

2021 No. 428

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

<i>Made</i> - - - -	<i>30th March 2021</i>
<i>Laid before Parliament</i>	<i>31st March 2021</i>
<i>Coming into force</i> - -	<i>21st April 2021</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 59, 60, 61, 108(2A), (3C) and (5) and 333(2A) and (7) of the Town and Country Planning Act 1990(a):

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 and comes into force on 21st April 2021.

(2) This Order extends to England and Wales, and any amendments made by this Order have the same application as the instruments amended.

Amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015

2. The Town and Country Planning (General Permitted Development) (England) Order 2015(b) is amended in accordance with articles 3 to 12.

Amendments to article 2

3. In paragraph (1) of article 2 (interpretation), in the definition of “dwellinghouse”, after “(changes of use),” insert “Class B (demolition of buildings) of Part 11 (heritage and demolition),”.

(a) 1990 c. 8. Amendments have been made to section 59 which are not relevant to this Order. Section 60 was amended by section 4(1) of the Growth and Infrastructure Act 2013 (c. 27) and section 152 of the Housing and Planning Act 2016 (c. 22); section 108(2A) and (3C) was inserted by section 189 of the Planning Act 2008 (c. 29) and amended by S.I. 2012/210 and paragraph 29(5), (6) and (7) of Schedule 12 to the Housing and Planning Act 2016; section 333(2A) was inserted by paragraph 14(2) of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c. 5). In section 108, “prescribed” means prescribed in regulations made by the Secretary of State.

(b) S.I. 2015/596, which has been amended by S.I.s 2016/332, 2016/765, 2016/772, 2016/1040, 2016/1154, 2017/391, 2017/571, 2017/619, 2017/1011, 2017/1012, 2018/119, 2018/343, 2018/695, 2019/907, 2020/330, 2020/412, 2020/632, 2020/755, 2020/756, 2020/1243 and 2020/1459.

Amendments to Part 1 of Schedule 2

4. In each of the following provisions of Part 1 (development within the curtilage of a dwellinghouse) of Schedule 2 (permitted development rights), after “Class M,” insert “MA,”—

- (a) paragraph A.1(a) (development not permitted) of Class A (enlargement, improvement or other alteration of dwellinghouse);
- (b) paragraph AA.1(a) (development not permitted) of Class AA (enlargement of a dwellinghouse by construction of additional stories);
- (c) paragraph B.1(a) (development not permitted) of Class B (additions etc to the roof of a dwellinghouse);
- (d) paragraph C.1(a) (development not permitted) of Class C (other alterations to the roof of a dwellinghouse);
- (e) paragraph D.1(a) (development not permitted) of Class D (porches);
- (f) paragraph E.1(a) (development not permitted) of Class E (buildings etc incidental to the enjoyment of a dwellinghouse);
- (g) paragraph F.1(a) (development not permitted) of Class F (hard surfaces incidental to the enjoyment of a dwellinghouse);
- (h) paragraph G.1(a) (development not permitted) of Class G (chimneys, flues etc on a dwellinghouse);
- (i) paragraph H.1(a) (development not permitted) of Class H (microwave antenna on a dwellinghouse).

Amendments to Class M of Part 3 of Schedule 2

5. In Class M (retail, takeaways and specified sui generis uses to dwellinghouses) of Part 3 of Schedule 2, in paragraph M.2(3) (conditions for permitted development under Class M)—

- (a) in paragraph (a), at the end omit “and”;
- (b) in paragraph (b), at the end insert—
 - “; and
- (c) where the proposed development includes a change of use of a building from a use falling within Class A1 or Class A2 of the Use Classes Order, the developer must apply for a determination under sub-paragraph (1) or (2) on or before 31 July 2021”.

Insertion of Class MA in Part 3 of Schedule 2

6. After Class M (retail, takeaways and specified sui generis uses to dwellinghouses) of Part 3 of Schedule 2 insert—

“Class MA – commercial, business and service uses to dwellinghouses

Permitted development

MA. *Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.*

Development not permitted

MA.1.—(1) Development is not permitted by Class MA—

- (a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;

- (b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;
- (c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;
- (d) if land covered by, or within the curtilage of, the building—
 - (i) is or forms part of a site of special scientific interest;
 - (ii) is or forms part of a listed building or land within its curtilage;
 - (iii) is or forms part of a scheduled monument or land within its curtilage;
 - (iv) is or forms part of a safety hazard area; or
 - (v) is or forms part of a military explosives storage area;
- (e) if the building is within—
 - (i) an area of outstanding natural beauty;
 - (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981(a);
 - (iii) the Broads;
 - (iv) a National Park; or
 - (v) a World Heritage Site;
- (f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or
- (g) before 1 August 2022, if—
 - (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
 - (ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—

