



The Scottish Government's consultation on the relaxation of planning controls for digital communications infrastructure

Response from Mobile UK

Mobile UK, which represents the UK's four mobile network operators – EE, Telefonica UK (O2), Three and Vodafone – welcomes the opportunity to respond to the Scottish Government's consultation on planning controls for electronic communications infrastructure. This is a welcome progression from the Action Plan. The quality of a country's infrastructure is one of the most important determinants of economic and social prosperity. In recent years essential infrastructure has come to include mobile telecommunications networks, which have evolved, in a relatively short period, to become the primary platform through which people manage their work and domestic lives.

63% of households in Scotland access the internet via a mobile phone and *"Internet users in Scotland were most likely to consider smartphones their most important device for accessing the internet in 2016"*¹

In addition to mobile networks connecting people, we are starting to see 'things' also connected (6.6m UK wide in the most recent Ofcom data), with applications such as remote telemetry, 'smart' applications and asset tracking. This is expected to be a very rapidly growing segment in the next few years, driving innovation and productivity across the Scottish economy. Good mobile coverage is a source of national competitive advantage.

In summary, this is the context in which the Scottish Government is making the proposed changes. As an overall comment, we support relaxation of planning regulations, as this will speed up deployment, and cut down on administrative burden on all sides. Where, in our responses, we have suggested less definitive parameters, this is with a view to increasing flexibility and potentially reducing the amount of equipment that needs to be deployed.

The construction of a cellular mobile network is an intricate jigsaw of coverage planning, where the placement of one site can have a significant impact on the placement of several neighbouring sites. If a replacement site can be constructed as 'close as reasonably practical' from an existing site, rather than within a strict limit, this may have beneficial knock-on effects on adjacent sites and may

¹ Ofcom Communications Market Report 2016 – Scotland

even lead to a need for less apparatus overall. The same goes for the width of masts, where greater load bearing capacity could lead to more mast sharing.

Mobile UK will be very happy to discuss in detail any aspect of our response.

The detailed answers are set out below:

Q1. Do you agree Class 67 PD rights should continue to apply only to Electronic Communications Code Operators?

Having access to code powers is a right that has been granted by Ofcom after Ofcom have conducted a public consultation and an in-depth assessment of an applicant's serious intent to build networks or ducts for networks that will be of benefit to society and the economy. Today, around 120 businesses have been accorded code rights by Ofcom. From time to time Ofcom withdraws code rights from operators that are no longer intent on building telecommunications facilities.

Code powers are useful privilege that make it easier to build infrastructure that confer wide societal gains. It is right that Ofcom, who are able to assess such matters as the impact on competition, and also ensure that the privilege is not misused, remains gatekeeper to this privilege.

If an organisation needs the permitted development rights (PD rights) associated with code powers in order to build infrastructure, it is perfectly open to them to apply to Ofcom.

PD rights should continue to apply only to Electronic Communications Code Operators and those acting in their name.

Q2. Do you agree with the proposed update to the general conditions for Class 67 PD rights?

Yes

No Comments

Q3.(a) In view of the controls in place out-with the planning system, should Category A listed buildings and scheduled monuments be removed from the general area based restrictions on Class 67 PD rights?

Yes, because these buildings are covered by their own consent process.

As a rule of thumb, where the Scottish Government feels that it can simplify the PD rights in any respect, the opportunity should be taken. The Government has rightly set itself ambitious targets for fixed coverage and aspires to maximise mobile coverage, to meet growing customer demand and expectation. Albeit difficult to articulate definitive benefit – it all helps.

Q3. (b) Are there any other Class 67 designated areas which can be removed from the general area based restrictions?

See (a) above

Q4. Do you have any other comments on the Class 67 designated areas in light of the proposals set out in this paper?

As part of this process, and, in due course, there must be an alignment with revised Electronic Communications Code.

Q5. Do you agree with proposals to extend the time period for emergency works from 12 to 18 months?

Yes

It is vital for customers that continuity of service is being provided when a new site is being progressed.

It would be very helpful if the word 'moveable' be removed from the order. It is quite clear from the context that these sites are temporary and that the equipment would have to be removed at the expiry of 18 months (unless granted permission to stay longer) and so a code operator is always going to be install structures that can be dismantled. 'Moveable' makes it sound as if the equipment should be readily moveable (e.g. on wheels) which, for safety reasons, will not always be the case, particularly if it is placed on a rooftop.

