

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

This note provides an assessment of impact to support the reform of the Use Classes Order.

As noted in the Explanatory Memorandum, to support economic renewal, this legislation has been brought forward at pace and therefore this assessment of impact has been provided alongside the instrument as an interim measure. A full Regulatory Impact Assessment will be produced in due course and submitted for independent verification against any Business Impact Target set under the requirements of the Small Business, Enterprise and Employment Act 2015.

REFORM OF THE USE CLASSES ORDER – Assessment of impacts

1. Description of measures

Planning permission is required if the work being carried out meets the definition of 'development' in primary legislation (section 55 of the Town and Country Planning Act 1990). The use of land or buildings is generally 'development' and as such is an intrinsic part of the planning system. When a development proposal is brought forward through a planning application both the physical nature of the development will be considered and the appropriateness of its proposed use in the context of the local and neighbourhood plan and national policy as set out in the National Planning Policy Framework. When a material change from this use is subsequently proposed planning permission is required.

The primary legislation allows the Secretary of State to make an order creating use classes. This is a measure that brings together uses with similar land use impacts into a single use class. Movement within a single use class is not development and therefore does not require planning permission. A material change of use between use classes is development and requires planning permission. Some uses do not fall within any use class and material changes of use to or from these types of uses also require planning permission. The use classes are set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order). The use classes operate nationally across England in all cases.

The current use classes are:

Part A

- **A1 Shops** - Use for all or any of the following purposes—for the retail sale of goods other than hot food, as a post office, for the sale of tickets or as a travel agency, for the sale of sandwiches or other cold food for consumption off the premises, for hairdressing, for the direction of funerals, for the display of goods for sale, for the hiring out of domestic or personal goods or articles, for the washing or cleaning of clothes or fabrics on the premises, for the reception of goods to be washed, cleaned or repaired, as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet; where the sale, display or service is to visiting members of the public.
- **A2 Financial and professional services** - Use for the provision of financial services, or professional services (other than health or medical services), or any other services which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.
- **A3 Restaurants and cafés** - Use for the sale of food and drink for consumption on the premises.
- **A4 Drinking establishments** - Use as a public house, wine-bar or other drinking establishment.

- **A5 Hot food takeaways** – Use for the sale of hot food for consumption off the premises.

Part B

- **B1 Business** – Use for all or any of the following purposes— (a) as an office other than a use within class A2 (financial and professional services), (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.
- **B2 General industrial** - Use for the carrying on of an industrial process other than one falling within class B1 above
- **B8 Storage or distribution** - Use for storage or as a distribution centre

Part C

- **C1 Hotels** - Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels)
- **C2 Residential institutions** - Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre
- **C2A Secure Residential Institution** - Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks
- **C3 Dwellinghouses** - Use as a dwellinghouse (whether or not as a sole or main residence) by— (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).
- **C4 Houses in multiple occupation** - Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Part D

- **D1 Non-residential institutions** – Any use not including a residential use— (a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner, (b) as a crèche, day nursery or day centre, (c) for the provision of education, (d) for the display of works of art (otherwise than for sale or hire), (e) as a museum, (f) as a public library or public reading room, (g) as a public hall or exhibition hall, (h) for, or in connection with, public worship or religious instruction (i) as a law court.
- **D2 Assembly and leisure** - Use as— (a) a cinema, (b) a concert hall, (c) a bingo hall, (d) a dance hall, (e) a swimming bath, skating rink, gymnasium or

area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

In addition the Use Classes Order states that no class specified in the Schedule to the Order includes use— (a) as a theatre, (b) as an amusement arcade or centre, or a funfair, (c) as a launderette, (d) for the sale of fuel for motor vehicles, (e) for the sale or display for sale of motor vehicles, (f) for a taxi business or business for the hire of motor vehicles, (g) as a scrapyard, or a yard for the storage or distribution of minerals or the breaking of motor vehicles, (h) for any work registrable under the Alkali, etc. Works Regulation Act 1906 , (i) as a hostel, (j) as a waste disposal installation for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) or landfill of hazardous waste as defined (in relation to England) in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005 or (in relation to Wales) in regulation 6 of the Hazardous Waste (Wales) Regulations 2005, (k) as a retail warehouse club being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club, (l) as a night-club, (m) as a casino, (n) as a betting office, (o) as a pay day loan shop.

