



SCOTTISH EXECUTIVE
Development Department

Circular *5/2001*

THE TOWN AND COUNTRY PLANNING (GENERAL
PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT
(No.2) ORDER 2001: DEVELOPMENT BY
TELECOMMUNICATIONS CODE SYSTEM OPERATORS

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**THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT (No.2) ORDER 2001:
DEVELOPMENT BY TELECOMMUNICATION CODE SYSTEM
OPERATORS**

The Chief Executive
Local Authorities

Copy to: The Director of Planning

Our ref: PGD/1/31
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Planning Series:

National Planning Policy Guidelines (NPPGs) provide statements of Government policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.

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Planning Advice Notes (PANs) provide advice on good practice and other relevant information.

Statements of Government policy contained in NPPGs and Circulars may, so far as relevant, be material considerations to be taken into account in development plan preparation and development control.

This Circular summarises the Scottish Ministers' understanding of the general effect of the relevant primary or secondary legislation although the summaries do not carry statutory authority in themselves and legal advice should always be taken in case of doubt.

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INTRODUCTION

1. The Scottish Executive has amended the permitted development rights (PDR) available to telecommunications code system operators¹ (Operators) under Class 67 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO). This circular explains the changes contained in the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2001 (Scottish Statutory Instrument 2001 No. 266)². It should be read in conjunction with the new National Planning Policy Guideline (NPPG 19): Radio Telecommunications and the related Planning Advice Note (PAN 62): Radio Telecommunications, as well as the statutory instrument itself.

2. The aforementioned SSI also amends Class 68 of the GPDO, which relates to PDR for telecommunications development by those not entitled to PDR under Class 67. A separate SSI (2001 No. 245)³ amends article 3 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. These changes are also described in this Circular.

CONTEXT

3. Aware of the concern about the erection of mobile phone masts under permitted development rights, the then Scottish Office announced in December 1998 that it intended to introduce a prior approval system as part of an updating of the PDR for such development. These measures were not implemented by the time the Scottish Parliament came into being and the Scottish Executive took over the devolved responsibilities for the planning system in Scotland. The Executive indicated that it supported these proposals for a prior approval system. Shortly after this the Transport and the Environment Committee of the Scottish Parliament announced its intention to hold an inquiry into these proposals.

4. The changes made to the GPDO and the preparation of the new NPPG and PAN have been done primarily in response to the 3rd report 2000 of that Committee entitled Report on Inquiry into Proposals to Introduce New Planning Procedures for Telecommunications Development⁴. The statutory instrument and guidance were also developed in the light of the report of the Independent Expert Group on Mobile Phones⁵ (the Stewart Report), concerning health related issues, and the UK Government's response to it.

KEY PRINCIPLES

¹ A person who has been granted a licence under section 7 of the Telecommunications Act 1984 which applies the telecommunications code to him in pursuance of section 10 of that Act

² The original SSI intended to introduce the changes to these PDR, SSI 2001 No. 244, was revoked prior to coming into force and replaced by SSI 2001 No.266. This revocation and replacement was in order to introduce transitional arrangements into legislation to cover development started but not completed by 23 July 2001. The Executive concluded that legislative provisions would be appropriate in this particular case in the interests of clarity and to achieve consistency across Scotland in the introduction of the new arrangements. The opportunity was also taken to amend an error in the version of Class 67(2)(c) in SSI 2001 No. 244.

³ The Town and Country Planning (General Development Procedure) (Scotland) Amendment Order 2001

⁴ text available – see www.scottish.parliament.uk/official_report/cttee/trans.htm

⁵ text available - see www.iegmp.org.uk

5. The Executive's aim in making and issuing the new legislation and guidance is to encourage the efficient rollout of telecommunications infrastructure throughout Scotland, while minimising the impact on the environment and addressing public concerns about siting and design. The amendments to the GPDO involve an increase in planning control. However, these changes must be seen in the context of the policy and guidance set out in the NPPG and PAN respectively. These documents promote a pro-active and co-operative approach to the rollout of telecommunications infrastructure which planning authorities and Operators are expected to adopt.

6. The main features of the changes to Class 67 of the GPDO are:

- Planning permission will be required for ground based masts erected for the support of antennas;
- An increase in the number of designated areas within which PDR are restricted;
- Tighter controls are placed on PDR for apparatus, including antennas and equipment housing, on buildings and other structures;
- A requirement to give planning authorities 28 days notice of the installation of equipment housing and antennas under PDR;
- A requirement to provide a declaration in relation to compliance with the public exposure guidelines for radiofrequency emissions published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP)⁶ for development involving antennas.

MANPOWER AND FINANCIAL IMPLICATIONS

7. A Regulatory Impact Assessment accompanies these proposals. Copies can be obtained from the contacts at paragraph 9 below.

