

Government Consultation on the introduction of a new Planning Class for Short Term Holiday Lets

(THIS NOTE ONLY APPLIES TO ENGLAND)

Guidance on Responding to the Consultation 19 May 2023

Consultation URL

<https://www.gov.uk/government/consultations/introduction-of-a-use-class-for-short-term-lets-and-associated-permitted-development-rights/introduction-of-a-use-class-for-short-term-lets-and-associated-permitted-development-rights>

Deadline

7th June 2023

How to respond

You can respond online here:

<https://consult.levellingup.gov.uk/planning-development-management/short-term-lets-use-class-and-pdrs/>

You'll need to have your answers ready to transfer question by question.

Or, you can create your own word document, with each question and answer, which you can cut and paste from this doc and send it to:

short.term.lets.consultation@levellingup.gov.uk

Don't forget to include your name, address and business name, and if possible, a short note about your business.

Please answer the questions as you see fit, and please don't just cut and paste answers from below, adapt and modify, the less they see a cut and paste the greater the impact.

Background

The Government has opened a consultation on the planning status of short term lets. The language of the consultation is, itself, telling. The government is concerned about the increase in such uses (which it presumably considers is a bad thing) and the impact on local communities (which it assumes is a negative impact).

At present, the vast majority of short term lets will, in planning terms, be dwellinghouses (within planning Use Class C3). As such, an owner can move freely from permanent occupation of the property as a sole residence through periodic tenancies such as a term

time letting to students or occupation by peripatetic workers to short term holiday-type lettings.

The introduction of a new Use Class for short term lettings (however that ends up being defined) would provide a basis for controlling the creation of new short term lets, reducing the number of such lets in any given area and restricting the ability of property owners to have a free hand in deciding how to use their property.

We set out below some analysis of the consultation document and the issues that it would seem to raise. Alongside that, we provide some guidance on possible responses that Members might wish to consider and adapt for their own responses. We would advise against a 'copy & paste' approach as it is human nature to consider responses as being more genuine to the extent that they are reflected in the authors' own words.

Guidance on Responses

Please feel free to adapt the responses, and avoid simple cut and pasting. These are guidance notes only and are provided freely to all that wish to respond to the Consultation.

Q1. Do you agree that the planning system could be used to help to manage the increase in short term lets?	
What's behind this question?	<p>There is an underlying assumption that there is a need to 'manage the increase in short term lets'.</p> <p>This question assumes that consultees agree with that founding assumption. Since the 'problem' stems from the breadth of the current use class, it can only realistically be managed through changes within that system or a parallel system such as registration or taxation.</p>
What might be a response?	<p>No - the comments are more important than the answer.</p> <p>Certainly not until there is sufficient accurate data available to correctly analyse the actual situation in any given area. For this to be available we would need to see a proportionate Statutory Registration Scheme in place for some years to gather that data.</p> <p>Is there really enough data to conclude that this is the correct issue to be looking at in</p>

	<p>the context of any problems in the housing market.</p> <p>If there is a need to control short term lets then the planning system could be used.</p> <p>If the quality of provision is an issue, better regulation of the sector could improve standards and the letting experience.</p> <p>If there are infrastructure impacts, those could be addressed through the taxation (rates/ council tax/ other) of that activity.</p> <p>The lack of availability of housing is not exclusive to tourism locations.</p> <p>There doesn't appear to have been an assessment of any corresponding negative impacts on the tourism sector.</p>
Does it link to another question?	
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	<p>This is a 'fixed' question because although other systems could be used, it is difficult to argue that the issue identified by the Government could not be addressed through the planning system.</p> <p>However, all of the other questions flow from this founding point which is a tacit acceptance that (a) there is a problem; and (b) the planning system is at fault for creating the difficulties.</p>

Q2. Do you agree with the introduction of a new use class for short term lets?	
What's behind this question?	<p>This is a better and more open question.</p> <p>It still assumes that the 'problem' stems from an over-supply of short term lets.</p> <p>It could create a two-tier house pricing model.</p> <p>The expectation being C5 properties in areas where an Article 4 direction is in place will increase in value disproportionately to those classed as C3. This could lead to second homeowners purchasing lower priced C3 properties and leaving them</p>

