
Report To:	Safe Sustainable Communities Committee	Date:	30 August 2011
Report By:	Corporate Director Regeneration & Environment	Report No:	SSC/11/08/30/SJ/NMcL
Contact Officer:	Development & Building Standards Manager	Contact No:	01475 712420
Subject:	Scottish Government Consultation on Non Domestic Permitted Development Rights		

1.0 PURPOSE

- 1.1 The Scottish Ministers wish to exempt certain non domestic developments from the requirement to obtain planning permission. This consultation sought views by 1 July 2011. The purpose of this report is to inform the Committee of the draft response submitted on behalf of the Council.

2.0 SUMMARY

- 2.1 The consultation poses 27 questions, which were responded to as detailed in paragraphs 4.2 to 4.24.

3.0 RECOMMENDATION

- 3.1 It is recommended that the Committee agrees to the consultation response submitted to the Scottish Government.

Stuart Jamieson
Head of Regeneration and Planning

4.0 BACKGROUND

- 4.1 The Scottish Ministers wish to exempt certain non domestic developments from the requirement to obtain planning permission. This consultation sought views by 1 July 2011. The purpose of this report is to inform the Committee of the draft response submitted on behalf of the Council. The consultation poses 27 questions.
- 4.2 The consultation contains a partial Business and Regulatory Impact Assessment which highlights issues the Government need to explore regarding the costs and benefits of changes to Permitted Development Rights (PDRs). The Government would like to discuss the detailed impact of these changes with a range of companies that may be affected by these proposals.

Consultation Question

- Q1. Can you identify likely costs and benefits associated with the potential changes discussed in this paper which should be covered in the BRIA?

Comments: Any impact as a result of PDR changes affecting aviation, markets and hill tracks is likely to be nil or negligible in Inverclyde. There will be variable impact resulting from other changes, and Inverclyde Council may be considered for testing, following detailed drafting of the regulations.

- 4.3 Potential changes to the PDRs require consideration under the Environmental Assessment (Scotland) Act 2005. The content of the consultation will therefore be subject to Strategic Environmental Assessment.

Consultation Question

- Q2. Please provide details of any significant environmental effects (positive or negative) which you think may arise in relation to the potential changes discussed in this paper.

Comments: While there are potential negative visual effects on the built environment, none are considered significant. Positive visual effects on the built environment may arise if PDRs are withdrawn.

- 4.4 As the Government take this work forward it will develop an Equality Impact Assessment that explains impacts of the proposed changes on 5 Equality Strands. This will inform a forthcoming consultation on detailed legislative proposals.

Consultation Question

- Q3. Please provide details of any specific issues for any of the equality groups (including race, disability, age, sexual orientation, gender or religion and belief) which you think may arise in relation to the potential changes discussed in this paper.

Comments: None

- 4.5 New legislation on climate change, flooding and equality has placed new duties and set targets for public authorities.

The Climate Change (Scotland) Act 2009 includes ambitious legislation to reduce emissions by at least 80 per cent by 2050. This is driving new thinking, new solutions and new technologies. The Scottish Government has already introduced PDRs for microgeneration equipment and has included in this consultation potential amendments for the installation of charging points for electric vehicles. The Government is also interested in whether there are other structures, operations or technologies which could contribute toward the objectives of the Climate Change Act and for which some form of PDRs would be appropriate.

The Flood Risk Management (Scotland) Act 2009 places a duty on Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to exercise their functions with a view to managing and reducing flood risk and to promote sustainable flood risk

management, but there is no specific mention in the Act of PDRs.

The Government's recent proposals for new householder PDRs require porous material to be used or for run off to be dealt with within the curtilage of the dwellinghouse. There are currently PDRs for hard surfaces around industrial buildings and warehouses and the Government consider that may benefit from similar requirements. PDRs are also given for land drainage works.

The Equality Act 2010 aims to end the discrimination and identifies what constitutes direct and indirect discrimination, harassment and victimisation and places duties on public bodies, employers and others to eliminate discrimination.

