

Local Government, Housing and Planning Committee

10th Meeting, 2023 (Session 6)

Tuesday, 28 March 2023

SSI cover note for: Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023

SSI 2023/35

Title of Instrument: Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023

Type of Instrument: Negative

Laid Date: 10 February 2023

Circulated to Members: 16 February 2023

Meeting Date: 28 March 2023

Minister to attend meeting: Yes

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 27 March 2023 (40-day date: 30 March 2023)

Introduction

1. The Committee considered this instrument on 21 March and agreed to invite the Minister for Public Finance, Planning and Community Wealth to give evidence on it. The purpose of this paper, therefore, is to provide information to support this session.

2. An electronic copy of the instrument is available at: [Town and Country Planning \(General Permitted Development and Use Classes\) \(Scotland\) Miscellaneous Amendment Order 2023](#)

3. Copies of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**.

4. In its discussion on 21 March, the Committee expressed particular interest in whether guidance would be helpful in assisting interpretation of the changes made by the Order.

Purpose of Order

5. The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and the Town and Country Planning (Use Classes) (Scotland) Order 1997. The amendments made by the Order form part of the Scottish Government’s phased programme to review and extend PDR in Scotland. PDR grant planning permission for specified types of development, meaning development can take place without a planning application having to be submitted to and granted by the planning authority.

6. The Policy Note states that the Order is intended to help support—

- The rollout of electric vehicle (“EV”) charging infrastructure;
- The resilience and recovery of city, town and local centres; and
- Operational development at Scottish ports.

7. In addition to extending PDR in relation to electric vehicle charging infrastructure, the placing of furniture on roads and pavements outside specified hospitality premises and making changes in respect of the development of ports, the Order amends the Use Classes Order to provide greater flexibility to permitted changes of use for certain buildings as follows—

- Planning permission applications would no longer be required for a change of use in buildings from shops to financial, professional, and other services or vice versa.
- Planning permission applications would no longer be required for a change in use in buildings from shops, financial, professional, and other services to food and drink premises (other than where the premises are in “close proximity” to dwellings) or to small-scale work premises.

8. Although the extension of PDR in respect of street furniture outside hospitality establishments means that this can be installed without a planning application having to be submitted to (and approved by) the planning authority, the EQIA¹ confirms that “the new PDR for movable outdoor furniture associated with specified hospitality premises is subject to a condition that consent must be obtained from the relevant roads authority under the Roads (Scotland) Act 1984.”

9. Neither the SSI itself, or its accompanying documents, commit the Scottish Government to producing guidance on the interpretation of the revised PDR.

Written Submissions

¹ [The Town and Country Planning \(General Permitted Development and Use Classes\) \(Scotland\) Miscellaneous Amendment Order 2023 \(legislation.gov.uk\)](#)

10. The Committee wrote to relevant stakeholders inviting views on the proposed changes to the placing of street furniture outside hospitality premises and proposals in respect of the change of use in buildings.

11. FSB Scotland confirmed that it supported the measures, which it considered would be “welcome in terms of reducing the regulatory burden often faced by small businesses in terms of planning.” In its view, “these simplifications of the system will not only support the economic recovery of small businesses, but also of town/city centres overall.”

12. Living Streets Scotland confirmed that it was content with the proposed changes to the General Permitted Development and Use Classes Regulations (GPDR) offering more flexibility in the renovation and regeneration of shops and other high street buildings.

13. However, Living Streets Scotland feared unintended consequences regarding removing planning permission for associated street furniture such as tables and chairs on the pavement or carriageway, noting that wider street management challenges around accessibility shouldn’t be ignored. In its view, the Committee should “pause and seek reassurance that the above issues have been thought through, and the practical implications of the new regime for councils and pedestrians fully understood.”

