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TOWN AND COUNTRY PLANNING (TELECOMMUNICATIONS) DEVELOPMENT ORDER 2019

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Statutory Document No. 20XX/XXXX

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Town and Country Planning Act 1999

TOWN AND COUNTRY PLANNING (TELECOMMUNICATIONS) DEVELOPMENT ORDER 2019

Approved by Tynwald:

Coming into Operation:

The Cabinet Office makes the following Order under sections 8(1), (2), (3), (4), (5) and (6A) of the Town and Country Planning Act 1999.

PART 1 - INTRODUCTION

1 Title

This Order is the Town and Country Planning (Telecommunications) Development Order 2019.

2 Commencement

If approved by Tynwald¹, this Order comes into operation on XXXX.

3 Interpretation

(1) In this Order –

“**1984 Act**” means the Telecommunications Act 1984;

“**airport**” means the airport operated by the Department of Infrastructure at Ronaldsway in the parish district of Malew;

“**ancient monument**” means any monument deemed to be an ancient monument under Section 7 of the Manx Museum and National Trust Act 1959;

“**area of special scientific interest**” means land to which section 27(1) of the Wildlife Act 1990 applies;

¹ Tynwald approval is required by section 44(1) of the Town and Country Planning Act 1999.

“building” means something which has at least four walls and a roof, the primary purpose of which is not to facilitate the installation of telecommunications structures or mounted equipment and does not include plant or machinery or any bridge, gate, fence, wall or other means of enclosure;

“conservation area” means an area designated by order as a conservation area under section 18 of the Town and Country Planning Act 1999;

“designated watercourse” means a designated watercourse under the Flood Risk Management Act 2013;

“eaves” means the point where the lowest point of a roof meets the outside wall and parapet walls and overhanging parts of eaves are not be included in any calculation of eaves height;

“ground level” means the existing surface of the ground immediately adjacent to the proposed development, and where the ground is sloping, the ground level is the lowest part of the existing ground level adjacent the proposed development;

“harbour” has the meaning given by section 83 of the Harbours Act 2010;

“highway” means a highway maintainable at the public expense within the meaning of section 3 of the Highways Act 1986 and any part of such a highway;

“ICNIRP” means the International Commission on Non-Ionizing Radiation Protection;

“mounted equipment” means transmission equipment including transmission lines, base transceiver stations and multiplexers;

“operations in accordance with a licence” means development carried out by an operator in pursuance of a right conferred on that operator under the telecommunications code, and in accordance with any conditions relating to the application of that code imposed by the terms of the operator’s licence;

“primary window” means a main window serving a ground floor living room, dining room, kitchen which includes dining facilities or conservatory;

“prior approval decision notice” has the meaning given in paragraph 2 of Schedule 4;

“registered building” has the meaning given by section 45 of the Town and Country Planning Act 1999;

“shrouded” means that the telecommunications equipment is covered in order to conceal, protect, or screen it;

“telecommunications cabinet” means a cabinet the primary purpose of which is to house telecommunications equipment;

“telecommunications code” means the code contained in Schedule 1 to the 1984 Act;

“telecommunications code system operator” means a person to whom licence has been granted under section 5 of the 1984 Act which applies the telecommunications code to him in pursuance of section 8 of that Act;

“telecommunications structure” means a structure the primary purpose of which is to have mounted equipment attached to it; and

“telecommunications system” has the meaning given by section 2 of the 1984 Act.

PART 2 – APPROVED DEVELOPMENT

4 Planning approval for development specified in Schedule 2

Planning approval is granted for the classes of development specified in Schedule 2 to the extent and subject to the conditions and limitations as specified in –

- (a) that Schedule; and
- (b) Schedule 1.

5 Planning approval for development specified in Schedule 3

Subject to the giving of prior approval, planning approval is granted for the classes of development specified in Schedule 3 –

- (a) if that development does not meet the conditions for, or exceeds the limitations, specified in Schedule 2; and
- (b) to the extent and subject to the conditions and limitations specified in –
 - (i) that Schedule;
 - (ii) Schedule 1; and
 - (iii) the relevant prior approval decision notice.

