

RECLASSIFICATION OF USE CLASSES: AMENDMENTS TO THE USE CLASSES ORDER 1987

23 July 2020

www.bcplaw.com

BRYAN
CAVE
LEIGHTON
PAISNER **BCLP**

The introduction of a new 'broad' use class aimed at revitalising town centres was announced by Robert Jenrick MP in early July 2020 and follows a 2018/2019 consultation on measures to support high streets.

This week the details of these measures were laid before Parliament in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the Amendment Regulations") which comes into force on 1 September 2020 and fundamentally amends the Use Classes Order 1987 ("UCO"), going much further than the proposals in the 2018/2019 consultation.

In this briefing we discuss how the amended UCO will work in practice and the implications and ambiguities of the amendments.

CHANGES TO THE USE CLASSES ORDER 1987

The Amendment Regulations introduce significant and permanent changes to the UCO to reclassify a number of uses and allow parts of buildings to be used for other purposes within the same use class. The long established classification of uses within Class A (retail), Class B1 (business) and Class D (non-residential institutions and assembly and leisure) will be permanently removed. These uses are reallocated into:

- New Class E 'Commercial, Business and Service'
- New Class F.1 'Learning and non-residential institutions'
- New Class F.2 'Local Community'
- Sui generis uses

The attached **Table** summarises how the current uses will be reallocated from 1 September 2020 (subject to the transitional arrangements).

New Use Class E

The new Class E 'Commercial, Business and Services' is a wide and diverse grouping of uses and incorporates:

- retail uses, cafes and restaurants, financial and professional services (formerly in Classes A1, A2 and A3)
- gyms (formerly in Class D2)
- medical services (formerly in Class D1)
- children's nurseries (formerly in Class D1)

→ offices, research and development facilities and some industrial uses(formerly in Class B1)

New Use Class F

The new Class F is split into:

- Class F.1 'Learning and non-residential institutions' which incorporates all the former Class D1 uses (non-residential education uses, art galleries, museums, libraries, public halls and public worship or religious uses and law courts) save for medical and health services which are allocated to Class E; and
- Class F.2 'Local community' uses incorporates small 'essential' shops (less than 280sq m where there are no other such uses within 1000m), community halls, outdoor sports or recreation areas and indoor and outdoor swimming pools and skating rinks. Other than small essential shops, these uses formerly fell within Class D2.

Sui Generis

'Sui Generis' is the term given to the uses of land or buildings not falling into any of the use classes identified by the UCO. The non-exhaustive list is expanded by the Amendment Regulations to include:

- Drinking establishments (formerly in Class A4)
- Hot food takeaways (formerly Class A5)
- Drinking establishments with expanded food provision (formerly Class AA)
- Venue for live music performance (formerly Class D2)
- Cinema (formerly Class D2)
- Concert hall (formerly Class D2)
- Bingo hall (formerly Class D2)
- Dance hall (formerly Class D2)

Transitional Arrangements

Migration of existing uses to new use class on 1 September 2020

The Amendment Regulations expressly state that premises used within Classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafés) or B1 (business) on or after 1 September 2020, should be treated as being within Class E (Commercial, business and service) of the amended UCO.

However, there is no express reference in the Amendment Regulations to premises used within Classes A4, A5 or Class D on 1 September 2020 and whether these should be treated as being within their newly allocated class from this date, which raises questions as to whether or not it is intended that these uses migrate to their new class on 1 September or not. We assume that they do migrate on this date on the basis that the Amendment Regulations come into force on 1 September 2020 and there is no provision expressly stating that they are excluded from the reclassification for a transitional period. However, the omission requires clarification to provide confidence and certainty to operators.

Arrangements between 1 September 2020 – 31 July 2021

From and including 1 September 2020 until 31 July 2021 (defined as the 'material period' for the purposes of the Amendment Regulations) the current use classes (as they exist on 31 August 2020) continue to operate for:

- The Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") where use classes are referenced;
- Applications for prior approvals under the GPDO or relating to Article 4(1) Directions where use classes are referenced;
- Article 4(1) Directions made before 1 September 2020 where use classes are referenced

Existing Applications

Applications for planning permission, permission in principle (known as 'PiPs') or reserved matters which are submitted before 1 September 2020 that refer to the current use classes must be determined by the local planning authority using the current use classes (rather than the new ones).

