

REGULATORY IMPACT ASSESSMENT (RIA)

AMENDMENTS TO CLASS 67 OF SCHEDULE 1 TO THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) ORDER 1992

Issues, Risk and Objectives

1. The policy of successive UK Governments has been that mobile telecommunications technology should extend throughout the country in view of the related economic and social benefits. Telecommunications policy has been reserved by the UK Government. The policy on Town and Country Planning is devolved.
2. As part of the initial development of the Government's UK policy on the telecommunications industry, attention was given to how the planning systems in the UK would cater for development in this regard. A balance had to be struck between the desire for the rapid spread of the technology and the need to ensure that adequate controls were put in place to protect amenity and the physical environment.
3. The solution which was identified applied the general planning permission associated with permitted development rights (PDRs) to certain telecommunications development. These rights apply to telecommunications code system operators (TCSOs) who are licensed by the Department of Trade and Industry (DTI). A considerable amount of development by these telecommunications code system operators is granted planning permission by Class 67 of Schedule 1 to the Town and Country Planning (General Permitted Development)(Scotland) Order 1992. Planning authorities have control of the remainder through the usual process of applications for planning permission. This approach was intended to facilitate the rollout of an efficient national telecommunications network while protecting the environment.
4. With the increasing number of telecommunications masts, concerns were expressed by communities and planning authorities that a lack of planning controls on telecommunications development was having a detrimental impact on amenity. In May 1998 The Scottish Office issued a consultation paper seeking views on proposals to ensure that inappropriate siting and appearance of masts would be minimised. Following consultations about additional controls, in 1999 the Scottish Executive proposed increased controls in the form of a prior approval procedure and associated measures. These would bring the system of planning control in Scotland broadly in line with that proposed for England and Wales.
5. In September 1999 the Transport and Environment Committee of the Scottish Parliament took evidence from the Scottish Executive on the current procedures, the issues involved and the outcome of those consultations. The Committee was concerned that the proposed approach to bring the developments under a system of prior approval might be insufficient in terms of the level of control within the planning system and decided to carry out its own inquiry. The Committee's subsequent inquiry report contained 35

recommendations ('Report on inquiry into the proposals to introduce new planning procedures for telecommunications developments¹).

6. The decision by the Executive to consider amendments to the GPDO was a response to the concerns set out in the Transport and Environment committee report and to concerns made directly to Scottish Ministers. Concerns were expressed about the operation of the existing regime of PDRs and the need to go beyond the original prior approval proposals.

7. The reasons for taking these new measures can be divided into three main categories – listening to the views of the public; impact on the environment; and administration:

Consultation with Communities

- Concern about the lack of formal opportunities for public consultation on those elements which qualify for PDRs, such as base stations and ground based masts. A particular concern was the speed with which ground based masts (often very close to the 15 metre limit) were erected without any requirements to notify the local community.
- The Transport and Environment Committee's Report identified 3 further significant concerns:- erection of masts next to residential property without consulting householders over development which affects their amenity; allegations that some companies offer the most basic technical choice first and will only improve on it when faced with significant opposition from the community once it has been alerted; and the impact of electromagnetic fields (in particular telecommunications masts on health and the proximity of such developments to existing buildings)
- The Independent Expert Group on Mobile phones chaired by Sir William Stewart in its report 'Mobile Phones and Health²' made reference to lack of public consultation as a major cause of grievance to people who suffer from a loss of amenity when base stations are erected. It specifically referred to the concern and distress by the locations of base stations 'up to 15 m' in residential areas without the need for a full planning application. That Report concluded that the balance of evidence indicated that there was no general risk to the health of people living near to base stations on the basis that exposures were expected to be small fractions of the guidelines. However, it also said that there could be indirect adverse effects on their well-being in some cases. It concluded therefore that public concern about the siting of base stations required changes in the planning process to include bringing the siting of all new base stations under planning control.

¹ Published by The Stationery Office Ltd (Tel. 0870 606 5566) in 2 Volumes (Volume 1: Report ISBN 0-33-840096-6 Price £8.60, Volume 2: Evidence ISBN 0-33-840093-1 Price £19.00)

² Available from the IEGMP Secretariat (Tel. 01235 822742) – Full report (ISBN 0-85951-450-1 Price £20.00) or Summary (ISBN 0-85951-451-X Price £2.00)

Impact on the environment

- The Transport and Environment Committee's Report identified concerns about the visual and noise impact of telecommunications developments. In urban areas unsightly spread of masts impacts on local amenity and there are genuine concerns about design, scale and size and the need to explore scope for improvement and disguise with technological advance.
- In rural areas, concerns have been expressed about the landscape and visual impact of masts and associated cabins, access routes and power supplies to telecommunications equipment (often sited in prominent positions and out of keeping with the existing landscape). These same developments have can have ecological impact and result in habitat loss as well.
- Scotland's landscape is, in itself, an important contributor to the nation's economy and is sensitive to development. It is important to consider the potential impact on the enjoyment of the natural heritage (and associated tourist economy) where cumulative growth of masts and associated infrastructure represents significant intrusion into the environment.

