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CONSOLIDATED CIRCULAR ON NON-DOMESTIC PERMITTED DEVELOPMENT RIGHTS

circular

PLANNING SERIES

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Scottish Planning Series

PLANNING CIRCULAR 2/2015

Consolidated Circular on Non-Domestic Permitted Development Rights

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PLANNING SERIES:

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Consolidated Circular on Non-Domestic Permitted Development Rights

Circular 2/2015

Contents Page

Introduction

1. This Circular consolidates, updates and replaces certain previous guidance on non-domestic Permitted Development Rights ('PDRs'). The Circular brings together guidance previously contained in a number of separate Circulars concerning relevant aspects of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended ('the GPDO'). It also updates and replaces previous guidance, where relevant, to take account of wider legislative changes, including; the implementation of The Planning etc. (Scotland) Act 2006, ('the 2006 Act'), and associated secondary legislation.

2. The Circulars listed in Annex A are hereby revoked.

Permitted development

3. Considering applications for planning permission for minor and uncontroversial developments is not an effective or efficient way of regulating development. Permitted development rights are granted so that some types of development (small alterations, extensions or works associated with existing development, for example) can be carried out without the need to submit an application for planning permission.

4. Article 3 of the GPDO grants planning permission for any development or class of development specified in schedule 1 to the GPDO, subject to the limitations or conditions imposed on that development or class of development. Development contrary to any condition is not permitted. In practice, this means that development of a description in Schedule 1 can be undertaken without the need for a planning application to be sought and granted, but only provided that it meets all the conditions attached.

5. Every class in the GPDO begins with a description of the permitted development in bold type. This is set out in sub-paragraph (1) of the class number. Subsequent sub-paragraphs set out the circumstances, if any, in which the permitted development does not apply, and any relevant conditions.

6. There are a number of development types that are specifically excluded from the GPDO and which do not benefit from PDRs. Article 3 sets out that nothing in the GPDO permits development contrary to a condition imposed by a planning consent, including a consent deemed to be granted under PDRs. Article 3(4A) further establishes that permitted development rights associated with a building or use do not apply if that building or use is unlawful.

7. Other restrictions apply to certain developments, including:

- Development, other than development permitted by Parts 9, 11, 24 and Class 31 of Schedule 1, that requires or involves the formation, laying out or material widening of an access to an existing trunk or classified road or creates an obstruction to the view of any vehicular traffic;

- Laying or construction of a notifiable[1] pipeline, except where this is being done by a public gas transporter in accordance with Class 39 of Schedule 1;

- Demolition of a building except in certain circumstances; and,

- Where an Environmental Impact Assessment is required (again with certain exceptions. Separate guidance on PDRs and EIA is available.)

- Where a development; (a) is likely to have a significant effect on a European site (as defined in The Conservation (Natural Habitats &c.) Regulations 1994[2]), either alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site, permitted development rights do not apply unless approval is first obtained under these Regulations. (Separate guidance is available.)

Directions restricting permitted development

8. The GPDO contains provisions, set out in Article 4 of the GPDO, allowing planning authorities or Scottish Ministers to make Directions (commonly known as Article 4 Directions) removing PDR for particular types of development or classes of development. For example, Article 4 Directions limiting householder permitted development are often associated with conservation areas.

9. The process to be followed, particularly whether the approval of Scottish Ministers is required can vary depending on the content and scope of the Direction. Different procedures apply to Directions restricting development in respect of minerals under classes 54 (development relating to mineral explorations) or 56 development related to mining), which are covered by Article 7 of the GPDO.

Further guidance

10. Detailed guidance on individual classes of the GPDO is contained in the annexes to this Circular.

[1] 'Notifiable pipeline' means a pipeline used for dangerous liquids such as oil, ammonia, etc or gases such as natural gas. These have to be notified to the Health and Safety Executive prior to construction work.
[2] S.I. 1994/2716

ANNEX A

SUPERSEDED CIRCULARS

The following Circulars are revoked;

- 1/2008: The Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2008[3]

- 6/2007: The Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2007[4]

- 5/2001: The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 2001: Development by Telecommunications Code Systems Operators

- 2/1998: The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 1997: Water and Sewerage Authorities: Above Ground Sewerage Works

- 42/1996: The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 1996: Water and Sewerage Authorities and Liquefied Petroleum Gas Tanks

- 18/1996: The Town and Country Planning (General Permitted Development) (Scotland) Order 1996: Close Circuit Television (CCTV) Cameras

- 25/1992: The Town and Country Planning (General Permitted Development) (Scotland) Order 1992: Amendments to Correct Printing Errors

- 5/1992: The Town and Country Planning (General Permitted Development) (Scotland) Order 1992

- 8/1990: Changes to the General Development Order

- 9/1986: Changes to the General Development Order

- 18/1985: The Town and Country Planning (Scotland) Act 1972 – Development by Statutory Undertakers – Consultation with Planning Authorities

[3] Circular 1/2008 covered amendments to Class 72A which extended the temporary permitted development rights for housing birds in the event of a Bird Flu epidemic for a further 12 month period.
[4] Circular 6/2007 covered the creation of Class 72A of the GPDO which created temporary permitted development rights for housing birds in the event of a Bird Flu outbreak. The temporary PDR were put in place for 12 months.

ANNEX B

Development by Statutory Undertakers

1. The GPDO grants certain statutory undertakers (and in some cases their lessees) permitted development rights for a range of developments associated with their operational requirements. This reflects the specialised nature and operational necessity of much development by, or on behalf of, statutory undertakers.

2. There is a requirement for certain undertakings to give prior notification to a relevant planning authority and, if necessary, for the planning authority to give prior approval for such matters as the design and external appearance of buildings (for example; Classes 39 and 40, Part 13 of Schedule 1 of the GPDO). Planning authorities may consider any detrimental effect the development might have on the amenity of the neighbourhood; modifications which might be reasonably made to avoid or reduce any such effect; and whether the proposed development ought to, or could reasonably and without excessive cost, be sited elsewhere.

3. Where there is no statutory requirement to notify planning authorities, it may nevertheless be beneficial for informal arrangements to be established between planning authorities and statutory undertakers for advance notification of development proposals. There is potential for contact of this kind to be of mutual benefit. One benefit to be gained, for example, is that statutory undertakers themselves will be given timely warning of proposed development by other persons for which their services will be required and of proposed developments which might interfere with existing services provided by them. Statutory undertakers should consider informing planning authorities of proposals for permitted development which are likely to affect them significantly before the proposals are finalised.

