
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 136

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (General
Permitted Development) (Non-Domestic
Microgeneration) (Scotland) Amendment Order 2011**

Made - - - - - *21st February 2011*
Laid before the Scottish
Parliament - - - - - *23rd February 2011*
Coming into force - - - - - *18th March 2011*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 30 and 31 of the Town and Country Planning (Scotland) Act 1997(1) and all other powers enabling them to do so.

In accordance with section 71(4) of the Climate Change (Scotland) Act 2009(2) they have consulted with persons appearing to them to represent the producers and suppliers of microgeneration equipment to which this Order relates and such other persons as they considered appropriate.

Citation and commencement

1. This Order may be cited as the Town and Country Planning (General Permitted Development) (Non-Domestic Microgeneration) (Scotland) Amendment Order 2011 and comes into force on 18th March 2011.

Amendment of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

2.—(1) The Town and Country Planning (General Permitted Development) (Scotland) Order 1992(3) is amended in accordance with paragraph (2).

(2) After Part 1A of Schedule 1 (installation of domestic microgeneration equipment) insert—

(1) 1997 c.8. Section 30 was amended by section 54 of the Planning etc. (Scotland) Act 2006 (asp 17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
(2) 2009 asp 12.
(3) S.I. 1992/223, to which there are amendments not relevant to this Order.

“PART 1B

INSTALLATION OF NON-DOMESTIC MICROGENERATION EQUIPMENT

Class 6I.—(1) The installation, alteration or replacement of underground pipes within the curtilage of a non-domestic building required in connection with either or both—

- (a) a ground source heat pump;
- (b) a water source heat pump.

(2) Development is not permitted by this class if the surface area of land under which the installation, alteration or replacement of any underground pipes (together with any other such pipes) is to be carried out would exceed 0.5 hectares.

(3) Development is not permitted by this class in the case of land within—

- (a) a site of archaeological interest;
- (b) within the curtilage of a listed building;
- (c) a World Heritage Site; or
- (d) a historic garden or designed landscape.

(4) Development is not permitted by this class if the total heat output capacity of all microgeneration installed within the curtilage of a non-domestic building would exceed 45 kilowatts thermal.

(5) Development is permitted by this class subject to the condition that the surface of the land on which any works have been carried out to install, alter or replace the underground pipes required in connection with either or both—

- (a) a ground source heat pump;
- (b) a water source heat pump;

must as soon as practicable after the development is completed be restored.

(6) In this class “World Heritage Site” means land appearing on the World Heritage List kept under article 11(2) of 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage(4).

Class 6J.—(1) The installation, alteration or replacement of solar PV or solar thermal equipment on a non-domestic building.

(2) Development is not permitted by this class, in the case of solar PV or solar thermal equipment installed on a pitched roof of a non-domestic building, if—

- (a) any part of the solar PV or solar thermal equipment would protrude more than 200 millimetres beyond the roof plane;
- (b) any part of the solar PV or solar thermal equipment would project higher than the roof ridge on which the equipment is fixed; or
- (c) any part of the solar PV or solar thermal equipment would protrude outwith any of the edges of the roof on which the equipment is fixed.

(3) Development is not permitted by this class, in the case of solar PV or solar thermal equipment installed on a flat roof of a non-domestic building, if—

- (a) the flat roof does not have a parapet wall;
- (b) where the flat roof does have a parapet wall—
 - (i) any part of the solar PV or solar thermal equipment would exceed the height of such parapet wall; or