	<p>empty when not visiting. This will clearly not address any shortage of housing issue and will have a negative effect on the local economy.</p>
<p>What might be a response?</p>	<p>No.</p> <p>There is a shortage of permanent housing; there is a growing demand for domestic holiday accommodation.</p> <p>Assuming a fixed housing stock, all that a new use class is capable of achieving is trading a shortage in one category for a shortage in the other. The solution to a shortage of housing is to allow more houses to be built, including social housing.</p>
<p>Does it link to another question?</p>	<p>All of the other practical/ implementation questions stem from this one. If the answer to this question is “yes” and no caveat is given to the answer to Q1 then the outcome is almost inevitable.</p> <p>If there is to be a C5 use class then it is incredibly important which properties will and won't be included within it, what that use class will permit, what rights there may be to change to an alternative use class, how any such change can be effected and whether that can be prevented.</p>
<p>What might the consequences be? If a proposal is accepted, what might it mean for an owner?</p>	<p>A new use class will fix the position of an individual unit at the point of implementation.</p> <p>Given that the objective of these measures is to reduce the number of short term lets, there is no guarantee that an individual unit will be found to be within the new use class.</p> <p>If current use isn't sufficient to be classed as C5 and it is instead C3, planning permission would be required to continue to operate as a short term let (and that permission might not be forthcoming).</p> <p>The right to use a property flexibly will be removed (subject to any parallel re-grant and maintenance of permitted development</p>

	<p>rights); for example, you may not be allowed to rent out of season to a family who are 'between houses' in a conveyancing chain or, alternatively, if you do rent on that basis you may not be permitted to resume your holiday offering come the next Spring.</p> <p>If a property is classed as C3 then it may be allowed to be rented on a limited basis but that might not be sufficient to maintain a business, meet any borrowing costs and on selling (as a C3 dwelling) there may be a capital loss if the purchase price was based on a different operating model.</p>
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<p>Q3. Do you agree with the description and definition of a short term let for the purposes of the new use class?</p>	
<p>What's behind this question?</p>	<p>The new C5 class would apply to Use of a dwellinghouse that is not a sole or main residence for temporary sleeping accommodation for the purpose of holiday, leisure, recreation, business or other travel.”</p> <p>The intention is presumably to have something short and punchy and to effectively sweep everything that isn't a 'normal' home into the new use class.</p> <p>Any new use class must have a definition.</p>
<p>What might be a response?</p>	<p>No.</p> <p>This is a very blunt definition that could have a number of adverse and unintended outcomes. It could have the effect of bringing a lot more properties into the use class (even on a very temporary basis) and thus distorting a planning authority's view of the extent of short term letting in its area. That could then drive policy changes based on a set of false or misleading data.</p>
<p>Does it link to another question?</p>	<p>This links to later attempts to finesse which properties should and should not fall within the use class, whether any specific classes of use ought to be dealt with differently, the permitted development right to move</p>

	between C3 and C5 and the obligation to notify.
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	<p>It is very difficult to accidentally change a home into a shop or office but it could be very easy to fall between the new use classes without intending to.</p> <p>Depending on how that is viewed by insurers, lenders, buyers etc. the consequences could be severe.</p> <p>That could particularly be the case once an Article 4 Direction is brought in (which seems to be the direction of travel – see later questions) such that a move to C3 becomes irreversible and your business model crashes.</p>

Q4. Do you have any comments about how the new C5 short term let use class will operate?	
What's behind this question?	<p>This provision is intended to avoid a flurry of applications to LPAs to obtain a particular use class status.</p> <p>This essentially defines properties at a single point in time (when the new regulations come into force). It is intended for the ease of planning authorities and not for property owners.</p>
What might be a response?	<p>Yes.</p> <p>Having a drop dead point with such a blunt definition will cause problems for empty properties or properties being refurbished, which wouldn't appear to fall into either category.</p> <p>The reference to second homes in the consultation is inconsistent with the earlier C5 definition because the definition is about how it is used and not by whom it is used. The definition would put a second home into C5 but in this section suggests that a second home would only be in C5 if it is let to somebody else; it cannot be both.</p>