4. In exceptional cases the authority may consider that normal planning control should apply and it will be open to them (except in the case of development under Part 11, Class 29 of the GPDO: Development under Local or Private Acts or Orders) to make and submit to the Scottish Ministers a Direction under Article 4 of the GPDO.

ANNEX C

Sewerage Undertakings

1. Class 43A covers sewerage development undertaken by a sewerage authority or by a person authorised under Section 3A of the Sewerage (Scotland) Act 1968. The class covers development both under and over ground.

2. Class 43A(2) requires planning authorities to be notified of the proposed works (both above and/or underground) and their location not less than 28 days prior to the commencement of works. Good practice would be for early liaison between the sewerage authority and the planning authority. Planning authorities should have information on environmentally sensitive sites, archaeological sites and proposals for development etc., which would be essential to the sewerage authority in planning their works.

3. Permitted development rights under Class 43A cover any development not above ground level which involves the provision, improvement, maintenance or repair of a sewer, outfall pipe or sludge main or any associated apparatus. Above ground, PDR allow certain works subject to the following restrictions:

Type of development	Restrictions
Control kiosk for a pump station or monitoring station	Dimensions of the kiosk do not exceed; 6 cubic metres total volume; 2 metres in height; 3 metres in width; and, 1 metre in depth.
Sewer pipe supported on pillars or truss above ground to maintain a gradient	1 metre in height
Raised manhole covers or sampling chamber	1 metre in height 1 metre in width
Vent pipe	3 metres in height
Concrete head wall for sewer discharge pipes	1.5 metres in height 1.5 metres in length 0.5 metres in depth

ANNEX D

Closed Circuit Television (CCTV) Cameras

1. Class 72, Part 25 of the GPDO extends permitted development rights to include the installation, alteration or replacement on buildings or other structures (such as walls, fences or poles) of CCTV cameras for security purposes, subject to specified limits on size, numbers and positioning. The class does not apply within conservation areas or national scenic areas. Nor does it give permitted development rights to poles or other structures specially constructed to hold cameras; these still require planning consent. Where CCTV cameras are being installed on a listed building or scheduled monument, they will continue to be subject to listed building consent and scheduled monument consent procedures as appropriate.

2. Up to 4 cameras are permitted on the same side of a building or structure and up to 16 cameras in total on any one building or structure, provided that they are at least 10 metres apart. Each camera must be sited so as to minimise its effect on the external appearance of the building or structure and cameras are to be removed as soon as is reasonably practicable after they are no longer required for security purposes. The field of vision of a camera should, as far as practicable, not extend beyond the boundaries of the land where it is sited or any adjoining land to which the public have access. Intrusion and inconvenience to neighbours should be limited as far as is practicable without compromising the camera's effectiveness for security purposes.

ANNEX E

Agricultural and Forestry Buildings and Operations

1. Class 18 of the GPDO establishes permitted development rights (PDR) for agricultural buildings up to 465 square metres or 12 metres in height (reduced to 3 metres in height where the development is within 3 kilometres of the perimeter of an aerodrome). Larger buildings require an application for planning permission, thus ensuring that the effect on the landscape can be fully considered. PDR also do not apply if any part of the building is within 25 metres of a trunk or classified road.

2. Class 18 also provides for a "cordon sanitaire", which excludes permitted development for the construction, extension or use of buildings for housing pigs, poultry, rabbits or animals bred for their skin or fur or for the storage of slurry or sewage sludge within 400 metres of a "protected building". A "protected building", as defined in Class 18, is any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is apt; but does not include:

i. a building within the agricultural unit;
ii. a dwelling or other building on another agricultural unit which is used for or in connection with agriculture.

3. Planning authorities should exercise particular care when considering planning applications for houses and other new "protected buildings" within 400m of established livestock units to minimise the potential for future problems of nuisance.

4. For agricultural developments there is a requirement that the development is on agricultural land used for an agricultural purpose and at least 0.4 hectares in size. The provisions in Class 18 make it clear that separate parcels of land cannot be taken into account in calculating the existing threshold of 0.4 hectares, above which permitted development applies. An exception is made in the following areas:

> "Argyll and Bute District Council, Badenoch and Strathspey District Council, Caithness District Council, Inverness District Council, Lochaber District Council, Orkney Islands Council, Ross and Cromarty District Council, Shetland Islands Council, Skye and Lochalsh District Council, Sutherland District Council, and Western Isles Council."

5. In practice, this now relates to the planning authority areas of Orkney Islands, Shetland Islands and Western Isles Councils plus relevant parts of Argyll and Bute and Highland Council areas. In these areas, the 0.4 hectares may be calculated by adding together the areas of separate parcels of land.

6. Class 22 of the GPDO establishes similar PDR for forestry buildings. The restrictions differ somewhat; there is no restriction on the maximum size or height of the building other than a height restriction of 3 metres where the building is within 3 kilometres of an aerodrome. The development must be for forestry purposes on forestry land but there is no minimum area of land. The development must not be within 25 metres of a trunk or classified road. As forestry uses do not involve the keeping of livestock or storage of slurry, there is no ‘cordon sanitaire’ provision.

Prior Notification

7. Anyone who wants to carry out development in relation to agricultural and forestry buildings under the permitted development provisions is required to notify the planning authority - this is a condition of the planning permission granted under these provisions. If a developer fails to notify an authority the usual enforcement action for a breach of planning control would be open to the authority.

8. Where a development has been notified and the authority have given notice that prior approval of the authority is required, the development cannot proceed until that approval is given It is therefore in the developer's own interests to submit the details as soon as possible. If however the developer proceeds without submitting details or without, or in contravention of, the authority's approval the normal enforcement measures would again be available for use as the authority deem appropriate in the circumstances of any particular case.

9. Prior notification arrangements apply to:

a) the erection of new agricultural and forestry buildings; and
b) the "significant extension" or "significant alteration" of existing agricultural and forestry buildings which are permitted development under Classes 18 and 22 of Schedule 1 to the GPDO.

Prior notification arrangements also apply to agricultural and forestry private ways, which are the subject of a separate annex.

"Significant extension" and "significant alteration" mean any extension or alteration which would result in:

a) the cubic content of the original building being exceeded by more than 10%; or
b) the height of the building exceeding the height of the original building.

10. The arrangements mean that the planning permission granted under Classes 18 and 22 for agricultural and forestry buildings cannot be exercised unless the landowner or developer has notified the planning authority and allowed 28 days (from the date on which the planning authority receives the notification) for initial consideration of what is proposed. Planning authorities must decide whether to require full details of the proposed development to be submitted for their approval and ensure that the developer is informed of their decision within the 28 day period. If no request for details or indication that prior approval is required is received within the 28 day period, the developer may proceed to exercise his permitted development rights.