- (ii) any part of the solar PV or solar thermal equipment would protrude outwith any of the edges of the roof on which the equipment is fixed.
- (4) Development is not permitted by this class, in the case of solar PV or solar thermal equipment installed on an external wall of a non-domestic building, if—
 - (a) any part of the solar PV or solar thermal equipment would protrude 200 millimetres beyond the outer surface of that wall;
 - (b) any part of the solar PV or solar thermal equipment would extend beyond the boundaries of the curtilage of the non-domestic building; or
 - (c) any part of the solar PV or solar thermal equipment would be situated within 200 millimetres of any edge of the wall.
- (5) Development within 3 kilometres of the perimeter of an aerodrome or technical site is not permitted by this class.
- (6) Development is not permitted by this class in the case of land within—
 - (a) a site of archaeological interest;
 - (b) the curtilage of a listed building;
 - (c) a National Scenic Area;
 - (d) a historic garden or designed landscape;
 - (e) a conservation area; or
 - (f) a National Park.
- (7) Development is not permitted by this class if the total output capacity of all microgeneration installed within the curtilage of a non-domestic building would exceed—
 - (a) in relation to the generation of electricity, 50 kilowatts; or
 - (b) in relation to the production of heat, 45 kilowatts thermal.

Class 6K.—(1) The carrying out on agricultural land comprised in an agricultural unit of works for the erection, extension or alteration of a non-domestic building or structure for the purpose of—

- (a) the generation (including cogeneration) of energy from burning biomass;**
- (b) the generation (including cogeneration) of energy from anaerobic digestion of biomass; or**
- (c) the storing of biomass,**

including works for the installation, alteration or replacement of a flue forming part of the biomass equipment.

- (2) Development is not permitted by this class if—
 - (a) the development would be carried out on agricultural land less than 0.4 hectares in area;
 - (b) the ground area to be covered by any building or structure erected or any building or structure as extended or altered, would exceed 465 square metres;
 - (c) the height of any part of the building, structure or flue within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres;
 - (d) the height of any part of the building, structure or flue outwith 3 kilometres of the perimeter of an aerodrome would exceed 12 metres;
 - (e) any part of the development would be within 25 metres of a classified road; or
 - (f) any part of the development would be situated within 400 metres of the curtilage of a protected building.

(3) Development is not permitted by this class if the total output capacity of all microgeneration installed within the curtilage of a non-domestic building would exceed—

- (a) in relation to the generation of electricity, 50 kilowatts; or
- (b) in relation to the production of heat, 45 kilowatts thermal.

(4) Development for the purposes of generating energy from burning biomass is not permitted by this class in the case of land within an air quality management area.

(5) Development for the purposes of generating energy from burning biomass is not permitted by this class if—

- (a) it would require more than one flue to be connected to the biomass equipment;
- (b) the flue forming part of the biomass equipment would be either—
 - (i) greater than 500 millimetres in diameter; or
 - (ii) in the case of an alteration to or replacement of an existing flue which is greater than 500 millimetres in diameter, greater in diameter than the existing flue.

(6) Development consisting of the erection of a building, structure or flue or the significant extension or significant alteration of a building, structure or flue is permitted by this class subject to the following conditions—

- (a) the developer must, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the authority will be required in respect of the siting, design and external appearance of the proposed building, structure or flue;
- (b) the application is to be accompanied by a written description of the proposed development, the materials to be used and a plan indicating the site together with any fee required to be paid;
- (c) the development is not to be commenced before the occurrence of one of the following—
 - (i) the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required;
 - (ii) where the planning authority gives the applicant notice within 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval;
 - (iii) the expiry of 28 days following the date on which the application was received by the planning authority without the planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;
- (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) where prior approval is required, in accordance with the details approved; or
 - (ii) where prior approval is not required, in accordance with the details submitted with the application; and
- (e) the development is to be carried out—
 - (i) where approval has been given by the planning authority, within a period of 3 years from the date on which approval was given;
 - (ii) in any other case, within a period of 3 years from the date on which the planning authority were given the information referred to in sub-paragraph (6)(b).

