



Heads of Planning Scotland

HEADS OF PLANNING SCOTLAND'S SCOPING PAPER ON THE EXTENSION OF PERMITTED DEVELOPMENT RIGHTS (PDR) AND THE OPTIONS TO REMOVE THE NEED FOR PLANNING PERMISSION FOR MORE DEVELOPMENT TYPES.

"Planning should not be bureaucratic and dull, but inspiring and influential.

We will remove the need for planning consent from a wider range of developments.

We want to simplify, streamline and clarify procedures so that planners can focus on activities that add more value."

In the coming year, we will consult on extending PDR, informed by the ongoing work of HOPS."

Extracts from the Scottish Government Consultation Paper, "People, Places and Plans", January,2017.

Report compiled by Jim Birrell BSc Hons, MRTPI, on behalf of Heads of Planning Scotland(HOPS)

HOPS Planning Review Programme Manager,

April,2017

CONTENTS

EXECUTIVE SUMMARY - Pages 3-5

1.0 INTRODUCTION - Pages 6-10

2.0 HOPS PROPOSED CHANGES TO PERMITTED DEVELOPMENT RIGHTS (PDR) FOR CONSIDERATION - Pages 11-16

3.0 HOPS COMMENTS ON THE USE CLASSES ORDER - Pages 17-18

4.0 HOPS COMMENTS ON THE ADVERT REGULATIONS - Page 19

5.0 SPECIFIC QUESTIONS RAISED BY THE SCOTTISH GOVERNMENT - Pages 20-29

APPENDICES

APPENDIX 1- A list of existing consents (Extract from the Independent Review of Planning Report, 2016) - Page 30

APPENDIX 2- A summary extract of the options set out in the Research Report, “Review of the General Permitted Development Order,1992”, Heriot Watt University, Brodies and Scott Wilson, 2005 - Pages 31-36

APPENDIX 3- PDR and Flood Risk – Issues raised by SEPA - Pages 37-39

APPENDIX 4 – Key Reference Documents - Pages 40-41

EXECUTIVE SUMMARY

This report is an initial HOPS input to the Scottish Government for its consideration prior to the publication of a full Consultation Paper later this year on extending Permitted Development Rights (PDR), as outlined in “Places, People and Planning”, January, 2017.

The legislation and regulations governing PDR are complex, dated and labyrinthine in nature and in need of an overhaul and rethink to reposition them in a contemporary context which also simplifies and streamlines them.

As with all considerations for extending PDR, which means granting more freedom to build and develop without the need for planning permission, it is important to get the balance right between granting more planning freedoms to assist customers and ease the burden on planners, but there are important checks and controls which are carried out at the detailed level to protect the public and private interests, and these need careful consideration if they are to alter.

It is important to recognise at the outset that there is value in the processing of domestic proposals and they form the vast bulk of the work carried out by LPAs. They have immediate impacts on neighbours and communities and although often minor in nature their impacts, both individual and cumulative, if not controlled can be detrimental to the overall environmental quality of a local place.

Although the clear majority of these minor applications are approved this in itself is not an indicator that the application process is not required. The fact that the LPA has to determine the merits of the proposal provides a degree of self-regulation and balance which is important.

Before the Government embarks on further incremental change to PDR, HOPS considers that there are fundamental issues to be addressed in the broader simplifying and streamlining agenda set out clearly in the SGCP. For example, the work on aligning consents could be extended to include the possible transfer of some elements of householder PDR to Building Standards as was previously mooted in earlier research. (Heriot Watt University, 2005).

HOPS considers that wider options for the simplification of PDR will benefit from further discussion and consultation to identify any options for radical changes to the way in which householder applications are determined which may be better received in 2017, given the current climate for repositioning planning and resource reduction and redirection. Concerns do remain however and these include how legal rights of appeal and natural justice could be maintained if decisions are taken away from the LPA.

The ongoing work on extending the scope of PDR will help to simplify and streamline development management processes and release resources for other workstreams, both existing and those proposed in the SGCP.

As part of this “makeover”, serious consideration should be given by the Scottish Government to set up a national online portal to “gatecheck” planning queries and to provide advice on PDR to ensure a national and consistent basis, in conjunction with HOPS- a national “one stop” shop.

The existing arrangements for the publication and updating and version control of legislation, Circulars, Regulations, Statutory Instruments etc. relating to planning, and PDR in particular need to be overhauled and maximum use made of digital techniques and online sources must be used, in addition to any necessary paper/manual updates.

It is time for SG to further commit to the digital transformation agenda and use the opportunity to bring all PDR work in to an electronic environment for information, updating, version control and storage. The existing arrangements for the publication and updating and version control of legislation, Circulars, Regulations, Statutory Instruments etc. relating to planning, and PDR in particular need to be overhauled and maximum use made of digital techniques and online sources must be used, in addition to any necessary paper/manual updates.

HOPS considers that the forthcoming Scottish Government consultation on PDR should be wide ranging in terms of its scope and coverage to consider all aspects of Permitted Development, the Use Classes Order and the Advertisement Regulations. As with the general consultation process for the planning review so far, it should be open, transparent and include a wide range of stakeholders.

As the consultation will be dealing with matters at the “micro” end of the planning system, the use of local workshops and review groups would be helpful so that a variety of views can be canvassed from all sectors.

HOPS feels that these areas of detailed control have been revised and updated previously and there is therefore time for full consideration and discussions to take place, outwith the pressurised timetable for the overall review of the planning system. It is an important part of fulfilling the aspirations of the review to “simplify and streamline” but it can be undertaken in a complementary manner within its own controlled timetable.

HOPS has suggested many areas of Householder PDR where there is scope for extending existing freedoms without compromising visual amenity or privacy standards and these are set out in the Paper for further discussion.

Views have been expressed by many HOPS members to seek the removal of Prior Notification Applications (PNA) as they are time consuming and complicate the existing procedures where a development requires planning permission or it does not. HOPS recommends that the current scope for PNA is re-assessed for its value and clarity in an already cluttered legislative landscape.

In addition, HOPS members have raised concerns that the Certificate of Lawfulness route is not designed to be easily used by most householders and it is considered that a quicker and more proportionate way of confirming what is Permitted Development to help customers and reduce enforcement investigations is now required.

The areas of possible PDR relaxations set out by SG in its recent Consultation Paper (Proposal 19, para 4.23) have also been responded to by HOPS, but in some of these areas we see the need for more innovative policy stances and statements within Local Development Plans and related guidance rather than reliance on creating additional PDR. These areas can however be explored in more detail in the proposed consultation paper.

The report also identifies some definitional issues which require clarification, including for example the definition of a “caravan” under the 1960 Act. Revisions are considered

necessary to bring matters up to date in the mobile van and caravan market and a redefinition should be able to better support tourism across Scotland.

Individual councils have had the opportunity to provide examples of further PDR in relation to question 32 in the recent SGCP, **“What types of development would be suitable for extended permitted development rights?”** HOPS considers that the list of additional suggestions from all Scottish LPAs should be included in the PDR Consultation Paper for wider assessment.

HOPS sees greater value in PDR being comprehensively reviewed and extended to deliver the much needed repositioning of local authority planning resources. This review can also be usefully extended in to reviews of the Use Classes Order and the Advertisement Regulations to ensure that the 3 principal areas of detailed regulatory control are covered.

The other 3 United Kingdom administrations have also been undertaking research and reviews into their PDR legislation and it would be helpful to have summary comparisons included in the forthcoming Consultation Paper to provide a broader context for assessing the repositioning considered necessary in Scotland.

HOPS is recommending a 3-tiered approach is used in the Consultation on PDR: -

1. A radical and comprehensive review which assesses the range of options available, including the possible transfer of householder PDR or parts of it to the Building Standards regulatory system.
2. A “root and branch” review of PDR, the Use Classes Order and the Advert Regulations, which will require separate consultation processes with different customer groups. It is important that we move away from minor and incremental adjustments and create regulations which are modern, relevant and fit for purpose.
3. A more holistic assessment of PDR at a higher governmental level to read across the national agenda in areas such as the rural economy, climate change, economic growth and digital infrastructure to enable the planning controls to be proportionate and complementary to other SG ambitions.

HOPS believes that there is considerable scope and potential for further deregulation of planning controls. It is an area of work, however, which needs to be tackled as part of an integrated package of measures looking to simplify the bureaucratic elements of planning control, to assist customers of the planning service in getting clear advice as well as further freedoms to develop their own house and also to reduce and redirect the resource requirements for local councils.

In the final assessment of the impacts on extending PDR limits the Scottish Government will require to factor in the financial impacts of any reduced income to LPAs. This will require to be an important consideration in the forthcoming Consultation Paper on Planning Fees to ensure that any lost revenue is compensated for.

1.0 INTRODUCTION

1.1 In the recent report on the Independent Review of Planning **“Empowering Planning to Deliver Great Places”** May 2016 the report contained a specific recommendation relating to Permitted Development Rights (PDR).

Recommendation 31:

Planning authorities should work together to identify the scope for **significantly extending** permitted development rights.

“We believe there is significant scope to remove uncontroversial minor developments from the system and use this to incentivise developments which support policy aspirations such as low carbon living and digital infrastructure. We would suggest that Heads of Planning Scotland establish a working group to define this in more detail and establish the options for the Scottish Government to take forward to consultation”.

1.2 The Independent Review Panel felt that there was significant scope to remove uncontroversial minor developments from the system and to use this to incentivise developments which support policy aspirations such as low carbon living and digital infrastructure. **HOPS supports this view and aspiration, which has found new expression in the more recent Consultation Paper, “Places, People and Planning”, subject to the proposals being proportionate and balanced against environmental and amenity concerns.**

1.3 Inputs to the Independent Review Panel from individual sources suggested that the scope of permitted development rights could be broadened to free up resources and allow planning officers to focus on where they can add most value. **Again, HOPS agrees with this proposition and feels it would also contribute to the HOPS strategic objective of “repositioning” planning.**

1.4 Suggestions made to the Panel for increased permitted development rights included provision of bike sheds, greater rights for retail in town centres, telecommunications masts and an increase in the permissible scope of change of use. Conversely, some have suggested increased restrictions to be included, for example on farm buildings, development in sensitive heritage locations and tracks in wild land areas, supporting the need for balance outlined above.

