

**EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED
DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2005**

2005 No.85

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1 This Instrument amends the Town and Country Planning (General Permitted Development) Order 1995 which permits certain changes of use of premises without the need for planning permission. The GPDO is being amended to reflect the changes to the Use Classes Order. The changes to the Use Classes Order involve the introduction of three new classes, in place of the former A3 (food and drink) class. The new Use Classes are A3: (restaurants and cafes), A4: (drinking establishments), and A5 (hot food takeaways).
- 2.2 The Order also removes the permitted development rights for motor car sales showrooms to change to general retail use.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

4. Legislative Background

- 4.1 The Town and Country Planning (General Permitted Development Order) 1995 was made pursuant to section 59 of the Town and Country Planning Act 1990 (The 1990 Act)
- 4.2 Section 59 of the 1990 Act permits the Secretary of State to make a development order that grants planning permission for specified development.
- 4.3 Section 337(7) of the 1990 Act gives the Secretary of State power to vary or revoke a development order made pursuant to section 59.

5. Extent

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

This Instrument is subject to negative procedure and does not amend primary legislation. Therefore no statement as to compatibility has been made.

7. Policy background

- 7.1 *The Town and Country Planning (Use Classes) Order 1987* (as amended) (UCO) sets out classes of uses, e.g. shops, houses, residential institutions etc. The UCO provides that a move between activities within the same class is not development and therefore does not require planning permission. The *Town and Country Planning (General Permitted Development) Order 1995* (as amended) (GPDO) provides further flexibility by classifying certain moves between the Use Classes as permitted development, which similarly does not require express planning permission.
- 7.2 The Planning Green Paper, published on 12 December 2001, set out the Government's proposals for reforming the planning system, making it faster, simpler and more accessible. The Green Paper announced our intention to review the UCO to ensure that it is constructed in a way which allows deregulation where this was consistent with delivering planning policy objectives.
- 7.3 A consultation paper which set out these proposals in detail was issued on 24th January 2002, with a closing date for comments by 24th April 2002. On 27 November 2003 the Minister for Housing and Planning the Rt. Hon. Keith Hill MP issued a Written Ministerial Statement setting out the changes the Government intended to make in light of the review.
- 7.4 The A class which includes commercial premises generated the most interest and concern following the publication of the consultation document. Shortly after the Consultation Document was published, Roger Tyms and Partners were commissioned to undertake a small scale research project to investigate the potential impact of the five options for the A Use Class on town and local centres. The findings of this research suggested that none of the options for change to the A Use Class supported all the Government's planning policy objectives for all centres. However the found merit in a series of "one-off" changes to the class which would provide a positive balance of advantage over disadvantage.
- 7.5 There has been widespread concern about the cumulative impact of the increasing number of drinking establishments in town centres leading to excessive drinking by large gatherings of young people, particularly at weekends, and to anti-social behaviour. It was argued that the planning controls over drinking establishments via the Use Classes Order were not tight enough. The UCO allowed within the A3 Class, restaurants and cafes to convert to pubs and bars without the need for planning permission. ODPM received many representations that this was contributing to the increase in the number of licensed premises in some areas and that because such changes in use do not require planning permission there was little the local authority could do to manage the problem. We considered these representations carefully and decided to amend the Use Classes Order so as to put pubs and bars into a separate class. The effect of this change will be to require any proposal to change use of an existing building into a pub or bar to apply for planning permission.

- 7.6 The Government has also decided to separate into a new use class takeaways which will give authorities more control and can help with traffic management and parking as well as other town centre problems such as litter etc.
- 7.7 Of course, previously nightclubs have not had a clear classification within the current Use Classes Order. We recognise that the impact on amenity of nightclubs is distinct and different from other uses. This is why they will be classified as *sui generis* to enable local planning authorities to better manage the location and impacts of new nightclub developments.
- 7.8 These changes will help local authorities get the right balance of businesses on the high street, boosting the evening economy while at the same time clamping down on the proliferation of uses such as pubs, takeaways and nightclubs that can have significant impact on the locality. The evening economy can play a vital role in regenerating our town and city centres, so it's vital we get the right business in the right place.
- 7.9 Motor vehicle showrooms will remain classified as *sui generis*, but with permitted development rights allowing a change-of-use to A1 to be removed. This restriction is intended to prevent large, and often out-of-town, showrooms becoming retail shopping outlets without planning permission.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.
- 8.2 The impact on the public sector is minimal. The clear definition and separation of the A Use Classes, particularly the A3 classes, will provide the local planning authorities with more certainty concerning the future uses of any development. Of course, the increase in the amount of regulation relative to the existing UCO will increase the time and administrative costs to local planning authorities who will now be faced with a larger number of planning applications to consider. However, these costs should be off set in each case by the planning application fee.

9. Contact

Andrew Gough at the Office of the Deputy Prime Minister Tel: 0207 944 6530 or e-mail: andrew.gough@odpm.gsi.gov.uk can answer any queries regarding the instrument.

FULL REGULATORY IMPACT ASSESSMENT (RIA)

Changes to the Use Classes Order & Temporary Use Provisions

Issue and Objective

1. **Issue:** *The Town and Country Planning (Use Classes) Order 1987* (as amended) (UCO) sets out classes of uses, e.g. shops, houses, residential institutions etc. The UCO provides that a move between activities within the same class is not development and therefore does not require planning permission. The *Town and Country Planning (General Permitted Development) Order 1995* (as amended) (GPDO) provides further flexibility by classifying certain moves between the Use Classes as permitted development, which similarly does not require express planning permission.
2. **Objective:** The Planning Green Paper, published on 12 December 2001, set out the Government's proposals for reforming the planning system, making it faster, simpler and more accessible. The Green Paper announced our intention to review the UCO to ensure that it is constructed in a way which allows deregulation where this was consistent with delivering planning policy objectives. A consultation paper which set out these proposals in detail was issued on 24th January 2002, with a closing date for comments by 24th April 2002. In addition, the consultation paper also looked at the current temporary use provisions under Part 4 of the GPDO.

Risk Assessment

3. The options proposed in the consultation paper do not seek to address a specific risk, but are aimed at meeting the objectives set out above. The existing provisions within the UCO and GPDO were formulated on the basis that it served no-one's interest to require planning permission for types of development that generally did not damage amenity. However, the UCO must also be able to respond to the above objectives.
4. That said, the choice to leave the UCO unchanged was a possible option for all the Use Classes. While this option offers the advantage of familiarity it does nothing to tackle the concerns about the current UCO. For example, there were a number of issues in the A class such as uncertainty over the classification of recent High Street additions e.g. internet cafés and concern about the breadth of the current food and drink class (A3). Making no changes in the face of these concerns would not be consistent with delivering planning policy objectives.

Options and Benefits

5. The consultation paper set out a range of options for changes to the Use Class provisions. We did not advocate a preferred choice to encourage comments on all the options available. Furthermore we believed that this approach could generate alternative proposals to those set out in the consultation paper which, on examination, might best deliver our objectives for change. Each of the options set out in the consultation paper, as well as the main alternatives, is considered below under the relevant use classes.
6. The consultation paper also proposed that local flexibility should be encouraged in areas where the national composition of the UCO and GPDO provisions might, in the view of the local authority, have specific undesirable implications. We proposed that it should only be used where an authority's local plan sets out appropriate policy establishing where such flexibility should be applied.
7. Shortly after the publication of the consultation paper, the (then) DTLR commissioned further research to look at the impact on town & village centres of the A class proposals set out in the consultation paper. This contract was let to Roger Tym and Partners. Throughout this document, this will be referred to as "further research." The findings were occasionally at variance with the views stated in the Baker Associates report, on which the original 5 options of the consultation document were based. In consequence, our determination of the A class will be based on three elements: public consultation, the Baker Associates report and the further research stated in the Tymes report.
8. Statistics on change-of-use from this report can be found at Annex 1.

