

Scottish Government submission of 1 September 2022

PE1954/A End the installation of new telegraph poles for broadband provision

Thank you for providing the opportunity to contribute views to the Public Petitions Committee's consideration of [Petition PE1954](#). The petition is "calling on the Scottish Parliament to urge the Scottish Government to amend the current Permitted Development rights for digital communications infrastructure to:

- encourage the use of underground ducting for new broadband service installations and avoid the installation of unsightly telegraph poles and overhead cables;
- ensure local communities are made aware of plans to install digital communications infrastructure in their area, and given an opportunity to share their views prior to any installation work taking place; and
- ensure that all digital infrastructure, including underground ducting, is routinely maintained by the developer".

Telecommunications is a reserved matter under the [Scotland Act 1998](#) with the Department for Digital, Culture, Media and Sport, as the relevant Department, and Ofcom, as the telecommunications regulator. However, land use planning is a devolved power and the day to day responsibility for dealing with local planning matters rests, in the first instance, with the local planning authority under the [Town and Country Planning \(Scotland\) Act 1997](#). It is for the planning authority to interpret and implement relevant planning legislation and guidance, as it deems appropriate, given the circumstances in each case and to ensure that the provisions of the planning system are applied properly. Planning authorities have enforcement powers under planning regulations to address unauthorised development and ensure compliance with planning controls.

Permitted Development Rights

Some forms of development are granted planning permission through national legislation (referred to as permitted development rights), meaning they can be carried out without an application for planning

permission having to be submitted to – and approved by – the relevant planning authority. Permitted development rights (PDR) are contained within [The Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992](#) (GPDO) and subsequent amendments. Class 67 of the GPDO sets out the PDR for certain works carried out by or on behalf of electronic communications code operators (further advice on code operator rights is set out below). Class 67(1) includes development under land controlled by the developer which supports a digital telecommunications network. This may involve cabling for the purposes of a broadband network or a mobile radio telecommunications network which is ancillary to masts and telegraph poles.

In addition, PDR for new ground based masts requires the prior approval of the planning authority, as set out in paragraphs 69 to 99 of [Annex G of Scottish Government Circular 2/2015](#). Paragraph 86 sets out the requirement of the planning authority to carry out neighbour notification and paragraph 88 sets out that the planning authority has to make information pertaining to the application available for inspection.

The Scottish Government is currently carrying out an extensive review of PDR across a wide range of development types in Scotland. The PDR for digital communications infrastructure were considered through Phase 1 of the programme to assist in supporting economic and social recovery from the coronavirus pandemic as well as helping to tackle climate change and support remote and rural communities. A formal public consultation was undertaken in Autumn 2020, which provided an opportunity for anyone to become involved and comment on proposals. The amendments stemming from this public consultation were given effect by [The Town and Country Planning \(General Permitted Development and Use Classes\) \(Scotland\) Order 2020](#); the changes are summarised on our [Transforming Planning website](#). Further guidance on PDR can be found in [Annex G of Scottish Government Circular 2/2015](#).

As the PDR for digital infrastructure were recently reviewed and updated following public consultation, we have no current plans to further amend class 67. The current provisions are considered to strike an appropriate balance, by supporting the efficient rollout of digital connectivity across Scotland, whilst ensuring larger developments of this sort in the most sensitive, designated locations are subject to the requirements associated with a full planning application.

The Scottish Government is currently reviewing and updating its advice on how the planning system can strengthen and support high quality digital connectivity across the whole of Scotland. This will provide good practice on working together across Scottish Government, local authorities, operators, key agencies and communities which is essential to successful delivery and is key to ensure good siting and design of infrastructure. This will replace the current [Planning Advice Note 62: Radio Telecommunications](#) . We intend to publish this revised guidance later this year

The Electronic Communications Code

Schedule 3A of the [Communications Act 2003](#) - *The Electronic Communications Code* (the Code) – gives statutory rights to operators for the facilitation of installing and maintaining their electronic communications networks.

The Code confers “code rights” on a person with Code powers. A code right is a right to:

- install electronic communications apparatus on, under or over the land;
- keep installed apparatus which is on, under or over land;
- inspect, maintain, and operate apparatus;
- carry out any works on the land to enable apparatus to be installed and maintained;
- gain access to land to maintain or operate apparatus;
- connect to a power supply;
- interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land); and
- lop or cut back any tree or other vegetation that could interfere with apparatus.

In connection with these rights, the Code allows persons to whom the Code applies to:

- construct and maintain electronic communications networks and infrastructure (such as ducts, cabinets and poles) on public highways without the need to obtain a street works licence to undertake such works;

- construct communications infrastructure which is classified as 'permitted developments' under Town and Country Planning legislation (such as certain types of masts, poles and cabinets) without the need to apply for planning permission;
- in the event that agreement cannot be reached with the owner or occupier of private land, the Code allows an operator to apply to the Court to impose an agreement which confers the Code right being sought or for the Code right to bind the landowner or occupier; and
- claim compensation from a local authority in circumstances where that local authority has obstructed access to electronic communications apparatus in certain stipulated circumstances.

Where an operator has installed overhead apparatus using their rights under the Code they have a duty to affix a notice to the nearest major piece of apparatus with the name and address at which an objection notice may be given. Part 12 of the Code gives rights to object to certain apparatus provided the conditions in legislation are met.

Further information on the Code is available on the website of OFCOM, the UK telecommunications regulator, and available at the following link:

<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code>

I hope the Public Petitions Committee finds this information helpful.