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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 35**

**TOWN AND COUNTRY PLANNING**

**The Town and Country Planning (General Permitted Development and Use Classes)  
(Scotland) Miscellaneous Amendment Order 2023**

<i>Made</i>	- - - -	<i>8th February 2023</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>10th February 2023</i>
<i>Coming into force</i>	- -	<i>31st March 2023</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 26(2)(f), 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997(1) and all other powers enabling them to do so.

**Part 1**

**General**

**Citation and commencement**

**1.** This Order may be cited as the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023 and comes into force on 31 March 2023.

**Application**

**2.—(1)** The amendments made by this Order do not apply to development begun before 31 March 2023.

(2) For the purposes of paragraph (1) development is to be taken to be begun on the earliest date on which any material operation (within the meaning of section 27(4) of the Town and Country Planning (Scotland) Act 1997) comprised in the development begins to be carried out.

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(1) 1997 c. 8. Section 275 was relevantly amended by section 54(16) of the Planning etc. (Scotland) Act 2006 (asp 17) and paragraph 32 of schedule 3 of the Regulatory Reform (Scotland) Act 2014 (asp 3). There are amendments to section 30 which are not relevant to the changes made by this Order. 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).

## Part 2

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

**3.**—(1) The Town and Country Planning (General Permitted Development) (Scotland) Order 1992(2) is amended as follows.

- (2) In article 3(1) (permitted development) the words “and printed in heavy type” are omitted.
- (3) Schedule 1 (classes of permitted development) is amended in accordance with articles 4 to 12.

#### **Amendment of Part 2A of schedule 1**

- 4.** In Part 2A (shops or catering, financial or professional services establishments)—
- (a) in class 9A (the extension or alteration of a shop or financial or professional services establishment), in paragraph (5) in the definition of “shop or financial or professional services establishment” for “Class 1 or 2” substitute “class 1A”.
  - (b) in class 9B (the erection or construction of a trolley store within the curtilage of a shop) in paragraph (5) in the definition of “shop” for “class 1” substitute “paragraph (1) of class 1A”.

#### **Amendment of Part 2D of schedule 1**

- 5.** In Part 2D (recharging electrical outlets)—
- (a) in class 9E (wall-mounted electrical outlets for recharging electric vehicles)—
    - (i) in paragraph (1) for “an area lawfully used for off-street parking” substitute “a qualifying parking area”,
    - (ii) omit paragraphs (3) and (4),
    - (iii) for paragraph (5)(b) substitute—
      - “(b) the wall on which the development was mounted or into which the development was set must be reinstated—
        - (i) as soon as reasonably practicable, and so far as reasonably practicable, to its condition before that development was carried out, or
        - (ii) in accordance with a restoration plan agreed in writing with the planning authority.”.
  - (b) in class 9F (upstands with an electrical outlets for recharging electric vehicles)—
    - (i) for paragraph (1) substitute—
      - “(1) The installation, alteration or replacement, within a qualifying parking area of—
        - (a) an upstand with an electrical outlet mounted on it for recharging vehicles,
        - (b) equipment (including equipment housing) necessary for the operation of such an upstand.”.
    - (ii) for paragraph (2)(a) substitute—

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(2) S.I. 1992/223 which has been relevantly amended by S.I. 1997/3060, S.S.I. 2014/142, S.S.I. 2016/421, S.S.I. 2020/269, and S.S.I. 2020/437.



## **Amendment of schedule 1 – hospitality uses and solar canopies for recharging vehicles**

7.—(1) After Part 2G (pedal cycle storage) insert—

### **“Part 2H**

#### **Hospitality uses - outdoor serverly provision**

##### **Class**

**9L.**—(1) Development consisting of—

- (a) a change of use of part of a public road adjacent to relevant premises for the purposes of selling or serving food or drink supplied from those premises or consuming good or drink supplied from those premises, and
- (b) placing furniture for use in connection with such purposes.

##### *Conditions*

(2) Development is permitted by this class subject to the condition that no furniture may be placed in a public road so as to cause an obstruction unless consent has first been obtained from the relevant roads authority under section 59 of the Roads (Scotland) Act 1984**(3)**.

##### *Interpretation*

(3) In this class—

“furniture” means—

- (a) counters or stalls for selling or serving food or drink,
- (b) tables, counters or shelves on which food or drink can be placed,
- (c) chairs, benches or other forms of seating,
- (d) umbrellas, ramps, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink,
- (e) decking structures for the purpose of creating a level surface on which items mentioned in sub-paragraphs (a) to (d) can be placed,

“relevant premises” means a premises—

- (a) used for a purpose specified in class 3 (food and drink) of the schedule of the Use Classes Order,
  - (b) used as a public house,
- “public road” has the meaning given in section 151 of the Roads (Scotland) Act 1984.

### **Part 2I**

#### **Solar canopies, battery storage and equipment housing for recharging vehicles**

##### **Class**

**9M.**—(1) The installation, alteration or replacement within a qualifying parking area of—

- (a) a solar canopy,
- (b) battery storage and equipment (including equipment housing) necessary for the operation of a solar canopy.

