

ENVIRONMENT DEPARTMENT

CONSULTATION PAPER

REVIEW OF THE LAND PLANNING AND DEVELOPMENT (USE CLASSES) ORDINANCE, 2007

Purpose and type of consultation

The Land Planning and Development (Use Classes) Ordinance, 2007 (the 'Use Classes Ordinance'), came into force on 6th April 2009. Planning permission is required to change from one use to another between different use classes but not to change from one use to another within each of the use classes. A change of use within a numbered use class is not classed as development for which planning permission is required under the Law. The Use Classes Ordinance currently contains 44 separate use classes along with a list of specific uses which do not fall within any use class (known as 'sui generis' uses).

Following a review of the current legislation and initial consultation with stakeholders, the Environment Department has identified scope to simplify the Use Classes Ordinance, reducing the number of use classes from 44 to 28. A limited number of new use classes are proposed to reflect changed circumstances and the development of new policy approaches.

Some changes are also proposed to the Land Planning and Development (Exemptions) Ordinance, 2007 (the 'Exemptions Ordinance') to reflect the proposed amendments to the Use Classes Ordinance and expand the number of permitted changes between use classes in appropriate circumstances.

The main objectives of the review are:-

- To simplify the current Use Classes Ordinance and reduce the number of use classes,
- To create more flexibility in the operation of the Ordinance and add further permitted changes between classes where appropriate, and
- To add new use classes where relevant to reflect changed circumstances and the development of new policy approaches.

The Department believes that its proposals will result in considerable simplification of the current legislation through reducing the requirement for planning applications to be made for certain changes of use. It is anticipated that this will in particular improve the operation of the commercial market for industrial and storage/distribution premises and have consequent economic benefits for the Island.

The purpose of this consultation is to publicise the Department's proposals to amend the Use Classes Ordinance and to gather views from the public and other stakeholders as to whether its proposals are considered to be appropriate and effective in meeting the objectives referred to above, and if there are any other issues that should be considered.

This consultation paper sets out in more detail the background to the proposals and an overview of the proposed amendments to the Use Classes Ordinance.

Closing date for consultation

Friday 25th September 2015

Summary of questions

The Environment Department would particularly like your views as to whether its proposals for amendments to the Use Classes Ordinance are considered to be appropriate and effective in meeting the objectives for the review, would benefit the Island economy without harming amenity or the environment, are a reasonable and proportionate way of dealing with the new issues and policy approaches and if there are any other issues with the amendments as proposed. To assist with this, a questionnaire is attached at the end of this consultation paper.

Contact details

Please send your comments by letter or email addressed to:-

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Proposal overview

Background

The Report by former England and Wales Chief Planning Inspector Chris Shepley into Guernsey's Planning Service published in April 2008 (the 'Shepley Report') recommended, inter alia, that the 2005 Land Planning and Development (Guernsey) Law be introduced as soon as possible and that it be reviewed soon after its introduction. The Shepley Report specifically recommended simplifying use classes.

The Land Planning and Development (Guernsey) Law, 2005 ('The Law') came into effect on 6th April 2009. The Land Planning and Development (Use Classes) Ordinance, 2007 (the 'Use Classes Ordinance'), also came into force on 6th April 2009. It contains 44 separate use classes.

The current 44 Use Classes relate to the following categories of use:

- (i) Residential (9 separate use classes – numbered 1-9);
- (ii) Visitor economy (4 separate use classes – numbered 10-13);
- (iii) Retail (7 separate use classes – numbered 14-20);
- (iv) Administrative, financial and professional services (3 separate use classes – numbered 21-23);
- (v) Public amenity (6 separate use classes – numbered 24-29);
- (vi) Storage/Distribution (7 separate use classes – numbered 30-36);
- (vii) Industry (7 separate use classes – numbered 37-43);
- (viii) Agriculture (a single use class - numbered 44).

Planning permission is required to change from one use to another between different use classes but not to change from one use to another within each of the use classes. A change of use within a numbered use class is not classed as development for which planning permission is required under the Law.

