

REVIEWING AND EXTENDING PERMITTED DEVELOPMENT RIGHTS

EXPLANATION OF PHASE 1 MEASURES

DECEMBER 2020

BACKGROUND AND PURPOSE

1. The Scottish Government is taking forward a phased programme to review and extend permitted development rights (PDR) in Scotland. In October 2020, [we consulted on Phase 1 of that reform programme](#). The Phase 1 consultation sought views on proposals relating to four development types: digital telecommunications infrastructure, agriculture, peatland restoration and active travel.
2. On 18 December 2020 we laid a Development Order¹ in the Scottish Parliament that will bring the Phase 1 changes into effect by amending the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”). Subject to confirmation by the Parliament, they will come into force on 1 April 2021.
3. In addition to the proposals in the consultation, and to facilitate urgent changes needed to finfish cages to mitigate seal predation, some changes to PDR for aquaculture were also included in the Order.
4. The purpose of this note is to provide an overview of the new and extended PDR that are being taken forward as part of Phase 1, and to explain how those measures have evolved in response to the feedback we received during the public consultation. An independent analysis of the responses to the Phase 1 consultation is available at: www.gov.scot/isbn/9781800044814
5. We will be working on more detailed guidance and advice early in the New Year and will publish this alongside the measures coming into force in Spring 2021.
6. PDR generally relate to minor, uncontroversial developments or changes associated with an existing development where it would be unlikely for a planning permission application to be refused, where standardised conditions are likely to be used, and therefore, where consideration on the principle of the development by a planning authority on an individual basis is unlikely to add value to the process. On this basis, PDR can help remove the need for unnecessary applications for planning permission and therefore reduce the burden on both applicants and planning authorities. Nevertheless, even when a particular type of development is granted PDR, projects must still comply with other statutory obligations, including requirements to obtain another consent – for example, listed building consent or consent requirements under the Nature Conservation (Scotland) Act 2004 where works affect a Site of Special Scientific Interest.

¹ [The Town and Country Planning \(General Permitted Development and Use Classes\) \(Scotland\) Amendment Order 2020 \(legislation.gov.uk\)](http://www.legislation.gov.uk)

DIGITAL TELECOMMUNICATIONS

Overview

7. Overall, extending PDR for digital connectivity will assist in supporting and enhancing the roll out of vital and improved digital communications for all regions of Scotland. This has become even more important given society's reliance on digital communications during the Covid-19 pandemic and will particularly support working from home and economic development in remote and rural communities.
8. The changes we are introducing:
 - Increase the height limit for new masts outside designated areas to 30 metres, subject to a determination by the Planning Authority on whether prior approval is needed for its appearance and visual impact;
 - Extend the maximum amount that existing masts can be increased in height and width by (depending on their original size);
 - Increase the size and number of antennas permitted on buildings outside designated areas in certain circumstances and introducing PDR for antennas on buildings in designated areas, subject to a determination on prior approval;
 - Introduces PDR for small cell systems and Regulation 2020/1070 small cell systems – in addition to existing PDR for 'small antennas'. This measure is necessary to comply with Article 57 (1) of Directive (EU) 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code;
 - Introduces PDR for new equipment housing cabinets on the ground and on buildings in designated areas up to a maximum volume of 2.5 cubic metres;
 - Introduces PDR for other apparatus (such as ladders, back-up power generators or fencing) on buildings in designated areas, subject to a determination on prior approval; and
 - Introduce PDR for underground equipment in certain designated areas, and subject to a determination on prior approval in other designated areas.

Changes since the October consultation

9. The consultation responses highlighted that there was broad support for increases to PDR in this area, but also concerns about the potential negative impacts on cultural heritage and the historic environment. There were also concerns raised about the complexities of PDR and a call for a more streamlined approach.
10. In extending PDR, we have sought to balance these concerns by including measures to mitigate any potential negative impacts where necessary. For example, it was widely accepted that a requirement for prior notification/prior approval of certain matters (particularly visual impact) in areas designated for their cultural/built heritage could mitigate risks identified in the 2019 sustainability appraisal. In addition, the Scottish Government is currently preparing new good practice guidance on siting, design and construction/ installation of digital telecommunication equipment that will replace the existing Planning Advice Note 62.

Masts

11. There was generally a positive reaction to proposals to increase the permitted height for new masts from 25 metres to 30 metres outside designated areas. Those changes are to be introduced, subject to the existing requirement for prior approval.

12. Views were more divided in respect of increases in height and width to existing ground-based masts, whilst a large majority were in favour of proposals for a slight increase to the maximum distance replacement masts may be from the original. On balance, we have decided to proceed with those incremental changes as we consider that the publication of new good practice guidance on siting and design will be sufficient to mitigate the risk of any negative impacts.