14. RNIB Scotland also raised concerns about the impact that the new PDR might have on public spaces and on the confidence and independence of blind and partially sighted people. Noting that “the essence of PDR enables rapid change,” and the likelihood that any issues or complaints would arise retrospectively rather than before changes had taken place, they suggested that the Committee may wish to seek clarification of how the safeguarding process would work in practice and whether councils would offer clear procedures for raising concerns and complaints.

15. Both the Living Streets Scotland and RNIB Scotland letters are attached at Annexe B.

Delegated Powers and Law Reform Committee consideration

16. At its meeting on 28 February 2023² the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

Procedure for Negative Instruments

17. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

² <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/2/28/31dd5c50-cd7e-4c2c-afb4-3538f49774ec#Annex-A>

18. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Conclusion

19. The Committee is invited to consider the information above in its evidence session with the Minister for Public Finance, Planning and Community Wealth.

**Clerks,
Local Government, Housing and Planning Committee**

Scottish Government Explanatory Note**EXPLANATORY NOTE**

This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the 1992 Order”), and the Town and Country Planning (Use Classes) (Scotland) Order 1997 (“the Use Classes Order”).

Article 5 amends classes 9E and 9F in Part 2D of the 1992 Order (recharging electrical outlets). In particular, it alters the limitations on the permitted development and includes equipment and equipment housing in class 9F.

Article 7 inserts new Parts 2H and 2I into the 1992 Order. Part 2H contains class 9L providing permitted development rights for outdoor server provision, and Part 2I contains class 9M providing permitted development rights for solar canopies, battery storage and equipment housing for recharging vehicles.

Article 8 inserts new classes 11A and 11B into the 1992 Order which provide permitted development rights for changes of use.

Article 11 amends class 30 (the erection or construction and the maintenance, improvement or other alteration by a local authority) of the 1992 Order to provide that this permitted development right includes electric vehicle charging points and associated infrastructure.

Article 12 amends class 35 (dock, pier, harbour, water transport, canal or inland navigation undertakings) of the 1992 Order. In particular this clarifies that agents of statutory undertakers may carry out development permitted by this class, and extends the permitted development right to include development in connection with the provision of services and facilities, subject to limitations. The amendment also provides the permitted development right is subject to the condition that the planning authority is notified.

Article 13 amends the Use Classes Order to replace use class 1 (shops) and use class 2 (financial, professional and other services) with new use class 1A (shops, and financial, professional and other services). Articles 4, 6, 8, 9 and 10 make amendments to the 1992 Order in consequence of this amendment of the Use Classes Order.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Planning, Architecture and Regeneration Division, Victoria Quay, Edinburgh EH6 6QQ.

POLICY NOTE

**THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED
DEVELOPMENT AND USE CLASSES) (SCOTLAND)
MISCELLANEOUS AMENDMENT ORDER 2023**

SSI 2023/35

The above instrument (“the Order”) was made in exercise of the powers conferred by sections 26(2)(f), 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997. The instrument is subject to negative procedure.

The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”) and the Town and Country Planning (Use Classes) (Scotland) Order 1997 (“UCO”).

The GPDO grants planning permission for specified types of development, meaning development can take place without a planning application having to be submitted to and granted by the planning authority. These grants of planning permission under the GPDO are referred to as permitted development rights (“PDR”). PDR are typically subject to specific conditions and limitations to protect amenity and to control the impacts of the development which they permit. The UCO groups together various land uses into separate use classes. Changes of use within a single class do not constitute development for planning purposes and so planning permission is not required.

The amendments made by the Order form part of the Scottish Government’s phased programme to review and extend PDR in Scotland. The Order relates to Phase 2 of that review programme.

1 Policy Objectives

The Scottish Government is carrying out a review of PDR as part of its wider planning reform programme. The review is being taken forward in phases, with each phase considering the potential for new and extended PDR for specific development types. The Order relates to the second phase of the review; the measures it provides for are intended to help support:

- The rollout of electric vehicle (“EV”) charging infrastructure.
- The resilience and recovery of city, town and local centres.
- Operational development at Scottish ports.