Building on the Use Classes Order over recent years a range of national permitted development rights, set out in The Town and Country Planning (General Permitted Development) (England) (as amended) Order 2015, have been created to provide for the change of use between classes without the need for a planning application, including to support High Streets (as set out below). These grant planning permission, and where it is recognised that the change of use does raise planning matters these are considered in the prior approvals that an applicant must address.

Permitted development rights to support the High Street:

Some permitted development rights allow the change of use without any application process. This includes the following:

- from shops to financial and professional services uses, such as a bank;
- from financial and professional services, a betting shop or pay day loan shop to a shop;
- from a betting shop or pay day loan shop to financial and professional services,
- from a restaurant or café, or a hot food takeaway to a shop or financial or professional services;
- from a hot food takeaway to a restaurant or café;
- from a shop, financial and professional services, betting shop or pay day loan shop with two flats above.

Further permitted development rights allow for a change of use subject to prior approval by the local planning authority on specific planning matters:

- from shops and financial and professional services, a betting shop or pay day loan shop to a restaurant or café;
- from shops and financial and professional services, a betting shop or pay day loan shop to an assembly and leisure use;
- from shops, financial and professional services, a betting shop, pay day loan shop, launderette, and hot food takeaway premises to office use;

- from shops, financial and professional services, a betting shop, pay day loan shop, launderette, and hot food takeaway premises to residential use;
- from amusement arcades / centres or casinos to residential use;
- from offices to residential use.

There is a specific right support business flexibility, new ventures and pop-ups and avoid buildings being left empty. This right allows a range of uses (such as offices, shops, financial and professional services, restaurants and cafes, hot food takeaways, assembly and leisure uses) to convert temporarily to another use (such as office, shop, financial and professional service, restaurant) for a single continuous period of up to three years. This allows start-ups to test a new business model, and then to seek planning permission for the permanent change of use on that or another site.

The right was broadened in 2019 to provide a greater mix of uses on the high street and increase footfall, and bring community uses closer to communities. It now additionally allows for the temporary change of use to specified community uses: health centre, art gallery, museum, public library, public hall or exhibition hall.

The measures being brought forward in the regulations

The measures build on the approach taken over recent years and amends the Use Classes Order in England with effect from 1 September 2020. While these reforms to the use classes are primarily designed to help support vibrant, mixed use town centres, they apply to all uses of land and buildings, in town centres and elsewhere, across England.

The reforms create a new 'Commercial, business and service' use class, Class E, which incorporates the former use classes of A1 shops, A2 financial and professional services, A3 restaurants and cafes and B1 business use classes. Other uses such as gyms, nurseries and health centres which fell within the former D1 Non-residential and D2 Assembly and leisure use classes are also included in this class as are other uses which are suitable is appropriate to provide in a commercial, business or service locality such as town centres. The new 'Commercial, business and service' class also allows for mixed uses where all the uses fall within the class. The introduction of Class E will mean, that from 1 September 2020, it will be possible to change between any uses, or mix of uses, falling within this new class without having to obtain planning permission. This will give property and business owners giving greater flexibility to adapt and diversify to meet changing circumstances.

New 'Learning and non-residential' and 'Local community' use classes, Class F1 and F2 respectively, have also been created. These classes are intended to ensure that those uses which are important to local communities have some protection through the planning system because the scope to change use without permission is more limited.

The 'Learning and non-residential institutions' class incorporates uses from the former D1 Non-residential institutions use class such as schools, libraries and art galleries.