EVALUATION

8. The Executive will evaluate the operation of the new planning legislation and guidance. This will include the collection and analysis of statistical data on the processing of planning applications for telecommunications development and, in due course, research aimed at obtaining the views of those using the new legislation and guidance and on whether the aim set out at paragraph 5 is being achieved.

⁶ 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)

FURTHER COPIES AND ENQUIRIES

9. General enquiries about this circular should be addressed to Mr Alan Cameron, The Scottish Executive Development Department, Planning Division, 2-H, Victoria Quay, Edinburgh EH6 6QQ (Telephone 0131 244 7065); e-mail: Alan.Cameron@scotland.gov.uk. Further copies and a list of current planning circulars can be obtained from the same address (Telephone 0131 244 7066); e-mail: planningdivision@scotland.gov.uk.

CLASS 67(1) PERMITTED DEVELOPMENT

10. The provisions for a blanket 6 month temporary permission for moveable equipment and temporary buildings required in relation to development authorised by a grant of planning permission (Previously Class 67(1)(c)) have been removed. Operators are, however, entitled to apply the general PDR granting temporary permissions contained in Part 4 (Temporary Buildings and Uses) of Schedule 1 to the GDPO. Planning authorities are expected to be sympathetic to Operators' needs regarding temporary equipment.

11. New PDR for development ancillary to equipment housing, including access tracks, have been introduced. Limits on the extent of these PDR are included in Class 67(2).

CLASS 67(2)

Designated Areas

12. Class 67(2)(a) lists all the designated areas within which these PDR do not apply. These are:

- National Scenic Areas
- National Parks
- Natural Heritage Areas
- Conservation Areas
- Historic Gardens and Designed Landscapes
- Sites of Special Scientific Interest
- European Sites (including Special Protection Areas and Special Areas of Conservation)
- Category A listed building, or its setting
- Scheduled Monument, or its setting

13. There are 3 exceptions to this restriction of PDR, namely emergency development, the installation of up to 2 "small antennas" on a dwellinghouse (neither of which faces on to a road) and the installation of a new line between existing telephone poles.

Ground Based Masts

14. Class 67(2)(b) removes PDR for the construction or installation of a ground based mast. Where a planning application is submitted for a ground based mast and planning permission is subsequently granted, Class 67(2)(h) restricts PDR for other development associated with the ground based mast. The aim is to encourage Operators to look ahead and

consider what development may be required on the site in future, and provide planning authorities with an opportunity to consider the full extent of the likely development on the site. This restriction will apply for a limited period only. It is tied to the length of time within which development must be started as specified in the planning permission for the ground based mast. Where the planning permission does not specify a time period, the statutory period of 5 years from the grant of planning permission for the mast will apply.

15. Operators will therefore need to consider when making their application what development may be required within the aforementioned timescale. Where planning authorities feel further development at a proposed site for a ground based mast should be encouraged, they may wish to reduce the time period in the planning permission for starting development. This would mean PDR are restored earlier. Where time periods are to be shortened for this reason, planning authorities should consult with Operators on the timing of their rollout programme to avoid permissions lapsing unnecessarily. Operators may ask planning authorities for a reduction in the time limit and planning authorities may wish to consider favourably such a request if sufficient justification is given.

16. Controls also apply to the extent to which a ground based mast can be altered under PDR. Class 67(2)(c) specifies that such masts may be increased by up to 2 metres in height and/or up to 1 metre measured horizontally. These increases are in relation to the dimensions of the original mast when it was constructed or installed. Repeated 2 metre extensions in height, for example, are therefore not permitted under Class 67. The amendments specified in Class 67(2)(c) would of course be restricted where appropriate by Class 67(2)(h) – see paragraph 14 above.

17. Where a replacement mast is installed or constructed under PDR, Class 67(2)(c) specifies that it must not exceed the height of the original mast by more than 2 metres, or the horizontal measurement of the original by more than 1 metre or be situated more than 4 metres from the location of the original mast.

Equipment Housing

18. Controls on PDR for ground based equipment housing are contained in Class 67(2)(d) and (e). Where existing equipment housing exceeds the measurements in Class 67(2)(d), then Class 67(2)(e)(i) means it can be altered or replaced provided the resulting equipment housing does not exceed the dimensions of the original structure. Where the existing equipment housing is within the measurements specified in Class 67(2)(d), then Class 67(2)(e)(ii) allows replacement or alteration provided the resulting structure does not exceed the measurements in Class 67(2)(d).

19. In Class 67(2)(i) and (j) the same principles apply to the construction, installation, replacement or alteration of equipment housing on a building or other structure.