The most significant planning duty of the Equality Act 2010 is to make 'reasonable adjustments' to premises where a physical feature creates a disadvantage for a disabled person to, for example, access a service.

There are currently no specific PDRs that would allow service providers to carry out works to comply with the Equality Act 2010, although the wide ranging nature of some PDRs allow limited adjustments to premises without the need for a planning application.

Q4. What types of technology, equipment, structures or related developments should be considered for PDR to support climate change / flood risk management or disabled access?

Comments: Works to address flood risk are typically incorporated into larger development proposals that will, regardless, require planning permission. Disabled access ramps, subject to height, positioning and location, may be considered for PDRs.

Q5. Are there any particular classes, within the 1992 Order, where the controls do not strike the right balance between meeting the above obligations and the purpose of PDR?

Comments: All classes should be amended where appropriate to facilitate PDRs for disabled access.

4.6 Concern has been raised about the scope of general aviation PDRs. One issue is that terminal buildings and car parking facilities can be constructed under PDRs, increasing the capacity of the airport to handle passengers and freight which can result in increased pressure on local transport infrastructure.

Scottish Planning Policy (SPP) notes that Scotland's airports, as well as being important transport nodes and supporting wider economic growth, provide a significant number and variety of jobs. Relevant issues include public safety zone safeguarding, surface transport access for supplies, air freight, staff and passengers, related on- and off-site development such as transport interchanges, offices, hotels, car parking, warehousing and distribution services, and other development benefiting from easy access to the airport.

Q6. Do the restrictions on PDR for Aviation (in particular Classes 44 and 52) strike the right balance between removing unnecessary planning applications and allowing appropriate control over the wider impacts of development?

Comments: As there are no aviation facilities in Inverclyde, the Council wishes to make no comment.

4.7 A Petition, lodged in October 2008, called on the Scottish Parliament to urge the Scottish Government to remove the general PDRs of port authorities as a result of amenity concerns. There was also a more general concern about the ability to erect buildings within harbours without any scope for planning control.

PDRs are widely drawn, permitting development on land by statutory undertakers or their lessee required for the purposes of shipping or to facilitate the movement of passengers, livestock or goods. This is on the basis that where there is a harbour then additional buildings and other development related to harbour activities are likely to be appropriate.

In addition, the Scottish Government is clear that it does not wish to increase regulatory burdens on harbour development unnecessarily, as this will hamper Scottish harbours' ability to carry out their normal business and compete with other ports. This includes in relation to new economic opportunities in relation to the offshore renewable energy sector.

Q7. Do the existing controls on PDR for developments within harbours strike the right balance between removing unnecessary planning applications and protecting amenity?

Comments: The commercial success of harbour operations in Inverclyde is recognised as being of important benefit to the local economy. In the large scale harbour environments of Inverclyde there is significant scope for harbour related development without unacceptable amenity impact on neighbouring uses and / or the overall built environment. However, it is recognised that some small harbours present quality townscape environments, attracting tourists and visitors. In such locations there is a clear requirement to balance function and form.

4.8 The Scottish Government recognises the need to further develop Scotland's electric vehicle charging network. While some of this work is already being carried out by Transport Scotland through the 'Plugged-in Places' scheme, the Government wishes to incentivise other bodies, such as private companies and employers, to play their part in the adoption of this technology. Key to this aim is the considered removal of any unnecessary planning barriers.

Charging points themselves are simple electric power outlets. The main concerns for the Scottish Government at this stage are to clarify the status of:

- the infrastructure on which charging points are being mounted in off-street external car parking areas; and
- the on-street charging infrastructure that is being installed across Scotland.

The Government proposal is to introduce a new class of PDR to permit the installation of infrastructure for charging points within both public and private car parking areas. The possible approaches that the Government is considering are:-

a) Planning permission would be granted for electrical outlets mounted on external walls for re-charging electric vehicles off-street. This could be subject to limitations on size and location.

b) Planning permission would be granted for upstands for mounting an electric vehicle charging point and feeder pillar within an outdoor off-street parking area. This could be subject to limitations on numbers, size and location.