- (a) the following classes of the Schedule as it had effect before 1st September 2020—
 - (i) Class A1 (shops);
 - (ii) Class A2 (financial and professional services);
 - (iii) Class A3 (food and drink);
 - (iv) Class B1 (business);
 - (v) Class D1(a) (non-residential institutions – medical or health services);
 - (vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);
 - (vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;
- (b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

(a) 1981 c. 69. Section 41 was amended by sections 20 and 24 of, and Schedules 2 and 4 to, the Agriculture Act 1986 (c. 49), Schedule 3 to the Norfolk and Suffolk Broads Act 1988 (c. 4), Schedule 10 to the Environment Act 1995 (c. 25) and Schedules 11 and 12 to the Natural Environment and Rural Communities Act 2006 (c. 16). There are other amendments not relevant to this Order.

Conditions

MA.2.—(1) Development under Class MA is permitted subject to the following conditions.

(2) Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (a) transport impacts of the development, particularly to ensure safe site access;
- (b) contamination risks in relation to the building;
- (c) flooding risks in relation to the building;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (e) where—
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor,
the impact of that change of use on the character or sustainability of the conservation area;
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and
- (h) where the development involves the loss of services provided by—
 - (i) a registered nursery, or
 - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006(a),
the impact on the local provision of the type of services lost.

(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if in the introductory words in sub-paragraph (5), for “and highways impacts of the development” there were substituted “impacts of the development, particularly to ensure safe site access”.

(5) Development must be completed within a period of 3 years starting with the prior approval date.

(6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.”.

Amendments to Class O of Part 3 of Schedule 2

7. In Class O (offices to dwellinghouses) of Part 3 of Schedule 2, in sub-paragraph (2) of paragraph O.2 (conditions), for the words from “condition that” to the end substitute—

“following conditions—

(a) 2006 c. 41. Section 2 was substituted by paragraph 1(1) of Schedule 4 to the Health and Social Care Act 2012 (c. 7), and section 3 was amended by section 13(2)(a) and (b), (3), (4), (5) and (6) of that Act.

- (a) the development must be completed within a period of 3 years starting with the prior approval date; and
- (b) the developer must apply for a determination under sub-paragraph (1) on or before 31st July 2021”.

Amendments to paragraph W of Part 3 of Schedule 2

8.—(1) Paragraph W (procedure for applications for prior approval) of Part 3 of Schedule 2 is amended as follows.

- (2) In sub-paragraph (2)—
 - (a) in paragraph (ba), after “Classes M,” insert “MA,”;
 - (b) in paragraph (2)(bc)—
 - (i) after “Class M,” insert “MA,”;
 - (ii) after “a floor plan indicating” insert “the total floor space in square metres of each dwellinghouse,”;
- (3) In sub-paragraph (8)(b), for the words from “form on any” to the end substitute—
 - “form—
 - (i) on any adjoining owner or occupier; and
 - (ii) where the proposed development relates to part of a building, on any owner or occupier of the other part or parts of the building”.

Amendments to Class M of Part 7 of Schedule 2

9.—(1) Class M (extensions etc for schools, colleges, universities and hospitals) of Part 7 (non-domestic extensions, alterations etc) of Schedule 2 is amended as follows.

- (2) In the heading, after “universities” insert “, prisons”.
- (3) In paragraph M (permitted development), after “university” insert “, prison”.
- (4) In paragraph M.1 (development not permitted)—
 - (a) for paragraph (a) substitute—
 - “(a) if the cumulative footprint of any erection, extension or alteration under Class M on or after 21st April 2021 would exceed the greater of—
 - (i) 25% of the cumulative footprint of the school, university, prison or hospital buildings as it was on 21st April 2021; or
 - (ii) 250 square metres;”;
 - (b) in paragraph (b), after “university” insert “, prison”;
 - (c) in paragraph (d), for “exceed 5 metres” substitute—
 - “exceed—
 - (i) if within 10 metres of a boundary of the curtilage of the premises, 5 metres; or
 - (ii) in all other cases, 6 metres;”;
 - (d) after paragraph (d) insert—
 - “(da) if the height of any rooftop structure would exceed 1.5 metres;”;
 - (e) in paragraph (e)(i), after “premises,” insert “the lesser of the height of the building being extended or altered or”;
 - (f) in paragraph (g)(ii), at the end insert—
 - “;
 - (iii) in the case of prison buildings—
 - (aa) the predominant use of the existing buildings on the premises is for the confinement of prisoners in closed conditions;

- (bb) the buildings are located on a site with a closed perimeter; and
- (cc) the development does not involve the erection, extension or alteration of any building beyond the perimeter as it stood on 21st April 2021”.