6 Procedure for making and determining applications for prior approval

Schedule 4 sets out the procedure for the making, and the determination, of applications for prior approval.

7 Direction that generalised approval does not apply

- (1) If the Cabinet Office is satisfied that any development specified in Schedule 2 or Schedule 3 should not be carried out in any particular area without planning approval granted pursuant to an application for the purpose, the Cabinet Office may by an instrument in writing direct that

this Order is not to apply in relation to such development in any such area as may be specified in the direction.

- (2) The Cabinet Office –
- (a) must give notice of any direction under paragraph (1) in one or more newspapers published and circulating in the Island;
 - (b) may give such other notice of the direction as it thinks fit; and
 - (c) must make a copy of the direction available for inspection by any person at all reasonable times at the principal office of the Cabinet Office.

PART 3 – TRANSITIONAL PROVISIONS AND REVOCATION

8 Transitional provisions

Any undetermined application for a determination as to whether prior approval is required, or for the granting of prior approval, under the Town and Country Planning (Permitted Development) (Telecommunications) Order 2013 made before this Order comes into operation is to be determined in accordance with that Order as if this Order had not been made.

9 Revocation

The Town and Country Planning (Permitted Development) (Telecommunications) Order 2013² is revoked.

MADE

CHRIS THOMAS MHK
Minister for Policy and Reform

² SD 0433/13

SCHEDULE 1

[Article 4 and 5]

GENERAL CONDITIONS

- 1 The development must be carried out by or on behalf of a telecommunications code system operator for the purpose of the operator's telecommunications system in accordance with the operator's licence.
- 2 The development must be in full compliance with the requirements of the radio frequency public exposure guidelines of the ICNIRP.
- 3 The development must not contravene any condition lawfully imposed on the grant of planning approval for development or use of land or buildings.
- 4 The development must not –
 - (a) require or involve the formation, laying out or material widening of a means of access to a highway used by vehicular traffic; or
 - (b) create an obstruction to the view of persons using any such highway so as to be likely to cause danger to such persons.
- 5 The development must not interfere with the safe operation of the airport or any harbour.
- 6 No development may take place in, on, over or under -
 - (a) a registered building or ancient monument;
 - (b) land which forms the curtilage of a registered building or ancient monument; or
 - (c) land which is designated as, or as part of, an area of special scientific interest.
- 7 The construction (including foundations) must not involve the felling, lopping or limbing of any tree or interfere with the root system of any such tree.
- 8 Unless otherwise approved in writing by the Department, any cabinet, mounted equipment or telecommunications structure shall be removed from the land, building or structure on which it is situated, within 6 months of it no longer being required for telecommunications purposes, and such land, building or structure must be restored to its condition before the development took place.

- 9 Development which is specified in Schedule 3 must –
- (a) not commence unless –
 - (i) a prior approval decision notice has been issued to the applicant under paragraph 2(3) and (4) of Schedule 4 advising the applicant that prior approval has been given; or
 - (ii) the application is treated as having been approved under paragraph 3(3) of that Schedule;
 - (b) not commence any later than the expiry of 3 years following the date on which –
 - (i) the notice referred to in sub-paragraph (a)(i) was issued to the applicant; or
 - (ii) the application is treated as having been approved under paragraph 3(3) of Schedule 4; and
 - (c) only be carried out in accordance with the details approved by the Department.
- 10 In paragraph 9 “**application**” means an application for prior approval and “**applicant**” means a person making an application.