#### *Limitations*

- (2) Development is not permitted by this class—
  - (a) if the development would—
    - (i) be within 5 metres of a road,
    - (ii) be within the curtilage of a dwellinghouse, or a building containing one or more flats,
    - (iii) be within 10 metres of the curtilage of a dwellinghouse or a building containing one or more flats,
    - (iv) be within 3 kilometres of the perimeter of an aerodrome or technical site,
  - (b) if a solar canopy would exceed 4 metres in height from the level of the surface used for the parking of vehicles,
  - (c) if any battery storage unit or piece of equipment (other than a solar canopy)—
    - (i) would exceed 29 cubic metres,
    - (ii) would exceed 3 metres in height from the level of the surface used for the parking of vehicles,
  - (d) in the case of land within—
    - (i) a site of archaeological interest,
    - (ii) a national scenic area,
    - (iii) a historic garden or designed landscape,
    - (iv) a historic battlefield,
    - (v) a conservation area
    - (vi) a National Park,
    - (vii) a World Heritage Site,
    - (viii) the curtilage of a listed building,
  - (e) where the development would take place—
    - (i) on the roof of a building, or
    - (ii) on the top level of an open top multi-storey car park.

#### *Conditions*

- (3) Development is permitted by this class subject to the conditions that when the development is no longer needed for the purposes of charging electric vehicles—
  - (a) the development must be removed as soon as reasonably practicable, and
  - (b) the land on which the development was mounted or into which the development was set must be reinstated—
    - (i) as soon as reasonably practicable, and so far as reasonably practicable, to its condition before that development was carried out, or
    - (ii) in accordance with a restoration plan agreed in writing with the planning authority.

(4) Development is permitted by this class subject to the condition that any lighting or illumination forming part of the development—

- (a) is directed towards the surface used for the parking of vehicles, and
- (b) only illuminates the immediate area of the development.

*Interpretation*

(5) In this class—

“qualifying parking area” means an area which—

- (a) has as its primary use lawful off-street parking, and
- (b) has a hard surface,

“solar canopy” means a canopy structure which—

- (a) is open on three or more sides,
- (b) supports solar photovoltaics for the purposes of the generation of electricity from solar energy,
- (c) has as its primary use the recharging of vehicles, and
- (d) is designed to allow one or more vehicles to be parked underneath it,

“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 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,

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

**Amendment of Part 3 of schedule 1**

**8.** In Part 3 (changes of use)—

- (a) in class 10 (development consisting of a change of use of a building or land) in paragraph (1)—
  - (i) for “class 1 (shops)” substitute “class 1A (shops and financial, professional and other services)”,
  - (ii) omit sub-paragraph (a),
- (b) in class 11 (development consisting of a change of use of a building or land to a use within class 2 (financial, professional and other services) from a use within class 3 (food and drink) or a use for the sale of hot food for consumption off the premises), for “class 2 (financial, professional and other services)” substitute “class 1A (shops and financial, professional and other services)”.
- (c) after class 11 insert—

**“Class**

**11A.**—(1) Development consisting of a change of use of a building to a use within class 3 (food and drink) from a use—

- (a) within class 1A (shops and financial, professional and other services),
- (b) as a betting shop,
- (c) as a pay day loan shop, or
- (d) for the sale of hot food for consumption off the premises.

*Limitations*

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

- (a) it would result in the change of use of a building unit situated below any part of a dwelling, or
- (b) it would result in the change of use of a building or a building unit which is within 1 metre of a dwelling.

*Interpretation*

(3) For the purposes of paragraph (2)(b) of this class when measuring the distance of 1 metre no account is to be taken of any communal access.

(4) In this class—

“building unit” means a part of a building which is designed or altered to be used separately,

“communal access” means a passage, stairs or landings within a building which constitute a common access to two or more building units.

**Class**

**11B.**—(1) Development consisting of a change of use of a qualifying building or qualifying building unit to a use within class 4 (business) from a use—

- (a) within class 1A (shops and financial, professional and other services),
- (b) within class 3 (food and drink),
- (c) as a betting shop,
- (d) as a pay day loan shop, or
- (e) for the sale of hot food for consumption off the premises.

*Interpretation*

(2) In this class—

“building unit” means a part of a building which is designed or altered to be used separately,

“qualifying building” means a building with a floor area of no more than 300 square metres,

“qualifying building unit” means a building unit with a floor area of no more than 300 square metres.”,

(d) for class 13A (development consisting of a change of use of a building of land) substitute—

**“Class**

**13A.**—(1) Development consisting of a change of use of a building or land from use as a betting office or pay day loan shop to a use within class 1A (shops and financial, professional and other services).”.

**Amendment of Part 6 of schedule 1**

**9.** In Part 6 (agricultural buildings and operations) in class 18C (development consisting of a change of use of a building and any land within its curtilage) for paragraph (7)(a) and (b) substitute—

“(a) class 1A (shops and financial, professional and other services),”.

**Amendment of Part 7 of schedule 1**

**10.** In Part 7 (forestry buildings and operations) in class 22B (development consisting of a change of use of a building) for paragraph (7)(a) and (b) substitute—

“(a) class 1A (shops and financial, professional and other services),”.