Antennas

13. A large majority agreed with the proposals to increase the PDR outside designated areas. Views were, however, divided on proposals to extend PDR to all or some designated areas. A number of potential controls were suggested, including prior notification/prior approval.
14. Changes are therefore being brought in as proposed outwith designated areas. We are also introducing PDR in areas designated for their natural heritage and landscape value on the grounds that other protections and good practice guidance should mitigate any potential negative impacts here. PDR in areas designated for their built/cultural heritage will be subject to prior notification/ approval.

Small Cell Systems

15. A large majority agreed that PDR for small cell systems should be in line with existing PDR for small antennas, The changes being introduced will allow for up to 4 small cells on a dwellinghouse and its curtilage outwith conservation areas, and up to 2 on a dwellinghouse and other buildings in conservation areas.
16. The PDR changes ensure that for small aerial wireless access points systems the requirement to comply with Article 57 of the EU Directive are met.

Equipment Housing Cabinets

17. Views were divided on proposals to permit the installation of new equipment housing cabinets in designated areas. On reflection we have decided to introduce PDR for cabinets on the ground and on buildings up to 2.5 cubic metres in volume as these are considered to be critical to the roll out of effective digital networks. We recognise the importance of good siting and design and will ensure that this is set out clearly in forthcoming good practice guidance to address any negative impacts on the built environment.

Other Apparatus

18. Views were also mixed, though a majority agreed that any new PDR for other apparatus (such as generators, ladders and fences) should be subject to prior notification/prior approval. We have therefore decided to introduce PDR for other apparatus in areas designated for natural heritage and landscape on the grounds that other protections and good practice guidance should mitigate any potential negative impacts. In areas designated for the built/cultural heritage a determination on whether prior approval is required will be needed.

Underground Equipment

19. Respondents suggested a number of designated areas where they considered that PDR for underground development could be extended but concerns were expressed about the potential impact in areas designated for their archaeological and cultural heritage. We have therefore introduced PDR in areas designated for natural heritage and landscape on the

grounds that other protections and good practice guidance should mitigate any potential negative impacts. We propose PDR in other areas designated for their cultural heritage (i.e. conservation areas, the setting of listed buildings and scheduled monuments, historic gardens and designed landscapes) should be subject to prior notification/approval to assess the potential impacts on archaeology and cultural heritage. We have not introduced PDR in World Heritage Sites and Historic Battlefields.

AGRICULTURAL DEVELOPMENTS

Overview

20. The Phase 1 changes we are taking forward:
 - Increase the scale of agricultural buildings that may be erected or extended under existing PDR.
 - Introduce new PDR for the conversion of agricultural (and forestry) buildings to residential and commercial use.
21. These new and updated agricultural PDR are intended to support Scotland's rural economy by promoting agricultural development and diversification.

Larger agricultural buildings

22. Existing legislation (the GPDO) already allows agricultural buildings to be erected and extended under PDR, subject to certain conditions and limitations. Prior to the Phase 1 changes:
 - the ground area of any agricultural building erected or extended under PDR may not exceed 465sqm
 - prior notification/approval (in respect of the siting, design and external appearance) is required in the case of the erection of a new building, or the "significant extension or significant alteration" of an existing one.
 - Significant alteration and significant extension are defined as any extension/alteration where the cubic content of the original building would be exceeded by more than 10%, or where the height of the original building would increase.
23. Once in force, the Phase 1 changes will increase the size limit for agricultural buildings erected or extended under PDR from 465sqm to 1,000sqm. The definition of significant extension/alteration is also being updated to refer to a 20% increase in the cubic content of a building.
24. Taken together, the effect of these changes will be to approximately double the size of new agricultural buildings that may be erected under PDR (subject to prior notification/approval) outwith designated areas, and double the size of extensions to existing agricultural buildings that may be carried out without requiring prior notification/approval. All other existing conditions and limitations (e.g. maximum building heights, minimum distances to trunk roads) will continue to apply.

Conversion of agricultural and forestry buildings

25. The Phase 1 changes introduce new PDR for the conversion of existing agricultural and forestry buildings to:
 - Up to 5 dwellings (houses or flats), none of which may exceed 150sqm
 - Up to 500sqm flexible commercial space