Q8. Would such PDR, restrictions and conditions be clear and reasonable for wall mounted outlets, upstands and feeder pillars?

Comments: There are no objections to the proposed introduction of PDRs in support of charging infrastructure for electric vehicles.

Q9. Is such clarification of Class 30 on minor developments by local authorities clear and reasonable?

Comments: Parking meters have, under Class 30, been considered as "other works required in connection with the operation of any public service...." Introduction of direct reference to "associated charging infrastructure" relating to electric vehicles should be removed or alternatively, reference to parking meters added to ensure consistency.

Q10. Should there be a deemed advertising consent for nameplates on charging points with

the suggested restrictions?

Comments: Yes

- 4.9 Proposals for industrial and warehouse developments, institutions, offices and shops have been consulted upon and implemented in England. These proposals take into account the economic downturn by proposing that business be allowed to undertake works without the costs of preparing and submitting a planning application.

The current PDRs allow for extensions up to 1,000 square metres subject to the increased floor area not exceeding 25 per cent of the original building. Evidence points to this being generally set at the right level for industry and warehousing; but it was identified that there is no allowance for the erection of new buildings.

The suggested approach is to add to the existing PDRs for industry and warehousing by including research and development and allowing the construction of a new building up to 100 square metres gross floor area subject to conditions.

- Q11. Do you think that we should clarify that Class 23 (Industrial and Warehouse Development) of the GPDO includes research and development?

Comments: Yes

- Q12. Do you think that we should grant PDR for the construction of new buildings in relation to industrial and warehouse development?

Comments: This proposal does not recognise issues of development density, road safety and impact on neighbours. The erection of a new building may impact on the level of on site car parking and turning areas for service vehicles, adding to or creating additional on street parking and vehicular circulation issues. PDRs for extensions are withdrawn where there is a loss of parking and vehicle circulation space. The same should apply to new buildings. If the proposal is to be introduced, there should be limitations on the siting of PDR buildings, by adding a distance to site boundary condition to limit impact on neighbours (particularly in mixed use areas) and visibility/road safety issues.

- 4.10 The proposal is that Class 25 be amended to emphasise that where hard surfacing is laid, provision should be made for drainage to a permeable surface. The permeability requirement would not, however, apply where there was a risk of contamination. While it would be for the developer in the first instance to consider whether there was such a risk, the planning authority may, in light of its enforcement role, have to make a judgement in this regard if it appeared the developer had avoided the permeability requirement without due cause.

- Q13. Do you think that PDR for hard surface in Class 25 should include requirements for disposing of surface water?

Comments: No, such a condition is difficult to both monitor and enforce.

- 4.11 In reviewing other classes of industrial and warehouse development PDRs there is also the opportunity to reconsider some limitations and conditions. For example, the Government considers developments could be closer to the boundary and the impact on neighbours could be limited by controlling the maximum height of the building within 5 or 10 metres of the boundary. In addition, should there be a limit the amount of ground covered by buildings to

50% of the curtilage?

Q14. Do the existing controls on PDR for industrial and warehouse development strike the right balance between removing unnecessary planning applications and protecting amenity?

Comments: The current rights present a fair and reasonable balance. Cross reference to the response to Q12.

4.12 There are currently no PDRs for schools, colleges, universities, hospitals, council-run care homes and other council buildings.

Research commissioned by the UK Government found that schools, universities, colleges and hospitals had the strongest case for a relaxation of PDRs where they occupy substantial sites. The Scottish Government propose new PDRs for the erection of buildings, extension or alteration of these institutions subject to the following potential limitations on floorspace, height, proximity to boundary and impact on outdoor sports facilities.

Q15. Do you agree that we should extend permitted development rights for schools, universities, colleges, hospitals, council-run care homes and other council buildings?

Comments: Yes, however there is scope for conflict with adjacent land uses, in particular residential, as a result of permitting development up to 5 metres of the boundary. This may cause unreasonable overlooking, particularly of residential property from upper floor classrooms.