Administration and process

- The current arrangements are perceived to be complex and lack transparency. The inadequacy of the existing system has been criticised for producing inconsistencies and differences in interpretation by planning authorities across Scotland (also cited in the Transport and Environment Committee's Report). Evidence cited by the Committee's report indicated that the position would not be improved by the introduction of a system of prior approvals which was also complex, not well understood and could lead to similar variation in application. Prior approval would not usually require neighbour notification
- The operation of the system of planning applications is well understood by public, all sizes of business and planning authorities. It ensures a place for statutory consultation with the public and neighbour notification.
- The application of PDRs to certain telecommunications development is anomalous. This gives TCSOs exemptions not shared by individuals or other businesses who are required to seek planning permission for smaller and less significant developments (a point raised during the T&E inquiry).

8. Having carefully considered the evidence presented by the Department of Trade and Industry, representatives of the companies in the telecommunications industry and of the planning authorities, the Transport and Environment Committee were convinced that planning controls could be increased without significantly slowing down the rollout of telecommunications technology. They were also convinced that increasing the amount of development by TCSOs which requires full planning permission from the planning authority could allow the regulatory framework to be simplified

9. The objective behind the new measures is to strike a fair balance between responding to concerns from the public, planning authorities and the Scottish Parliament for controls to address concerns, protect amenity and the physical environment with the economic and social benefits which are delivered to Scotland by this technology.

Options

10. Four options have been identified:

(a) continue to rely on current controls and guidance (**Option 1**).

(b) introduce a prior approval procedure in respect of all base stations in order to allow greater public consultation on proposals under permitted development rights. This would be along the lines of the prior approval procedure for telecommunications code system operators' permitted development rights which exists in England and Wales with added public consultation. (**Option 2**).

(c) remove permitted development rights for all masts (ground based or on buildings), antennas (other than lower powered micro cells), equipment housing and buildings greater than 3 metres in height and 90 cubic metres in volume and infrastructure (**Option 3** - recommended by the Transport and the Environment Committee)

(d) remove permitted development rights for ground based masts and associated equipment and tighten up on permitted development rights which apply to the number of antennas which can be installed on a building or other structure and on the size of radio equipment housing and on other equipment, including masts, which can be installed on buildings under permitted development rights (**Option 4**).

Issues of Equity or Fairness

11. All four options will apply equally to telecommunications developments and should raise no issues of equity or fairness. During the Transport and Environment Committee's Inquiry some concerns were raised about the impact of introducing planning controls on operators which use radio technology to deliver services. The technology involved is very low powered – masts have to be located relatively close to the areas to be served. Such operators (in evidence to the Committee one operator expressed a preference for use of building based infrastructure), would still be able to make use of the PDRs for buildings provided overall the numbers of masts these did not exceed the limits in the order.

12. Concerns have also been raised about the impact on new entrants to the mobile communications industry. Unlike established mobile phone operators, they will not have an infrastructure network which has been rolled out to an advanced degree.

Identification of Benefits

13. These are:

Option 1 will not improve public consultation, improve understanding of the operation of the existing controls, nor increase the level of planning control. However, there are no additional costs associated with this option.

Option 2 would allow the public an opportunity to comment on siting and design issues where it was proposed to install a new base station and would allow planning authorities an opportunity to consider issues of siting and design within a specified timescale. Costs to Industry associated with any increased delay and process would be greater than option 1.

Option 3 would allow the public an opportunity to comment on a vast array of telecommunications development, from the installation of a single antenna to the erection of a ground based mast. It would also allow planning authorities the opportunity to consider a vast array of telecommunications development, from the installation of single antennas to the erection of base stations. They would be able to consider the proposal in full and over a longer timescale than under a prior approval system. The scope of this option would be likely to lead to greater costs and potential delays for Industry than any of the other options.

Option 4 would allow the public an opportunity to comment on the installation of ground based masts and on developments on buildings beyond the level allowable under permitted development rights, which, under this option, would be reduced. It would also allow planning authorities the opportunity to consider proposals involving the installation of ground based masts and related development in full. It would also allow them to control the installation of equipment, such as antennas and supporting structures, on buildings beyond specified levels allowable under permitted development rights. It would allow the industry some permitted development rights. Costs to Industry associated with process and delay would exceed those for options 1 and 2, but be less than those of option 3.