The Use Classes Ordinance also contains a list of specific uses which do not fall within any use class (known as 'sui generis' uses). Planning permission is required for a material change of use either from or to a 'sui generis' use. The 2007 Use Classes Ordinance lists the following uses as 'sui generis':

- (i) Sale of fuel for motor vehicles or boats;
- (ii) Taxi business;
- (iii) Betting office;
- (iv) Funeral parlour or business of a funeral director or undertaker;
- (v) Veterinary clinic or boarding of animals;
- (vi) Abattoir or knacker's yard;
- (vii) Sale, or display for sale or hire, of motor vehicles;
- (viii) Casino.

Overview of the Proposed Changes

Following a review of the current legislation and initial consultation with stakeholders, the Environment Department has identified scope to simplify the Use Classes Ordinance, reducing the number of use classes from 44 to 28. A limited number of new use classes are proposed to reflect changed circumstances and the development of new policy approaches.

Some changes are also proposed to the Land Planning and Development (Exemptions) Ordinance, 2007 (the 'Exemptions Ordinance') to reflect the proposed amendments to the Use Classes Ordinance and expand the number of permitted changes between use classes in appropriate circumstances.

The proposed amendments to the 2007 Use Classes Ordinance are set out in detail below. These are described in order reflecting the structure of classes within the existing Use Classes Ordinance.

For ease of comparison between the existing and proposed situations, the proposed changes to the Use Classes Ordinance are summarised in the table in Appendix 1.

The current Administrative, financial and professional services use classes would be unchanged, apart from being re-numbered as a result of the changes proposed to other use classes, and they are therefore not mentioned specifically below.

1. Residential Use Classes

The existing Residential use class 3, relating specifically to **sheltered housing**, would be retained and amended to further emphasise the support provided for residents through the provision of facilities such as on-call assistance from a resident or nearby warden and other support services associated with such accommodation. The existing sheltered housing use class currently limits occupancy of such accommodation to households at least one of whom has attained an age of 55 years, or requires access to facilities because of disability. This specific age-related restriction on the occupation of sheltered housing has become increasingly irrelevant to the planning purpose of classifying such accommodation as separate from the general housing stock which centres on the support services that are provided to occupants, irrespective of age. The proposed amended sheltered housing use class would therefore not limit occupation to those who have attained 55 years of age.

The proposed amended sheltered housing use class would be supplemented by a proposed new use class relating to **Specialised Housing**. This form of housing is distinguished by the provision of care for residents, as distinct from the support services of sheltered housing. In accordance with the 2011 Strategic Land Use Plan, the proposed specialised housing use class would include extra-care accommodation, examples of which include the schemes at La Nouvelle Maraitaine, Vale and Le Grand Courtil, St Martins.

Furthermore, the proposed **Specialised Housing** use class would also include nursing and residential homes and other accommodation for people in need of care, where care staff operate on-site and residents tend to live in single-room accommodation. Although the resulting proposed use class would be relatively broad, allowing potential for movement between uses

falling within it without the need for planning permission, it is recognised that Government controls exist outside of the planning system, primarily operated by the Health and Social Services Department, regarding such specialised residential uses.

It is proposed that the use class (current use class 4), relating to **use of a dwelling in part for business purposes**, would remain but be re-numbered, and continue to offer householders the benefit of flexibility by enabling certain uses such as home-based small-scale retail, office or industrial activity to take place in locations where independent use for such purposes might not be permitted. However, the Department intends to publish for the first time guidance regarding when such use would be likely to amount to a material change of use in planning terms. This will help clarify the legal position and circumstances when low-key business uses may take place within dwellings without the need for planning permission.

Two current separate use classes, relating to houses in multiple occupation and lodging houses (current use classes 5 and 6) are proposed to be amalgamated into a single use class relating to **premises in multiple occupation**. 'Lodgings' is now a somewhat out-dated term and the retention of two separate use classes to deal with what is essentially a single category of establishment in planning terms is considered unnecessary.