(5) In paragraph M.2 (conditions)—

- (a) after each occurrence of “university” insert “, prison”;
- (b) in paragraph (c), omit “and”;
- (c) at the end of paragraph (d) insert—
“;
- (e) where proposed development under Class M relates to the erection, extension or alteration of a school building that results in an increase in the school’s published admission number, the developer must, within a period of six months starting with the date the development is completed, submit to the local planning authority a travel plan for the site;
- (f) where proposed development under Class M relates to the erection, extension or alteration of a university building, development is permitted subject to the condition that before beginning the development the developer applies to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
 - (i) transport and highways impacts of the proposed development;
 - (ii) the design and external appearance of the erection, extension or alteration; or
 - (iii) the impact of the development on heritage and archaeology;
- (g) an application required under paragraph (f) is to be made and determined in accordance with paragraph M.2A (procedure for applications for prior approval under Class M);
- (h) development approved pursuant to an application under paragraph (f) is permitted subject to the condition that it is completed within a period of three years starting with the prior approval date”.

(6) After paragraph M.2 insert—

“Procedure for applications for prior approval under Class M

M.2A.—(1) The following provisions apply where a developer is required under paragraph M.2(f) to make an application to a local authority for a determination as to whether the prior approval of the authority will be required.

(2) The application must be accompanied by—

- (a) a written description of the proposed development;
- (b) a plan indicating the site and showing the proposed development;
- (c) drawings prepared to an identified scale and showing—
 - (i) in the case of a building to be erected, the proposed external dimensions and elevations of that building; and
 - (ii) in the case of a building to be extended or altered, the external dimensions and elevations of that building both before and after the proposed extension or alteration;
- (d) a written statement in respect of the heritage and archaeological considerations of the development;
- (e) the developer’s contact address;
- (f) the developer’s email address if the developer is content to receive communications electronically; and
- (g) any fee required to be paid.

(3) Sub-paragraphs (3) to (5) and (7) to (14) of paragraph W of Part 3 apply to an application under this paragraph as they apply to an application under Part 3 as if—

- (a) in sub-paragraph (3)—
 - (i) the words from “except for” to “paragraph Q.2(1)(f)” were omitted;
 - (ii) for “this Part” there were substituted “Class M”;
- (b) sub-paragraph (10)(c) were omitted.”.

(7) In paragraph M.3 (interpretation of Class M)

(a) for the entry that begins ““original school, college, university or hospital building”” substitute—

““footprint”, in relation to a building, means the total area of ground covered by it;

“original school, college, university, prison or hospital building” means original building which is a school, college, university, prison or hospital building, as the case may be, other than any building erected at any time under Class M;

“prior approval date” has the meaning given in paragraph X of Part 3;

“prison”—

(a) includes a young offender institution provided pursuant to section 43(1)(a) (places for the detention of young offenders etc) of the Prison Act 1952(a);

(b) does not include—

(i) a secure training centre or a secure college provided pursuant to, respectively, section 43(1)(b) or (c) of the Prison Act 1952;

(ii) premises approved pursuant to section 13(1) (approved premises) of the Offender Management Act 2007(b);

(iii) a bail hostel within the meaning of section 2(2) (other definitions) of the Bail Act 1976(c);

“published admission number” means the number of pupils of any relevant age group at the school determined by the admission authority under sections 88C and 88D of the School Standards Framework Act 1998(d);

“rooftop structure” has the meaning given in paragraph D.3 of Part 9;”;

(b) in the definition of “school”, at the end insert—

“; and

“travel plan” means a long-term management strategy that seeks to deliver sustainable transport objectives”.

Amendments to Class B of Part 8 of Schedule 2

10.—(1) Class B (dock, pier, harbour, water transport, canal or inland navigation undertakings) of Part 8 (transport related development) of Schedule 2 is amended as follows.