Further information on the rationale for and intended effect of the changes is set out below.

1A. Electric Vehicle Charging Infrastructure

The need to consider changes to existing planning controls on EV charging infrastructure reflects: the role EVs can play in helping to address climate change; the substantial growth in EV ownership that is forecast in the coming years; and the increased need for charging equipment (including larger high power chargers) associated with forecasted levels of EV ownership. The public consultation which ran from 11 May to 3 August 2022 set this out in further detail and sought views on several proposals for change.

Having considered the responses to the consultation, the Order amends existing classes 9E and 9F of the GPDO, which currently include PDR for, respectively, wall mounted electrical outlets for EV charging and for EV charging upstands (a pillar from which the EV charging cable extends). The Order also introduces a new class 9M with PDR for solar canopies for the primary purpose of EV charging, and battery storage and equipment (including equipment housing) necessary for the operation of a solar canopy. The changes extend PDR, whilst retaining an acceptable level of planning control, to help address climate change.

In summary, the changes will:

- Remove the current limitation regarding specified areas¹ in classes 9E and 9F, so that in future the PDR in these classes will apply in such areas.
- Grant additional PDR under class 9F for taller upstands and for equipment (including equipment housing) necessary for the operation of EV charging upstands. The new PDR for taller upstands will not apply within the curtilage of a dwellinghouse or of a building containing a flat or flats (“dwellings”); in such locations the previous height limit will continue to apply.
- Remove conditions in classes 9E and 9F on the size, location, illumination of nameplates on wall mounted chargers and upstands; add a new condition on lighting and illumination regarding the class 9F PDR; amend the reinstatement conditions where development permitted under these classes is subsequently removed, and clarify the definition of the parking areas, ‘qualifying parking areas’, to which these PDR apply.
- Introduce new class 9M PDR for solar canopies, whose primary purpose is EV charging, and battery storage and equipment (including equipment housing) necessary for the support of a solar canopy. These apply in ‘qualifying parking areas’, based on a different definition from that for classes 9E and 9F.
- Apply certain requirements regarding class 9M, namely: certain size and locational requirements, and, in particular, that the PDR will not apply in certain specified areas, or within the curtilage of a dwelling. These new class 9M PDR are also subject to conditions on removal of redundant development, reinstatement of the property and on lighting and illumination.
- Clarify that local authority PDR (class 30) cover the provision of EV chargers and associated infrastructure.

Class 9E – Wall Mounted Chargers for EV

Article 5(a) of the Order amends class 9E such that:

- A. The term ‘areas lawfully used for off-street parking’ will be replaced by ‘qualifying parking areas’, defined as the curtilage of dwellings or areas with hard surfaces used primarily for lawful off-street parking (article 5(a)(i) and (c)).

¹ Sites of archaeological interest; national scenic areas; historic gardens and designed landscapes; historic battlefields; conservation areas; National Parks and World Heritage Sites.

This change, which will also apply to class 9F, is to clarify the areas to which PDR apply. Namely, that the areas involved must be established, not merely temporary, parking areas whilst recognising that the curtilage of dwellings, to which some of the PDR applies, may not necessarily have car parking as a primary use or a hard surface.

- B. The list of specified areas to which the current class 9E PDR do not apply will be removed, allowing the PDR to be exercised in qualifying parking areas within those specified areas (article 5(a)(ii)). Current PDR conditions on the size of wall mounted chargers and their location on a building are retained. Where, for example, a planning authority felt that PDR would undermine the basis for an area being designated for built heritage or environmental sensitivities, they do have powers to promote directions to restrict PDR in their area, or part of their area.
- C. The conditions on the size, number and location of nameplates on the electrical outlet and restrictions on illumination in that regard will be removed (article 5(a)(ii)). This is to streamline the legislation in light of the limited impact of these conditions, which apply only to the wall mounted charger. The PDR relate only to the wall charger which is of limited size and therefore any nameplates or illumination on it will be of limited impact.
- D. The conditions on the restoration of land and buildings (once redundant development, originally permitted by class 9E, is removed as required) will be replaced (article 5(a)(iii)). The change allows a restoration plan to be agreed between developer and planning authority, rather than a requirement merely to reinstate property as nearly as practicable to what it was before the development. The latter would still apply in the absence of an agreed restoration plan. A degree of flexibility will therefore be applied to allow for better outcomes regarding restoration. This approach will also apply to class 9F and new class 9M.

