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2011

THE TOWN AND COUNTRY PLANNING  
(GENERAL PERMITTED DEVELOPMENT)  
(NON-DOMESTIC MICROGENERATION)  
(SCOTLAND) AMENDMENT ORDER 2011

# ■ circular

## **Scottish Planning Series**

### **PLANNING CIRCULAR 2 2011**

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

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## Introduction

1. This Circular explains the provisions of the Town and Country Planning (General Permitted Development) (Non-Domestic Microgeneration) (Scotland) Amendment Order 2011 (the 'Amendment Order'), which came into force on 18 March 2011. The Amendment Order can be accessed on the [legislation.gov.uk](http://www.legislation.gov.uk) website<sup>1</sup>.

2. The aim of the amendments to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992<sup>2</sup> is to enable microgeneration equipment to be installed on or within the curtilage of existing non-domestic buildings without the need to apply for planning permission. The Amendment Order will grant permitted development rights to the following classes of development, subject to limitations and conditions:

- **Ground and Water Source Heat Pump Pipes**  
Class 6I
- **Solar Photo Voltaic and Solar Thermal Panels**  
Class 6J
- **Biomass boilers and furnaces**  
Classes 6K, 6L, 6M
- **Anaerobic Digestion Systems**  
Classes 6K, 6L

3. The Amendment Order makes provision for the microgeneration equipment listed in order to meet the requirements of Section 71 of the Climate Change (Scotland) Act 2009. The Amendment Order has been designed to manage impacts on places and people, considered against the wider environmental, social and economic benefits of microgeneration. This is achieved by means of limitations and conditions on the permitted development rights. Proposed amendments were subject to consultation between July and October 2010.

4. The permitted development rights provided by the Amendment Order apply to all non-domestic use classes and exclude residential dwellings. Residential institutions such as hospitals and nursing homes have a non-domestic function and therefore the permitted development rights provided by the Amendment Order apply to them. It is not intended that the permitted development rights apply to features of the electricity or electronic or telecommunications network, for example pylons, and antennae masts.

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<sup>1</sup> <http://www.legislation.gov.uk/ssi/2011/136/contents/made>

<sup>2</sup> The Town and Country Planning (General Permitted Development) (Scotland) Order 1992: <http://www.legislation.gov.uk/uksi/1992/223/contents/made>

## Limitations

### Solar voltaic and solar thermal panels or other installations

5. The effects of these installations are similar, being focused mainly on visual impacts but there are also some safety implications. The impact of solar installations on Communications, Navigation and Surveillance (CNS) systems which are essential for the safe operation of Scotland's licensed aerodromes has been safeguarded by a distance limitation. The effect of that distance limitation also mitigates the impact of potentially distracting glare arising from solar panels, in close proximity to the landing zone of aerodromes. Apart from the limitation set out below, the surface area of solar panels is only constrained by the total output of the panels, which should not exceed 50 kilowatts of electricity or 45 kilowatts of heat. If both types of panels are being installed, the individual systems can generate up to their respective limits. The Order specifies:

- Where the installation is on a pitched roof the panels must be within the limits of the existing roof and not protrude from the roof surface by more than 200mm.
- Where the installation is on a flat roof it should not protrude above the height of an existing parapet. Where there is no existing parapet, permitted development rights do not apply to the flat roof.
- Where the installation is wall-mounted it should not protrude more than 200mm from the surface of the wall and should not be within 200mm of the edge of the wall.
- Permitted development rights do not apply to solar panels within 3 kilometres of the perimeter of an aerodrome or technical site, including land specifically designated for helicopter takeoff and landing<sup>3</sup>.

### Ground and water source heat pumps

6. The Amendment Order provides permitted development rights only for the buried or immersed pipework, meaning that the heat exchanger unit must be sited within an existing structure. It is possible under the permitted development rights to install a ground and water source heat pump at the same property, although the area of pipework for a single or for multiple installations should not exceed 0.5 hectare. That limitation avoids the need for the proposals to be screened for Environmental Impact Assessment, which if positive would result in a planning application being required.

### Biomass installations

7. This is equipment which provides heat, electricity and/or mechanical energy on the basis of burning wood or other biological matter. This is considered to be a

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<sup>3</sup> Aerodromes are defined in the Air Navigation Order 2009:

<http://www.legislation.gov.uk/ukxi/2009/3015/contents/made>. Criteria that limit the aerodromes to which the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 applies are set out in the interpretation of that order. The interpretation section of the Amendment Order inserts a definition of technical sites into the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

renewable source of energy where the fuel is not peat or other mineral fuel. The Amendment Order is designed to allow existing permitted development rights for agricultural, forestry, industrial and warehousing uses (provided by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992) to apply to the development of buildings and structures for the installation of equipment to generate heat, electricity and/or mechanical energy from the burning of biomass. For developments occurring on agricultural or forestry land prior notification procedures will apply to developments for energy from biomass equipment.