(2) In paragraph B (permitted development)—

(a) in the introductory words, after “lessees” insert—

“or agents of development (including the erection or alteration of an operational building)”;

(b) at the end of sub-paragraph (a), omit “or”;

(c) at the end of sub-paragraph (b) insert—

(a) 1952 c. 52. Section 43 was substituted by section 38(1) of the Criminal Justice and Courts Act 2015 (c. 2).

(b) 2007 c. 21.

(c) 1976 c. 63. The definition of “bail hostel” was substituted by paragraph 50(3)(a) of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(d) 1998 c. 31. Sections 88C and 88D were inserted by section 151 of the Education and Skills Act 2008 (c.25). “Admission authority” is defined in section 88(1) of that Act.

“, or

(c) in connection with the provision of services and facilities”.

(3) In paragraph B.1 (development not permitted)—

(a) at the end of sub-paragraph (b)(i), omit “or”;

(b) at the end of sub-paragraph (b)(ii), insert—

“, or

(c) where the development falls within paragraph B(c)—

(i) the erection of a building other than an operational building; or

(ii) the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected”.

(4) After paragraph B.1, insert—

“Condition

B.1A.—(1) Development is permitted by Class B subject to the condition that the relevant statutory undertaker consults the local planning authority before carrying out any development, unless that development falls within the description in paragraph B.3.”.

(5) After paragraph B.2 (interpretation of Class B), insert—

“B.3. Development falls within this paragraph if—

(a) it is urgently required for the efficient running of the dock, pier, harbour, water transport, canal or inland navigation undertaking, and

(b) it consists of the carrying out of works, or the erection or construction of a structure or of an ancillary building, or the placing on land of equipment, and the works, structure, building, or equipment do not exceed 4 metres in height or 200 cubic metres in capacity.”.

Amendments to Class B of Part 11 of Schedule 2

11.—(1) Class B (demolition of buildings) of Part 11 (heritage and demolition) is amended as follows.

(2) In paragraph B.1 (development not permitted)—

(a) at the end of sub-paragraph (c), omit “or”;

(b) after sub-paragraph (d) insert—

“; or

(e) the demolition relates to a statue, memorial or monument (“a commemorative structure”) in place for a period of at least 10 years on the date of any proposed demolition, other than a commemorative structure—

(i) that is a listed building;

(ii) that is a scheduled monument;

(iii) within a cemetery, on consecrated land, or within the curtilage of a place of public worship;

(iv) within the grounds of a museum or art gallery; or

(v) within the curtilage of a dwellinghouse”.

(3) In paragraph B.3 (interpretation of Class B), before the definition of “excluded demolition” insert—

““cemetery” has the meaning given by section 214(8) of the Local Government Act 1972(a);

“dwellinghouse” does not include educational accommodation;”.

Amendments to Part 20 of Schedule 2

12.—(1) Part 20 (construction of new dwellinghouses) of Schedule 2 is amended as follows—

(a) in paragraph A.1(a) (development not permitted) of Class A (new dwellinghouses on detached blocks of flats), after “Class M,” insert “MA,”;

(b) before each of the provisions of Part 20 listed in paragraph (2) insert—

“(za) the permission to use the building as a dwellinghouse has been granted only by virtue of Class MA of Part 3 of this Schedule;”.

(2) The provisions mentioned in paragraph (1)(b) are—

(a) paragraph AA.1(a) (development not permitted) of Class AA (new dwellinghouses on detached buildings in commercial or mixed use);

(b) paragraph AB.1(a) (development not permitted) of Class AB (new dwellinghouses on terrace buildings in commercial or mixed use);

(c) paragraph AC.1(a) (development not permitted) of Class AC (new dwellinghouses on terrace buildings in use as dwellinghouses);

(d) paragraph AD.1(a) (development not permitted) of Class AD (new dwellinghouses on detached buildings in use as dwellinghouses).

(3) In paragraph B(2)(c) (procedure for applications for prior approval under Part 20), after “indicating” insert “the total floor space in square metres of each dwellinghouse,”.

Amendment to the Town and Country Planning (Use Classes) Order 1987

13. In Part A of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987(b), in sub-paragraph (d) of Class E (commercial, business and service), after “or firearms” insert “or use as a swimming pool or skating rink”.

Amendment to the Town and Country Planning (Compensation) (England) Regulations 2015

14. In regulation 2 (prescribed development) of the Town and Country Planning (Compensation) (England) Regulations 2015(c), in sub-paragraph (c) after “M,” insert “MA,”.