Three current separate use classes relate to hospitals, nursing homes or residential establishments for the provision of accommodation and care and to residential schools, colleges and training centres (current use classes 7-9). There are at present no residential schools, colleges or training centres in Guernsey, and should any such be proposed in the future they could be considered on their own particular merits, effectively as a 'sui generis' use. Similarly, a hospital is likely to be relatively easily distinguished from other uses and its definition as at present in a use class relating solely to that use is considered unnecessary. Nursing homes and care homes are primarily intended to provide care to residents and would be best considered as a form of specialised housing as described above.

2. Visitor economy Use Classes

Two current separate use classes, relating respectively to guest houses/private hotels and hotels (current use classes 10 and 11) are proposed to be amalgamated into a single use class relating to **Serviced Visitor Accommodation**. This would include Hotels, Guest Accommodation, Serviced Apartments and other minor classifications where there is an element of guest services required by the quality rating standard and therefore by the Boarding Permit for the premises. These uses are considered to have similar implications in planning terms and the retention of two separate use classes is considered unnecessary.

It is proposed that the use class relating to **Non-Serviced Visitor Accommodation**, being principally self-catering accommodation but including hostels and other group accommodation (current use class 12) would remain. However, it is proposed that the recognised position regarding winter lets, i.e. that these may take place without a requirement for prior planning permission in such accommodation from 1st November to 31st March each year, will be clarified within the Ordinance.

The current Visitor Economy use class 13 provides for:

“Use as a visitor attraction other than –
a use for a retail trade or business falling within use class 14,
a use as a theatre or cinema falling within use class 28, or
a use falling within use class 29.”

The range of uses on Guernsey providing attractions and facilities, to visitors and locals alike, is extensive, including those that provide a predominantly retail, leisure or recreational experience or a combination of these uses. Reflecting this diversity of character and use, it is considered most appropriate, therefore, in planning policy terms to apply use classifications to such sites according to the principal use of the proposal, site or premises. This reflects the approach proposed in the draft Island Development Plan which does not have policies specifically for visitor attractions, given the wide range of possible types of development that could be considered a visitor attraction, but does seek to support them wherever possible. This proposed approach is intended to provide more flexibility for businesses to develop not limited to only visitor attraction use as described in the current use class. On this basis, given the characteristics of such attractions which may potentially include a number of ‘principal’ uses, there is no need for a specific use class and it is therefore proposed to not replace the existing use class relating to “visitor attractions” within the new Use Classes Ordinance.

3. Retail Use Classes

In line with the policy direction of the 2011 Strategic Land Use Plan (Billet d’État No XIX of 2011), and in accordance with Strategy Proposal 10 of the Island’s Retail Strategy, the policies of the draft Island Development Plan draw a distinction between the two broad categories of retail use; ‘convenience’ and ‘comparison’. Convenience retail is defined in the draft Island Development Plan as *‘the selling of, often essential, daily items such as fresh produce, food and drink’*. To reflect this policy approach, it is proposed that a new use class is created relating to **Convenience Retail** use. The proposed new Convenience retail use class would include only the sale of, often essential, daily items.

‘Comparison’ retail is the selling of goods including clothing and footwear, furniture, furnishings and household equipment, which generally involves comparing similar goods before buying. In accordance with the strategic policy direction of the Strategic Land Use Plan, and the findings of the Island’s Retail Strategy, the draft Island Development Plan supports both comparison and convenience retail within the Main Centres of Town and The Bridge, but limits new comparison retail to within the Main Centres in order to safeguard their retail function and to help sustain them as the Island’s primary retail destinations.

Reflecting this proposed change, it is proposed that the terms of current retail use class 14 would be amended to exclude convenience retail and the equivalent proposed new use class would relate to **General Retail** use including comparison retail. This proposed class would therefore include all the trades or businesses currently within the definition of “retail trade or business” in the 2007 Ordinance subject to the exclusion of convenience retail. The proposed General Retail class would still include hairdressing, which is currently regarded as a retail use, and would also include for the avoidance of doubt similar uses such as beauty parlours and nail bars, which

are not currently specified as retail uses. Tattoo parlours generally have a distinctly different appearance and character within the street to shops and are proposed to be included in the list of 'sui generis' uses. As proposed, the General Retail use class would also include use as a launderette and use for the sale, or display for sale, to visiting members of the public of live animals, both of which are currently in separate retail use classes (current use classes 17 and 20). These proposed changes would improve flexibility to allow the change of use of premises within existing retail areas to a somewhat wider variety of uses without the requirement to obtain planning permission.