(7) For the purposes of this class—

- (a) the area of 0.4 hectares referred to in sub-paragraph (2)(a) shall comprise one piece of land except within the areas of the following planning authorities, namely Argyll and Bute Council, Highland Council, Orkney Islands Council, Shetland Islands Council and

Comhairle nan Eilean Siar, where the area of 0.4 hectares may be calculated by adding together the areas of separate parcels of land;

- (b) the ground area referred to in sub-paragraph (2)(b) is the sum of—
 - (i) the ground area which would be covered by the proposed development; and
 - (ii) the ground area of any building (other than a dwelling), or any structure, works, plant or machinery within the same unit which is being erected or has been erected within the preceding two years and any part of which would be within 90 metres of the proposed development; and
 - (c) the 400 metres measurement referred to in sub-paragraph (2)(f) is to be measured along the ground.
- (8) In this class—

“agricultural land” means land which, before development permitted under this Order is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business and excludes any dwellinghouse or garden or any land used for the purposes of fish farming;

“agricultural unit” means agricultural land which is occupied as a unit for the purposes of agriculture other than fish farming, but includes—

- (a) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit; or
- (b) any dwelling on that land occupied by a farmworker;

“fish farming” means the breeding or rearing of fish or the cultivation of shellfish (including crustaceans and molluscs of any description) for the purpose of producing food for human consumption or for transfer to other waters;

“the purposes of agriculture” includes fertilising land used for the purposes of agriculture, and the maintenance, improvement or alteration of any buildings, structures or works occupied or used for such purposes on land so used; and

“protected building” means any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is apt; but does not include—

- (a) a building within the agricultural unit; or
- (b) a dwelling or other building on another agricultural unit which is used for or in connection with agriculture.

Class 6L.—(1) The carrying out on land used for the purposes of forestry, including afforestation works for the erection, extension or alteration of a non-domestic building or structure for the purpose of—

- (a) the generation (including cogeneration) of energy from burning biomass;**
- (b) the generation (including cogeneration) of energy from anaerobic digestion of biomass; or**
- (c) the storing of biomass**

including works for the installation, alteration or replacement of a flue forming part of the biomass equipment.

- (2) Development is not permitted by this class if—
- (a) the height of any building, structure or flue within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres in height;
 - (b) any part of the development would be within 25 metres of a classified road; or
 - (c) any part of the development would be situated within 400 metres of the curtilage of a protected building.

(3) Development is not permitted by this class if the total output capacity of all microgeneration installed within the curtilage of a non-domestic building would exceed—

- (a) in relation to the generation of electricity, 50 kilowatts; or
- (b) in relation to the production of heat, 45 kilowatts thermal.

(4) Development for the purposes of the generation of energy from burning biomass is not permitted by this class—

- (a) in the case of land within an air quality management area;
- (b) if it would require more than one flue to be connected to biomass equipment;
- (c) if the flue forming part of the biomass equipment would be either—
 - (i) greater than 500 millimetres in diameter; or
 - (ii) in the case of the alteration to or replacement of an existing flue which is greater than 500 millimetres in diameter, greater in diameter than the existing flue.

(5) Development is permitted by this class subject to the following conditions—

- (a) the developer must, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the authority will be required in respect of the siting, design and external appearance of the proposed building, structure or flue;
- (b) the application is to be accompanied by a written description of the proposed development, the materials to be used and a plan indicating the site together with any fee required to be paid;
- (c) the development is not to be commenced before the occurrence of one of the following—
 - (i) the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required;
 - (ii) where the planning authority gives the applicant notice within 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval;
 - (iii) the expiry of 28 days following the date on which the application was received by the planning authority without the planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;
- (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) where prior approval is required, in accordance with the details approved;
 - (ii) where prior approval is not required, in accordance with the details submitted with the application; and
- (e) the development is to be carried out—
 - (i) where approval has been given by the planning authority, within a period of 3 years from the date on which approval was given;
 - (ii) in any other case, within a period of 3 years from the date on which the planning authority were given the information referred to in sub-paragraph (5)(b).

(6) For the purposes of this class, “protected building” means any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is apt; but does not include a building on land used for the purposes of forestry including afforestation.

Class 6M.—(1) The extension or alteration of an industrial building or a warehouse for the purpose of either or both—

- (a) **the generation (including cogeneration) of energy from burning biomass;**

(b) the storage of biomass

including works for the installation, alteration or replacement of a flue forming part of the biomass equipment.