11. The prior notification procedure provides planning authorities with a means of regulating, where necessary, important aspects of new farm and forestry development for which full planning permission is not required by virtue of the GPDO. Provided all the GPDO requirements are met, the principle of whether the development should be permitted is not for consideration. The formal submission of details for approval should only be required in cases where the authority considers that a proposal is likely to have a significant impact on its surroundings. Many proposals notified to authorities under the GPDO will not have such an impact.

12. Long-term conservation objectives will often be served best by ensuring that farming and forestry are able to function successfully. Therefore, in operating the controls, planning authorities should always have full regard to the operational needs of the farming and forestry industries; to the need to avoid imposing any unnecessary or excessively costly requirements; and to the normal considerations of reasonableness. However, they will also need to consider the visual effect of the development on the landscape and the desirability of preserving ancient monuments and their settings, known archaeological sites, the settings of listed buildings, and sites of recognised or designated nature conservation value.

Efficient Handling of Notifications and Details Submitted for Approval

13. The Scottish Ministers attach great importance to the prompt and efficient handling of notifications and any subsequent submissions of details for approval under the provisions of the GPDO. Undue delays could have serious consequences for agricultural and forestry businesses, which are more dependent than most on seasonal and market considerations. The procedures adopted by authorities should be straightforward, simple, and easily understood. Delegation of decisions to officers will help to achieve prompt and efficient handling, and should be extended as far as possible. It is essential that authorities acknowledge receipt of each prior notification, giving the date on which it was received, so that the developer will know when the 28 day period begins. Where the authority does not propose to require the submission of details it should not merely wait for the 28 days to expire but should inform the developer as soon as possible, to avoid any uncertainty and possible delay. Where the authority does decide submission of details is required, it should write to the developer as soon as possible stating clearly and simply exactly what details are needed. Care should be taken not to request more information than is absolutely necessary.

14. There will often be scope for informal negotiations with the developer, as an alternative or preliminary to requiring a formal submission of details. If, as a result of discussions, the developer's original proposal is modified by agreement, he or she is not required to re-notify it formally to the authority in order to comply with the terms of the GPDO condition, but the authority should give its written approval to the modification to make it clear that the developer has authority to proceed with the modified proposals.

Records of Notifications

15. Although there is no statutory requirement to do so, planning authorities should keep records of such notifications.

ANNEX F

Guidance on prior notification and approval requirements in relation to agricultural and forestry private ways

Introduction

1. The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2014 (SSI 2014 No. 300) came into effect on 15th December 2014. The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ('the GPDO') [5] to require that, prior to the formation, or alteration, of agricultural or forestry private ways[6] the developer or landowner must apply to the relevant planning authority ('PA') for a decision on whether the prior approval of the PA is needed before development begins. This process is known as '*prior notification'*. The application must be accompanied by a description of the proposed development. The PA will then consider whether their prior approval is required. Existing permitted development rights for other forestry and agricultural operations are unaffected by these changes.

2. Separate arrangements apply to development relating to private ways for any other purposes, including sporting and recreational use. It is for the relevant PA to determine which planning procedures apply to any other private ways, however a full planning application would generally be required.

Background

3. Requiring planning applications in circumstances where the planning system can add little, or no, value imposes unnecessary costs and causes delays to development. Equally however, if permitted development rights are set too widely, there is a risk of inappropriate development taking place. Concerns have been expressed in recent years regarding the number and scale of private ways constructed, particularly but not exclusively, where these are located in sensitive upland areas. Landscape, visual and environmental impacts, flooding, drainage and erosion have all been identified as potential concerns

4. The introduction of the prior notification procedure is intended to balance these concerns by providing authorities with a means of regulating, where necessary, important aspects of agricultural and forestry development for which an application for full planning permission is not required by virtue of the the GPDO. Prior notification is therefore an important tool in preventing inappropriate construction of private ways. However, provided all other relevant GPDO requirements, including the necessity for, and use of, the track for agricultural or forestry purposes, are met, the principle of whether the development should be permitted need not be considered since this has already been established.

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[5] The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) (SI 1992 No.223) .

[6] These private ways are commonly referred to as tracks or hill tracks, although the legislation applies to all agricultural and forestry tracks regardless of location or elevation.

5. Long-term effective management of the landscape will often be served best by ensuring that farming and forestry are able to function successfully. Therefore, in operating these controls, a PA should always have full regard to the operational needs of the farming and forestry industries and to the normal considerations of reasonableness. However, they will also need to consider issues such as; the visual effect of the development on the landscape, flood risk, the impact on local amenity and environmental impacts to soils and the water environment, including wetlands.

6. Finally, there are opportunities for alignment of planning procedures with other relevant consenting regimes. For forestry private ways, for example, the applicant may decide to align their prior notification application with the forestry approval procedures administered by Forestry Commission Scotland (FCS). Further information on the alignment of forestry and planning procedures is provided in paragraphs 32-35 of this Annex.

The definition of a private way

7. A private way is defined in the GPDO (Article 2(1)) as meaning a road or footpath which is not maintainable at the public expense. 'Road' in this instance is further defined as having the meaning set out in section 151 of the Roads (Scotland) Act 1984. The definition of a road is;

'any way (other than a waterway) over which there is a public right of passage (by whatever means) and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof'.

The Town and Country Planning (Scotland) Act 1997 (as amended) defines footpath as having the meaning set out in section 47 of the Countryside (Scotland) Act 1967. The definition is;

'a way over which the public have the following, but no other, rights of way, that is to say, a right of way on foot with or without a right of way on pedal cycles.'

8. It should also be noted, for clarity, that although private ways are commonly referred to as 'tracks' or 'hilltracks', these terms are not used in either Class 18 or 22 of the GPDO and have no definition in planning terms.

Permitted Development Rights for agricultural and forestry private ways

9. Permitted Development Rights (PDR) for agricultural private ways are set out in Class 18 of the GPDO. These PDR are granted subject to certain criteria and conditions. In summary these are:

- The private way must be on agricultural land,[7] comprised in an agricultural unit;
- The area of agricultural land must be at least 0.4 hectares;[8]
- It must be necessary for an agricultural use or purpose which is being carried out on that land;
- Schedule 1 development under the EIA Regulations[9] is not permitted development. Schedule 2 development does not constitute permitted development unless the planning authority has adopted a screening opinion or the Scottish Ministers issued a screening direction to the effect that EIA is not required;
- No part of the development can be within 25m of the metalled portion of a trunk or classified road;
- Before construction or alteration of a private way, prior notification must be given to the relevant planning authority; and,
- The development must be carried out in accordance either with the details provided in the prior notification, **or** where prior approval has been issued in accordance with the details and requirements of that prior approval.
- The development must be completed within 3 years of the date on which prior approval is given or, if prior approval is not required, the date on which the information required to be submitted with the prior approval was given to the planning authority.

