

Department of Environment, Food & Agriculture and the Cabinet Office



Isle of Man
Government

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Consultation Summary & Department Responses

**Draft Town and Country Planning (Use
Classes) Order 2019 & Draft (Change of Use)
(Development) Order 2019**

Date: November 2019

We Asked - The Town and Country Planning Act (1999) gives the Cabinet Office responsibility for some planning functions and the Department for Environment, Food and Agriculture responsibility for other functions. Two draft orders were published. The Draft Town and Country Planning (Change of Use) Order made reference to the Draft TCP (Use Classes) (Development) Order. It is important therefore to ensure a co-ordinated approach whereby the two Departments are working together to deliver these measures. The consultation sought views on the two draft orders.

You Said - There were 15 responses to the consultation.

We Did – The responses to the set questions are set out in appendix 1. No changes are proposed in response to these. Comments made in response to the free text questions and the responses to these (including proposed changes to the emerging orders) are set out in appendix 2. The draft orders have been updated in light of the above, and require Tynwald approval before coming into operation.

Appendix 1 – Set Questions

Questions 1-4 were background questions.

Question 5 asked: In the Schedule (Part 1) Class 1.1 sets out a 'Shops' Use Class and Class 1.2 sets out a 'Financial and Profession Services' Use Class. Do these adequately set out the relevant uses? 33% (5) said Yes, 26% (4) said No, 40% (6) said no opinion or no answer

Question 6 asked In the Schedule (Part 1) Class 1.4 makes hot food takeaway a use class rather than Sui Generis use to enable easier referencing in permitted development orders, policies and conditions attached to planning approvals. Do you agree with this approach? 33% (5) said Yes, 7% (1) said No, 60% (9) said no opinion or no answer

Question 7 asked: Article 5(2) sets out a list of exclusions from the use classes (things which are Sui Generis) in the interests of clarity. The definition of a special industrial building is as per the Strategic Plan (2016). Please tick any use you disagree with as being Sui Generis and give your reasons below, including which of the use classes you think they should be included within. The results are below.

| Option | Total | Percentage |
|---|-------|------------|
| As a retail warehouse | 2 | 13.33 |
| For the sale of fuel for motor vehicles | 0 | 0 |
| For the sale, display or washing of motor vehicles | 1 | 6.67 |
| As a pay day loan shop | 2 | 13.33 |
| As a betting office/shop | 3 | 20.00 |
| As an amusement arcade or centre, or a funfair | 1 | 6.67 |
| As a night club or casino | 3 | 20.00 |
| For the provision of boarding kennel for pets (including daycare) | 0 | 0 |
| For a taxi business or business for the hire of motor vehicles | 2 | 13.33 |
| As a laundrette or dry cleaners | 0 | 0 |
| For the direction of funerals | 1 | 6.67 |
| As a scrapyard, or a yard for the storage or distribution of minerals of the breaking of motor vehicles | 1 | 6.67 |
| As a special industrial building | 0 | 0 |
| As a residential school | 1 | 6.67 |
| As a hostel | 1 | 6.67 |
| As a secure residential institution (such as prisons, young offenders' institutions, detention centres, secure training centres, custody centres, short term holding centres, secure hospitals, or military barracks) | 1 | 6.67 |
| As agricultural land or buildings | 0 | 0 |
| Not Answered | 11 | 73.33 |

Question 8 provided the opportunity for free-text comment (these are reflected in section 3).

Question 9 asked: Schedule 1, Part 1 sets out Changes of Use which will apply to Specified Land Only. The order intends to encourage investment in town centres, and avoid empty units, by providing more flexibility to change between different uses without the need for a planning application. The Department considers these proposals to be beneficial for the vitality and continued success of the Town Centres. Do you agree with the proposed changes of use allowed within Schedule 1? 40% (6) said Yes, 33% (5) said no and 27% (7) did not answer.

Question 10 asked: Schedule 2 defines the areas to which Schedule 1, Part 1 will apply (Specified Land Maps). 20% (3) said yes, 53% (8) said no and 27% (4) did not answer. Potential changes to the maps are considered in appendix 2.