Class 9F – Upstands for EV charging

Article 5(b) of the Order amends class 9F such that:

- A. The term ‘areas lawfully used for off-street parking’ will be replaced by ‘qualified parking areas’ (article 5(b)(i) and (c)). See entry A in the above section on class 9E changes.
- B. The class 9F PDR will be extended to include equipment (including equipment housing) necessary for the operation of an upstand (article 5(b)(i)).
- C. The maximum height for an upstand will be 2.7 metres above the parking surface (Article 5(b)(ii)), except within the curtilage of dwellings, where the current limit of 1.6 metres will continue to apply. The current restriction on upstands within 2 metres of a road, and those which would result in more than one upstand being provided for each parking space will continue to apply.

- D. Limitations will apply to the new PDR for equipment (including equipment housing) necessary to the operation of an upstand, to avoid road safety issues and minimise impacts on public amenity (article 5(b)(iii)).
- E. The list of specified areas to which the class 9F PDR do not apply will be removed, allowing the PDR to be exercised in qualifying parking areas within those areas (article 5(b)(iv)). The change will also apply to the PDR as it relates to equipment and equipment housing.
- F. The conditions on the size number and location of nameplates on an upstand and restrictions on illumination are removed (article 5(b)(iv)).

A new condition on lighting or illumination forming part of the development permitted by class 9F will apply (article 5(b)(v)). This is in view of the larger scale of development now permitted.

- G. The conditions on the restoration of land and buildings (once redundant development permitted by class 9E is removed as required) will be replaced (article 5(b)(vi)). See entry D in the above section on class 9E changes.

Class 9M – Solar Canopies for EV Charging

- A. Article 7(1) of the Order introduces class 9M, which contains PDR for the installation, alteration or replacement within a qualifying parking area of: (a) a solar canopy, and (b) battery storage and equipment (including equipment housing) necessary for the operation of a solar canopy.
- B. ‘Qualifying parking area’ in class 9M has a different meaning from that in classes 9E and 9F, in that it does not include the curtilage of dwellings (class 9M(5)).
- C. Class 9M (2)(a) to (e) contain size and locational limitations on the exercise of these PDR, to avoid potential road safety issues and minimise the visual and other impacts of the development. Given the potential scale of development under this class, Class 9M PDR do not apply within the curtilage of dwellings or the areas specified in 9M (2)(d). The additional control on class 9M development in relation to proximity to aerodromes, reflects current requirement in relation to the general PDR for solar panels on non-domestic buildings.
- D. Class 9M(3) and (4) contain conditions on the removal of redundant equipment that was permitted by class 9M, and reinstatement of the property, and on any lighting or illumination forming part of the development permitted under class 9M .
- E. Class 9M(5) sets out interpretation for various terms used in the new class. This includes definitions of ‘qualifying parking area’ and ‘solar canopy’ (e.g. such canopies must be primarily for the purpose of recharging of vehicles, which does not rule out any surplus electricity being used for other purposes).

Class 30 – Electric Vehicle Charging Points and Associated Infrastructure

- A. Article 11 of the Order amends the PDR in class 30 (the erection or construction and the maintenance, improvement or other alteration by a local

authority) of the GPDO to clarify it covers electric vehicle charging points and associated infrastructure.