Ongoing application of current use classes

The current use classes will continue to be used in certain sections of the Town and Country Planning (Development Management Procedure) Order 2015, the London Gateway Port Harbour Empowerment Order 2008 and the Town and Country Planning (Mayor of London) Order 2008 which will continue to be read in the context of the current use classes (rather than the new ones).

Implications

Increased flexibility for some

The new Class E will in the majority of cases allow operators to change uses between the diverse list of uses in this class (retail, food and drink, financial services, gyms, health services, crèches and nurseries and office uses) from 1 September 2020 (subject to our comment above) without needing planning permission, unless there is an existing planning condition/obligation, a local authority Article 4 direction or local development order in place to prevent operation within one of these uses.

However, the reclassification of some uses from a formal use class to 'sui generis' (which means they are their own class and includes pubs, hot food takeaways and gastro-pubs) means that a greater level of planning control will be applied to these uses. A change from one 'sui generis' use to another will usually require planning permission making these operations ultimately less flexible, leaving many operators disappointed.

As a result, depending on which class buildings and land will be allocated to could have implications on value, and whether tenants can take advantage of the new flexibilities will ultimately depend on the terms of their lease.

Comment

The reclassification of uses will increase flexibility for a large number of retail and town centre operators. Whilst this will be broadly welcomed by landlords and tenants who find themselves in Class E, operators who find their use now allocated as 'sui generis' are likely to be frustrated.

It's also worth noting that the use class for small retailers selling food and essential goods that are less than 280 sq m could be fluid depending on what other facilities are operating within a 1000m radius. If there are no small retailers operating in the locality this use will fall into Class F2 (community use) but if another facility opens up within 1000m then the use will fall into Class E (and vice versa). This could have significant implications on flexibility and value.

Ultimately the introduction of Class E will diminish local authority control and erode the importance of local town centre policies, which in turn could have a detrimental impact on the diversity and vitality of town centres.

Local authorities do have the option to include planning conditions on new planning permissions granted restricting changes of use and put in place Article 4 Directions which, with reference to the current UCO (up to 31 July 2021), will allow them to maintain a degree of management and control.

Ambiguities

Under the transitional arrangements the permitted development rights will continue to operate with reference to the current use classes until 31 July 2021. What is not clear is whether this presents opportunities to rely on permitted development rights for uses re-classified as 'sui generis' that would ordinarily require planning permission to authorise any change of use, or whether it is intended that certain permitted development rights will become redundant. Further clarification from Government would be welcome as this will have implications for operators and will require amendments to the GPDO if parts of it will become redundant.

There are a number of other ambiguities and uncertainties particularly around the transitional arrangements which include:

- The approach to permitted development for buildings brought into use from 1st September if they are to rely on change of use permitted development rights after 31 July 2021, when the transitional period comes to an end. The assumption must be that it will not be possible for landowners to use these rights and instead they must rely on the breadth of Class E, unless of course there is to be a further change to the GDPO.
- If planning applications that have been submitted but not yet determined can they be amended to reflect use class E? Planning authorities appear to be required to leave quoted use classes as they are and determine each planning application as submitted.
- Whether uses within Classes A4, A5 and D migrate to their new class on 1 September 2020 in the absence of express provision to this effect? It is clear that current buildings used within Classes A1, A2, A3 and B1 migrate to the new Class E on 1 September 2020, but these other uses are not expressly referred to.

The Planning Practice Guidance will be updated to reflect these changes before they come into effect. With that update we welcome the opportunity to provide much needed clarification on these points to ensure that operators can plan and proceed with confidence.

