



# 2

2015

CONSOLIDATED CIRCULAR ON NON-DOMESTIC  
PERMITTED DEVELOPMENT RIGHTS

# ■ circular

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## REVISIONS TABLE

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### Revision 1 Changes 10/09/2015

Change 1.1	Contents page – insertion of new text
Change 1.2	Annex A – insertion of new bullet point – Circular 5/2001
Change 1.3	Annex F – paragraph 39 – addition of text in first sentence
Change 1.4	Insertion of Annex G

### Revision 2 Changes 29/03/2018

Change 2.1	Annex F – page 12, footnote 9 – reference to the environmental impact assessment legislation for Planning updated.
Change 2.2	Annex F – paragraph 10 and footnote 10 - references to environmental impact assessment legislation for Forestry updated.
Change 2.3	Annex F – paragraph 32 – reference to environmental impact assessment legislation for Forestry updated.
Change 2.4	Annex G – New version of annex to reflect amended legislation

The original version and revision 1.0 as published can be viewed in the supporting files section of the web page for this Circular: <https://beta.gov.scot/publications/planning-circulars-index/>

# **Scottish Planning Series**

## **PLANNING CIRCULAR 2/2015**

# **Consolidated Circular on Non-Domestic Permitted Development Rights**

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# **Consolidated Circular on Non-Domestic Permitted Development Rights**

## **Circular 2/2015**

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## 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<sup>1</sup> 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<sup>2</sup>), 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.

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<sup>1</sup> '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.

<sup>2</sup> 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<sup>3</sup>
- 6/2007: The Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2007<sup>4</sup>
- 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

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<sup>3</sup> 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.

<sup>4</sup> 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 15<sup>th</sup> December 2014. The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ('the GPDO')<sup>5</sup> to require that, prior to the formation, or alteration, of agricultural or forestry private ways<sup>6</sup> 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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<sup>5</sup> The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) (SI 1992 No.223) .

<sup>6</sup> 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,<sup>7</sup> comprised in an agricultural unit;
- The area of agricultural land must be at least 0.4 hectares;<sup>8</sup>
- 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<sup>9</sup> 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 the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>10</sup> 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;

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<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> The Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 2017, S.S.I. 2017/102

<sup>10</sup> S.S.I. 2017/113

- 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<sup>11</sup>, 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<sup>12</sup>), 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.

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<sup>11</sup> The Town and Country Planning (Restriction of Permitted Development) (National Scenic Areas) (Scotland) Direction 1987

<sup>12</sup> 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 tarmac), 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**

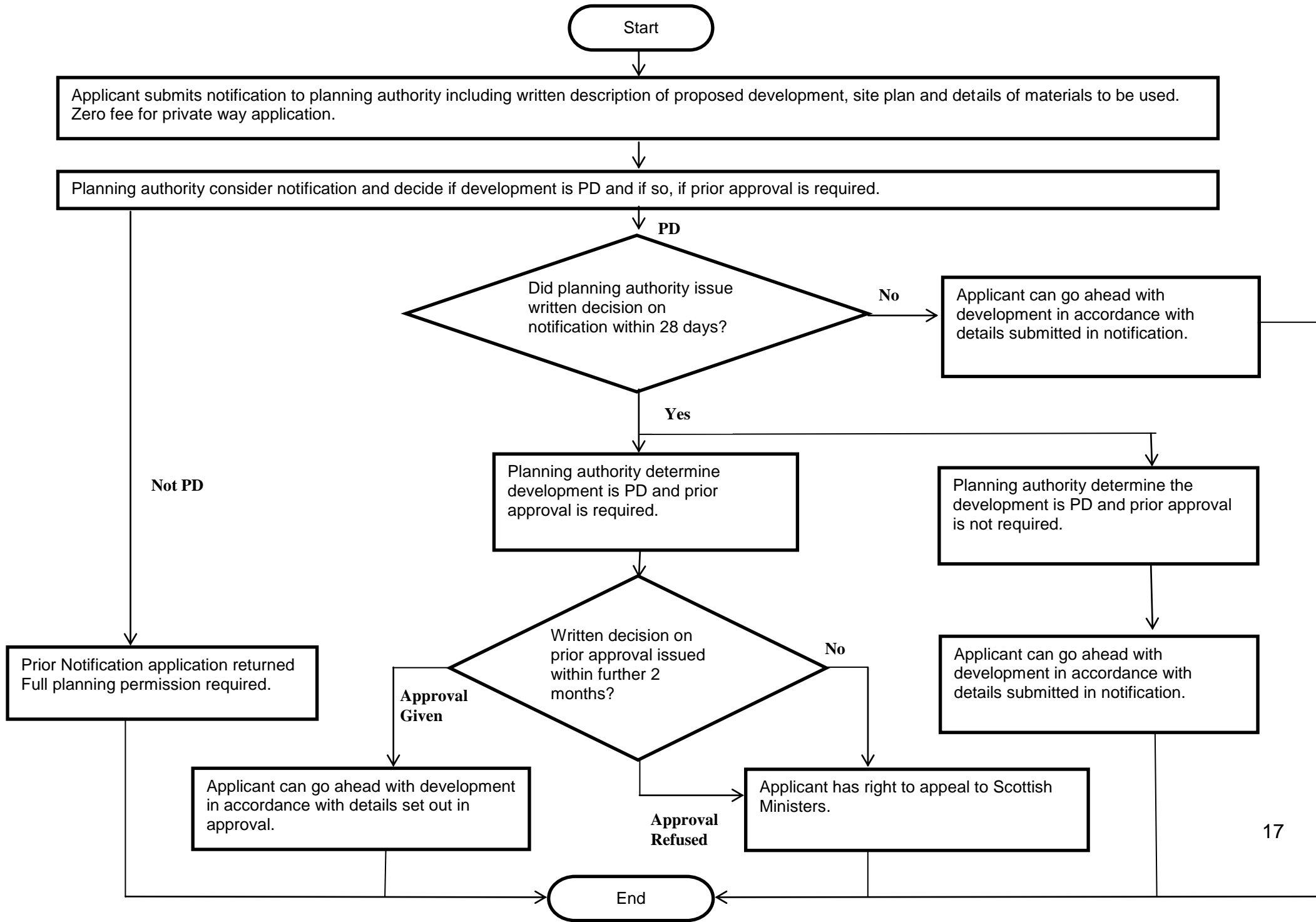
23. Prior approval allows the PA to consider the proposed design and manner of construction of the private way, the details of the materials to be used and the route, and to request any amendments they consider necessary to these details in the context of its setting. Where amendments are considered 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.



