devolved matter.

4. The Scottish Government wants to ensure Scotland has planning controls that strike an appropriate balance between facilitating the rollout of such infrastructure and ensuring appropriate controls on development to protect amenity and the environment. With the increasing use and importance of such technology, it is important to review planning controls in this area.

5. Electronic communications code operators (i.e. parties licensed by Ofcom to use the Electronic Communications Code in the rollout of their communications networks) benefit from permitted development (PD) rights for elements of their infrastructure. PD rights grant planning permission in legislation, removing the need to apply for planning permission, provided the developer complies with the conditions and restrictions in the PD rights.

6. The SSI replaces the current class 67 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO). It also adds some new articles to the GPDO covering a new procedure for prior approval which applies to the PD rights for new ground based masts.

7. The main changes to the PD rights incorporated in the legislation are summarised in the annex to this note.

8. The amendment made by article 6(c) implements an undertaking given to the Delegated Powers and Law Reform Committee in relation to the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126).

Consultation

9. Scottish Government commissioned research on 2015 from FarrPoint Ltd and Bidwell LLP to consider extensions to these PD rights. The Scottish Government then consulted publicly (10 August 2016 to 4 November 2016) on specific legislative proposals in light of the research and sought views on further extensions to PD rights, particularly in designated areas¹. PD rights are more restricted in the latter and the research indicated more PD rights in such areas could be possible without making specific recommendations.

10. During the consultation exercise, officials spoke to Historic Environment Scotland and Scottish Natural Heritage about the proposals, and to communications industry representatives, including on issues relevant to the Business and Regulatory Impact Assessment (BRIA).

11. There were 38 responses to the consultation from the communications industry, planning authorities, heritage bodies, individuals, agencies and government (such as MOD and SNH and HES), and some consultants and wider business interests.

12. The communications industry and business and individuals generally were in favour of further PD rights to promote the infrastructure and so services and the benefits they bring. Other groups, while recognising the need for such infrastructure and services, had concerns about possible impacts on the historic, built and natural environments or on their activities (e.g. MOD regarding new masts in safeguarded areas around certain of their facilities) if planning controls were relaxed. There was no consistency as regards what might be acceptable by way of extending PD rights in designated areas.

13. We have revised our proposals in light of the responses. An analysis of the consultation response, including a list of the respondents (other than those who requested anonymity) has been published and is available via the following Link:

¹ Currently: conservation areas, historic battlefields, category A listed buildings and scheduled monuments and the settings of such buildings and monuments, National Parks, national scenic areas, sites of special scientific interest and European Sites – see items (e) and (l) of the annex to this note regarding changes to this list.

<https://beta.gov.scot/publications/consultation-relaxation-planning-controls-digital-communications-infrastructure-analysis-responses/>

Impact Assessments

14. We have done an Equality Impact Assessment (EqIA) for this legislation. We also screened it as regards a Children's Rights and Welfare Impact Assessment, but concluded no such assessment was necessary. The proposals were screened for strategic environmental assessment, but the conclusion was that the changes were not likely to have significant environmental effects, and no assessment was required.

15. The EqIA concluded there were no significant or differential impacts on particular equality groups. The assessment is attached to this note.

Financial Effects

16. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of the changes is considered to be positive for business, removing the need to apply for planning permission for certain developments and, where prior approval is required for a new ground based mast, reducing the costs of processing applications (e.g. with a lower fee than for an application for planning permission).