- (2) Development is not permitted by this class if—
- (a) the height of the building, structure or flue as extended or altered would exceed the height of the original building, structure or flue;
 - (b) the floor area of the original building would be exceeded by more than 25% or 1,000 square metres whichever is the greater;
 - (c) the external appearance of the premises of the undertaking concerned would be materially affected;
 - (d) any part of the development would be carried out within 5 metres of any boundary of the curtilage of the premises; or
 - (e) the development would lead to a reduction in the space available for the parking or turning of vehicles.
- (3) Development is not permitted by this class if the total output capacity of all microgeneration installed within the curtilage of an industrial warehouse or building would exceed—
- (a) in relation to the generation of electricity, 50 kilowatts; or
 - (b) in relation to the production of heat, 45 kilowatts thermal.
- (4) Development for the purposes of the generation of energy from burning biomass is not permitted by this class—
- (a) in the case of land within an air quality management area;
 - (b) if it would require more than one flue to be connected to the biomass equipment;
 - (c) if the flue forming part of the biomass equipment would be either—
 - (i) greater than 500 millimetres in diameter; or
 - (ii) in the case of the alteration to or replacement of an existing flue which is greater than 500 millimetres in diameter, greater in diameter than the existing flue.
- (5) Development is permitted by this class subject to the condition that where any building, structure or flue is extended or altered the extension or alteration must only be used to house equipment required in connection with the generation of energy from burning biomass.
- (6) For the purposes of this class—
- (a) the erection of any additional building within the curtilage of another building, whether by virtue of this class or otherwise, and used in connection with it is to be treated as the extension of that building, and the additional building is not to be treated as an original building;
 - (b) where two or more original buildings are within the same curtilage and are used for the same undertaking, they are to be treated as a single original building in making any measurement;
 - (c) “industrial building” means a building used for the carrying out of an industrial process and includes a building used for the carrying out of such a process on land used as a dock, harbour or quay for the purposes of an industrial undertaking but does not include a building on land in or adjacent to and occupied together with a mine; and
 - (d) “warehouse” means a building used as a wholesale warehouse, or repository for any purpose and does not include a building on land in or adjacent to and occupied together with a mine.

Interpretation of Part 1B

For the purposes of Part 1B—

“air quality management area” has the meaning given in section 83(1) of the Environment Act 1995⁽⁵⁾;

“cogeneration” means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;

“dwelling” means a dwellinghouse, a building containing one or more flats or a flat contained within such a building;

“microgeneration” has the meaning given in section 82(6) of the Energy Act 2004⁽⁶⁾;

“non-domestic building” means a building other than a dwelling or a building containing a dwelling;

“significant extension” and “significant alteration” mean any extension or alteration of the building or structure where the cubic content of the original building or structure would be exceeded by more than 10% or the height of the building or structure as extended or altered would exceed the height of the original building or structure;

“technical site” means—

- (a) any area within which is sited or is proposed to be sited equipment operated by or on behalf of NATS Holdings Limited, any of its subsidiaries or such other person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000⁽⁷⁾ for the provision of air traffic services, particulars of which have been furnished by the Scottish Ministers or the Civil Aviation Authority to the planning authority or authorities for the area in which it is situated; or
- (b) any area within which is sited or is proposed to be sited equipment operated by or on behalf of the Secretary of State for Defence for the provision of air traffic services, particulars of which have been furnished by the Secretary of State for Defence to the planning authority or authorities for the area in which it is situated.”.

St Andrew’s House, Edinburgh
21st February 2011

KEITH BROWN
Authorised to sign by the Scottish Ministers

(5) 1995 c.25.
(6) 2004 c.20.
(7) 2000 c.38.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the principal Order”). Schedule 1 to the principal Order specifies classes of development to which permitted development rights apply. Where such rights apply, an application for planning permission is not needed. This Order extends permitted development rights to the following microgeneration equipment—

- (a) underground pipes required in connection with ground source heat pumps and water source heat pumps;
- (b) solar PV or solar thermal equipment;
- (c) biomass equipment; and
- (d) anaerobic digestion.

Article 2(2) amends Schedule 1 of the principal Order. It provides permitted development rights for the installation, alteration or replacement of such microgeneration equipment on or within the curtilage of non-domestic buildings, subject to certain limitations and conditions.

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