MobileUK takes it that 'land' in this context has the same meaning as for the Digital Economy Bill.

Q6. Do you agree with the proposed extension of Class 67 PD rights for small antenna on buildings, including dwelling houses?

The additional PD rights for the installation of small antennas are welcome, as are the removal of restrictions regarding antennas being fitted to walls facing highways.

Q7. Do you agree with the proposed increase in height allowed for altered or replaced ground based masts under Class 67 PD rights?

For MNO's to deliver the kind of modern, world-class, connectivity to every part of Scotland that the Scottish Government wants, it is fundamental that code operators have PD rights to be flexible on height as possible, and for the process to be as quick and simple as possible.

Much of Scotland has a rural, sparse, population with hilly, difficult, topography and it is within these locations that mobile communications rollout is at its most difficult and where base station height is absolutely fundamental for efficient service.

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While it is welcome that PD rights for ground based masts have been extended, Mobile UK feels that the calculation results in some perverse outcomes in some instances. For example a 20 metre mast can be extended to 27m (10% + 5m) but a 21m mast only to 26m (max of 5m or 15%)

All in all, the proposals could be made much simpler: say sites up to 50m are able to extend by 7 metres and sites over 50m by 20%. This will deliver beneficial flexibility to arrange the vertical separation of potentially multiple antennas to maximise coverage in difficult locations.

A flat 7m would not be so different to the proposals currently on the table, and Mobile UK feels that the extra simplicity and flexibility would facilitate the deployment of the infrastructure that Scotland wants and needs.

Q8. Do you agree with the proposed increase in the maximum distance allowed between the original and replacement ground based masts under Class 67 PD rights?

No

There are benefits to an increase in the maximum distance allowed between the original and replacement ground based masts as it reduces the potential for site specific constraints to impact upon an upgrade but the measure could go further and be a bit more flexible. Northern Ireland uses 'as close as reasonably practicable' and we are not aware that this has caused any problems. A 6m limit may still curtail a proposal in cases where, for example, the existing foundation is incapable of supporting the new pole and it requires relocation nearby to a place where the appropriate necessary foundation can be accommodated without any potential impact to underground services.

Q9 (a) Should the current width restriction of one third the original or one metre (whichever is the larger) for alterations to ground based masts be increased?

Yes it should. Northern Ireland does not have a width restriction and, again, as far as we are aware, this greater flexibility has not caused problems. The width limitation is also not particularly logical in the context of equivalent PD rights. There is no width restriction on a new mast which can come under prior approval, yet an 'upgraded' site does have a restriction and could consequently require full planning. The restricted width can lead to problems, if it means that there is insufficient space for the number of antennas that are required. It also means that necessary separation distances between antennas can sometimes not be achieved and so the site is less efficient (and therefore might require additional sites to meet capacity and coverage needs).

Q9(b) What should the new restriction be?

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Mobile UK considers that there is no need for a restriction; keep it flexible and maximise the potential for mast sharing (where stronger masts are needed).

Q10. Do you agree with proposals to introduce PD rights for new ground based masts outside the Class 67 designated areas?

a) do you agree the proposed height restriction of 25m?

If the Scottish Government believes that it would be beneficial to have a prior approval system for ground based masts, it would be helpful if this only applied to the higher masts above 15m and that sites below 15m are PD without prior approval. Sites between 15m and 25m would be PD with prior approval and sites above 25m would be subject to full planning. This would lessen the administrative load of planning authorities, while establishing the principle that the development is acceptable.

With respect to the administrative proposals for prior approval, Mobile UK has some significant concerns.

It is welcomed that the required decision period is 40 days (within the generic GPDO as opposed to Class 67 specifically, as is normal in Scotland). However, as there is no 'deemed consent' procedure or an effective mechanism for forcing a decision to be taken within the allotted time, it brings very little, if any, benefit to operators in terms of timescale certainty. Prior approval applications contain almost identical information as FP applications so there is little gain for operators in terms of information supplied.