Question 11 provided the opportunity for free-text comment (these are reflected in section 3).

Appendix 2 – General Comments

| Consultation Comments | Proposed Government Response | Change |
|--|--|------------|
| Town centre uses are merging more than ever before and it is types of use for locations that could be a key driver for the future | Noted | No |
| Given High Streets are dying because planners don't want people visiting them in cars and public transport so rubbish what is the point of this? People will not visit fast food take-aways by public transport - food cold when it gets home. Retail shopping with large bags - cannot carry home on public transport. The High Street as a concept only dates back to Victorian times - the Industrial revolution. Market forces will drive evolution, as they did then. Planners are helping nothing by sending out mixed messages - please visit the High Street but not by car -Douglas Corp even then charge for using toilets!! Why not insist toilet provision is provided for free? | Noted, provision of public car parks and toilets is outside the scope of the DO. | No |
| The focus should be on sustainability and access by public transport | Noted | No |
| Don't agree with empty units. So yes encourage BUT - landlords need to be more flexible on rents so don't agree with rate relief on empty properties. | Noted | No |
| Other Comments | | |
| Given the financial cuts by other Departments, what is the cost of this exercise and what real benefit will accrue from this? Red tape demands more red tape and more bureaucrats to regulate the bureaucrats that implement compliance department. Quis custodiet ipso custodes? | Concerns noted. The broad purpose of permitted development is to reduce unnecessary bureaucracy and allow resources to be focused on more complex/controversial proposals. | No |
| I am very concerned that this order will make it too easy for new "services" to be installed and/or operated without consent of the public. | Noted – it is understood that this relates to Class 1.2 of the UCO and 'other services' in shopping areas – see response below | No |
| I am very concerned that individual civil rights will be taken away from the public, if it becomes too easy for new "services" to be installed and/or operated without consent of the public. This would become a very unfair society. | Noted – it is understood that this relates to Class 1.2 of the UCO and 'other services' in shopping areas – see response below | No |
| Your explanatory notes on Revocations and the revocations in the two proposed orders do not stack up. The proposed Use Classes Order article 7 should surely refer to article 6 and Schedule 4 of the PDO Order 2012 as referred to under use classes explanation in the notes - not article 5 and Schedule 4 | Article 7 of the UCO states, "Article 5 of, and Schedule 4 to, the Town and Country Planning (Permitted Development) Order 2012 are revoked" whilst the the explanatory note on the UCO states, "Article 7 revokes Article 6 of, and Schedule 4 to, the Town and Country Planning (Permitted Development) Order 2012". The explanatory note is correct, the main text of the order shall be corrected. | Yes |

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| In the proposed change of use Order Article 7 on revocation should surely refer to Article 4(3) and schedule 3 and Article 5 of the PDO 2012; alternatively Article 5 of the PDO 2012 needs re-wording. | Article 5 is ability of CO to produce an instrument suspending PD in a particular area, the result of changes is that it will include a list schedule numbers one of which will no longer exist. It would be helpful to amend Article 5 of the 2012 as suggested. | Yes |
| <p>Draft Town and Country Planning Act 1999 (Use Classes) Order 2019</p> <p>Article 3 – Interpretation Definitions of “flat” and “multiple occupation”</p> <p>“Article” should say “article”.</p> <p>Article 4 – Meaning of industrial process</p> <p>In paragraph (1) –</p> <p>a) “(3)” should say “(2)”.</p> <p>b) There is a redundant “or” at the end of sub-paragraph (a).</p> <p>Article 7 – Revocation</p> <p>I think “Article 5” should say “Article 6”, per the explanatory note.</p> <p>Explanatory note</p> <p>I struggled to understand all of paragraph 3 (especially “Sui Generis”).</p> <p>In paragraph 4 “made” is better than “submitted” – see the wording in section 9(1)(a) of the Town and Country Planning Act 1999.</p> | The suggestions are noted and agreed with | Yes |
| Use Classes | | |
| What does the sale of hot drinks / soup come under - often sold with cold food? | The sale of hot drinks for consumption off the premises would be class 1.1 (Wording to be clarified). | Yes |
| Yes, but it should apply to those properties where the principal business is that of a hot food takeaway, and not to those where hot food is not the primary business, for example supermarkets and newsagents where hot food is sold but is not the main business. | This is a concern about the definition of the planning unit. The serving of a small amount of hot food relative to the overall use could be regarded as ancillary or incidental (and so not a material change of use). If the hot food element became significant then a change to this use class (or a dual use) may have occurred. | No |
| Fast food no difference to local convenience store particularly in respect of short term drop in parking problems. If take away need separate parking regs to drop in convenience then that isn't fair. | The difference between hot food take away and other uses is not about parking, but about other issues – typical opening hours, odour (and healthy eating agenda) | No |
| I am concerned about the added words in Class 1.2 : “any other service which it is appropriate to provide in a shopping area”. My questions are: Who determines which other services are appropriate? Will the public be consulted on whether they agree that these other services are appropriate and indeed required and/or desired? | It is accepted that there is an element of interpretation and professional judgement in relation to this, which would be made by suitably qualified and experienced professional planners taking into account any relevant case law. This is as per other areas of planning legislation. The caveat relating to visiting members of the public would still apply. | No |