10. PDR for forestry private ways are set out in Class 22 of the GPDO. PDR is granted subject to certain criteria and conditions. These are very similar to the criteria and conditions that apply to agricultural private ways, although there is no minimum area of land required. Different EIA regulations and procedures apply; where EIA is required under Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999[10] the development remains permitted development (i.e. a planning application is not required, but the prior notification and approval processes will still be followed). Consent may be required under those Regulations.

11. For completeness, the criteria and conditions that apply in respect of permitted development rights to forestry private ways are:

- The private way must be on land used for forestry purposes;
- It must be necessary for a forestry use or purpose (which includes afforestation) which is being carried out on that land;

[7] Agricultural land is defined for this purpose as land that is in use for agriculture and which is so used for the purposes of a trade or business. Gardens are specifically excluded.
[8] The area of 0.4 hectares must be one piece of land except in certain planning authority areas (Argyll & Bute, Highland, Orkney, Shetland and the Western Isles) where it can be calculated by adding together the area of separate parcels of land.
[9] The Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 2011
[10] S.S.I. 1999/43

- No part of the development can be within 25m of the metalled portion of a trunk or classified road;
- Before construction or alteration, prior notification must be given to the relevant planning authority; and,
- The development must be carried out in accordance either with the details provided in the prior notification, **or** where prior approval has been issued in accordance with the details and requirements of that prior approval;
- The development must be completed within 3 years of the date on which prior approval is given or, if prior approval is not required, the date on which the information required to be submitted with the prior approval was given to the planning authority.

12. Additional restrictions may also apply depending on the location of the private way;

- If the developer is proposing to construct a private way for vehicular use (i.e. a road rather than a footpath) and any part of the development falls within a National Scenic Area[11], permitted development rights do not apply (except for forestry tracks which are part of an approved afforestation scheme);
- Where a development; (a) is likely to have a significant effect on a European site (as defined in The Conservation (Natural Habitats &c.) Regulations 1994[12]), either alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site, permitted development rights do not apply unless approval is first obtained under the 1994 Regulations.
- Permitted development rights may be restricted or removed by conditions attached to a planning consent or by an Article 4 Direction.

13. It should be noted that, in the case of forestry development, there are PDR for 'borrow pits' to be formed on land held or occupied in connection with the forestry land for the purposes of obtaining materials to form the private way. Essentially, this means no further approval is required for operations to obtain the materials required for the work. This applies only to the extraction of materials for forming a private way and not to the extraction of materials for any other operations or works.

14. Private ways for other uses do not meet the criteria for permitted development rights under Classes 18 and 22 of the GPDO. It is for the relevant PA to determine which planning procedures apply to any other private ways, however a full planning application would generally be required.

[11] The Town and Country Planning (Restriction of Permitted Development) (National Scenic Areas) (Scotland) Direction 1987
[12] S.I. 1994/2716

Prior notification and approval for construction or alteration of agricultural or forestry private ways

15. Prior notification and approval is required when a person intends to exercise their permitted development rights to construct or alter a private way for agricultural or forestry uses.

16. Both Classes 18 and 22 of the GPDO set out rights for the 'formation, alteration or maintenance' of private ways, however prior notification and approval procedures are only required for the 'formation or alteration' of a private way. Prior notification is not required for 'maintenance' of agricultural or forestry private ways.

17. The distinction between 'alteration' and 'maintenance' may sometimes be difficult to determine. 'Maintenance' work could include routine repairs to private ways such as filling potholes or clearing drainage channels or replacing culverts in line with recommendations and guidance by SEPA to comply with good practice. Work such as resurfacing to provide a materially different road surface (for example replacing loose gravel with tarmacadam), or to widen or extend a track, would generally be considered an 'alteration'.

18. Developers and/or landowners are strongly advised to check with the relevant PA where they are unsure whether any proposed development is 'maintenance' or 'alteration' of a private way. Planning authorities should consider setting out in guidance what they consider to be covered by the respective terms.

Requirement to comply with conditions and restrictions of Permitted Development Rights.

In order to benefit from PDR a person must comply with all the requirements of the relevant class as set out in the GPDO, otherwise the PDR do not apply. This means that where prior notification and approval is required a developer or landowner:

- must submit a prior notification before starting construction or alteration of a private way;
- must not start construction or alteration before the prior notification is determined, the 28 day period expires or, where appropriate, prior approval is received; and,
- must construct the private way in accordance with the details of the route, design and method of construction supplied in the prior notification or, where appropriate, as detailed in the prior approval.

The development must of course comply with all the other criteria and conditions that apply as set out above.

The fact that a private way may benefit from PDR does not remove any requirements to comply with other legislation. For example; any engineering works in the vicinity of the water environment will need to comply with the Water Environment (Controlled Activities) Scotland Regulations 2011. Similarly, any waste material will need to be managed in accordance with the Waste Management Licensing (Scotland) Regulations 2011.

Prior notification Application Process

19. Before starting development, the developer or their agent is required to provide the PA with a written description of the development, including details of the design and manner of construction, a plan showing the route of the private way and details of the materials to be used. The PA will then consider whether the development meets the criteria for PDR. If the criteria are not met, the PA should inform the developer that the prior notification application cannot be considered and that a full planning application is required.

20. Where the PA agrees that the development benefits from PDR it should next consider whether prior approval is required. The PA must give notice to the applicant within 28 days following the date on which the application was received by the PA that either;

- Prior approval is not required and the development can proceed in accordance with the details submitted; or,
- That prior approval is required.

21. Where the PA consider that the development benefits from PDR and are also content with the details of the development, they should inform the applicant that prior approval is not required. The applicant can then proceed with the development in accordance with the details submitted in the prior notification.

22. Alternatively, if the PA considers that there are insufficient details or that alterations to the details submitted may be required, they should inform the applicant that an application for prior approval is needed. Planning authorities should also provide reasons for their opinion, and should set out any additional information they require the applicant to submit.

