

# **A Summary of the Regulations for Permitted Development Rights for Biomass Boilers on Agricultural Holdings in Scotland**

Either an application for prior notification or an application for full planning permission must be submitted and subsequently approved before a biomass boiler is lawfully erected on agricultural land or elsewhere.

## **Biomass boilers require full planning permission if –**

- The biomass boilers and/or the required structures are already erected without the consent or approval of the planning authority.
- The development is carried out on agricultural land less than 0.4 hectares in area (the area referred to should comprise one piece of land).
- The ground area to be covered by any biomass boiler structure erected or extended exceeds 465 square metres.
- The height of any part of the biomass boiler structure (including flue) located within 3 kilometres of the perimeter of an aerodrome is more than 3 metres.
- The height of any part of the biomass boiler structure (including flue) located outwith 3 kilometres of the perimeter of an aerodrome is more than 12 metres.
- Any part of the development is within 25 metres of a classified road.
- Any part of the development is within 400 metres of the curtilage of a protected building (e.g. a dwellinghouse not part of the agricultural unit).
- Electricity generated exceeds 50 kilowatts or heat produced exceeds 45 kilowatts thermal.
- The land is within an air quality management area.
- More than 1 flue is connected to the biomass equipment or if the flue is greater than 500 millimetres in diameter (or in the case of an alteration/replacement of an existing flue which is greater than 500mm in diameter, it has a greater diameter than the existing flue).

## **Permitted Development**

All development requires planning permission. However, certain forms of development benefit from a general planning permission usually referred to as 'permitted development rights'. Generally this is because the scale and nature of the development is considered to be of a minor and/or non-contentious nature.

## **Prior Notification**

Prior notification is a procedure whereby a developer must notify the planning authority of proposals before exercising permitted development rights. This procedure will not result in planning permission. We will instead determine whether prior approval is or is not required.

### **When an Application for Prior Notification is required –**

- 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 biomass boiler building, structure or flue.
- The prior notification application must include 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.
- The development should not commence until one of the following:
  - (i) The applicant receives written notice from the planning authority that prior approval is not required.
  - (ii) The applicant receives notice from the planning authority, 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.

Please note that the development must be carried out in accordance with the details approved when prior approval is required **or** in accordance with the details submitted with the prior notification where prior approval is not required.

The development is to be carried out within a 3 year period from the date the planning authority has given approval or (in the case where the planning authority did not respond) within a 3 year period from the date the planning authority were given the application for prior notification.

For information please find the link below to the relevant legislation. Class 6K. of the Order below is specific to the generation of energy from burning biomass, the generation of energy from anaerobic digestion of biomass and the storing of biomass (including a flue).

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

<http://www.legislation.gov.uk/ssi/2011/136/article/2/made>

If you are proposing a biomass development, please ensure that you always contact the relevant Development Management Team (see below for contact details) to discuss the works in advance of submitting any details. The Development Management Service will be able to offer further guidance on planning requirements from the outset and thereafter the details (incorporating the requirements of Development Management) of the proposed biomass installation should be

submitted through Aberdeenshire Councils pre-application enquiry process in order to get formal clarification and confirmation of the next step (i.e. as to whether a prior notification or formal planning application is required).

**If in any doubt on any planning matter – please contact the planning office in your area. Details noted below.**

**Area offices:**

Banff & Buchan – E-mail: [bb.planapps@aberdeenshire.gov.uk](mailto:bb.planapps@aberdeenshire.gov.uk) Tel: 01261 813210

Buchan – Email: [bu.planapps@aberdeenshire.gov.uk](mailto:bu.planapps@aberdeenshire.gov.uk) Tel: 01779 483724

Formartine – Email: [fo.planapps@aberdeenshire.gov.uk](mailto:fo.planapps@aberdeenshire.gov.uk) Tel: 01358 726429

Garioch – Email: [ga.planapps@aberdeenshire.gov.uk](mailto:ga.planapps@aberdeenshire.gov.uk) Tel: 01467 534333

Kincardine & Mearns – Email: [km.planapps@aberdeenshire.gov.uk](mailto:km.planapps@aberdeenshire.gov.uk) Tel: 01569 768300

Marr: Email – [ma.planapps@aberdeenshire.gov.uk](mailto:ma.planapps@aberdeenshire.gov.uk) Tel: 01569 768300

**Additional information:**

The Planning Service will consult with the Environmental Health Service (EH) on any proposed development as EH are particularly interested in the environmental impact the proposal would have on the surrounding protected buildings i.e. dwelling houses.

If an application is submitted for planning consent, Environmental Health Service is likely to request that an Air Quality Impact Assessment (AQIA) report is submitted to support the application. Such an AQIA would consider the emissions from the flue stacks associated with the biomass boilers and would assess emissions including PM2.5; PM10 and NOx. Smoke emissions will also be considered.

Please note that failure to secure Prior Approval or Full Planning Permission may result in Enforcement investigations. Aberdeenshire Council as the Planning Authority have a duty to protect the wider public interest if it is deemed necessary, in the interest of protecting amenity, the environment or public safety.

**Interpretation:**

“**Air Quality Management Area**”, has the meaning given in section 83(1) of the Environment Act 1995;

“**aerodrome**” means an aerodrome as defined in article 96 of the Air Navigation Order 1985 which is—

- (a) licensed under that order;
- (b) a Government aerodrome;
- (c) one at which the manufacture, repair or maintenance of aircraft is carried out by a person carrying on business as a manufacturer or repairer of aircraft;
- (d) one used by aircraft engaged in the public transport of passengers or cargo or aerial work; or
- (e) one identified to the Civil Aviation Authority before 1st March 1986 for inclusion in the UK Aerodrome Index,

and for the purposes of this definition, the terms “aerial work”, “Government aerodrome” and “public transport” have the meanings given in the aforesaid article 96;

“**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;

“**classified road**” means a road which is for the time being so classified under section 11 of the Roads (Scotland) Act 1984(6);

**“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.