1.5 We need to ensure that the planning system is strengthened, streamlined and re-positioned at the heart of place making and sustainable economic growth. To reposition planning and release resources to create more capacity it is necessary to make changes at the micro level to,

- Reduce any unnecessary bureaucratic burden on planners.
- Remove complicated and cluttered processes.
- Provide clarity and consistency to customers.
- Provide clear and unambiguous definitions.
- Improve communication channels and provide clearer publications and supporting literature.
- Maximise the use of digital technology and communications.

1.6 In his Ministerial foreword to the Consultation Paper, "Places, People and Planning" (SGCP), Kevin Stewart MSP, Minister for Local Government and Housing states that, "**Planning should not be bureaucratic and dull, but inspiring and influential**". In the SGCP itself the Scottish Government confirms its intention to, "**simplify, streamline and clarify procedures so that planners can focus on activities that add most value**"

1.7 Two detailed matters have been identified by the Scottish Government (SG) for refinement and these are the Permitted Development Rights and the Use Classes Order, legislation and regulations. This is one of the dedicated tasks which the Scottish Government wants to work with HOPS to arrive at a preferred position. In the SGCP there is also a list of "suggested" areas for consideration including,

- Digital telecommunications infrastructure
- Developments which meet the Government's wider commitment to reducing emissions that cause climate change. These could include, micro regeneration equipment, installations supporting renewable heat networks, cycle networks, parking and storage, and facilities to support low carbon and electric vehicles.
- Development which supports the resilience of the farming sector, including polytunnels, and changes of use from agricultural buildings to housing.
- Allotments and community growing schemes.
- Changes to the use of premises within town centres to stimulate vitality.
- Elements of development within the aquaculture sector.

1.8 An initial Briefing Paper was prepared for HOPS by SG which set out the initial key tasks for consideration, but this has now been supplemented following the publication of the Government's Consultation Paper, "People, Places and Plans" issued in January, 2017, as referred to above.

1.9 For the purposes of this report HOPS has looked at potential opportunities relating to permitted development, use classes and the advertisement regulations as these are all considered to be areas of detailed control and regulation which can be effectively simplified and streamlined. Traditionally these 3 areas of detailed control are areas of technical and legal complexity which tend to consume planning resources in a disproportionate manner, and which can cause confusion to planners, applicants, landowners and developers, and community groups. These areas have been overhauled in the past with successive, incremental changes and improvements but it is now an appropriate time to take a more fundamental and comprehensive look at their content and context.

HOPS Task

1.10 HOPS was asked to establish the scope to further relax planning controls to remove from the planning application system minor, uncontroversial development, and / or proposals where case by case consideration through the planning application process could be replaced with a national grant of planning permission with standardised conditions and / or restrictions.

1.11 Prior to the publication of the Consultation Paper the Scottish Government suggested that HOPS consideration should include the following areas, but should not be limited to:

- Whether planning controls could be relaxed to better support rural communities.

- Whether planning controls could be relaxed to improve availability of new housing, for example to support changes of use from commercial to residential¹.
- Whether existing controls in conservation areas are too onerous.
- Whether planning controls could be further relaxed to support modern technology, e.g. micro-renewables. Information will be provided to inform this analysis looking specifically at whether Conservation Areas are acting as a barrier to the development of micro renewables where planning permission is required.

1.12 The HOPS recommended proposals were also to include,

- Further changes to relax or remove existing restrictions on permitted development rights (PDR);
- Proposals for the introduction of new PDR; and,
- Changes to the Use Classes Order.

1.13 Where new PDR are to be proposed, any associated conditions or restrictions which should apply to mitigate likely impacts arising, for example noise, visual impacts, restrictions in sensitive areas, distance thresholds from sensitive receptors etc. need to be set out as well as an explanation as to how these would address the issues identified.

1.14 The HOPS DMSC has separately been requested for information from SG on PD rights for micro renewables within conservation areas. Additionally, HOPS views were requested on the scope to extend PDR in relation to the following specific development types:

- Bike sheds in front gardens²
- To support the establishment of new allotment plots and facilities on them to support community growing (as now referred to in the Consultation Paper)
- PD Rights for defibrillator cabinets on the outside of buildings

1.15 The Government also confirmed that further HOPS input may be requested to Scottish Government led work on PDR and / or the Use Classes Order, for example on any matters arising out of the Planning and Agriculture Summit.

HOPS High Level Views

1.16 HOPS considers that it is now time, as part of the overall review of the planning system, to complete the various review and improvement processes for PDR and to provide a single, updated and streamlined system of planning controls and freedoms which can be clearly understood and regulated for the benefit of all parties.

1.17 Whilst the SG Working Group on development management (2016) mentioned “not much appetite to make these changes” and the need to “consolidate recent changes”, **HOPS sees greater value in PDR being comprehensively reviewed and extended to deliver the much needed repositioning of local authority planning resources. This review can also be usefully extended in to reviews of the Use Classes Order and the Advertisement Regulations**

¹ See for example English changes: The Town and Country Planning (General Permitted Development) (England)(Amendment)Order,2016.

<http://www.legislation.gov.uk/ukxi/2016/332/article/7/made>

² See for example: <http://www.spokes.org.uk/wp-content/uploads/2013/03/Cycle-sheds-factsheet-Word97-v12-FINAL.pdf>

to ensure that the 3 main areas of detailed regulatory control are covered in an holistic manner.

HOPS/SG Reporting Processes

1.18 HOPS was asked to provide an initial High Level Paper setting out the broad scope of the work and areas to be looked at in more detail through the proposed White Paper/Consultation Paper by 11th November 2016. HOPS is to provide finalised, detailed options for consultation on the significant further extension of PDR, and / or changes to the Use Classes Order by the end of March 2017. HOPS was also to meet with Planning and Architecture Division staff prior to and to inform the final detailed scoping paper, in February 2017 prior to the submission of the final paper by the end of March, 2017. These requirements were all met, although the final publication and approval of this HOPS Input Paper has been delayed slightly due to the Easter holiday period.

Working Group Proposal

1.19 Regarding the part of the Panel Review Recommendation that “**HOPS should establish a working group to take this work forward**” HOPS considered that this co-ordination work could best be undertaken by the existing HOPS Development Management Sub Committee (DMSC) who have responded previously to matters related to PDR, acting as a working group. It has a wide and representative membership which can draw on the experience from a cross-section of different sized planning authorities with experience of a wide range of different application types. All LPAs in Scotland are represented on the DMSC. A smaller, more focussed group from the DMSC was used to test the final recommendations. Opportunities for comments were also provided to the wider HOPS membership via the HOPS website and dedicated Knowledge Hub and social media channels were used as appropriate.

Conclusions

1.20 Where the scale and nature of a development is considered to be minor and non-contentious then it may benefit from permitted development rights. (PDR)

1.21 Extending or improving a house/home are popular and important projects for individuals and it should be easy to find out what permissions are needed and when work can be carried out without the need for planning permission. This applies equally to businesses that are investing and expanding their premises or land.

1.22 It becomes complicated even at the start of the project as many customers are not aware of the different roles and responsibilities between planning permission and a building warrant, and the many other consents which may be required before a project can be built. It is often assumed that if planning permission is not required from the Council that is the end of the matter. Unfortunately, many minor projects will still require a building warrant from the Council and this is a separate process. The Panel Review Report lists 25 other consents which may apply in different circumstances depending on the nature of the proposal. (See Appendix 1 for details of these consents)

1.23 Determining permitted development in particular circumstances is a complex area of planning which consumes resources and despite simplification over the years still proves to be a problematic area for both planners and customers. In the Panel Review Paper, it was

argued that **the scope of permitted development rights could be broadened to free up resources and to allow planning officers to focus on where they can add most value and HOPS supports this position.** It applies equally to the Use Classes Order and the Advert Regulations and all require to be radically streamlined to improve efficiency, service to customers and reduce the resources required by LPAs. It is a finely detailed area of planning law at the micro level which needs to be de-cluttered and simplified.

1.24 HOPS has set out in this Paper the key areas for consideration and change in discharge of the Panel Reviews Recommendation 31. HOPS has also set out initial thoughts on the specific areas highlighted by the Scottish Government in its recent response to the Consultation Paper, "People, Places and Plans".

1.25 HOPS fully recognises, as set out in the Conclusions and Recommendations sections that these suggested changes and options will require further discussion and wider consultation and HOPS will be pleased to continue its participation in this process to ensure the successful implementation of a reduced, streamlined and simplified set of planning procedures for minor developments.

1.26 Subsequently the HOPS DMSC has discussed and assessed the possible areas for change and improvement and this Paper sets out the general and specific suggestions for inclusion in the Scottish Government's proposed wider consultation exercise later in 2017.

1.27 In addition to this, HOPS has assessed some previous research reports into PDR and has assessed the different approaches taken in the other 3 UK administrations to identify any lessons to be learned and best practice to be considered.

1.28 This Report sets out the HOPS position on the matters tasked to it by the Scottish Government relating to PDR and related matters, and HOPS has produced a set of recommendations and conclusions for the initial consideration of the Scottish Government and subsequent inclusion in the proposed Consultation Paper to be issued later in 2017.

2.0 HOPS PROPOSED CHANGES TO PDR FOR CONSIDERATION

2.1 Heriot-Watt University led research (2005-2007) in to a review the GDPO and 6 options were set out at that time for consideration and these are summarised in Appendix 2. HOPS considers that it is useful and timely to revisit these suggestions, particularly in the context of the Panel Review recommendations which touch on Options 1, 2 and 3 in the research report in particular.

2.2 The 6 options presented at that time included,

- Partial or complete deregulation of householder permitted development rights (Options 1,2 and 3)
- Transfer of regulation to a substitute compliance regime (Option 4)
- Delegation of regulation to other bodies (Options 5 and 6)

2.3 HOPS considers that the wider options set out in the Research Paper could benefit from further discussion and consultation as they do present options for radical changes which may be better received in 2017 given the current climate for repositioning and resource reduction and redirection.

