

PLANNING

Householder Permitted Development Rights

Consultation Paper

December 2008



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SCOTTISH GOVERNMENT

Householder Permitted Development Rights

Consultation Paper

HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS CONSULTATION PAPER

Responding to this consultation paper

We are inviting written responses to this consultation paper by **Friday 13 March 2009**. Please send your response to:

householderdevelopment@scotland.gsi.gov.uk

or

HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS CONSULTATION
Directorate for the Built Environment
Scottish Government
2H, Victoria Quay
Edinburgh
EH6 6QQ

Please indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

If you have any queries on the content of the consultation paper or the consultation process, please contact Luke McGarty on 0131 244 7806.

In the Directorate for the Built Environment we have changed our method of distribution, with electronic publication for all our documents subject to only a very small list of exceptions which will also be published in hard copy, such as the National Planning Framework. In addition, we have created an improved e-newsletter system which will provide an effective way of alerting you to new e-publications, including consultations. To register for electronic newsletters about planning, please register your details at www.scotland.gov.uk/Topics/planning as soon as possible.

The Scottish Government also has an email alert system for all consultations ([SEconsult: http://www.scotland.gov.uk/consultations/seconsult.aspx](http://www.scotland.gov.uk/consultations/seconsult.aspx)). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations. SEconsult complements the new planning e-publications system described above and allows you to register for consultations on specific topic areas across the Government. Please follow the SEconsult link above if you wish to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** which forms part of this consultation paper as this will

ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Publishing responses

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library and on the [SEconsult](#) web pages within 6 weeks of the close of the consultation. Where agreement to publish has been given, we will check all responses for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4556. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the draft order. The final order will require to be laid in Parliament. Further details on the timing of this process will be available through the Modernising Planning page on the Scottish Government's Planning Homepage at www.scotland.gov.uk/Topics/planning.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Luke McGarty on 0131 244 7806.

RESPONDENT INFORMATION FORM: CONSULTATION ON HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

- 2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

Equal Opportunities Questionnaire

This Equal Opportunities Questionnaire is requested in order that the Scottish Government can build an accurate picture of the make-up and diversity of the people and groups that our planning policies impact on, and to ensure that the way in which we carry out our consultations is inclusive and not unwittingly discriminatory. If you have responded to this consultation as an individual it would be helpful if you could complete the form. This information is **only** used for this purpose.

If you have a disability that requires us to make a reasonable adjustment to enable you to complete this form, please notify us.

Name	
Consultation to which you are responding	
Gender	Male <input type="checkbox"/> Female <input type="checkbox"/>

Ethnic origin

How would you describe your ethnic or cultural origin?		
White Scottish <input type="checkbox"/>	White British <input type="checkbox"/>	White European/Other <input type="checkbox"/>
Black Scottish <input type="checkbox"/>	Black British <input type="checkbox"/>	Black African <input type="checkbox"/>
Black Caribbean <input type="checkbox"/>	Black Other <input type="checkbox"/>	
Asian Scottish <input type="checkbox"/>	Asian British <input type="checkbox"/>	
Indian <input type="checkbox"/>	Pakistani <input type="checkbox"/>	Chinese/Other Asian <input type="checkbox"/>
Bangladeshi <input type="checkbox"/>		
Mixed Racial Origin <input type="checkbox"/>		Other

Age

Under 25 <input type="checkbox"/>	25-39 <input type="checkbox"/>	40 – 54 <input type="checkbox"/>	55- 65 <input type="checkbox"/>	65 + <input type="checkbox"/>
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Disability

<p>Do you have a disability as defined by the Disability Discrimination Act 1995 (DDA)?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The definition of a disability under the DDA is “a physical or mental impairment which has a substantial and long term adverse effect on a person’s ability to carry out normal day to day activities.”</p>
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THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of the Scottish Government's working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a consultation paper inviting answers to specific questions or more general views about the material presented. Consultation papers are distributed to organisations and individuals with an interest in the issue, electronically or in hard copy and are placed on the Scottish Government's consultations webpage¹ to allow for participation from a wider audience. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4556).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: [SEconsult](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

¹ <http://www.scotland.gov.uk/consultations>

HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS CONSULTATION PAPER

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PART 1

Glossary

The 1997 Act:	The Town and Country Planning (Scotland) Act 1997
The 2006 Act:	The Planning Etc (Scotland) Act 2006
The GPDO:	The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended
The dHPDO:	The draft Town and Country Planning (Household Permitted Development) (Scotland) Order 2009
PDR:	Permitted Development Rights – a term often applied to the planning permission granted by permitted development orders, like the GPDO.
PP:	Planning Permission
EIA Regs:	The Environmental Impact Assessment (Scotland) Regulations 1999

Introduction

1.1 This paper concerns the relaxation of planning controls on development in relation to existing dwellinghouses thus removing the need for planning applications. For the most part the proposals in this paper do not apply to flats or buildings containing flats (see paragraph 2.27 below).

1.2 As part of the Government's proposals for modernisation of the planning system, it is intended to remove a significant number of minor householder planning applications from the planning system. This will allow individuals more freedom to develop their property and planning authorities to allocate resources to more significant developments, while retaining an appropriate level of planning control.

1.3 Research commissioned by the Scottish Government in 2006 recommended changes to permitted development rights (PDR) that would allow some 38% of householder applications to be removed from the planning application process – almost 10,000 applications based on figures for 2006/2007.

<http://www.scotland.gov.uk/Publications/2006/10/09103423/0>

Legislative Background

1.4 The 1997 Act contains powers for the Scottish Ministers to make a development order which grants planning permission for certain classes of development. The granting of planning permission in this way (often referred to as permitted development rights – PDR) removes the need to apply for planning permission provided that the development complies with certain restrictions and conditions set out in the order.

1.5 This consultation paper seeks comments on our proposals to extend PDR for householder developments. A draft Householder Permitted Development Order (dHPDO) is attached as Annex B. The intention is that a finalised version of this order will eventually replace the existing PDR for householder developments

contained in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (the GPDO).

1.6 This paper sets out a number of general issues before considering individual classes of householder PDR. There are questions throughout and these are listed at Annex A. Respondents are advised to read both the consultation paper and the dHPDO before answering these.

PART 2 – GENERAL ISSUES

Summary of the Main Changes Proposed

2.1 We propose to increase the level of development by householders which is allowed without applying for planning permission by making the following key changes:

- Increasing the limit on such development within the curtilage of a house from 30% to 40 % of the curtilage;
- Increasing the proportional limit of the increase in the size of the original dwellinghouse from 10% of the total internal floor area to 50% of the development footprint of the original dwellinghouse (subject to a height limit);
- Relaxing the restrictions on roof alterations on certain rear and side elevations to allow the construction of dormer extensions or other extensions which enter the roof;
- Relaxing certain restrictions on development near roads;
- Introducing new rights covering decking, small porches and alterations to chimneys;
- Introducing a single height restriction of 4 metres for separate development within the curtilage of a dwellinghouse.

2.2 We intend to introduce the following changes to standard conditions and restrictions to prevent overdevelopment a result of these changes:

- An absolute limit of 60 square metres on the area of the curtilage of the dwellinghouse which can be developed;
- A limit of 40% on the area of the rear curtilage which can be developed;
- No permitted development within 1 metre of the property boundary;
- No permitted development over 1 metre in height within 5 metres of a road if it is nearer to the road than the original dwellinghouse.

2.3 In a number of areas we have sought to simplify terms used in order to make it clearer to people what they may do without having to apply for planning permission. We also intend to produce illustrated guidance to accompany the finalised legislation.

Development Footprint

2.4 Under the current GPDO a number of controls on householder PDR refer to limits on floor area or on extensions being limited to a proportion of the floor area of the house. Consequently, in order to confirm whether a proposal requires a planning application or not, the floor area within each floor of a house has to be calculated and the floor area of, for example, any extension.

2.5 We propose to move towards a combination of controls based on the ground area covered by development – “the development footprint” - and its height (See paragraphs 2.16-2.18 on controls on area).

Q1. Do you agree with this change from floor area to development footprint/ground area?

Principal Elevation, Side Elevations and Rear Elevation

2.6 We propose a new approach to distinguishing between the various elevations of a house. The current GPDO restricts certain householder PDR within 20 metres of a road and if closer to the road than that part of the original dwellinghouse nearest to it (the road) – “the 20 metre rule”. The current “20 metre rule” prevents developments happening in front gardens facing the street, which might significantly undermine the street scene, without having to define to which side of the house the restrictions applied. However, it also prevents permitted development in other areas of the curtilage within 20 metres of a road, even though there may be no adverse impact on the street scene.