4.13 There are no specific PDRs for office buildings. A new class for offices could allow the extension (or alteration) of an existing office building up to a maximum of 25 per cent of existing floorspace or 50 square metres, whichever is least. There would be no right to erect new freestanding buildings since offices are unlikely to require additional buildings for operational purposes. Such extensions could be subject to the additional limitations on height, materials and location.

Q16. Do you think that we should have PDR for office extensions?

Comments: Cross referring to points raised in response to Q12 and 15, this fails to recognise issues of overdevelopment, car parking, service vehicle circulation and, where applicable, neighbouring residential amenity.

4.14 In order to promote and encourage a cafe culture in Scotland, it has been suggested that consideration be given to reducing, where appropriate, the existing planning controls affecting pavement cafes.

The PDRs permits certain temporary use of land for up to 28 days in any calendar year and the consequential erection, or placing, of temporary structures.

Q17. What sort of activities under the heading of 'pavement cafes' should be considered for PDR (e.g. pubs, restaurants, mobile refreshment stalls) and what sort of PDR and related controls should apply?

Comments: Pavement cafes have the potential to present problems of noise and disturbance and footpath obstruction. While there are many locations where they present no planning issues, there are many which do. Due to the flexibility of "pavement cafes", as they are set up on a day to day basis with the potential to vary the area they cover and the number of tables and chairs used, any PDRs may be difficult to enforce. It is considered appropriate to retain existing controls and allow each example to be considered on merit.

4.15 Retail and town centres offer a wide range of facilities including shops, sandwich bars, banks,

building societies, restaurants, cafes, public houses, wine bars and hot food takeaways. At present there are no PDRs for retail and town centre facilities to alter or improve existing buildings nor erect new buildings. The Government proposals for retail and town centres including shops are to provide new PDRs to allow for alterations and extensions to the original building up to 50 square metres, or to a maximum of 25 per cent of the original floor space. Alterations and extensions could be subject to limitations on size, materials, design detail and location.

There would be no new PDRs for shops to create new freestanding buildings, other than trolley stores, since shops and restaurants generally operate out of a single building. Freestanding trolley stores could be permitted subject to limitations on size, height and position.

Q18. Do you agree that PDR should allow shops, banks, pubs, restaurants and other similar businesses to enlarge their premises?

Comments: Yes, subject to the PD rights proposed in the consultation paper.

4.16 The Caravan Sites and Control of Development Act 1960 requires a licence to be held for caravan sites, but specifies exceptions. The cross reference to the 1960 Act means that, where changes are made to the circumstances in which a local authority licence is not required, these feed through to the PDRs, which remove the need to apply for planning permission where exceptions apply to the siting of caravans for human habitation and to land used. Planning permission for use of land for camping is not included.

Where development is required to meet the conditions of a licence under the 1960 Act, then PDRs apply, so the local authority should not be requiring developments under the licence which would be incompatible with planning considerations.

Q19. Do the controls on PDR for caravans strike the right balance between removing unnecessary planning applications and protecting amenity?

Comments: Planning controls should be separated from the 1960 Act to assist clarity and to allow planning implications to be fully considered. Additionally, the current definition of a caravan requires to be addressed, as presently structures that may be defined as caravans are well beyond the original expectation.

4.17 Concerns have been raised with Scottish Ministers that requirements for planning permission and market operators licences for farmers' markets are a burden which could discourage development and marketing of products for direct sale to consumers by producers.

PDRs apply to the temporary use of land for any purpose on not more than 28 days in total in any calendar year. However, this specifically excludes open air markets.

Market Operators licences are the responsibility of local authorities. The licence is granted to the operator of the market and a local authority may attach conditions which relate to matters of public interest and safety, e.g. days and hours of opening, toilet facilities, layout and maintenance. Further conditions can be imposed relating to environmental and crime prevention.