8. The flue is included within the thresholds of the permitted development rights and only one flue is provided for. The site circumstances of some installations will mean that the permitted development rights are insufficient to gain adequate draw for the flue. In those instances a planning application will be required for the entire external flue. In order to benefit from permitted development rights the flue should be no more than 500mm in diameter, unless replacing an existing flue, when the replacement should not exceed the diameter of the flue being replaced if it is greater than 500mm.

9. The fuel store must be accommodated within the thresholds set by the permitted development rights, otherwise planning permission will be required.

10. Biomass installations do not enjoy permitted development rights in designated Air Quality Management Areas. The Clean Air Act 1993<sup>4</sup> provides additional restrictions on the emission of smoke in declared Smoke Control areas. Biomass boilers are not permitted in a smoke control area unless they have been exempted under section 21 of the Clean Air Act 1993. A Council in Scotland could take action against a non-exempt biomass boiler being operated in a smoke control area.

11. Previously, permitted development rights for agricultural and forestry buildings have required the building to be used for the purposes of agriculture or forestry. As biomass installations can be used to generate electricity, not all of which will be needed on the site of production, the Amendment Order allows buildings for the generation of energy from biomass to be used not purely for agricultural or forestry purposes, enabling some of the energy generated to be used off-site.

### **Anaerobic Digestion Equipment**

12. Operation of this equipment results in the production of biogas. The Amendment Order is designed to allow existing permitted development rights for agricultural and forestry uses to apply to the development of buildings and structures for the installation of anaerobic digestion plant. Prior notification procedures apply to developments for anaerobic digestion plant. Hazardous substances consent may be required, see paragraph 35.

13. As with biomass, the Amendment Order allows buildings for the generation of energy from anaerobic digestion to be used not purely for agricultural or forestry purposes, enabling some of the the energy generated to be used off-site.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/1993/11/contents>

## **Structures where planning conditions require the removal of the structure or restrict the use of the structure for alternative uses**

14. Permitted development rights provided by the Amendment Order do not negate or otherwise remove the need for compliance with existing planning conditions. For example, the installation of solar panels on a building which has permission for a limited period would not remove or lessen the ability of the planning authority to enforce the removal of the building, including the solar panels, at the specified time.

## **Conditions**

### **Listed Buildings**

15. Permitted development rights do not apply within the curtilage of a listed building and as such planning permission will be required.

### **Conservation Areas**

16. Locally designated for particular special qualities, no permitted development rights beyond those already conferred by the existing Town and Country Planning (General Permitted Development) (Scotland) Order 1992, are proposed for designated conservation areas, save for the pipes for ground and water source heat pumps. In the case of that equipment, the unseen nature of the installation means there would be no adverse impact on the conservation area.

### **The Historic Environment**

17. Permitted development rights do not extend to technologies likely to require significant disruption to the ground, such as the excavations required to install the pipes for ground source heat pumps, in designated Sites of Archaeological Interest. The Scottish Government's Planning Advice Note on Archaeology sets out the responsibilities of developers who discover archaeological remains during development.

18. Permitted development rights conferred by this order do not extend to Scheduled Ancient Monuments or World Heritage Sites.

### **Landscape**

19. National Scenic Areas and Historic Gardens and Designed Landscapes are generally excluded from permitted development rights in the Amendment Order. However, within National Scenic Areas permitted development rights will apply to the pipes for ground and water source heat pumps, as the unseen nature of those installations will not harm the landscape quality of the National Scenic Area.



## **Ground Restoration**

20. Owing to the invasive nature of excavations to install the pipes for ground source heat pumps and water source heat pumps, developers are required to return the ground to its original condition. In this sense the 'ground' applies to the earth itself rather than to the land and anything which may have been on the land prior to the excavations taking place.

## **Energy Output**

21. The Energy Act 2004<sup>5</sup> defines microgeneration equipment as that which is capable of the generation of up to 50 kilowatts of electricity or 45 kilowatts of heat (thermal). The Amendment Order allows multiple technologies to be applied to any one building or site. The cumulative total of all microgeneration equipment placed on a non-domestic building or site should not exceed the microgeneration thresholds (for either heat or electricity).