2.7 Our proposed approach proceeds on the basis that most houses have a “principal elevation”. This is generally defined with reference to the door which forms the main or principal entrance to the house – this is not necessarily the door most often used, but the one designed as the main formal entrance to the house – usually the “front door”. This principal elevation may not be the wall of the house fronting the street on which the house is located and may not necessarily be the wall of the house which is designed as the face of the house. In most cases the principal elevation is easily identified and from that the rear (the elevation opposite the principal elevation) and side elevations (those connecting the principal and rear elevations) are self evident.

2.8 The main ways in which these concepts come into play are where the principal elevation and/or a side elevation “front a road”. In our proposals in Annex B (Class 1 of the Schedule to the dHPDO), there is a restriction preventing extensions

where development would extend from a wall which was a side elevation fronting a road or a principal elevation fronting a road thus preserving the street scene.

2.9 In some instances, a house may, for example, have its principal elevation facing away from the road and it is the rear elevation which fronts the road. In that case an extension could be made under the proposed PDR to the rear of the house although this fronts the road, provided it complies with other restrictions.

2.10 In a number of instances throughout the dHPDO we have therefore replaced the “20 metre rule” with various restrictions on development forward of a wall forming the principal elevation and in some cases a side elevation. We have also introduced a replacement limit on the distance of development from roads (see next section on PDR near roads).

Q2. Do you agree with the new approach to principal, side and rear elevations?

Permitted Development Rights Near Roads

2.11 The current householder PDR in the GPDO contains specific restrictions in some of the classes regarding the distance of development from a road. In particular the “20 metre rule”, mentioned in the previous section, has potentially severe limitations on householder PDR.

2.12 In order to promote full and appropriate use of the PDR, we have moved away from this restriction in relation to roads and sought to identify the “principal elevation” of the house. This is on the basis that any concerns about road safety arising from PDR exercised in the vicinity of a road will be addressed by the general requirements set out in Article 3 of the dHPDO, in particular those which prevent permitted development which would cause an obstruction to road users (See paragraph 2.15).

2.13 We have also included at various points in the dHPDO a restriction on development over 1 metre in height within 5 metres of a road where the development would be closer to the road than the part of the original dwellinghouse closest to the road. This last element simply means that where the original dwellinghouse is within 5 metres of the road you can still, for example, have an extension or a fence over 1 metre high at the side of the house within 5 metres of the road provided it is no nearer the road than the original dwellinghouse.

Q3. Do you believe that issues regarding road safety are sufficiently addressed by the restrictions on PDR set out in Article 3 of the draft householder permitted development order and the height limit of 1 metre within 5 metres of a road?

Article 2 – Boundary of a Dwellinghouse

2.14 Article 2 contains the interpretation of the phrase “boundary of a dwellinghouse” used in the dHPDO. This interpretation addresses situations where the curtilage of a dwellinghouse extends to the property boundary and those cases, usually isolated houses in rural areas with a large area of land around the house, where the property boundary extends beyond the curtilage. The vast majority of houses in streets have a discrete area of garden associated with the house and are bounded by roads or neighbouring properties; in such cases there is no distinction between the curtilage and the property boundary.

Article 3 – Grant of Permission and General Restrictions and Conditions on PDR

2.15 Article 3 of the dHPDO grants permission for the developments specified in the classes in Schedule 1, and places some restrictions and conditions on this permission. In particular:

i) Sub-paragraph (1) “European Sites”, such as Special Protection Areas are protected;

ii) Sub-paragraph (4) PDR cannot override a condition attached to another grant of planning permission, e.g. a condition preserving visibility splays for access attached to the planning permission for the dwellinghouse itself;

iii) Sub-Paragraph (5) PDR cannot be used in relation to a development which is unlawful, e.g. if the dwellinghouse were erected without PP then PDR do not apply;

iv) Sub-paragraph (6)(a) PDR cannot authorise development in relation to a means of access to an existing classified or trunk road, or which creates an obstruction to the view of persons using any road used by vehicular traffic, so as to be likely to cause danger to such persons.

v) While partial demolition of a house to implement PDR is allowed, the whole demolition of a house could only be carried out in accordance with Class 70 of the GPDO.

vi) Article 3(6) (b) - (d) place restrictions on the area of the curtilage of a dwellinghouse which can be developed under PD. They consist of:

- a proportion of the area of the curtilage (excluding the area of the original dwellinghouse) which can be developed – 40% ;
- a new limit of the area of rear curtilage (excluding the area of the original dwellinghouse) which can be developed again of 40%; and
- an absolute total of the area of the curtilage (excluding the area of the original dwellinghouse) which can be developed of 60 square metres.

vii) PDR cannot be used for development which might require environmental impact assessment under the EIA Regulations. Although this is unlikely with the scale of development involved, we are required to legislate to ensure compliance with the EIA Directive.

viii) Article 3(7) defines the term “rear curtilage” in relation to the controls at vi) above.

2.16 The restrictions in vi) above in effect raise the proportional limit of the curtilage of a dwellinghouse which can be developed, but with a limit on the area of the rear curtilage which can be developed – to avoid the whole of a rear garden being developed under PDR. The absolute limit of 60 square metres is to avoid situations where, for example, developers with single dwellings with large areas of property associated with the house carry out very considerable householder developments on the basis that they contend the entire area of their property constitutes the curtilage of the dwellinghouse.

2.17 In such cases, once 60 square metres of the curtilage have been developed, even if that is less than 40% of the curtilage, no more of the curtilage can be developed under PDR. These limits exclude the area of the development footprint of the original dwellinghouse.

2.18 These limits apply to all development within the curtilage, whether or not carried out under PDR. For example, if a householder has applied for and received planning permission for a building covering 50% of the curtilage of a dwellinghouse, excluding the area of the original dwellinghouse, PDR cannot be exercised under the dHPDO to develop any more of the curtilage and a planning application would be required for such further development.

Q4. Do you agree with the overall limit on development of the curtilage (excluding the original dwelling) of 40%?

Q5. Do you agree with the additional limit on the development of rear curtilage of 40%?

Q6. Do you agree with an absolute limit of 60 square metres?

Designated Areas

Conservation Areas and the Curtilage of Listed buildings

2.19 Additional controls apply in the current GPDO for householder development within conservation areas and within the curtilage of listed buildings (as free-standing developments are not subject to requirements for listed building consent). Also, a significant number of conservation areas have directions (known as “Article 4 Directions”) which restrict some or all of the classes of householder PDR available under the GPDO.

2.20 Our proposals in Annex B include additional restrictions and conditions on permitted development in these areas based on the current provisions in this regard in the GPDO, adjusted in line with the changes to PDR.

2.21 One argument has been that it would be simpler not to allow any permitted development in these areas. While that might reduce workload with Article 4 Directions restricting permitted development in conservation areas, such a blanket restriction might also prevent innocuous development from taking place without an application for planning permission.

Q7. Do you agree with the additional conditions and restrictions on householder PDR in conservation areas contained in the draft householder permitted development order?

Q8. Do you agree with the additional conditions and restrictions on householder PDR within the curtilage of listed buildings as set out in the draft householder permitted development order?

Q9. Should there simply be no permitted development in relation to conservation areas or the curtilage of listed buildings?

World Heritage Sites

2.22 There are increasing calls for further protection to be given to World Heritage Sites (WHS) (as designated by UNESCO). This could presumably extend to restrictions on PDR within WHS.

2.23 WHS fall into 2 broad categories, namely cultural sites and natural heritage sites. With regard to the latter, PDR in relation to existing dwellinghouses would seem unlikely to compromise these designations. With those WHS designated on cultural grounds, which could include built heritage, there would seem to be an argument for restrictions on a par with conservation areas. However, again there may be issues where PDR for existing housing within the designated area would have no effect on the basis for designating the area a WHS.

2.24 This raises the issue whether WHS require additional statutory controls or whether we should rely on existing restrictions on conservation areas and the use of Article 4 directions to protect such areas or areas within WHS which might be vulnerable to development carried out under householder PDR.

Q10. Should additional statutory restrictions be placed on householder PDR within World Heritage Sites?

Q11. If so, what level of control should be applied (e.g. similar to that for conservation areas or a total restriction)?

Other Designated Sites

2.25 We do not intend to apply these restrictions on householder PDR to other designated areas. On that basis, it would be for the planning authority for the area to promote an Article 4 direction and to make the case for restricting PDR within other designated areas.

Q12. Do you have any comments on the extent of designated areas where restrictions will apply?