2.4 Following on from that research and consultation domestic PDRs were revised in 2012. There have also been revisions to some existing non-householder PD and the creation of several new classes of non-domestic PDR in 2014, following consultations in 2011, 2012 and 2014.

2.5 Notwithstanding the comments above, the following comments and suggestions have been compiled from various HOPS submissions and discussions at the HOPS DMSC based on an initial questionnaire to all local planning authorities.

1. Comments and suggestions submitted for HOPS assessment and consideration for PDR changes.

- Increase PD in respect of increased eaves and ridge heights. Currently there are too many extensions which require planning permission because the eaves level restriction is set too low. (Suggest increase to 3.5 metres)
- Increase PD rights for rear extensions in conservation areas. A slight increase is unlikely to impact on the character and appearance of conservation areas.
- Increase PD rights for sheds etc. in rear gardens of flats/house in conservation areas. Too much time and resources is spent dealing with small sheds in conservation areas with no real added value achieved.
- Review use classes to simplify changes of use or at least make these clearer as to what requires planning permission.
- Airports/Railways need to be reconsidered to reduce PD rights – unlikely that airports would change but the 1839 Railways Act needs updated.
- Sundry minor – can put a fence around a flat in a conservation area but not in a house under PD where no Article 4.
- Dormer sizes – less restriction to rear would be helpful and we need to set some parameters re size and amount of roof area to be used.

- Increase PD rights for flats outwith conservation areas e.g. formation of new openings to doors and windows, sheds/outbuildings.
- Schools and local authority developments (Class 33). Definition of enactment to be explained.
- Air BnB –Need to legislate/regulate better for this type of use.
- PDR for businesses and industrial uses could be expanded without any detriment to the environment.
- The permitted development rights that exist for shops and offices (GPDO 1992, Class 9A) should be expanded to include Class 3 (food and drink).
- PDR advice to developers should be introduced by the Scottish Government similar to the advice on Householder PDR.
- House extensions at basement level (below ground level) could be permitted development
- Disabled access permitted development rights could be extended.
- Permitted development for porches could be extended slightly without any significant impacts. (perhaps a depth of 2 metres and a width of 3m, which could allow the inclusion of a toilet, which is what a lot of people request).
- There could be some permitted development to the rear of houses in conservation areas (but not the front or side – where it fronts a road). These should be less than rights elsewhere, but allow for small rear extensions and porches.
- All 'prior approvals' should be removed – either something should need planning permission or not – the current rules are cumbersome and difficult to explain and understand.
- Demolition outwith conservation areas and listed buildings should be removed from planning control and considered under building standards.
- The regulations should be specific in allowing the replacement of existing extensions and outbuildings (providing they are no bigger than currently exists on site) – similar to how replacement fences/walls are specifically allowed in Class 3E(c).
- The height of developments could be increased slightly (but not substantially) e.g. eaves up to 3.5m and height up to 4.5. Quite a lot of relatively inoffensive extensions are caught particularly by the 3m eaves height restriction which is quite low for eaves (particularly the way that eaves are currently defined).
- The restriction in Class 3A(e) that outbuildings cannot be more than 2.5m high within 1m of a boundary seems overly-restrictive, given that a house extension under Class 1A is allowed up to 3m high. We suggest that 3m is also used in Class 3A(e).
- Class 2B (3) could be expanded to allow the replacement of a glass roof e.g. on a conservatory, with tiles or slates to match the existing house.
- Class 1D could be expanded to allow the replacement of the roof of a flat roofed extension, with a pitched roof (with tiles or slates to match the existing house) as long as the extension when completed does not breach the PD rights in Classes 1A, 1B or 1C as appropriate.
- Class 4A(c) does not allow the dimensions of an existing window or door to be altered, but it does not preclude a new window or door being knocked through – this seems inconsistent and should preclude the latter.

- Class 3B should be clearer in terms of defining what is included and excluded. Retaining walls should be should be treated like any other walls e.g. the normal 1 metre and 2 metre restrictions.
- Engineering works permitted of 3m seems too high e.g. digging down or building up ground levels by 3m could have a significant impact on the area and on neighbours – we suggest this is reduced, at most, to 1m at front (and side facing a road) and 2m at rear
- All flues should be considered as PD, including flues in Conservation Areas.

2. What needs to be removed from PDR?

- The requirement for prior approval/notification should be removed. It adds no value to the regime and causes an extra burden to developers and planning authorities. The development is either PD or not and a standardised system should be in place for all classes.
- Make changing roofing materials less restrictive.
- Demolition (residential buildings) is one where neighbours are notified and comments can be made but we can only assess the suitable method of demolition – what is the point of this process?
- Dwellings require permission to form a new opening on principal or side elevations that front a road and are within a conservation area – is this necessary?
- Prior approvals relating to telecommunications should be removed.

3. How do we revise PDR and what are the priority areas?

- A practitioner's working group is needed with priority to householder development and prior approval/notification changes.
- We do not get many requests for Developer PDR so guidance would not be used much.
- Porches seem to be the only class that needs re-examining and extending as well looking at relaxing controls in Conservation Areas.
- Scottish Government carried out the last substantive review of Householder PDR using staff from the DPEA, held local workshops and the feedback from these sessions was very positive. Something similar could be carried out again for selected subject areas, **with an emphasis on non-householder PDR.**

4. Should a standardised PDR consent notice be introduced to set out what is actually being agreed as PDR?

- The certificate of lawfulness regime essentially fulfils this function. This and the provision of legislation to allow us to assess applications as PD and keep half the fee would be better.
- We really need a standard application form to deal with all these enquiries rather than applying for a CLUED with a proportionate fee to cover the costs i.e. £40-50.
- No. We should be removing paperwork not adding to it. Certificate of Lawfulness exists if developer wants to use it.
- The CLUED does fulfil this remit but householders are not able to do it easily and are often put off by the cost and complexity of the process. A reduced and simplified form, with an appropriate fee (say £50) to cover costs would allow confirmation of householder PD. All other PD queries could still be done by CLUED. This would save on resources and follow up in enforcement cases.

5. Are current flow charts helpful to customers?

- The biggest issue is that we need much clearer examples of the drawings and information needed, primarily concerning windows, driveways and walls/fencing.
- Flow charts in themselves are not necessary a customer friendly means for establishing whether works are PD and are unlikely to reduce customer enquiries and subsequent applications.
- A much better solution would be to develop an online interactive house similar to the [one used in England](#). This has been updated recently and as a visual tool makes it much easier for customers (of varying levels knowledge and abilities) to understand the need for permission. This helpfully includes building regulation requirements. **A similar model should be developed for use by Scottish authorities and their customers.**
- I do not find that officers use the flow charts much.
- No. Some LPAs have developed their own in house question and answer/information booklets which are easier to use. The idea and questions in the flowcharts used are correct, but the flowcharts are not well set up and they look over-busy and off putting. A graphical redesign would help to improve them.
- The interactive house was to be introduced by SG as part of the updated Householder PDR but was dropped.
- The interactive house is an effective way of getting young people involved in planning.
- Is the interactive house a possible University project with examples of good and bad design solutions?

6. General comments

- The 1997 Act needs to be updated – in so far as we are required to determine an application for planning permission – should this allow for applications to be determined as PD, not development or are deemed consent and keep half the fee.

- Provision should be made for withdrawal of applications by the planning authority.
- Why are heights more than 1m away from the boundary the same as extensions 5m away?
- A glossary is needed e.g. definition of eaves.
- It would be helpful to look at how many enforcement notices were served on householder developments to get a feel of where the real issues are.
- Where at all possible PDR needs to be made simpler. I.e. whether a development does or does not need planning permission. Overall, we need to simplify the “ifs” and “buts” and the lists of provisos.
- If you look at Page 6 of the PD Guidance for Householders it lists 7 items to check before starting – the overall system needs streamlining and even if it is PD you may need listed building consent, a road opening permit, advertisement consent and building warrant. (See Appendix 1 for the full list of other consents).
- If it needs permission then maybe what we should be having is one application form submitted to the Local Authority which would grant consent under one certificate with one fee. It is time to work more closely together as budgets are only going to get tighter in future years. We need to think more radically and then Councils can spend more time focusing on the bigger issues that support the economy.
- Timber decking and related structures cause lots of enforcement issues.
- It would be helpful to introduce a single application form to cover Planning Permission, Listed Building Consent, Advertisement Consent and Conservation Area Consent. The planning legislation does not need to change and a single decision notice can be issued provided that it still refers to all the relevant legislation.

7. Definitions within PDR.

There is a need for more and better definitions within the regulations (and also include in the regulations some definitions that are only in the Circular), for example:

- ‘hard surface’ if this is kept in the regulations (see comments above), should be defined e.g. does it include the laying of stones & gravel? From discussion around our benchmarking group it is evident that authorities are taking different approaches on this point.
- terms should have a planning definition, and not rely on definitions from elsewhere e.g. a ‘road’ should be defined, including whether it includes a footpath which does not carry vehicle traffic.
- ‘curtilage’ needs a better definition in the regulations, reflecting the case law position.
- ‘principal elevation’ definition should be improved – it essentially says that *the principal elevation is the principal elevation* – which isn’t helpful.
- ‘eaves’ – this definition is strange and doesn’t really reflect what people normally consider to be the eaves.
- “hard surface” includes gravel driveways.
- Paddock and horse ménages take up resources and need to be properly defined.

8. Simplification and Clarification

- The permitted development rights introduced in 2012 made permitted development rights more difficult to calculate. Previously a pretty simple calculation of area/volume sufficed. The regulations now are more

complicated and often results in the need for a site visit before a PD enquiry can be fully answered.

