

MONTAGU EVANS PRESENTS CHANGES TO THE USE CLASSES ORDER

FUNDAMENTAL CHANGES IN ENGLAND EFFECTIVE 1 SEPTEMBER

IN CONJUNCTION WITH TOWN LEGAL LLP

HEADLINES

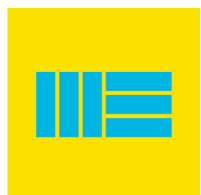
FROM 1 SEPTEMBER 2020

Generally, current use classes A1, A2, A3 and B1 will fall within new use Class E, along with some D1 uses (crèche, nursery, health centres, clinics) and some D2 uses (indoor sport, recreation and fitness)

Where a building or land is in use for a purpose in Use Class E, the use of that building or land (or the use of part of that building or land) for any other purpose within Class E **will not constitute development and will not therefore need planning permission.** However, in individual cases, the planning history for the site might remove this benefit and planning permission may still be required for works to facilitate the change of use.

Additional uses will be considered to be sui generis. These include pub, wine bar, or drinking establishment (currently use Class A4), hot food takeaway (current use Class A5) and several uses within current Class D2 (live music venues, cinemas, concert halls, bingo halls and dance halls). As a result, changes to or from these uses will normally require planning permission.

Use Classes D1 and D2 will cease to exist. Most D1 uses will fall into new use Class F.1 and a new separate use class for community uses will be created giving those uses greater protection (F.2).