Ramps and Handrails

2.26 There are no specific PDR for ramps to doorways or handrails for such ramps or steps up to doorways to assist the elderly and disabled people. We would be interested to know how such works are currently treated by planning authorities – whether, for example, they are regarded as covered by householder PDR generally or are regarded as relatively minor developments to which planning controls are not applied.

Q13. In your experience, do planning authorities treat the addition of ramps and handrails to the exterior of houses to assist the elderly or disabled people as requiring an application for planning permission?

Flats

2.27 There are currently no PDR for flats or buildings containing flats (other than in relation to satellite and other antennas) where the more intensive levels of occupation and different property ownership arrangements could lead to particularly problematic outcomes. While we have no specific proposals in the dHPDO for additional PDR for flats, we would appreciate views on a possible minor change which might avoid the need for planning applications in relation to flats without creating amenity problems.

Q14. Do respondents believe that replacement and alteration of existing windows in flats, without altering the overall size of the window opening should be permitted development?

Flagpoles

2.28 There are currently no explicit PDR for flagpoles within the curtilage of a dwellinghouse. We would be interested in views on having specific PDR in this regard and what conditions and restrictions might apply to such PDR.

Q15. Do respondents believe there should be specific PDR to allow flagpoles to be erected within the curtilage of a dwellinghouse?

Q16. If so, what controls should there be on the height of flagpoles and on their location, with particular regard to designated areas?

PART 3 - Classes of Householder Permitted Development Rights

3.1 The classes in this order are structured to have specific classes of PDR for various common forms of development. So, for example, decking has its own class of PDR and cannot be carried out under the provisions of another class. Some permitted developments may involve a combination of classes, e.g. where an extension to a house increases its development footprint and requires an alteration to the roof of the original dwellinghouse, then the development would have to comply with the restrictions and conditions which apply to both Class 1 and Class 2 in order to benefit from PDR.

3.2 All of the PDR in the dHPDO are subject to a set of general restrictions and conditions set out in Article 3 (see paragraphs 2.15 – 2.18). When reading the specific restrictions and conditions on each class below, these general restrictions and conditions must be borne in mind. The main ones are:

- The development must not result in more than 40% of the curtilage of the dwellinghouse (excluding the development footprint of the original dwellinghouse) being built upon;
- The development must not result in more than 40% of the rear curtilage of the dwellinghouse (excluding the development footprint of the original dwellinghouse) being built upon;
- The development must not result in more than 60 square metres of the curtilage being built upon, excluding the development footprint of the original dwellinghouse;
- The development must not involve works to or forming an access to a trunk road or classified road;
- The development must not result in an obstruction to the view of persons using any road used by vehicular traffic, so as to be likely to cause danger to such persons

Q17 (Classes 1-12)

For each Class of PDR :

- **Are the grant of permission and the restrictions and conditions clear?**
- **Will these controls release a significant number of proposals (see paragraph 1.3) from the planning application process?**
- **Will these PDR provide adequate controls on amenity?**
- **Are there any changes to the controls which might mean significant further reduction in planning applications without undermining amenity?**

There is an additional question on Class 4 below.

Class 1 – the enlargement, improvement or other alteration of a dwellinghouse

3.3 This Class is subject to the following restrictions and conditions:

General

3.4 The general restrictions and conditions referred to in paragraph 3.2.

Specific

3.5 Sub-paragraphs (2)(a)(ii), (b) and (e) cover the basic restrictions on development footprint and height relative to the original dwellinghouse and distance from the dwellinghouse boundary.

3.6 Sub-paragraph (2)(d) places an additional control of 4 metres on the height of development within 2 metres of a boundary. The exception to this is where part of the original dwellinghouse is within 2 metres of the boundary and is already over 4 metres in height, in which case that part of the original dwellinghouse can be developed provided it does not get any higher.

3.7 Sub-paragraph (2)(f) provides that where a side elevation of a house or the principal elevation of a house fronts a road, any enlargement of the house must not extend beyond the wall which forms one of these elevations.

3.8 Sub-paragraph (2)(g) provides that there must be no development above 1 metre in height within 5 metres of a road where it would be closer to the road than the original dwellinghouse.

3.9 This class does not grant planning permission for any changes to the roof, or development relating to hard surfaces, decking, antennas, fences or gates etc, stone cleaning or painting. As indicated in paragraph 3.1 above, these are covered by other classes, set out below. Where an extension to a house affects the roof of the dwelling, then that development must comply with the restrictions in Class 2 relating to alterations to a roof.

Additional constraints in relation to dwellinghouses within conservation areas and the curtilage of listed buildings

3.10 Sub-paragraphs (2)(a)(i) and (c) limit extensions in these areas to a development footprint of 10 square metres and restrict any development beyond a building line bounded by a road and restrict certain changes to the external appearance of the dwellinghouse.

Class 2 – any alteration to the roof of a dwellinghouse including the enlargement of a dwellinghouse by way of an addition or alteration to its roof.

3.11 Class 2 grants planning permission for the alteration of or addition to a roof associated with the enlargement of the dwellinghouse, either by an extension of the development footprint of the original house affecting the roof or by development like a dormer window contained within the area of the original roof. It also covers alterations like velux windows which may not in themselves increase the size of the house. The following restrictions apply.

General

3.12 The general restrictions and conditions referred to in paragraph 3.2.

Specific

3.13 Sub-paragraphs (2)(a) and (d) control the height of any development relative to the height of the roof and the area of any plane of the roof which can be developed. Sub-paragraph (2)(b) prevents development extending beyond 20 centimetres from the existing plane of the roof on a principal elevation or a side elevation where these front a road. Sub-paragraph (f), contains the same height limit on development within 2 metres of the boundary as Class 1(2)(d) mentioned above.

3.14 Sub-paragraph (2)(c) contains additional locational requirements for developments, like dormer windows, which are located entirely within the development footprint of the existing dwellinghouse.

3.15 Sub-paragraph (3) contains a requirement that enlargements of more than one storey must have roof pitches which match those of the plane of the existing dwellinghouse.

Additional constraints in relation to dwellinghouses within the curtilage of a listed building or within conservation areas

3.16 Under sub-paragraph (2)(e), no permitted development is allowed under this class in these areas.

Class 3 – the provision within the curtilage of a dwellinghouse of any building, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse, or the maintenance, improvement or other alteration of such a building or enclosure.

3.17 Class 3 basically grants permission for developments separate from the dwellinghouse but within its curtilage. This includes development for the keeping of poultry, bees, pets, animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. This Class does not grant any planning permission for antennas (see Class 6 below). The restrictions and conditions are as follows:

General

3.18 The general restrictions and conditions referred to in paragraph 3.2

Specific

3.19 The specific restrictions do not apply to maintenance of an existing building. Development is not allowed where any part of the building, enclosure or pool would be situated on land forward of a wall forming the principal elevation or side elevation of the original dwellinghouse and is fronting a road. Development is not allowed where any of it would be more than 4 metres in height or within 1 metre of the boundary of the dwellinghouse. Development is not allowed above 1 metre in height within 5 metres of a road where it would be closer to the road than the original dwellinghouse. There is also a restriction on decking being erected under this class as there is separate PDR for decking under Class 10.

Additional constraints in relation to dwellinghouses within the curtilage of a listed building or within conservation areas

3.20 Development is not allowed in these areas where it would consist of the provision, alteration or improvement of a building with a development footprint of greater than 4 square metres.

Class 4 – the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse.

3.21 In the current GPDO, this class grants planning permission for various forms of hard surface, e.g. paving stones, tarmac or mono blocking. Some concerns have been raised about this type of un-regulated hard surfacing adding to run off from dwellings which, in times of heavy rainfall for example, can contribute to flooding and the overflowing of drainage systems.

3.22 The Scottish Government Building Standards Division (BSD - formerly the Scottish Building Standards Agency) consulted earlier this year on changes to building standards controls on hard surfaces, which would apply to all buildings, not just dwellinghouses. At present building standards apply to hard surfacing exceeding 200 square metres and smaller areas that are part of an access required by regulations. BSD are considering reducing the exempt area threshold which will result in smaller areas having to comply with the standards.

3.23 Some parties have argued for additional constraints on planning freedoms allowing hard standing around dwellinghouses.

3.24 In England new conditions on PDR for hard surfaces within the curtilage of dwellinghouses have recently been introduced. These PDR continue to grant planning permission for hard surfaces but require that for new or replacement hard surface over 5 square metres between the principal elevation and the road - *“either the hard surface shall be made of porous materials, or provision shall be made to direct water run-off from the hard surface to a permeable or porous area or surface*

within the curtilage of the dwellinghouse". The Department for Communities and Local Government have also provided additional guidance in this area:

<http://www.communities.gov.uk/publications/planningandbuilding/pavingfrontgardens>

3.25 Although not included in the draft Order, the Scottish Government as part of its overall approach to flood protection is considering including the same requirements as England on PDR for hard surfaces.