## **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<sup>1</sup>, 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.

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<sup>1</sup> 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 Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 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 permitted development rights (PDR) for certain works carried out by or on behalf of an electronic communications code operator for the purposes of the operator's electronic communications network or carried out in accordance with the electronic communications code (see paragraph 3 below).

#### **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, in line with Scottish Planning Policy. We also intend to publish good practice planning guidance on rollout of this infrastructure.

#### **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. The apparatus to which PDR refer is 'electronic communications apparatus' as defined in the Communications Act 2003<sup>1</sup>.

#### **Limitation on PDR in designated areas**

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

- national scenic areas,
- National Parks,
- 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),
- World Heritage Sites

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<sup>1</sup> The Communications Act 2003, see paragraph 2 in Schedule 3A and Section 405: <http://www.legislation.gov.uk/ukpga/2003/21/contents>. [Note: the text of Schedule 3A may need to be accessed through the drop down menu of 'outstanding changes' on this web version of the 2003 Act.]

- the settings<sup>2</sup> of Category A listed buildings, and
- the settings of scheduled monuments.

5. There are, however, a number of circumstances specified in Class 67(2) in which development under this class may be permitted in the above areas. These include:

- development carried out in an emergency,
- the installation of small cell systems on buildings or other structures (other than in conservation areas or on dwellinghouses and in their curtilage),
- the installation, in a conservation area, of up to two small antennas—
  - on a building or other structure, or
  - on a dwellinghouse and within its curtilage<sup>3</sup>,
- development consisting of a ‘link antenna’<sup>4</sup> within the compound of an existing ground based mast,
- 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 and requirements described in paragraphs 18 to 32 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 7 to 10 below,
- development consisting of the alteration or replacement of apparatus generally where the size and number of pieces of apparatus is the same or smaller and the location of apparatus is the same or substantially the same (unless specific restrictions in Class 67(2) apply, e.g. alterations to ground based masts).

6. Even with these PDR, compliance with other statutory requirements, including requirements to obtain a consent, may apply. For example, listed building consent, scheduled ancient monument consent, consent requirements under the Nature Conservation (Scotland) Act 2004<sup>5</sup> in relation to works affecting sites of special scientific interest (SSSI) and appropriate assessment and consent in relation to European Sites, under the Conservation (Natural Habitats &c.) Regulations 1994. See paragraphs 60 to 62 regarding SSSIs and European Sites.

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<sup>2</sup> Historic Environment Scotland have guidance on ‘Managing Change in the Historic Environment: Setting’ - <https://www.historicenvironment.scot/advice-and-support/planning-and-guidance/legislation-and-guidance/managing-change-in-the-historic-environment-guidance-notes/> (see also paragraph 53).

<sup>3</sup> The maximum of two small antennas applies across a dwellinghouse and its curtilage (e.g. not two on the dwellinghouse and two in the curtilage), and there are additional locational restrictions in this regard.

<sup>4</sup> A ‘link antenna’ consists of a satellite antenna on a separate structure (up to four metres in height) and ancillary equipment where this is all located within the compound of an existing ground based mast – where such a compound has been established by a grant of planning permission or prior approval.

<sup>5</sup> The Nature Conservation (Scotland) Act 2004 <http://www.legislation.gov.uk/asp/2004/6/contents>

### ***Ancillary development related to telegraph poles and ground based masts***

7. As noted above, Class 67(2)(e) and (g) provide that PDR for certain works associated with telegraph poles and ground based masts, including development which 'is ancillary to such development', apply in designated areas.