4. Public Amenity Use Classes

Three current separate use classes, relating to non-residential educational establishments or training centres, museums, public archives, art galleries, libraries or reading rooms and for use as a place of public assembly or of public worship or for the social and recreational activities of a religious body (current use classes 25-27) are proposed to be amalgamated into a single use class relating to **non-residential establishments**. These uses are considered to have broadly similar implications to one another in planning terms and the retention of three separate use classes is therefore considered unnecessary.

5. Storage/Distribution Use Classes

Six current separate use classes, relating to general storage, cooled or refrigerated storage exceeding 10 cubic metres, storage of solid fuels, building materials or non-hazardous materials, storage or parking of motor vehicles, transfer of goods or distribution of goods in connection with their commercial storage and data and archive storage (current use classes 30-35) are proposed to be amalgamated into a single use class relating to **General Storage/Distribution**. These uses are considered to have similar implications to one another in planning terms and the retention of six separate use classes relating to these storage/distribution uses is considered unnecessary.

It is anticipated that this proposed simplification of the Ordinance would improve the operation of the commercial market for storage/distribution premises and would have consequent economic benefits for the Island, without any significant adverse impacts on amenity or the environment.

6. Industrial Use Classes

It is proposed that the current use class 38, relating to use for any **general industrial purpose**, be expanded to include commercial laundries, which are currently in a separate industrial use class (current use class 39). Commercial laundries generally share key characteristics in terms of impact with general industry and retention of a separate use class is considered unnecessary.

Three further current separate use classes, relating to 'special' industrial uses, which are uses with high impacts on amenity, along with use for the production or processing of any article or substance which may be hazardous or present a risk to public health or safety and use for processing putrescible or offensive material or noxious organic material (current use classes 40, 41 and 43) are proposed to be amalgamated into a single use class relating to **Special Industry**. These uses are all considered to have broadly similar

implications to one another in planning terms particularly in relation to their high impacts on amenity. The retention of three separate use classes relating to such industrial uses is considered unnecessary. In addition, and for the same reason, it is proposed that the Special Industry use class will include abattoir/knacker's yards, which are currently listed as a separate 'sui generis' use.

It is anticipated that this proposed simplification of the Ordinance would improve the operation of the commercial market for industrial premises and would have consequent economic benefits for the Island, without any significant adverse impacts on amenity or the environment.

It is proposed that the existing use class relating to the sorting, treatment, baling, disposal or transfer of putrescible or inert waste (current use class 42) would be replaced with a broader use class relating to **Waste**. A new definition of waste would be introduced to cover all relevant aspects. In this regard, section 73 of The Environmental Pollution (Guernsey) Law, 2004 provides that: "Waste includes (a) scrap material, effluent or other unwanted surplus arising from any process, and (b) anything which requires to be disposed of as being broken, worn out, contaminated, spoiled or redundant". A broad definition of waste along these lines could similarly be utilised for planning purposes, recognising that waste activities are closely regulated by Government outside of the planning process and that there is no need to duplicate such other controls. Use for composting carried out on a commercial basis or large scale (currently within use class 43) is however materially different to these activities and would be added under the proposals to the list of 'sui generis' uses for the avoidance of doubt.

7. Agricultural Use Class

It is proposed that the use class relating to Agricultural land, including horticultural or forestry use (current use class 44) would remain. However, agriculture is not currently defined in the Use Classes Ordinance and it is proposed to clarify the intended meaning by adding a definition of agriculture. This would clarify that the use class is consistent with section 45A of the 2005 Land Planning and Development Law and includes land which is covered by a glasshouse and land which was covered by a glasshouse and which is used, or, with the application of good husbandry, is capable of being used, for dairy farming, the production, rearing or maintenance of livestock, or market gardening or the outdoor cultivation of flowers, bulbs or nursery stock.

It is also proposed to clarify, though an addition to the list of 'sui generis' uses, that so called "solar farms", involving an installation or area of land in which a large number of solar panels are set up in order to generate electricity on a large or commercial scale, would fall outside of any use class specified within the Use Classes Ordinance.