Business Sectors Affected

14. Persons who have been granted a licence under Section 7 of the Telecommunications Act 1984 which applies the telecommunications code to them in pursuance of Section 10 of the 1984 Act. The proposals would be expected to affect those operators licensed to operate a mobile or radio fixed-link phone service. There are currently 5 national mobile operators and seven radio fixed-access operators in the UK.

Compliance Cost for a “Typical” Business

15. **Option 1** would have no additional costs for business.

Cost Associated with Implementation of the Legislation

16. In respect of the main issues identified as concerns under **Option 2** there will be an additional fee associated with a prior approval application for each base station. The likely level for such a fee, in line with fees for prior approval procedures in relation to other permitted development rights in Scotland, would be £40. In addition, there would be costs associated with public consultation e.g. notices in newspapers, letters to nearby homes and discussions with local residents. These additional costs could be in the region of £300 - £500 per site (to cover local advertisement of the proposal, issuing proposal details by post to houses in the locality and staff attending local meetings). There would also be costs associated with delays in relation to the determination of the prior approval application, although the time period for determining such an application would be fixed.

17. The additional costs associated with **Option 3** involve those associated with making a planning application. This would apply to something as small as adding a single antenna (other than low powered “micro cells”) to a mast or building. The planning fee for plant and machinery is £210 per 0.1 hectare (up to a maximum of £10,500), and would apply to non-domestic radio masts. In addition, masts over 20 metres in height could be construed as bad neighbour development and require the applicant to meet a payment towards advertising costs. The fee for other engineering operations is £105 per 0.1 hectare (up to a maximum of £1,050). Planning applications will also carry administration costs such as neighbour notification. The need for a planning application will also carry with it a delay associated with the determination of the application.

18. **Option 4** would involve additional costs associated with planning applications along the lines described for **Option 3**. However, the permitted development rights under **Option 4** would allow up to 8 antennas and 30 cubic meters of radio equipment housing to be installed on a building (enough for a mobile operators base station) under permitted development rights.

Costs associated with meeting Policy Aims

19. The aim of proposed options for legislative changes (Options 2, 3 and 4), is to have a telecommunications infrastructure on which local communities have had an opportunity to comment, which is more sympathetic to their needs and those of the environment in terms of its location and design while allowing the continued rollout of said infrastructure. Improvements in design and location will also involve an unquantifiable cost in addition to the costs associated with actually going through the statutory procedures but from evidence to the Transport and Environment Committee, companies already regard this as a legitimate business cost (see below). The costs of participation in the planning process will be fairly marginal to the overall costs of 3G developments. [If we assume a base station from all networks per 2,000 people, then for a roll out to cover 4m of Scotland’s population, 2,000 stations would be needed. A direct planning cost of £1,000 per application amounts to about £2m, compared with an overall cost in Scotland of the order of £1bn.] It is only if significant delays are introduced into the launch of services that large costs start to emerge.

Total Compliance Costs

20. The draft RIA invited consultees (and the industry in particular) to offer more detailed information about costings during the consultation. Responses did not offer any significantly new breakdown of costing or financial estimates of the effect of these new controls on the industry overall. In one case information was provided which covered the contribution of the industry to the UK economy and estimated the potential cost of delays in the roll-out of 3G but due to its commercial sensitivity we have been asked not to circulate the contents of that report more widely. However, we have noted the contents. Some other responses also included figures about the contribution of the industry to the UK economy and the impact of delays on 3G (these are mentioned below). A number of responses commented on the need to take account of the costs to planning authorities of implementing these controls and processing these additional (unquantified) applications. It is outwith the scope of this RIA to look at costs to bodies other than businesses. However, these points have also been noted and will be used to inform the monitoring of the regulations (see below).

Impact on Small Business

21. A number of organisations involved in small business development were consulted as part of the public consultation (see below for summary of comments). Small businesses can be expected to suffer from delayed benefits if the overall roll out of 3G services is delayed.

Other Costs

22. The most significant costs that could arise from this regulation are if the overall roll out of 3G services were delayed. It is in the nature of a network that until it is completed, at least over a significant geographical area, then it cannot start to deliver benefits. These costs would be in two main areas:- the capital costs to the telecommunications companies of holding a near-complete infrastructure that was generating no revenues, and the delay in benefits to users. If the overall cost of 3G developments in Scotland is around £1bn, a one month delay in completing a nearly finished network can be expected to carry a capital cost of about £8m. At this time, the DTI estimate that the loss in benefit to users of 3G services to be about £100m (at 2000 prices) a year at a UK level, and so the cost to Scottish users of a one month delay in the implementation of 3G Services is estimated at about £1m. The benefits to users are estimated in terms of the amount of money that users would be willing to pay for 3G services less the amount they are forecast to pay. This measure is called consumer surplus.

