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MAJOR CHANGES TO THE USE CLASSES ORDER IN ENGLAND

NOTES & COMMENTARY BY HUW WILLIAMS

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The changes to the use classes order has been significant with hidden pitfalls and the likelihood of “the law of unexpected consequences” arising, already emerging. This paper steers the reader through the major points and gives an indication where the problems and frustrations are likely to arise.

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (2020 No. 757) came into force on 1st September and represents a radical, and potentially far-reaching, shake up the 1987 Use Classes Order in England. The changes – alongside the recent additions to Permitted Development rights – are part of the Government’s “Project Speed” initiative, that aims to deregulate existing planning rules and assist the revival of High Street in the wake of the economic downturn following the Covid19 pandemic.

The Regulations introduce three new use classes:

Class E: ‘Commercial, Business and Service Use’

This new Use Class incorporates:

- Retail (previously Class A1) Use;
- Financial and Professional Services (previously Class A2) Use;
- Restaurants (previously Class A3) Use; and
- Offices (previously Class B1) Use; together with
- Other uses that were previously in Class D1 & D2 as well as “any other services which it is appropriate to provide in a commercial, business or service locality” – these including:
 - o Indoors sport, recreation and fitness facilities;
 - o Medical and health facilities;
 - o Creches and day nurseries;
 - o Research and development facilities; and
 - o Light industrial uses

The Explanatory Memorandum states that:

‘This new class allows for a mix of uses to reflect changing retail and business models. It therefore, recognises that a building may be in a number of uses concurrently or that a building may be used for different uses at different times of the day. Changes to another use, or mix of uses, within this class do not require planning permission.

Bringing these uses together and allowing movement between them will give businesses greater freedom to adapt to changing circumstances and to respond more quickly to the needs of their communities.’

Changes of use within this new Class E will not constitute development under the Act and will not require planning permission.

Class F ‘Local Community and Learning’

This has two sub-categories:

- **Class F1 ‘Learning and Non-residential institutions’**

This new class incorporates a series of uses that were previously Class D1 – including ‘non-residential’ educational uses, use as a museum, art gallery, library, public hall, religious institution or law court

- **Class F.2 ‘Local community’**

This includes essential isolated shops (defined as “a shop of no more than 280 sqm mostly selling essential goods, including food and at least 1km from another similar shop”) as well as use as a community hall, area for outdoor sport, swimming pool or skating rink.

The remaining Use Classes within Parts A and D of the original Schedule to the Use Classes Order - including a pub/drinking establishment (formerly Class A4), hot food takeaway (A5), venue for live music (D2), cinema (D2(a)), concert hall (D2(b)) and bingo hall (D2(c)) - have all now become ‘sui generis’ uses. As a result no changes of use to or from these uses fall within permitted development.

General industrial (B2) and Storage and distribution (B8) use classes remain unchanged (except for a new cross reference in B2 to the new ‘commercial’ class). Similarly, Part C of the original Schedule to the Use Classes Order is not affected and existing Use Classes C1, C2, C2A, C3 and C4 remain unchanged.

Full details of the new and revised Use Classes are shown on the attached table.

Unfortunately, there are no current plans to consolidate the Use Classes legislation so these new Regulations will continue to sit alongside the various other amendments that have been made to the original Order since it was issued in 1987.

So what does all this mean for owners and occupiers?

From 1st September 2020, when a premises or other land is being legally used for a purpose falling within one of the original Use Classes, that building or other land will be treated as if it is being used for the corresponding new Use Class. Perhaps the easiest example is that of an existing shop (formerly within Use Class A1) which would now be deemed to be occupied for any of the uses now contained in the new Class E; formal consent for any of the uses now within Class E would not be required in this instance.

New planning applications (including variations of existing consents as well as reserved matters approvals) will also be determined by reference to the new Use Classes.

The previous Use Classes will, however, remain relevant for certain change of use permitted development rights until 31 July 2021. There are also some complicated transitional provisions in the Regulations relating to permitted development prior approvals and planning applications or Article 4 Directions made before 1 September 2020 and the uses or Use Classes that apply to those. These transitional provisions will remain in place until 31 July 2021 when new, revised permitted development rights will be introduced. These savings provisions also apply to relevant Article 4 Directions.

If there is any doubt, please do not hesitate to contact Chase & Partners who can investigate the situation and then advise on the most appropriate approach.