Q18. Do respondents agree with the addition of requirements on drainage to PDR for new and replacement hard surfaces over an area of 5 square metres between the principal elevation and the road?

Class 5 – the erection or provision within the curtilage of a dwellinghouse of a container for the storage of oil or liquefied petroleum gas or other domestic fuel.

Class 7 – the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure within the curtilage of a dwellinghouse.

3.26 There are no significant changes planned for these PDR except that instead of the "20 metre rule" (see paragraph 2.6) we have used a restriction on development forward of the principal elevation and included the limit on the height of development within 5 metres of a road and where it would be nearer the road than the original dwellinghouse.

Class 6 – the installation, alteration or replacement of a microwave antenna on a dwellinghouse or within the curtilage of a dwellinghouse.

Class 8 - the formation, laying out and construction of a means of access to a road which is not a trunk road or a classified road, where that access is required in connection with development permitted by any class in this schedule other than Class 7.

Class 9 – the stone cleaning or painting of the exterior of any dwellinghouse or building within the curtilage of a dwellinghouse

3.27 The permitted development rights in Classes 6, 8 and 9 are unchanged from the current provisions in the GPDO.

Class 10 – the erection, construction, maintenance, improvement or other alteration of a deck or other raised platform within the curtilage of a dwellinghouse.

3.28 This is a new class of PDR specific to decking. The restrictions and conditions which apply to this class are:

General

3.29 The general restrictions and conditions set out in paragraph 3.2.

Specific

3.30 The floor height of decking is limited to 1 metre and decking cannot be erected within 2 metres of the boundary of the dwellinghouse. Where a householder wished to erect a fence around such decking, this would have to comply with the height restrictions in Class 7. There are also restrictions on locating decking forward of a side or principal elevation fronting a road.

Additional constraints in relation to dwellinghouses within the curtilage of a listed building or within conservation areas

3.31 In these areas decking is limited to 4 square metres in area.

Class 11 – the erection or construction of a porch outside any external door of a dwellinghouse

3.32 This is a new separate class of PDR for porches and allows them around any doorway to the house, regardless of the controls in Class 1 on other alterations and additions to dwellinghouses. The restrictions and conditions that apply are:

General

3.33 The general restrictions and conditions set out in paragraph 3.2.

Specific

3.34 The development footprint of a porch under these PDR is limited to 3 square metres and the height to 3 metres. Also no part of the porch can be within 1 metre of the boundary of the property or within 5 metres of a road and nearer to the road than part of the original dwellinghouse.

Additional constraints in relation to dwellinghouses within conservation areas.

3.35 These PDR do not apply within conservation areas.

Class 12 – the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.

3.36 This is a new class of PDR to make clear that an application for planning permission is not required for these minor developments. The restrictions and conditions are:

General

3.37 The general restrictions and conditions referred to in paragraph 3.2 (although these are unlikely to be an issue for this class of PDR).

Specific

3.38 The height of the chimney, flue or soil and vent pipe must not exceed the highest part of the roof of the dwellinghouse by more than 1 metre.

Additional constraints in relation to dwellinghouses within the curtilage of a listed building or within conservation areas

3.39 The chimney, flue or soil and vent pipe must not be installed on a wall or roof slope which fronts a highway and forms the principal elevation or a side elevation of the dwellinghouse

PART 4 – Some General Questions

Q19. Do respondents think the changes to permitted development rights as drafted will achieve the Scottish Government’s aim of removing a significant amount of householder development from the planning application process?

Q20. If not, what particular alterations to the draft Householder Permitted Development Order might significantly reduce the number of householder planning applications?

Q21. What effects might any suggested changes have on amenity issues?

Q22. Do respondents believe that the provisions of the draft Householder Permitted Development Order pay sufficient regard to the impact on local amenity?

Q23. If not, what particular alterations to the draft Householder Permitted Development Order might address some or all of these issues?

Q24. What particular issues would you like to see addressed in the guidance accompanying the changes to householder permitted development rights?

REGULATORY IMPACT ASSESSMENT (ANNEX C)

Q25. Are there any costs or benefits not identified in the draft RIA?

Q26. If so, do you have any information or can you suggest sources of relevant information on these costs and/or benefits?

EQUALITIES IMPACT ASSESSMENT (ANNEX D)

Q27. Are there any potential impacts on particular societal groups that we should be aware of in finalising the order?

**HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS CONSULTATION
PAPER**

LIST OF QUESTIONS

Q1. Do you agree with this change from floor area to development footprint/ground area?

Q2. Do you agree with the new approach to principal, side and rear elevations?

Q3. Do you believe that issues regarding road safety are sufficiently addressed by the restrictions on PDR set out in Article 3 of the draft Householder Permitted Development Order and the height limit of 1 metre within 5 metres of a road?

Q4. Do you agree with the overall limit on development of the curtilage (excluding the original dwelling) of 40%?

Q5. Do you agree with the additional limit on the development of rear curtilage of 40%?

Q6. Do you agree with an absolute limit of 60 square metres?

Q7. Do you agree with the additional conditions and restrictions on householder PDR in conservation areas contained in the draft Householder Permitted Development Order?

Q8. Do you agree with the additional conditions and restrictions on householder PDR within the curtilage of listed buildings as set out in the draft householder permitted development order?

Q9. Should there simply be no permitted development in relation to conservation areas or the curtilage of listed buildings?

Q10. Should additional statutory restrictions be placed on householder PDR within World Heritage Sites?

Q11. If so, what level of control should be applied (e.g. similar to that for conservation areas or a total restriction)?

Q12. Do you have any comments on the extent of designated areas where restrictions will apply?

Q13. In your experience, do planning authorities treat the addition of ramps and handrails to the exterior of houses to assist the elderly or disabled people as requiring an application for planning permission?

Q14. Do respondents believe that replacement and alteration of existing windows in flats, without altering the overall size of the window opening should be permitted development?

Q15. Do respondents believe there should be specific PDR to allow flagpoles to be erected within the curtilage of a dwellinghouse?

Q16. If so, what controls should there be on the height of flagpoles and on their location, with particular regard to designated areas?

Questions on Classes – Q17 (Classes 1-12)

- **Are the grant of permission and the restrictions and conditions clear?**
- **Will these controls release a significant number of proposals (see paragraph 1.3) from the planning application process?**
- **Will these PDR provide adequate controls on amenity?**
- **Are there any changes to the controls which might mean significant further reduction in planning applications without undermining amenity?**

Q18. Do respondents agree with the addition of requirements on drainage to PDR for new and replacement hard surfaces over an area of 5 square metres between the principal elevation and the road?

Q19. Do respondents think the changes to permitted development rights as drafted will achieve the Scottish Government's aim of removing a significant amount of householder development from the planning application process?

Q20. If not, what particular alterations to the draft Householder Permitted Development Order might significantly reduce the number of householder planning applications?

Q21. What effects might any suggested changes have on amenity issues?

Q22. Do respondents believe that the provisions of the draft Householder Permitted Development Order pay sufficient regard to the impact on local amenity?

Q23. If not, what particular alterations to the draft Householder Permitted Development Order might address some or all of these issues?

Q24. What particular issues would you like to see addressed in the guidance accompanying the changes to householder permitted development rights?

Q25. Are there any costs or benefits not identified in the draft RIA?

Q26. If so, do you have any information or can you suggest sources of relevant information on these costs and/ or benefits?

Q27. Are there any potential impacts on particular societal groups that we should be aware of in finalising the order?

“dwellinghouse” does not include a building containing one or more flats, or a flat contained within such a building;

“existing”, in relation to any building means (except in the definition of “original”) existing immediately before the carrying out of development described in this Order;

“flat” means a separate and self-contained set of premises whether or not on the same floor and forming part of a building from some other part of which it is divided horizontally;

“listed building” means a listed building under section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997⁽³⁾;

“microwave” means that part of the radio spectrum above 1,000MHz;

“microwave antenna” means a satellite antenna or a terrestrial microwave antenna;

“original” means—

- (a) in relation to a building, other than a building which is Crown land, existing on 1st July 1948, as existing on that date and, in relation to a building, other than a building which is Crown land, built on or after 1st July 1948, as so built;
- (b) in relation to a building which is Crown land on 12th June 2006, as existing on that date and, in relation to a building built on or after 12th June 2006 which is Crown land on the date of its completion, as so built;

“plant or machinery” includes any structure or erection in the nature of plant or machinery;

“principal elevation” means the elevation of the dwellinghouse used as the principal means of access to the dwellinghouse;

“rear curtilage” has the meaning given in Article 3(7);

“terrestrial antenna” means apparatus designed for transmitting or receiving terrestrial radio energy between two fixed points; and

“the Schedule” means the Schedule to this Order.

