

## Insights

# BCLP RETAIL INSIGHT: THE WEEK THAT WAS VOL. 4

Jul 30, 2020

## SUMMARY

This week the BCLP Retail Team look at the impact of the changes to the Use Classes Order 1987 on retailers, the new regulations requiring face coverings in shops, the Land Registry's acceptance of electronic signatures and the future of business rates.

### **New Use Class E Introduced**

Following the Government's announcement of a new 'broad' use class earlier in July, details are now set out in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the "**Amendment Regulations**") which will come into force on 1 September 2020. The Amendment Regulations create a new Class E 'Commercial, Business and Services' which amalgamates, amongst others, retail uses, cafes and restaurants, gyms and offices. The new use class aims to provide greater flexibility to help reinvigorate the high street by enabling retailers to quickly adapt to changing customer needs as well as market properties to a wider range of potential buyers, when exiting a site. Please click [here](#) for further discussion on how the amended Use Classes Order will work in practice and the implications and ambiguities of the amendments for landowners and operators.

### **Face Coverings Required in Shops under New Regulations**

As we mentioned in our previous blog, the wearing of face masks in shops became mandatory as of Friday 24 July. The relevant provisions were brought into force under the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (the "Regulations"). Regulation 3(1) states *no person may, without reasonable excuse, enter or remain within a relevant place without wearing a face covering*. Regulation 4(1) provides a non-exhaustive list of 'reasonable excuses', such as instances where individuals cannot put on, wear or remove a face covering because of a physical or mental illness or impairment or disability, or without severe distress. Relevant places include shops and enclosed shopping centres but restaurants with table service, bars, pubs and areas within or adjacent to shops that are used for consumption of food and

drink are all excluded. The definition of face covering is very wide and includes any covering over a person's nose and mouth.

The Regulations set out those who are exempt from wearing a face covering (such as children under 11 or employees working within shops) in addition to the 'reasonable excuse' exceptions. The Government has issued guidance to supplement the Regulations ([click here](#)).

The Regulations and guidance whilst helpful in some respects also raise a number of challenges and questions for retailers:

- Retailers have no direct power to enforce the regulations;
- It may be hard to determine whether a relevant excuse applies in a given case and it is not clear what evidence is required to support this (some of the reasonable excuses are based on non-visible health conditions which will be impossible for retailers to identify without questioning a customer and there are equally no requirements for a person to carry evidence of their reasonable excuse);
- Whilst retailers' own employees are not required to wear face coverings within their workplace the guidance suggests in some circumstances this might be advisable depending on the general social distancing measures in place (but is not very clear when it might be appropriate to do so);
- Whilst statements from the Government and police have indicated that they expect retailers to take the lead on ensuring compliance with the Regulations, the responsibility for enforcement under the Regulations lies with the police (there are no enforcement powers granted to retailers under the Regulations). Consequently, retailers considering denying customers entry should only do so under more general rights to refuse entry.

There do not appear to be any direct enforcement provisions which can be taken against a retailer specifically under the regulations. However, it is possible that where problems do occur and become widely known that reputational risk issues will arise and need to be tackled by retailers.

The Regulations leave many questions for retailers unanswered. Similarly, the guidance is perhaps not as clear or as helpful as retailers may have hoped it would be.

## **E-Signatures Accepted by the Land Registry**

On Monday 27 July, the Land Registry announced that, until further notice, they will now accept e-signatures on registrable dispositions, subject to some conditions. Given current difficulties in obtaining wet-ink signatures, this is a welcome change to the Land Registry's practice guidance and will assist the signing of transfers, leases for a term of more than seven years, discharges or releases of charges, and powers of attorney.

The conditions stipulated by the Land Registry include the requirement for both parties to have been represented by a conveyancer. The Land Registry practice guide sets out a procedure to follow when e-signing, including a requirement for signatories and any witnesses to be sent a one-time password by text message in order to access the document upon signing. Any witnesses must also be physically present when the signatory signs (witnessing by video call is not permitted). Please [click here](#) for further detail on how the Land Registry's acceptance of e-signatures will impact transactions in practice.

## **Business Rates to be Replaced by Online Tax?**

Following repeated calls from parts of the property industry for business rates to be abolished, the Government has confirmed that it will review business rates and has published a call for evidence ([click here](#)). Alternative proposals include an online sales tax. Retailers have seen online sales soar during the COVID-19 crisis, accentuating the trend of customers opting to shop online rather than in store. Retailers operating in town-centre locations tend to be disadvantaged under the business rates regime as opposed to online retailers who can operate from cheaper out-of-town locations. Restoring the balance is a priority for the Government and it will be keen to effectively tax online sales. Nevertheless, the Government must ensure that such a tax is coordinated with other countries so as not to drive sales away from UK-based online retailers, thereby reducing tax receipts. There is also a risk that any online sales tax will simply be passed on to consumers. The call for evidence also suggests a Capital Values Tax (CVT) for physical stores. This tax would be paid by the property owner (as opposed to the retail tenant) based on the capital value of the building, and further indicates a desire to lessen the tax burden on retail tenants.

Please do get in touch with the BCLP Retail Team if you have any queries regarding the topics raised in this bulletin. This bulletin was co-written with Trainee Solicitor Jack Pepper.

## **RELATED PRACTICE AREAS**

- Real Estate
- Real Estate Sector
- Real Estate Retail
- Retail & Consumer Products

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