SCHEDULE 2

[Article 4]

PERMITTED DEVELOPMENT NOT SUBJECT TO PRIOR APPROVAL PROCESS

PART 1 - TELECOMMUNICATIONS CABINETS

Table 1

<i>Class of development</i>	<i>Conditions or limitations</i>
Class 1 Telecommunications Cabinets The installation, alteration or replacement of a telecommunications cabinet	<ol style="list-style-type: none">1 No part of the development may be within a conservation area.2 No part of the development may be within 9 metres of a designated watercourse.3 No part of the development may be within 20 metres of a primary window.4 No part of the development may exceed —<ol style="list-style-type: none">(a) 1.5 metres in height; or(b) 2.5 cubic metres.

PART 2 - TELECOMMUNICATIONS STRUCTURES**Table 2**

<i>Class of development</i>	<i>Conditions or limitations</i>
<p>Class 2 Telecommunications Structures on Land The installation, alteration or a replacement of a telecommunications structure on land</p>	<ol style="list-style-type: none"> 1 No part of the development may be within a conservation area. 2 No part of the development may be within 9 metres of a designated watercourse. 3 No part of the development may be within 20 metres of a primary window. 4 No part of the development may exceed – <ol style="list-style-type: none"> (a) 12 metres in height; or (b) 0.3 metres in diameter.
<p>Class 3 Telecommunications Structures on Buildings between 4 and 12 metres in height The installation, alteration or a replacement of a telecommunications structure on the roof of a building which is no less than 4 and no more than 12 metres in height (not including the proposed or any existing telecommunications structures)</p>	<ol style="list-style-type: none"> 1 No part of the development may be within a conservation area. 2 There must be no more than 2 telecommunications structures on any one building. 3 If the structure is to be installed on a pitched roof, it must be at eaves level. 5 The telecommunications structure to be installed must not exceed – <ol style="list-style-type: none"> (a) 10% of the height of the building plus 1 metre in height; and (b) 1 metre in diameter.
<p>Class 4 Telecommunications Structures on Buildings more than 12 metres in height The installation, alteration or a replacement of a telecommunications structure on the roof of a building which is more than 12 metres in height (not including the proposed or any existing telecommunications structures)</p>	<ol style="list-style-type: none"> 1 No part of the development may be within a conservation area. 2 There must be no more than 2 telecommunications structures on any one building. 3 If the structure is to be installed on a pitched roof, it must be at eaves level. 4 The structure to be installed must not exceed – <ol style="list-style-type: none"> (a) 4 metres in height; and (b) 2 metres in diameter.

PART 3 - MOUNTED EQUIPMENT

Table 3

<i>Class of development</i>	<i>Conditions or limitations</i>
<p>Class 5 Mounted Equipment on Telecommunications Structures on Land The installation, alteration or a replacement of mounted equipment on a land-based telecommunications structure</p>	<ol style="list-style-type: none"> 1 The development must be shrouded. 2 The development must not exceed — <ol style="list-style-type: none"> (a) the height of the structure plus 1 metre in height; and (b) 1 metre in diameter.
<p>Class 6 Mounted Equipment on Telecommunications Structures on buildings The installation, alteration or a replacement of mounted equipment on a telecommunications structures on top of the roof of a building</p>	<ol style="list-style-type: none"> 1 The mounted equipment must not exceed the height of the telecommunications structure plus 1 metre in height. 2 No more than 6 items of mounted equipment may be installed on the telecommunications structure.
<p>Class 7 Mounted Equipment on the side of a Building The installation, alteration or a replacement of mounted equipment on the side of a building</p>	<ol style="list-style-type: none"> 1 No part of the development may be within a conservation area. 2 The mounted equipment must not exceed 0.6 metres in diameter. 3 No more than one item of mounted equipment may be installed on any elevation of the building (including the front).

**PART 4 - UNDERGROUND TELECOMMUNICATIONS
EQUIPMENT****Table 4**

<i>Class of development</i>	<i>Conditions or limitations</i>
Class 8 Underground telecommunications equipment The installation, alteration or a replacement of underground telecommunications equipment	No part of the development may be within 9 metres of a designated watercourse.

