

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (USE CLASSES) (AMENDMENT)
(ENGLAND) (NO. 2) REGULATIONS 2020

2020 No. 859

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (S.I. 2020/757) (“the Amendment Regulations”) amend the Town and Country Planning (Use Classes) Order 1987 (S.I. 1987/764) (“the Use Classes Order”) on the 1st September 2020 as it applies to England by replacing certain existing use classes with new ones.
- 2.2 This instrument inserts (in advance) a new regulation 4A into the Amendment Regulations.
- 2.3 The purpose of this instrument is to ensure that Community Infrastructure Levy charging schedules continue to operate and have proper effect when the Amendment Regulations come into force. New regulation 4A applies with respect to charging schedules approved and published by charging authorities before 1st September 2020, under regulation 25 of the Community Infrastructure Regulations 2010 (S.I. 2010/948). It provides for any references in such charging schedules to the use classes that were specified in the Use Classes Order to be read as if they were references to the descriptions of the uses which comprised those use classes before that date.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In addition to revising certain use classes in the Use Classes Order, the Amendment Regulations make supplementary provision to enable the planning regime to transition smoothly from the ‘old’ regime to the new use class regime (see regulations 2 to 7 of the Amendment Regulations). It was not identified at the time of drafting the Amendment Regulations that some charging authorities refer to the use classes specified in the Use Classes Order to charge differential rates of CIL by reference to different intended uses of development. There is no legal requirement for such an approach, but it is a matter of practice with some charging authorities.
- 3.2 This issue was brought to the attention of the department by some of these charging authorities after the Amendment Regulations were made and laid. As soon as this issue was identified this matter was progressed with utmost speed and attention. To address this issue and ensure charging schedules can be properly interpreted and remain operative from 1st September, this instrument provides the necessary

construction of such schedules from that date. It is regretted that it has not been possible to comply with the 21 day rule. It is necessary for this instrument to come into force in advance of 1st September so that it is clear the new regulation 4A is included when the Amendment Regulations take effect. Delaying the coming into force of this instrument to comply with the 21 day rule would result in confusion and uncertainty about existing charging schedules and the application of the Community Infrastructure Levy Regulations 2010 in certain cases, and this would be likely to result in disputes between charging authorities and developers and a loss of CIL revenue for some charging authorities.

- 3.3 It is not considered that the provision made by this instrument is a free issue matter as it is not correcting an error in the Amendment Regulations but simply adding further supplementary provision to ensure a smooth transition of the old regime into the new use class regime.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Use Classes Order groups different uses of buildings and other land into use classes. A change of use within a single use class is not considered to be development and therefore does not require planning permission.
- 6.2 The Amendment Regulations revise and replace certain use classes in relation to England (see new Schedule 2: namely, Class E (Commercial, Business and Service), Class F.1 (Learning and non-residential institutions) and Class F.2 (Local community)).
- 6.3 The Community Infrastructure Regulations 2010 as amended (“the CIL Regulations” made under Part 11 of the Planning Act 2008, provide that a charge may be levied on new development of land in an area. Development is liable to CIL where a charging schedule is effective in the area on the date that planning permission first permits development for the chargeable development.
- 6.4 Part 3 of the CIL Regulations make provision for the preparation and application of charging schedules. Regulation 13 of the CIL Regulations provides that a charging authority may set differential rates by reference to (inter alia) different intended uses of development. Some charging authorities have used the nomenclature of the use class categorisation in the Use Classes Order as a short-hand to specify different intended uses for development.

- 6.5 This instrument inserts new regulation 4A into the Amendment Regulation to make provision with respect to references to use classes in charging schedules that are approved and published prior to the 1st September 2020 by a charging authority. If such a charging schedule sets differential rates for CIL by reference to different intended uses of development, and it refers to use classes for that purpose, then those references to use classes are to be read as if they were references to the descriptions of the uses which were specified for the purposes of those use classes in the Use Classes Order on 31st August 2020. This instrument ensures the continued operation and effect of CIL charging schedules after the Amendment Regulations come into force.

7. Policy background

What is being done and why?