- One of the main complicating/restricting factors is the calculation of 'hard surface' which currently counts towards development within the curtilage in Class 1A(f), Class 1B(c), Class 3A(f) & Class 3B(c). This is the criterion which most often means that a site visit is needed. We believe that a 'hard surface' at ground level e.g. paving slabs should not count as previous development as these really have no impact on neighbours. We suggest that these references should change to 'raised surface or deck', when potential impact on neighbours could be impacted. This would bring several developments within PDR.
- Schedule 3 needs to be reviewed and clarified.
- No fee for adverts if part of the planning application submission?

NON-DOMESTIC PDR

The following additional suggestions have been put forward by HOPS members for consideration.

- MOD classes need to be re-examined.
- Clarification of PDR for LPAs and Councils would be beneficial, as well as raising the PDR limits on expenditure
- Extended PDR for docks and harbours
- Extended PDR for offices, businesses and industrial premises
- School extension should be PD with no financial limit.
- Planning and Building Standards can work better together to control development. Why can PDR not tie in with the Building Regulations to simplify matters and streamline processes. (See also option set out in the Prior Report, Appendix 2)
- Building Standards Regulations over controlling the re-use of premises in town centres and preventing empty spaces being used as housing.
- To support tourism, the Caravan Acts require to be updated to allow sites to be brought up to modern standards as traditional caravans are not possible?
- Increase PDR for touring caravans and camping uses.

HOPS considers that there is significant scope to simplify and extend the PDR for the non-domestic categories of development and HOPS recommends that this should be prioritised in the proposed PDR Consultation Paper.

3.0 HOPS comments on the Use Classes Order

3.1 The definition of different “use classes” has been a long-standing feature in the planning legislation. In general terms, it is a list of different use types within specific classes or groupings. Planning permission is not normally required for changes within the same class and for changes across certain groups or classes.

3.2 The 4 UK administrations have very similar set ups for controlling use classes but there are differences in presentation and detail.

3.3 There are 4 main groups in England as follows,

- Class A - Shops and Retail premises
- Class B - Offices, factories and Warehouses
- Class C - Residential Uses
- Class D – Non-residential uses, assembly and leisure uses

3.4 In Northern Ireland the main use classes are,

- Class A – Shopping, finance and professional services
- Class B – Industrial and Business use
- Class C – Residential uses
- Class D – Community, recreation and culture

3.5 Wales has the same system as in England although Welsh Ministers can make their own modifications and therefore there are some differences in the detailed provisions.

3.6 In Scotland, the Town and Country Planning (Use Classes) (Scotland) Order, 1997 sets out 11 broad use classes as follows,

- Class 1-Shops
- Class 2 – Financial, professional and other Services
- Class 3 – Food and drink
- Class 4 – Business
- Class 5- General Industrial
- Class 6 – Storage and Distribution
- Class 7 – Hotels and Hostels
- Class 8 – Residential Institutions
- Class 9 – Housing
- Class 10 – Non-residential Institutions
- Class 11 – Assembly and Leisure

The HOPS suggestions received from LPAs are,

- Change of use from Class 1 to 2 should be PD if reverting back to office use within a certain timescale
- Change of use – HMO's from Class 7 B&B then to residential Class 9 – a one-way CoU
- More PD for CoUs above shops to bring these back in to use. Allow upper floors in town centres to be made in to flats without needing planning permission.
- The permitted changes under part 3 “Changes of Use” could be extended to allow upper floors to be used for residential supporting the town centre first principle.

- Maybe what we need is a new use class for town centres that allows much more flexibility and allows property to be marketed more widely.
- The UCO could be simplified in the light of modern trends to bring together the current Classes, 1, 2 and 3 as all are to be expected in town and neighbourhood centres.
- Controls should continue for pubs, nightclubs and hot food take aways.
- Properties located above shops and commercial properties could have permitted development rights to change to residential, therefore keeping town and neighbourhood centres active at night.
- Allow upper floors in town centres to be flats without needing planning permission.

Note: - From 10th February, 2017, changes of use from any premises to a bookmaker or pay day loan shop require planning permission. Both types of business use previously fell within Class 2, Financial, Professional and other services, and benefitted from PDR. In contrast, in England the UCO had already been amended and both uses were classified as "sui generis" so that planning permission is also required for any change to these uses.

HOPS considers that there is further scope to consider updating and modernising the list of use classes and to include some classes which are termed "sui generis" (unique). The regulations and related circular require to be co-ordinated and presented in a more succinct and graphic style to make assessments easier and more visual to customers.

Many private sector offices publish their own "in house" versions of the Use Classes Order which are very well presented in graphic terms and easy to understand. HOPS recommends that an easy guide user chart for the Use Classes Orders is published by the Scottish Government when the legislation is revised and updated.

4.0 HOPS comments on the Advert Regulations

4.1 The rules for advertisement consent in the 4 UK administrations are broadly similar in format. There are 3 categories of advertisement control, summarised as,

- Permitted.
- Deemed Consent, and
- Express consent required from the LPA.

4.2 In Scotland, the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, as amended, regulate the display of advertisements. The 3 classes used are,

- **Excepted** - Adverts which are not subject to control. E.g. adverts within buildings.
- **Deemed Consent** – Adverts which are automatically deemed to have consent. E.g. Traffic signs, statutory signs and notices, and adverts in business premises. These are all subject to 5 standard conditions relating to safety, being kept tidy and clean and not obstructing traffic signs etc.
- **Express Consent** - Adverts not included in Categories 1 and 2 above require the consent of the LPA.

4.3 HOPS considers that there is further scope to update and rationalise the Advert Regulations and bring all previous regulations and amendments in to a single document which is well designed and includes photographs and examples.

4.4 The HOPS suggestions received from LPAs include,

- The advertisement regulations need re-writing and a lot of officer time and resources are wasted on these.
- Could adverts not form a new PD class and remove the 1984 regulations if the definition of development is amended to include an advertisement?
- Advertisement consent "Deemed Consent" badly needs reviewed in the light of modern advertising trends and practices.
- A wider consultation needs to take place, with the development and advertising industry, to gain a wider understanding of the current issues and complexities.
- Flags and flag poles are always a planning issue and the regulations need to be simplified.
- Businesses require adequate signage to inform customers and to promote their business. More flexibility is needed and less control.
- Retail logos and "house styles" often change with rebranding proposals e.g. bank mergers and the need to re-apply each time is a waste of resources as often the new signs are the same size and design as the previous signs.

5.0 SPECIFIC QUESTIONS RAISED BY THE SCOTTISH GOVERNMENT

1. DIGITAL COMMUNICATIONS INFRASTRUCTURE

The Scottish Government recently consulted on the “Relaxation of Planning Controls for Digital Communications”. The consultation process closed in November, 2016. It is proposed to publish an analysis of the responses soon and work will commence on any legislative changes required.

This consultation seeks views on proposed changes to planning legislation (permitted development rights) on electronic communications infrastructure (e.g. masts, cabinets and antennas).

World class digital connectivity is vital to Scotland’s economy, whether in relation to: improving the ability of business to operate effectively in attracting inward investment; the delivery of public services; contributing to a low carbon environment and having strong, connected communities in urban and rural areas. Digital connectivity takes on greater significance in Scotland, helping to address some of the disadvantages of physical distances between places. However, the rural and remote nature of some of Scotland’s geography, together with low population densities in these areas, can make connecting the unconnected very challenging – from both a practical and economic perspective.

The Planning System has an important role to play in supporting digital connectivity and the rollout of electronic communication infrastructure (such as masts, equipment cabinets and antennas), and this is set out in the National Planning Framework 3 and Scottish Planning Policy. While permitted development rights already exist to remove the need for an application for planning permission for a range of such infrastructure, research has indicated there is scope to extend these permitted development rights. In taking forward such extensions to permitted development, we need to ensure an appropriate balance is struck between facilitating the rollout of such infrastructure and having appropriate planning controls on the impacts of such development on amenity and the environment.

HOPS recommends that, due to the previous research report and findings, and the comprehensive consultation process which has recently taken place, the findings and recommendations can be included in the PDR Consultation Paper. HOPS believes that there needs to be a fundamental change to make telecommunications/digital equipment to be considered as a “statutory consultee” to benefit from PDR, with control in Conservation Areas.

2. DEVELOPMENT WHICH MEETS THE SG WIDER COMMITMENT TO REDUCING EMISSIONS THAT CAUSE CLIMATE CHANGE

Development which meets our wider commitment to reducing emissions that cause climate change. These could be wide ranging and include different types of microgeneration equipment, installations supporting renewable heat networks, cycle networks, parking and storage, and facilities to support low carbon and electric vehicles.

HOPS supports the extension of the PDR to facilitate developments related to emissions reduction and climate change, some of which are referred to above. It is suggested that

these and other similar developments could usefully be included in a new specific development type (e.g. Energy and Climate Change Developments) which sets out the detailed restrictions for PDR. The emphasis should be placed on the PDR aspects rather than the need for planning permission, except where there are likely to be any significant environmental impacts.

3. DEVELOPMENT WHICH SUPPORTS THE RESILIENCE OF THE FARMING SECTOR

Agriculture and farming are important components in the national economy and the Scottish Government is committed to providing support to the sector in terms of finance, and supportive planning policies and strategies.

Prior notification and approval procedures apply to agriculture. They were introduced to balance the concerns between requiring planning applications where the planning system can add little or no value, imposes unnecessary costs and causes delays to development, set against concerns about landscape, visual and environmental impacts, flooding, drainage and erosion.

Prior notification is a procedure where a developer must notify the LPA of proposals before exercising permitted development rights. The procedure does not result in planning permission but instead the LPA will determine whether prior approval is or is not required.

The following types of application are included,

- Proposed farm or forestry building works on farm more than 0.4 hectares
- The construction, or significant alteration /extension of a building (10% increase of the cubic content of the original building, or the height exceeding the height of the original building)
- The buildings must be designed for agricultural purposes
- Size restrictions apply-
 - Up to 465 square metres
 - Up to 12 metres in height
 - Up to 3 metres in height within 3 kilometres of an aerodrome
 - Not within 25 metres of a trunk or classified road
 - More than 400 metres away from housing for buildings used for housing pigs, poultry or rabbits, or animals bred for their skin, or storage for slurry or sewage sludge.