	<p>Letting a room to a lodger is already permitted within C3 and so this change is not necessary to continue that.</p> <p>The letting of rooms would be a change of use to C1 and so again does not create a need for this new use class.</p>
Does it link to another question?	This question links forwards and backwards in the consultation to the definition in Q3, the question of need in Q2, the availability (or not) of permitted development rights in Q6 and Q7.
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	<p>Lender conditions are likely to require you to be operating within the planning rules. How will you know whether you are or aren't without applying for and being granted a certificate of lawfulness?</p> <p>If you close for refurbishment, how will you ensure that you haven't changed use class over that period and that you'll be able to re-commence letting once completed?</p>

Q.5 Do you consider there should be specific arrangements for certain accommodation as a result of the short term let use class	
What's behind this question?	This question is a pragmatic acknowledgment that the private rented sector covers a broad spectrum of modes of occupation. For example (as per the consultation) a student's parents' home is likely their main residence and so their student house is probably a short term let in C5 despite the fact that they are currently living there as C3.
What might be a response?	<p>Yes.</p> <p>There are too many different modes of occupation currently under C3 to be able to document them sufficiently in any introduction of C5 and that point hasn't been fully considered.</p> <p>In seeking to address a perceived issue in some localities the entire private rented sector could be impacted.</p>

Does it link to another question?	This links to the definition of the C5 use class and what would and wouldn't be included.
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	

Q. 6 Do you agree that there should be a new permitted development right for the change of use from a C3 dwellinghouse to a C5 short term let (a)	
What's behind this question?	This is intended to soften the blow of the proposed change. It is saying 'don't worry if you find yourself in the 'wrong' category as you can always just move when you want to'
What might be a response?	Yes. Some properties will inevitably end up incorrectly classified at the time of the change and need to be able to move to the correct position. Some properties will be used for holiday letting in the summer and longer term 'residential' letting over winter. Those businesses need the comfort that they can revert to their core model in the Spring; if that isn't the case, businesses will simply close over winter rather than risk losing their C5 status and the result will actually be less 'residential' accommodation rather than more.
Does it link to another question?	Q6 and Q7 are two sides of the same coin. The fundamental linkage, though, is to Q10 where the right to switch could be removed as well as Q8 and Q9 on limitations and notifications.
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	Considering that the purpose of the proposed changes is to address the harm caused by there being too many holiday lets in certain locations, it seems unlikely that any automatic right to create more such lettings is going to survive first contact with the LPAs.

	<p>These rights (Q6 and Q7) to change and change back are designed to draw consultees into thinking that the introduction of the new use class is nothing to worry about.</p> <p>Governments do not seek to divide a population (in its broadest sense) into different classes unless it is in order to facilitate different treatment of those different classes.</p> <p>Houses in Multiple Occupancy (HMOs) used to be C3 and then a new C4 class was created with equivalent switching permitted development rights.</p> <p>Following that changes, local authorities made Article 4 Directions removing the right to change from C3 to C4 but retaining the right to change from C4 to C3. What they created was a ratchet effect.</p> <p>Any HMO that fell back into C3 was stuck there and couldn't be re-let to students for the new term. That could have happened because they all went home (or even that there was only one of them left) and the property was empty or there was a conventional residential let over the summer. The same is likely to happen here because this change to a new use class is designed (and probably intended) to squeeze the sector.</p>
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<p>Q.7 Do you agree that there should be a new permitted development right for the change of use from a C5 short term let to a C3 dwellinghouse (b)</p>	
<p>What's behind this question?</p>	<p>One could look at this with benevolence in terms of making it easy for businesses to give up on short term letting and convert to C3 without any troublesome paperwork.</p> <p>Unless other changes come in (see later Q11) without this right or 'reversion' conventional homeowners wouldn't be able to do holiday swaps or rent out their houses for sports events (see Wimbledon).</p>