Under the regime in England, there is already a right of appeal to the Planning Inspectorate for non-determination for **full planning** applications not determined within 8 weeks but this is rarely used given the length of time an appeal takes to determine, which is often beyond 6 months from submission depending on the workload on the Inspectorate at that particular time. Appeals to Scottish Ministers have similar timescales to the Planning Inspectorate and, again, it is largely based on their workload at that particular time.

With appeals taking approximately 6 months, a right of appeal for non-determination – for cases where decisions go beyond 40 days, delivers no improvement in the efficient operation of the planning system or for the faster deployment of much needed infrastructure. Mobile operators are as well continuing to wait on the planning authority to make their post-40 day determination, because generally speaking, although late, a decision will be reached more quickly than the approximately six month period an appeal would take. Waiting also avoids the additional workload and expense of preparing an appeal.

In England there is a deemed consent process with prior approval where a local authority must make their decision within 56 days.

We would like to see the equivalent processes to protect mobile operators from determinations (or lack of) that do not arrive within the prescribe timescales.

As an additional measure, in England, in keeping with best practice, there is the legal facility within the GPDO to lengthen the prior approval period of 56 days, where appropriate to facilitate further

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discussions between with a basic agreement in writing between applicant and the planning authority and this would also be appropriate to include in Scotland to accompany a legal mechanism for the necessary determination deadline.

Aside to these points, there is also a minor amendment condition required, relating to prior approval, whereby approved prior approval schemes may be amended via basic email exchange 'OK' between the planning authority and applicant. This is a very convenient mechanism (used in England) that benefits both the planning authority and operator and leaves an adequate audit trail.

Q11.(a) Is there scope to introduce Class 67 PD rights for new ground based masts within any, or all, of the Class 67 designated areas?

Yes. In England, there are proposals to give new sites up to 20m permitted development rights with prior approval in protected areas – a similar right could be achieved with the procedural change as identified above.

b) if yes, within which of the Class 67 designations should such PD rights apply? Please give reasons for your answer.

All, where relevant.

c) Should any conditions (e.g. prior approval) and/or restrictions (e.g. on height) apply?

As in (a) above.

Q12. (a) Do you agree with the proposed mechanism for prior approval of new ground based masts?

No. See answer to 10, above.

b) In particular, do you agree with the proposed publicity requirements, including neighbour notification and on-line publication?

No comments. Mobile UK looks forward to contributing to the development of the new Planning for Digital Communications Advice.

c) Do you agree with the proposed list of statutory consultees for the purposes of Class 67 prior approval?

Yes

Q13. Please explain your answers and any suggestions for alternative requirements. Do you have any further comments on the proposed prior approval process for new ground based masts?

(7)(a) Development is not permitted by sub-paragraph (1)(a) if it would consist of—

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(i) the construction, installation, alteration or replacement of ground based apparatus where the ground or base area of the development would exceed 1.5square metres unless it would be....

Mobile UK believes that this restriction is unhelpful and unnecessary, given the height restrictions envisaged. In the great majority of instances, 1.5sqm will be sufficient and code operators (for cost reasons) will not build bases any larger than is necessary. Nonetheless, on a few occasions, where for example, the ground is poor/soft, a larger base will be required.

14. Do you agree with the proposed fee of £150 for prior approval for new ground based masts?

The fee seems reasonable

Q15.(a) What should the Class 67 PD rights be for ground based equipment housing (and development ancillary to such equipment housing) within the various Class 67 designated Q15(b) Please explain your answer, including any proposed conditions and restrictions on such PD rights.

Cabinets (equipment housing) and ancillary equipment should be PD with no prior approval; ancillary equipment is by its nature is minor compared to the main development - items such as handrails, mountings, bollards, fences etc, most of which are required for basic health and safety and to make sure the antennas stay in place. These types of development should be PD irrespective of whether they are in a protected area or not.

In addition, where a cabinet or other ancillary works is being added/replaced in a designated area, PD rights should exist, even when the work is not being carried out directly in conjunction with the principal works. For example - in a case where a site is situated in a car park in a Conservation Area and people accidentally reverse into the cabinets – and an ancillary bollard has to be added to stop this - it should be clear that there is no need for further planning or approval. Or, in another example, where cows are damaging the equipment housing for a mast in a field in a National Park or National Scenic Area by leaning against, it should be clear that there is no need for further planning or approval to add an ancillary fence to enclose the site. This should all be permitted development.