HOPS considers that there are a range of planning controls which can be relaxed to lessen the burden on the farming sector and to enable agricultural developments to be carried out without the need for planning consent.

- Polytunnels can often be questioned by local communities for their impact on the local environment but this is an agricultural operation which should be permitted development. There are concerns about possible localised flooding where extensive areas of land are covered, particularly on sloping land, but this could be covered off

by the imposition of a standard planning condition requiring adequate land drainage and surface water disposal to be put in place.

- The use of prior notification processes has been raised by many LPAs and it is suggested that this area of control can be further streamlined by removing this additional layer of control. Agricultural developments which are currently included could be deemed to be permitted development (with any modifications considered necessary re size and location).
- It should be possible for farmers to erect agricultural buildings within the curtilage of the farm unit without the need to obtain planning permission provided that there is a "cordon sanitaire" for existing residential properties which are not connected with the farm being protected from any adverse visual or amenity impacts. HOPS suggests consideration of a minimum distance of 200 metres?

HOPS has received SEPA's initial thoughts on the suggestion in the planning review Consultation Paper that polytunnels, changes of use from agricultural buildings to dwellings, and changes to the use of premises within town centres to stimulate vitality, could become permitted development. Whilst SEPA appreciates that further detail on these proposals will be provided in due course, we wish to flag that these would raise concerns for SEPA in relation to food risk, with the latter two suggestions being of particular concern.

In relation to polytunnels, SEPA is aware that some LPAs have identified significant issues in relation to increased runoff caused by large areas of poly-tunnels leading to surface water flooding. However, they have had some success in dealing with these issues by virtue of the fact that the poly-tunnels (currently in most cases) require planning permission, and so have been able to ensure suitable mitigation measures are incorporated in such schemes.

4. CAN WE RELAX PLANNING CONTROLS TO BETTER SUPPORT RURAL COMMUNITIES?

The Scottish Government is committed to supporting rural life, rural communities and the rural economy. To do so it has "mainstreamed" the needs of rural communities within all its policies.

Rather than setting rural Scotland aside as something different and separate, it has encouraged all policy makers to take the needs of rural areas seriously and to adapt the policies to meet local needs and circumstances wherever possible.

Scottish Planning Policy (SPP), June, 2014 is the statement of the Scottish Government's policy on nationally important land use planning matters, and in relation to rural development it states that the planning system has a significant role to play in supporting sustainable economic growth in rural areas.

The aim should be to, **"enable development in all rural areas which supports prosperous and sustainable communities, whilst protecting and enhancing environmental quality"**.

Developments which provide employment or community benefits, particularly where this includes the sensitive re-use of previously used land and buildings, should be encouraged.

PDR in England in rural areas has been the subject of considerable discussions and several Papers have been produced recently.

- Briefing Paper on PD Rights, House of Commons, Library, March 2016.
- "Towards a One nation economy- A 10-point plan for boosting productivity in rural areas", Department of Environment, Food and Rural Affairs, August 2015.
- Rural Planning Review- A call for evidence, February,2016.

Suggestions and proposals include, extending PDR for telecommunications masts to improve mobile connectivity, improving PDR to support new jobs, homes and innovation, and better regulation and improved policies for rural areas.

HOPS considers that there is scope for relaxing planning controls but feels that the more suitable approach however would be for rural planning policies to be innovative and creative as suggested in the SPP. Examples include,

- Rural gap sites being developed for housing and other uses
- Rural "clusters" being rounded off or added to in an environmentally sustainable manner.
- Presumption in favour of derelict/disused buildings being brought back in to use.
- Conversion and extension of existing/former agricultural buildings, particularly traditional steadings and barns
- Consideration being given to the conversion of redundant and disused non-traditional agricultural buildings or redevelopment on the existing footprint of buildings.

These are all matters of detail and design, as well as policy, and the use of PDR is likely to be too open-ended and not able to adequately control the design and environmental impacts in the same way that a planning application assessment process can. HOPS looks forward to contributing further on this topic during the next consultation phase.

5. CAN WE RELAX PLANNING CONTROLS TO IMPROVE THE AVAILABILITY OF NEW HOUSING/CHANGES OF USE FROM COMMERCIAL TO RESIDENTIAL USE?

In the report, "Community and Enterprise in Scotland's Town Centres "(The Fraser Report), June 2013 recommendations were set out for proactive planning approaches and the principle of "town centres first". The report identified that," Footfall is key to achieving thriving, successful town centres. The best footfall is the residential kind, for people who live in a town centre will not only use its shops and institutions but will care for its safety and security in the evenings and at night".

There is an undisputed need to build more homes in Scotland, and an equal need to rediscover and renew the art of building family homes in urban settings, including town centres.

The study showed that many of those in most need of housing are young, old or single persons, well-suited to using and supporting a town centre's amenities and often happy to

find a home at the heart of their communities, rather than out at the edge, with the need to maintain a car for accessibility.

In our town centres there are many flats sitting empty and unattractive above shops in our town centres, which could be put to better and more productive uses, including new housing provision. The study concluded that “this sets a fertile context for proposing a new housing model around the occupation of empty flats, and other properties, in town centres”.

There are barriers to the use of empty shops being brought back into use, such as, owners selling long leaseholds above shops, and Scotland's 20-year limit on residential leasehold.

The report recommended,

- Local authorities to recognise the importance of bringing residential footfall back into town centres and prioritise appropriate sites for town centre housing development within their local housing strategies.
- Public agencies and the private sector to be alive to the potential for the conversion of empty offices and redundant public buildings.
- All housing providers to consider the needs of, and market for, family homes in town centres and the new, or refreshed old models that can deliver the amenity that modern family living requires.

A suggestion was also made in the Report that the concept of a “Town Centre Use Class” be tested with willing participating towns.

The possibility of freeing up empty premises in town centres is laudable but it does need to be considered carefully. To simply introduce non-conforming uses to stimulate vitality may have unintended consequences. E.g. having domestic accommodation above a shop or a Class 3 use may lead to issues of nuisance and disamenity, controlled under other legislation – environmental health.

Local Plan policy presumptions in favour of such changes of use and town centre health checks, town centre design guides and similar can all contribute to a positive position of support from the LPA.

HOPS considers that the re-use of empty property above shops and offices, including flats, storage rooms and office space etc. can be beneficially converted into residential use. This can provide a mix of sizes and tenures, but would be particularly suited to affordable housing and local authority stock. Planning control does however provide the LPA with the opportunity to assess the proposal and any consequences for amenity, parking etc. rather than grant exemption under PDR.

6. HOW CAN WE SUPPORT ESTABLISHED OR NEW ALLOTMENT PLOTS AND FACILITIES TO SUPPORT COMMUNITY GROWING?

Allotment plots and gardens are a long-established tradition in Scotland, particularly in the cities and main urban areas. They were initially established by the Allotments (Scotland) Act, 1892. They have enjoyed a resurgence in popularity in recent years resulting in an increasing demand for allotment plots and new areas for allotments, and longer waiting lists for existing allotments and gardens.

The Community Empowerment (Scotland) Bill, 2014 includes measures for local councils to keep waiting lists for allotments, produce an Annual Allotment report and to seek permission

from the Scottish Government if it wishes to sell off an allotment or to change the use of an existing allotment.

Different studies in England and Scotland have indicated that applicants enquiring about whether planning permission is required to set up an allotment or to erect buildings on the land tend to receive varied and different responses from LPAs.

In normal circumstances the setting up of a new allotment on land not in agricultural use will require planning permission. The erection of structures on an existing allotment will normally require planning permission if it is privately owned and they are deemed to be “development”. This usually includes sheds, greenhouses, toilets, polytunnels, fences and enclosures.

If the allotment is owned by the local authority the erection of structures may be permissible under the PDR enjoyed by the Council for work on its own land. Allotments can be out of character in some rural/sensitive landscape locations due to the proliferation of associated buildings and fences. If it involves a change of use of land it is not PD for local authorities.

Issues can arise for neighbours due to increased noise and activity, vehicle movements to and from the allotment but in general terms a well-managed, designed and laid out allotment area should not give rise to serious amenity or environmental issues.

HOPS members have provided examples of recent applications for allotments which required extensive use of planning conditions and provision for car parking.

HOPS considers that this particular land use should remain under planning control so that the main issues relating to the erection of buildings and structures, amenity, environmental impact, water and drainage and car parking can all be properly assessed in a comprehensive manner.

7. ELEMENTS OF DEVELOPMENT WITHIN THE AQUACULTURE SECTOR.

Aquaculture makes a significant contribution to the Scottish economy, particularly for coastal and island communities. The SPP on Aquaculture confirms that, “Planning can help facilitate sustainable aquaculture whilst protecting and maintaining the ecosystem upon which it depends”.

Since 1 April 2007 all new fish and shellfish farm development in Scotland has required planning permission under the Town and Country Planning Act from the relevant Planning Authority

In Scotland, most fish farming takes place within six Planning Authorities:

- Argyll and Bute
- Western Isles
- Highland
- North Ayrshire
- Orkney

- Shetland

The Scottish Government introduced certain PDR for fish farming in 2012. This enabled fish farms to make minor changes to their farming activities without the need to apply for further planning permission. These rights, other than to change the balance across fish species, are subject to a process of prior notification and approval by the LPA.

Since then an independent review of the planning and consenting process for Scottish aquaculture, was jointly commissioned by Marine Scotland and The Crown Estate in response to concerns expressed by industry, consenting bodies and regulators.

The consultants appointed to undertake the review were tasked with undertaking an objective review of the whole of the aquaculture consenting process; determining the concerns of the key actors in the consenting process; identifying the strengths and weaknesses of the process, examining the scope for improvement; and providing recommendations. In addition to desk-based research, the reviewers consulted extensively with regulators, consenting bodies, statutory consultees and representatives of the finfish and shellfish industries. The members of the Capacity Working Group also participated in the review.