What might be a response?	Yes. Most holiday lets could be sold to a new owner for them to live in permanently. This would allow that to continue.
Does it link to another question?	Linked to Q6 as the other side of the coin but also Q8, Q9 and Q10 as described in Q6.
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	Houses in Multiple Occupancy (HMOs) used to be C3 and then a new C4 class was created with equivalent switching permitted development rights. Following that changes, local authorities made Article 4 Directions removing the right to change from C3 to C4 but retaining the right to change from C4 to C3. What they created was a ratchet effect. Any HMO that fell back into C3 was stuck there and couldn't be re-let to students for the new term. That could have happened because they all went home (or even that there was only one of them left) and the property was empty or there was a conventional residential let over the summer. The same is likely to happen here because this change to a new use class is designed (and probably intended) to squeeze the sector.

Q.8 Do you agree that the permitted development rights should not be subject to any limitations or conditions?	
What's behind this question?	This is drafted to reassure but is an offer to AONBs, National Parks, heritage coasts and other areas to seek to have conditions and limitations imposed.
What might be a response?	Yes. The new use class should not be able to restrict changes that are currently not subject to planning control.

	New buildings can have their permitted development rights excluded by condition and so there is no reason to impose limitations on any right for existing properties.
Does it link to another question?	
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	It seems unlikely that some areas of the country won't seek to limit the availability of the permitted development right. A property could fall back into C3 and then be prevented from reverting to C5 use because it is listed, in a conservation area or a National Park, for example.

Q.9 Do you agree that the local planning authority should be notified when either of the two permitted development rights for change of use to a short term let (a) or from a short term let (b) are used?	
What's behind this question?	This question perhaps shows how fine some of the distinctions are that owners/operators are being invited to self-report. Self-reporting would be a fundamental requirement for some of the other provisions to operate as otherwise the sector would be too large and broad for LPAs to police.
What might be a response?	No. People are not required to tell the LPA when they exercise 28 day permitted development rights or change between C3 and C4 or carry out minor works or development of dwellinghouses and this should be no different.
Does it link to another question?	Establishing a ratchet away from C5 would be assisted by self-reporting (Q6 and Q7). A self-reporting regime might have sanctions in terms of what options may be open to a property owner if they have failed to notify (this point isn't clear as this notification doesn't really exist in the current system).

	Self-reporting would prevent people from arguing marginal cases (Q3) if they have already submitted a report.
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	The concern with changes between the classes is the risk of withdrawal and the loss of a right of reversion (as opposed to a fundamental decision to move out of the sector). If the right to revert to C5 was removed, it would be of little effect if the LPA never caught people using the property for a longer term residential letting over the winter. An LPA only needs to know when people are using the right if it wants to restrict the ability to do so.

Q.10 Do you have any comments about other potential planning approaches?	
What's behind this question?	<p>This is a rather catch-all but is an even stronger signal that the purpose of these changes is to shrink the sector.</p> <p>Article 4 Direction would remove the permitted development right to change to C5 and not the other way round (see ratchet comments in Q6 and Q7).</p>
What might be a response?	<p>Yes.</p> <p>To add holiday use to the list of sui generis uses would mean that a planning application would be needed to change to permanent residential and that is presumably not what the Government is seeking to achieve.</p> <p>Moving holiday lets to a new use class and then restricting it through an Article 4 Direction seems an odd way of addressing a housing shortage, which would be better addressed by allowing more housing to be built.</p>
Does it link to another question?	Q6 and Q7 permitted movement between the classes.
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	This is a sly way of introducing the removal of permitted development rights as it is not an 'other potential planning approaches' as