8. 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 housing<sup>6</sup>, other ground based apparatus and associated cabling.

9. 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.

10. 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(15), to the planning authority of their intention to start development.

### **Telegraph poles**

11. PDR apply to various development related to telegraph poles, namely 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 designated areas. See paragraphs 34 to 35 on general limits on ground based apparatus.

### **Ground based masts**

#### ***New Ground based masts***

12. Class 67(3) covers the PDR for the construction or installation of a new ground based mast<sup>7</sup> up to 25 metres in height above ground level and located outside designated areas. These PDR are subject to a prior notification/ prior approval procedure (paragraphs 66 to 96 below). While new ground based masts within the specified parameters in PDR should generally be acceptable in principle in planning terms, the planning authority can impose a requirement for prior approval with regard to the siting and/ or appearance of a specific proposal.

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<sup>6</sup> For example; cabinets to house Digital Subscriber Line Access Multiplexer (DSLAM's) and Primary Cross Connection Points (PCP's).

<sup>7</sup> A "ground based mast" means a mast constructed or installed either directly or on a plinth or other structure constructed or installed for the purpose of supporting the mast. "mast" means a structure erected by or on behalf of an electronic communications code operator for the support of one or more antennas and includes any mast, pole, tower or other similar structure.

13. In calculating the height of a mast in accordance with the PDR in Class 67(3), add together the height of the plinth or supporting structure, the mast itself and any apparatus (including antennas) on it contributing to the height and subtract from that total the height of the antenna to the extent that it protrudes above the top of the mast – i.e. it is not simply the height of the structure without the antennas on it.

14. The intention is to allow a new mast slightly above 25 metres in height where antennas protrude above the top of the mast element. This may require supporting rods that exceed the limit of 25 metres to attach such antennas. But to avoid allowing supporting rods which add excessively to the height of the new structure, these rods can only extend above the height of the mast element by, at most, the height of the antenna.

15. For example, with heights:

Plinth = 1 metre

Mast element = 24 metres

Antenna on the top of the mast = 1 metre

Supporting rod = 1 metre

i) If the supporting rod holds the antenna such that the bottom of the antenna is 1 m clear of the top of the mast element, the mast is not PD: overall height of the structure is  $1\text{m} + 24\text{m} + 1\text{m} + 1\text{m} = 27\text{m}$ . Subtracting the extent to which the antenna protrudes above the mast is  $27\text{m} - 1\text{m} = 26\text{m}$ .

ii) If the rod holds the antenna such that the bottom of the antenna is flush with the top of the mast element it is permitted development – i.e. in this case the supporting rod is not adding to the overall height of the structure, so the latter is  $1\text{m} + 24\text{m} + 1\text{m} = 26\text{m}$ . Subtracting the extent to which the antenna protrudes above the mast is  $26\text{m} - 1\text{m} = 25\text{m}$ .

16. Once a new ground based mast has been constructed or installed under PDR, the other PDR in relation to such masts will apply thereafter.

17. New ground based masts above the height limit or in a designated area would require an application for planning permission. The 25 metres limit under PDR does not mean new masts significantly above this height are unacceptable where an application for planning permission is required. Taller masts can improve coverage, reduce the need for more, smaller masts (e.g. due to wider coverage and allowing multiple operators to share) and can be the difference between service coverage being viable in a remote area and not. Also, in more rural locations, taller masts can address topographical challenges and the need for direct line of site transmission dishes to link to the wider network ('backhaul').

## ***Alteration and Replacement of Ground Based Masts***

18. Class 67(4) specifies the PDR for the replacement or alteration of an existing ground based mast or the installation of apparatus on such a mast. There are limitations on the increase of the overall height and/or width of the structure (i.e. the mast and any other apparatus – other than antennas - attached to it) and the repositioning/ replacement of the mast being no more than 6 metres from the original mast, i.e. the mast as first installed.

19. Class 67(19) subjects the PDR for the alteration or replacement of ground based masts (including the installation of apparatus on the mast) to a condition on minimising the visual and environmental impact as far as practicable (see paragraph 55 to 57).

20. Under Class 67(2)(g), these PDR for the replacement or alteration of an existing mast, or work ancillary to such development, apply in designated areas.

21. Where the existing mast has a height of 20 metres or less, it can be increased up to the height of the original mast plus 7 metres, up to a maximum of 25 metres.

22. Where the existing mast has a height of more than 20 metres but no more than 50 metres, it can be increased up to the height of the original mast plus 5 metres. Where the existing mast is over 50 metres in height, an increase up to the height of the original mast plus 15% of its heights is permitted development.

23. The height of the original mast, the existing mast and the resulting mast after any alteration or replacement is calculated by adding: the height of the mast; any apparatus (other than antennas) on it that adds to the height of the structure; and any plinth or other structure required for the purposes of supporting the mast. Here, it is the height of the overall structure without any antennas that matters. This is different from the calculation for new ground based masts installed under PDR – see paragraph 13.