Scottish Government
Local Government and Communities Directorate
31 May 2017

ANNEX

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT ORDER 2017**Summary of changes to PD rights.**

a) The introduction of PD rights for new ground based communication masts up to 25m in height outside designated areas, subject to conditions regarding prior approval (see paragraphs 2-6 below) by the relevant planning authority.

b) The introduction of new PD rights for 'small-cell systems'; this would relate to small antennas and ancillary apparatus on buildings and other structures (see paragraphs 7-8 below).

c) 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 15m above ground level – this will be extended to 5).

d) Extend PD rights for apparatus on buildings outside designated areas, including fewer specific controls on certain antennas and some increases in height limits (e.g. currently the maximum by which apparatus can exceed the height of a building is 6m but in future this will be 8m for buildings above 15m in height).

e) Remove Category A Listed Buildings and Scheduled Monuments, which have their own consent regimes, from the list of designated areas in which these PD rights are more restricted, whilst retaining their settings as designated areas (as the consent regimes for these buildings and monuments do not extend to their settings).

f) Allow under PD rights existing ground based masts under 20m in height to increase by a maximum of 7m (currently the maximum is 5m), and allow replacement ground based masts to be up to 6m from the original mast (currently the maximum is 4m) – this would apply in all areas. Taller masts allow more coverage and sharing of infrastructure. With replacement masts an increased distance makes it easier to erect a replacement while the original mast is still operating.

g) Increased PD rights for 'small antennas' on dwellinghouses and other buildings in all areas, except conservation areas (see paragraphs 7-8 below).

h) Increased PD rights for the alteration and replacement of apparatus with no increase in size or numbers or significant changes in location in all areas (i.e. where changes have lesser or no greater impact than existing apparatus).

i) Extend the time period for emergency PD rights (applies in all areas) from 12 months to 18 months. This to allow flexibility in maintaining services, for example, where a new site may have to be identified and developed for a base station.

j) Amend and clarify the general conditions on these PD rights on 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.

k) Additional PD rights for a 'link antenna', i.e. a satellite antenna and supporting structure up to 4m in height alongside an existing ground based mast, provided the latter has an established compound around it. This is primarily for remote sites to connect into the wider communications network (sometimes called 'backhaul').

l) Adding World Heritage Sites to the list of designated areas in which additional restrictions apply to these PD rights. Much of the area covered by a WHS designation will be subject to other designations in which such restrictions already apply. This change will cover some areas of WHS which are not so underpinned.

1. Most of these changes are extending existing PD rights to allow more flexibility. Two of the more significant changes relate to PD rights for new masts and new PD rights for 'small cell systems'.

PD Rights for New Ground Based Masts and Prior Approval

2. Currently a new ground based mast would require an application for planning permission. While such applications have a high approval rating, the mobile network operators have indicated that to rollout a network they need more certainty around decision making, particularly around timescales. Having PD rights with prior approval requirements means that such new masts (in this case up to 25m in height) are acceptable in principle, but the planning authority can consider the siting and appearance of a proposal and, if necessary, refuse to grant approval.

3. Unlike other prior approval regimes in the Scottish PD rights, this one has requirements for neighbour notification, placing information on planning authority web sites and consultation with Scottish Natural Heritage and Historic Environment Scotland. Developers must also notify the site owners 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 informs these parties that an application has been made, to which planning authority and how to make representations.

4. Another difference is that the planning authority has 56 days from when an application 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 submitted application details.

5. A similar approach is already in place in England and Wales. The mobile operators indicate this is needed to give greater certainty as to when a decision will be forthcoming to assist network planning and rollout.

6. These PD rights for new ground based masts will not apply in designated areas.

Small Antennas and Small Cell Systems

7. 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. With the latter, some of the ancillary apparatus (antenna links to the wider communications system and supporting electronics) will also need PD rights, as they cannot be located inside the structure (as they can with shops and offices).

8. ‘Small cell systems’ therefore include the ‘small antenna’ and any ancillary apparatus. PD rights currently exist for small antennas on buildings. The changes in this SSI mean that four (rather than the current two) small antennas would be PD on dwellinghouses and buildings within their garden area, while on other buildings and structures small cell systems will be PD. The exception to this is conservation areas – where we believe further work would be needed on the potential impact before PD rights for such apparatus could be increased.

Scottish Government
Local Government and Communities Directorate
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