26. In the case of agricultural buildings, the 5-unit and 500sqm limits apply cumulatively in respect of a pre-existing agricultural unit (farm). In the case of forestry buildings, they relate to each individual building.
27. As well as authorising the change of use of agricultural and forestry buildings, these new PDR also permit certain building operations that are reasonably necessary to carry out the conversion. These measures are not intended to permit works that are so extensive that, in effect, they amount to either the substantial demolition and reconstruction of a building, or the creation of a new building. For that reason, only those building operations specified in the legislation may be carried out under the new PDR (e.g. installation or replacement of windows, doors, roofs, exterior walls or utilities services, to the extent reasonably necessary for the building to function in its new use). Additionally, development cannot extend the external dimensions of the building that is being converted (excluding guttering, pipes, flues and aerials).
28. Before carrying out development under the new PDR, prior notification/approval is required in respect of design and external appearance, transport, access, noise, contamination, flood risk and (in the case of residential conversions) the provision of natural light in habitable rooms.
29. The new PDR do not apply to buildings that were constructed after 4 November 2019. A building may only be converted under these measures if it was solely used for the purposes of agriculture (or forestry) on 4 November 2019, or (if it was not in use on that date) it must have been used for those purposes when it was last in use.
30. Additionally, the new PDR do not apply to listed buildings or buildings situated within the curtilage of a listed building, a site of archaeological interest, a safety hazard area or a military explosive storage areas. The PDR authorising residential conversions does not apply to buildings on croft land.

Changes since the October consultation

Larger agricultural buildings

31. There was general support for increasing the scale of agricultural buildings that may be constructed or extended under PDR. However, a number of respondents expressed concern about the potential visual impact of allowing agricultural buildings up to 1,000sqm under PDR in sensitive areas such as National Parks and National Scenic Areas. In response to these concerns, the measures we are taking forward provide that the new 1,000sqm size limit will only apply outwith specified designated areas. Within those areas, the current 465sqm threshold will continue to apply.

Conversion of agricultural and forestry buildings

32. Those responding to the Phase 1 consultation expressed concerns about the impact of PDR for the conversion of agricultural and forestry buildings. In particular, the suggestion was that the measures would lead to inappropriate development in the countryside and that the impacts of such developments ought to be considered through a full planning application. Such concerns were exacerbated by worries about how the new PDR for the conversion of agricultural and forestry buildings would interact with existing PDR for the erection of such buildings. The suggestion was that the combination of these measures could lead to 'gaming': that landowners would be incentivised to construct new buildings with the sole intention of subsequently converting them.
33. The consultation acknowledged the potential for such gaming. To address such risks, it proposed that if a building was brought into agricultural (or forestry) use on or after 5

November, it would have to be used for those purposes for 10 years before it could be converted to residential or commercial use under the new PDR. The proposed cut-off date was chosen because this was when Scottish Government first published its intention to introduce PDR for the conversion of agricultural buildings. Many of those who responded to the consultation doubted whether such a measure would be effective, even if they agreed with its objective. It was pointed out that 10 years is a relatively short time horizon in the context of land ownership and investment, and unlikely to provide meaningful disincentive to the kind of gaming outline above.

34. In response to these concerns, the measures we are taking forward only apply to “pre-existing” buildings (i.e. those used for agricultural or forestry purposes before 5 November).
35. Some respondents expressed concern about the impact of the new and extended agricultural PDR on the long-term viability of crofting. In response to this, the PDR for the conversion of agricultural buildings to residential use will not apply on croft land. On the basis of concerns about possible health and safety risks, we decided that the new PDR should not apply where buildings are located within military explosives storage areas and safety hazard areas.
36. With regard to new PDR for the conversion of buildings to commercial use, the consultation proposed that prior notification/approval would only be required above a 150 sqm threshold. This was not taken forward on the basis that conversions below that limit can have impacts that ought to be considered through prior notification/approval, and to provide consistency with the PDR for residential conversions

PEATLAND RESTORATION

Overview

37. The Phase 1 changes introduce a new class of PDR for peatland restoration projects and are intended to clarify the position with regard to the planning status of this growing sector of activity. Peatland restoration is expected to make a significant contribution to the achievement of the Scottish Government’s Climate Change targets by capturing and storing carbon. In addition, peatland restoration can also make important contributions to preserving and enhancing biodiversity, improving water quality and reducing flood risk.
38. The Phase 1 changes will:
 - permit projects to proceed without applying for planning permission, subject to a determination on prior approval of the peatland restoration scheme by the planning authority.
39. In addition, the regulations define some of the peatland restoration operations that are permitted and, for the avoidance of doubt, some that are not, including the construction of access tracks.

Changes since the October consultation

40. There was widespread support for PDR for peatland restoration but also some concern about the possible unintended negative impact of projects that were not in receipt of Scottish Government funding through, for example, Peatland Action and had therefore not been subject to scrutiny by NatureScot. There were particular concerns about the potential impact of unregulated projects on archaeology and cultural heritage, flood risk and soils. It was therefore decided that peatland projects should be subject to prior notification/approval by the planning authority of their restoration scheme in respect of these matters. Where projects

are in receipt of Scottish Government funding this is expected to be a very straightforward matter but, where they are not, this will allow proper scrutiny of the proposals.