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

- 1 metre; or
- one third of the width of the original mast,

whichever is the greater.

25. The width of the structure is measured horizontally at the widest point of the original structure (though this does not include any plinth or other structure required for the purposes of supporting the mast). When calculating this point it should be borne in mind that the width of the original structure includes any apparatus (other than antennas) attached to the original mast. The widest part of the structure is not therefore necessarily at the foot of the mast, and may be at some distance above ground level. The resulting structure, after alteration or replacement, is measured in the same way.

26. In effect, the limits on these PDR for altering masts do not include the antennas that may contribute to the height and width of the overall structure.

### ***Safeguarded Areas***

27. Safeguarding maps for planning authorities are issued by the Civil Aviation authority, the Secretary of State for Defence and the Met Office. These maps identify safeguarded areas around aerodromes, technical sites, meteorological technical sites and military explosive storage areas. Where an existing ground based mast is to be increased in height and/or replaced under PDR in a safeguarded area, under class 67(16) the developer must first notify the relevant body, which is:

- Where a safeguarding map has been issued by the CAA, the owner or operator of the aerodrome or technical sites identified on the map;
- Where a safeguarding map is issued by the Secretary of State for Defence, the Secretary of State for Defence; and
- Where the safeguarding map is issued by the Met Office, the Met Office.

28. Planning authorities can advise developers whether a site is within a safeguarded area and which body should be so notified.

29. In this case, the notice to the relevant body must include:

i) the date on which the notice is sent;

(ii) the name and address of the developer and, where an agent is acting on behalf of the developer, the name and address of that agent;

(iii) the postal address of the land to which the development relates or, if the land has no postal address, a description of the location of the land;

(iv) a description of the development to which the notice relates, including its siting, appearance and dimensions (including the height of any mast and the height of any apparatus attached to the mast to the extent that it would protrude above the highest part of the mast); and

(v) a grid reference (to at least 6 figures each of Eastings and Northings) and the elevation height of the site (to an accuracy of 0.25 metres above Ordnance Datum).

30. Such notice must be given at least 28 days before development is to commence. Where development is carried out in an emergency, notice must be given as soon as possible after the emergency arises.

31. It will be for the developer and the relevant body to resolve any issues arising for the potential impact of the exercise of these PDR.

32. Similar requirements apply to PDR for new ground based masts in safeguarded areas and link to the prior notification/ prior approval procedure (paragraphs 75 to 78).

## **Ground based equipment housing**

33. Class 67(5) and (6) place 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 replacement or alteration of such equipment housing provided that after the replacement or alteration either:

- the equipment housing does not exceed 3 metres in height or 90 cubic metres in volume; or
- if the equipment housing being replaced or altered exceeds either or both of the above limits, the equipment housing as replaced or altered is no greater in height or volume than the equipment housing it replaces or alters.

## **Other Ground based apparatus**

34. Class 67(7) places limitations on PDR for development involving the installation, alteration or replacement of ground based apparatus. Class 67(7)(a)(i) specifies that for ground based apparatus, with exceptions<sup>8</sup>, the ground or base area of the structure must not exceed 1.5 square metres. Where existing apparatus already exceeds this limit, it can be altered or replaced up to the existing ground or base area.

35. Class 67(7)(a)(ii) and (iii) deal with the height of apparatus. Class (7)(a)(ii) limits the height permitted for apparatus installed under PDR to 15 metres above ground level. Where existing apparatus is being altered or replaced Class 67(7)(a)(iii) 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. These limits do not apply to ground based masts (Class 67(3) and (4)) or ground based equipment housing (Class 67(5) and (6)).

## **Development on a building or other structure**

36. Developers should be aware of the condition set out in Class 67(18), that any apparatus installed, altered or replaced, on a building<sup>9</sup> (other than a ground based mast) under the PDR granted by Class 67(1)(a), and any development ancillary to equipment housing carried out under the PDR granted by Class 67(1)(c), shall, as far as is practicable, be sited so as to minimise its effect on the external appearance of the building (see paragraph 55). This includes 'small antennas' and 'small cell systems'.

37. In some instances the carrying out of works for the alteration of a building which affect only the interior of the building or do not materially affect its external appearance do not constitute development requiring planning permission. In the

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<sup>8</sup> The exceptions are; a public call box; any apparatus which does not project above the surface of the ground; equipment housing; any kind of antenna; or a ground based mast.

<sup>9</sup> 'Building' includes any structure other than plant or machinery or gate, wall, fence or other means of enclosure



event of any question of planning enforcement, it would be for the planning authority, in the first instance, to consider such a question in the circumstances of the case.

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

38. Class 67(10) sets out a general height limitation on PDR for the installation of apparatus on a building or other structure, other than a ground based mast. Equipment housing has its own specific height limit in this regard. Equipment housing and other apparatus also have other restrictions, detailed below, other than in relation to height.

39. Class 67(10)(a) permits the installation of apparatus subject to limitations on the height of the apparatus itself – namely up to either 10 metres or, in the case of alteration or replacement, up to the existing height of the apparatus, if greater than 10 metres.