SUMMARY OF NEW USE CLASSES (ENGLAND) FROM 1 SEPTEMBER 2020 (subject to transitional provisions)

As introduced by the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020

Use Class ¹ up to 31 August 2020  31/8	Use Class ² from 1 September 2020  01/9	Use permitted from 1 September 2020 
Class A		
Class A1 (Shops)	Class E(a)	Retail sale of goods (other than hot food) to visiting members of the public
Class A2 (Financial and professional services)	Class E(c)	Professional and financial services to visiting members of the public: (i) financial services, (ii) professional services (other than health or medical services), or (iii) any other services which it is appropriate to provide in a commercial, business or service locality
Class A3 (Food and drink) - For consumption on the premises or of hot food for consumption off the premises	Class E(b)	Sale of food and drink to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises
Class A4 (Drinking establishments) Public house, wine-bar or other drinking establishment	Sui generis	<ul style="list-style-type: none"> Public house, wine bar, or drinking establishment Drinking establishment with expanded food provision
Class A5 (Hot food takeaway)	Sui generis	Hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises

¹ Under Town and Country Planning (Use Classes) Order 1987

² Town and Country Planning (Use Classes) Order 1987 as amended by Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Use Class¹ up to 31 August 2020		Use Class² from 1 September 2020		Use permitted from 1 September 2020	
---	---	--	--	--	---

Class B

Class B1 (Business)	Class E(g)	Business (a) as an office carry out any operational or administrative functions (b) for research and development of products or processes, or (c) for any industrial process, being a use which 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.
Class B2 (General industrial)	Class B2	General industrial Use for the carrying on of an industrial process other than one falling within the uses described in Class E(g)
Class B8 (Storage and distribution)	Class B8	Storage or as a distribution centres (unchanged)

Class C

Class C1 (Hotels)	Class C1	Hotels (unchanged)
Class C2 (Residential institutions)	Class C2	Residential institutions (unchanged)
Class C2A (Secure residential institutions)	Class C2A	Secure residential institutions (unchanged)
Class C3 (Dwellinghouses)	Class C3	Dwellinghouses (unchanged)
Class C4 (Houses in Multiple Occupation)	Class C4	Houses in Multiple Occupation (unchanged)

Use Class¹ up to
31 August 2020



Use Class² from
1 September 2020



Use permitted from 1 September 2020



Class D

<p>Class D1 (Non-residential institutions)</p> <ul style="list-style-type: none"> • medical or health services, • crèche, day nursery or day centre, 	<p>Class E(e) and (f)</p>	<p>(e) Medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner.</p> <p>(f) Crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public.</p>
<p>Class D1 (Non-residential institutions)</p> <ul style="list-style-type: none"> • education, • display of works of art (otherwise than for sale or hire), • museum, • public library or public reading room, • public hall or exhibition hall, • public worship or religious instruction • law court 	<p>Class F.1</p>	<p>Learning and non-residential institutions</p> <p>Any use not including residential use:</p> <p>(a) for the provision of education,</p> <p>(b) for the display of works of art (otherwise than for sale or hire),</p> <p>(c) as a museum,</p> <p>(d) as a public library or public reading room,</p> <p>(e) as a public hall or exhibition hall,</p> <p>(f) for, or in connection with, public worship or religious instruction,</p> <p>(g) as a law court.</p>
<p>Class D2 (Assembly and Leisure)</p> <ul style="list-style-type: none"> • a cinema, • a concert hall, • a bingo hall, • a dance hall 	<p>Sui Generis</p>	<ul style="list-style-type: none"> • Cinema • Concert hall • Bingo hall • Dance hall
<p>Class D2 (Assembly and Leisure)</p>	<p>Class E(d)</p>	<p>Indoor sport, recreation or fitness, not involving motorised vehicles or</p>