1B. Centres

In summary, the Order introduces new PDR (and amendments to the UCO) that will provide greater flexibility to change the use of certain buildings and place furniture outside specified premises. As set out in the Phase 2 public consultation, the measures are intended to help promote the resilience, regeneration and recovery of Scotland's centres. The consultation document recognised that the challenges facing city, town and local centres are long-standing, complex and have been exacerbated by the Covid-10 pandemic. In that context, it underlined that the planning system is not the only mechanism with the potential to support Scotland's centres, and that PDR and UCO changes form part of a wider approach spanning several policy areas.

Use Classes Order

Article 13 of the Order amends the UCO to replace use class 1 (shops) and use class 2 (financial, professional and other services) with class 1A (shops, and financial, professional and other services). New use class 1A brings together those uses previously falling within use classes 1 and 2 of the UCO into a single class. The effect of doing so is that changes of use that would previously have involved a change between use classes 1 and 2 no longer constitute development for planning purposes. Such changes of use can therefore be carried out without an application for planning permission. This new use class is intended to provide greater flexibility to change the use of buildings and/or for buildings to have multiple concurrent uses. The GPDO includes PDR granting planning permission for certain changes of use between various use classes, including use class 1 and use class 2. Unlike the UCO, using PDR for changes of use between classes means that these can be permitted in one direction only and subject to condition. Articles 4, 6, 8(a), (b) and (d), 9 and 10 of the Order make consequential changes to the GPDO to reflect that use classes 1 and 2 will be replaced by use class 1A.

New PDR for provision of class 3 food and drink premises

Article 8(c) of the Order inserts new class 11A into the GPDO. This new PDR provides for a change of use of a building (or part of a building) to use class 3 (food and drink) from a use within class 1A (shops and financial, professional and other services). Class 11A also provides PDR for betting shops, pay day loan shops and hot food takeaways to change to class 3 use.

Class 11A does not apply to buildings (or parts of buildings) that are in close proximity to dwellings. Specifically, class 11A(2) disapplies the PDR if:

- Any part of a dwelling is located directly above part of a building that would change to class 3; or
- A dwelling is located within 1 metre of a building (or part of a building) that would change to class 3. This measurement does not include any communal access (i.e. a communal passage, stairwell or landing).

The restriction provided for by class 11A(2) should not be taken as implying that changes of use to use class 3 adjacent to or directly below dwellings are inherently unacceptable in planning terms. Rather, it recognises that such changes of use may have impacts on residential amenity (e.g. as a result of cooking odours) that ought to be considered through a planning application and may require mitigation, for

example through the provision of flues or ventilation systems.

New PDR for provision of small-scale class 4 workspaces

Article 8(c) of the Order also inserts new class 11B into the GPDO. This new PDR class provides for a change of use of a building (or part of a building) to class 4 (business) from a use within class 1A (shops, and financial, professional and other services) or class 3 (food and drink). Class 11B also provides PDR for betting shops, pay day loan shops and hot food takeaways to change to class 4 use. Class 11B PDR apply to buildings whose floorspace does not exceed 300 square metres; it also applies to “building units” up to 300 square metres within larger buildings (e.g. tenement buildings with shop, restaurant and takeaway units at ground floor). So, a building over 300 square metres could have multiple 'qualifying building units' within it which could change to Class 4 use.

New PDR for outdoor furniture

Article 7(1) inserts new class 9L into the GPDO. This new PDR class provides for the placement of furniture on a public road (including the pavement) adjacent to class 3 (food and drink) premises, pubs and bars. What constitutes furniture for the purposes of class 9L PDR is specified in sub-paragraph 9L(3). Sub-paragraph 9L(2) makes clear that although the GPDO grants planning permission for development covered by class 9L, it does not disapply separate controls on obstructions to roads under section 59 of the Roads (Scotland) 1984. Relevant licensing controls will also continue to apply.