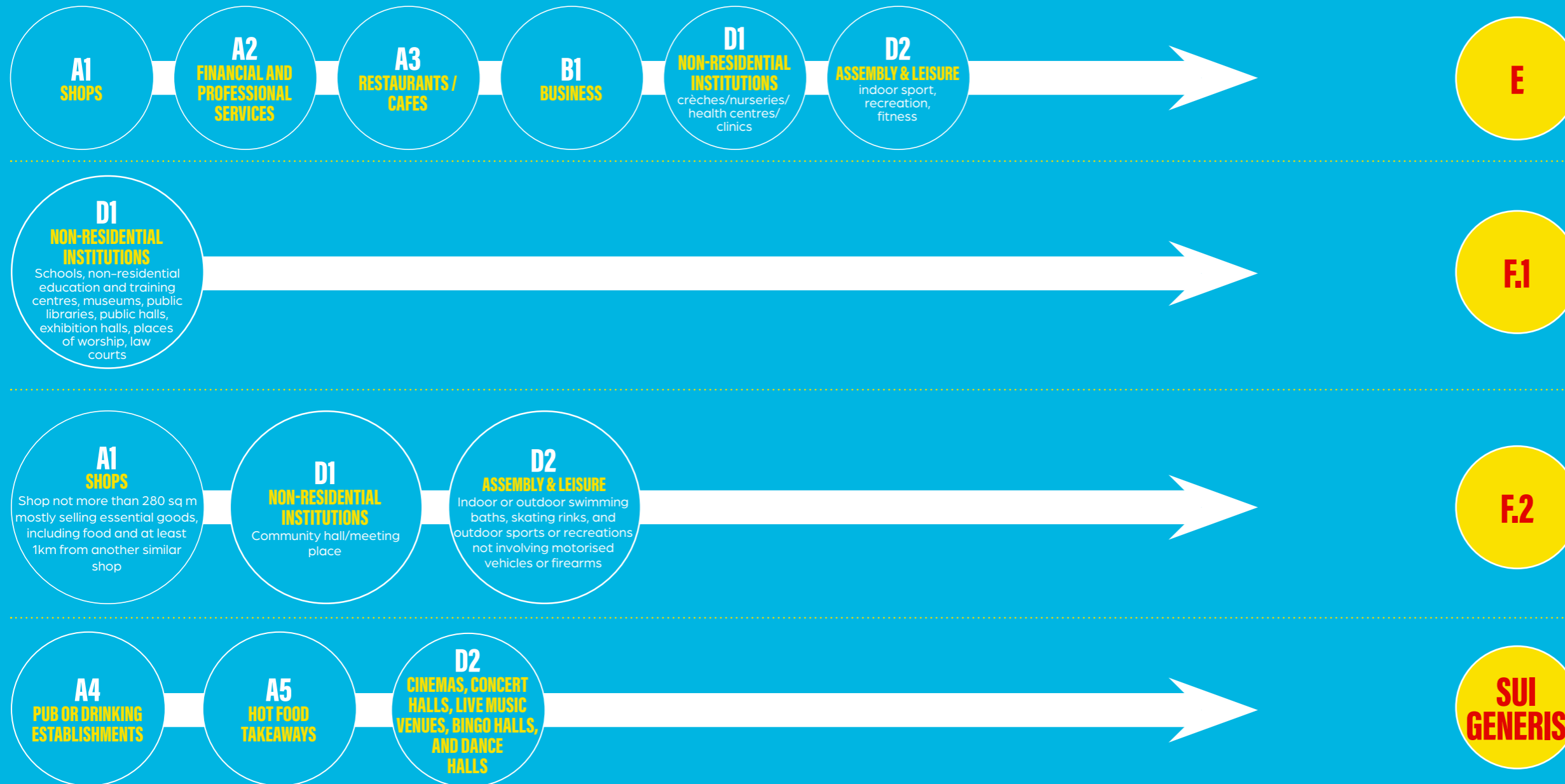


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OVERVIEW OF CHANGES TO THE USE CLASSES ORDER IN ENGLAND EFFECTIVE 1 SEPTEMBER 2020....

USE CLASSES UNTIL 31 AUGUST 2020

USE CLASSES FROM 1 SEPTEMBER 2020



USE CLASSES UNTIL
31 AUGUST 2020

E

A1
SHOPSA2
FINANCIAL AND
PROFESSIONAL
SERVICESA3
RESTAURANTS /
CAFESA4
DRINKING
ESTABLISHMENTSA5
HOT FOOD
TAKEAWAYSB1
BUSINESSD1
NON-RESIDENTIAL
INSTITUTIONS**NEW CLASS E. COMMERCIAL, BUSINESS AND SERVICE.****Use, or part use, for all or any of the following purpose:**

- (a)** for the display or retail sale of goods, other than hot food, principally to visiting members of the public (previously A1)
- (b)** for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises (previously A3)
- (c)** for the provision of the following kinds of services principally to visiting members of the public –
 - (i) financial services
 - (ii) professional services (other than health or medical services), or
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality (previously A2)
- (d)** for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public (previously D2)
- (e)** for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner (previously D1)
- (f)** for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public (previously D1)
- (g)** for–
 - (i) an office to carry out any operational or administrative functions,
 - (ii) the research and development of products or processes, or
 - (iii) any industrial process – being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit (previously B1)

GENERAL EFFECT**New Class E effectively combines the following current use classes:**

- **Class A1** shops (but not small community shops – see Class F2 below)
- **Class A2** financial and professional services (but there is scope for a wider range of services)
- **Class A3** restaurants/cafés
- **Part of D1** (medical or health services for the visiting public, as well as a crèche, day nursery or day centre with no residential use and for the visiting public)

- **Part of D2** (indoor sports, recreation or fitness for the visiting public but not a swimming pool or skating rink – see Class F2 below)

- **Class B1** business

This means that with effect from 1 September, where a building or land is in use for a purpose specified in Class E, the use of that building or land (or the use of part of that building or land) for any other purpose within Class E will not constitute development and will not therefore need planning permission. This will apply permanently in England only and, in principle, will apply in any location (e.g. in town centres and out of town centres).

Class E introduces the concept of part use; this appears to envisage the co-location of commercial and business uses in the same premises.

A number of uses become unclassified or sui generis (see below). They include: previous use Classes A4 and A5 and uses previously within use Class D2 (live music venues, cinemas, bingo halls, concert halls, dance halls).

Other D1 uses now form part of new Class F (see below). This appears to provide those uses with greater protection from changes of use to more commercially valuable purposes.