The 'Local community' use class groups together those uses from the former D2 Assembly and leisure use class which provide for group activities of a more physical nature – swimming pools, skating rinks and areas for outdoor sports. It also includes the use of buildings where this is principally by the local community. The class also recognises the importance of small, local shops in meeting the day to day shopping and service needs of local communities, particularly in rural communities, large residential estates and outside main shopping areas generally. Therefore, alongside community social facilities the F2 class includes what would be considered shops servicing the essential needs of local communities. This provides some protection for such shops. Those shops found on high streets and town centres will be in the new 'commercial' class so that they can benefit from the greater flexibility offered by that class.

The residential (C classes), general industrial (B2) and storage and distribution (B8) use classes remain unchanged.

The former A4 Drinking establishments and A5 Hot food takeaway use classes have been removed. We recognise that changes of use to or from these uses can give rise to important local considerations, for example to ensure that local pubs can be protected or to prevent the proliferation of hot food takeaways. We have therefore, included these uses in the list of uses which are specifically identified in the Use Classes Order (see Article 3(6)) as uses which do not now fall within any use class. We have also taken this approach with cinemas, concert, dance and bingo halls which fell within the former D2 use class and for venues for live music performance. This ensures that any change of use to or from these uses requires planning permission, ensuring greater control over these uses.

The Secretary of State has powers to grant planning permission by development order for specified development. These national permitted development rights as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are deregulatory and remove the need for a full planning application. There are a number of existing permitted development rights which grant planning permission allowing changes of use between use classes. We will make savings provisions which retain the effect of these rights based on the those in the classes that were in place prior to these regulations coming into force. These provisions will remain in place until 31 July 2021 when revised permitted development rights will be introduced.

This will mean that, for example, a post office which fell within the former A1 Shops use class on the 31 August 2020, will continue to benefit from any permitted development rights that apply in relation to the A1 class, for the period up to 31 July 2021. As post office use will fall in the new Class E Commercial, business and service use class as of 1 September 2020 it will also benefit from the increased flexibility of being able to change to any of the uses, for example a gym or an office, within Class E without planning permission.

2. Policy rationale

The government is committed to supporting our high streets and town centres. In response to the 2018 consultation, *Planning reform: supporting the high street and increasing the delivery of new homes*, the government announced that it would amend the shops use class to ensure it captures current and future retail models and include clarification on the ability of (A) use classes to diversify and incorporate ancillary uses. However, given the economic impact of Covid-19, the government has now decided that wider reaching reform to the change of use rules is needed to help support the town centres and allow more flexible use of existing buildings to encourage their continued occupation and to attract new investment.

Modern high streets and town centres have changed so that they now seek to provide a wider range of facilities and services, including new emerging uses, that will attract people and make these areas viable now and in the future. To do so, they will need to be able to adapt and diversify.

These reforms are intended to give businesses greater freedom to change use so that they can adjust more quickly, and with more planning certainty, to changing demands and circumstances. The aim of the reforms is to support vibrant, mixed use high streets and town centres that will attract people and allow local businesses to thrive.

At the same time, we want to ensure that those valued community and learning uses which are important for communities, such as community shops and libraries, are protected by limiting the scope for change of use without planning permission. We also recognise that some changes of use can give rise to important local considerations, for example, to prevent the proliferation of hot food takeaways or betting shops in an area or to protect a local pub. We also want to protect those assets that once lost are hard to replace such as live performance music venues. For this reason, such changes of use will be subject to full consideration through the planning application process

3. Economic Analysis

Summary

Overall, the changes to the Use Classes Order are deregulatory. Businesses within the new Commercial, business and service use class will have greater freedom to adapt and diversify their business helping them to remain viable as market conditions change. The reforms mean that fewer changes of use will require an application for planning permission. This will benefit businesses by removing the costs of preparing and submitting applications, reducing the time period for implementing changes as they will no longer have to wait for applications to be determined, and giving them greater planning certainty.

We expect the number of premises changing use to increase in response to the great freedom provided by the change of the use classes, but they are only likely to do so when changing use will lead to an enhanced value.