A Use Class

9. The A Use Class, at present, covers shops (A1); financial and professional services (A2); and food and drink establishments (A3). There were five options for change proposed in the consultation document plus one that proposed no change at all. All options for change proposed that A1 and A2 use classes should be merged. This would benefit developers and owners of such property, as they would no longer require an application for planning permission to change the use of their building within the new expanded use class. Although local planning authorities would benefit from the reduction in planning applications, there would inevitably be a loss in the level of control by the granting of planning permission. However, there will be less opportunity for local people to influence use class decisions, although local communities might benefit from the swifter market reaction to the changing needs of consumers.
10. Conversely, some options also proposed that one or more existing use class should be separated. For example, the A3 use class covers a very broad spread of premises associated with food and drink, i.e. restaurants, cafés, pubs, bars and takeaways. In consequence, conversions can take place between any of these uses without being subject to planning permission. A change between uses within the A3 Use Class can in practice have very different impacts on amenity. For example, restaurants are generally not thought to have the noise impacts or the anti-social behaviour impacts that pubs have. Or the litter problems, traffic-generation, and issues of short-term parking that takeaways can have. Conversely, restaurants are themselves often responsible for other impacts, such as cooking or food smells, long-term parking, and noise-generation from extractor or air conditioning fans.
11. In consequence, the view was taken that differentiation of the A3 use classes, into 2 or 3 further classes, would have many advantages; that, although the workload on local planning authorities would increase, it would allow them the opportunity to control potentially inappropriate development, and would provide local people with an opportunity to comment on a proposed changes of use.

Consultation Document - Options

Option 1

12. [Option 1](#) was to create a new "mixed retail" use class by combining the current A1 and A2 classes and the A3 class below a set size threshold of 100 square metres of gross lettable area . Above this size threshold, separate use classes would be set for establishments where the primary purpose was the sale and consumption of alcoholic drink, and establishments for the sale of food and drink primarily for consumption on the premises. Establishments for the sale of hot food to be taken away would not fall within a specific class, and so would be treated as *sui generis* (Latin: "of its own kind"; used to describe those uses which do not have a classification. Any premises classified as being treated as *sui generis* would mean that any change-of-use from *sui generis*, or to *sui generis* would require planning permission.)

Option 2

13. Option 2 was to create a new "mixed retail" use class by combining the current A1 and A2 classes, but exclude A3 uses entirely from this new class. A3 uses would be split between establishments where the primary purpose was the sale and consumption of alcoholic drink; establishments for the sale of food and drink primarily for consumption on the premises; and establishments for the sale of hot food to be taken away.

Option 3

14. Option 3 was to create a new "mixed retail" use class by combining the current A1 and A2 classes, and to include in this new class premises for the sale of food and drink primarily on the premises (but excluding take-away restaurants). Premises for the sale and consumption of alcohol would be a separate use class.

Option 4

15. [Option 4](#) was to create a new "mixed retail" use class by combining the current A1 and A2 classes, whilst keeping A3 uses as a separate use class retaining both food and drink, but excluding take-away restaurants.

Option 5

16. [Option 5](#) was to adopt either option [2](#), [3](#) or [4](#), but to include the sale of hot food within the use for the sale of food.

Option 6: *no change*

17. [Option 6](#) is to leave the A use classes unchanged. The benefits of this option are simplicity since the current composition has been in place for a number of years, and is generally well understood. However, it would not address any of the weaknesses identified with the current composition and highlighted in the consultation paper.

Alternative options

18. Perhaps not surprisingly this was a popular option, with a corresponding diversity of alternatives. Some suggested total deregulation, with A1, A2, and A3 (up to a set square footage) enjoying a single use class, although takeaways would be excluded. A2 would include restaurants/cafes over that square footage limit; A3 would be include takeaways. However, there were other proposals that advocated the reverse of this: increased regulation, with increased numbers of use classes to reflect the increased diversity of use. In particular, it was thought that the A3 use class should be sub-divided into its constituent parts: with restaurants & cafes being differentiated from pubs & bars, and takeaways being differentiated from both.

Consultation Document - Costs & Benefits

19. A full account of the costs & benefits specific to each option can be found at **Annex 2**. However, due (in part) to the findings of the consultation, the recommended option is not one of those outlined in the Consultation Document itself. The cost/benefits details will not therefore be restated in this section.

Recommended alternative option:

20. The results of the consultation indicated that an alternative option would be preferred. Although a number of responses were broadly in favour of mixed uses, although there was some variation as to where the square footage limit should be set. The outcome of further research was that combining the current A use classes could limit local planning authorities ability to pursue planning policies effectively. There was general approval for the disaggregation of the current A3 use class into separate classifications for pubs and bars and restaurants and cafes. The further separation of takeaways was a particularly popular notion amongst respondents.

21. Hence, the recommended option for reforming the Use Classes Order & Temporary Use Provisions with respect to the A Use Class is as follows.

A1 Use Class

22. We are proposing to retain the A1 use class (shops) as it stands except for:

- *Internet service premises/cafés* which we propose to include within the A1 Use Class. This should be advantageous to internet services premises. At present, local authorities find classification of such premises not easy. Classification as A1 should assist those who wish to set up internet service premises on the high street.
- *Warehouse clubs* will be classified as *sui generis*. Warehouse clubs, due to their hybrid nature, have often fallen between the gaps in classification. Case law has it that these premises are *sui generis*. As such, some warehouse clubs have been located in industrial areas – an inappropriate location for conversion to retail premises (such as supermarkets) but one difficult to prevent if warehouse clubs were to be classified as A1.
- *Motor vehicle showrooms* will remain classified as *sui generis*, but with permitted development rights allowing a change-of-use to A1 to be removed. This restriction is intended to prevent large, and often out-of-town, showrooms becoming retail shopping outlets without planning permission. It has been stated, however, that these changes could affect the actual value of motor vehicle showroom premises. In many cases, this is a major asset of the business against which funding is often obtained.

A2 Use Class

23. We are not proposing any changes to the A2 Use Classes: Professional and Financial Services.

A3 Use Class

24. We are proposing to sub-divide the former A3 Use Class: Food and Drink into three Use Classes. The divisions will be arranged as follows:

- *A3 Restaurants & Cafes*, where the primary use is the sale & consumption of food on the premises. Restaurants and cafes will remain an A3 classification. However, this amendment restricts the *change-of-use* to A1 or A2 only. Conversion to former A3 categories (ie pubs & bars, or takeaways) will require planning permission. However, it is believed that LPAs may be more willing to grant permission to new restaurants/cafes because of this requirement. Formerly, change-of-use would have been considered as permitted development.
- *A4 Pubs and Bars*, where the primary use is the sale & consumption of alcohol on the premises. This is a very minor change to the current regulations and should not prove particularly onerous for pubs and bars. Planning permission would be required before such premises can be converted to takeaways, although conversion to a restaurant would be considered permitted development.

There are fears regarding the primary use test particularly when pubs serve food as well as alcohol, and especially when the concentration of one use over the other varies throughout the day. It is argued that, in some cases, there is no clear difference between the two, particularly when food sales are an equal or greater contribution to overall revenue. However, Scotland has successfully treated pubs/bars as *sui generis* since 1989

- *A5 Takeaways*, where the primary use is the sale of hot food for the purposes of taking it away. This is a slight increase in regulation for takeaways. There would be permitted development rights for a *change-of-use* to restaurants and cafés, but *change-of-use* to pubs and bars would require planning permission. However, as takeaways would be classified as a wholly separate use class any premises that a developer wished to convert to a takeaway would require planning permission to do so.

Recommendation - Benefits

- *Businesses*: The recommended option clearly defines all the A Class Uses and hence removes ambiguity. Developers will therefore face more certainty when considering development activities.
- *Local Authorities*: The clear definition and separation of the A Use Classes, particularly the A3 classes, will provide the LPAs with more certainty concerning the future uses of any development. Hence, Local Authorities will be able to plan more accurately for the future.
- *Communities*: The increase in regulation will allow communities to have more input, through LPAs, in the location of different types of businesses as different A Use Classes have very different impacts on amenity.

Recommendation - Costs

25. There are likely to be costs for business and developers as a result of the recommended option, which proposes a removal of some of the flexibility of the existing UCO.

- *Businesses*: The fee for a planning application is currently £110. However, it is the costs to business in terms of time taken and the administrative burden of the planning application process that is the principal economic cost. Removing some of the flexibility in the existing UCO will increase the costs to businesses and who will, on aggregate, now be liable to pay the fee for a planning application more frequently.
- *Local Authorities*: The increase in the amount of regulation relative to the existing UCO will increase the time and administrative costs to LPAs who will now be faced with a larger number of planning applications to consider. In addition, in cases of increased regulation, there is matter of compensation which may be payable as a result of the removal of previously existing permitted development rights.

- **Communities:** The increased regulation and the resulting decline in flexibility will limit businesses ability to respond quickly to changes in preferences in the retail market. As a result, there may be a decrease in the turnover time between businesses, potentially resulting in a higher risk of business closure.

Equity and Fairness

26. These changes would impact on all A3 businesses. We do not believe they are overly burdensome and do not favour one business group over another. In summary, we do not believe there are any issues of equity or fairness that would result from these proposals.