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| A completely new approach should be used linked to requirements of the area plans | The order could be reviewed/updated as necessary once the area plans are in place, however this is likely to take some time and it is considered that there is benefit in having the order in place as soon as possible. | No |
| In Use Class 2.2, "visual amenity" should be added to the list of detriments, in order to prevent unsightly industrial used being included. | Whilst there is a logic to this, it is difficult to link visual appearance with uses (as operational development is a separate issue). Also, there is potential confusion with having different definitions in the strategic plan and UCO. | No |
| Exclusions from Use Classes | | |
| pay day loan shop = same as bank night club = public house taxi business = what happens to taxis (private hire) parked awaiting a "job" by outside home of relief driver | It is considered that the impacts (including visual) of pay day loan shops is different to banks (which are in class 1.2) and it is appropriate for them to be excluded from use class 1.2. It is considered that the potential impact of night clubs is different to public houses (including on local amenity) and so it is appropriate for them to be excluded from Class 1.3 Taxis parked at residential properties are not considered to be development if the driver lives at that address, has parking provision and there is only one (taxi) vehicle. | No |
| Pay day loan shop, betting shop and nightclub/casino could come together within a sub category. | It is considered that the potential impacts of these may be different and allowing the uncontrolled change from a nightclub to a pay day loan shop may not be appropriate. | No |
| The list as set out is acceptable (with the correction of "minerals" to "materials" in relation to the breaking of motor vehicles). | Change "minerals" to "materials" in relation to the breaking of motor vehicles | Yes |
| The use of the term 'sui generis' is confusing; why not just speak plain English and say it is now a use class of its own rather than an unspecified exclusion to a use class. As it is a unique use it is still 'sui generis' whether or not it is a use class. | The term sui generis is an accepted planning term and means that a development is not within a use class | No |
| Changes of Use | | |
| There does need to be flexibility but care should be taken to prevent proliferation of any one type of development within an area; for example the percentage of properties in a retail area changed to coffee shops. | This concern is noted and is a potential outcome. It is difficult to see how this could be controlled, other than by having individual approvals (either some form of prior approval process or full applications) which would undermine the flexibility outcome desired of the DO. On balance it is considered that the risk of vacant properties or loss of investment in town centres is greater than the risk of proliferation of uses (which to some extent will be | No |

