

# Local Government, Housing and Planning Committee

## 14<sup>th</sup> Meeting, 2021 (Session 6)

Tuesday 7 December 2021

### SSI cover note for: SSI 2021/411: The Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment (No. 2) Order 2021

**Title of Instrument:** [The Town and Country Planning \(General Permitted Development\) \(Coronavirus\) \(Scotland\) Amendment \(No. 2\) Order 2021](#)

**Type of Instrument:** Negative

**Laid Date:** 12 November 2021

**Circulated to Members:** 25 November 2021

**Meeting Date:** 7 December 2021

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No

**Reporting deadline:** 20 December 2021

### Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

### Purpose

2. Planning permission granted by the Order is temporary. The purpose of this Amendment Order is to permit development by or on behalf of the Crown on Crown land required to address the impacts of a pandemic for a period of 24 months from the

date development is started. The development must cease and any buildings and structures removed, with the land restored to its condition before the development, before the expiry of this period unless planning permission has been granted following a planning application under Part 3 of the Town and Country Planning (Scotland) Act 1997.

3. The Order will also extend the period by which development or change of use under Class 72C of the GPDO must cease from 31 December 2021 to 30 June 2022.

4. The Order also extends the duration of planning permission under class 91 from 18 months to 24 months where temporary development relates to the prevention, control or mitigation of a pandemic. This supports timeous reaction to the current public health emergency caused by the spread of the virus.

## **Delegated Powers and Law Reform Committee consideration**

5. At its meeting on 23 November 2021, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

6. A copy of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

## **Procedure for Negative Instruments**

7. 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.

8. 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.

## **Recommendation**

9. The Committee is invited to consider any issues which it wishes to raise on this instrument.

**Clerks**

**Local Government, Housing and Planning Committee**

# Annexe A

## Scottish Government Explanatory Note

This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. Article 2 amends Class 72C. This Class was inserted by the Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2020. Class 72C allows local authorities and certain health service bodies to carry out development for the purposes of—

- a) preventing an emergency,
- b) reducing, controlling or mitigating the effects of an emergency, or
- c) taking other action in connection with an emergency.

For these purposes, an emergency is an event or situation which threatens serious damage to human welfare in a place in the United Kingdom. The development permitted is subject to conditions which are set out in paragraph (3) of Class 72C. These conditions currently include a requirement that any use of the land for the purposes of Class 72C ceases on or before 31 December 2021.

This Order amends that condition so that the requirement will be that any use of the land for the purposes of Class 72C ceases on or before 30 June 2022. Article 2 also amends class 72D which was inserted by the Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2021 and which provides permitted development rights for temporary development by the Crown in relation to the prevention, control and mitigation of a pandemic.

Article 2 extends the duration of planning permission under class 72D from 18 months to 24 months.

Article 3 amends the Town and Country Planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006 to extend the duration of planning permission under class 91 from 18 months to 24 months where temporary development relates to the prevention, control or mitigation of a pandemic.

## Scottish Government Policy Note

The Scottish Ministers make the above Order in exercise of the powers conferred by sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997, sections 98 and 122(3) of the Planning and Compulsory Purchase Act 2004 and all other powers enabling them to do so. Town and Country Planning is a devolved matter. Article 2 of the Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”). The GPDO is a general development order granting planning permission for certain classes of development.

The Order amends the GPDO to extend the period during which planning permission is granted for development by or on behalf of the Crown on Crown land for the

purposes of preventing, reducing, controlling or mitigating, or taking other action in connection with, a pandemic.

Article 2 of the Order also amends class 72C of the GDPO to extend the period during which planning permission is granted for certain development carried out by, or on behalf of local authorities or health service bodies for the purposes of preventing, reducing, mitigating or controlling the effects of the current emergency caused by the spread of the COVID 19 virus (the virus) and its impacts on public health.

The Order is subject to negative procedure.

**Purpose of the instrument.**

Planning permission granted by the Order is temporary. The purpose of this Amendment Order is to permit development by or on behalf of the Crown on Crown land required to address the impacts of a pandemic for a period of 24 months from the date development is started. The development must cease and any buildings and structures removed, with the land restored to its condition before the development, before the expiry of this period unless planning permission has been granted following a planning application under Part 3 of the Town and country Planning (Scotland) Act 1997.

The Order will also extend the period by which development or change of use under Class 72C of the GPDO must cease from 31 December 2021 to 30 June 2022.

