

Citizen Participation and Public Petitions Committee

16th Meeting, 2022 (Session 6), Wednesday
23 November 2022

PE1954: End the installation of new telegraph
poles for broadband provision

Note by the Clerk

Petitioner	Lorna Buntain
Petition summary	<p>Calling on the Scottish Parliament to urge the Scottish Government to amend the current Permitted Development rights for digital communications infrastructure to:</p> <ul style="list-style-type: none">• 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.
Webpage	https://petitions.parliament.scot/petitions/PE1954

Introduction

1. This is a new petition that was lodged on 31 August 2022
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.

4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 74 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE1954: End the installation of new telegraph poles for broadband provision

Petitioner

Lorna Buntain

Date lodged

31 August 2022

Petition summary

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.

Previous action

Our local communities have raised objections with local Councillor Paul Ferretti, and our local MP, Stuart McDonald. They have raised concerns with Openreach on our behalf.

We have also contacted Rona McKay MSP, who is well aware of the concerns raised with Openreach.

The Community Council corresponded with Openreach, who were invited and attended a community council meeting, but we felt that our objections were dismissed.

Background information

In 2021, Openreach installed hundreds of telegraph poles in our communities in Lennoxton and Milton of Campsie.

Our understanding is that Openreach had assessed and planned the cheapest option to install the infrastructure needed to provide Ultrafast Full Fibre Broadband for hard to reach areas. No consultation had occurred between Openreach and local communities.

Our communities pressed forward with Openreach's objection process, which was kindly attached to each and every Telegraph Pole, only to receive what we felt were unhelpful and dismissive responses from Openreach.

All the telegraph poles have been coated with a wood preservative, which smells very strongly of a paraffin-like substance. Each time it rains, this oily substance runs onto the area surrounding the telegraph pole. We fear that it could make its way into the watercourse via absorption into the soil, the local burns and the River Glazert. This risks adversely affecting local communities, microorganisms, wildlife and our pets.

Annexe B

The logo for SPICe is a purple rounded rectangle with a gradient. The text 'SPICe' is written in white, bold, sans-serif font.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition PE1954: End the installation of new telegraph poles for broadband provision, lodged by Lorna Buntain

Brief overview of issues raised by the petition

Petition PE1954 calls 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.

The petition relates to the installation of hundreds of telegraph poles in Lennoxton and Milton of Campsie in 2021. The local communities have raised the issue with the local council, MSP and MP.

Recently, a local campaign raised issues with Openreach relating to five new telegraph poles in East Wemyss in Fife, which resulted in the five poles being removed. [Internet Service Provider Review notes that:](#)

Such poles are typically built using Permitted Development (PD) rights, which means they don't have to go through the usual planning process and can pop up quite quickly, often without residents getting much of a say, which adds to the frustrations of those who oppose them.

Key Organisations and relevant links

[Openreach](#) is responsible for the copper wire and fibre cables that connect homes and businesses to local exchanges in the UK. They have a [webpage where individuals can request that Openreach alter or remove their equipment](#), including telegraph poles.

[Ofcom](#) is the regulator for the UK communications industry, and is responsible for making sure people are able to use communications services, including broadband. They publish annual [Openreach monitoring reports](#) which focus on assessing the independence of Openreach, ensuring that its services can be accessed by all companies to promote competition among fibre networks. In response to a [freedom of information request in February 2021](#), Ofcom noted that:

Ofcom regulates aspects of Openreach's products and services, including the products such as poles that it manages on behalf of BT, and has also granted BT1 powers under the Electronic Communications Code (the Code) that enable it to benefit from simplified planning procedures when installing and maintaining electronic communications equipment on public or private land.

The Scottish Government published an update to [Planning circular 2/2015: non-domestic permitted development rights](#) in April 2021, which sets out conditions on permitted development rights in relation to the installation of telegraph poles. It notes that:

PDR apply to various development related to telegraph poles, namely the installation of new telegraph poles, the replacement or alteration of existing poles, the installation of new overhead lines on such poles and work which is ancillary to such development. These PDR apply in designated areas. See paragraphs 35 to 36 on general limits on ground based apparatus.

The House of Commons Library published a [briefing on building broadband and mobile infrastructure](#) in March 2022 which sets out the rules for building telecommunications infrastructure such as mobile

masts, including planning rules and the Electronic Communications Code.

Andrew Feeney-Seale

Senior Researcher

[19/08/2022]

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

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.