23. However, the scale of costs that could arise from delays in the completing of 3G networks as a result of this regulation are very uncertain. The policy introduces an additional planning hurdle for the development of elements of the 3G infrastructure, but with careful planning by the telecommunications firms, and efficient consideration by planning authorities, this should not delay the point at which 3G networks are complete. It is also possible that other factors, such as the development of the software or the manufacture of handsets, could introduce delays beyond the completion of the base station network. At this

time, there is no basis to estimate any delay that could be introduced into the introduction of 3G services as a result of this regulation. It will be an important element of the plans to monitor this regulation that the time taken in the planning process is kept to a minimum consistent with the policy, and that systematic delays are not introduced into the roll out of 3G. The telecommunications companies will also have every incentive to incorporate the planning process into their project management, to ensure that they can accommodate the necessary time.

24. In addition to the 4 options covered in this paper, the intention would be to make a number of changes to the existing legislative framework in relation to conditions attached to permitted development rights. These will govern the minimisation of visual impact of permitted development, the removal of redundant equipment and restoration of sites, as well as conditions relating to notification of exercises of permitted development in relation to the installation of antennas and radio equipment housing. The conditions on minimisation, removal and restoration are consistent with good practice and should not place an additional burden on operators (see above). The new notifications are to ensure planning authorities are aware of potentially controversial developments carried out under these PDRs. In the expected climate of co-operation and consultation volunteered by the industry in general, these notification requirements should not involve significant costs on operators.

25. In order to ensure planning authorities are informed about health related matters, a requirement on operators to declare that any telecommunications development (whether it is permitted development or requires planning permission from the planning authority) involving the installation of antennas will, when it is operational, comply with the International Commission on Non-Ionizing Radiation Protection's Guidelines on public exposure to electromagnetic radiation is included. As well as the emissions from the antennas themselves, this declaration would cover the aggregate emission levels in the vicinity of the site. Some operators have undertaken to provide these certificates voluntarily as part of their 10 commitments.

Result of Consultation

26. The industry response to the draft RIA was concerned primarily with the delays likely to be caused by the requirement to obtain planning permission under the Executive's preferred option. In terms of 3G technology, The Department of Trade and Industry suggest a figure of £34 million per operator per month for the cost of delay due to the need to obtain full planning permission in a UK context. Specific reference was made to British Telecom's Universal Service Obligation which may involve radio links and the depreciated losses on the purchase of equipment while awaiting decisions on planning applications. Concern about the planning authorities' ability to deal with the increased number of planning applications, and the Executive's ability to deal with the potential increase in the number of appeals were also voiced. Again the concern is that further delays will occur. The issue of Scotland, and rural areas in particular, being marginalised in telecommunications terms because of costs related to delays in developing infrastructure was also raised.

27. Some respondents voiced concern that the costs on the telecommunications industry would be used to override less easily quantifiable benefits, such as the benefit of public

involvement in decision making, benefits of the environment generally and to the tourism industry in particular.

28. Planning authorities were also concerned about the level of resources they would require to deal with the increase in planning applications, and developing expertise in or obtaining expert advice on the telecommunications sector.

29. No reference was made in responses to particular issues for small businesses.

Enforcement, Sanctions, Monitoring and Review

30. The existing enforcement provisions under the Town and Country Planning system would cover the new arrangements. Any development which neither complies with the requirements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 nor enjoys planning permission would be open to enforcement action by the planning authority. Enforcement action can range from requiring a retrospective planning application for any unauthorised development, to serving stop notices and enforcement notices requiring action to rectify any breach of planning control.

Monitoring

31. As mentioned above, it is crucial for controlling the costs of this regulation that the time spent on the planning process does not introduce systematic delays into the roll out of 3G services. The time elapsed in the consideration of planning applications under this regulation will be monitored.

Review RIA

32. The Scottish Executive will monitor the implementation and operation of this regulation to assess its impact and effectiveness. The compliance costs given as part of the consultation vary considerably, and consequently, as part of this work a full and accurate assessment of the compliance costs will be undertaken. The review will culminate in a formal consultation and a revisiting of this RIA. The RIA will be updated in the form of a review RIA within 10 years. That RIA will be put out to public consultation to confirm if the regulations remains fit for purpose and proportionate.

Declaration:

I have read the regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the responsible Minister

Date