Use Class ¹ up to 31 August 2020 	Use Class ² from 1 September 2020 	Use permitted from 1 September 2020 
Gyms		firearms, principally to visiting members of the public
Class D2 (Assembly and Leisure) Swimming pools, outdoor sports or recreation	Class F.2	An area or place for outdoor sport or recreation, not involving motorised vehicles or firearms, an indoor or outdoor swimming pool or skating rink.
Class E		
N/A	Class E	<p>Commercial, Business and Service Use, or part use, for all or any of the following purposes:</p> <ul style="list-style-type: none"> (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public, (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises, (c) for the provision of the following kinds of services principally to visiting members of the public: <ul style="list-style-type: none"> (i) financial services, (ii) professional services (other than health or medical services), or (iii) any other services which it is appropriate to provide in a commercial, business or service locality (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public, (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner, (f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

Use Class ¹ up to 31 August 2020 	Use Class ² from 1 September 2020 	Use permitted from 1 September 2020 
		(g) for: <ul style="list-style-type: none"> (i) an office to carry out any operational or administrative functions, (ii) the research and development of products or processes, or (iii) any industrial process, being a use, which 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.
Class F		
N/A	Class F.1	Learning and non-residential institutions Any use not including residential use: <ul style="list-style-type: none"> a) for the provision of education, b) for the display of works of art (otherwise than for sale or hire), c) as a museum, d) as a public library or public reading room, e) as a public hall or exhibition hall, f) for, or in connection with, public worship or religious instruction, g) as a law court.
N/A	Class F.2	Local community Use as: <ul style="list-style-type: none"> (a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where: <ul style="list-style-type: none"> (i) the shop's premises cover an area not more than 280 metres square, and (ii) there is no other such facility within 1000 metre radius of the

Use Class ¹ up to 31 August 2020	Use Class ² from 1 September 2020	Use permitted from 1 September 2020
		shop's location, (b) a hall or meeting place for the principal use of the local community, (c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms, (d) an indoor or outdoor swimming pool or skating rink.
Sui Generis³ (non-exhaustive list)		
<ul style="list-style-type: none"> • Theatre • Amusement arcade/centre, or a funfair • Launderette • Sale of fuel for motor vehicles, • Sale or display for sale of motor vehicles, • Taxi business or business for the hire of motor vehicles, • Scrapyard, or a yard for the storage or distribution of minerals or the breaking of motor vehicles • Work registrable under the Alkali, etc. Works Regulation Act 1906, • Hostel • Waste disposal installation for the 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • Theatre • Amusement arcade/centre, or a funfair • Launderette • Sale of fuel for motor vehicles, • Sale or display for sale of motor vehicles, • Taxi business or business for the hire of motor vehicles, • Scrapyard, or a yard for the storage or distribution of minerals or the breaking of motor vehicles • Work registrable under the Alkali, etc. Works Regulation Act 1906 • Hostel • Waste disposal installation for the incineration, chemical treatment or landfill of hazardous waste • Retail warehouse club • Night-club • Casino

³ 'Sui Generis' means in 'of its own kind', and is the term given to the uses of land or buildings not falling into any of the use classes identified by the Use Classes Order

Use Class¹ up to 31 August 2020 	Use Class² from 1 September 2020 	Use permitted from 1 September 2020 
<ul style="list-style-type: none"> incineration, chemical treatment or landfill of hazardous waste • Retail warehouse club • Night-club • Casino • Betting office • Pay day loan shop 		<ul style="list-style-type: none"> • Betting office • Pay day loan shop • Public house, wine bar, or drinking establishment • Drinking establishment with expanded food provision • Hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises • Venue for live music performance • Cinema • Concert hall • Bingo hall • Dance hall

Please note that the transitional and saving provisions in Regulations 3-7 of the Town and Country Planning (Use Classes) (Amendment)(England)Regulations 2020 mean that in some cases and in reference to certain legislation the use classes as they apply on 31 August 2020 will continue to apply.

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

London

Governor's House, 5 Laurence Pountney Hill
London EC4R 0BR England

Giles Pink, Partner

Tel: +44 (0)20 3400 4370

M: +44 (0)7710 320603

giles.pink@bclplaw.com

Clare Eccles, Knowledge Development Lawyer

Tel: +44 (0)20 3400 4267

M: +44 (0)7702 910399

clare.eccles@bclplaw.com