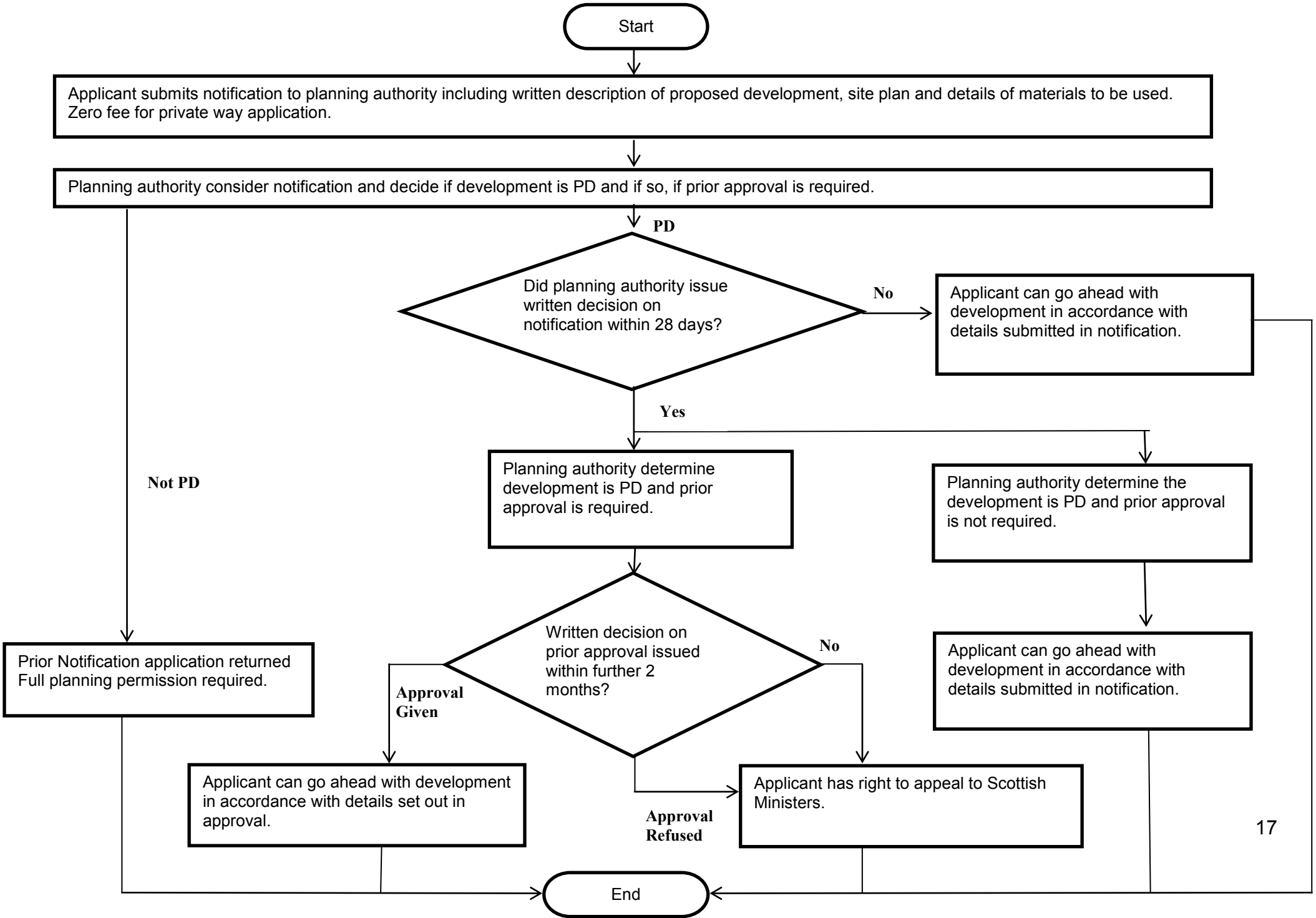
Prior approval

23. Prior approval allows the PA to consider the proposed design and manner of construction of the private way, the details of the materials to be used and the route, and to request any amendments they consider necessary to these details in the context of its setting. Where amendments are considered necessary it is expected that the planning authority will require that the private way is constructed or altered in accordance with the amended details that they approve. For forestry private ways, as a matter of good practice the PA should consider consulting FCS and take any comments or views expressed by FCS into account.

24. Provided all other relevant GPDO requirements, including the necessity for, and use of, the track for agricultural or forestry purposes, are met, the principle of whether the development should be permitted need not be considered since this has already been established Subject to the normal criteria governing the use of conditions in planning permission, conditions may be imposed when prior approval is given. Prior approval may also be refused where there are clear reasons for doing so. There is a right of appeal against refusal of prior approval and against any conditions attached to a prior approval.

Time limit for consideration of a prior approval
As is the case with planning applications, there is no set time limit for a PA to issue a prior approval decision. If prior approval is not issued within 2 months then the applicant has the option, if they wish, to appeal to Scottish Ministers on the grounds of non-determination.

25. Figure 1 (overleaf) sets out the process for prior notification and approval.


Start
Applicant submits notification to planning authority including written description of proposed development, site plan and details of materials to be used. Zero fee for private way application.
Planning authority consider notification and decide if development is PD and if so, if prior approval is required.
PD
Did planning authority issue written decision on notification within 28 days?
No
Applicant can go ahead with development in accordance with details submitted in notification.
Yes
Not PD
Planning authority determine development is PD and prior approval is required.
Planning authority determine the development is PD and prior approval is not required.
Written decision on prior approval issued within further 2 months?
No
Approval Given
Prior Notification application returned Full planning permission required.
Applicant can go ahead with development in accordance with details submitted in notification.
Applicant can go ahead with development in accordance with details set out in approval.
Approval Refused
Applicant has right to appeal to Scottish Ministers.
End

Development to be carried out within 3 years

26. The proposed development has to be carried out within 3 years of the date on which approval is given. Where the planning authority does not give notification as to whether prior approval is required or not within the 28 day period following submission of the application then the development must be carried out within 3 years from the date the prior notification application was received.

Efficient Handling of Notifications and Details Submitted for Approval

27. As with all planning applications, the Scottish Ministers attach great importance to the prompt and efficient handling of notifications and any subsequent submissions of details for approval under the provisions of the GPDO. Undue delays could have serious consequences for agricultural and forestry businesses, which are more dependent than most on seasonal and market considerations. The procedures adopted by authorities should therefore be straightforward, simple, and easily understood.

28. Planning authorities should consider setting out in guidance the information they consider they require to make a decision, taking into account local circumstances. Equally, it is in the developers interest to prepare sufficiently detailed information to support the prior notification.