In June 2009, the Scottish Government published Recipe for Success - Scotland's National Food and Drink Policy, which included a commitment to "provide advice and funding to local producers to help them develop markets for their products and encourage the growth of farmers markets, farm shops and local food initiatives". Also, Scottish Planning Policy stresses the need for planning authorities to take a welcoming approach to development in rural areas, including proposals which support communities and contribute to a sustainable and diverse rural economy.

The Scottish Government issued a survey on farmers' markets to planning authorities in late 2009. The main finding was that while some markets do not require planning permission, as they are regarded as not constituting a material change in the use of land, the majority of

respondents still favoured retaining planning authority control on those that do constitute 'development'. The reasons for doing so related to controlling issues such as: traffic, parking, impact on existing retail centres, opening hours, waste disposal, noise and impact on amenity generally. These could either be addressed by conditions on a planning permission or, if necessary, refusal of permission. There were differing views as to whether simply relying on the licensing regime could address these concerns.

Q20. Should there be PDR for open air markets where an operators licence has been obtained from the local authority?

Comments: No. It is the role of the planning system to address issues such as traffic, parking, impact on town centres, noise and impact on amenity, all of which may be issues associated with outdoor markets, and to take into account Government policy in reaching planning decisions. It should also be noted that any PDRs should not limit benefits to Farmers Markets. It is not the role of the planning system to show preference towards types of retailers.

4.18 Hill tracks play an important role in modern land management, facilitating access to remoter areas. However, inappropriately sited vehicle tracks can have detrimental impacts on the visual landscape, in particular where tracks extend into remote wild land areas or are on higher ground. In addition, poorly constructed tracks can adversely impact on biodiversity.

The formation of tracks and other means of access are covered by a number of classes of PDR. Private ways and roads are also being built for access to wind farms or hydroelectric schemes. Planning permission for these is usually obtained either through the consent required under the Electricity Act, or through an application for planning permission.

Private roads and ways are also created for field sports under PDRs on the basis of a claim that they are constructed for agricultural purposes. A road or way originally intended for one purpose may be easily employed for another and a distinction may not be enforceable. The Scottish Government has concluded that the issue is to ensure adequate controls are in place, and are also concerned that defining and mapping other sensitive areas and trying to specify controls within them could have significant practical challenges and costs. Similarly, they also do not believe that simply removing PDRs is a suitable approach to the issue.

It is proposed to look at possible changes in three parts:

In Designated Areas there are requirements to screen developments involving road construction for EIA in "sensitive areas" and, if the planning authority believe the development is likely to have significant environmental effects, a planning application and EIA are required.

The Conservation (Habitats &c.) Regulations 1994 have controls mainly concerned with biodiversity issues rather than impacts on landscape.

National Scenic areas have more specific restrictions on PDR for private and roads and ways for agricultural and forestry purposes.

Q21. Do the existing controls on PDR in designated areas strike the right balance relating to the formation of private roads and ways?

Comments: No. The requirement to obtain planning permission should be clear and decisive and not need pre application screening. It is considered that an amendment to the definition of a private road to include hill tracks is preferable.

4.19 Outside designated areas, thresholds trigger screening for EIA on roads construction projects outwith "sensitive areas" and planning permission or an alternative consent (e.g. under the Forestry EIA Regulations 1999) would be required if it were concluded a proposal was likely to have significant environmental effects.

In terms of additional controls, there are a number of approaches which might be applied,

possibly in combination. They include:-

- removing all PDR for the formation of private vehicular ways for Agricultural and Forestry purposes;
- removing of all PDR in specified landscape types by defining in the GPDO terms such as 'uncultivated land', 'unfenced land', 'open hill land' and 'semi-natural areas';
- defining "hill track" in the GPDO to specify limitations and conditions on any related PDR;
- amending the definition of private road and private way so that they make a distinction between 'vehicular' and 'non-vehicular' road or way;
- withdrawing PDR for private roads and ways above a certain height above sea level;
- limiting the length of tracks which can be constructed under PDR for Agricultural and Forestry uses;
- amending the thresholds within the planning EIA regime;

Q22. Is there an approach or combination of approaches that would ensure the majority of the hill tracks of concern were subject to a consent procedure? If so can you suggest definitions for terms such as 'hill tracks' or the locations (e.g. 'semi-natural areas', 'open hill land') where they occur?