GENERAL LIMITATIONS AND QUALIFICATIONS

A building or land must be in actual use for one of these purposes before it can take advantage of the ability to change use within Class E without the need for planning permission. Separate planning permission will still be needed for any building or engineering operations which are required to facilitate the change of use (e.g. new shopfronts). In the case of a building planning permission will not be required if those works would not materially affect the external appearance of the building; however, if the works increase floor area in the building by 200 square metres or more when it is used for the retail sale of goods, planning permission will still be required.

The General Permitted Development Order already grants automatic planning permission for changes between certain use classes. Between 1 September 2020 and 31 July 2021 references in the GPDO to uses/use classes are to be interpreted by reference to the use classes as they still existed on 31 August 2020.

In addition, during this period, references to uses/use classes in the context of applications for prior approval and making modifying or cancelling an Article 4 Direction (a local direction restricting permitted development rights) are to be read as references to the use classes subsisting on 31 August 2020. This means, for example, that changes away from some of the Class E uses (currently A1, A2 and B1) to

residential use will still be allowed, as well as changes from offices/light industrial to warehousing. *This is also relevant to the new sui generis uses – see below.*

An Article 4 Direction made before 1 September 2020 and relating to uses or use classes specified in the Use Classes Order as it existed on 31 August 2020 is still to be read as referring to those uses or use classes. Any planning application submitted before 1 September 2020 which relates to uses or use classes specified in the Use Classes Order as it existed on 31 August 2020 is still to be determined by reference to those uses or use classes.

SITE SPECIFIC CONSIDERATIONS

Depending on the planning history of the site in question, changes within new Use Class E might not be possible without further steps:

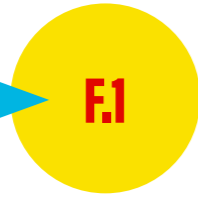
- Conditions attached to a planning permission can effectively exclude or prevent the operation of the Use Classes Order. Where this applies an application for planning permission would still be required to give effect to a change of use.
- Section 106 Agreements may also contain provisions which exclude or prevent the operation of the Use Classes Order. Where this applies a deed of variation will be required before a change of use can be made without breaching the S106.

In instances where planning permission has been granted for one of the uses specified in the Use Classes Order as it existed before 1 September 2020 but the use has not been implemented, a change of use cannot be made under the Use Classes Order until the site is in actual use. However, the backdrop of changes to the Use Classes Order might be helpful in persuading a local planning authority to accept a non-material amendment to the permission to facilitate a wider range of uses.

Site specific title information will also be required before giving effect to any change in case there are restrictive covenants or lease restrictions which exclude certain uses.

USE CLASSES UNTIL
31 AUGUST 2020

D1
NON-RESIDENTIAL
INSTITUTIONS



CLASS F.1 LEARNING AND NON-RESIDENTIAL INSTITUTIONS

Any use not including residential use—

- (a) for the provision of education
- (b) for the display of works of art (otherwise than for sale or hire),
- (c) as a museum,
- (d) as a public library or public reading room,
- (e) as a public hall or exhibition hall
- (f) for, or in connection with, public worship or religious instruction,
- (g) as a law court.

(all previously D1)

GENERAL EFFECT

New Class F.1 incorporates most the remaining uses from the current use Class D1 except for medical/health services for the visiting public and crèche/day nursery/day centre for the visiting public (which form part of Class E) and a hall or meeting place where it is used principally by the local community (which forms part of Class F.2 – see below).

This means that with effect from 1 September, where a building or land is used for a purpose specified in Class F.1, the use of that building or land for any other purpose within Class F.1 will not constitute development and will not therefore need planning permission. This will apply permanently in England only and, in principle, will apply in any location.

GENERAL LIMITATIONS AND QUALIFICATIONS

Same as above.

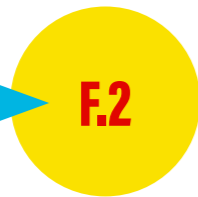
SITE SPECIFIC CONSIDERATIONS

Same as above.