The report provides an overview of the current aquaculture consenting process, notes the robust nature of the current planning and consenting regime, and makes 23 recommendations for change. Some of these could be implemented relatively quickly, while others would necessarily be longer-term.

As discussed at a recent meeting with Marine Scotland, the Scottish Government response to the Independent Review references the Government's intentions to consult on changes to PDR as set out in para 4.3: **"In order to improve the current consenting system, we will update guidance and consult on changes to permitted development legislation."**

HOPS agrees that this specialist area of planning control does provide further scope for extending PDR and it should be the subject of a customised consultation exercise with all the relevant bodies, consultees and the affected LPAs.

8. ARE THE EXISTING CONTROLS IN CONSERVATION AREAS TOO ONEROUS?

There are approximately 650 Conservation Areas in Scotland which are classed as, "areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance". (S61, Planning (Listed Buildings and Conservation Areas) (Scotland) Act, 1997. They are designated by local planning authorities following public consultation.

Due to their special status, in conservation areas there are additional planning controls for certain types of development which might otherwise be permitted development not requiring planning permission. This is to safeguard the wider area from any developments which are unsympathetic or out of keeping with the overall character and appearance and to retain the special nature of the conservation area.

The most recent changes to PDR are set out in the Town and Country Planning (General Permitted Development (Scotland) Amendment Order 2011 and allowed some additional freedoms for house owners in general but house owners in conservation areas are still more severely restricted in what they can do without obtaining planning permission.

- Trees- 6 weeks' notice to LPA before any cutting, lopping, topping, uprooting, wilful damage or destruction of any tree.
- Extending a terraced house is restricted to 16 square metres (10% of floor area of existing house) or 24 square metres (20%) in all other cases.
- Miscellaneous Works- Most domestic projects will require planning permission, including, alterations to a roof, installation of a satellite dish, forming a parking space, stone cleaning or painting the outside of a building, cladding of exterior with stone, artificial stone, timber, plastic, tiles, or any other material.
- Demolition- Demolition of a building in a Conservation Area requires Conservation Area Consent, unless it is a Listed Building or less than 50 square metres in area.
- Gates, fences and walls- Planning permission required?
- Sheds, greenhouses, garages and other such buildings more than 4 square metres require planning permission.
- Oil Storage Container- Planning permission needed.

Repairs or replacements do not normally require planning permission if the new work is similar in appearance to the original. This is often a difficult area to define adequately to assist applicants e.g. "the materials used for any roof covering must be as similar in appearance to the existing roof covering as is reasonably practicable" windows that look the same but are in a different material, say UPVC rather than timber.

There are sound reasons for imposing additional controls in Conservation Areas and most house owners recognise and understand the environmental reasoning behind this. Unsympathetic and out of character alterations to a building can affect the character of the building itself, a group of buildings, and the street scene in general.

PDR should not be available on the front/in front garden of a conservation Area but there may be scope for some relaxations at the rear of a building and in the rear garden area, although it must be acknowledged that development at the back of property may still be relevant to the character and quality of a Conservation Area and appeal cases have confirmed this.

HOPS considers that, subject to consultation some of the additional Conservation Area controls can be removed or the sizes increased as follows, without any adverse effects being caused.

Possible examples could include,

- PDR for oil storage tanks, subject to the existing restrictions i.e. 3500 litres, less than 3 metres in height and more than 20 metres from any road and nearer to the road than the part of the original dwellinghouse nearest to it.
- PDR for satellite dishes, subject to the existing restrictions, 90 centimetres in size, lower than the roof, and sited to minimise the effect on the external appearance of the building or structure on which it is installed.
- PDR for extending a terraced house, subject to the existing restrictions. i.e. 24 square metres or 20% of floor area of original house, and 24 square metres or 20% in all other cases.

9. SHOULD WE EXTEND PDR FOR BIKE SHEDS IN FRONT GARDENS?

In May 2013 SPOKES, (The Lothian Cycling Campaign) published a leaflet on "Cycle Storage in Gardens which indicated that most sheds and certain storage containers in Edinburgh had been installed without any planning permission and that this is likely to be the case in most or all councils across Scotland. The leaflet also indicates that the cost of the planning fee at £.... acts as a disincentive as it is normally greater than the actual cost of the shed or container! This scenario appears to be related to front gardens where planning permission would be required under the existing PDR.

Bikes are normally stored in domestic garages or sheds, along with other ancillary equipment and storage such as cars, children's prams, toys, garden equipment and tools etc. The PDR rules for garden sheds are relatively straightforward in the normal domestic situation (Rear garden area of a house not in a Conservation Area or a Listed Building)

- 4 metres high
- 3 metres at the eaves
- 2 metres at eaves if within 1 metre of the garden boundary

Planning permission is required for a shed in a garden of a flat, front garden area of a house and a side garden area of a house which adjoins a public road.

There may also be Title restrictions or previous planning conditions which may need to be checked out also to determine any other consents required.

It is important to note that bike sheds are just sheds and no distinction can be made in planning terms. A shed is a shed whatever is stored within it.

HOPS has no strong view on this matter but believes that sheds in front gardens should require to obtain planning permission because of the neighbour and amenity issues which may arise.

10. PDR FOR DEFIBRILLATOR CABINETS ON THE OUTSIDE OF BUILDINGS

Defibrillator cabinets, or Automated External Defibrillators (AEDs) are becoming an increasingly common feature in many towns, villages and cities and are often supported and funded by voluntary groups or local communities. They require to be centrally located in an obvious and available space, normally on the outside wall of an existing, prominent building and be readily visible, even in poor lighting conditions. The most common colours seem to be yellow and green and this dual requirement for both visibility and prominence can bring it in to an area of possible tension with the LPA, particularly if the site is in a Conservation Area or if it is to be sited prominently on a Listed Building.

The requirement for AEDs is well understood and supported by everyone and it should not therefore be a decision which ultimately rests with the LPA balancing amenity and impact considerations.

Many LPAs have determined that the siting of an AED on a building is “de minimis” due to the small size involved. Exceptions are usually made in the case of a Listed Building or a Conservation Area and an application is requested and subsequently determined by the LPA. If an LPA decided to refuse such an application on visual or amenity grounds the reaction from the local community can only be imagined!

HOPS considers that to remove any uncertainty or doubt the installation of an AED cabinet should be included in the categories of Permitted Development or alternatively it is confirmed as” de minimis” and no planning permissions required. The installation of an AED on a Listed Building should still require LBC to be obtained.

APPENDIX 1-LIST OF EXISTING CONSENTS

Advertisement Consent

Alcohol Licences

Building Warrant

Controlled Activity Regulations (CAR Licence)

Certificate of lawfulness of use or development (CLUD)

Change of use of land or buildings

Conservation Area Consent (CAC)

Habitat / Species Licence

Hazardous Substance Consent

Houses in Multiple Occupation Licence (HMO)

Listed Building Consent (LBC)

Marine Licences (0-12 nautical miles)

Marine Licences (12-200 nautical miles)

Planning Permission in Principle (PPiP)

Planning Permission

Prior Notification and Approval (PNA)

PPC Permit (Pollution Prevention and Control)

Roads Construction Consent/Roads Authorities' Adoption

Section 36 Application and Section 37 Application

Scheduled Monument Consent

Specific forestry project work

Traffic Regulation Order

Tree felling consent

Stopping Up Order (Planning Authority-led)

Stopping Up Order (Roads) 26.

APPENDIX 2- A summary extract of the options in the Heriot-Watt Research Report, "Review of the GPDO,1992", 2005.

Option 1: extend permitted development rights to all householder development

This was to extend the permitted development rights currently enjoyed under Part 1 of Schedule 1 of the GPDO to all development within the curtilage of a dwellinghouse. This would mean that potentially all alterations, extensions and other building operations within the curtilage of a dwellinghouse, and incidental to its enjoyment, would be granted planning permission. In effect, the existing limitations in Part 1 would be removed.

To ensure safeguards in sensitive environments, such developments could be excluded in specified designated areas, and in proximity to Listed Buildings. There would be scope for planning authorities to claw back a level of control considered appropriate in local contexts by seeking a Direction under Article 4 of the GPDO.

The report recognised that there may need to be standard conditions or other limitations attached to such a wide-ranging planning permission, limiting such developments in relation to: existing roof heights; a proportion of the plot area of the existing dwellinghouse; proximity to common boundaries and to roads and footpaths.

The positive impact of granting a general planning permission to all householder development would be to reduce significantly the volume of planning applications submitted to planning authorities, thus minimising bureaucracy and reducing burdens on planning authorities, enabling them to focus on more significant developments in the public interest, speeding up the planning process for such developments. There would nevertheless continue to be scope for planning authorities to reduce the level of permitted development rights.

The negative impact of such an extensive planning permission would be to remove neighbour notification rights and hence ability by neighbours, who deem their amenity to have been adversely affected, to challenge or otherwise influence householder developments. This option therefore gives greater weight to addressing the problems of development management, rather than to social inclusion/participation, or to environment/amenity. However, it would give planning authorities the discretion to increase controls over such developments through Article 4 Directions, or justification in an up to date adopted development plan which had been open to effective public consultation and independent scrutiny at a Public Local Inquiry.

The characteristic of this option is full deregulation and minimisation of bureaucracy, but with the scope to claw back a level of planning control as deemed appropriate by planning authorities, and justified in the development plan.

Option 2: grant 'deemed approval' to all householder development

All householder development would be permitted, as in Option 1, but householders would be required to notify neighbours in advance of the start of building work. In the event of valid objections, the planning authority could require a planning application by "call-in". This option acknowledges that the public interest cannot always be identified in advance. It retains current rights of neighbours to be notified, and to make objections. But it remains the discretion of the planning authority to decide whether to require a planning application.

Whilst all householder development would be permitted, Article 4 Directions could still be applied to restrict permitted development rights, in areas to be specified in the development

plan (and thus could apply outside designated Conservation Areas). In this way, any restriction of householder development rights would have to be justified in an adopted development plan, which had been open to public objection and subject to independent scrutiny at a Public Local Inquiry. The period of any Direction would be conterminous with an up to date development plan (i.e. it would not apply *ad infinitum*, as at present, and would require further justification in a subsequent development plan review).