40. Class 67(10)(b) deals with the extent to which the apparatus can protrude above the highest part of the building – namely 8 metres where the building is 15 metres or more in height and 6 metres where it is below 15 metres in height. Again, where the existing apparatus already protrudes beyond these limits, it can be altered or replaced up to the extent to which it currently protrudes above the highest part of the building

### ***Equipment housing on a building***

41. Class 67(8) and (9) cover, respectively, the construction or installation and replacement or alteration of equipment housing on a building. These provisions are very similar to those of Class 67(5) and (6) relating to ground based equipment housing, with the only difference being in respect of the volume of the equipment housing. The PDR allow the installation or construction of equipment housing on a building provided the housing 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 housing as replaced or altered either:

- does not exceed 3 metres in height or 30 cubic metres in volume, or
- if the equipment housing being replaced or altered exceeds either or both of the above limits, the housing as replaced or altered is no greater in height or volume than the equipment housing it replaces or alters.

### ***Small antennas and small cell systems***

42. Other than in conservation areas, and on dwellinghouses and in their curtilages, there are no limits on the installation of small antennas<sup>10</sup> or small cell systems<sup>11</sup> on buildings and other structures.

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<sup>10</sup> 'Small antenna' means an antenna which-  
(a) operates on a point to multi-point or area basis in connection with an electronic communications service;

43. Class 67(13) limits PDR for the installation of electronic communications apparatus on, or within the curtilage of, a dwellinghouse to small antennas, permitting up to 4 small antenna in total across the dwellinghouse and its curtilage. The antenna must not be installed so that they would protrude above the highest part of the roof of the dwellinghouse. In conservation areas the total number of small antennas on dwellinghouses and in their curtilage is two, and a further restriction that they are not located where they would front a road applies.

***Dish antennas and antenna systems on buildings and other structures (other than dwellinghouses and their curtilages)***

44. Class 67(11) and (12) set out PDR in relation to dish antennas and antenna systems on buildings and other structures (other than dwellinghouses and in their curtilages) and distinguish respectively between such apparatus located below a height of 15 metres and such apparatus located above that height. These restrictions do not apply to small antennas or small cell systems or to antennas installed on ground based masts.

45. When installing a dish antenna on a building or structure at a height below 15 metres, the maximum size of dish antenna that can be installed is 0.9 metres when measured in any dimension. PDR do not apply if the aggregate size of all the antennas which would be on the building or other structure (at whatever heights) would exceed 4.5 metres. When installing a dish antenna at a height above 15 metres, the size limits are 1.3 metres for individual antennas and 10 metres for the aggregate size (again, the aggregate of all dish antennas on the building or structure at whatever heights).

46. If existing dishes on a building or other structure exceed the above limits, they can be altered or replaced up to their existing size or aggregate size.

47. When installing an antenna system on a building or other structure at a height below 15m, PDR only apply if, as a result, there would be no more than 4 such systems on the building or structure at whatever heights. When installing an antenna system on a building or other structure at a height above 15m, the PDR only apply if, as a result, there would be no more than 5 such systems on the building or structure (at whatever heights). Again, if what already exists on the building or structure exceeds these limits, antenna systems can be altered or replaced up to the existing level. 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'.

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(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.

<sup>11</sup> 'Small cell system' means a small antenna and any apparatus which is ancillary to that antenna.

## **Access tracks**

48. Class 67(14) permits the construction of an access track of no more than 50 metres in length which is ancillary to equipment housing.

## **Conditions on Class 67 PDR**

### ***Notification and declaration requirements***

49. Under Class 67(15), where development consists of the construction or installation of one or more antennas or of equipment housing, or the alteration or replacement of a ground based mast, PDR is subject to the condition that the developer is required to give written notice to the relevant planning authority. This must be given at least 28 days before the start of development, unless development is carried out in an emergency, when the developer must give written notice to the planning authority as soon as possible after the emergency arises.

50. The notification must consist of a detailed description of the apparatus, and a plan indicating its proposed location. The description should include specifications such as purpose, dimensions, materials and colour, and the location plan should show the layout of the apparatus.

51. 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, but there is no statutory requirement in Class 67 for such comments to be taken on board by an operator. However, an operator may wish to consider comments from the planning authority when considering compliance with other conditions and limitations such as the conditions on minimising the impacts (see paragraphs 55 to 57), or when considering what constitutes the setting of a scheduled monument or category A listed building.

52. Class 67(15) 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<sup>12</sup> public exposure guidelines on radiofrequency radiation<sup>13</sup> has to be submitted along with the notification required under Class 67(15). An example of the format of this declaration is given at the end of this annex.

53. Other legislation also governs the activities of electronic communications code operators. The Electronic Communication Code (Conditions and Restrictions) Regulations 2003, include provisions for such operators to give advance notice of works to, for example, planning authorities and/or Scottish Natural Heritage in certain circumstances, and set out what such parties can do in response. Notifications should be clear about the legislation under which they are being made.