Generators, ‘brackets and fixings’, and ‘casing and covering²’ should all be added to the definition ‘ancillary equipment’. [Page 28 of the draft regulations]

Q16. Do you agree with the proposed increase in Class 67 PD rights to allow up to five antenna systems on a building outside Class 67 designated areas?

Yes. This new right will give operators more flexibility to deploy additional capacity and technologies, as consumer demand increases. Flexibility also increases the chances of deploying antennas where they will deliver the best coverage for customers.

In this section it would also be very useful to get clarity on how the 6 metres is measured.

² e.g. to include glass reinforced plastic ‘GRP’ shrouding

The current wording could mean that in a case like a flagpole, where antenna and its support structure is fitted to a gable end. While the overall length of the pole is 7m in length, the majority is supporting apparatus required to make it structurally sound and maybe only the top 2m will be above the roof height providing coverage; this case could be interpreted as needing full planning.

In other regimes it has been clarified that the permitted height (also 6m) is from the last point of **fixing** and so in the example described the lower 5m required to make it structurally sound would not count towards to permitted limit – this would allow that the upper 2m (and additional 4m if required) would be permitted development; this would provide much better coverage and open up numerous additional rooftops as potential sites.

Q17.(a) What additional PD rights should apply to apparatus on buildings in Class 67 designated areas? Please explain your answer – including any different restrictions and conditions that might apply in different Class 67 designated areas.

As with prior answers, wherever there is scope for greater simplification and flexibility, the opportunity should be take to make adding capacity and coverage more straightforward.

There should **at least** be permitted development with prior approval for rooftop works in designated areas. There may even be scope for designated area rooftop works to be permitted development not requiring prior approval. For example parameters could include antenna numbers, height, distance from rooftop edge and this could also vary depending on building height – for example rooftop antennas and equipment housing on a circa 30m (non-listed) building in Conservation Area will have negligible impact upon the setting of that Conservation Area and so should be afforded full permitted development rights without prior approval.

Q18(a) Are any changes required to current PD rights for apparatus on buildings and structures to further support deployment of ‘small cell’ technology in future? (Paragraph 20 of the consultation refers).

All small cells, which constitute development, should be PD.

Q18(b) If yes, what particular PD rights are needed?

Most small cells should be considered *de minimis*, or, where necessary, should be covered by PD not requiring prior approval in both protected and non-protected areas.

Q.19(a) Is there scope to extend PDR for supporting equipment (ground based masts)?

Please see our response to q15.

Q.19(b) If yes, please describe the type of development involved and the circumstances in which additional PD rights should apply (for example, should these apply within the Class 67 designated areas)?

Please see our response to q15

Q.20 Do you have any further comments on the proposed miscellaneous changes to Class 67?

Mobile UK welcomes the consultation and the commitment of the Scottish Government to extending the permitted development regime.

As an overarching point, we have pointed out where greater flexibility would assist our job of delivering mobile coverage. Wherever the Scottish Government believes it can simplify further the measures being proposed, this is likely to benefit the deployment of our infrastructure.

Q.21 Do you have any further comments on any other aspects of the proposed Class 67 PD rights?

Permanent access tracks with hardstanding will become more common and are fundamental to some remote sites; again, with resilience in mind, PD rights must also be made for these to be added/extended where necessary.

Q22. Do you have any comments or information relevant to the Strategic Environmental Assessment (SEA) aspects of this issue? If so, please elaborate.

Q23. Do you agree with the conclusions of the partial Business and Regulatory Impact Assessment (BRIA), in particular regarding the anticipated benefits of the proposed changes? Do you have any further comments or information to support the final BRIA?

Mobile UK has no specific comments on the BRIA; perhaps one more important point should be added, though and that is the benefits to Scottish businesses and to consumers that will flow from improved mobile coverage in Scotland. This is the central purpose for making the changes to planning regime.

Q.24 In relation to the partial Equality Impact Assessment, please tell us about any potential impacts, either positive or negative, you feel the proposals in this consultation document may have on any particular groups of people.

Q.25 In relation to the partial Equality Impact Assessment, please tell us what potential there may be within these proposals to advance equality of opportunity between different groups and to foster good relations between different groups.