Telecommunications Apparatus on a Building or Other Structure

20. The term “telecommunications apparatus” means any apparatus falling within the definition of that term in paragraph 1 of Schedule 2 to the Telecommunications Act 1984. A copy of the definition is set out in Annex A. Class 67(2)(f) and (g) provide controls on the installation of telecommunications apparatus on a building or other structure. While equipment housing and antennas would fall within the definition of telecommunications apparatus, they have additional controls elsewhere in Class 67(2) (see the sections on “Equipment Housing”, “Small Antennas” and “Antennas on Buildings and Other Structures”).

21. The separate entries in Class 67(2) controlling the sizes and numbers of antennas allowed under PDR should be read in conjunction with Class 67(2)(f) and (g). For example, where an antenna 2 metres in height is to be installed with a supporting structure on a building over 15 metres in height, and the overall height of the antenna and support when in place would exceed 4 metres, then this proposal would not qualify for PDR.

22. Class 67(2)(g)(i) and (ii) deal with controls on alterations to and replacement of apparatus in a similar way to the provisions covering equipment housing. Where existing apparatus falls within the measurements for permitted development in Class 67(2)(f), it can be altered or replaced under PDR providing the resulting structure does not exceed those measurements. Where existing telecommunications apparatus exceeds the measurements in Class 67(2)(f), then it can be altered or replaced under PDR providing the resulting structure does not exceed the measurements of the original apparatus when measured vertically and horizontally.

“Small Antennas”

23. The controls on the PDR for “small antennas”⁷, namely Class 67(2)(k), (l) and (m), have been changed. The installation of telecommunications apparatus on a dwellinghouse under PDR is still limited to “small antennas”, however, this has been increased under Class 67(2)(k) to 2 small antennas on a dwellinghouse under PDR. Also, the list of designated areas within which small antennas must not be installed on any part of a dwellinghouse facing on to a road has been expanded. In addition to Conservation Areas and National Scenic Areas, this list now includes Natural Heritage Areas, Sites of Special Scientific Interest, European Sites, National Parks, Historic Gardens, Designed Landscapes and the curtilage of both Category A Listed Buildings and Scheduled Monuments.

24. Class 67(2)(l) deals with controls on “small antennas” installed on dwellinghouses which are category A listed buildings.

⁷ (as defined in Class 67 of the GPDO as amended) – an antenna which-

(a) is for use in connection with a telephone system operating on a point to fixed multi-point basis;

(b) does not exceed 50 centimetres in any linear measurement; and

(c) does not, in two-dimensional profile, have an area exceeding 1,591 square centimetres;

and any calculation for the purposes of (b) and (c) shall exclude any feed element, reinforcing rim mountings and brackets.

25. The limit on permitted development involving “small antennas” on a building, which is not a dwellinghouse or a building within the curtilage of a dwellinghouse, has also been increased (Class 67(2)(m)). The installation, alteration or replacement of a “small antenna” which results in not more than 8 “small antennas” on such a building is now permitted development. This is regardless of the height of the building, but may depend on the number of other antennas already on the building.

Other Ground Based Apparatus

26. The controls in Class 67(2)(o) and (p) place a height limit of 15 metres on ground based apparatus (ground based masts are covered by Class 67(2)(b) and (c)) installed or altered by Operators under PDR.

Antennas on Buildings and Other Structures

27. The limits on PDR involving antennas on a building or other structure are set out in Class 67(2)(q) and (r). Class 67(2)(q) deals with buildings and structures over 15 metres in height and where development is carried out at over 15 metres above ground level. It sets out size thresholds on antennas of 2.8 metres in height and 1.3 metres when measured horizontally, and sets an upper limit of 8 antennas for the purposes of PDR in these circumstances. This limit of 8 antennas applies to both small antennas or other antennas or a combination of the two e.g. if a mixture of small and other antennas adds up to 8 antennas in total on a building over 15 metres in height, then no more antennas can be added under PDR, even if the limit on PDR for small antennas in Class 67(2)(m) has not been reached.

28. The restrictions in Class 67(2)(r) relate to buildings or structures up to 15 metres in height and to taller buildings or structures where development is carried out at less than 15 metres above ground level. In these circumstances, permitted development involving antennas is limited to antennas of up to 0.9 metres in size when measured in any dimension. Also, development must not result in their being more than 4 antennas on the building or structure in order to qualify for PDR. This limit on numbers of antennas does not apply to “small antennas”. As set out in Class 67(2)(m), the limit on PDR for small antennas on a building is 8, regardless of the height of the building.

29. None of the controls on PDR relating to the numbers of antennas on a building or other structure apply to ground based masts. There are of course controls on the increase in size of a ground based mast allowable under PDR in Class 67(2)(c). Any additional antennas installed on a ground based mast would need to comply with the restrictions in that provision if they are to benefit from PDR.

Notification and Declaration

30. Under Class 67(3), where development carried out under Class 67 consists of the installation of one or more antennas or the installation or construction of equipment housing, then notice must be served on the planning authority 28 days prior to the start of development. Where development is carried out in an emergency, notice should be served on the planning authority as soon as possible after the emergency begins.