1C. Port Development

The Scottish Government committed in March 2021 to consider whether port operators' PDR were fit for purpose and whether amending them could support the objectives of both the Scottish and UK Government for Green Freeports. Building on this, the Phase 2 public consultation set out the Scottish Government's intention to ensure a level playing field between Scottish and English ports by aligning port operators' PDR (class 35) with those of airport operators (class 44).

To that end, article 12 of the Order amends class 35 to widen the scope of development that can be undertaken under this class and who can undertake it. Specifically, the Order:

- permits development in connection with the provision of services and facilities.
- provides for development to be undertaken by the statutory undertaker's agent.
- requires the developer to notify the planning authority before carrying out development under Class 35 unless it is of a specified description.

These changes apply to all ports in Scotland; not just those designated as Green Freeports.

2 Consultation

The provisions of the Order were the subject of a public consultation which ran from 11 May to 3 August 2022. An independent analysis of the responses to the Phase 2 consultation was published in February 2023.

Public consultation on Phase 1 measures ran from 1 October to 12 November 2020. An independent analysis of the responses to this consultation was published in December 2020.

An earlier consultation on the overall PDR review programme and its associated sustainability appraisal ran from 5 November 2019 to 28 January 2020. A summary of the responses to that consultation was published on 30 September 2020.

The text below sets out where proposals have not been taken forward or where the provisions or the Order differ substantively from what was consulted on.

2A. Electric Vehicle Charging Infrastructure

In light of the consultation responses, the dimensions for upstands and equipment (including equipment housing) and battery storage in relation to development covered by classes 9F and 9M, are slightly larger than was proposed. These changes reflect the practical considerations associated with rolling out this sort of infrastructure.

The proposal to disapply the new class 9F PDR for additional equipment (including equipment housing) in specified areas has not been included in the Order. This was on the basis that in the absence of such equipment, PDR for an upstand alone would be of limited practical use.

The consultation paper also sought views on the potential implications of introducing PDR for parties other than local authorities to install on-street EV chargers and PDR for petrol stations to convert to EV charging forecourts. Further consideration will be given to the issues raised by such measures before any PDR are brought forward.

2B. Centres

The Phase 2 consultation sought views on a merged use class bringing together use classes 1, 2 and 3. It recognised that the effect of doing so would be to take any changes of use falling within a merged class out of the scope of planning control (as such changes would not comprise development), meaning the planning system would not be able to mitigate associated impacts. The consultation gave the specific example of where a retail unit (class 1) located below a flat changes to a restaurant (class 3). Taking account of the consultation responses and the concerns expressed about potential impacts on residential amenity, rather than merging use classes 1, 2 and 3 as proposed, the Order instead:

- Merges use classes 1 and 2 into new use class 1A (see article 13); and
- Introduces a new PDR providing for a change of use from class 1A (and betting shops, pay day loan shops and hot food takeaways) to class 3 – unless the relevant unit is adjacent to or directly below a dwelling (see article 8).

The consultation proposed a new PDR for outdoor furniture adjacent to class 3 premises. In light of the feedback received, new class 9L also applies to pubs and bars.

2C. Port Development

The Order requires that developers carrying out development under the amended class 35 notify rather than “consult” the relevant planning authority. In light of the consultation responses, this is considered a clearer and more proportionate requirement.

3 Impact Assessments

The following assessments have been carried out and are published alongside this SSI:

- a. Business and Regulatory Impact Assessment (BRIA)
- b. Equality Impact Assessment (EqIA)
- c. Island Communities Impact Assessment (ICIA) Children's Rights and Wellbeing Impact Assessment (CRWIA) - screening
- d. Fairer Scotland Duty - screening

A Sustainability Appraisal incorporating Strategic Environmental Assessment (SEA) requirements was undertaken and published in November 2019. Through this process, the potential environmental, social and economic effects of the proposed programme of changes to PDR has been considered. A draft Post Adoption Statement and some additional assessment of Phase 2 proposals that were not considered as part of the 2019 Sustainability Appraisal were published alongside the May-August 2022 consultation. The draft Post Adoption Statement will be updated to reflect the final Phase 2 measures.