Small Firms' Impact Test

27. The options and the recommended alternative are based on classification of the premises rather than size or turnover of business.

28. The option recommended does not affect small businesses unduly. There is no change to the A1/A2 Use Class; the principal changes affect the A3 Use Classes. Of these, restaurants are the most affected by these amendments in that planning permission will be required for any change-of-use to pubs and bars, or to takeaways. However, this could be offset by the greater willingness of local authorities to grant permission for a restaurant in the knowledge of this restriction. Pubs and takeaways are permitted a "one-way" change-of-use to restaurants, but are not permitted a change-of-use to each other.

29. We have consulted the SBS who are content with the recommended proposal.

Competition Assessment

30. There are three principal ways in which increased regulations can affect competition:

- *Supply and Demand:* Change in the Competitive Process though affecting Supply and Demand, e.g. changing the cost structures for firms, which can have knock-on effects in the competitive process.
- *Market Outcomes:* Changes in the Competitive Process through specifying market outcomes, e.g. specifying a minimum standard for a product.
- *Direct Impact:* Changes in the Competitive Process through direct impact, e.g. changing barriers to entry or expansion.

The Competition Assessment seeks to identify the extent to which the regulations are likely to result in any of the three above effects.

Market Structure

31. The Food and Drink industry is of considerable size and importance to the UK economy. It consists of a great many small firms, such as owner/operator takeaways and family-owned cafés to the large-scale chain operators, such as J.D. Wetherspoon or Whitbread Group of pubs and restaurants. Finally, of course, there are the very large multinationals, such as MacDonalds. Whilst it must be accepted that the larger operations control a significant sector of the market, the number of the smaller operations, particularly in the restaurant industry, indicates that the market is not dominated by these firms.

Supply and Demand

32. It is not thought that the proposed changes to the regulations would have any effect on demand within the food and drink industry. The changes are administrative in nature, and should not therefore affect the demand for the product and services on offer.

33. However, it could be argued that some businesses would be reluctant to proceed with some changes-of-uses that require planning permission and thus restrict the freedom of movement for businesses to adapt or modify their premises. However, under the new regulations only changes-of-use to pubs or takeaways require planning permission. The flexibility for businesses to undergo a change-of-use to restaurants (without planning permission) would remain.

34. Whilst we recognise that some flexibility is lost by these proposals, we do not wholly support the view that the business case for a change-of-use of an existing premises would be significantly put off by the need for planning permission (currently £110). Although a refusal of planning permission is an obvious setback to the development potential of a property, this should be viewed in the context of specific and valid planning objections against the (proposed) change-of-use.

Market Outcomes

35. The proposed changes do not specify any market outcome.

Direct Impact

36. It is thought that the proposed changes will have a direct impact on the ease in which firms can enter the market and/or change the nature of their business to reflect the needs of the market.

37. Specifically, the proposals require split the three A3 sector types into three separate use classes. Thereafter, the businesses in each sector would have to apply for planning permission for certain specific changes of use, other than changes to A1 or A2 use for which there is permitted development rights. The table below gives details:

Use Class	Proposed Permitted Change
A3: Restaurants and Cafes	Change of use to A1/A2 permitted.
A4: Pubs and Bars	Change of use to A1/A2 & A3 permitted.
A5: Takeaways	Change of use to A1/A2 & A3 permitted.

38. This means for example, that formerly where pubs/bars could be converted into A1 and A2 and either takeaways *or* restaurants, under the proposed changes, pubs and bars would be limited to A1 and A2 premises and restaurant conversions only. They would lose the facility to convert premises to a takeaway. It is a similar situation for takeaways, which would lose the facility to convert to pubs or bars. Restaurants would lose the facility to convert to both pubs/bars *and* takeaways, although like the other two sectors, would retain the facility to convert to A1 and A2 Use Classes.

39. However, we do not believe that these changes amount to barriers to entry of expansion. Indeed, although the creation of additional use classes means additional work for local authorities, it is thought that the precision of the new use classes facilitates a quicker decision on new development as there would be less potential inappropriate changes-of-use. Furthermore, the fact that these proposals restrict the change-of-use of businesses does not, in itself, restrict expansion. As, although conversion of A3 premises may require planning permission, loss of A3 premises to other uses would also require planning permission.

40. That said, there remains the possibility that businesses in this highly competitive sector which run into financial difficulty may find that that its principal asset, the property itself, is less to easy to sell as a result of the restrictions in its change-of-use. However, overall we believe that the competition element is not significant and that benefits of change are at least equal to the losses.

Consultation - Responses

41. The consultation document containing the various options for changes to the Use Classes Order was published on 24th January 2002. A full account of the responses to the consultation is obtainable in **Annex 2**.

Monitoring and Evaluation

42. We will continue to monitor the effectiveness of any changes we introduce. We intend to review any new measures within 3 years of them coming into force.

Summary and Recommendation

A1/A2 Use Class:

43. All the options for change included the merger of A1 and A2. This meant that to register disapproval of this idea meant either supporting option 6 (no change) or identifying a specific alternative. Furthermore, the consultation did not ask specifically whether A1 and A2 should be merged. The level of genuine support for the A1/A2 merger is therefore difficult to determine. By extracting the responses received elsewhere in the

document, it is possible to establish some sort of overall view, although the results are not conclusive, with those in favour of the merger numbering 171, and those against (including the 53 choosing the status quo) numbering 183.

44. However, additional research, commissioned by ODPM to look specifically into the ‘A’ use class, found against the merging of A1 and A2. There were concerns that there would be a loss of retail function. Researchers felt that, whilst merger would not be detrimental to principal centres, vitality could be harmed in smaller centres, such as district and local centres in an urban setting. This proposal would therefore undermine Government’s stated objectives of strengthening local centres.
45. **In consequence, we believe that A1 and A2 use classes should remain separate.** In effect, this proposal amounts to virtually “no change” to the current regulations as regards A1 and A2 premises, although we intend to clarify any confusion over the classification of internet services premises/café’s and of warehouse clubs, and remove permitted development rights for car showrooms. All changes are summarised below.

A3 Use Class:

46. The A3 use class covers a wide range of use, with a correspondingly wide range of impacts. Some of these are similar but often their differences (referred to at 10) are significant, and that classifying them with one single use class could bring unfortunate consequences.
47. There was considerable support to differentiate takeaways from all other A3 uses. Some of the planning issues associated with takeaways are similar to those of pubs and restaurants, eg. late night opening, cooking noises and smells. However, other problems, such as litter, short-term parking, and traffic generation, are very much the by-products of takeaways.
48. It is therefore proposed that takeaways (that is, premises where the primary use is the sale of hot food for taking away) is classified as a separate use. Change-of-use to restaurants would be permitted, in addition to the existing permitted development rights to A1 or A2 use.
49. Perhaps the most significant concern about the A3 use class related to the issue of restaurants being converted to pubs. It was felt that the operation of a restaurant has significantly different planning implications to the operation of a pub, for which there were additional concerns regarding noise, behavioural impact, and late hours of operation. In addition, it was felt that there was a cumulative impact as a result of the increasing concentration of such conversions.
50. It is thought that much of the increase in quantity and concentration of pubs and bars in-town has been due to the freedom to move within the A3 use class. Currently, without the need for planning permission for a change-of-use from a restaurant to a pub, a local authority is powerless to either refuse permission, or apply conditions. This flexibility of the UCO makes it difficult for LPAs to manage the mix of uses within town-centres to preserve the daytime vitality of these centres and do not result in major amenity or public disorder problems at night.
51. However, there are concerns about how to define the difference between what is a pub and what is a restaurant as increasingly there has been some breaking down of the traditional boundaries between a pub and a restaurant. Food sales in pubs and bars can now contribute a significant proportion of overall revenue, and sometimes constitutes a larger source of income than sales of alcohol. The concept of ‘primary use’ would clearly have to operate in these circumstances. In Scotland pubs and bars have been successfully classified as *sui generis* since 1989.
52. There are clear arguments for and against the separation of pubs from restaurants. **However, on balance, we believe that splitting A3 use classes into 3 separate entities would better assist the achievement of wider Government policy objectives.**

Summary:

53. A summary of our proposals for the ‘A’ Use Class is detailed below:

Class	Details	Permitted Change
A1: Shops and Retail Outlets	Internet service/café’s to be classified as A1. Otherwise, A1 to remain unchanged.	No permitted change
A2: Financial and Professional Services	To remain as it is.	Permitted change to A1 only (Where a ground floor window display

		exists.)
(NEW) A3: Restaurants and cafes	Where the primary purpose is the sale & consumption of hot food on the premises	Permitted change to A1 or A2.
(NEW) A4: Pubs and bars	Where the primary purpose is the sale/consumption of alcohol on the premises.	Permitted change to A1, A2, or A3.
(NEW) A5: Takeaways	Where the primary purpose is the sale of hot food for taking away.	<i>Permitted change to A1, A2, or A3</i>
Sui Generis	Warehouse clubs to be classified as sui generis. Motor vehicle showrooms to remain classified as sui generis, but with permitted development rights allowing a change-of-use to A1 to be removed.	