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<sup>12</sup> International Commission on Non-ionising Radiation Protection

<sup>13</sup> 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)

### ***Safeguarded Areas***

54. See the paragraphs of this annex regarding the alteration and replacement of ground based masts (paragraphs 27 to 32) or the installation of new ground based masts (paragraphs 75 to 78) in safeguarded areas under PDR and the requirements specified in conditions as regards notifying the relevant body.

### ***Minimising the impact of development under these PDR***

55. Class 67(18) and (19) contain conditions on minimising the impact of development carried out under PDR. Apparatus installed, constructed, altered or replaced under Class 67(1)(a) or development ancillary to equipment housing described in Class 67(1)(c) on a building (other than a ground based mast) must, as far as practicable, be sited to minimise the effect of the development on the appearance of the building.

56. Similarly permitted development consisting of the alteration or replacement of a ground based mast is subject to the condition that the visual and environmental impact of the development is minimised as far as is practicable.

57. 'As far as is practicable' can relate to a number of issues, such as: the technological requirements of the equipment; interference issues (e.g. the presence of trees or overhead power lines); the availability of alternative locations (e.g. site acquisition issues), the structural limitations of masts, the need for and availability of underground services.

### ***Removal of equipment***

58. Class 67(20) and (21) impose conditions requiring the removal of development carried out under these PDR. Any development carried out under Class 67 PDR in an emergency must be removed as soon as the need for the development ends, subject to a maximum of 18 months from development commencing. Where development is carried out under Class 67(1)(a) and (c) in the normal course of events, i.e. not in an emergency, then the development must be removed once it is no longer needed for electronic communications purposes.

59. In any event, when the development is removed, the land or building must be restored to its condition before development took place or to any other condition agreed upon in writing with the planning authority.

### ***The Conservation (Natural Habitats &c.) Regulations 1994***

60. PDR generally are subject to regulations 60 to 63 of the Conservation (Natural Habitats &c.) Regulations 1994 (The Habitats Regulations). In effect these add another condition to Class 67 PDR and others potentially requiring an appropriate assessment to be carried out and consent obtained from the planning authority in relevant cases adversely affecting European Sites i.e. not just development in a European Site.

61. This consent under the Habitats Regulations is in addition to any prior approval procedure in Class 67. Consequently, for example, even if prior approval is granted, is not required, or the planning authority does not issue a decision on prior approval within the 56 day period, development, in relevant cases, would not be authorised without the consent under the Habitats Regulations.

62. Most European Sites in Scotland are also sites of special scientific interest (SSSI). The Nature Conservation (Scotland) Act 2004 contains additional requirements as regards approval of works affecting a SSSI. These include requirements to obtain consent from SNH for any operation that is likely to damage the features of a SSSI, including those allowed under permitted development - unless this has been specifically approved by the local authority in accordance with requirements of the 2004 Act.

### ***Work carried out in an emergency***

63. 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 electronic code system operators. The electronic communications code is now in Schedule 3A of the Communications Act 2003<sup>14</sup>.

64. Class 67(1)(b) grants PDR for the temporary use of land in an emergency to station and operate moveable apparatus. 'Moveable' in this context does not necessarily mean the apparatus or other structure is not installed or attached in some way (e.g. it does not have to be on wheels) – the idea is it is not a permanent structure. PDR under Class 67(1)(a) and (c) can be used in an emergency, but the restrictions in Class 67(2) to (13) will apply.

65. There are exemptions from and specific provision in certain of the conditions where PDR under Class 67(1)(a), (b) or (c) is carried out in an emergency: there is no requirement for prior approval (see paragraph 70) and notices must be served as soon as possible after an emergency arises rather than a specified time period in advance of development (see paragraphs 30 and 49). Such emergency permitted development has separate requirements as regards the timescales for removal of the works (see paragraphs 58 and 59), and for Class 67(1)(b) PDR the conditions on limiting impacts do not apply (see paragraphs 55 to 59).

### ***Prior Notification/ Prior Approval – New Ground Based Masts***

66. The PDR for new ground based masts are subject to a condition in class 67(23)(b) that the developer must first apply to the planning authority for a determination as to whether its prior approval is required with regard to the siting and appearance of the development. The procedures in this regard under Class 67(22) and (23) differ from those for other classes of PDR. There are, for example, requirements for: advance notice to be served on any other owners and any

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<sup>14</sup> The Communications Act 2003: <http://www.legislation.gov.uk/ukpga/2003/21/contents> - Schedule 3A paragraph 51. [Note: the text of Schedule 3A may need to be accessed through the drop down menu of 'outstanding changes' on this web version of the 2003 Act.]

agricultural tenants of the land by the developer (class 67(22)(b)); for consultation (article 7ZC) and neighbour notification (article 7ZA) by the planning authority; a different period for the procedure (56 days for a decision on whether prior approval is required and within which such approval is to be granted or refused if prior approval is required - class 67(23)(d)); and a different fee applies here compared to other, similar procedures.