29. Delegation of decisions to officers will help to achieve prompt and efficient handling, and should be extended as far as possible. It is essential that authorities acknowledge receipt of each prior notification, giving the date on which it was validated[1], so that the developer will know when the 28 day period begins.

30. Where the authority does not require the submission of details for prior approval, it should not wait for the 28 days to expire but should inform the developer as soon as possible, without delay. Where the authority does decide submission of details is required, it should write to the developer as soon as possible stating clearly and precisely which details are needed. Care should be taken not to request more information than is necessary to determine the prior approval.

31. There will often be scope for discussions with the developer regarding any concerns the planning authority might have, either before the prior notification is submitted or during the 28 day period for consideration. If, as a result of these discussions, the developer amends their proposals this may avoid the need for prior approval to be required where agreement on the amended proposals can be reached within the 28 day period.

[1] A prior notification is taken to be valid on the date that the last piece of information required to accompany the prior notification is received by the planning authority. This may not necessarily be the same date as that on which the information was sent to the planning authority; for example, if the information was sent by post.

Alignment with existing procedures

32. There are opportunities for aligning planning procedures with other relevant consenting regimes. This is especially true in relation to forestry private ways where there are existing and long-established statutory consultation procedures for forestry projects, including tracks, as well as the Environmental Impact (Forestry) (Scotland) Regulations 1999 which cover amongst other things, forestry roads, tracks, quarries and borrow-pits.

33. Accordingly, where an applicant so wishes, prior notification for forestry private ways should be considered by the relevant PA alongside FCS decisions on EIA determinations or consent, as well as approval of Forest Plans, Felling Licences or Woodland Creation applications.

34. In most circumstances, it is expected that where the PA are satisfied that sufficient information is supplied through the aligned notification process, further information would not be required and the need for prior approval would be minimised.

35. For those applications where the PA is of the view that prior approval may be required, consultation between the PA, FCS and the applicant at an early stage (ie prior to the formal decision as to whether or not prior approval is necessary) should be considered. Screening and scoping of substantial forestry projects is routine between applicants, FCS and other statutory consultees, including planning authorities, and, as such, provides a good opportunity for initial discussion.

Alignment of planning and forestry procedures

For forestry private ways, the applicant may decide to align their prior notification application with the forestry approval procedures administered by Forestry Commission Scotland (FCS) for Forest Plans, felling licences, EIA Forestry determinations, and woodland creation projects. Further information along with more detailed guidance on how this can be undertaken can be obtained from FCS.

Aligning processes provides opportunity for more efficient handling of applications and reduces the need for duplication of information. Planning authorities may use the forestry approval procedures, on which they are routinely consulted by FCS, to better understand the forestry context and purpose of the activities proposed, as well as the standards required for FCS approval. In this way authorities can seek to minimise the need for further formal scrutiny and prior approval processes.

Aligning processes does not however remove the need to comply with the legal requirements to submit a prior notification and to obtain either prior approval, or the planning authority's agreement that prior approval is not required.

Records of Notifications

36. Although there is no statutory requirement to do so, planning authorities should keep records of prior notifications. In the interests of transparency and public awareness, planning authorities may wish to publish details of prior notifications and approvals on-line in the planning application register and other available lists.

Enforcement

37. The prior notification arrangements are intended to fit in with the existing enforcement provisions in the Town and Country Planning (Scotland) Act 1997. Circular 10/2009 provides guidance on enforcement procedures and practice.

38. Anyone wishing to carry out development under the permitted development provisions is required to notify the planning authority - this is a condition of the planning permission deemed to be granted under these provisions. If a developer fails to notify an authority the usual enforcement action for a breach of planning control would be open to that authority.

39. Where a development has been notified and the authority has requested further details and advised that prior approval is required, the development may not proceed until the details have been submitted and approved. It is therefore in the developer's own interests to submit the details as soon as possible. If however the developer proceeds without submitting details or without, or in contravention of, the authority's approval, the normal enforcement measures would again be available for use as the authority deem appropriate in the circumstances of any particular case.

40. If a private way, or an alteration to an existing private way, is proposed as being for an agricultural or forestry use, but this turns out not to be the case, then enforcement action may likewise be taken.

ANNEX G

Development By Electronic Communications Code Operators

Introduction

1. Class 67 of the GPDO sets out PDR for certain works carried out by or on behalf of electronic communications code operators for the purposes of the operator's electronic communications network or carried out in accordance with the electronic communications code[1].

Context

2. Planning has an important role to play in strengthening digital communications capacity and coverage across Scotland and PDR for Class 67 have been substantially amended in recent years. The purpose of these changes has been to support a range of existing communication services and facilitate new services to help Scotland become a world class digital economy.

Permitted development under Class 67

3. Class 67(1) sets out PDR for development by or on behalf of an electronic communications code operator, for the purpose of the operator's electronic communication network in, on, over or under land controlled by that operator or in accordance with the electronic communications code.

Limitation on PDR in designated areas

4. There are a number of limitations on PDR which apply in certain areas, and these are set out in paragraph (2)(a) of Class 67. In general, PDR under Class 67 will not apply in:

- national scenic areas,
- National Parks,
- Natural Heritage Areas,
- conservation areas,
- historic gardens or designed landscapes,
- sites of special scientific interest,
- historic battlefields,
- European Sites (including Special Protection Areas and Special Areas of Conservation),
- Category A listed buildings, and their settings, and
- scheduled monuments, and their settings.

[1] "electronic communications code" means the code set out in Schedule 2 to the Telecommunications Act 1984 (c.12), as amended.

5. There are however a number of circumstances in which development under this class may be permitted in the above areas. These include:[3]

- development carried out in an emergency,
- development that would result in no more than 2 small antennas on a building,
- development that involves the installation of new telegraph poles, the replacement or alteration of existing telegraph poles, the installation of new overhead lines on telegraph poles, or development that is ancillary to such development,
- development (subject to limitations set out in paragraphs 11 to 16 below) that involves the replacement or alteration of an existing ground based mast or the installation of additional equipment on an existing ground based mast, or development which is ancillary to such development. Further information on what constitutes 'ancillary' development in this context is provided in paragraphs 6 to 9 below.

Ancillary development related to telegraph poles and ground based masts

6. As noted above, paragraph (2)(a)(iii) and (iv) of Class 67 sets out that PDR for certain works associated with telegraph poles and ground based masts, including development which 'is ancillary to such development', apply in the areas set out in paragraph (2)(a).