SCHEDULE 3

[Article 5]

**PERMITTED DEVELOPMENT WHICH IS SUBJECT TO PRIOR APPROVAL
PROCESS**

PART 1 - TELECOMMUNICATIONS CABINETS

Table 1

<i>Class of development</i>	<i>Conditions or limitations</i>
Class 1 Telecommunications Cabinets The installation, alteration or a replacement of a cabinet	The cabinet must not exceed 2.5 cubic metres.

PART 2 - TELECOMMUNICATIONS STRUCTURES**Table 2**

<i>Class of development</i>	<i>Conditions or limitations</i>
<p>Class 2 Telecommunications Structures on Land The installation, alteration or a replacement of a telecommunications structure on land</p>	<p>No part of the development may exceed –</p> <ul style="list-style-type: none"> (a) 12 metres in height; or (b) 0.3 metres in diameter.
<p>Class 3 Telecommunications Structures on Buildings between 4 and 12 metres in height The installation, alteration or a replacement of a telecommunications structure installed on the roof of a building which is between 4 and 12 metres in height (not including the proposed or any existing telecommunications structures)</p>	<p>The telecommunications structure to be installed must not exceed either of the following (whichever is greater) –</p> <ul style="list-style-type: none"> (a) 10% of the height of the building plus 1 metre in height; or (b) 30% of the height of the building.
<p>Class 4 Telecommunications Structures on Buildings more than 12 metres in height The installation, alteration or a replacement of a telecommunications structure on the roof of a building which is more than 12 metres in height (not including the proposed or any existing telecommunications structures)</p>	<p>The structure must not exceed 4 metres in height.</p>

PART 3 - MOUNTED EQUIPMENT

Table 3

<i>Class of development</i>	<i>Conditions or limitations</i>
<p>Class 5 Mounted Equipment on Telecommunications Structures on Land The installation, alteration or a replacement of mounted equipment on a land-based telecommunications structure</p>	None
<p>Class 6 Mounted Equipment on Telecommunications Structures on Buildings The installation, alteration or a replacement of mounted equipment on a telecommunications structures on top of the roof of a building</p>	None
<p>Class 7 Mounted Equipment on the side of a Building The installation, alteration or a replacement of mounted equipment on the side of a building</p>	None

SCHEDULE 4

[Article 6]

MAKING AND DETERMINING APPLICATIONS FOR PRIOR APPROVAL**1 Making an application**

- (1) An application must be made to the Department by, or on behalf of, the applicant in accordance with the instructions on a form supplied by the Department for that purpose or in such other written form as the Department may accept.
- (2) An application must be sent to the Department at any such postal or electronic address as the Department may require.
- (3) An application must be accompanied by—
 - (a) a written description of the proposed development; and
 - (b) a written statement of the reasons for the choice of design of the proposed development;
 - (c) an accurate and up-to-date location plan to a scale of 1:500 or 1:1250 on which —
 - (i) there is a clearly marked north point;
 - (ii) the site that is the subject of the application is clearly defined with a red line; and
 - (iii) there is illustrated the relationship of the site to adjoining land and buildings, to any highway servicing the site, and to the nearest settlement or other familiar point of reference;
 - (d) an illustration showing the relationship of the site to adjoining land and buildings, to any highway servicing the site, and to the nearest settlement or other familiar point of reference, which may either be contained in the location plan referred to in paragraph (c) or in a separate plan not exceeding a scale of 1:10:000;
 - (e) a site plan to a scale of not less than 1:500 on which there are indicated accurately —
 - (i) the position of all existing buildings, structures, including, but not limited to, telecommunications structures, trees and other relevant features;
 - (ii) the position of any existing driveways and vehicular access; and
 - (iii) the position of all development proposed as part of the application; and
 - (f) plans, elevations and sections of all development proposed as part of the application to a scale of not less than 1:100, fully

dimensional using metric units and annotated to specify floor or base levels relative to a fixed datum point outside the site plan.