**Amendment of Part 12 of schedule 1**

**11.** In Part 12 (development by local authorities) in class 30 (the erection or construction and the maintenance, improvement or other alteration by a local authority), after “street furniture” insert “(including electric vehicle charging points and any associated infrastructure)”.

**Amendment of Part 13 of schedule 1**

**12.** In Part 13 (development by statutory undertakers) in class 35 (dock, pier, harbour, water transport, canal or inland navigation undertakings)—

(a) in paragraph (1)—

(i) for “Development” substitute “The carrying out of development”

(ii) for “undertakers or their lessees” substitute “undertakers, or their lessees or agents,”

(iii) at the end of sub-paragraph (a) omit “or”,

(iv) after sub-paragraph (b) insert—

“(c) in connection with the provision of services and facilities.”

(b) in paragraph (2)—

(i) at the end of sub-paragraph (b)(i) omit “or”,

(ii) after sub-paragraph (b)(ii) insert—

“(iii) where development falls with paragraph (1)(c)—

(aa) the erection of a building other than an operational building, or

(bb) the alteration or reconstruction of a building other than an operational building where its design or external appearance would be materially affected.”,

(c) after paragraph (2) insert—

“(2A) Development is permitted by this class subject to the condition that notice of the development is given to the planning authority before any development is carried out unless that development—



- (a) is urgently required for the efficient running of the dock, pier, harbour, water transport, canal or inland navigation undertaking, and
- (b) consists of the carrying out of works, or the erection or construction of a structure or of an ancillary building, or the placing on land of equipment, and the works, structure, building or equipment do not exceed 4 metres in height or 200 cubic metres in capacity.”

### Part 3

#### Amendment of the Town and Country Planning (Use Classes) (Scotland) Order 1997

13.—(1) The Town and Country Planning (Use Classes) (Scotland) Order 1997<sup>(4)</sup> is amended in accordance with paragraphs 2 and 3.

(2) In article 3(6) (use classes) in the definition of “pay day loan shop”, for “class 2 (financial, professional and other services)” substitute “paragraph (2) of class 1A (financial, professional and other services)”.

(3) In the schedule—

- (a) for paragraphs 1 (Class 1. Shops) and 2 (Class 2. Financial, professional and other services) substitute—

#### **“Shops and financial, professional and other services**

##### **Class**

1A.—(1) Use—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets,
- (d) as a travel agency,
- (e) for the sale of cold food for consumption off the premises,
- (f) for hairdressing,
- (g) for the direction of funerals,
- (h) for the display of goods for sale,
- (i) for the hiring out of domestic or personal goods or articles,
- (j) as a laundrette or dry cleaners,
- (k) for the reception of goods to be washed, cleaned or repaired,

where the sale, display or service is principally to visiting members of the public.

(2) Use for the provision of—

- (a) financial services,
- (b) professional services,
- (c) any other services,

which it is appropriate to provide in a shopping area and where the sale, display or service is principally to visiting members of the public.”, and

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(4) [S.I. 1997/3061](#) which has been relevantly amended by [S.S.I. 1999/1](#), [S.S.I. 2016/421](#), and [S.S.I. 2020/437](#).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (b) in paragraph 4 (class 4. Business), for “class 2 (financial, professional and other services)” substitute “paragraph 2 of class 1A (financial, professional and other services)”.

St Andrew’s House,  
Edinburgh  
8th February 2023

*TOM ARTHUR*  
Authorised to sign by the Scottish Ministers

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## 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”), and the Town and Country Planning (Use Classes) (Scotland) Order 1997 (“the Use Classes Order”).

Article 5 amends classes 9E and 9F in Part 2D of the 1992 Order (recharging electrical outlets). In particular, it alters the limitations on the permitted development and includes equipment and equipment housing in class 9F.

Article 7 inserts new Parts 2H and 2I into the 1992 Order. Part 2H contains class 9L providing permitted development rights for outdoor servery provision, and Part 2I contains class 9M providing permitted development rights for solar canopies, battery storage and equipment housing for recharging vehicles.

Article 8 inserts new classes 11A and 11B into the 1992 Order which provide permitted development rights for changes of use.

Article 11 amends class 30 (the erection or construction and the maintenance, improvement or other alteration by a local authority) of the 1992 Order to provide that this permitted development right includes electric vehicle charging points and associated infrastructure.

Article 12 amends class 35 (dock, pier, harbour, water transport, canal or inland navigation undertakings) of the 1992 Order. In particular this clarifies that agents of statutory undertakers may carry out development permitted by this class, and extends the permitted development right to include development in connection with the provision of services and facilities, subject to limitations. The amendment also provides that the permitted development right is subject to the condition that the planning authority is notified.

Article 13 amends the Use Classes Order to replace use class 1 (shops) and use class 2 (financial, professional and other services) with new use class 1A (shops, and financial, professional and other services). Articles 4, 6, 8, 9 and 10 make amendments to the 1992 Order in consequence of this amendment of the Use Classes Order.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Planning, Architecture and Regeneration Division, Victoria Quay, Edinburgh EH6 6QQ.