(2)

- (a) any reference in this Order to the height of a building shall be construed as a reference to its height when measured from ground level; and
- (b) for the purposes of this paragraph “ground level” means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.

(3) Any reference in this Order to a numbered article or Schedule is a reference to the article or as the case may be the Schedule bearing that number in this Order and a reference to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph having that number in the article or paragraph in the Schedule in which the reference appears.

Permitted development

3.—(1) Subject to the provisions of this Order and regulations 60 to 63 of the Conservation (Natural Habitats, & c.) Regulations 1994⁽⁴⁾, planning permission is hereby granted for the development or class of development specified and printed in heavy type in sub-paragraph (1) of any paragraph of the Schedule or where any such paragraph is not divided into sub-paragraphs in that paragraph.

(2) Any development or class of development permitted under paragraph (1) above is subject to any limitation or condition specified in the sub-paragraphs subsequent to sub-paragraph (1) in each paragraph in the Schedule.

(3) References in this Order to permission granted by the Schedule or by any class, paragraph or sub-paragraph of the Schedule is a reference to the permission granted by this article in relation to development specified in the Schedule or in that provision of the Schedule.

(3) 1997 c.9.

(4) S.I. 1994/2716.

(4) Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the Act otherwise than by this Order.

(5) Planning permission granted by the Schedule shall not apply if–

- (a) in the case of a permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; or
- (b) in the case of permission granted in connection with an existing use, that use is unlawful.

(6) The permission granted by this article shall not authorise the following–

- (a) any development, which requires or involves the formation, laying out or material widening of a means of access to an existing road which is a trunk road or a classified road or creates an obstruction to the view of persons using any road used by vehicular traffic, so as to be likely to cause danger to such persons;
- (b) any development which would result in the development footprint of all buildings within the curtilage of the dwellinghouse exceeding 40% of the total area of the curtilage;
- (c) any development which would result in the development footprint within the rear curtilage exceeding 40% of the total area of the rear curtilage;
- (d) any development which would result in the development footprint within the curtilage of the dwellinghouse exceeding 60 square metres;
- (e) any Schedule 1 or Schedule 2 development within the meaning of the Environmental Impact Assessment (Scotland) Regulations 1999⁽⁵⁾; or
- (f) any development, other than development permitted by Class 70 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992⁽⁶⁾ which requires or involves the demolition of a dwellinghouse, but in this sub-paragraph “dwellinghouse” does not include part of a dwellinghouse.

(7) For the purposes of this article “rear curtilage” means the land comprised in the curtilage of the dwellinghouse other than land forward of a wall forming the principal elevation of the original dwellinghouse.

Directions restricting permitted development

4.—(1) If in relation to any area the Scottish Ministers or, in relation to the district of a planning authority, that planning authority, is satisfied that it is expedient that all or any development of all or any of the classes of the Schedule should not be carried out in that area or, or any particular part thereof, or that any particular development of any of those classes should not be carried out in such area or part, unless permission is granted on an application in that behalf, the Scottish Ministers or the planning authority may direct that the permission granted by article 3 shall not apply to–

- (a) development in a particular area; or
- (b) any particular development falling within any of these classes.

(2) Subject to paragraph (4), a direction by a planning authority under this article shall require the approval of the Scottish Ministers, and the Scottish Ministers may approve the direction, with or without modifications.

(3) When a planning authority submits a direction to the Scottish Ministers for approval, it shall also send–

- (a) two additional copies together with a plan of the area in respect of which the direction applies, unless the direction includes such a plan; and
- (b) a statement of its reasons for making the direction.

⁽⁵⁾ S.S.I. 1999/1.

⁽⁶⁾ S.S.I. 1992/223 as amended by S.S.I. 1994/3294.

(4) The approval of the Scottish Ministers is not required in the case of a direction which relates only to either or both of the following—

- (a) a listed building or a building in respect of which the Scottish Ministers have given notice in writing to the authority making the direction that it is a building of special architectural or historic interest;
- (b) development within the curtilage of a listed building.

(5) A direction shall come into force on the date on which notice of that direction first published under article 5(1) or in a case where notice is served in accordance with article 5(4) when such notice is served on the occupier or if there is no occupier on the owner.

Notice and service of article 4 directions

5.—(1) Notice of any direction made or approved by the Scottish Ministers and of any such direction as is referred to in article 4(4) specifying any particular area given under article 4(1)(a) must be published by the planning authority concerned in one or more newspapers, circulating in the locality in which the area is situated, and on the same or a subsequent date in the Edinburgh Gazette.

(2) Such a notice shall contain a concise statement of the effect of the direction and name a place or places where a copy thereof and of a map defining the area to which it relates may be seen at all reasonable hours.

(3) The Scottish Ministers may publish a notice in accordance with paragraph (1) of any direction given under article 4(1)(a) in which case the planning authority is not required to publish such notice.

(4) Notice of any direction specifying any particular development given under article 4(1)(b) must be served by the planning authority concerned on the owner and occupier of the land affected.

(5) The Scottish Ministers may serve notice in accordance with paragraph (4) of any direction given under article 4(1)(b) in which case the planning authority is not required to serve notice.

Cancellation of article 4 directions

6.—(1)

- (a) any direction made by the Scottish Ministers under article 4 may be cancelled by a subsequent direction made by the Scottish Ministers;
- (b) any direction made by a planning authority in accordance with article 4 may be cancelled by a subsequent direction made by that authority or by a direction made by the Scottish Ministers. A direction given by a planning authority which contains only provisions cancelling a previous direction, does not require the approval of the Scottish Ministers.

(2) Article 5 shall apply to the making of any direction under paragraph (1) in the same way as it would apply to the making of the direction being revoked.

Modifications and savings

7.—(1) In Schedule 1 (Development within the curtilage of a dwellinghouse) to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, Part 1 is omitted.

(2) Any direction under article 4 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 which was in force immediately before [] 2009 shall in so far as it relates to development permitted by this Order have effect as if it were a direction given under article 4 of this Order of which notice has been published or served, as the case may be.

St Andrew's House,
Edinburgh

2009

Authorised to sign by the Scottish Ministers

SCHEDULE 1

Article 3

CLASSES OF PERMITTED DEVELOPMENT

DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLINGHOUSE

Class 1

(1) **The enlargement, improvement or other alteration of a dwellinghouse.**

(2) Development is not permitted by this class if—

- (a) the development footprint of the resulting building would exceed the development footprint of the original dwellinghouse—
 - (i) in the case of a dwellinghouse in a conservation area or within the curtilage of a listed building by more than 10 square metres;
 - (ii) in any other case, by more than 50%;
- (b) the height of the resulting building would exceed the height of the highest part of the roof of the existing dwellinghouse (excluding any chimney);
- (c) in the case of a dwellinghouse within a conservation area or within the curtilage of a listed building any part of the resulting building would—
 - (i) extend beyond the building line of the original dwellinghouse on any side of the house where its curtilage is bounded by a road;
 - (ii) consist of or include the cladding of any part of the exterior with stone, artificial stone, timber, plastic or tiles or any other material; and
- (d) any part of the resulting building would be within 2 metres of the boundary of the dwellinghouse and—
 - (i) would be increased in height as a result of the development; and
 - (ii) would exceed 4 metres in height;
- (e) any part of the resulting building would be within 1 metre of the boundary of the dwellinghouse;
- (f) the enlarged part of the dwellinghouse would extend beyond a wall which—
 - (i) fronts a road; and
 - (ii) forms either the principal elevation or a side elevation of the original dwellinghouse;
- (g) any part of the resulting building would be more than 1 metre in height and would be both less than 5 metres from any road and would be nearer to that road than the part of the original dwellinghouse nearest to it; or
- (h) it would consist of or include any development which falls within classes 2(1) (alteration to a roof), 3(1) (building or pool in curtilage), 6(1) (microwave antenna), 9(1) (stone cleaning), 11(1) (porch) or 12(1) (chimney, flue or soil pipe) of this Schedule.

(3) For the purposes of this class “resulting building” means the dwellinghouse as enlarged, improved or altered, taking into account any previous enlargement, improvement or alteration to the original dwellinghouse.