- (4) An application must be accompanied by a signed declaration that the equipment and installation –
 - (a) has been designed to be in full compliance with; or
 - (b) falls outside the scope of,the requirements of the radio frequency public exposure guidelines of the ICNIRP.
- (5) An application must be accompanied by any fee required to be paid in respect of the application.

2 Determining an application

- (1) The Department must consider an application and determine whether the application is approved or refused.
- (2) If an application is approved, approval may be subject to conditions or limitations in addition to those under Schedules 1 and 3.
- (3) Following the determination of an application, the Department must issue a prior approval decision notice to the applicant.
- (4) A prior approval decision notice must set out –
 - (a) whether the application is approved (with or without being subject to conditions or limitations) or refused;
 - (b) if it is approved subject to conditions, what those conditions are; and
 - (c) if it is refused, the reasons for refusal.
- (5) There is no right of appeal against a decision made under sub-paragraph (1) or conditions imposed under sub-paragraph (2).
But see sub-paragraph (6).
- (6) A decision to approve an application subject to conditions or to refuse an application for prior approval in relation to a development does not prevent the applicant from seeking planning approval by –
 - (a) making an application to the Department for planning approval for the carrying out of the development for which an application for prior approval was made but was approved subject to conditions or refused; or
 - (b) making a fresh application for prior approval in relation to an amended proposal for development.
- (7) The Department must only consider the following factors in determining an application –
 - (a) the visual and noise impact on residential amenity;

- (b) the visual impact on the character and appearance of the area;
 - (c) the impact on any designated conservation area; and
 - (d) the impact on any designated watercourse.
- (8) The Department must only approve an application if it considers that the development would not have a material negative impact in relation to any of the factors specified in sub-paragraph (7).
- (9) The Department must adopt a precautionary approach and in cases of doubt it must assume a material negative impact.
- (10) The Department must not carry out consultation in relation to an application unless it considers technical advice is required.
- (11) If the Department considers technical advice is required in relation to the determination of an application, it may seek the advice of any relevant Departments or other body.
- (12) The Department must have regard to any comments received in response to a request for advice under sub-paragraph (11) insofar as they relate to any of the factors specified in sub-paragraph (7).
- (13) The Department must maintain a public register of applications and prior approval decision notices.

3 Timescale for Determination

- (1) If the Department does not issue a prior approval decision notice to the applicant within 42 days of receipt of an application the applicant may write to the Department (and must include a copy of the relevant delivery confirmation) requesting that the application be determined.
- (2) If the Department receives a request made under sub-paragraph (1), it must determine the application within –
- (a) the following 14 days; or
 - (b) such longer period which has been agreed in writing with the applicant.
- (3) If the Department receives a request made under sub-paragraph (1) and does not issue a prior approval decision notice within the relevant period under sub-paragraph (2) –
- (a) the application is to be treated as having been approved; and
 - (b) there shall be no right of appeal from that determination.
- But this is subject to sub-paragraph (4).
- (4) The Department may write to the applicant requesting further information which it considers necessary to determine the application.
- (5) The time periods specified in sub-paragraphs (1) and (2) exclude the time –

- (a) beginning on the date on which the Department issues a request for further information under sub-paragraph (4); and
 - (b) ending on the date on which the Department receives that information.
- (6) If —
- (a) the Department seeks further information under sub-paragraph (4); and
 - (b) that information is not supplied to the Department within 21 days of it being sought or such other period which has been agreed by the Department in writing,
- the application is to be treated as having been withdrawn.

4 Interpretation

In this Schedule (except in paragraph 2(6)) “**application**” means an application for prior approval and “**applicant**” means a person making an application.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and replaces the Town and Country Planning (Permitted Development) (Telecommunications) Order 2013.

The Order provides that planning approval is granted for a number of classes of telecommunications developments specified in the Order.

It also specifies a number of classes of telecommunications developments for which planning approval is granted, subject to a prior approval process set out in Schedule 4.