Comments: See the response to Q21.

4.20 Repairs to private roads and private ways are granted PDR for "maintenance" or "improvement". "Improvement" is used, for example, to upgrade a non-vehicular to a vehicular way without applying for planning permission; this can lead to damage to ground outwith the boundaries of a private road or private way.

The Scottish Government considers taking forward the recommendation to distinguish between non-vehicular and vehicular ways as well as removing "improving", or possibly replacing it, could help address the issue. In addition, it could make clear that maintenance and repair are permitted development but improvement from non-vehicular to vehicular way and perhaps widening an existing private road or way requires a planning application.

Q23. Would a restriction of the PDR for the improvement of private roads and ways help address the concerns about hill tracks? If so, what form should the restriction take?

Comments: The restriction as proposed is supported.

4.21 There is currently no specific PDRs for waste management other than in relation to minerals development. The Scottish Government has adopted Zero Waste as a goal. The planning system has a crucial role in delivering waste management facilities to ensure the objectives and targets of Scotland's Zero Waste Plan are met. Moving to zero waste means more facilities will be required to collect, sort, reuse, recycle and process waste. There will also be opportunities to harness heat and power generated from waste recovery processes.

Transferring the scale of PDRs currently available to industrial and warehouse premises may be excessive given the nature of waste management processes and likely concerns about potential environmental impacts.

Q24. Would it be appropriate to have PDR for any types of waste management facilities? Are there types of waste management facilities for which it would be inappropriate to have any PDR and, if so, why.

Comments: All new waste management facilities should require planning permission as a consequence of the potential impacts resulting from vehicular movement, potential visual impact and noise and disturbance.

Q25. What sort of issues would PDR have to address that would not be addressed by WML and the PPC regimes or by other legislation?

Comments: See the response to Q24.

4.22 There are PDRs for buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in under or over that land or on land adjoining that land. The Government propose to clarify that this includes concrete crushers and other plant and equipment for the recovery of materials from wastes generated during the buildings process.

Q26. Do you have any comments on this proposal to clarify the PDR on temporary structures required during building operations?

Comments: No comment.

4.23 The following outline Government proposals for PDR for waste management. The first proposal is not confined to existing waste management facilities but to the curtilage of any other building (or a car park), other than the curtilage of a dwellinghouse or flats.

a) New PDR permitting the erection of a waste storage container (for non-hazardous waste with limitations on size, capacity and proximity to the site boundary, but not applicable to conservation areas and listed buildings.

b) A new part to the Order for 'waste management facilities' allowing works to existing facilities subject to limitations on size, capacity, number, location, surfacing, materials and flood risk.

Q27. Would such PDR, restrictions and conditions be clear and reasonable for waste storage containers, waste processing facilities and landfill sites?

Comments: The proposal is not clear without a definition of a waste management facility. It is also not clear where small scale public waste disposal (recycling) facilities, typically found in supermarket and public car parks fit into the proposal.

4.24 Additional comments : The decision to review non domestic elements of The Town and Country Planning (General Permitted Development)(Scotland) Order 1992 is welcomed, but the approach taken is far from comprehensive and fails to address the many changes in Government ,service delivery and technology during the last 19 years. Parts 11 (Development under Local or Private Acts or Orders), 12 (Development by Local Authorities), 13 (Development by Statutory Undertakers), 20 (Development by Telecommunication Code System Operators) and 21 (Other Telecommunications Development) all require consolidation and review.

5.0 IMPLICATIONS

5.1 Finance:

Financial Implications – One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

5.2 Personnel: None.

5.3 Legal: None.

6.0 **LIST OF BACKGROUND PAPERS**

Scottish Government – Consultation on Non-Domestic Elements of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 – copy available in the Members Lounge