

2010 No. 27

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (General Permitted
Development) (Domestic Microgeneration) (Scotland)
Amendment Order 2010**

Made - - - - *4th February 2010*
Laid before the Scottish Parliament *5th February 2010*
Coming into force - - *8th March 2010*

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(a) and all other powers enabling them to do so.

In accordance with section 70(4) of the Climate Change (Scotland) Act 2009(b) they have consulted with persons appearing to them to represent the producers and suppliers of air source heat pump and wind turbine 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) (Domestic Microgeneration) (Scotland) Amendment Order 2010 and comes into force on 8th March 2010.

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(c) is amended in accordance with paragraph (2).

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

(a) after class 6F insert—

“Class 6G

(1) The installation, alteration or replacement of a free standing wind turbine within the curtilage of a dwelling.

(a) 1997 c.8. 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).

(b) 2009 asp 12.

(c) S.I. 1992/223 as relevantly amended by S.S.I. 2009/34.

- (2) Development is not permitted by this class if—
 - (a) it would result in the presence within the curtilage of a dwelling of more than one free standing wind turbine; or
 - (b) the wind turbine would be situated less than 100 metres from the curtilage of another dwelling.
- (3) Development is not permitted by this class in the case of land within—
 - (a) a conservation area;
 - (b) a World Heritage Site;
 - (c) a site of special scientific interest; or
 - (d) a site of archaeological interest.
- (4) Development is not permitted by this class if the wind turbine would be within the curtilage of a listed building.
- (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—
 - (i) the approval of the authority in respect of the design and size of the proposed wind turbine; and
 - (ii) a determination as to whether the prior approval of the authority will be required in respect of the siting and external appearance of the proposed wind turbine;
 - (b) the application is to be accompanied by—
 - (i) a written description of the proposed development, including details of the design and size of the proposed wind turbine; and
 - (ii) a plan indicating the site;
 - (c) the development is not to be commenced before—
 - (i) the applicant has received written approval from the planning authority in respect of the size and design of the wind turbine; and
 - (ii) the occurrence of one of the following—
 - (aa) the receipt by the applicant from the planning authority of a written notice of their determination that prior approval in respect of the siting and external appearance of the proposed wind turbine is not required;
 - (bb) the expiry of a period of 28 days following the date on which the application was received by the planning authority without the planning authority giving notice of their determination that such approval is required; or
 - (cc) where the planning authority gives the applicant notice within a period of 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval;
 - (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) to the extent to which prior approval is required, in accordance with the details approved;
 - (ii) to the extent to which prior approval is not required, in accordance with the details submitted with the application;
 - (e) the development is to be carried out within a period of three years from the date on which all approvals required in accordance with this paragraph have been given.

(6) Development is permitted by this class subject to the conditions that a free standing wind turbine—

- (a) must, so far as reasonably practicable, be sited so as to minimise its effect on the amenity of the area; and
- (b) is used only for the purposes of domestic microgeneration; and
- (c) that is no longer needed for or capable of domestic microgeneration must be removed as soon as reasonably practicable.

Class 6H

(1) The installation, alteration or replacement of an air source heat pump within the curtilage of a dwelling.

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

- (a) it would result in the presence within the curtilage of a dwelling of more than one air source heat pump; or
- (b) the air source heat pump would be situated less than 100 metres from the curtilage of another dwelling.

(3) Development is not permitted by this class in the case of land within a conservation area if the air source heat pump would be visible from a road.

(4) Development is not permitted by this class if the air source heat pump would be within—

- (a) a World Heritage Site; or
- (b) the curtilage of a listed building.

(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 to the siting and external appearance of the air source heat pump;
- (b) the application is to be accompanied by a written description of the proposed development and a plan indicating the site;
- (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) the expiry of a period of 28 days following the date on which the application was received by the planning authority without the planning authority giving notice of their determination that such approval is required; or
- (iii) where the planning authority gives the applicant notice within a period of 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval;

(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;

(e) the development is to be carried out—

- (i) where approval has been given by the planning authority, within a period of three years from the date on which approval was given; or
- (ii) in any other case, within a period of three years from the date on which the application under paragraph (a) above was made.

- (6) Development is permitted by this class subject to the conditions that an air source heat pump—
- (a) must, so far as reasonably practicable, be sited so as to minimise its effect on the amenity of the area;
 - (b) is used only for the purposes of domestic microgeneration; and
 - (c) that is no longer needed for or capable of domestic microgeneration must be removed as soon as reasonably practicable.”; and
- (b) in the interpretation section of Part 1A—
- (i) after the definition of “Air Quality Management Area” insert—
““dwelling” means a dwellinghouse, a building containing one or more flats or a flat contained within such a building;”; and
 - (ii) after the definition of “free-standing solar” insert—
““free standing wind turbine” means a wind turbine which is not installed on a building;”.

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
4th February 2010

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 1992 Order”). Schedule 1 to the 1992 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 free standing wind turbines and air source heat pumps.

Article 2(2) amends Part 1A to Schedule 1 of the 1992 Order. It provides permitted development rights for the installation of free standing wind turbines and air source heat pumps on or within the curtilage of a dwellinghouse and building containing flats, subject to certain limitations and conditions.

A 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.

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