22. The Amendment Order does not specify a proportion of the energy output which must be used on site, however the expectation is that the installations will have the primary purpose of meeting the energy needs of the onsite premises, selling surplus back to the national grid or local network. Permitted development rights only apply to existing land uses. Installations which do not provide energy for use on site do not enjoy permitted development rights under the Amendment Order, as that would be a new land use rather than a supplement to an existing land use.

## **Removal of Equipment**

23. Although not a legislative requirement, to avoid the build up of clutter, installations should be removed once they are no longer needed or have ceased to function and there is no intention of repair. The removal, in either case, should be undertaken as soon as reasonably practical.

## **Multiple Occupancy**

24. Permitted development rights conferred by the Amendment Order apply to sites and buildings, rather than being applied by ownership or occupation. Individual buildings in multiple occupancy therefore do not receive greater allowances for permitted development rights.

## **Aerodromes**

25. Aerodromes (which refer to airports but can include other sites such as helipads) are defined in the Air Navigation Order 2009. In many cases the permitted development rights are restricted within 3 kilometres of the perimeter of an aerodrome. This is to help safeguard against accidents caused by physical obstructions and disturbance to communications, navigation and surveillance equipment. In some instances solar panels could cause glare which could dazzle pilots on approach to or takeoff from aerodromes.

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<sup>5</sup> The Energy Act 2004: <http://www.legislation.gov.uk/ukpga/2004/20/contents>

## Inability to Comply With Conditions and Limitations

26. Where the limitations and thresholds cannot be complied with, a full planning application is required. The inability of microgeneration equipment to conform to the permitted development rights thresholds does not count against that equipment in the determination of a planning application for development.

27. The planning authority may take enforcement action where the installed microgeneration equipment does not meet the limitations or conditions set out in the permitted development rights and no planning permission has been granted for the equipment.

## Other Legislation and Consents

28. Permitted development rights conferred by the Amendment Order do not remove the need to secure other consents such as a building warrant or remove the need to comply with other legislation, such as that related to health and safety. Developers should ensure that they possess all of the necessary consents and clearances prior to the installation and operation of microgeneration equipment. The legislation referred to below is not an exhaustive list.

### Environmental Impact Assessment

29. The Environmental Impact Assessment (Scotland) Regulations 1999<sup>6</sup> (Schedule 2) require that industrial installations for the production of electricity, steam and hot water, where the area of the development exceeds 0.5 hectare should be screened for the need for Environmental Impact Assessment.

30. The surface or underground storage of natural gas is subject to screening for the need for Environmental Impact Assessment when the new building, structure or deposit is in excess of 500 square metres, or the new building, deposit or structure is to be sited within 100 metres of any controlled waters.

31. Where it has been determined through the screening process that Environmental Impact Assessment is required (the types of development subject to Environmental Impact Assessment mentioned in paragraphs 29 and 30 above are not exhaustive), a planning application is also required and permitted development rights cease to apply.

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<sup>6</sup> The Environmental Impact Assessment (Scotland) Regulations 1999:  
<http://www.legislation.gov.uk/ssi/1999/1/contents/made>

## Wildlife

32. Installers of microgeneration equipment should be aware of their legal responsibilities under the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats, &c.) Regulations 1994 and the Nature Conservation (Scotland) Act 2004. Breaches of those responsibilities can constitute criminal offences and enforcement is undertaken by the police. Further information is available from Scottish Natural Heritage<sup>7</sup>.

33. Birds and bats often roost and nest in buildings; disturbance to the animals can be breaches of the law. Avoidance of installing microgeneration technologies such as solar panels to roof spaces within breeding seasons is a good approach. However, some species can breed earlier or later so care remains important. Guidance on the approach to work where protected species might be affected is available from Scottish Natural Heritage<sup>8</sup>.

34. Procedures for gaining consent for development works within Natura 2000 sites and Sites of Special Scientific Interest exist within The Conservation (Natural Habitats, &c.) Regulations 1994<sup>9</sup> and the Nature Conservation (Scotland) Act 2004<sup>10</sup> remain in force. Although the permitted development rights described in the Amendment Order will apply to sites designated for species or habitat conservation, in practice consent, under the legislation described above, from the appropriate authority will be required before the development can proceed.