8. 'Sui Generis' Uses

As described above, the proposed amendments to the Use Classes Ordinance would result in a reduction in the number of use classes overall from 44 to 28. It is also proposed to amend the list of defined 'sui generis' uses, falling outside of the numbered use classes, to delete use as an abattoir/knacker's yard from the list as it would be included within the Special Industry use class. Other current 'sui generis' uses would be unaffected by these proposals.

Proposed additions to the 'sui generis' list are:-

- Composting (from current use class 43), as this is materially different to other activities within the proposed "Waste" use class;
- Nightclubs, due to the potential amenity impacts (NB. Nightclubs are considered as 'sui generis' uses in the United Kingdom due to their particular characteristics and potential amenity impacts);
- Campsites, to clarify the 'sui generis' status of such use of open land;
- Tattoo parlours, to clarify their status as distinct from a retail use; and
- "Solar Farms", to clarify their 'sui generis' land use status.

Permitted changes between use classes

As well as significantly reducing the number of use classes as described above, it is also proposed to increase the number and scope of permitted changes of use between different classes.

At present, the Land Planning and Development (Exemptions) Ordinance, 2007, (the 'Exemptions Ordinance') sets out the following permitted changes between use classes for which planning permission is not required:

(i) Class 6 – **Industrial change of use**. This Class of the Exemptions Ordinance allows for permitted changes from general industrial to light industrial use (current use class 38 to 37), and from special industrial use (current use classes 40-43) to general (current use class 38) or light industrial use (current use class 37).

(ii) Class 9(2) – **Retail and Administrative, financial and professional change of use**. This Class of the Exemptions Ordinance allows for permitted changes from special retail use (current use classes 15-17) to general retail use (current use class 14), and from an administrative office use (current use class 22) to use for the temporary relocation of an administrative office in an emergency (current use class 23).

The current permitted changes relating to Administrative, financial and professional change of use and Industrial change of use would remain in place under the present proposals.

In addition, it is proposed to introduce new permitted changes between light industry and general storage use for premises up to 250 square metres in size and from general industry to general storage use for premises up to 250 square metres. This proposal would allow considerable flexibility in the use of these smaller premises, which make up a significant proportion of the overall commercial building stock, and help to improve economic performance in these sectors.

Permitted changes are also proposed from use class 5 (current use class 4 - use of a dwelling in part for business purposes) to either use class 1 or 2. This proposal would enable reversion to sole use as a dwelling house or flat without the need for further permission and should thereby assist those wishing to work from home for a temporary period, perhaps during the initial stages of business development. It should be noted that like current class 4, class 5 would require that the principal use is a dwelling. As noted above, the Department also intends to publish for the first time guidance regarding when such use would be likely to amount to a material change of use in planning terms. This will help clarify the legal position and circumstances when low-key

business uses may take place within dwellings without the need for planning permission.

The current Exemptions for Retail change of use would not be retained under these proposals as they are not compatible with the changes proposed to the retail use classes which accord with the policy direction of the Strategic Land Use Plan and the findings of the Island's Retail Strategy. Transitional arrangements may be required to ensure that there is no disadvantage to those currently in the process of carrying out such a change of use arising from withdrawal of these existing exemption rights.

Next steps

Following this public consultation, the Environment Department will finalise its proposals with a view to submitting a Policy Letter for consideration by the States early in 2016.

Questionnaire:

The main objectives of the review of the Use Classes Ordinance are:-

- To simplify the current Use Classes Ordinance and reduce the number of use classes,
- To create more flexibility in the operation of the Ordinance and add further permitted changes between classes where appropriate, and
- To add new use classes where relevant to reflect changed circumstances and the development of new policy approaches.

I believe that, overall, the proposed changes will meet the objectives of the review and am in favour of the proposed approach in principle	<p>Yes/No</p> <p>Comment:</p>
I believe that the proposed changes will simplify the Use Classes Ordinance and will help to make its operation more flexible	<p>Yes/No</p> <p>Comment:</p>
In detail, I believe that the proposed changes will benefit the economy of Guernsey without causing harm to the amenity or environment of the Island	<p>Yes/No</p> <p>Comment:</p>
In detail, I believe that the proposed changes are a reasonable and proportionate way of dealing with the new issues and policy approaches identified in this consultation	<p>Yes/No</p> <p>Comment:</p>
I would like to make some additional comments to help the Environment Department when considering its proposals for changes to the Use Classes Ordinance	<p>Yes/No</p> <p>Comment:</p>

Appendix 1

Summary of proposed amendments to the Use Classes Ordinance

Proposed new Use class (No & brief description)	Equivalent Use Class in 2007 Use Classes Ordinance	Proposed permitted changes between proposed use classes (from/to)
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Residential

Residential use class 1: Dwelling houses	Residential use class 1	From 5
Residential use class 2: Flats	Residential use class 2	From 5
Residential use class 3 Sheltered housing	Residential use class 3	
Residential use class 4: Specialised housing	Part of Residential use class 8	
Residential use class 5: Use of part of dwelling for business purposes	Residential use class 4	To 1 and 2
Residential use class 6: Premises in Multiple occupation	Residential use classes 5 & 6	
	Residential use classes 7, 8 & 9 are not replaced	

Visitor economy

Visitor economy use class 7: Serviced Visitor Accommodation	Visitor economy use classes 10 & 11	
Visitor economy use class 8: Non-Serviced Visitor Accommodation	Visitor economy use class 12	
	Visitor economy use class 13 is not replaced	

Retail

Retail use class 9: Convenience retail	Part of Retail use class 14	
Retail use class 10: General retail	Part of Retail use class 14 & Retail use classes 17 & 20	
Retail use class 11: Food and drink	Retail use class 15	
Retail use class 12: Hot food take-away	Retail use class 16	
Retail use class 13: Plant centre	Retail use class 18	
Retail use class 14: Garden centre	Retail use class 19	

Administrative, financial and professional services

Administrative, financial and professional services use class 15: Financial, professional & support services	Administrative, financial and professional services use class 21	
Administrative, financial and professional services use class 16: Administrative office	Administrative, financial and professional services use class 22	To 17 (as existing)
Administrative, financial and professional services use class 17: Temporary office	Administrative, financial and professional services use class 23	From 16 (as existing)

Public amenity

Public amenity use class 18: Non-residential health/welfare services	Public amenity use class 24	
Public amenity use class 19: Non-residential establishments	Public amenity use classes 25, 26 & 27	
Public amenity use class 20: Assembly/leisure	Public amenity use class 28	
Public amenity use class 21: Sport/fitness	Public amenity use class 29	

Storage/distribution

Storage/distribution use class 22: General storage/distribution	Storage/distribution use classes 30, 31, 32, 33, 34 & 35	To and from 24 for premises not exceeding 250 square metres; From 25 for premises not exceeding 250 square metres
Storage/distribution use class 23: Special storage	Storage/distribution use class 36	

Industry

Industry use class 24: Light industry	Industry use class 37	To and from 22 for premises not exceeding 250 square metres; From 25 & 26 (no size restriction) (as existing)
Industry use class 25: General industry	Industry use classes 38 & 39	To 22 for premises not exceeding 250 square metres; To 24 (no size restriction) (as existing); From 26 (no size restriction) (as existing)

Industry use class 26: Special industry	Industry use classes 40, 41 & 43 (plus a <i>sui generis</i> use)	To 24 & 25 (no size restriction) (as existing)
Industry use class 27: Waste	Industry use class 42	

Agriculture

Agricultural use class 28: Agricultural	Agriculture use class 44	
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Listed *sui generis* uses

Added:	Deleted:
Tattoo parlours (added to clarify <i>sui generis</i> status distinct from a retail use)	Abattoir/knacker's yard (included in use class 26 Special Industry)
Campsite (added to clarify <i>sui generis</i> status as use of open land)	
Nightclub (added due to particular characteristics and potential amenity impacts)	
Composting (added as materially different to uses within use class 27 Waste)	
"Solar farms" (added to clarify <i>sui generis</i> status as use of land)	