7. The Scottish Government considers that, in respect of Class 67, ancillary development means the installation of equipment providing necessary support to the primary activities or operation of an electronic communications code system. This includes, but is not necessarily restricted to, such items as equipment cabinets[4], other ground based apparatus and associated cabling.

8. It may be necessary to have such ancillary equipment in place either prior to the installation, replacement or alteration of telegraph poles or ground based masts under PDR, or subsequent to such development.

9. Planning authorities should bear in mind that ancillary development does not necessarily need to be adjacent, or visually linked, to a telegraph pole or existing ground based mast to serve an ancillary purpose. Planning authorities should take into account any supporting evidence that the proposed development is ancillary to development involving telegraph poles or ground based masts, and therefore that the PDR under Class 67 are applicable. Operators are also encouraged to provide such evidence when giving notice, where required under Class 67(3), to the planning authority of their intention to start development.

[3] Listed building consent may still be required where appropriate.
[4] For example; cabinets to house Digital Subscriber Line Access Multiplexer (DSLAM's) and Primary Cross Connection Points (PCP's)

Telegraph poles

10. PDR apply to various development related to telegraph poles, including the installation of new telegraph poles, the replacement or alteration of existing poles, the installation of new overhead lines on such poles and work which is ancillary to such development. These PDR apply in the areas set out in Class 67(2)(a)

Ground based masts

11. The construction or installation of a new ground based mast[5] does not benefit from PDR and requires a planning application (Class 67(2)(b) refers).

12. PDR do however apply to the replacement or alteration of an existing mast or to the installation of apparatus on such a mast, subject to limitations on the increase of the overall height and/or width of the structure (i.e the mast and any antenna or other apparatus attached to it) and the repositioning of the mast being no more than 4 metres from the original location.

13. Under Class 67(2)(a)(iv) PDR for the replacement or alteration of an existing mast[6], or work ancillary to such development, apply to existing masts in the areas specified in Class 67(2)(a).

14. Where the structure has a height of 50 metres or less, the height of the structure can be increased by up to 5 metres. Where the structure is over 50 metres in height, an increase of up to 15% of the original height of the structure is permitted.

15. The overall width of the structure can be increased by up to either:

- one metre; or
- one third of the original width of the structure,

whichever is the greater.

16. The width of the structure is measured horizontally at the widest point of the original structure. When calculating this point it should be borne in mind that the width of the original structure includes that of any apparatus attached to the original mast (as per the definition of 'existing mast' in the GPDO). The widest part of the structure is not therefore necessarily the base, and may be at some distance above ground level.

Ground based equipment housing

17. Paragraph (2)(d) and (e) of Class 67 places limitations on PDR for development involving ground based equipment housing. The PDR allow the installation or construction of ground based equipment housing provided it does not exceed 3 metres in height or 90 cubic metres in volume. PDR further allow the

[5] "ground based mast" means a mast constructed on the ground either directly or on a plinth or other structure constructed for the purpose of supporting the mast.
[6] "existing mast" means a mast with attached electronic communications apparatus.

replacement or alteration of such equipment housing provided that the replacement or alteration either:

- does not exceed these dimensions; or
- if the equipment housing being replaced or altered exceeds 3 metres in height or 90 cubic metres in volume, the replacement or alteration is no greater in height or volume than the equipment housing it replaces or alters.

Ground based apparatus

18. Paragraph (2)(n), (o) and (p) of Class 67 places limitations on PDR for development involving cover the installation or replacement of apparatus. Paragraph 67(2)(n) sets out that for ground based apparatus, with exceptions[7], the ground or base area of the structure must not exceed 1.5 square metres.

19. Sub paragraphs (o) and (p) deal with the height of apparatus. Sub paragraph (o) limits the height permitted for apparatus installed under PDR to 15 metres above ground level. Where existing apparatus is being altered or replaced sub paragraph (p) limits the height of the altered or replacement apparatus to the height of the existing apparatus or 15 metres above ground level, whichever is the greater (apparatus mounted on ground based masts is covered by Class 67(2)(c)).

Development on a building or other structure

20. Developers should be aware of the condition set out in paragraph (5) of Class 67 that any apparatus installed, altered or replaced, on a building under the PDR granted by paragraph (1)(a) and any equipment housing ancillary development carried out under the PDR granted by paragraph (1)(c) shall, as far as is practicable, be sited so as to minimise its effect on the external appearance of the building. This includes 'small antennas'.

Electronic communications apparatus on a building or other structure (other than a ground based mast)

21. Paragraph (2)(f) and (g) of Class 67 sets out limitations on PDR for the installation of apparatus on a building or other structure, other than a ground based mast. The limitations do not apply to the installation of equipment housing. While equipment housing and antennas fall within the definition of electronic communications apparatus, additional controls apply to them elsewhere under Class 67(2) (see the sections on 'equipment housing', 'small antennas' and 'antennas on buildings and other structures').

[7] The exceptions are;
(i) a public call box,
(ii) any apparatus which does not project above the surface of the ground;
(iii) equipment housing; or,
(iv) any kind of antenna.

22. Paragraph (2)(f) permits the installation of apparatus subject to limitations on dimensions (which do not apply to the installation of equipment housing) so that the apparatus must not exceed;

- 2 metres measured horizontally, or
- 6 metres in height, including any equipment housing on which the apparatus is mounted.

23. Paragraph (2)(g)(i) and (ii) of Class 67 deals with the alteration or replacement on buildings or other structures (other than ground based masts) of apparatus, excluding equipment housing. The effect of Class 67(2)(g) is to allow the alteration or replacement of such apparatus subject to limitations on dimensions. The replacement or altered apparatus (including any equipment housing on which it is mounted) must not exceed:

- 6 metres in height or, if greater, the current height of the apparatus being altered or replaced, or
- 2 metres measured horizontally or, if greater, the current horizontal measurement of the apparatus being altered or replaced.

Equipment housing on a building

24. Paragraph 67(2)(i) and (j) of Class 67 cover, respectively, the construction or installation and replacement or alteration of equipment housing on a building. The provisions of these subparagraphs are very similar to those of Class 67(2)(d) and (e) relating to ground based equipment housing with the only variation being in respect of the volume of the equipment housing. The PDR allow the installation or construction of equipment housing on a building provided it does not exceed 3 metres in height or 30 cubic metres in volume. PDR further allow the replacement or alteration of equipment housing on a building provided that the replacement or alteration either:

- does not exceed these dimensions, or
- if the equipment housing being replaced or altered exceeds 3 metres in height or 30 cubic metres in volume, the replacement or alteration is no greater in height or volume than the equipment housing it replaces or alters.