Class 2

(1) **Any alteration to the roof of a dwellinghouse including the enlargement of a dwellinghouse by way of an addition or alteration to its roof.**

(2) Development is not permitted by this class if—

- (a) any part of the dwellinghouse would as a result of the works, exceed the height of the highest part of the existing roof (excluding any chimney);

- (b) any part of the dwellinghouse would, as a result of the works, extend 20cm beyond the plane of any existing roof slope which–
 - (i) fronts a road; and
 - (ii) forms either the principal elevation or a side elevation of the dwellinghouse.
- (c) where the development does not increase the development footprint of the existing dwellinghouse–
 - (i) any part of the addition or alteration to the roof would be within 1 metre of the edge of the roof and where the roof adjoins another dwellinghouse 1 metre from that dwellinghouse;
 - (ii) it consists of any addition or alteration to a roof–
 - (aa) within 50 centimetres from the eave of the plane of the roof;
 - (bb) within 50 centimetres below the ridge of a roof.
- (d) more than 40% of any plane of the existing roof would be subject to development;
- (e) the dwellinghouse is within a conservation area or the curtilage of a listed building;
- (f) any part of the addition or alteration to the roof within 2 metres of the boundary of the dwellinghouse–
 - (i) would be increased in height as a result of the development; and
 - (ii) would exceed 4 metres in height; or
- (g) it would consist of or include any development which falls within class 12(1) (chimney, flue or soil and vent pipe) of this Schedule.

(3) Development is permitted by this class subject to the condition that where the enlarged part of the dwellinghouse has more than one storey, the roof pitch of the enlarged part must be the same as the roof pitch of the plane of the existing dwellinghouse.

Class 3

(1) The provision within the curtilage of a dwellinghouse of any building, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse, or the maintenance, improvement or other alteration of such a building.

- (2) Development is not permitted by this class if it consists of a dwelling or a microwave antenna.
- (3) Development, other than maintenance, is not permitted by this class if-
 - (a) any part of the building, swimming or other pool would be on land which–
 - (i) fronts a road; and
 - (ii) is forward of a wall forming the principal elevation or a side elevation of the original dwellinghouse.
 - (b) any part of the building, swimming or other pool would be within 1 metre of the boundary of the dwellinghouse;
 - (c) any part of the building would exceed 4 metres in height;
 - (d) any part of the building would be more than 1 metre in height and would be both less than 5 metres from any road and would be nearer to that road than the part of the original dwellinghouse nearest to it;
 - (e) in the case of any land in a conservation area or land within the curtilage of a listed building, it would consist of the provision, alteration or improvement of a building with a development footprint greater than 4 square metres; or
 - (f) it would consist of or include any development which falls within Class 10(1) (decking).

(4) For the purposes of this class “purpose incidental to the enjoyment of the dwellinghouse” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

Class 4

(1) The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse or the replacement in whole or in part of such a surface.

(2) Development is not permitted by this class if it would be within a conservation area or within the curtilage of a listed building.

Class 5

(1) The erection or provision within the curtilage of a dwellinghouse of a container for the storage of oil or liquefied petroleum gas or other domestic fuel.

(2) Development is not permitted by this class if–

- (a) it would be within a conservation area or within the curtilage of a listed building;
- (b) the capacity of the container would exceed 3500 litres;
- (c) any part of the container would be more than 3 metres in height;
- (d) any part of the container would be within 1 metre of the boundary of the dwellinghouse;
- (e) it would result in more than one container within the curtilage of a dwellinghouse;
- (f) any part of the container would be more than 1 metre in height and would be both less than 5 metres from any road and would be nearer that road than the part of the original dwellinghouse nearest to it; or
- (g) any part of the container would be situated on land–
 - (i) which fronts a road; and
 - (ii) is forward of a wall forming the principal elevation or a side elevation of the dwellinghouse.

Class 6

(1) The installation, alteration or replacement of a microwave antenna on a dwellinghouse or within the curtilage of a dwellinghouse.

(2) Development is not permitted by this class if–

- (a) it would result in the presence on a dwellinghouse, or within the curtilage of a dwellinghouse of–
 - (i) more than two microwave antennas;
 - (ii) a single microwave antenna exceeding 100 centimetres in length;
 - (iii) two microwave antennas which do not meet the relevant size criteria;
 - (iv) a microwave antenna installed on a chimney, where the length of the antenna would exceed 60 centimetres;
 - (v) a microwave antenna installed on a chimney, where the antenna would protrude above the chimney;
 - (vi) a microwave antenna with a cubic capacity in excess of 35 litres;
- (b) in the case of a microwave antenna to be installed on a roof without a chimney, the highest part of the antenna would be higher than the highest part of the roof;
- (c) in the case of a microwave antenna to be installed on a roof with a chimney, the highest part of the antenna would be higher than the highest part of the chimney, or 60 centimetres measured from the highest part of the ridge tiles of the roof, whichever is the lower;
- (d) in a designated area it would consist of the installation of a microwave antenna on a chimney, wall or roof slope which faces onto, and is visible from, a road.

(3) Development is permitted by this class subject to the following conditions–

- (a) the microwave antenna shall, as far as practicable, be sited so as to minimise its effect on the external appearance of the building on which it is installed; and
- (b) a microwave antenna no longer needed for reception or transmission purposes shall be removed as soon as reasonably practicable.

(4) The length of a microwave antenna is to be measured in any linear direction, and shall exclude any projecting feed element, reinforcing rim, mounting or brackets.

(5) For the purposes of this class–

“designated area” means a national scenic area, National Park, conservation area, historic garden or designed landscape, or on a Category A listed building or a scheduled monument or within the setting of such a building or, as the case may be, monument; and

“relevant size criteria” means that–

- (i) only one of the microwave antennas may exceed 60 centimetres in length; and
- (ii) any microwave antenna which exceeds 60 centimetres in length must not exceed 100 centimetres in length.

Class 7

(1) The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure within the curtilage of a dwellinghouse.

(2) Development is not permitted by this class if–

- (a) the height of any gate, fence, wall or other enclosure to be erected or constructed would exceed one metre in height and would be both less than 5 metres from any road and would be nearer that road than the part of the original dwellinghouse nearest to it;
- (b) the height of any other gate, fence, wall or other enclosure to be erected or constructed would exceed 2 metres in height;
- (c) the height of any existing gate, fence, wall or other enclosure maintained, improved or altered would exceed its former height or the height referred to in (a) and (b), whichever is the greater;
- (d) any part of the gate, fence, wall or other enclosure would exceed 1 metre in height where it–
 - (i) fronts a road; and
 - (ii) is forward of a wall forming the principal elevation or a side elevation of the dwellinghouse.
- (e) it would be within a conservation area or within the curtilage of a listed building.

Class 8

The formation, laying out and construction of a means of access to a road which is not a trunk road or a classified road, where that access is required in connection with development permitted by any class in this Schedule other than Class 7 (gate, fence, wall or other means of enclosure).

Class 9

(1) The stone cleaning or painting of the exterior of any dwellinghouse or building within the curtilage of a dwellinghouse.

(2) Development is not permitted by this class–

- (a) for the purposes of advertisement, announcement or direction;
- (b) where the building or works are in a conservation area; or
- (c) where the building is a listed building.

(3) For the purposes of this class, “painting” includes any application of colour.

Class 10

(1) The erection, construction, maintenance, improvement or alteration of a deck or other raised platform within the curtilage of a dwellinghouse.

(2) Development is not permitted by this class if–

- (d) any part of the deck or raised platform would–
 - (i) be within 2 metres of the boundary of the dwellinghouse; or
 - (ii) have a height of more than 1 metre;
- (e) the deck or raised platform would be situated on land which–
 - (i) fronts a road; and
 - (ii) is forward of a wall forming the principal elevation or a side elevation of the dwellinghouse.
- (f) in the case of any land in a conservation area or land within the curtilage of a listed building it would consist of the erection, construction, maintenance, improvement or alteration of a deck or other raised platform with a development footprint greater than 4 square metres.

Class 11

(1) The erection or construction of a porch outside any external door of a dwellinghouse.

(2) Development is not permitted by this class if–

- (a) the development footprint of the porch would exceed 3 square metres;
- (b) any part of the porch would be both less than 5 metres from any road and nearer to the road than part of the original dwellinghouse nearest to it;
- (c) any part of the porch would be within 1 metre of the boundary of the dwellinghouse;
- (d) it would be within a conservation area; or
- (e) it would consist of or include any development under Class 1(1) (alteration of a dwellinghouse).

Class 12

(1) The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.