- 7.1 The Community Infrastructure Levy Regulations 2010, (“the CIL Regulations” (S.I. 2010/948)) provide that a charge may be levied on new development of land in an area. Development is liable to CIL where a charging schedule is effective in the area on the date that planning permission first permits development for the chargeable development.
- 7.2 The CIL charging authority is normally the local planning authority. Liability to pay CIL arises when development is commenced in reliance on planning permission, or where development which requires planning permission is commenced without it. The amount of CIL chargeable is determined by reference to rates or other criteria which are set out in charging schedules issued by charging authorities. A charging authority may charge differential rates of CIL by reference to (inter alia) “different intended uses of development” – see regulation 13 of the CIL Regulations. These may be supplementary charges, nil rates or increased rates or reductions.
- 7.3 There is no requirement in the CIL Regulations to reference different intended uses of development by reference to the use classes specified in the Use Classes Order. However, Planning Practice Guidance on CIL states that “charging authorities may set differential rates by reference to different intended uses of development. The definition of “use” for this purpose is not tied to the classes of development in the Use Classes Order, although that Order does provide a useful reference point.”
- 7.4 Some charging authorities have set differential rates and have used the use class categorisation (e.g. Class ‘A1’; ‘A2’ etc.) in their charging schedule to distinguish one intended use from another.
- 7.5 The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 make significant changes to the use class categorisation in relation to England. The Regulations create a new broad ‘Commercial, business and service’ use class (Class E) which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices (B1) use classes. It also includes uses such as gyms, nurseries and health centres (previously in use classes D1 Non-residential institutions and D2 Assembly and leisure) and other uses which are suitable for a town centre area. Changes of use, or a mix of uses, within this class does not require planning permission.
- 7.6 S.I. 2020/757 also creates new ‘Learning and non-residential institutions’ (F1) and ‘Local community’ (F2) use classes.

7.7 These changes to the categorisation of use classes on 1st September mean that some former use classes will not exist in relation to England in terms of their pre-September nomenclature (e.g. A1, A2 etc). This could create uncertainty and ambiguity about the application of CIL where a CIL charging schedule only refers to a use class as a shorthand way of referencing an intended use.

7.8 This instrument provides for the interpretation of any charging schedule which is approved and published before 1st September 2020 and which refers to use classes for the purpose of setting differential CIL rates. New Regulation 4A inserted by this instrument requires references to use classes in such schedules to be read as if those references were the descriptions of the uses which comprised those use classes in the Use Classes Order on 31st August 2020. This ensures such charging schedules continue to operate and set appropriate differential rates of CIL for different intended uses of development after the changes made by the Amendment Regulations come into force.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There are no current plans to consolidate this legislation.

10. Consultation outcome

10.1 There is no statutory duty to consult. As this instrument simply adds further supplementary provision in the Amendment Regulations a formal consultation has not been carried out. However, Ministry officials have liaised with CIL charging authorities during their preparation.

11. Guidance

11.1 Guidance on the operation of the 2010 Regulations has been published in the Community Infrastructure Levy section of the Ministry's Planning Practice Guidance and is available at: <https://www.gov.uk/guidance/community-infrastructure-levy>. This has been updated to explain the effects of the current changes. Copies can be requested from the Ministry of Housing, Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies. The impact on business is limited to those who develop or own land. The amendment will avoid unintended effects on CIL resulting from the changes to the use class nomenclature in the Use Classes Order on 1st September 2020.

12.2 There is no, or no significant, impact on the public sector. The amendment will avoid unintended effects on CIL resulting from the changes to the use class nomenclature in the Use Classes Order on 1st September 2020.

12.3 An Impact Assessment has not been prepared for this instrument because this instrument provides for the preservation of existing charging schedules.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The purpose of the regulations is to ensure the continued operation and effect of CIL charging schedules as they stand prior to 1st September 2020.

14. Monitoring & review

- 14.1 The department will continue to liaise and engage with local planning authorities on the changes made by this instrument. This measure will also be monitored as part of the Government's package of planning reforms to support economic recovery, with changes made accordingly to ensure the intended outcomes. The Government has announced that it will be considering major and wide-ranging reforms of the planning system.

15. Contact

- 15.1 Tom Simpson at the Ministry for Housing, Communities and Local Government (telephone: 0303 444 1704 or email: cil@communities.gov.uk) can answer any queries regarding the instrument.
- 15.2 Jenny Preece, Deputy Director for Planning Infrastructure, at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Luke Hall at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.