	it speaks directly to the inability to move to C5 or revert to C5.
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Q.11 Do you agree that we should expressly provide a flexibility for homeowners to let out their homes (C3 dwellinghouses)?	
What's behind this question?	This question has been included to increase the sample size of consultees. It splits the consultation between those running businesses renting properties and those members of the general public who don't want to lose the ability to rent out their property for a couple of weeks each summer.
What might be a response?	<p>No.</p> <p>Planning is based on the use and not the user.</p> <p>If there is going to be control over short-term letting then it should apply to all properties on the same basis.</p> <p>There is no justification for saying that one property can be allowed 90 nights of short-term rental without control and not another based on what is happening in that property for the remainder of the year.</p> <p>There may be owners who let out their properties whilst they are themselves away (work or holiday) who might welcome this clarity (and might therefore answer 'yes').</p>
Does it link to another question?	
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	This is not about flexibility for homeowners but is intended to boost sample size so that objections from the sector on the rest of the survey are watered down. If the result of the consultation was that more people would be affected then it is less likely to go ahead. The suggested response to this question is therefore a deliberate attempt to bring everyone into the same boat and avoid a divide and conquer position.

<p>Q.12 If so, should this flexibility be for:</p> <p>i. 30 nights in a calendar year; or</p> <p>ii. 60 nights in a calendar year; or</p> <p>iii. 90 nights in a calendar year</p>	
<p>What's behind this question?</p>	<p>Perhaps a dividing line is being drawn between people letting out their own home and people running a letting business.</p> <p>There is a suspicion that all of the questions relating to the non-commercial aspect are an effort to increase the response rate and so water down responses elsewhere in the consultation as homeowners will only be interested in these very limited points.</p>
<p>What might be a response?</p>	<p>Undecided.</p>
<p>Does it link to another question?</p>	<p>Linked back to Q.11 and forward to Q.13 in terms of implementing any changes. Fundamentally linked to Q2 in terms of when something is or is not in the new use class.</p>
<p>What might the consequences be? If a proposal is accepted, what might it mean for an owner?</p>	<p>As above, this is likely to link to the broader question of when C5 is triggered. It wouldn't really make sense otherwise to have an allowance for a C3 property but not then flip to C5 if that allowance is exceeded.</p> <p>Will an exceedance immediately push a property over into C5 or will it simply be a breach of the terms of C3 and potentially subject to enforcement?</p> <p>If the former and there is a withdrawal of PD rights for a reversion to C3, can properties get trapped?</p> <p>If this sets a threshold, will it be the case that a property let for too short a time will end up classed as C3 and may not then be allowed to increase letting use beyond that and into C5 without planning permission (if PD rights are withdrawn)?</p>

	<p>This isn't one of the options. However, if the use classes order is amended so that C3(a) includes a time limited letting allowance then that will also define the point at which the letting of a property becomes a commercial operation and probably then falls into C5 and business rates.</p> <p>It might be best for it to be as large as possible so as to stop other people dropping into the commercial (C5) setting and the LPA having to respond to that and thus affecting more people whose livelihoods rely on the availability of planning permission to carry on their business.</p>
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<p>Q.13 Should this flexibility be provided through:</p> <p>i) A permitted development right for use of a C3 dwellinghouse as temporary sleeping accommodation for up to a defined number of nights in a calendar year</p> <p>ii) An amendment to the C3 dwellinghouse use class to allow them to be let for up to a defined number of nights in a calendar year.</p>	
<p>What's behind this question?</p>	<p>The LPA can, to a certain extent, control the local availability of permitted development rights. By contrast, the LPA cannot amend the terms of the use class order which is set by Parliament.</p> <p>Greater local control is a double-edged sword and the impact will depend on local circumstances and politics.</p>
<p>What might be a response?</p>	<p>Undecided.</p>
<p>Does it link to another question?</p>	<p>Linked to the definition of C5 in Q2. Also linked to the technical implementation of non-commercial letting (as I have referred to it here) in Q.11 and Q.12.</p>
<p>What might the consequences be? If a proposal is accepted, what might it mean for an owner?</p>	<p>If lots of people take up the opportunity to let their properties on a non-commercial basis (subject to mortgage conditions, insurance, etc.) and that puts pressure on the LPA to take steps, its only option might be to act on the availability of the C5 rights.</p>