B Use Classes

54. The B Use Classes, at present, covers 3 principal areas: Business (B1); General Industry (B2); and Storage or distribution (B8). B1 uses, uniquely in the Use Classes Order, are themselves sub-divided into :

- B1(a): offices;
- B1(b): research & development; and
- B1(c): Light Industry.

55. There were two options proposed in the consultation document, the second of which proposed no change to the current provisions. The first option was not particularly a deregulatory measure rather it focused more on re-defining the existing classifications and sub-divisions.

Consultation Document - Options

Option 1

56. [Option 1](#), the option for change, proposed that the current B1(a) and B1(b) be amalgamated into one single sub-division, re-named B(a); and the current B1(c) be separated and redefined as B(b): “Clean production processes” ie. industrial processes appropriate in a residential area. As before, both of these sub-divisions would (up to a specified square footage) be allowed a change-of-use to B8, which retains its classification as “storage and distribution”. The current B2 would largely remain unchanged as “General production processes”, but would be allowed a change-of-use to the new “Clean production processes” subdivision as well as to B8.

Option 2

57. Option 2 would leave the B use classes unchanged.

Alternative options

58. This option was not particularly popular, with only 16 responses in favour. There was no overall consensus as to a preferred alternative.

Consultation Document – Benefits

59. The benefits and costs of the options suggested in the consultation can be examined by looking at the impacts of the options on three different groups: businesses, Local Authorities and the community.

60. Option 1

- **Businesses:** The flexibility inherent in the current B1 use class, whilst deriving many advantages, has been thought to be used as a way of avoiding area constraints, thereby enabling incremental change to take place. This option was devised as a means of circumventing that process. There is, in consequence, a marginal increase in regulation, although this was thought necessary to attain these objectives.
- **Local Authorities:** Preventing incremental change taking place between use classes gives local authorities more control over the businesses uses in their area and increases the effectiveness of their planning strategy.
- **Communities:** Option 1 will also safeguard the community against any unwelcome incremental changes.

61. Option 2

- **Businesses:** The benefits of this option lie in its flexibility and simplicity, since the current composition has been in place for a number of years and is generally well understood and businesses will therefore not incur any additional costs.
- **Local Authorities:** The retention of B1 as it stands would obviate the need for decisions on what was the primary use and what was ancillary in circumstances where all uses (ie. office, R&D, clean production) were in place, facilitating Local Authorities' planning decisions.
- **Communities:** Given that Option 2 leaves the B Classes unchanged, there are no added benefits to the communities.

62. Alternative options

- In theory, an alternative could bring together the best of the existing system and any of the proposed options for change. However, there was a general consensus that the flexibility of the current system was worth retaining and that the proposed alternative (option 1) did not satisfactorily provide a solution to any present shortcomings.

Consultation Document - Costs

63. It is difficult to estimate the cost disadvantage for the option 1 changes to the UCO. There is a marginal decrease in UCO flexibility, and a re-alignment of the B1 class sub-divisions. The fee for a planning application is currently £110. However, the attendant economic costs, the administrative burden and the time it takes to receive a decision, that is the principal economic cost.

64. In addition, in cases of increased regulation, there is matter of compensation which may be payable as a result of the removal of previously existing permitted development rights.

65. Option 1

- **Businesses:**

B(a): This proposed new sub-division is an amalgamation of the current B1(a) and B1(b) and is de-regulatory. However, under this proposal, there would be no permitted change-of-use to current B1(c) sub-division, or vice-versa. This means that premises whose primary use is light industry would have to apply for planning permission for a change-of-use to offices or research and development. As many companies mix light industry and offices, the extent of these companies to adapt quickly would be undermined.

B(b): Businesses in this category would undergo a redefinition: with “clean production processes” replacing “light industry”. However, this proposal amounts to a new use class for this category of activity. Businesses operating under this use class would have to obtain planning permission for any change-of-use to any use except B8 (up to 235m², approx. 50 sq. feet), severely limiting their flexibility.

B2: Businesses in the B2 classification are faced with a slight loss of flexibility; they would be permitted a change to B8 (up to 235m², approx. 50 sq. feet), as before, but in B1 use class, would be limited to the new B(b) use class only.

The loss in flexibility in B(a), B(b) and B2 will lead to an increase in the costs to businesses of changing between Use Classes and may also lead to an increase in the number of times the planning application fee has to be paid.

- *Local Authorities:* There will be an increase in the amount of time and resources spent by Local Authorities in order to process the larger number of planning applications now required to change between the different use classes.
- *Communities:* As the flexibility of companies to adapt quickly to changes in their is reduced, there is an increased risk of company closures, which is detrimental to the local economy.

66. **Option 2:**

- **Since no change is recommended to the B Use Class there would be no additional costs incurred by any of the three parties.**

Equity and Fairness

67. Option 1 changes would primarily impact on B1 and B2 businesses. They do not favour one business group over another. We therefore do not believe there are any issues of equity or fairness that would result from these proposals.

68. Option 2 does not recommend any change and would therefore have no impact on equity or fairness issues.

Small Firms' Impact Test

69. **These options do not affect small businesses unduly. The options and the recommended alternative are based on classification of the premises rather than size or turnover of business.**

70. We have consulted the SBS who are content with the recommended proposal.

Competition Assessment

71. There are three principal ways in which increased regulations can affect competition:

- *Supply and Demand:* Change in the Competitive Process through affecting Supply and Demand, e.g. changing the cost structures for firms, which can have knock-on effects in the competitive process.
- *Market Outcomes:* Changes in the Competitive Process through specifying market outcomes, e.g. specifying a minimum standard for a product.

- *Direct Impact:* Changes in the Competitive Process through direct impact, e.g. changing barriers to entry or expansion.

The Competition Assessment seeks to identify the extent to which the regulations are likely to result in any of the three above effects.

Market Structure

72. The B Use Class covers the vast proportion of Business and Industry. It is therefore of major importance to the UK economy and covers a vast range from small offices or light industry businesses to giant multinational companies, such as Ford Motor Company. Whilst it must be accepted that the larger operations control a significant sector of the market, there is no market domination by any single firm.

Supply and Demand

73. It is not thought that the proposed changes to the regulations would have any effect on supply and demand.

Market Outcomes

74. The proposed changes do not specify any market outcome.

Direct Impact

75. It is thought that the option 1 proposed change could have a direct impact on the ease in which firms can enter the market and/or change the nature of their business to reflect the needs of the market.
76. Specifically, the changes affect general industry where change-of-use would be permitted to storage but restricted to the 'new' sub-division of B1(b) or 'Clean Production Processes' rather than B1 in its entirety. However, a more substantive affect would be on the B1 sub-divisions, where change between B1(a) (Offices and R&D) and B1(b) (Clean Production Processes) would require planning permission.

77. The table below gives details:

Use Class	Proposed Permitted Change
B1(a): Offices and R&D	Change of use to B8 permitted (up to a 235 m ²).
B1(b): Clean Production processes	Change of use to B8 permitted (up to a 235 m ²).
B2: General Production	Change of use to B8 permitted (up to a 235 m ²). Change of use to B1(b) permitted.
B8: Storage & Distribution	Change of use to B1(a) and B1(b) permitted. Change of use to B8 permitted (up to a 235 m ²).

78. This means that, formerly, where business and light industry could mix their uses, for example moderating their primary use from offices to light industry without the need for planning permission, this change-of-use would now require it.
79. Although we do not believe that these changes amount to barriers to entry, there is an undoubted loss of flexibility here which runs the risk of restricting business expansion. In addition, there could be disputes over the interpretation of "primary use" which would occupy both local authority and business resources.

Consultation

80. The consultation document containing the various options for changes to the Use Classes Order was published on 24th January 2002. There were over 2500 responses to the consultation document, with 270 responses received relating to the B use class. The respondents included trade and professional associations, local authorities and government associations, the CBI, British retail Consortium, various Planning Institutes, Associations, and Societies.

81. **Option 1:** was a popular choice with 103 responses from 270. Support for this option was broadspread, although planning authorities constituted the bulk of the response with 71 in favour. However, enthusiasm was often qualified by specific concerns. Many thought greater clarification of "clean production" was necessary to avoid difficulties of definition. Some questioned the logic of not permitting a change-of-use from B1(c) to B1(a/b) which was invariably a benefit. Others

thought that “clean production” did not take into account potential increases in traffic generation.

82. **Option 2:** was clearly the most popular choice, with 151 responses in favour of “no change.” This figure was obtained by adding together the 70 responses favouring Option 2, with the 81 responses who separately advocated “no change”. There was appreciation for the flexibility of the current B1 use class, avoiding undue complications, and a view that, overall, the current provision has worked reasonably well. In addition, it was thought that option 1 would create problems of definition and that addressing the change-of-use from B2 to B1 was dealing with a problem which was not really prevalent.

83. **Alternative Options:** No specific alternative solutions became apparent as a result of the consultation.

Monitoring and Evaluation

84. We will continue to monitor the effectiveness of any changes we introduce. We intend to review any new measures within 3 years of them coming into force.

Summary and Recommendation

85. There is a lot to be said for the flexibility of the current system. For developers the broad spread of uses prevents the need for precise clarification over what is primary use and for local authorities the current system includes the possibility of using conditions to limit development where this is necessary.

86. In addition, we remain to be convinced of the benefits offered by the additional regulation of option 1 outweigh the loss in flexibility. Firstly, the segregation of “clean production processes” brings problems of clarification and, in some cases, the question of primary use. Secondly, those concerned that science parks could give way to office or business parks would not be assuaged by this option which cannot prevent this.

87. Overall, therefore, we recommend that the B Use Class should remain as it is.

C Use Class

88. The C Use Classes is concerned with different types of residential occupation. At present, it is divided into 3 principal classes: Hotels (C1); Residential Institutions (C2); and Dwelling Houses (C3).

Consultation Document – *Options*

89. There were no options proposed in the consultation document. It was thought that the existing system works reasonably well and that, although there were concerns about the composition of the current C use class, there was no identifiable alternative which satisfactorily addressed these issues.

Consultation Document – *Benefits and Costs*

90. Since no change is proposed for the C Use Class there are unlikely to be any additional benefits beyond familiarity with the current system. There are no

compliance costs which is a principal advantage for developers and local authorities.

Equity & Fairness

91. We propose no change. We do not believe there are any issues of equity or fairness which would result from this decision.

Small Firms Impact Test

92. There is no specific impact on small firms.

Competition Assessment

93. There are no proposed changes in the C Use Class so a competition assessment is not required.

Consultation

94. One of the benefits of retaining the current C use class lies, of course, in its familiarity. However, many of the responses to the consultation suggested that one of the concerns regarding the C use class was its perceived lack of clarity. No change in his regard might be seen as a missed opportunity.

95. The consultation document addressed some of the main issues that affect the C Use Class and asked whether a change to the current composition would better meet Government objectives. 93 of the 232 respondents thought that a change to the C class would not achieve Government objectives; 61 thought that it would. 78 abstained.

96. Overall, the respondents shared a number of similar concerns: the classification of student accommodation; the clarity over the definition of Houses of Multiple Occupation; the question of a separate use class for affordable housing, or for holiday and short-term housing were also raised. However, no specific alternative solutions were identified as a result of the consultation nor any overall consensus of view.

Monitoring and Evaluation

97. We will continue to monitor the effectiveness of the UCO. We intend to review any new measures within 3 years of them coming into force.

Summary and Recommendation

98. We therefore recommend that the C Use Class should remain as it is.

D Use Classes

99. The D Use Classes, at present, covers 2 principal areas: non-residential institutions (D1); and Assembly and Leisure (D2). There were three options for change. Although, as the main issues concerned the D2 use class, two of the three options for change affected D2 only. The principal issue in the D2 class was “nightclubs”.

Consultation Document - Options

Option 1

100. Option 1 proposed that nightclubs where the primary purpose is the sale and consumption of alcohol, and where the “gross lettable area” was above 100 square metres (approx. 1550 square feet) should be classified in the A use class, along with pubs and bars.

Option 2

101. *Option 2* proposed that all nightclubs should be in a use class of their own, either in the D class where change of use to other D2 uses could be permitted, or the A class where change of use to A class uses could be permitted.

Option 3

102. *Option 3* proposed that both D1 and D2 Use Classes be amalgamated into one single Use Class.

Option 4

103. *Option 4* proposed maintaining the current D Use Class structure.

Alternative options

104. There were a number of concerns raised in the consultation document of which only nightclubs were effectively addressed. These included loss of cinemas, theatres and gambling premises. A variety of alternative options were proposed which addressed this issue as well as others, although there was no overall consensus.

Consultation Document – Benefits

105. The benefits and costs of the options suggested in the consultation can be examined by looking at the impacts of the options on three different groups: businesses, local authorities and the community.

106. Option 1

- **Businesses:** This option recognises that many nightclubs, for all practical purposes, function as pubs with dance floors. Therefore, both to avoid confusion and differential treatment it was thought that the larger nightclubs where primary use was the sale of drink should be treated the same as pubs and placed in the same use class. The transparency of this option reduces ambiguity and allows businesses more flexibility to move between two very similar types of business. This added flexibility, will reduce costs and allow businesses to respond to changes in the market more easily.
- **Local Authorities:** Reducing the ambiguity concerning the classification of nightclubs will make it easier for Local Authorities to make planning application decisions regarding their use.
- **Communities:** Nightclubs and pubs and bars have very similar impacts on local communities. Placing nightclubs in the same Use Class as pubs and bars could facilitate local authorities in safeguarding communities from the negative impacts of these uses.

107. Option 2

- **Business:** The benefits of this option lie in its simplicity. The issue of nightclubs is dealt with by separation into a new Use Class, but there is no determination based on square footage; nor over the debatable area of what is the primary purpose. Hence developers face no ambiguity in setting up nightclubs.
- **Local Authorities:** Developers who wished to convert existing premises to nightclubs would require planning permission before so doing and, in consequence, local authorities would have some input into the development of nightclubs in their area.
- **Communities:** Communities can exert more influence, through Local Authorities, on the development of nightclubs in their area.

108. Option 3

- **Businesses:** This option recognises the disparate nature of the D Use Class, often thought as a “everything else” or “default” category. It is a deregulatory measure which relies on the principal that many D1 functions have very similar impacts on amenity as those in D2. eg. it has been suggested that churches might have very similar patterns of visitors to cinemas or concert halls. Furthermore, under this option, developers would be allowed to convert any D class premises into any other D class use without planning permission. This could result in swifter conversions of existing and possibly even closed D class premises to other uses, decreasing the costs to businesses of responding to changes in the market.
- **Local Authorities:** This deregulatory measure will reduce the number of planning applications required for conversions within the D Classes. Local Authorities will therefore spend less time and resources on considering planning applications.
- **Communities:** Decreasing the costs to businesses of responding to changes in the market will reduce the risk of business closures, and may increase the conversions of unused premises and regenerate the area.

109. Option 4

- The “no change” option offers the advantage of familiarity.

110. Alternative options

- The benefits of the alternative options are that they take into account other concerns, as well as nightclubs.

Consultation Document – Costs

111. There is a range of ways in which changes to the Use Classes could affect businesses in the D Use Class. However, it should be noted that 2 out of the 3 options for change would principally affect nightclubs.

112. Under options 1 and 2, any proposal to convert nightclub to any other use, which includes D2 uses, would need planning permission to do so. It is difficult to estimate the costs of this requirement. The fee for a planning application is currently £110. However, it is the attendant economic costs; the time it takes to receive a decision and the possibility of refusal that are the principal economic costs.

113. However, it should be noted that the current UCO does not make reference to ‘nightclubs’ by that term. The D2 Use Class refers to “Dance Halls,” which could be taken to include “nightclubs,” although the matter is by no means clear, particularly as some pubs with dance floors and late licences are closer to

nightclubs in amenity issues but are classed as A3. Therefore, the need for planning permission for a change-of-use may not be the additional burden it first seems, as it was never quite clear to which category they belonged in the first place. Although, of course, where formerly the nightclub was either D2 or (exceptionally) A3, the proposal puts them in separate use altogether.

114. Option 1

- **Businesses:** This option would differentiate some nightclubs from others depending on their square footage and their primary use. The smaller nightclubs below this threshold would remain in class D2 and, therefore, would not be subject to any compliance costs. It is difficult to estimate the compliance costs for those larger nightclubs which would, under this proposal, be allied with pubs within the A use class. However, some local authorities may be reluctant to grant planning permission for these categories in the knowledge that such a change-of-use between pubs/bars and the larger nightclubs would be possible without planning permission.
- **Local Authorities:** The use of square footage and primary use as determinants of classification, could lead to disputes if planning permission was thought to be in doubt, leading to the use of more Local Authority time and resources. It should also be remembered that, under our recommendations on the A use class, pubs & bars would be able to convert to restaurants and bars, or A1/A2 use classes. Under Option 1, a large nightclub could, by incremental steps, become a large shop. In some cases, this would result in large shops (eg. supermarkets) being developed in unforeseen and perhaps inappropriate locations.
- **Communities:** Similar to Local Authorities, communities could suffer if large shops were developed in inappropriate locations due to the regulations in this option. Also, the potential reluctance of some authorities to grant planning permission to pubs and bars, in fear of them becoming nightclubs without planning permission in the future, could have negative economic impacts on the community.

115. Option 2

- **Businesses:** This option wholly separates all nightclubs from other classifications. It has the advantage of clarity as there would be no complex or disputable square footage determinations although it is not deregulatory. It will therefore lead to an increase in the number of planning applications and a consequent increase in the costs to developers. Planning application fees are currently £110. However, beyond this and the administrative requirements it is difficult to state the costs of such a policy on nightclubs. In some cases where, for example, there was a significant youth sector not served with nightclub facilities it may be that the LPA would grant permission for a licensed nightclub where they may have been more circumspect over a wider pub/nightclub classification, which could result in an additional pub. However, equally, it may be that the LPA would refuse an application if it thought that the proposed location was inappropriate.
- **Local Authorities:** The increase in regulation will increase the number of planning applications required for conversions within the D Classes. Local Authorities will therefore spend more time and resources on considering planning applications.
- **Communities:** The increase in regulation decreases the flexibility developers have to convert large vacant premises into nightclubs, potentially leaving premises vacant.

116. Option 3

- *Businesses:* Option 3 is de-regulatory. There are no additional costs. However, under this option, developers would be allowed to convert any D class premises into any other D class use without planning permission. In some cases, this means that developments could take place in inappropriate locations. Beyond this, it could be argued that some LPAs may feel reluctant to grant permission for new construction in the D class, mindful of the possible future changes-of-use, over which (without conditions) they would have very little control.
- *Local Authorities:* The de-regulation may make it more difficult for Local Authorities to plan for future changes-of-use.
- *Communities:* The de-regulation will decrease the influence the local community has over different class uses occurring in their area. The community may therefore suffer from negative impacts produced by developments in inappropriate locations.

Equity & Fairness

117. We do not believe there are any issues of equity or fairness which would result from this decision.

Small Firms Impact Test

118. Options 1 and 2 primarily affect nightclubs. Although some of these would be small businesses, it is not thought that these changes will be specifically harmful to their ongoing operation. These changes would only take effect should these businesses wish to convert their premises to another use, as existing nightclubs undergoing a change-of-use will require planning permission. Developers wishing to establish a new nightclub would need planning permission, but this requirement is not thought to be particularly onerous on small businessmen.

119. We have consulted the SBS who are content with these proposals.

Competition Assessment

120. There are three principal ways in which increased regulations can affect competition:

- *Supply and Demand:* Change in the Competitive Process through affecting Supply and Demand, e.g. changing the cost structures for firms, which can have knock-on effects in the competitive process.
- *Market Outcomes:* Changes in the Competitive Process through specifying market outcomes, e.g. specifying a minimum standard for a product.
- *Direct Impact:* Changes in the Competitive Process through direct impact, e.g. changing barriers to entry or expansion.

The Competition Assessment seeks to identify the extent to which the regulations are likely to result in any of the three above effects.

Market Structure

121. Two of the three proposed changes, including the recommended change, primarily affect the D2 Use Class only specifically nightclubs. Option 3 affects the entire D Us class.

122. The D2 Use Class, Assembly and Leisure, covers very a broad range of operations. However, the inclusion of nightclubs among them is not specific. In contrast, “dance halls” are a stated D2 use, a fact which has led many local authorities to categorise nightclubs in the same classification. However, there are many pubs (currently A3) with dance floors and late licences which, for all practical purposes, function as nightclubs. There is undoubted confusion over this, to which the solution is either: specific inclusion of nightclubs within D2; inclusion of nightclubs within another use class for example, the same one as pubs; or a new use class altogether. The nightclub ‘industry’ is not a large one, although changes to this sector of activity could have impacts on the pub industry that is.

123. There are some larger operations in the nightclub industry, although there is no market domination by any single firm.

Supply and Demand

124. It is difficult to accurately determine how these proposed changes would affect supply and demand in this area.

125. As explained above, the proposed changes will establish nightclubs in their own use class. As a consequence, those wishing to convert existing premises (whether a pub or cinema) into a nightclub would require planning permission to do so. It is difficult to determine the extent of this administrative burden as it was never clear to which use class nightclubs belonged in the first place. Therefore, whilst these provisions result in a slight loss of UCO flexibility, they at least provide nightclub developers with a degree of certainty which never existed before.

126. On the other side, this provision gives local authorities an opportunity to exercise a higher degree of control over developments in their area. It may be the case, for example, that a local authority would be more willing to grant permission for a D3 nightclub than a A3 pub, or a wide-ranging D2 classification.

Market Outcomes

127. The proposed changes do not specify any market outcome.

Direct Impact

128. It is thought that options 1 and 2 could have a direct impact on the ease in which firms can enter the market and/or change the nature of their business to reflect the needs of the market. This is not the case with option 3.

129. Specifically, option 1, which identifies a clear link between some of the larger nightclubs and pubs, would mean that a change-of-use between these uses would be permitted. Obviously, a factor here is what decision is taken over the classification of pubs. Currently, the A3 classification would mean that this proposal would allow a change-of-use from a restaurant to a nightclub.

130. Option 2 for the separation of nightclubs would mean that any change-of-use from a nightclub to any other use or from any other use to a nightclub would require planning permission. The requirement for planning permission can, we believe, amount to a barrier for entry for new nightclubs. Clearly, where formerly cinemas or bingo halls could be converted without LPA involvement, option 2 would require planning permission. However, there may be cases, perhaps where there was an identified lack of entertainment venues, in which a nightclub would be granted planning permission and a pub would not.

Consultation

131. The consultation document containing the various options for changes to the Use Classes Order was published on 24th January 2002. There were over 2500 responses to the consultation document, with 275 responses received relating to the D use class. The respondents included trade and professional associations, local authorities and government associations, as well as various Planning Institutes, Associations, and Societies.

132. **Option 1** was not a popular option, with only 19 in favour from 275 respondees. There were concerns over the value of square footage thresholds; others thought that there would be problems of definition over what was the "primary use". There was also a view that those pubs which did not have loud music/dancefloors etc. would be unfairly categorised with those that did, and may therefore be faced difficulties over planning permission.

133. **Option 2** was substantially the most popular of the three options for change, with 101 responses (37%) in favour. The separation of nightclubs was generally favoured, although some warned that an accurate definition of nightclubs would be required to differentiate them from those pubs which have dance floors and late licenses. However, it was thought that nightclubs, with their late hours, loud

music, large capacity crowds, had specific amenity issues that were best answered with a separate use class. This would allow local authorities a greater degree of control in putting nightclubs in the most appropriate location and prevent a control-free *change-of-use* from other uses to nightclubs, or vice-versa.

134. **Option 3** was not popular, with 19 only responses in favour, the same as option 1. It has very little to recommend it other than its deregulatory nature. The argument that some D1 land uses are similar to some others in D2 is not a robust one and does not stand up to scrutiny. It was felt that the very wide range of activities of an amalgamated use class would lead to significant changes-of-use, which could have significant environmental impacts on amenity. Art galleries and libraries, for example, are very much daytime establishments; are not given to significant problems of amenity such as litter or noise or crowds; and are valued public services. Under this option, there could many such premises presently occupying D1, with similar low amenity impact, which could change its use to, for example a nightclub.
135. **Option 4** was actually the most popular of all, with 113 responses (41%) in favour. It has the advantage of familiarity. It could be argued that support for the current system shows that concern over other D2 uses becoming nightclubs was not prevalent. However, this option does not address any of issues presented in the consultation document including the issue of nightclubs, over which there was in fact much public disquiet.
136. **Alternative Options.** There were surprisingly few suggestions, with only 23 in favour of an alternative structure. An alternative option could, theoretically, offer greater variety and address a wider range of concerns. However, very few alternatives arose from the consultation on which there was consensus.

Monitoring and Evaluation

137. We will continue to monitor the effectiveness of any changes we introduce. We intend to review any new measures within 3 years of them coming into force.

Summary and Recommendation

138. The similarities of nightclubs to some pubs was the primary rationale behind Option 1. However, perhaps because determinations based on square footage could lead to disputes, it was not popular and could cause more problems than it was designed to solve.
139. Option 2 deals with the nightclubs issue in a far simpler way. This avoids uncertainties of classification, although all nightclubs would be affected. It received the vast majority of responses of the options for change. This option is not deregulatory, although it has the benefit of clarity. Other than nightclubs, which would occupy a new use class, this option leaves D unchanged.
140. Option 3 has little to recommend it, other than it is de-regulatory. Very wide classifications as this option proposes would permit change-of-use to occur between manifestly different types of use with wholly different amenity issues. For example, under this proposal, a library or an art gallery could become a nightclub

or a casino. The low level of responses following consultation was evidence that concern for the consequences of this option were strongly felt.

141. We recommend that option 2 be taken up in the revision of the UCO.

Use Classes RIA

Declaration

142. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the minister responsible

Keith Hill

Minister for Planning ODPM

Eland House
Bressenden Place
Westminster
SW1E 5DU

Date: 21st January 2005

Official Contacts:

Katy Collins or Andrew Gough
Planning Development Control Division
Office of the Deputy Prime Minister
Zone 4/H1 Eland House
Bressenden Place
London
SW1E 5DU

020 7944 6530 or 3942

David Moir
Departmental Regulatory Impact Unit
Office of the Deputy Prime Minister
Room 17/3
26 Whitehall
London
SW1A 2WH

020 7944 8922

ANNEX 1

Change of Use statistics

The research undertaken by Roger Tym & Partners conducted a range of case studies which looked into the effect of all the A class options on various types of centre around England. These were, in particular:

- Principal centres (Clapham Junction);
- District centres (Balham, in London, & Westbrook, Cheshire);
- Local centres (Penketh, near Warrington, Cheshire, & Earlsfield, in Wandsworth);
- Market towns (Mildenhall in Suffolk, and Hexham in Tyndale, Northumberland);
- Village centres (Haydon Bridge, in Northumberland).

Their findings, whilst not intended to be specifically representative of the whole country, are, nevertheless, informative. The figures below refer to the last 2-3 years.

Principal centres: **Clapham Junction**

12 change-of-use applications
75% from A1 Class
Most change of use were to A2 or A3
All have been approved

District centres:

Balham, London

12 change-of-use applications
58% from A1 Class
Most change of use were to A2 or A3
2 refusals

Westbrook, Cheshire;

1 change-of-use application
A3 to A2 use

Local centres:

Penketh, near Warrington, Cheshire

2 change-of-use applications
50% from A2 Class, 50% from Class A3

Earlsfield, in Wandsworth

4 change-of-use applications
All from A1 Class
All changes of use were to A2 or A3
All approved

Market towns:

Mildenhall in Suffolk

16 change-of-use applications
8 involved the A class
50% from A1 Class
62% of changes of use were to A2 or A3
38% of changes of use were to A1.

Hexham in Tyndale, Northumberland

5 change-of-use applications
40% from A1 Class
80% of changes of use were to A2 or A3
4 approved; 1 refused

Village centres:

Haydon Bridge, Northumberland.

No changes-of-use applications

Consultation Document - Benefits

143. The proposals will affect primarily the commercial development sector. Changing the definition of Use Classes may affect the flexibility of developers to respond to market demand for different uses. Any inflexibility could impose an extra cost on the community.

144. The benefits and costs of the options suggested in the consultation can be examined by looking at the impacts of the options on three different groups: businesses, local authorities and the community.

145. Option 1

- *Businesses:* The benefits of this option were thought to be the greater flexibility for change, which would reduce the need for planning permission and thereby saving both time and money for developers.
- *Local Authorities:* The greater flexibility for change provided by this option will reduce the number of planning permissions required, saving time and money for the local authorities.
- *Communities:* The inclusion of a range of activities within this mixed retail use should maximise the opportunities for the full use of premises. This would reduce the risk of business closures and businesses would respond faster to the consumer demands of the local community.

146. Option 2

- *Businesses:* Similarly to option 1 the benefits to business include the greater flexibility for change between A1 and A2 uses.
- *Local Authorities:* The greater flexibility for change between A1 and A2 uses will reduce the authorities' expenditure on resources for granting planning permission. The benefit over the first option is that local authorities could grant development in the knowledge that no change-of-use which could have serious impacts on amenity could occur thereafter.
- *Communities:* Residents will have input, via the local authority, on changes of uses occurring within their area.

147. Option 3

- *Businesses:* Offers greater flexibility than option 2, further reducing the cost to developers.
- *Local authorities:* Local authorities will retain control over pubs and bars that could have significant impacts on amenity.
- *Communities:* Communities, through the local authority, will also have control over the development of pubs and bars.

148. Option 4

- *Businesses:* The benefits of this option are the same as those set out for options 2 and 3 above.
- *Local Authorities:* This option would retain the current flexibility for establishments to change from restaurants to bars (or vice versa) without the need for planning permission, thus necessitating fewer decisions on whether a material change had or had not occurred.
- *Communities:* Communities could exercise influence on the location of takeaways which have the greatest impact on local amenity.

149. Option 5

- *Businesses:* The benefits of this option are, accordingly, those stated at options [2](#), [3](#) or [4](#) above but with the additional benefit that it would avoid difficulties of definition (for example where a fast-food restaurant includes eat-in and take-away facilities in equal amounts). This would reduce the uncertainty to the developer of receiving planning permission.
- *Local Authorities:* The benefits remain the same as for option 2, 3 or 4 above.
- *Communities:* The inclusion of a range of activities within this mixed food use should maximise the opportunities for the full use of premises. This would reduce the risk of business closures and businesses would respond faster to the consumer demands of the local community.

150. Option 6

- The benefits of this option are simplicity since the current composition has been in place for a number of years, and is generally well understood by all three parties.

Consultation Document - Costs

151. It is difficult to estimate the economic advantages of deregulation and an increase in UCO flexibility. The fee for a planning application is currently £110. However, it is the costs to business in terms of time taken and the administrative burden of the whole planning application process that is the principal economic cost.

152. In addition, in cases of increased regulation, there is matter of compensation which may be payable as a result of the removal of previously existing permitted development rights.

153. Option 1

- *Businesses:* Lack of planning control may over time make the offer in town centres too limited to attract consumers.
- *Local authorities:* The greater flexibility between use classes under the threshold may make it difficult for authorities to plan effectively, as businesses may change uses without planning permission, and without consideration of the impacts on the local community.
- *Communities:* Local communities will have less influence over the type of developments that occur in their local area on premises smaller than 100 square metres of gross lettable area.

154. Option 2

- *Businesses:* This option blends de-regulation (amalgamation of A1 and A2, as above) with increased regulation (sub-division of A3.) Accordingly, whilst there are likely to be reduced costs for business as regards the former; there is a likelihood of increased costs as regards the latter, as former A3 businesses have lost the flexibility of the existing A3.
- *Local Authorities:* Increased regulation in the A3 Use classes will increase the costs to local authorities in terms of time and resources in considering planning applications without commensurate pay off in the A1 and A2 class.
- *Communities:* Local communities will have significantly less influence over the type of developments that occur in their area.

155. Option 3

- *Businesses:* This option also blends de-regulation with increased regulation. In this option, restaurants would enjoy increased UCO flexibility, although takeaways and pubs would be separated. The overall costs to businesses will hence depend on what Use Class is being developed.
- *Local Authorities:* Local authorities will face fewer costs as they will not have to consider planning applications in the new mixed retail class but they will exert less control. The resource implications for option 3 will be less than for option 2 in the longer term.
- *Communities:* Communities may find they can only influence the offer in town centres by their consumption habits. They retain some influence over the location of pubs and bars.

156. Option 4

- *Businesses:* This option is generally de-regulatory although takeaways are excluded from their current classification. Whilst this option is likely to result in reduced costs overall, it would, of course, increase costs for developers looking to convert premises for takeaways.
- *Local Authorities:* Authorities would generally spend less time and resources on considering planning applications with regards to A1, A2 and A3 use classes but would have to spend more resources than at present in considering developments to be converted to takeaways.
- *Communities:* Communities will not be able to influence conversions between A1 and A2 classes or within A3 classes but may be able to express their preferences for the location of takeaways.

157. Option 5:

- *Businesses:* This option is generally de-regulatory. Its costs are, correspondingly, similar to options 2, 3, or 4, depending on choice. However, its main attribute is

the inclusion of hot food within the sale of food. This broadens the categories and is a flexible measure, with lower costs accordingly.

- **Local authorities:** As this option is generally deregulatory, it will reduce the time and resources spent by the Local Authorities. However, it may increase the uncertainty Local Authorities face about future conversions.
- **Communities:** Similarly, deregulation may limit the opportunity of the local community to express their preferences for the conversion to different Use Classes.

Option 6:

158. No change: no costs or savings.

Consultation - Responses

159. The consultation document containing the various options for changes to the Use Classes Order was published on 24th January 2002. There were over 2500 responses to the consultation document, with approximately 350 responses received relating to the A use class. The respondents included trade and professional associations, local authorities and government associations, the CBI, British retail Consortium, various Planning Institutes, Associations, and Societies.

160. **Option 1** was not a popular choice, with only 29 responses from over 350. Support for this option came primarily from the restaurant industry. However, even advocates of this option were critical of the “gross lettable area” threshold. There were universal views to the effect that the chosen square footage (100 sq. metres) was not large enough, although the preferred floor-space varied from 175 to 235 square metres. In consequence, with the balance of support and the weight of additional research against option 1, we feel that it is not most appropriate choice.

161. **Option 2** was substantially the most popular of all options presented, with 111 responses from 352. Local planning authorities particularly favoured this option, with 57 responses in its favour.

162. There was general support for the sub-division of A3, including the separation of takeaways. In addition, it avoided the difficult area of size limits and the “gross lettable area” concept that was thought would lead to disputes. However, like all options for change, option 2 included was hampered by the merging of A1 and A2 which, as stated in paragraph 114, is not be supportive of Government objectives in strengthening local centres. However, there were one or two concerns with this option. The A3 sub-divisions would require firm definitions to distinguish between pubs/bars and restaurants/cafes. In many cases, some establishments functioned as a restaurant during certain hours and as a busy pub at other times. As it stood, there was a “grey area” in this regard, which could lead to confusion and uncertainty. Therefore, despite the many advantages of this option, due to the A1/A2 merger, we could not support option 2 in its entirety.

163. **Option 3** received very little support, only 23 responses in favour, and the support it received was highly sector-specific with 14 responses coming from business and retail groups, with whom this option was marginally the most favoured option.

164. There was amongst the responses general support for the “mixed-use” retail class that would allow the market to determine the make up and balance of retail uses within a shopping centre without the need for planning permission. However, despite this general endorsement for the flexibility offered here, there were some concerns that the A1/A2 merger could result in a loss of A1 retail outlets to A2 financial uses. In addition, the researchers felt that this option would impact negatively on objectives for principal and district centres, especially where there was demand for restaurants that would result in a reduction of footfall and losses in the daytime economy. There was general support for the separate classifications for pubs/bars and takeaways (including drive-through) within option 3. However, overall there was very little to recommend this option.

165. **Option 4** also solicited a low level of support, with only 20 responses in favour. Support came primarily from the pub/restaurant industry for which this was the regulatory option. They thought that placing pubs and restaurants within one class recognised the difficulty of clear definitions between what was a pub and what was a restaurant. The evolution of the so-termed “gastro pub” meant that the demarcation line between the two is less apparent. Indeed, with some premises operating primarily as restaurants during the day and as pubs in the evenings, it was suggested that even the operation of “primary use” would not suffice. However,

other than the separation of takeaways, this option was very similar to the existing A3. Accordingly, this option allowed the conversion of restaurants to pubs, or *vice versa*, without the need for planning permission and did not adequately reflect others' concerns about the proliferation of drinking establishments. As with all the others options this one also advocated the merger of A1 and A2, discussed earlier.

166. **Option 5** was the most unpopular option, with only 1 response in its favour. It was evident that the inclusion of hot food sales within the sale of food was not thought to be positive. Furthermore, there was prevalent view that takeaways should have their own use class. The researchers supported this, regarding the introduction of controls for takeaways as being a useful tool in meeting Government town centre objectives. Accordingly, option 5 was not favoured.

167. **Option 6** that proposed maintaining the current use classes was not a popular choice. However, there were some that suggested that the current system struck a broadly successful balance between free market flexibility and regulation. Others were not so much advocates of the current system just wary of the potential pitfalls of changes to it.

168. **Alternative options.** All the all options for change incorporated the merger of A1 and A2. The benefit of this policy has since been validly questioned thus all options for change proposed in the consultation document are compromised in this respect. Therefore, a hybrid option that takes the best of the proposed options would seem to be the most logical choice.

169. Perhaps unsurprisingly, this option was very popular with a wide variety of respondents, with a corresponding diversity to their recommended alternatives. Some suggested complete deregulation allowing current A1, A2, and A3 (up to 200 sq. metres) to be all reclassified as A1, with pubs/restaurants over 200 sq. metres being A2, takeaways as A3, and the rest as *sui generis*. The general logic here was that this option allowed the greatest flexibility and allow a mix of A1 – A3 type premises on the high street. There was a belief that the planning system was not the place to control disruptive behaviour of rowdy pub-goers, and that the forthcoming licensing regime should deal with any concerns.

170. However, in contrast, other proposals espoused increased regulation, with increased numbers of classes to account for the increased diversity of uses. Change of uses between class being permitted or not permitted, accordingly. Others favoured a middle ground approach, being broadly in favour of the mixed classes concept, although there was hesitancy about the concept of 100 sq. metres limit, which was not thought to be useful. There was general approval for pubs/bars to be distinct from restaurants/cafes, and for takeaways to have their own class.

TOWN & COUNTRY PLANNING (USE CLASSES) ORDER

Full announcement of the review of the Use Classes Order Keith Hill

IN January 2002, the Government issued a consultation document on possible changes to the *Town & Country Planning (Use Classes) Order*, with a closing date for responses were on 24th April 2002. We received over 2,500 responses which the ODPM has been considering.

Initial proposals to amalgamate the A1 and A2 Use Classes, resulting in a very wide Use Class, comprising of not only shops and stores but also premises in the financial and professional services sector.

However, there was anxiety, from a range of sectors in the marketplace, that this proposal may not prove beneficial for business growth and would, on the whole, do more harm than good. As a consequence, I can announce today that this proposal has been reconsidered and has now been dropped: the A1 and A2 Use Classes will remain separate.

That said, I am announcing a number of -- quite small but important -- amendments to the A1 Use Class, which will have the effect of bring it up to date. These include:

- Clarification of internet service premises - sometimes called internet cafes - as an A1 classification;
- Re-classification of warehouse clubs as *sui generis* (of its own kind), following UK case law;
- Amendment of permitted development rights for motor vehicle showrooms, (currently - and remaining - *sui generis*) removing the permitted rights for a change-of-use to A1 classification.

There is to be no other changes to the A1 Use Class.

There is to be no change to the A2 Use Class.

The current A3 is a wide-ranging classification which includes cafés and restaurants, pubs and bars, and takeaways. There is widespread concern that such a broad classification, which allows changes-of-use from restaurants to pubs without the need for planning permission, contributes to the increase in the number of licensed premises.

As indicated by Tony McNulty, in March of this year, the Government has considered these representations, and I am announcing today our intention to modify the A3 Use Classes, differentiating restaurants and cafés, pubs and bars, and takeaways.

Restaurants and bars will retain their A3 classification, with a permitted change to A1 or A2 Use Classes, but with all other changes-of-use requiring planning permission.

Pubs and bars will be classified under the (new) Use Class of A4.

Takeaways will be classified under the (also new) Use Class of A5.

Both A4 and A5 Use Classes will be permitted a change-of-use to A1 or A2 classification, and A3 classification. Any other proposed changes-of-use will require planning permission.

We do not propose to make any amendments to the current B Use Classes.

Neither do we propose to make changes to the current C Use Classes.

The current D Use Classes will contain one only amendment.

The issue of nightclubs was addressed in the consultation document. To begin with, the current D Use Class simply does not make reference to 'nightclubs' specifically. The existing reference to 'dance halls,' aside from being rather quaint, is actually insufficient and unsatisfactory. In consequence, I am announcing today a new classification specifically to remedy this anomaly.

I do not propose any other amendments to the current D1 or D2 classification, but a new Use Class of D3 will be the classification for nightclubs. Planning permission would be required for any change-of-use from or to a D3 classification.