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| <p>As internal works frequently don't need planning consent, change of use can also result in internal conversion of the building. There has to be concern that certain buildings which are not Registered could have important internal layouts / features that need conserving - public houses for one, banks and churches for another. Does this order put at risk the architectural features of such buildings which it is otherwise desirable to conserve?</p> | <p>curbed by the market).</p> <p>Works to Registered Buildings are controlled separately.</p> <p>If a building is not registered then internal works are not development and so fall outside the scope of planning, they would therefore not be considered in the assessment of a specific change of use application and are therefore not a reason to not have a DO for changes of use.</p> | <p>No</p> |
| <p>In Table 1 of Schedule 1, referring to Class 2, limitation 4 should be amended by insertion of "suitable" bin or bicycle storage provision.</p> | <p>Amend as suggested</p> | <p>Yes</p> |
| <p>We welcome the proposed new flexible permitted development rights within town centres. However, in terms of business uses it is considered that the proposed changes do not provide enough flexibility. It is noted that the only permitted development right being introduced for the Industrial Category is to allow Class 2.3 General Industrial (formerly sui generis) to change to a use class falling within Class 2.2 Light Industry and Research & Development (formerly Class 5). The proposed changes do not allow Light Industry to change to any other use and there is no permitted development rights to allow offices to change use.</p> <p>It is considered that the revised Town and Country Planning (Use Classes) Order 2019 and Change of Use Development Order 2019 is an ideal opportunity to make the Island more attractive to UK businesses who wish to establish a presence or relocate to the Island.</p> <p>However, the Island's existing and proposed permitted development rights for businesses are not as flexible as the UK's where the following permitted development rights apply:</p> <ul style="list-style-type: none"> - Change from office/light industry to retail (up to 150 sq.m for a temporary period) - Change from office/light industry to a school - Change from office to residential - Change from industrial to office/light industry - Change from industrial to warehousing (up to 500 sq.m) - Change from warehousing to office/light industrial (up to 500 sq.m) | <p>The proposal to allow, "Change from office/light industry to retail (up to 150 sq.m for a temporary period)" could undermine the town centre first policy set out within the Strategic Plan.</p> <p>The proposal to allow, "Change from industrial to office/light industry" is in part support as the draft order allows change of use from general industrial to light industrial. The Employment Land Review indicated a shortage of land within the East for manufacturing uses and a potential oversupply of office space. The considerations in relation to office uses (including parking/access arrangements) are considered to be materially different to industrial uses. Furthermore, the Strategic Plan policies direct offices towards town centres, and this would be undermined by allowing industrial buildings (in out of town location) to change use to office without case-by-case consideration and justification. Therefore the change of use from industrial to office is not considered appropriate.</p> <p>In terms of change of use from industrial to warehousing (up to 500 sq.m), a number of points are noted - that "Warehousing" is not within the use classes so it is assumed that this relates to storage and distribution, the ELR indicates a the greatest demand within the East is for manufacturing and the access requirements for storage/distribution can be different to industrial uses.</p> | <p>No</p> |

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| <p>The majority of the above would be suitable on the Island with the exception of the change of use to residential or a school. It is considered that the Island's permitted development rights should be more in line with the UK's as this would provide a number of benefits as outlined below.</p> <p>It is considered that more flexible permitted development rights would provide a wider range of available business premises to stimulate business growth on the Island and increase building occupancy. The Island has a finite amount of business premises which all have a specific use class. Due to limited permitted development rights, businesses often have to obtain planning permission for changes of use which can take from 3 months up to a year if the application is subject to an appeal. A business considering buying premises or relocating to the Island cannot therefore gain certainty which can impact on their ability to secure premises and cause them to locate elsewhere such as the UK where there are much more flexible permitted development rights.</p> <p>The further broadening of permitted development rights would also reduce the number of un-contentious planning applications and free up resources within both the planning and enforcement departments.</p> | <p>Therefore the change of use from industrial to office is not considered appropriate.</p> <p>In terms of "Change from warehousing to office/light industrial (up to 500 sq.m)", a number of points are noted - that "Warehousing" is not within the use classes so it is assumed that this relates to storage and distribution and the Strategic Plan policies direct offices towards town centres, and this would be undermined by allowing warehouse buildings (in out of town location) to change use to office without case-by-case consideration and justification. It is therefore considered that the change of use from warehousing to office is not appropriate.</p> <p>In terms of changing from warehousing to light industrial, and given the definition of light industrial, it is likely that the issue is access requirements (which are likely to be more onerous for warehousing than Light Industrial). It is also noted that the Employment Land Review suggests most demand is for manufacturing). However, on balance it is considered that such a change would need to be assessed and so should not be included.</p> | |
| <p>Department (DfE) has considered the above consultation and wishes to respond as follows:</p> <p>"The Department welcomes the opportunity to comment on the amendments proposed to the Draft Town and Country Planning (Use Classes) Order 2019 & Draft Town and Country Planning (Change of Use) (Development) Order 2019 is mindful of the impending Plan for the East and in doing so, welcomes the additional flexibility offered by these amendments and recognises the reinforcement of town centre based retail which it considers is crucial for the ongoing health of those centres.</p> <p>The consultation was also forwarded to the Department's Business Agency which has the responsibility for the domestic retail sector, for its consideration and comment which are set out as follows: "The need for "use classes" particularly in the retail sector is absolutely key to the preservation of the High Street. Without restricting retail business to a town centre high street could cause a mass</p> | <p>Comments noted. In relation to the comment, "Planning should increase permitted classes to include arts and culture spaces and community areas as long as it does not take away from expanding of the retail offering on the high street" this may be acceptable in many cases, but in some instances may undermine the retail offer and on balance it is considered appropriate for this to be assessed by way of a planning application.</p> | No |

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| <p>movement over the key retailers to outside of the town centres. This long term could jeopardise the high street offering and cause a breakup of the retail offering for the Island. In terms of increasing the type of permitted developments on to the High Street the Business Agency supports usages like residential on the upper floors of the High Street. Planning should increase permitted classes to include arts and culture spaces and community areas as long as it does not take away from expanding of the retail offering on the high street.” Department is content for this response to be made public if required.</p> | | |
| <p>The powers cited are section 8(1) to (5) of the Town and Country Planning Act 1999, i.e., including section 8(2A). Are the powers under section 8(2A) used to make the Order?</p> <p>Article 3(1) – interpretation Definition of “child-minder” The reference to section 63 of the Children and Young Persons Act 2001 in the definition of “child-minder” is incorrect. I presume it should refer to section 21(3) of the Regulation of Care Act 2013 and the phrases to be used in the Order are “childminder” and “childminding”, per the 2013 Act.</p> <p>Definitions of “specified land” and “primary window” They are not in the correct alphabetical order. Is this deliberate?</p> <p>Article 4(1) – planning approval for certain changes of use Do you need to say “development/classes of development” or just “classes of development”?</p> <p>Explanatory note - Missing full stop at the end of 3rd bullet point.</p> <p>Redundant full stop at the end of the final paragraph.</p> | <p>The suggestions are noted and agreed with</p> | <p>Yes</p> |
| Maps | | |
| <p>Why is Village walk included in Onchan but Avondale is not? Inconsistent. Some areas seem to be included for historical reasons Bucks Rd / Woodburn Terrace? not exactly Douglas town centre</p> | <p>Areas within Douglas are intended to reflect existing uses. However, it is agreed that in the interests of consistency Avondale in Onchan should be added to the map.</p> | <p>Yes</p> |
| <p>Largely agree, but suggest that in Douglas, secondary retail areas such as Bathurst Street, Brunswick Road and Ballaquayle Road could be included as empty retail properties in those areas are undesirable.</p> | <p>Bathurst Street (North of Derby Square gardens), Brunswick Road (South of Quarter Bridge Road) and Ballaquayle Road (West of Nobles Park) are relatively removed from the main shopping area and it is not clear how much/how they would be delineated, these areas function more as neighbourhood shopping areas which are outside the scope of the DO.</p> | <p>No</p> |

| Consultation Comments | Proposed Government Response | Change |
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| Registered buildings should be specifically excluded because of internal works implications and as above have concerns over safeguarding of certain internal works of non-Registered buildings. | PD for Change of Use does not remove the requirement for Registered Building Consent. Internal alterations to non-registered buildings outside the scope of planning. | No |
| In regard to the permitted development order they question the Ramsey area map and would suggest that chapel lane and the property either side be included with the town centre area. | Amend map as suggested | Yes |