This might be a more balanced approach to deregulation/inclusion/amenity. The likely outcome of this option is that the extent of householder freedom from planning control would vary by Council area (and perhaps geographically within a Council area), and could result in an increase in householder developments where planning authorities enthusiastically deployed the power of call-in. This might be offset by national policy guidance in a revised SPP1, or new dedicated policy guidance for householder development.

Overall, this option leaves the planning authority to balance the level of deregulation of householder development in relation to local planning issues and the deployment of planning resources, within a general framework of deregulated householder development. However, in principle, all householder development would have deemed approval, subject to prior neighbour notification and local authority call-in.

Option 3: relax some or all of the existing limitations on householder permitted development

Under this option, the present limitations and exclusions in Part 1 of Schedule 1 would be relaxed, by raising thresholds to enable a greater proportion of householder development to proceed without the need for a planning application (but not all, as in Options 1 and 2). The impact of this option on development management workloads would require to be assessed through research. Subject to availability of data, variations in development thresholds could be modelled to determine how far PD thresholds would have to be modified to deliver a given percentage reduction in householder development applications (for example: floor area maxima could be increased from 20% to 40% of the original dwelling, up to 50 sq. m (rather than the current 30 sq. m); proximity of any extension to a road could be reduced from 20m to 10m; total curtilage cover could be increased from 30% to 50%).

The positive impact of this option would be to extend permitted development rights and reduce the number of planning applications, but not for all householder developments. It acknowledges the risks inherent in Option 1, and to some extent in Option 2 (which leaves to the discretion of the planning authority whether to call in a proposed householder development). The negative impact would be the reduction in neighbour notification rights and the potential consequences for local residential amenity. There could be scope for local extension of householder development rights through Local Development Orders, promoted by the planning authority, following justification in the development plan.

Overall, it would be a cautious, pragmatic solution to reducing the number of applications by raising some of the current thresholds for permitted development, and allowing local authorities to extend further PD rights in accordance with the development plan.

Option 4: bring planning permission for householder development in line with building regulations

The attraction of this option is the scope to offer the applicant a one-stop-shop for small works. The Building Regulations are enforced through the building standards system established by the Building (Scotland) Act 2003. The system is designed to ensure that new

'buildings' and 'works' achieve the objectives of the Act for health, safety, welfare, convenience, conservation of fuel and power, and sustainable development. The duty to comply with the regulations lies with the owner for the work. Before work begins, a building warrant must be obtained. For simpler works, a warrant is not required, but the regulations still apply. The role of issuing warrants and accepting completion certificates (certifying that the works have been constructed in accordance with the warrant and the regulations) rests with 'verifiers', enforcement is by local authorities, and the system is overseen by the Building Standards Agency, which answers directly to Ministers. Verification does not absolve the owner from the responsibility of ensuring that the required quality of work has been achieved.

The system is based on functional standards, backed up by detailed guidance (in Technical Handbooks) to provide a flexible system of control. The need for a formal relaxation of standards (as under the superseded Regulations) is reduced because meeting the full details of given solutions is no longer mandatory. The professional judgement of the verifier, assisted by guidance, decides whether a standard is met.

Regulation 3 and Schedule 1 set out what buildings and work are *exempted* from the building regulations. This includes buildings or works with so small an impact on the public interest that there is no need to seek to enforce the regulations. In relation to householder development, this includes buildings ancillary to dwellings such as:

- (i) A detached single story building ancillary to and within the curtilage of a house, but not exceeding 8 sq. m in area, at least 1 m from a boundary of a house, and not containing a flue, fixed combustion appliance or sanitary fitting, nor comprising a wall or fence;
- (ii) a porch or conservatory, but with the same limitations as for 1;
- (iii) a greenhouse, car port or covered area, not exceeding 30 sq. m in area, and other limitations as for 1 and 2
- (iv) a paved or hardstanding area not exceeding 200 sq. m in area, or forming part of an access.

Regulation 5 and Schedule 3 specify what work can be done without the need for a warrant, including:

- (i) any work to or in a house, unless increasing the floor area, demolition or alteration of a roof, external walls or structural elements, or separating wall, or specific types of work to a house having a storey or creating a storey of more than 4.5m in height;
- (ii) any work associated with refillable LPG storage cylinders supplying, via a fixed pipework installation, combustion appliances used for space heating, water heating or cooking;
- (iii) a wall not exceeding 1.2m in height or a fence not exceeding 2m in height;
- (iv) any work associated with open raised external decking not exceeding 1.2m in height that does not form part of the accessible entrance to the building;
- (v) construction of a ramp not exceeding 5m in length.

The scope for using these Regulations as a proxy for householder development approval depends on how closely they match Classes 1-5 and Class 7 of the GPDO. In general, the exemptions and limitations within Regulations 3 and 5 fall within the thresholds and limitations of the corresponding PD Classes: in other words, the PD Classes at present permit larger works than do the Building Regulations.

It follows that changing the PD Classes to match the Building Regulations would reduce PD rights and therefore increase planning applications. This is contrary to the objectives in para 1.4. The alternative alignment, requiring householder development only to require Building Regulations approval would comply with these objectives, but at the loss of any assessment of the amenity impacts caused by some householder developments: the building standards regime is essentially concerned with objective assessment of compliance with technical

standards; the planning regime is essentially concerned with more subjective assessment about environmental impacts.

So, bringing planning permission for householder development in line with building regulations would require specification of some additional "technical standards" for householder developments (e.g. building height, building line, plot ratio). Assessment of compliance with these standards could be a separate administrative task within the local authority, undertaken in parallel with validation of the warrant application.

Thus, building warrant applications that did not comply with any of these "standards" (which could be set nationally or locally) would require a planning application. Effectively such applications would be "screened" for planning permission. The question remains as to who within the local authority should carry out this assessment.

Option 5: delegate to community councils decisions on some or all householder development

Community councils are statutory consultees on planning applications within their areas, if the community council inform the planning authority within 1 week of publication of the weekly planning applications list. There may be scope to delegate decision making on some or all householder developments to community councils. It could be left to the decision of planning authorities whether, within the community council scheme for their area, they delegate decisions on all or specified categories of householder development. This might be done in a context of establishing Best Value indicators for community councils operating such delegated power, and extending the local government code of conduct to community councillors.

The advantages of this option are that it would help free up planning resources of local authorities, and assist the aim of reducing householder development burdens on planning authorities by transferring all or part of this to community councils, while maintaining local involvement in small scale development. Delegation schemes could be prescribed in Regulations and/or require the approval of Ministers.

The disadvantages are that community councils are not always representative of their local areas, with many councillors returned unopposed, and the risk of a level of parochialism in decision making. Also, community councillors would not have ready access to professional expertise, unless held within their ranks. There is therefore a risk that decisions could be made on non-material grounds, resulting in an increase in appeals, or legal challenges on human rights grounds. This option would not reduce the bureaucracy of householder development, but transfer it to another body with: no previous expertise in making planning decisions; no guarantees that decisions would be made speedily and impartially; and the risk of an increase in planning appeals and legal challenges.

One way of mitigating this would be for each community council to operate a regular Local Development Forum, where householder applications would be deliberated, and at which a planning officer could provide professional guidance. Consequently, there would remain some demand for professional development management input, but to the benefit of locally robust decisions.

Option 6: transfer to 'licensed practitioners' decisions on some or all householder developments

This would remove the monopoly of the planning authority as the decision maker, by enabling licensed practitioners to certify the appropriateness of all householder developments that do not enjoy permitted development rights. They would include private sector professionals. Whilst there would be no reduction in the number of householder applications, the burden of determining them would be more widely shared.

The householder would be free to seek certification from a 'licensed practitioner'. Transferring this judgement to professionals in the private sector would be on the basis that such persons subscribed to a professional code of ethics. Additionally, there could be a specified statutory procedure to which such practitioners would be required to conform, or risk court challenge or even prosecution, to ensure that e.g. neighbours were notified, that issues raised were resolved, that a written judgement was produced, and that appropriate conditions for approval were specified.

The licensing scheme could be administered by central or local government. Householder development approvals would not be led by planning authority policies, but instead licensed practitioners would be required to ensure compliance with specified technical and environmental standards, which could be defined centrally and uniformly by government, or left to local authorities to define, reflecting local circumstances. There could be a requirement for advance neighbour notification (as in Option 2), but it would be for the independent licensed practitioner to seek to resolve neighbour disputes or other objections. There would thus continue to be a right of neighbours to be notified, and to raise objections, but not to a publicly accountable body, though there could be a right of administrative and/or legal challenge to a verifier's judgement.

This option would reduce or totally remove householder applications submitted to planning authorities, depending on whether some or all householder developments falling outside permitted development maxima were included within the 'independent verifier' scheme. The role of the licensed practitioner would include mediation in neighbour disputes over householder developments, so they would require mediation skills.

Summary of the 6 Options

Householder developments impose a significant burden on the planning system, stretching a system of scarce professional resources to deal efficiently with the need for up to date development plans and the speedy determination of major development proposals that have much wider social and economic impacts. The vast majority of such developments are granted planning permission.

There is wide scope for innovative reform of the way householder development is managed, with different emphases. These seek to streamline development management whilst safeguarding amenity and participation. The options discussed are not exhaustive, but help to map out some of the territory for reform. These options encompass:

- a) **partial or complete deregulation of householder permitted development rights** (options 1, 2 and 3);
- b) **transfer of regulation to a substitute compliance regime** (option 4);
- c) **delegation of regulation to other bodies** (options 5 and 6).

HOPS POSITION

HOPS understands the reasoning behind the options identified in this study and the fundamental message that resources could be freed up in planning authorities to prioritise other work areas if Householder Development was delivered by others and permitted development rights were simplified and streamlined. These are recurring themes in the Scottish Government Consultation Paper, "Places, People and Planning"

We have concerns however that the possible options bring in to the discussion wider considerations on how any legal rights of appeal could be maintained and how natural justice is served if decisions are made outwith the elected council environment by appointed individuals or volunteers within a community council set up.