(2) Development is not permitted by this class if–

- (a) the height of the chimney, flue or soil and vent pipe would exceed the highest part of the roof by 1 metre or more; or
- (b) in the case of a dwellinghouse within a conservation area, the chimney, flue or soil and vent pipe would be installed on a wall or roof slope which–
 - (i) fronts a road; and
 - (ii) forms either the principal elevation or a side elevation of the dwellinghouse.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers permitted development rights in respect of certain householder development. Where such rights apply, no specific application for planning permission is needed.

A Regulatory Impact Assessment has been prepared in relation to this Order and has been placed in the Scottish Parliament Information Centre. Copies can be obtained free of charge from the Scottish Government Planning Directorate, Area 2H, Victoria Quay, Edinburgh, EH6 6QQ.

PARTIAL REGULATORY IMPACT ASSESSMENT

1. **Title of proposal:** The Town and Country Planning (Householder Permitted Development) (Scotland) Order 2008.

2. **Purpose and intended effect**

Objective

2.1 To significantly reduce the number of applications for planning permission for minor householder developments – e.g. small house extensions, dormer windows, sheds – while retaining an appropriate element of planning control. This will:

- allow householders to carry out more development to their home without having to apply for planning permission; and
- allow planning authorities to devote more of their resources to more significant issues such as development planning and processing applications for major developments.

In addition we aim to make the regulations which control householder developments more user friendly, but also intend to provide guidance so that developers and planning authorities do not have to go directly to the legislation to try to interpret what is allowable without applying for planning permission.

Background

2.2 The annual rate of approval of householder consents has remained constant at around 97%¹. In 2006/2007, the number of householder planning applications determined consents comprised 47% of a total of 54,597 applications determined.

2.3 Householder developments which proceed on the basis of being permitted development are generally small-scale and uncontentious, but can on occasion give rise to complaints from neighbours.

2.4 In addition, the planning system has come under increasing criticism that it is too slow in processing applications and is in many instances regarded as a barrier to development and hence to economic growth.

2.5 The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, (the GPDO) currently grants a Scotland wide planning permission for a range of specified developments removing the need to apply for planning permission to the planning authority where proposals can comply with the requirements of the GPDO. The developments covered by the GPDO range from minor householder developments to development at existing industrial sites and

¹ As quoted in 'Review of the General Permitted Development Order 1992 Householder Development: Final Report' Heriot-Watt University School of the Built Environment, Brodies LL, Scott Wilson Scotland Ltd, 2006

airports. This nation wide planning permission for certain developments is often referred to as Permitted Development Rights (PDR).

Rationale for government intervention

2.6 Some of the developments that require an application for planning permission currently may have no significant impacts. Despite this a considerable amount of time and resource is required by the applicant and by planning authority officials to, respectively, prepare and process such applications. We propose to reduce the overall number of developments that require consent by removing those that have no or minimal impact from the system. This will reduce the costs in dealing with householder developments and ensure planning officers can focus on more strategic planning tasks with a wider public benefit.

2.7 In addition, the current difficulty in interpreting the GPDO takes up householders' and planning officers' time, as well as giving rise to avoidable enforcement action to remediate householder developments which have been carried out but do not comply with the legislation. We will clarify through new legislation and proposed accompanying guidance the circumstances in which planning permission is required.

3. Consultation

3.1 A review of the GPDO was carried in 2006 for the then Scottish Executive Development Department by Heriot-Watt University's School of the Built Environment, Brodies LL, and Scott Wilson Scotland Ltd. They set out their research findings in their report '*Review of the General Permitted Development Order 1992: Householder Development*'. As part of this review they conducted a survey of planning officers, community councillors, professional bodies and others on a range of reform options. They concluded the most effective way to address the above objectives would be to expand the existing householder permitted development rights.

<http://openscotland.gov.uk/Publications/2006/10/09103423/0>

4. Options

Option 1: Do nothing

4.1 The current provisions for householder development set out in the GPDO would apply.

Option 2: Extend existing Householder PDR

4.2 Broadly extend householder PDR thereby removing the need for householders to apply for planning permission for certain minor developments.

4.3 To help prevent any undesirable developments there will be limits on the extent of the curtilage of a dwelling which can be developed under these new PDR

and developments should be subservient in size and scale to the existing dwelling. This will help prevent significant impacts on others.

4.4 As part of this process we intend to provide more helpful guidance to accompany the changes in legislation to explain the system and provide examples of how the legislation should be applied.

5. **Costs and benefits**

Sectors and groups affected

- Householder applicants (including developers and homeowners)
- Public sector (planning authorities)
- Businesses involved in the preparation and submission of householder planning applications and carrying out householder developments

Economic Impacts

Option 1 – Do nothing

5.1 There are no direct additional economic benefits or costs, although planning authority resource would continue to be spent processing applications that have low impacts. If such applications continue to increase, this will further affect planning authorities' ability to process efficiently applications for more significant developments.

Option 2 – Revision of GPDO

Savings for householder applicants

5.2 Potentially cost savings to applicants accrue through removing the need for planning applications in a significant number of cases.

5.3 The planning performance data for 2004-2007 gathered by the Scottish Government indicate that a total of 25,707 householder applications were decided by all Scottish planning authorities in 2006/2007. The researchers led by Heriot Watt University indicate that their recommended changes to PDR could potentially take up to 38% of such applications out of the planning system.

5.4 In developing our legislative proposals, we have had to refine the Heriot Watt recommendations and so our proposals differ from their recommendations. The Heriot Watt report indicates that a total of 24,424 householder applications were decided by all Scottish planning authorities in 2004/2005. Taking their estimated 38% reduction in the number of these applications as a target, they estimate there would a reduction in the total number of householder applications to around 15,000 in future years. On average this would be a reduction of around 290 householder applications per year for each Scottish planning authority. However, it is

acknowledged in the research findings that there is likely to be wide variation between planning authorities around such reductions, depending on the characteristics of the housing stock in each Council area and pressures on the local housing market. If there was a 38% reduction in the number of householder applications for 2006/2007 the total number taken out of the planning system would have been 9,769, with a reduction in the total number of householder applications to around 16,000. On average this would be a reduction in the number of householder applications dealt with by each Scottish planning authority of around 300 for 2006/2007, subject to the abovementioned issue of the distribution of such reductions across authorities.

5.5 The following table estimates what the potential net saving to householder applicants would have been in 2006-2007 based on a 38% reduction in the total number of householder applications being considered:

Year	Applications removed from planning system	Fee saved (per development)	Total saved
2006-2007	9769	£145 ²	£1,416,505.00

Costs and savings for Scottish planning authorities

5.6 The fees charged by Scottish planning authorities to process householder applications and certificates of lawful use or development are intended to cover the costs of providing the service. Research published in 2005 concluded that the income from smaller applications did much to cross-subsidise larger more complex planning applications. A revision of the GPDO as suggested in the consultation is therefore likely to reduce planning authority fee income.

5.7 At the same time, the revision of the GPDO will benefit Scottish planning authorities to the extent that it results in the reduction of planning applications, planning appeals, development enquiries and enforcement activity. This overall decrease in workload will help free up staff resources for other planning matters and also help improve the efficiency in processing applications overall.

6. Small/Micro Firms Impact Test

6.1 Reform of the GPDO would remove a significant regulatory burden from the many small businesses – architects, architectural technicians, town planning consultants and builders – who are responsible for the design and building of domestic alterations. On the debit side is the fact that a simplification of the regulations could lead to a reduction in those seeking specialist help to interpret the regulations correctly and the loss of charges for making a planning application on the client’s behalf; but this could be compensated for by an increase in householders carrying out development as a direct result of the regulations being simplified.

² As quoted in Scottish Government ‘*Planning Circular 2/07: The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2007*’.

7. Legal Aid Impact Test

7.1 These proposals have no impact in relation to Legal Aid.

8. “Test Run” of business forms

8.1 The draft order does not contain business forms.

9. Competition assessment

9.1 The proposals are not expected to impact significantly more on some firms than others nor to restrict new entrants to the market. The freedom of firms to choose the price, quality, range or location of their products will be unaffected.

10. Enforcement, sanctions and monitoring

10.1 Householder PDR would be set nationally through an order replacing the householder PDR currently set out in the GPDO. Each Scottish planning authority would be responsible for enforcement in the same way as they do with existing PDR. The 2006 Act extended the enforcement powers available to planning authorities to include powers to require any developer (including householders where PDR does not apply) to submit a retrospective planning application for works which require planning permission. There are also enforcement powers available to planning authorities, where a development breaches planning control, to take action up to and including stopping construction work and require the demolition or rebuilding of works which constitute breaches of planning control.