67. Another significant difference is that even where the planning authority respond that their prior approval is required, if no decision on whether or not to grant that prior approval is given within the 56 day period (or within any agreed extension - see below) the developer can proceed in accordance with the submitted details (class 67(23)(f)(ii)).

68. The planning authority and the developer can agree a longer period than the statutory 56 period within which decisions have to be made – Class 67(23)(d).

69. This procedure applies to (Class 67(23)(a)) the construction or installation of a ground based mast<sup>15</sup>, including the development associated with the construction or installation of the mast which would consist of the construction or installation of apparatus or be development ancillary to the construction, installation or use of equipment housing permitted under Class 67(1)(a) or (c). That is, all the permitted development that will be on the new mast site is to be included in the application.

70. This prior approval requirement does not apply to a ground based mast being installed under Class 67 in an emergency (i.e. temporarily) – Class 67(23)(a).

71. In the event an application for a determination is made for a ground based mast which does not comply with the Class 67 PDR, e.g. such as the height limits or restriction on such development in a designated area, then the application should be returned explaining why it is not being accepted.

#### *Pre-application Notices to Site Owners and Agricultural Tenants*

72. Prior to making an application for a determination as to whether the prior approval of the planning authority is required, the developer must send a notice to anyone other than the applicant who is the owner of the land on which the development would be located and any agricultural tenant of that land (class 67(22)(b)).

73. In the event that there are known to be owners or agricultural tenants, but the developer cannot identify them, despite having taken reasonable steps to do so, they should indicate in their application that this is the case, including a description of what steps they took (see paragraph 79(h)).<sup>16</sup>

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<sup>15</sup> Although 'link antenna' falls with the definition of 'ground based mast', the prior notification and prior approval procedure does not apply where a 'link antenna' is being installed in relation to an existing ground based mast. Any 'link antenna' would need to be included where it was part of a proposal for a new ground based mast.

<sup>16</sup> Unlike applications for planning permission, there is no requirement for planning authorities to publish notices in newspapers in such circumstances.

74. Class 67(22)(c) sets out the required content of the notice to any other site owners and agricultural tenants:

- (i) the date on which the notice is sent;
- (ii) the name and address of the developer and, where an agent is acting on behalf of the developer, the name and address of that agent;
- (iii) the postal address of the land to which the development relates or, if the land has no postal address, a description of the location of the land;
- (iv) a description of the development to which the notice relates, including its siting, appearance and dimensions (including the height of any mast and the height of any apparatus attached to the mast to the extent that it would protrude above the highest part of the mast); and
- (v) a statement that the developer is to apply to the planning authority in whose area the land to which the development relates would be located for a determination as to whether the prior approval of the authority will be required as to the siting and appearance of the development;
- (vi) the name and address of the planning authority to which the application referred to in head (v) is to be made;
- (vii) a statement that the application will be available for public inspection at the offices of the planning authority;
- (viii) a statement that written representations may be made to the planning authority with regard to the siting and appearance of the development; and
- (ix) information as to how representations may be made and the period within which they may be made, being a period of 21 days beginning on the day after the day on which the notice is sent.

*Pre-application Notices - Safeguarded Areas*

75. As indicated in paragraph 54 above, there are issues with mast related development in safeguarded areas. In such cases, before applying for a determination as to the need for prior approval, the developer must notify the relevant body for the safeguarded area (class 67(22)(d)).

76. The notice to the relevant body must include the information contained in Class 67(22)(c) for notices to owners – see paragraph 74 - and a grid reference (to at least 6 figures each of Eastings and Northings) and the elevation height of the site (to an accuracy of 0.25 metres above Ordnance Datum).

77. This gives the relevant body an opportunity to make any representations to the planning authority within the timescale for prior notification and prior approval.

78. In an emergency, while the prior approval procedure does not apply, the developer should still advise the relevant body that a ground based mast is being erected for a temporary period, supplying the information specified in Class 67(16)(b)(aa) – i.e. the more limited information that would be notified for an increase in height or replacement of an existing ground based mast – see paragraph 29. This is allow an opportunity to consider any concerns arising from even the temporary presence of such apparatus.

#### *Application procedure*

79. The application for a determination as to whether prior approval is required must include the information in Class 67(23)(c), namely:

(a) the name and address of the developer and, where an agent is acting on behalf of the developer, the name and address of that agent;

(b) a description of the development to which the application relates, including its siting, appearance and dimensions (including the height of any mast and the height of any apparatus attached to the mast to the extent that it would protrude above the highest part of the mast);

(c) the postal address of the land to which the development relates or, if the land has no postal address, a description of the location of the land;

(d) a plan sufficient to identify the land on which the development would be located and showing the situation of that land in relation to neighbouring land<sup>17</sup>;

(e) other plans and drawings which are necessary to describe the development to which the application relates, showing in particular the dimensions, appearance and position of development on the site;

(f) where the application relates to an antenna, an ICNIRP declaration;

(g) any fee required to be paid; and

(h) where relevant, evidence of compliance with the requirements on notifying any other owners and/ or agricultural tenants or the relevant body as regards development in a safeguarded area.

