

AMENDMENTS TO THE USE CLASSES ORDER - JULY 2020

THE FIRST STEPS TO A ZONAL PLANNING SYSTEM?

IN LATE JUNE, THE PRIME MINISTER ANNOUNCED, AS PART OF HIS 'BUILD, BUILD, BUILD' SPEECH, TO MAKE THE "MOST RADICAL REFORMS TO OUR PLANNING SYSTEM SINCE THE SECOND WORLD WAR". BUILDING UPON THE DIRECTION OF TRAVEL INDICATED IN THE PLANNING REFORM: SUPPORTING THE HIGH STREET AND INCREASING THE DELIVERY OF NEW HOMES CONSULTATION CONDUCTED BETWEEN OCTOBER 2018 AND JANUARY 2019, A US STYLE ZONAL SYSTEM WAS MOOTED AS A MEANS TO SPEED UP THE UK'S "OVERLY BUREAUCRATIC" PLANNING PROCESS.

On 21 July 2020, the Government laid before Parliament Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the Use Classes Regulations"). The Use Classes Regulations amend the Town and Country Planning (Use Classes) Order 1987 by creating a new Schedule 2 containing new use classes for England.

Combined with two amendments to the Town and Country Planning (General Permitted Development) Order¹, these changes have far reaching implications for the fundamentals of the planning process and represent some of the most significant changes since the publication of the National Planning Policy Framework in 2012.

With the amendments due to take effect from 1 September 2020, we have produced a consolidated summary of the new use classes order - see our tabulated summary overleaf.

From 1 September 2020, movement between uses (e.g. shops to offices) that previously required planning permission now fall within the same use class definition and as such will no longer constitute development under section 55(2)(f) of the Town and Country Planning Act 1990, thereby avoiding the need for planning permission. This change provides businesses and freeholders seeking to manage their assets with significantly increased flexibility, including the ability to use one premises for a range or mix of uses at any one time.

The Use Classes Regulations include transitional provisions, retaining the effect of the permitted development right (including prior approval applications) based on the classes that were in place prior to 1 September 2020. A building or use will, therefore, continue to be subject to any permitted development rights that it was entitled to on or before 31 August 2020. These transitional provisions will remain in place until 31 July 2021 when the

government has indicated new revised permitted development rights, including changes to the current office to residential permitted development right change of use provisions, will be introduced. These transitional provisions also apply to relevant Article 4 Directions.

The Use Classes Regulations also provide that applications for planning permission or permission in principle or approval of a matter reserved under an outline planning permission, which are submitted prior to 1 September 2020, are to be determined by reference to the previous use classes (i.e. the Use Classes Order as at 31 August 2020).

Whilst deregulation and increased flexibility is likely to be welcomed by businesses, given the central role use classes take in virtually all aspects of the planning process, there are likely to be various challenges, and opportunities arising from these changes.

There is a raft of ambiguity within these amendments which will take time to understand when they are put into practice. For example, references in Class E to "any other services which it is appropriate to provide in a commercial, business or service locality" is vague and likely to lead to considerable debate over its interpretation. Similarly, the judgement whether an industrial process use meets the defining factor of whether the use can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit is likely to be matter of debate whether such a use falls within Class E or B2 of the use classes order. Class F.2(a) is on the other hand extremely specific and would appear to relate only to convenience retail stores located within remote villages.

¹ The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 No. 755 & The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 No. 756.

AMENDMENTS TO THE USE CLASSES ORDER 2020

THE TOWN AND COUNTRY PLANNING (USE CLASSES) (AMENDMENT) (ENGLAND)
REGULATIONS 2020 (JULY 2020)



USE	Use class to be revoked from 31 Aug 2020	Use class from 1 Sep 2020
Retail shops (display or sales of goods other than hot food to visiting members of the public)	A1	E
Shops selling essential goods, including food, where the premises is less than 280m ² and no such shop within 1,000m radius	A1	F.2
Financial and professional services (other than health or medical services & any other services appropriate in a commercial, business or service locality)	A2	E
Restaurants and cafés (sale of food and drink for consumption on the premises)	A3	
Drinking establishments (public house, wine bar or other drinking establishment)	A4	Sui Generis
Hot food takeaways (sale of hot food for consumption off the premises)	A5	