31. The notification should consist of a written description of the equipment, including specifications such as purpose, dimensions, materials and colour, and a plan indicating its proposed location and layout, for example the location and orientation of larger equipment housing on a building.

32. This information is primarily 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 comments to the Operator on proposals notified in this way. There is no statutory requirement in Class 67 for such comments to be taken on board by an Operator, although such comments from the planning authority may indicate grounds for potential enforcement action relating to compliance with the conditions and restrictions associated with the PDR in Class 67 (including Class 67(5) on generally minimising the visual impact of antennas and supporting apparatus on buildings).

33. Under Class 67(4), where development permitted under Class 67 involves the installation of antennas, a declaration regarding compliance with ICNIRP public exposure guidelines on radiofrequency radiation⁸ must be submitted along with the aforementioned notification. An example of the format of this declaration is given in Annex B

Conditions on Removal of Equipment

34. The conditions in sub-paragraph (6) of Class 67 deal with the removal of telecommunications apparatus when it is redundant or after a specified period as appropriate. Restoration of land would include restoration of any access track created under PDR in Class 67.

CLASS 68

35. We have removed the references to "microwave" in Class 68 (and in Class 67). This description, in relation to antennas and other equipment, was confusing and led to inconsistencies in the treatment of developments with similar impacts in planning terms.

36. The range of designated areas within which PDR are removed has been extended to reflect that in Class 67(2)(a).

37. For the avoidance of doubt a restriction preventing the erection of a ground based mast under Class 68 PDR has also been introduced.

TRANSITIONAL ARRANGEMENTS

⁸ 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)

38. Article 3(2) of the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 2001 contains transitional arrangements in respect of development commenced before 23 July and which benefited from PDR before that date. Provided such development is completed within 2 weeks from that date, it will still have the benefit of PDR.. Otherwise after 23 July the new PDR will apply to further development.

THE TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) (SCOTLAND) ORDER 1992 (THE GDPO)

39. Article 3 of the GDPO has been amended by the Town and Country Planning (General Development Procedure) (Scotland) Amendments Order 2001 (SSI 2001 No. 245). Planning applications for development involving the installation of one or more antennas to be employed in a "telecommunications system"⁹ will in future require to be accompanied by a declaration regarding compliance with the radiofrequency public exposure guidelines of ICNIRP¹⁰. A format for the declaration is given in Annex B

⁹ within the meaning of section 4(1) of the Telecommunications Act 1984 (1984 c.12)

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

DEFINITIONS

Telecommunication System

The definition of “telecommunication system” relevant to the amendment of Article 3 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 is contained in section 4(1) of the Telecommunications Act 1984. **Section 4(1)** reads:

“In this Act “telecommunication system” means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of-

- a) speech, music or other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons, things and things, or persons and things) of any matter otherwise than in the form of sounds and visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus”

Telecommunication Apparatus

The definition of “telecommunication apparatus” relevant to the operation of Class 67 is given in paragraph 1 of Schedule 2 to the Telecommunications Act 1984 which reads:

“includes any apparatus falling within the definition in **section 4(3)** of this Act and any apparatus not so falling which is designed or adapted for use in connection with the running of a telecommunication system and, in particular –

- (a) any line, that is to say, any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is so designed or adapted; and
- (b) any structure, pole or other thing in, on, by or from which any telecommunication apparatus is or may be installed, supported, carried or suspended;

and references to the installation of telecommunication apparatus shall be construed accordingly.”

Section 4(3) of the 1984 Act states that:

““telecommunication apparatus” means (except where the extended definition in Schedule 2 of this Act applies) apparatus constructed or adapted for use –

- (a) in transmitting or receiving anything falling within paragraphs **(a) to (d) of subsection (1)** (Note: see Section 4(1)(a) to (d) in definition of Telecommunication

system above) above which is to be or has been conveyed by means of a telecommunication system; or

(b) in conveying, for the purposes of such a system, anything falling within those paragraphs;"

Emergency

Although there is no statutory definition of what would constitute emergency development under Class 67, the definition of "emergency works" given in paragraph 1(1) of Schedule 2 to the Telecommunications Act 1984 may be helpful as a general guide in the context of development by telecommunications code system operators. This extract is set out below. Whether a particular development constitutes emergency development will be determined on the facts of the individual case.

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

- (a) danger to persons or property,
- (b) the interruption of any service provided by the operator's system or, as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or
- (c) substantial loss to the operator or, as the case may be, the undertaker,

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

Form of ICNIRP Declaration

**Declaration of Conformity with ICNIRP Public Exposure Guidelines
("ICNIRP Declaration")**

[Operator name]
[Operator address]
[Operator address]
[Operator address]
[Operator address]

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

(Address).....
.....
.....

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

* Reference: 1999/519/EC

Date:

Signed:

Name:

Position: