

# COVID- 19: shops, restaurants, cafes and drinking establishments



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## Topics

- New temporary permitted development right for restaurants, cafes and drinking establishments.
- Written ministerial statement on delivery restrictions.

## (1) 2020 Amendment Order

- Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020
  - Came into force at 10am on 24 March 2020 (art. 1).
  - Insert new Class DA in Part 4 of Schedule 2 to the GPDO 2015 (arts. 2 & 4) – new time limited (temporary) change of use.
  - Amends article 4(1) GPDO 2015 (art. 3) – prevent the LPA/SoS from directing that development under Class DA is not to apply in relation to a specified area.

## (2) New Class DA

- Class DA –
  - “Development consisting of a change of use of a building and any land within its curtilage”
  - From: Class A3 (restaurants and cafes); Class A4 (drinking establishments; mixed use for any purposes with Class A3 and Class A4; or use as a drinking establishment with expanded food provision as defined in Class AA.
  - To: use for the provision of takeaway food. See para. DA.2: *“includes any use for any purpose within Class A5 ... and any use for the provision of hot or cold food that has been prepared for consumers for collection or delivery to be consumed, reheated or cooked by consumers off the premises.”*
  - At any time from 10am 24 March 2020 – 23 March 2021.

### (3) Conditions on Class DA

- Para. DA.1 –
  - *“must notify the local planning authority if the building and any land within its curtilage is being used, or will be used, for the provision of takeaway food”*
  - *“does not affect the use class which the building and any land within its curtilage had before the change of use”*
  - *“the use of the building and any land within its curtilage reverts to its previous lawful use at the end of the relevant period or, if earlier, when the developer ceases to provide takeaway food under Class DA”*

## (4) WMS - context

- Context:

- NPPF para. 55:

*“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in response to suspected breaches of planning control.”*

- For example:

- Section 172(1)(b) TCPA 1990– where it appears to the LPA *“that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations”*
    - Section 187A TCPA 1990 – “may”

## (5) WMS on delivery restrictions

- Made by the Secretary of State on 13 March 2020 (HCWS159).
  - *“enabling retails of food, sanitary and other essential items to increase the frequency of deliveries to their stores to support the response to Covid-19”.*
  - *“The purpose of this Written Ministerial Statement, which comes into effect immediately, is to make clear that as a matter of urgency local planning authorities should take a positive approach to their engagement with food retailers and distributors, as well as the freight industry, to ensure planning controls are not a barrier to food delivery over the period of disruption caused by the coronavirus”*
  - *“Given the current situation local planning authorities should not seek to undertake planning enforcement action which would result in unnecessarily restricting deliveries of food and other essential deliveries during this period, having regard to their legal obligations”*

## (6) WMS on delivery restrictions

- Made by the Secretary of State on 13 March 2020 (HCWS159).
  - *“The Government recognises that the increased frequency of deliveries, particularly at night, could have temporary impact on local residents. However, this needs to be balanced by the significant public interest in ensuring local residents have continued access to food, sanitary and other essential goods in their local shops.”*
  - *“The Government will review the need for the flexibility outlined in this statement after the pressure from the coronavirus has reduced, and it is the intention to withdraw it once the immediate urgency has subsided.”*

# Thank you for listening

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