Transitional and saving provisions

15.—(1) The amendments made by the following provisions do not apply in relation to development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”) where the development has started, but not completed, on the date on which this Order comes into force—

(a) article 9(5)(c) (in respect of development under Class M of Schedule 7 to the GPDO);

(b) article 10(4) (in respect of development under Class B of Schedule 8 to the GPDO).

(2) The amendments made by the following provisions do not apply in relation to applications made on or before the date on which this Order comes into force—

(a) 1972, c. 70.

(b) S.I. 1987/764. Schedule 2 was inserted by S.I. 2020/757. There are other amendments to this instrument not relevant to this Order.

(c) S.I. 2015/598. Regulation 2 has been amended by S.I. 2016/331, 2017/392, 2017/620, 2019/907, 2020/632 and 2020/1243.

- (a) article 8(2)(b)(ii) and (3) (for determination as to whether the prior approval of the authority will be required under Part 3 of Schedule 2 to the GPDO);
- (b) by article 12(3) (for prior approval of the authority under Part 20 of Schedule 2 to the GPDO).

(3) Until the end of 31st July 2022, a direction issued under article 4(1) of the GPDO that—

- (a) is in effect immediately before 1st August 2021,
- (b) withdraws permission for all or any development, or for any particular development, granted for Class O of Part 3 of Schedule 2 to the GPDO, and
- (c) has not been cancelled in accordance with the provisions of Schedule 3 to the GPDO,

continues in effect as if a reference to any development permitted under Class O included a reference to the equivalent development under Class MA of Part 3 of Schedule 2 to the GPDO so far as that development would, but for the direction, be permitted under Class MA.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Christopher Pincher
Minister of State

30th March 2021

Ministry of Housing, Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends, primarily, the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”). The GPDO provides, for the purposes of section 59 of the Town and Country Planning Act 1990 (c. 8), for the granting of permission for certain classes of development without the requirement for a planning application to be made under Part 3 of that Act. The classes of permission, together with their accompanying conditions, limitations and restrictions, are set out in Schedule 2 to the GPDO.

Article 6 amends Part 3 (changes of use) of Schedule 2 to the GPDO to introduce a new class of permitted development (“Class MA”), being a right to change the use of premises from commercial, business or service purposes to use as dwellinghouses.

Article 9 amends Class M (extensions etc for schools, colleges, universities and hospitals) of Part 7 (non-domestic extension, alterations etc) of Schedule 2 to the GPDO. It expands the existing permitted development right in respect of schools, colleges, universities and hospitals to allow a wider range of development, and brings certain prisons within the scope of the right. The provision also introduces a requirement to apply to the local planning authority for determination as to whether the authority’s prior approval is needed in respect of proposed development of university buildings.

Article 10 amends Class B (dock, pier, harbour, water transport, canal or inland navigations undertakings) of Part 8 (transport related development) of Schedule 2 to the GPDO. It expands the existing permitted development right to allow development on operational land at a port in connection with the provision of services and facilities. The provision also introduces a requirement to consult the local planning authority in certain circumstances.

Article 11 amends Class B (demolition of buildings) of Part 11 (heritage and demolition) of Schedule 2 to exclude from the existing permitted development right the demolition of certain commemorative structures that have been in place for 10 years or more.

This Order makes further minor and consequential amendments to the GPDO.

Article 13 makes minor amendment to the Town and Country Planning (Use Classes) Order 1987 to clarify the scope of an existing use class.

Article 14 makes minor amendment to the Town and Country Planning (Compensation) (England) Regulations 2015 to add Class MA to the list of development prescribed for the purposes of subsections (2A)(a) and (3C)(a) of section 108 (compensation where planning permission granted by development order is withdrawn) of the Town and Country Planning Act 1990.

Article 15 makes transitional provision, particularly to ensure the continued effective operation of directions made by local planning authorities under article 4(1) of the GPDO restricting development permitted under Class O which is in future to be permitted under Class MA.

An Explanatory Memorandum is published alongside this instrument at www.legislation.gov.uk.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is being produced by the Ministry of Housing, Communities and Local Government and will also be published at www.legislation.gov.uk and copies may be inspected at the Planning Directorate, the Ministry of Housing, Communities and Local Government, 2 Marsham Street London, SW1P 4DF.

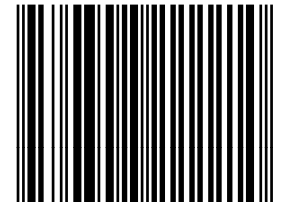
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