Local planning authorities will benefit from having to determine fewer planning applications for changes of use. This will save time and resources which can be used elsewhere. While communities will benefit from having a more vibrant and responsive high street which caters to local markets. The number of buildings in scope of the new commercial, business and service use class (Class E) is estimated to be around 1.5 million.

Potential wider positive and negative economic impacts are described qualitatively below.

Government is addressing market failures that affect shops and businesses. The measure will decrease uncertainty that businesses have when changing use. Currently there are problems of imperfect information because there is uncertainty whether an application for change of use would be granted or denied, making it difficult to know whether an alternative use would be viable. New businesses may become viable as this risk no longer needs to be factored in. Transaction costs will also be reduced by the measure as time, application fees, and process formalities will be cut by planning applications no longer being required for some changes of use. Existing vacant properties may indicate that the current allocation of land is not efficient. More easily changing between these values would help reallocate vacant properties to more productive use.

Methodology for estimating buildings in scope

In order to estimate the potential scale of change an estimate of the number of buildings in scope of the measure is required.

The number of eligible buildings under the new commercial, business and service class E is estimated to be around 1.5 million. This estimate is derived from address level data sourced from Ordnance Survey which lists detailed categories of use. The categories do not map one-to-one onto the existing use class order categories or the newly proposed categories, so a judgement has been made to map to the closest described group.

Table 1 shows the breakdown by broad categories of existing use, as well as vacancy rates in 2019. The majority of properties in scope are currently in office and retail use, making up 40% and 36% respectively. Addresses with a current light industrial use make up 12% of the total. Current vacancy rates for these properties are around 3%.

Table 1: Premises captured under the new Class E (1000s) based on Ordnance Survey address data (2019)

	In use	Unoccupied	Total	% of Grand total	Vacancy rate
Office	611	21	633	40%	3%
Retail	540	15	555	36%	3%
Light industrial	187	8	195	12%	4%
Other	177	3	180	12%	2%
Grand total	1,516	48	1,563	100%	3%

The number of premises falling under the old use classes A4 (drinking establishments) is estimated at 35,300 and the number under A5 (hot food takeaways) is estimated at 19,500. Table 2 shows in use vs unoccupied. Vacancy rates are also similar to the commercial class above at around 3%.

Table 2: Premises in former use classes A4 and A5 based on Ordnance Survey address data (2019)

	In use	Unoccupied	Total	Vacancy rate
drinking establishments	34,300	1000	35,300	3%
fast food outlets	19,200	300	19,500	2%

Impacts

The key impacts of this measure are described below. At this stage, they are described qualitatively. In developing the Impact Assessment for this measure the department will seek to monetise these benefits where feasible and proportionate to do so.

Benefits

- 1. Improved allocation of land to commercial uses and associated land value increase*

Overall, the proposed measures are deregulatory. They provide greater certainty to businesses and property owners in the new Commercial, business and service use class wishing to change use, and reduce planning burden and associated costs. The reform may allow additional productive use giving rise to some land value uplift.

An estimate of the level of churn between different commercial uses that might reasonably be expected to be enabled by this measure will be produced as the department carries out the full Impact Assessment. Landowners and freeholders are incentivised to maximise productive use of their land assets via rental yields. Trade-offs between switching costs, the relative productivity of competing uses, and the balance of risk will affect how many properties change use.

2. Externalities (positive) – amenity value

The primary aim of the reforms is to create vibrant, mixed use high streets and town centres. Communities could benefit from greater choice and convenience of having a wider range of services and facilities located in the same area.

Communities may benefit from more high street and town centre premises being repurposed rather than left vacant with the corresponding impact that has on the amenity of the area.

There is the potential for communities to be negatively impacted if local amenities or shops are lost to other uses through these reforms. However, this impact has been mitigated by excluding uses which are particularly important to communities, such as local shops and community buildings, schools and libraries, from the greater flexibility to change use introduced by these reforms. This means that these types of use will have some protection through the planning system. In addition, where there are uses which give rise to important local considerations, for example, to ensure local pubs and theatres are protected or to support delivery of local policies in relation to managing the location of particular uses including hot food takeaways or betting shops, such changes of use will be subject to full consideration through the planning application process.