## Hazardous Substances

35. Biogas is a dangerous substance as defined by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, with classification as extremely flammable (F+, R12). Where the storage and use of biogas exceeds 10 tonnes, The Control of Major Accident Hazards Regulations 1999<sup>11</sup>, The Planning (Hazardous Substances) (Scotland) Act 1997<sup>12</sup>, The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993<sup>13</sup> and The Planning (Control of Major-Accident Hazards) (Scotland) Regulations 2000<sup>14</sup> as amended will be applicable. It is for the individual operators of the Anaerobic Digestion equipment to determine whether The Control of Major Accident Hazards Regulations 1999 and the relevant hazardous substances consent legislation apply and notify the relevant enforcing authorities as required by the legislation.

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<sup>7</sup> Scottish Natural Heritage, legal framework: <http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/legal-framework/wca-1981/>

<sup>8</sup> Scottish Natural Heritage: <http://www.snh.gov.uk/>

<sup>9</sup> The Conservation (Natural Habitats, &c.) Regulations 1994: <http://www.legislation.gov.uk/uksi/1994/2716/contents/made>

<sup>10</sup> The Nature Conservation (Scotland) Act 2004: <http://www.legislation.gov.uk/asp/2004/6/contents>

<sup>11</sup> The Control of Major Accident Hazards Regulations 1999: <http://www.legislation.gov.uk/uksi/1999/981/contents/made>

<sup>12</sup> The Planning (Hazardous Substances) (Scotland) Act 1997: <http://www.legislation.gov.uk/ukpga/1997/10/contents>

<sup>13</sup> The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993: <http://www.legislation.gov.uk/uksi/1993/323/contents/made>

<sup>14</sup> The Planning (Control of Major-Accident Hazards) (Scotland) Regulations 2000: <http://www.legislation.gov.uk/ssi/2000/179/contents/made>

## The Coal Authority

36. The Coal Authority owns in situ coal, coal mines (current and abandoned), and coal mine entries (shafts and adits). Current and former mining activity may pose potential hazards, chiefly around collapse, gas emissions (which can be fatal), combustion of the coal and discharge of water from abandoned mines. New development in coalfield areas can realise such hazards. Therefore, activities which disturb or interact with The Coal Authority property require the written permission of The Coal Authority, otherwise court action might be pursued. Mining information should be obtained by developers as well as the undertaking of risk assessment work, including whether permission will be required. The Coal Authority can provide further information<sup>15</sup>.

## Microgeneration Certification Scheme

37. The Microgeneration Certification Scheme (MCS) is designed to accredit equipment and installers to published standards. Permitted development rights provided by the Amendment Order do not require the equipment installed or the installer to be subject to MCS accreditation. This is to allow for the development of the industry over time and in recognition that other accreditation schemes may offer similar levels of quality assurance. However, those considering whether to purchase equipment or who to employ to install purchased equipment, may want to consider the quality assurances provided by accreditation schemes such as MCS. More information can be found on the MCS website<sup>16</sup>.

## Article 4 Directions

38. The permitted development rights provided by the Amendment Order can be withdrawn in part or in full through the use of Article 4 Directions (under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992). Such directions must be approved by Scottish Ministers. Planning authorities may intend, for example, to monitor the impact of the provisions of the Amendment Order on the setting of the historic environment in their areas or the appearance of town centres. Article 4 Directions could be prepared if it is considered that significant harm could be caused by the application of the Amendment Order. It is considered that in the majority of cases, no harm will be caused to the historic environment through the application of the provisions in the Amendment Order.

## Cogeneration

39. Cogeneration is the production of many forms of energy from one process (for example burning biomass to drive a turbine for electricity generation and to produce hot water for heating purposes). The European Commission has issued directives on cogeneration<sup>17</sup>. The permitted development rights expressly includes the cogeneration of energy in respect of biomass and anaerobic digestion technologies.

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<sup>15</sup> The Coal Authority: <http://www.coal.gov.uk/services/planning/>

<sup>16</sup> Microgeneration Certification Scheme: <http://www.microgenerationcertification.org/>

<sup>17</sup> Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:052:0050:0060:EN:PDF> and Directive 2009/28/EC on the promotion of the use of energy from renewable sources: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:EN:PDF>

## Further Advice

40. Further advice on microgeneration equipment can be found on the Scottish Government's website<sup>18</sup>.

## Further Enquiries

41. Any enquiries about this Circular should be addressed to The Scottish Government, Directorate for the Built Environment, Area 2H, Victoria Quay, Edinburgh, EH6 6QQ. Telephone: 0131 244 7888. Copies of this circular can be obtained from the Scottish Government's website:

<http://www.scotland.gov.uk/Topics/Built-Environment/planning>.

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<sup>18</sup> Scottish Government website: <http://www.scotland.gov.uk/Topics/Built-Environment/planning>



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