10.2 Existing monitoring mechanisms will allow the operation of the proposals to be measured in terms of the volume of householder planning applications decided by each planning authority annually and therefore in terms of the consequent changes in Scottish planning authority income.

11. Implementation and delivery plan

11.1 It is anticipated that the revised GPDO will be implemented by early 2009. However this will to some extent be dependent on feedback received during the consultation period which is scheduled for late summer/early autumn 2008.

11.2 It is intended that a user guide on the new householder PDR will accompany the revised GPDO.

12. Post-implementation review

12.1 The Directorate for the Built Environment receives regular feedback from practitioners and professional bodies on all areas of planning, and householder applications are no different in this respect. The Directorate intends to review the effects of the changes proposed in this document within 3 years from their implementation.

13. **Summary and recommendation**

13.1 Based on the analysis presented above, the recommendation is to implement changes to the GPDO as outlined in Option 2.

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No change.	No change.
2	Reduce number of planning applications entering the system; save and redirect planning authority resources; improve efficiency of processing planning applications overall. Possible saving for developing householders of £1.4 million per annum.	Possible implications for a reduction in planning application fee income by around £1.4 million per annum,

Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

Date

Contact point for enquiries and comments:

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HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS CONSULTATION: PARTIAL EQUALITIES IMPACT ASSESSMENT

1. Equality Impact Assessment (EQIA) is about considering how policy (by policy we mean activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.
2. The Scottish Government is committed to ensuring that the planning system is designed and delivered in a way that is sensitive and relevant to the diverse needs and experiences of all people living in Scotland. We will consider and address the impact of policy on particular groups of people (whatever their age, race, gender, sexual orientation, religion or belief or whether disabled or not). This partial EQIA recognises that we are not currently able to identify in all cases **who** these people might be and **what** specific needs they may have.
3. The Scottish Government has developed the following 10 step process to aid the EQIA process.

Step 1	Define the aims of your policy
Step 2	What do you already know about the diverse needs and/or experiences of your target audience?
Step 3	What else do you need to know to help you understand the diverse needs and/or experiences of your target audience?
Step 4	What does the information we have tell us about how this policy might impact positively or negatively on the different groups within the target audience?
Step 5	What, if any, changes will be made to the policy?
Step 6	Does the policy provide the opportunity to promote equality of opportunity or good relations?
Step 7	Based on the work we have done – rate the level of relevance of the policy – HIGH, MEDIUM OR LOW
Step 8	Do we need to carry out a further impact assessment?
Step 9	Explain how we will monitor and evaluate this policy to measure progress
Step 10	Sign off and publish impact assessment

4. This partial EQIA covers the first three steps. We are seeking your views on the conclusions made and particularly where you consider that the policy may impact disproportionately on equality groups.

Step One

Defining the aims of the policy

<p>What is the purpose of the proposed policy (or changes to be made to the policy)?</p>	<p>Amend legislation allowing householders to carry out development in and around their homes without applying for planning permission.</p>
<p>Who is affected by the policy or who is intended to benefit from the proposed policy and how?</p>	<p>It will benefit planning authorities by reducing the number of minor planning applications thus freeing up staff resources for other planning matters and improving the efficiency of the processing of applications overall.</p> <p>Householders will benefit as they will be able to carry out more minor developments to their property without having to submit a planning application thus avoiding the associated costs. Neighbours may have their amenity affected without the opportunity to voice legitimate planning concerns which the requirement of a planning application would allow.</p> <p>Planning consultants and architects may lose out on the fees charged for handling a planning application on behalf of a householder.</p>
<p>How have you, or will you, put the policy into practice, and who is or will be responsible for delivering it?</p>	<p>The changes will be brought in through secondary legislation accompanied by appropriate guidance. Whilst planning authorities will be responsible for policing the implementation of the GPDO, it will be a matter for home owners and contractors / architects, acting on their behalf, to put them into practice.</p>
<p>How does the policy fit into our wider or related policy initiatives?</p>	<p>This policy particularly fits into the first of the Scottish Government's five strategic objective's:</p> <ul style="list-style-type: none">• Wealthier and fairer;

	<p>To a large extent it is about freeing up planning authority resources to concentrate on enabling developments to meet these objectives.</p> <p>These proposals form part of the wider modernisation of the planning system, the key aims of which are to make it:</p> <ul style="list-style-type: none"> • fit for purpose • more efficient; • more inclusive; and • play its part in delivering sustainable development.
Do you have a set budget?	No.

Step Two

What is already known about the diverse needs and/or experiences of the target audience?

To understand the different needs and experiences of those affected by the policy, we have gathered the following information about the target audience. The main sources of information for the EQIA include statistical research gathered by the Scottish Government, in particular, from the analysis of the 2001 Census in Scotland. It is also supported by information gathered by the UK Government Department for Communities and Local Government as part of their review of householder development consents; and by work undertaken by Inclusion Scotland.

It should be noted however that at this stage we do not have research that directly relates to different groups' views on householder permitted development rights.

Do you have information on	Yes		No	X
Age	Yes		No	X
Disability	Yes	X	No	
Gender	Yes	X	No	
Lesbian, Gay, Bisexual & Transgender	Yes		No	X
Race	Yes	X	No	
Religion and Belief	Yes	X	No	

Age	Evidence: None
Disability	Evidence: Inclusion Scotland's <i>Manifesto for Inclusion</i> (2007) identifies a lack of accessible and suitable housing as a major barrier preventing disabled people living independent lives with access to all the opportunities most non-disabled people take for granted. It suggests that all housing developments should have a minimum of ground floor housing designed and built to 'Barrier Free' standards.
Gender	Evidence: <i>A Gender Audit of Statistics</i> (March 2007) indicates that a substantial proportion of Scottish households are couple households, with men and women in such households having access to the same type and quality of housing. However, households where men are the highest income earners are likely to have access to better quality housing than households where women are the highest income earners, being more likely to be home owners and less likely to rent from a social landlord.

Lesbian, Gay, Bisexual & Transgender	Evidence: None
Race	<p>Evidence: The UK Government, Department for Communities and Local Government report <i>'Householder Development Consents Review – Race Equality Impact Assessment 2/2006'</i> indicated that there appeared to be – according to MORI survey data - differing attitudes between ethnic groups to development rights and obligations in respect to one's own home, and that different types of development might be required for different ethnic groups to meet different needs e.g. extended family or religious needs etc.</p> <p>For example, it was pointed out that Asian communities – in England – still tended to be largely located within inner city areas characterised by cheaper and smaller houses, resulting in pressures to add large extensions to properties that are not easily extendable, resulting in higher refusal rates.</p> <p>Additionally, according to the 2001 Census, 67% of people in Scotland aged 16 years and above live in homes which are owned either outright or with a loan or mortgage. The rate is over 70% for people who are Pakistani, Other White British or Indian. The rate falls to less than 50% for people in the following groups; African, Black Scottish or Other Black and Other Ethnic Group.</p>
Religion and Belief	Evidence: The highest rates of home ownership of all religion groups; Sikh (82%), Jewish (79%) and Church of Scotland (70%). The lowest rates of home ownership are experienced; Hindu (59%) and those from Another Religion (56%).

Step Three

What else do we need to know to help us understand the diverse needs and/or experiences of the target audience?

As part of the Scottish Government's consultation on householder permitted development rights **it is also our intention to write to equality groups** to seek additional evidence on the potential impacts of the proposals for the people and communities that they represent.

Age	See above paragraph.
Disability	See above paragraph.
Gender	See above paragraph.
Lesbian, gay, bisexual and transgender	See above paragraph.
Race	See above paragraph.
Religion and Belief	See above paragraph.

References to Published Information

Manifesto for Inclusion (Inclusion Scotland 2007)

<http://www.inclusionscotland.org/manifesto.asp>

A Gender Audit of Statistics (March 2007)

<http://www.scotland.gov.uk/Publications/2007/03/27104158/1>

Householder Development Consents Review – Race Equality Impact Assessment 2/2006 (Department for Communities and Local Government 2006)

<http://www.communities.gov.uk/documents/corporate/pdf/153277.pdf>

Analysis of Ethnicity in the 2001 Census (Scottish Executive, Office of the Chief Statistician 2004)

<http://www.scotland.gov.uk/Publications/2004/02/18876/32937>

Analysis of Religion in the 2001 Census (Scottish Executive, Office of the Chief Statistician Publication 2005)

<http://www.scotland.gov.uk/Publications/2005/02/20757/53572>



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Government

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