3. Savings to local authorities and businesses

Local authorities will have to process fewer planning applications, saving them time and staffing costs. Planning officer resource can be redirected to focus on the more significant applications that will still require planning permission, so we may expect the quality of decisions to improve.

Applicants will save on fees and administration costs as planning applications will not be required for some changes of use. The full extent of savings will depend on existing application fees.

4. Supporting high street businesses in a period of economic downturn

The measures will support the flexibility of the high street to adapt in a challenging time as part of the economic response to the downturn. As of early July the high street footfall index is still down at around 50% of pre-lockdown levels despite the re-opening of non-essential shops.¹ Reducing barriers to changes of use will allow businesses to adapt and encourage restarting of high street economies.

Costs

1. Externalities (negative)

Some uses cause harmful wider effects whose impact is borne by the whole community though caused by a single individual or business., Hot food takeaways can encourage unhealthy eating, and live performance music venues can create

¹ Source: Springboard via ONS

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/bulletins/coronavirustheukereconomyandsocietyfasterindicators/16july2020#footfall>

noise late at night. These effects are particularly harmful when these uses are located in residential areas or close to schools.

The costs of these impacts are difficult to monetise, however the measures here aim to minimise them. The uses most likely to cause these negative externalities have been specifically identified to not fall under any use class. This means that planning permission will be required for a change to these uses. The local planning authority will therefore have discretion over these uses so we expect negative effects to be balanced by the considerations of the community. Decisions by the planning authority would naturally balance the expected benefits to the community of new business with the costs due to these externalities.

Outside of the restricted uses described above, some use classes can have a detrimental externality on surrounding residents and businesses. For example, noise and smells from a restaurant might disturb users of a bookshop. There are however other environmental regimes that are intended to control such impacts

2. Impact on commercial leaseholders

In a market equilibrium the cost to a commercial leaseholder is determined by the potential economic output of the best available use of that space. If a more productive business can operate from a given building than the current occupier, then the freeholder can increase the cost of the lease to the point where only the business making best available use of the space can afford it.

The new occupant should be a more productive businesses and help to revitalise the local market, this is referred to as “creative destruction”, however substantial disruption could be caused to existing leaseholders.

3. Reduced flexibility for some use classes

Property and business owners with uses now falling within the new local community class or identified as not being in a use class may be adversely affected by reduced flexibility to change use. This is mitigated by allowing them to continue to benefit from existing permitted development rights until the new permitted development rights are introduced next year. The movement of uses into Article 3(6) of the order from certain use classes will mean that those uses will in future have to apply for planning permission for change of use, although the savings provisions will mean these uses continue to benefit from their existing permitted development rights.

Small business impact

The changes should make it easier for small business and start-up businesses to find new premises to start or grow. The bringing together of a number of use classes will increase the range of properties that should be available for use immediately, with the landlord’s consent, and without the need to first find out whether planning permission for change of use will be required and granted. As small businesses may find it relatively more arduous to navigate the planning system than larger ones, we would expect them to have a greater benefit through being able to change use of property without going through the planning system.

This approach should help attract more small businesses into areas where there is likely to be higher footfall and so increase the chance of success for the business. It may also enable a greater concentration of small businesses to come together and benefit from that co-location. The new Class E provides that different uses within Class E can occupy the same premises, operating at the same time or different times of the day. This approach could help small businesses share the overhead costs and help their viability.

There is a risk that some small business will be lost as the greater flexibility to change use will mean that the premises they use will now be in competition with other uses. These other uses may be more profitable and so rents may increase, squeezing the smaller business out of viability.

The measure is intended to mitigate these impacts. For example, community shops are protected by limiting the scope for change of use without planning permission.

Other small businesses might own the property they operate from, or indeed small businesses might lease our properties which become more valuable. In the former circumstance the businesses might be able to benefit from selling their current property and moving to a cheaper but more cost effective premises. The measure ultimately increases value on the high street but there will likely be winners and losers in the reallocation of value.