80. The planning authority should notify the developer as soon as possible whether the application has been validly made, i.e. in accordance with the list in Class 67(23)(c). Given the nature of this particular form of prior approval procedure, it is important that the date when a valid application was received by the planning authority is identified – in order to calculate the 56 day period.

81. Even where the application is made in accordance with the statutory requirements, the planning authority, if requiring prior approval, can ask for further

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<sup>17</sup> “neighbouring land” is defined in Article 7A(4) of the GPDO.



information necessary to determine whether prior approval should be granted. However, information beyond that required by Class 67(23)(c) requested by or submitted to the planning authority does not affect the start and end of the 56 day period (or any agreed extension to that period) within which a decision must be given to the applicant.

82. It is always better, therefore, if developers and planning authorities can identify in advance of an application any particular information requirements, which should be proportionate to the development and proposal site. Planning authorities should consider setting out in guidance any additional information they will need in particular circumstances. The good practice planning guidance on rolling out this infrastructure (see paragraph 2 above) should form the basis for pre-application discussions or guidance on information requirements.

83. The planning authority is required to carry out neighbour notification. This is essentially the same as for an application for planning permission<sup>18</sup>. Where there are premises on neighbouring land to which such notice can be sent, the planning authority are to send a notice addressed to “the Owner, Lessee or Occupier” to such premises.

84. Under Article 7ZA(3) of the GPDO, the notice must:

- (a) state the date on which the notice is sent;
- (b) state the name of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent;
- (c) include any reference number given to the application by the planning authority;
- (d) include a description of the development to which the application relates;
- (e) include the postal address of the land to which the application relates, or if the land has no postal address, a description of the location of the land;
- (f) state how the application and other documents submitted in connection with it may be inspected;
- (g) state that representations may be made to the planning authority with regard to the siting and appearance of the development and include information as to how representations may be made and the period within which they may be made (which must be not less than 14 days beginning with the day after the day on which the notice is sent); and
- (h) be accompanied by a plan showing the situation of the land to which the application relates in relation to neighbouring land.

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<sup>18</sup> There are no requirement for newspaper notices in relation to this procedure under Class 67.

85. Under Article 7ZC, the planning authority has to make the information described in (b) to (g) of paragraph 84 above available on its web site until the application has been dealt with. They must also make the application available at an office of the planning authority. Clearly the specific arrangement in this regard should be reflected in the neighbour notification (point (f) in paragraph 84).

86. Where an application relates to a proposal in the area of Cairngorm National Park, Article 7ZB requires the planning authority to notify the Park Authority of the application with 5 days of its receipt.

87. Article 7ZD sets out various requirements for planning authorities to consult other bodies where certain criteria are met, and the time periods for responses.

88. Article 7ZE includes a requirement to consider representations received within the specified timescales for statutory consultees. This should also in practice also cover responses to the planning authority arising from the notices issued by the developer prior to making the application - which have a set limit of 21 days for responses.

### *Decisions*

89. The planning authority has 56 days beginning with the date of receipt of a valid application to give the developer their decision as to whether their prior approval is required, and, where it is required, to give the developer a decision as to whether or not it is granted. The planning authority and the developer can agree a longer period than the 56 days, and the references to the 56 day period in the following paragraphs on Decisions should be read as including any such period.

90. In the event the planning authority does not notify a decision as regards the need for prior approval within the 56 day period, then the developer can proceed in accordance with the plans as submitted (class 67(23)(d)(iii)).

91. Where the planning authority gives their decision within the 56 day period that its prior approval is required, but does not give the developer a decision on whether or not to grant such approval within the same 56 day period, the developer can proceed in accordance with the details as submitted (class 67(23)(d)(ii)(bb)).

92. In the event that an application is called in by the Cairngorm National Park Authority, then the 56 day period, or any extended period agreed between the planning authority and the developer, will start again from the date of call-in (class 67(23)(e)).

93. Class 67(23)(f) allows the planning authority to agree to changes to the details that are approved or, where the developer can proceed without prior approval being granted, to the details as submitted. The expectation is that this is akin to the powers planning authorities have to agree non-material changes to applications for planning permission without the need for a new application.

94. Class 67(23)(g) specifies that development must be started within a 3 year period from the date of a grant of prior approval or, where the developer can proceed

without a grant of prior approval, from the date the planning authority receives a valid application for a determination on the need for prior approval.

95. Conditions can be attached to a grant of prior approval. As well as the usual tests for conditions (necessity, related to planning, related to the development, precise, enforceable and reasonable in all other respects), it should be noted that the use of other PDR cannot be restricted by condition in a grant of prior approval in the way they can be with a condition on a grant of planning permission. The developer will have a right of appeal against refusal of prior approval or against conditions attached to grant of prior approval.

96. If prior approval is not required, the planning authority should inform the developer without delay. Similarly, where prior approval is required, the planning authority should inform the developer of that as soon as possible, and include any request for further information needed to decide on whether to grant prior approval – bearing in mind the effect of not issuing a decision one way or another within 56 days or any extended period agreed (see paragraph 81).

**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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