	<p>If property owners aren't going to be relying on this concession, it would be better for the LPA to have the maximum control of it through it being a PD right that could be withdrawn or constrained, leaving the commercial sector untouched.</p> <p>Consequences will depend on the extent to which such rights (which effectively exist already) are relied on.</p> <p>At the moment, household insurance assumes that a householder is living at the property and not letting it out. If, for example, policies acknowledge this express flexibility in the scope of planning then might more people take it up?</p> <p>If the cost of living pressures are maintained, might more people take up this opportunity?</p> <p>The greater the increase in short term letting (all types), the more likely it seems that the LPA would want to act to reduce/ control it. If that can be done in a way that doesn't affect current operators then that would be to their advantage.</p>
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Q.14 Do you agree that a planning application fee equivalent to each new dwellinghouse should apply to applications for each new build short term let?	
What's behind this question?	This question is obviously about funding but may also be, in part, a disincentive to seek to change the use of a building.
What might be a response?	Any fee should be the same on a National basis and should be kept to an absolute minimum.
Does it link to another question?	
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	<p>If people want fast and efficient decisions from a planning authority then that department needs to be properly funded.</p> <p>If there is a fee payable for something that was previously free, that might be an incentive for the LPA to decide that a lot more properties need to go through this process.</p>

	New build isn't an issue as there would have to be a fee payable in any event. We are concerned that an LPA can remove the PD right and then seek payment to allow changes of use.
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Q.15 Do you agree with the proposed approach to the permitted development rights for dwellinghouses (Part 1) and minor operations (Part 2)?	
What's behind this question?	This is a tidying up operation to prevent unintended circumstances where a new use class is created but in doing so a whole host of allied rights, such as being able to replace windows, are withdrawn and would then require express planning approval.
What might be a response?	Yes.
Does it link to another question?	Linked to the existence of the C5 use class (Q.2)
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	<p>This is perhaps a softening of the 'blow' of a new use class. There is a sense that if there are permitted development rights to change between C3 and C5 and there is no loss of allied rights then what's the harm?</p> <p>If these works needed to be the subject of planning applications then the implications of the change to C5 might be more significant and might receive greater opposition.</p>

Q.16 Do you have any further comments you wish to make on the proposed planning changes in this consultation document?	
<p>These provisions could cause regional imbalance depending on which areas decide to take advantage of the ability to restrict these activities.</p> <p>Additional administration for planning authorities, if it comes without additional resource, is likely to further slow the function of their planning teams.</p> <p>We are not convinced that this proposal is really addressing (or capable of addressing) the basic problem of an under-supply of housing.</p>	

Q.17 Do you think that the proposed introduction of the planning changes in respect of a short term let use class and permitted development rights could give rise to any impacts on people who share a protected characteristic? (Age; Disability; Gender Reassignment; Pregnancy and Maternity; Race; Religion or Belief; Sex; and Sexual Orientation).

Q.18 Do you think that the proposed introduction of the planning changes in respect of a short term let use class and permitted development rights could impact on:
a) businesses
b) local planning authorities
c) communities?

What's behind this question?	Standard 'impact' question.
What might be a response?	<p>Yes.</p> <p>All of these will potentially be affected to a greater or lesser extent depending on what decisions are made in respect of the other questions/ matters in this consultation [a, b, c].</p> <p>Any business that finds itself dropping out of C5 and then not being permitted back could be forced into insolvency and or breach the terms of any lending or insurance [a].</p> <p>Tourism (non-accommodation) businesses will be negatively affected [a].</p> <p>The whole premise on which this consultation is founded is that the current number of short-term lets is a problem to be fixed. That is clearly a concern for businesses currently operating in the sector [a].</p> <p>Additional enforcement burden and increased workload on already under-resourced planning departments [b].</p> <p>The basis of the consultation includes an acknowledgment that there is a shortage in the supply of housing. That would be better fixed by LPAs allowing more housing to be built rather than restricting citizens to go on a self-catered holiday. Widely acknowledged</p>

	<p>to represent good value on a per person per night basis.</p> <p>There doesn't appear to have been an assessment of the impact on allied tourism businesses that would be impacted if the number of people visiting an area is reduced by a managed decline in the supply of accommodation [c].</p>
Does it link to another question?	
What might the consequences be? If a proposal is accepted, what might it mean for an owner?	