USE	Use class to be revoked from 31 Aug 2020	Use class from 1 Sep 2020
Offices (to carry out any operational or administrative functions)	B1(a)	E
Research and development of products or processes	B1(b)	
Industrial processes (which can be carried out in any residential area without causing detriment to the amenity of the area)	B1(c)	
General industrial	B2	B2
Storage and distribution	B8	B8



USE	Use class to be revoked from 31 Aug 2020	Use class from 1 Sep 2020
Hotels, boarding and guest houses	C1	C1
Residential institutions (provision of residential accommodation and care to people in need of care (other than a use within class C3 (Dwelling houses)); hospital or nursing home; residential school, college or training centre)	C2	C2
Secure residential institutions (prisons, young offender institutions, detention centres, secure training centre, custody centre, short term holiday centre, secure hospital, secure local authority accommodation or military barracks)	C2A	C2A
Dwelling houses	C3	C3
Houses in multiple occupation (use as a dwelling house by not more than six residents as a HMO i.e. sharing basic amenities and forming two or more households)	C4	C4

USE	Use class to be revoked from 31 Aug 2020	Use class from 1 Sep 2020
Medical or health centres, creches, day nurseries or day centre	D1	E
Education provider, art gallery, museum, public library or reading room, public hall or exhibition hall, public worship or religious instruction or law court		F.1
Hall or meeting place for the principal use of the local community		F.2
Cinema, concert hall, bingo hall, dance hall or live music venue	D2	Sui Generis
Indoor sport, recreation or fitness not involving motorized vehicles or firearms, principally to visiting members of the public		E
Indoor or outdoor swimming pool or skating rink or a place for outdoor sports or recreations not involving motorised vehicles or firearms		F.2

A LOOK AT THE WIDER IMPLICATIONS

PLAN-MAKING AND DECISION-TAKING

Whether adopted or emerging development plans can continue to be considered up to date or sound.

Altering the nature of assessments and policy protections relating to employment land, community facilities and town centre shopping frontages.

The feasibility of local authorities maintaining a supply of employment floorspace and whether applying restrictive policies, including requiring extensive marketing exercises to be undertaken to justify the loss of existing uses, can be justified in light of the wide ranging flexibility in uses.

The future nature and vitality of town centres – how will local authorities and communities react this?

COMMUNITY INFRASTRUCTURE LEVY

Whether existing charging regimes can be considered to be up to date or require amendment.

The amendments are likely to have wider implications on several other aspects of the planning system. A limited selection of issues that may arise include:

ARTICLE 4 DIRECTIONS

Planning legislation is currently unable to prevent changes within individual use classes on the basis that they do not amount to “development” under the Planning Acts. Will the Government therefore come under pressure to alter existing legislation to enable local authorities to impose greater controls in specific locations?

DEVELOPMENT VIABILITY

Re-consideration of alternative use values and scheme viability.

Further guidance from the Government, including further changes to legislation and updates to the NPPF and Planning Practice Guidance cannot be ruled out and may assist developers, local authorities and local community understand and properly implement these changes. On first glance, however, one could be forgiven for thinking that these changes as a first step towards a simplified, zonal style planning system.

ISSUED AUGUST 2020

Whilst every effort has been made to ensure the accuracy of the information contained within this publication, no warranty, expressed or implied, is given that the information is complete or accurate nor that it is fit for a particular purpose. All such warranties are expressly disclaimed and excluded. Any opinions, recommendations or interpretation provided are not necessarily the current opinions, recommendations or interpretation of the contributors and may be changed at any time.

Neither Barton Willmore nor any representative, agent or employee nor any connected company or party shall be liable to a user of this publication or to any third party for any loss or injury arising out of the information or any actions taken or not taken in response to any information or a user's use of (or inability to use) this publication. The recipient is obliged to inform any subsequent recipient of such terms.

This guidance note was printed on paper using fibre sourced from sustainable plantation wood from suppliers who practice sustainable management of forests in line with strict international standards. Pulp used in it's manufacture is also Elemental Chlorine Free (ECF).

GARY STEVENS

gary.stevens@bartonwillmore.co.uk



BEN SHAW

ben.shaw@bartonwillmore.co.uk



**BARTON
WILLMORE**

BARTONWILLMORE.CO.UK
GUIDANCE NOTE