The Order also extends the duration of planning permission under class 91 from 18 months to 24 months where temporary development relates to the prevention, control or mitigation of a pandemic.

This supports timeous reaction to the current public health emergency caused by the spread of the virus.

**Policy Objectives**

Planning permission is ordinarily required for new development in order to ensure that the development is appropriate, in terms of Development Plan policy and the protection of amenity, and sustainable. Permitted development rights, as set out by the GPDO, are intended to allow developments which have minimal impact on amenity and Development Plan policy to proceed without the delay which is involved in submitting a planning application. Planning authorities have a target of two months to determine a planning application; once an application is submitted the applicant has to wait until the application is determined before starting work. The removal of this period from the development process will enable the health authorities and local authorities to react to the virus more quickly.

As the developments which are required specifically to deal with the effects of the virus on public health will be in place for a temporary period only extending permitted

development rights to cover such developments will not have a lasting impact on amenity.

### **Consultation**

As this is an emergency measure, and intended to be temporary, no formal public consultation has been undertaken.

### **Assessments**

We have carried out a Business and Regulatory Impact Assessment. The Equalities Impact Assessment (EQIA) in relation to The Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2020 remains relevant and identified no negative impacts and minor benefits for some sectors of the community. We also screened out at stage one of Children's Rights and Welfare Impact Assessment (CRWIA), as the changes are technical and temporary changes driven by the public health policy. Similarly, we have screened out of the Fairer Scotland Duty Assessment, as the changes are temporary and technical rather than strategic.

These Regulations fall out with the scope of Strategic Environmental Assessment as per Section 4(3)(a) as their sole purpose is to serve a civil emergency. A Data Protection Impact Assessment is not considered relevant to the changes. In the circumstances, we have not done an Islands Impact Assessment, though we acknowledge that more remote areas with more limited online capabilities may be at something of a disadvantage for this temporary period.

### **Financial Effects**

There will be no financial costs imposed on the Crown, health authorities or local authorities as a result of the amendment. Indeed, there will be a cost saving as they will be spared the costs of preparing and submitting a planning application. The planning authority will not receive a fee for a planning application as they otherwise would, but will not incur the staff time and other costs of determining an application. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

Scottish Government  
Planning and Architecture Directorate

8 November 2021

## **Scottish Government - Other documents**

Final Business and Regulatory Impact Assessment

Town and Country Planning (General Permitted Development) (Coronavirus)  
(Scotland) Amendment (No. 2) Order 2021, **SSI No. 2021/411**

• **Background**

1. The amendment made by the Order does not stem from specific EU requirements, but supports the UK and Scottish Government's work to manage the impact of the COVID-19 outbreak.

• **Rationale for Government intervention**

2. In the absence of this amendment, certain developments would have to be delayed due to the statutory requirement to obtain planning permission through the planning application process, with potential effects on the ability to respond to the current situation.
3. National Performance Framework - These measures contribute to the following performance indicators:
  - We are healthy and active
  - We live in communities that are inclusive, empowered, resilient, and safe.

**Consultation**

• **Within Government**

4. Responsibility for these issues lies mainly with Planning and Architecture Division. We have discussed briefly with colleagues whose business areas may be affected.

• **Public Consultation**

5. Due to the urgency of these measures there has been no public consultation.

• **Business**

6. In the current emergency there has been no time to engage in detail with business on the changes.

**Options**

***Do nothing***

7. This would potentially create a situation where the existing temporary permitted development rights to facilitate responses by the Crown on Crown Land to the coronavirus emergency would cease to apply after 18 months from the date the development began with a requirement that any development or change of use created under the emergency rights would need to be removed or ceased within that period, unless planning permission was obtained for retention of the development or change of use.

8. Similar work can also be undertaken by Local Authorities and Health Bodies on other land subject to similar restrictions regarding cessation and restoration of land to the original condition and use. The Order makes an appropriate extension to the time limits in relation to Local Authority and Health Board temporary development to address the impacts of the current coronavirus emergency.

***Facilitate essential development through extending the duration of the permitted development rights***

9. This provides a proportionate response, removing potential planning barriers, while remaining appropriate to the need for balance between the need for facilities and to retain some control over the impact of development.