Small antennas

25. Paragraph (2)(k) of Class 67 limits PDR for the installation of electronic communications apparatus on, or within the curtilage of, a dwellinghouse to 'small antennas'[8], permitting up to 2 small antenna to be present. The antenna must not be

[8] The definition of 'small antenna' was amended by the 2014 Amendment Order and means an antenna which-
(a) operates on a point to multi-point or area basis in connection with an electronic communications service;
(b) may be variously referred to as a femtocell, picocell, metrocell or microcell antenna;
(c) does not, in any two dimensional measurement, have a surface area exceeding 5,000 square centimetres; and
(d) does not have a volume exceeding 50,000 cubic centimetres,
And any calculation for the purposes of heads (c) and (d) is to include any power supply unit or casing, but excludes any mounting, fixing, bracket or other support structure.

installed so that they would protrude above the highest part of the roof of the dwellinghouse, and in specified areas, cannot be installed on any part of a dwellinghouse facing a road.

26. Paragraph (2)(l) of Class 67 sets out controls on 'small antennas' installed on, or within the curtilage of, dwellinghouses which are category A listed buildings. In particular 'small antennas' are not permitted to be installed on any part of the dwellinghouse or within any part of its curtilage which faces onto a road.

27. Paragraph (2)(m) of Class 67 covers 'small antennas' on buildings other than dwellinghouses or buildings within the curtilage of dwellinghouses. PDR allow the installation of up to 8 'small antennas' on such a building. However, the limitations set out in paragraph (2)(a) mean that within an area specified in paragraph (2)(a) or on a category A listed building or scheduled monument, the PDR are restricted to the installation of 2 'small antennas'. There is no limitation similar to that applied to dwellinghouses under Class 67(2)(k) and (l), meaning that the 2 'small antenna' can be installed on any part of the building, including any part facing a road.

28. The number of 'small antennas' installed on a building do not count towards calculating the number of antenna systems installed on the building (see paragraph 31 below)

Antenna systems on buildings and other structures

29. Paragraph (2)(q) and (r) of Class 67 sets out PDR in relation to 'antenna systems' on buildings and other structures. An antenna system is defined in the GPDO for the purposes of Class 67 as:
'a set of antennas installed on a building or structure and operated in accordance with the electronic communications code'.

30. Paragraph (2)(q) and (r) of Class 67 cover the installation, alteration or replacement of an antenna system on a building or other structure, excluding a ground based mast. Paragraph (2)(q) covers development located more than 15 metres above ground level and paragraph (2)(r) makes similar provision for development located fewer than 15 metres above ground level.

31. In practice this means that, for an antenna system located more than 15 metres above ground level, antennas up to 6 metres in height or 1.3 metres wide can be installed under PDR. For lower level development, i.e. an antenna system located fewer than 15 metres above ground level, antennas have to be smaller – not more than 3 metres in height or 0.9 metres wide - in order for PDR to apply. Regardless of the height above ground level the height of the antenna system and supporting apparatus cannot exceed 6 metres.

32. A total of no more than 4 antenna systems (other than small antennas) may be installed on a building or structure (other than a ground based mast) under Class 67.

Access tracks

33. Paragraph (2)(s) covers the construction of an access track of no more than 50 metres in length.

Notification and declaration requirements

34. Under paragraph (3) of Class 67, where development consists of the construction or installation of one or more antennas, or the installation or construction of equipment housing, PDR is subject to the condition that the developer is required to give notice to the relevant planning authority at least 28 days before the start of development. Where development is carried out in an emergency, the developer should give written notice to the planning authority as soon as possible after the emergency begins.

35. The notification should consist of a written description of the apparatus, including specifications such as purpose, dimensions, materials and colour, and a plan indicating its proposed location and layout.

36. This information is primarily intended to ensure planning authorities are aware of antenna installations in their area and potentially large developments such as equipment housing. Planning authorities may wish to provide comment to the operator on proposals notified in this way. There is no statutory requirement in Class 67 for such comments to be taken on board by an operator. An operator may however wish to consider any such comments from the planning authority with regard to compliance with the conditions and limitations associated with the PDR in Class 67. This includes the requirements of paragraph (5) that any antenna or supporting apparatus installed, altered or replaced on a building should be, as far as is practicable, sited to minimise its effect on the external appearance of the building.

37. Paragraph (4) of Class 67 sets out a further requirement where the development involves the construction or installation of one or more antennas. A declaration that the proposed equipment and installation is designed to be in full compliance with ICNIRP[9] public exposure guidelines on radiofrequency radiation[10] has to be submitted along with the notification required under paragraph (3). An example of the format of this declaration is given at the end of this annex.

Removal of equipment

38. Paragraph (6) of Class 67 sets out conditions dealing with the removal of telecommunications apparatus when it is redundant or after a specified period as appropriate.

[9] International Commission on Non-ionising Radiation Protection

[10] The radiofrequency public exposure guidelines of the International Commission on Non-Ionising Radiation Protection, as expressed in EU Council recommendation of 12 July 1999 (1999/519/EC) on the limitation of exposure of the general public to electromagnetic fields (0Hz to 300 GHz)

Work carried out in an emergency

39. Although there is no statutory definition of what would constitute emergency development under Class 67, the definition of "emergency works" given in the electronic communications code may be helpful as a general guide in the context of development by telecommunications code system operators. The definition is set out below. Whether a particular development constitutes emergency development will be determined on the facts of the individual case.

""emergency works", in relation to the operator or a relevant undertaker for the purposes of paragraph 23 below, means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause-

(a) danger to persons or property,

(b) the interruption of any service provided by the operator's network or, as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or

(c) substantial loss to the operator or, as the case may be, the undertaker,

and such other works as in all the circumstances it is reasonable to execute with those works".

Form of ICNIRP Declaration

Declaration of Conformity with ICNIRP Public Exposure Guidelines ("ICNIRP Declaration")
[Operator name]
[Operator address]
[Operator address]
[Operator address]
[Operator address]

Declares that the proposed equipment and installation as detailed in the attached planning application/notification under Class 67(3) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 at:
(Address)……
……
……
……
……..

is designed to be in full compliance with the requirements of the radiofrequency (RF) public exposure guidelines of the International Commission on Non-ionizing Radiation Protection (ICNIRP), as expressed in EU Council recommendation of 12 July 1999* "on the limitation of exposure of the general public to electromagnetic fields (0Hz to 300 GHz)".

* Reference: 1999/519/EC
Date …….
Signed…….
Name……..
Position……..

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