The resources currently utilised by LPAs would need to be replicated in some way by others and the notion of simply transferring the activity or part of it to another agency is not practicable. E.g. what resource impact on Building Standards work if planning activity was transferred across.

APPENDIX 3- PERMITTED DEVELOPMENT AND FLOOD RISK-ISSUES RAISED BY SEPA

Although HOPS has not consulted any other organisations on PDR at this stage, SEPA did submit detailed comments, following on from initial contact with SG officers. A range of organisations will be included in the full Consultation Paper to be issued later this year, but the issues identified by SEPA are summarised below.

1. Land being raised above the floodplain through land-raising works carried out under agricultural PDR and then subsequently planning permission being applied for to develop housing etc. The issue for SEPA is that that this 'loophole' may be open to exploitation by those who wish to facilitate built development rather than carry out agricultural works. There are a small number of examples that we can cite where we know this has taken place. SEPA is aware of at least one local authority highlighting its concerns on this matter to the Scottish Government. Whilst this issue has only arisen in a limited number of sites to date (as far as we are aware), we are concerned that there is the potential for it gain traction as an approach to 'dealing with flood risk in development' and be replicated across Scotland. It is worth pointing out that, in the examples we are aware of, even if the land moving/raising works had occurred purely for the benefit of agriculture, they would still have significantly changed the storage and conveyance characteristics of the floodplain (see point 2). SEPA does not generally support land-raising when proposed as part of a planning application for development as it permanently removes an area of land from the floodplain and therefore cumulatively reduces the volume of local flood storage available, which can lead to an increase in flood levels elsewhere. Land raising within the floodplain can also impact on the conveyance of floodwater and elevate flood levels at the site and upstream therefore increasing the risk of flooding to nearby properties.
2. Instances where agricultural embankments are created or removed under PDR, which can have knock-on consequences for flood risk further downstream – embankments impact on the conveyance and storage of floodwater. The removal of existing embankments can in some instances have a detrimental impact on flood risk downstream in addition to the areas behind them. The erection of new embankments can increase the flow of water conveyed downstream. The impacts are site specific and dependent on location and height of embankments, but it would be advantageous if such development required planning permission and hence flood risk could be considered in the process.
3. Householder PDR for the formation of walls – we have recently been consulted on some applications for walls being built for flood protection purposes in a Conservation Area, which by virtue of their location did not benefit from PDR. This has served to highlight the fact that such development could be taking place in areas outwith Conservation Areas where planning permission is not required as PDR exist, and therefore flood risk will not be considered. Whilst we are not necessarily suggesting that PDR be removed for the development of all walls, it does highlight the broader issue as to whether PDR should be available at all in areas at flood risk.

SEPA recently held local authority training sessions on flood risk where several authorities highlighted their concerns that PDR in relation to agriculture in particular are undermining the objectives of sustainable flood risk management. It is therefore likely that local authorities could provide site-specific examples if required.

The 1993 flood event on the River Tay caused severe flooding in Perth as well as other upstream communities. A River Tay Catchment Study found that the existing rural embankments built to protect farmland, were overtopped in 1993. This reduced the peak flood level downstream in Perth by holding water back before slowly releasing it back into the main channel of the River Tay. Therefore, the removal of the present embankments would increase peak flows downstream during severe events due to the loss of off-line storage. Similarly, any raising of the embankments would also increase peak flows downstream due to increased 'in-channel' flood conveyance. These embankments provided some positive benefit to downstream communities. In contrast, a study on the Allan Water indicated that removing upstream embankments would result in increased flood risk to downstream property and communities.

This highlights that certain types of activity can have a significant impact on the storage and conveyance of water, which would suggest that they should be controlled in some way when proposed in an area of known flood risk. Furthermore, **given that the Controlled Activities Regulations (CAR) no longer take account of flood risk then there is no scope for SEPA to address the issue through that regime.**

Possible options for a solution have been explored with SG staff and include something akin to the 2014 GPDO amendment that removed PDR in areas of historic battlefields, in certain circumstances (these being defined as battlefields included in the inventory of battlefields set out in the Ancient Monuments and Archaeological Areas Act 1979 etc.).

This amendment removed PDR from Class 18 Part 6 (agricultural buildings and operations) and class 22 of Part 7 (forestry buildings and operations) respectively to the effect that works for the erection, extension or alteration of a building are not permitted by these classes if the development would take place on land within a historic battlefield.

A new class is also added (class 25 in Part 8 - industrial and warehouse development) which introduces new restrictions and conditions to permitted development - the provision of a hard surface within the curtilage of an industrial building or warehouse is not permitted where the development would take place on land within, amongst other things, a historic battlefield.

It is suggested that a similar approach could be taken in areas at risk of flooding, the example which follows highlighting how this could work:

Development is not permitted by this class in the case of land within:

- (a) a site of archaeological interest;
- (b) a national scenic area;
- (c) a historic garden or designed landscape;
- (x) the functional floodplain/medium to high flood risk areas;

SG Planning suggested that if SEPA were to seek a similar amendment, it would need to be able to define a readily identifiable area within which the removal of PDR would apply, so in

the case of flooding, SEPA suggests that this could be the functional floodplain/medium to high flood risk areas. The defined area would also need a statutory basis or hook (i.e. Conservation areas have a basis in the Listed Buildings and Conservation Areas Act). The statutory basis for SEPA's flood maps comes from the 2009 Flood Risk Management Act Scotland. Sections 21, 22 and 24 state that SEPA is required to produce flood hazard maps showing low, medium and high probabilities of flooding and must update them every 6 years. However, the flood maps are only viewable to the public at 1: 19,000 scale - this is intentional as they are not suitable for assessing the flood risk of individual properties. SEPA does have these maps at a bigger scale, however it would not be appropriate to use them at that scale as they are only *indicative* of flood risk. We can therefore see how this might present an issue in using the maps to apply PDR, however, we think it should be explored further.

SEPA's flood maps could be used as a trigger for consultation with the relevant planning authority to determine whether PDR exists – this would require a judgement to be made by the planning authority as to whether PDR are appropriate given the level of risk involved, and would require further analysis by planning authorities in order to understand the site-specific flood risk. It could perhaps be captured by an amendment to the prior notification/approval procedure so that the relevant planning authority takes into account flood risk and not just siting, design, etc. before indicating approval is given.

Any change to PDR for flood risk would require an assessment of all parts of the GPDO to determine those that it would be most appropriate to amend – we do not suggest that PDR should be removed for all classes of development in areas of flood risk, and we have not been able to carry such an assessment at this stage. The examples we have highlighted above relate largely to works we believe are being undertaken under Part 6 Class 18 of the GDPO, however, there are other areas classes that we think there may be merit in reviewing too.

In summary, while SEPA has not been able to develop these ideas as fully as it would have liked in the time available, it does feel that there is an issue here that is worthy of further exploration in the review of PDR, and that the opportunity to consider it should not be missed. It is also our intention to include these comments in the SEPA response to the Government on the planning review Consultation Paper, "Places, People and Planning".

APPENDIX 4- KEY REFERENCE DOCUMENTS

This is not a comprehensive list of all the legislation relating to permitted development. It sets out the key pieces of legislation and the references made to other work on PDR, referred to in the report.

All development requires planning permission. However, certain forms of development benefit from a general planning permission usually referred to as '**permitted development rights**' (PDR). Generally, this is because the scale and nature of the development is considered to be of a minor, non-contentious nature. The types of development that can be considered as 'permitted development', and the qualifying criteria, are set out in [the Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992](#), usually referred to as the 'GPDO'. Planning authorities can advise if a development is 'permitted development' or if a planning application is required. There have been several amendments to the GPDO since it was published in 1992. [Recent amendments](#)

Various amendments to the permitted development rights for non-domestic developments were implemented by [The Town and Country Planning \(General Permitted Development\) \(Scotland\) Amendment Order 2014](#). These include amendments to Classes 15, 18, 22, 25, 30, 33 and 67 of the GPDO. New permitted development rights were created for small extensions or alterations to shops, schools, colleges, universities and hospital and office buildings. Additionally, permitted development rights were created for off-street recharging of electric vehicles and disabled access ramps.

[The Town and Country Planning \(General Permitted Development\) \(Scotland\) Amendment \(No 2\) Order 2014](#) further amended Classes 18 and 22 specifically in relation to private ways (commonly known as tracks or hill tracks).

[Circular 2/2015](#) - Consolidated Circular on Non-Domestic Permitted Development Rights – This Circular sets out guidance on some non-domestic permitted development rights.

[The Town and Country Planning \(General Permitted Development\) \(Scotland\) Amendment Order 2011](#)

[Circular 1/2012: Guidance on Householder Permitted Development Rights](#)

SG consultation on the relaxation of planning controls for digital communications infrastructure. This consultation seeks views on proposed changes to planning legislation (permitted development rights) on electronic communications infrastructure (e.g. masts, cabinets and antennas). <http://www.gov.scot/Publications/2016/08/5901>

To help customers through the complexities the Scottish Government has published a series of guidance leaflets and also flowcharts set out below:

- Householder Permitted Development Checklist
- Guidance on Householder Permitted Development Rights Circular 1/2012
- The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order, 2011
- Householder Permitted Development Flowcharts

<https://interactive.planningportal.co.uk/detached-house> This is a link to the Interactive Planning Tool on the Planning Portal used in England.

Review of the General Permitted Development Order, 1992. (Heriot-Watt University, Brodies and Scott Wilson), 2005.

Community and Enterprise in Scotland's Town Centres. (The Fraser Report), 2013.

[Download the 'Consultation on the Relaxation of Planning Controls for Digital Communications Infrastructure' consultation paper](#)

[Circular 2/2015 Consolidated Circular on Non-Domestic Permitted Development Rights - See Annex G on permitted development rights for electronic communications code operators](#)

[Research on Permitted Development Rights and Planning Guidance for Electronic Communications Infrastructure](#)