4 Financial Effects

A BRIA has been completed and is published alongside this SSI. The BRIA highlights that by removing the need to apply for planning permission for various forms of development, the Phase 2 measures will provide greater certainty for applicants and save time and money associated with preparing a planning application. The BRIA did not quantify these savings.

Scottish Government
Directorate for Local Government and Communities

February 2023

ANNEX B

Dear Alan

Town and Country Planning (General Permitted Development and Use

Classes) (Scotland) Miscellaneous Amendment Order 2023

Thank you for seeking our views on the secondary legislation currently being considered by the committee.

Living Streets Scotland is content with the proposed changes to the General Permitted Development and Use Classes Regulations (GPDR) offering more flexibility in the renovation and regeneration of shops and other high street buildings. However, we do fear unintended consequences regarding removing planning permission for associated street furniture such as tables and chairs on the pavement or carriageway.

In theory, such activities are regulated under the roads Scotland Act 1984, Section 59 which prevents obstructions in the carriageway. The carriage includes the footway, although this isn't always understood. Section 59 as a minor consenting regime means less scrutiny than full planning permission, which would include prior consultation highways authorities at the application stage.

Under the new regime the onus will be on the applicant to seek separate permission for tables and chairs much later in the process when the site becomes operational. We are concerned about low awareness or confusion about the need for Section 59 consent, following COVID relaxations. We foresee considerable risk that retrospective permission being required response to public concern. Furthermore, areas like lanes and closes which aren't considered part of the carriageway (including rights of way) might be left unregulated.

In general Living Streets Scotland and its local groups have seen multiple examples in Scotland's major towns and cities of obstructions on pavements, which local authorities have been unable to adequately manage using their existing Road Scotland Act 1984 powers. Many examples can be found on major streets where passage by wheelchair is challenging or impossible because footway space has been lost (or simple cases of obstruction) because of tables and chairs. This situation deteriorated during the pandemic, so proposals for a more permissive regime are a concern. If successful, the more relaxed regulations will see more food and drink establishments and associated Section 59 applications. However, it seems unlikely roads authorities will have the staff to adequately scrutinise these or fulfill their statutory equalities obligations effectively. Nor do we believe

councils have sufficient capacity to monitor consents.

Whilst the implications of extending the General Permitted Development and Use Classes Regulations seem minor this shouldn't ignore wider street management challenges around accessibility. We therefore advise the committee to pause and seek reassurance that the above issues have been thought through, and the practical implications of the new regime for councils and pedestrians fully understood.

More generally, the committee might want to consider these issues in future as part of a wider inquiry into all aspects of street management, given the level of concern amongst disabled people about accessibility.

Yours sincerely

Stuart Hay
Director Living Streets Scotland

Dear Ms Burgess

RNIB Scotland - SSI 2023/035: The Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023

Thank you for your letter of 27 February offering us the opportunity to make some comments on SSI 2023/035 to help inform the committee's consideration of the Order.

We understand that the SSI is a negative instrument and that there is no requirement for the Committee to take evidence and report on it. However, it may do so should it consider that the proposed changes merit further scrutiny.

As your letter points out, in 2022 the Scottish Government carried out a public consultation on Permitted Development Rights (PDR). The Royal National Institute of Blind People (RNIB) Scotland submitted a consultation response. This focussed on our concerns about the impact of new PDR that would permit hospitality businesses to place tables and chairs on the pavement outside their premises without submitting a planning application and Electric Vehicle (EV) Charging Infrastructure.

In this letter we would like to first set out our general concerns about the impact that the new PDR may have on public spaces. We will conclude by asking how those

who believe themselves to be negatively impacted by the changes can effectively raise concerns or ask for changes given that PDR does not need planning permission.

RNIB Scotland believes that streets and public spaces should be safe and accessible for everyone to use. We agree that supporting the recovery of Scotland's town centres is crucial following the coronavirus pandemic.