41. Concerns were also expressed about the compliance of projects with sustainable forest management principles where restoration projects involve significant felling of trees and/or woodland removal. Concerns centred on the need to consider the impact on the wider Forest Plan where areas of woodland were proposed to be removed and the need to ensure that timber removed from sites was certified and the timber transport issues associated with this were properly considered and controlled. It has therefore been decided that changes will be made to the Forestry (Exemptions) (Scotland) 2019 regulations to require that relevant peatland restoration projects must still obtain a felling permission from Scottish Forestry. This change is expected to be made in 2021.
42. Furthermore, our consultation on the Phase 1 changes sought views on whether PDR might be introduced for temporary access tracks associated with peatland restoration projects, noting that this specific change had not been considered as part of the 2019 Sustainability Appraisal of options. There was some support for PDR for temporary access tracks but also some concern about the potential for abuse or misunderstanding of such a provision. It has therefore been decided to delay consideration of the introduction of PDR for access tracks for peatland restoration until Phase 3 of the Programme, when it is proposed to review the wider position in relation to hill tracks of all kinds. This will also provide time for assessment to be undertaken of the potential environmental impacts of such a change.

ACTIVE TRAVEL

Overview

43. The Phase 1 changes we are bringing forward will:
 - allow the erection of sheds for storing bicycles in the front gardens of houses and flats;
 - extend the size of storage sheds allowed in the rear gardens of houses (and introduce equivalent PDR for sheds in rear gardens of flats) in conservation areas;
 - allow communal cycle stores to be erected to the rear of blocks of flats;
 - allow communal cycle stores to be erected in the grounds of commercial, business and industrial buildings; and
 - allow communal cycle stores to be erected on public roads (for example, so called cycle 'hangars' that sometimes replace one or more on-street parking spaces in densely populated areas).
44. The changes are aimed at improving people's access to bikes, adaptive bikes, cargo bikes, e-bikes and mobility scooters, in order to encourage the recent increase in the use of bikes. Greater use of bikes as a primary means of transport will help achieve Scotland's carbon reduction targets and encourage healthy lifestyles.

Changes since the October consultation

45. Following comments received and discussions with suppliers, the maximum dimensions of householders' cycle stores proposed in the initial consultation have been increased slightly, in order to make them more useful for storing a greater range of bikes. The maximum dimensions for sheds in front gardens of residential properties will be 1.5 metres high, 1.2 metres deep and 2.5 metres wide. In rear gardens of houses in conservation areas the maximum footprint of a shed that can be erected under PDR will increase to 8 square metres.

46. Size restrictions for on-street communal cycle stores have been changed slightly from what was originally proposed to make them easier to access and to align them with the dimensions of existing parking bays. The maximum dimensions for on-street cycle stores will be 1.5 metres high, 2.5 metres deep, and 5 metres wide.
47. It was decided not to restrict the sizes of communal cycle stores to the rear of blocks of flats and in the grounds of commercial, business and industrial buildings, in order to allow them to meet demand effectively and because the visual impact was unlikely to be significant. Furthermore, a decision was taken not to place any restrictions on the materials or design/colour of cycle stores, even in designated areas, because it was considered that the visual impact of such stores was unlikely to be significant – certainly no more so than existing communal waste and recycling facilities.

AQUACULTURE

48. The changes related to aquaculture introduced by this Order extend an existing class of permitted development to enable the replacement of existing finfish cages with larger size alternatives as a non-lethal solution to mitigate seal predation. Aquaculture is vital to our rural economy and these changes were required as a matter of urgency due to the impending introduction of measures set out within the Animals and Wildlife (Scotland) Act 2020 from 1 February 2021 and also new requirements on exporting nations which are being introduced by US authorities on 1 January 2023. These new requirements will seriously impact on the use of the seal deterrent measures which are currently employed by the aquaculture finfish sector in Scotland.
49. Due to the urgent need to make these changes, and the lack of Parliamentary time in advance of the elections to the Scottish Parliament in 2021, the necessary amendments have been included within this wider Order, despite not being part of Phase 1 of the programme to review and extend PDR in Scotland. The changes will increase the maximum size of replacement or additional pens that fishfarms can install (from 100m to 200m circumference for circular pens and from a surface area of 796 square metres to 3182 square metres for non-circular pens). An increase in the surface area of the waters covered by the equipment of up to 1,100 square metres compared to the surface area originally consented will be permitted. The amendments also increase the total surface area of the fish farm as a whole for which development is permitted – this will now accommodate those farms where the surface area of the waters covered by the equipment as altered or extended does not equal or exceed 20,000 square metres.
50. These changes were subject to limited, targeted consultation with relevant planning authorities, SEA consultation authorities and the aquaculture industry and no changes were made to the provisional proposals as a result of this engagement.