USE CLASSES ORDER 2020 - SUMMARY OF CHANGES

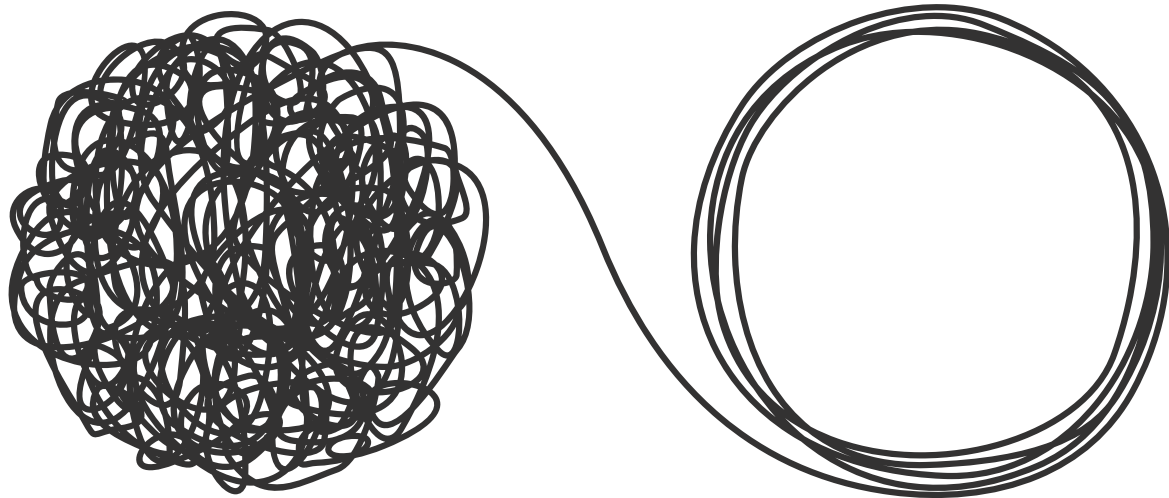
Use	Class		Use	Class	
	Under 1987 Order	Under 2020 Order		Under 1987 Order	Under 2020 Order
Shop	A1	E	Hotels, Boarding and Guest Houses	C1	C1
Financial & Professional Services	A2	E	Residential Institutions	C2	C2
Café or Restaurant	A3	E	Secure Residential Institutions	C2(a)	C2(a)
Pub or Drinking Establishment	A4	Sui generis	Dwelling Houses	C3	C3
Takeaway Restaurant	A5	Sui Generis	Use of a Dwelling House by 3-6 residents as a 'house in multiple occupation'	C4	C4
Shop of no more than 280 sqm mostly selling essential goods, including food and at least 1km from another similar shop	A1	F.2	Clinics, Health Centres, creches, day nurseries and day centres	D1	E
Office (other than within Class A2)	B1(a)	E	Schools, non-residential education and training centres, public libraries, public halls, exhibition halls, places of worship, law courts	D1	F.1
Research & Development	B1(b)	E	Cinemas, concert halls, bingo halls and dance halls	D2	Sui Generis
Any Industrial Process (which can be carried out in any residential area without causing detriment to the amenity of the area)	B1(c)	E	Gymnasiums, indoor recreations not involving motorised vehicles or firearms	D2	E
Industrial	B2	B2	Hall or meeting place for the principal use of the local community	D2	F.2
Storage & Distribution	B8	B8	Indoor or outdoor swimming baths, skating rinks and outdoor sports and recreations not involving motorised vehicles or firearms	D2	F.2

Changes of use within the same class does not constitute 'development' under the Act.

Use classes prior to 1 September 2020 will remain relevant for certain change of use permitted development rights, until 31 July 2021.

Commentary

The new Regulations seek to 'amend and simplify' the existing Use Classes Order and, on the face of it, offer considerable flexibility to many owners and occupiers of premises to change their use without the need for planning permission.



They have been largely welcomed by many businesses and landowners looking to adapt buildings in response to the economic downturn as well as changing market and consumer trends. On the other hand, C&P are aware that, following a pre-action letter on behalf of the campaign group Rights:Community:Action (RCA) to the Secretary of State for Housing, Communities and Local Government on 21st August, a legal challenge to the new Order was filed in the High Court on 27th August. This aims to block both the changes to the Use Classes Order as well as other Government deregulation initiatives for planning including permitted development rights for new residential development.

The changes described in this note have come into force but the possible threat of legal challenge may well lead to uncertainty and could affect owners and occupiers willingness to take advantages of the changes – at least in the short term.

It is also worth noting that successive Governments have expressed their commitment to sustain and regenerate existing High Streets. However, the changes introduced by the Order are not confined to uses in designated town centres and apply equally to premises both in, and outside, existing town and city centres. As a result, they could lead to the introduction of new 'town centre' uses in out of centre locations which would appear to run contrary to the general thrust of prevailing national planning policy guidance and local planning policies designed to protect the vitality and viability of existing town centres.