However, prior to the pandemic the streetscape was already challenging for people with sight loss, as was travel by public transport and having accessible information.

A 2020 RNIB survey found that 66 per cent of people surveyed said that they feel less independent than they did before the COVID-19 pandemic.

Blind and partially sighted people throughout the pandemic suffered from increased levels of social isolation and loneliness, which also resulted in reduced confidence and independence getting around/going out independently, due to changing environments.

During the pandemic this was primarily because of social distancing measures which were inaccessible to blind and partially sighted people, but also changing spacing requirements, access to environments, and routes had adverse consequences for many blind and partially sighted people. The impacts on practicalities such as getting to and from places independently, as well as loss of confidence in going out of the home has been felt by many.

People have told us of issues that were important for them to help them get around safely. In the main, these fell into three key themes:

- Avoiding moving vehicles.
- The importance of kerbs and crossings.
- The hazards of cluttered pavements.

Blind and partially sighted people rely on clear demarcations to distinguish between pavement/footways and roadsides, crossing points, bus stops, etc.

Those with navigation canes and guide dogs, use pavement and building lines as a means of orientation and navigation. We are concerned that rapid alterations in change of use of public spaces, could have negative consequences, on the confidence and independence of blind and partially sighted people to find places they need to get to.

Chairs, tables, and other movable furniture placed, on the road outside of food and drink premises can have a very real and negative impact on the accessibility of spaces.

Maintaining clear pavements is key to avoid injury and loss of confidence, amongst blind and partially sighted people, whilst being able to maintain independence by walking. One RNIB survey respondent said: “I’ve had a lot of issues with having to avoid some routes. This has made me more dependent on taxis and other public transport, as it’s just not possible to safely walk to these places.”

However well-meaning changes may seem, alterations or placement of street furniture should be done in a way so as not to disadvantage space available for blind and partially sighted people to navigate, as well as other street users such as those with pushchairs/prams and wheelchair users. A survey by Insight Angels and Guide Dogs found that “83% of people with sight loss said that reducing obstacles on pavements and street clutter was important to improving their quality of life.”

Keeping pavements clear also has implications for the positioning of the emerging Electric Vehicle (EV) Charging Infrastructure. RNIB Scotland believes that although developments are carried out by public and private bodies, due to the changing nature of demand for services, shops, etc, all EV charging points should adhere to minimum standards to reduce the risk of injury related to the positioning and design of new EV infrastructure.

While visually impaired people may be particularly vulnerable to trip risks, everybody, that is, those with or without disabilities, could be affected, for example, by trailing cables. Any obvious changes to the streetscape and diversions during delivering and operating EV charging infrastructure, should remain as accessible and clear as possible.

The press release issued by the Scottish Government on 10 February 2023 described the proposed changes as “flexible planning measures to boost hospitality and town centre recovery” and stated that:

“Simplifying planning rules for electric vehicle chargers will support the roll-out of infrastructure across Scotland as part of our commitment to tackling climate change and making Scotland a Net Zero nation.”

It went on to state that:

“Councils will, however, retain powers to prevent and deal with obstructions that make it difficult for people to access pavements safely and effectively, for example people in wheelchairs or with visual impairments, or families with children in pushchairs.”

Planning Minister Tom Arthur was quoted as saying:

“The important safeguards for councils seek to ensure that no one should be prevented from using pavements and visiting town and city centres safely.”

However, the essence of PDR enables rapid change. This makes it likely that complaints will be made after the event while it is likely to be contended that the changes are permissible under permitted development.

We would like to have further information on how the safeguarding process will work in practice. Will local councils offer clear procedures for raising concerns and complaints?

We hope that your committee consideration might help to clarify this.

Thank you once again for giving us the opportunity to write to you on the potential impact of the new permitted development rights.

We look forward to your response.

Yours sincerely

James Adams
Director,
RNIB Scotland