

OFFICE OF THE DEPUTY PRIME MINISTER

ODPM Circular 02/2006
Office of the Deputy Prime Minister
Eland House, Bressenden Place, London SW1E 5DU

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CHANGES TO PLANNING REGULATIONS FOR CASINOS

INTRODUCTION

1. This Circular gives guidance on the planning regulations for casinos, as amended by SI 220/06, which amends the *Town and Country Planning (Use Classes) Order 1987* (the UCO), and SI 221/06 which amends Part 3 of the *Town and Country Planning (General Permitted Development) Order 1995* (the GPDO).
2. Both Statutory Instruments come into force on 6th April 2006. These changes follow extensive consultation about the amendments to planning regulations considered necessary to reflect the changes in the regulation and nature of casinos anticipated following the *Gambling Act 2005*.
3. It should be remembered, however, that although this Circular gives guidance amounting to an interpretation of the Order, only the courts can interpret the law authoritatively.

BACKGROUND

4. The UCO sets out classes of uses, changes within which do not require planning permission due to the similarity in their impact on local amenity. The GPDO adds further flexibility by classifying certain changes between the Use Classes as permitted development which, accordingly, do not require planning permission.
5. Article 3(6) of the UCO provides that certain uses, due to their unique nature, are not within any class of the Order. Such uses are *sui generis* (of their own kind). This does not mean that such uses will always be regarded as environmentally undesirable, and thus liable to be refused permission, but that consideration by local planning authorities will be justified where these uses are proposed.

THE AMENDED ORDERS

6. SI 220/06 amends the UCO. It removes casinos from the D2: *Assembly and Leisure* use class, making them *sui generis*. De-classification from a use does not itself amount to development within the meaning of the 1990 Act. As casinos will be *sui generis* from 6 April 2006, planning permission will be needed for any premises, including D2 premises, to undergo a material change of use to a casino from that date.
7. The Courts have held that the first thing to consider in determining whether a material change of use has occurred (or will occur) is the existing primary use of the land. Each case will always be a matter for individual determination by fact and degree.
8. SI 220/06 amends Part 3 of the GPDO. It gives permitted development rights for a change of use from a casino to any use within the D2 use class, as amended. This means that existing and new casinos will **not** require planning consent to undergo a change of use to D2 uses; such changes are permitted development.
9. The aim of these amendments is to give local planning authorities control over the development of new casinos following the anticipated changes to the industry as a result of the *Gambling Act 2005*.

MIXED USES

10. Mixed use developments are *sui generis* and do not fall into any of the classes set out in the Order. New casinos (regional casinos may be notable in this respect) are likely to be a mix of uses. Section 7(6)(d) of the *Gambling Act 2005*, sets out the minimum floor space to be given over to gambling and non-gambling uses. This is reproduced in the table below.¹

Licence category	Minimum table gaming area	Minimum additional gambling area	Minimum non-gambling area	Minimum total customer area
Small	500 m ²	0 m ²	250 m ²	750 m ²
Large	1,000 m ²	0 m ²	500 m ²	1,500 m ²
Regional	1,000 m ²	2,500 m ²	1,500 m ²	5,000 m ²

11. Whether planning permission is required for the change of use from one mixed use to another depends on whether or not the change of use is material, in planning terms. In particular, local planning authorities will need to take into consideration more than just the amount of floor space occupied by different uses. Where the change of use does not amount to a material change, there will be no development, and no need to obtain planning permission.

¹ The Government set out these minimum floor areas that would apply to the different categories of new casino in its response to the first report of the joint committee on the (then) draft Bill.

UNIMPLEMENTED CONSENTS

12. When the amended Order comes into effect, on 6th April 2006, there will be a number of extant, but unimplemented, planning permissions for development which refer to the D2 use classes. Unless otherwise indicated, a reference to a use class in a planning permission is interpreted on the basis of the Use Classes Order in force at the time the consent is issued.
13. Planning consents granted after 6th April 2006 will be interpreted on the basis of the amended Use Classes Order. A reference to D2 in such a planning consent will not permit use as a casino. Where local planning authorities are processing applications for D2 uses which were received prior to 6th April 2006, they will need to clarify the precise use for which consent is being sought before determining such applications.

CONDITIONS

14. *Circular 11/95 - The use of conditions in planning permission* makes it clear that there is a presumption against conditions designed to restrict future changes of use which, by virtue of the UCO or the GPDO, would not otherwise constitute development. Accordingly, a change of use from a casino to a D2 use is one that is permitted under the GPDO and, as a general rule, conditions should not be imposed which prevent it. The Secretary of State will regard the imposition of such conditions as unreasonable unless there is clear evidence that there are particular circumstances in which such permitted development could have serious adverse effects on amenity or the environment.

MANPOWER AND FINANCIAL CONSIDERATIONS

The changes to the Orders are not expected to have significant expenditure or manpower implications for local authorities.

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Office of Deputy Prime Minister

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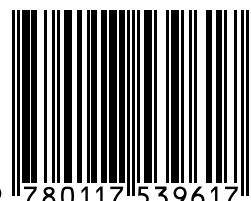
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