**Sectors and groups affected**

10. Whilst everyone is affected by the coronavirus emergency, the removal of the need for planning applications will affect prospective applications for such development. There will be some impact on members of the public who may be affected by development and might otherwise make representations on the proposed development. The temporary nature of the Order is intended to minimise any long term negative impacts of the development once the need for it has passed.

**Benefits**

***Do nothing***

11. No benefits.

***Facilitate essential development through permitted development rights***

12. Significant benefits through reduced planning engagement. Whilst some members of the public may wish to comment on such development, the overall impact on holding up and potentially derailing development could have far wider consequences.

**Costs**

***Do nothing***

13. Planning applications would be required, with associated costs and fees, in addition to potentially causing delays to necessary developments and infrastructure provision. The risk of delay and potential for derailment of projects could add significantly to the risks to public health and the public health response to COVID-19.

***Facilitate essential development through permitted development rights***

14. Subject to the requirements to comply with other statutory requirements such as EIA and listed building legislation, essential development to erect, extend or change the use of buildings by or on behalf of the Crown on Crown land or by a local authority or health body to address the impacts of the current coronavirus emergency can be undertaken without the costs associated with submitting an application.

**Scottish Firms Impact Test**

15. There has been no time for such engagement in the current crisis.

**Competition Assessment**

16. There are no obvious impacts on competition of these procedural amendments as regards obtaining planning permission.

- Will the measure directly or indirectly limit the number or range of suppliers?

17. No

- Will the measure limit the ability of suppliers to compete?

18. No. Decisions on procurement of sites or contractors for the additional facilities are separate from planning considerations.

- Will the measure limit suppliers' incentives to compete vigorously?

19. No. As above

- Will the measure limit the choices and information available to consumers?

20. No. As above.

**Consumer Assessment**

21. The Order is essentially about facilitating essential development for the benefit of the public.

- Does the policy affect the quality, availability or price of any goods or services in a market?

22. No. Any such changes will be driven by the health crisis and related public health policy in relation to which these changes to the GDPO are consequential.

- Does the policy affect the essential services market, such as energy or water?

23.No. Any such changes will be driven by the health crisis and related public health policy in relation to which these changes to the GPDO are consequential.

- Does the policy involve storage or increased use of consumer data?

24.No.

- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

25.No.

- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

26.No .

- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

27.No.

### **Test run of business forms**

28.No new forms.

### **Digital Impact Test**

29.No impact is anticipated as a result of the provisions of the Order

- Does the measure take account of changing digital technologies and markets?

30.Yes

- Will the measure be applicable in a digital/online context?

31.No.

- Is there a possibility the measures could be circumvented by digital / online transactions?

32.No

- Alternatively will the measure **only** be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

33.No.

- If the measure can be applied in an offline **and** online environment will this in itself have any adverse impact on incumbent operators?

34. No impact.

### **Legal Aid Impact Test**

35. These consequential changes are to ensure the legal requirements of the planning system can be met in the current crisis and thus avoid questions of legal challenge.

### **Enforcement, sanctions and monitoring**

36. These measures remove certain statutory requirements temporarily during the COVID 19 outbreak. We will be monitoring the planning system in general through this crisis.

### **Implementation and delivery plan**

37. These measures will be implemented at the earliest opportunity and the legislative changes conveyed to planning authorities and the wider public sphere through planning guidance in e-mail alerts to planning authorities and stakeholders and the Scottish Government's web site.

### **Post-implementation review**

38. Scottish Government measures will be subject to review through the course of the crisis to judge when it is appropriate to return to normal arrangements. The intention is to time limit the permitted development rights for development by or on behalf of the Crown on Crown Land to 24 months from the date the development or change of use starts, including the cessation of use and the removal of any structures to revert the land to its original condition and use. The Order also amends the date on which development by a local authority or a health body must cease from the current date of 30 December 2021 to 30 June 2022.

### **Summary and recommendation**

39. Doing nothing is simply not a realistic option. The potential health, economic and social costs of not introducing temporary permitted development rights, in terms of delaying provision of essential services and facilities, far outweigh the temporary removal of opportunities to scrutinise proposed development.

### **Declaration and publication**

#### **Sign-off for Final BRIA:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and

impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of relevant representative organisations in Scotland. Wider consultation with businesses has not been possible in the current circumstances.

**Signed: TOM ARTHUR**

**Date: 9th November 2021**

**TOM ARTHUR MSP, Minister for Public Finance, Planning and Community Wealth.**