A1
SHOPS

D1
NON-RESIDENTIAL
INSTITUTIONS

D2
ASSEMBLY &
LEISURE



CLASS F.2 LOCAL COMMUNITY

Use as—

- (a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where—
 - (i) the shop's premises cover an area not more than 280 metres square, and
 - (ii) there is no other such facility within 1000 metre radius of the shop's location (previously A1)
- (b) a hall or meeting place for the principal use of the local community (previously D1)
- (c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms (previously D2)
- (d) an indoor or outdoor swimming pool or skating rink (previously D2)

GENERAL EFFECT

New Class F.2 incorporates part of the current use Class A1 (small community shop), part of current use Class D1 (local community hall or meeting place) and the remaining parts of current use class D2 not included in new Class E or new Class F.1 (outdoor sport and recreation, swimming pools and skating rinks).

This means that with effect from 1 September, where a building or land is used for a purpose specified in Class F.2, the use of that building or land for any other purpose within Class F.2 will not constitute development and will not therefore need planning permission. This will apply permanently in England only and, in principle, will apply in any location.

GENERAL LIMITATIONS AND QUALIFICATIONS

Same as above.

SITE SPECIFIC CONSIDERATIONS

Same as above.

USE CLASSES UNTIL 31 AUGUST 2020

• THEATRE

• AMUSEMENT ARCADE OR CENTRE, OR A FUNFAIR

• LAUNDERETTE

• SALE OF FUEL FOR MOTOR VEHICLES

• SALE OR DISPLAY FOR SALE OF MOTOR VEHICLES

• TAXI BUSINESS OR BUSINESS FOR THE HIRE OF MOTOR VEHICLES

• SCRAPYARD, OR A YARD FOR THE STORAGE OR DISTRIBUTION OF MINERALS OR THE BREAKING OF MOTOR VEHICLES

• WORK REGISTRABLE UNDER THE ALKALI, ETC. WORKS REGULATION ACT 1906

• HOSTEL

• WASTE DISPOSAL INSTALLATION FOR THE INCINERATION, CHEMICAL TREATMENT OR LANDFILL OF HAZARDOUS WASTE

• RETAIL WAREHOUSE CLUB BEING A RETAIL CLUB WHERE GOODS ARE SOLD, OR DISPLAYED FOR SALE, ONLY TO PERSONS WHO ARE MEMBERS OF THAT CLUB

• NIGHT-CLUB

• CASINO

• BETTING OFFICE

• PAY DAY LOAN SHOP

SUI GENERIS

FULL LIST OF SUI GENERIS FROM 1 SEPTEMBER 2020

- Theatre
- Amusement arcade or centre, or a funfair
- Launderette
- Sale of fuel for motor vehicles
- Sale or display for sale of motor vehicles
- Taxi business or business for the hire of motor vehicles
- Scrapyard, or a yard for the storage or distribution of minerals or the breaking of motor vehicles
- Work registrable under the Alkali, etc. Works Regulation Act 1906
- Hostel
- Waste disposal installation for the incineration, chemical treatment or landfill of hazardous waste
- Retail warehouse club being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club
- Night-club
- Casino
- Betting office
- Pay day loan shop
- Pub, wine bar, or drinking establishment
- Drinking establishment with expanded food provision
- Hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises
- Venue for live music performance
- Cinema
- Concert hall
- Bingo hall
- Dance hall

GENERAL EFFECT

Generally, *sui generis* uses cannot be changed to any other use (including any other *sui generis* use) without express planning permission.

The effect of the change from 1 September 2020 is to identify additional uses as *sui generis*. These include pub, wine bar, or drinking establishment (currently use Class A4), hot food takeaway (current use Class A5) and several uses within current Class D2 (live music venues, cinemas, concert halls, bingo halls and dance halls).

Note that some *sui generis* uses can change to other uses with the benefit of automatic planning permission granted under the General Permitted Development Order.

GENERAL LIMITATIONS AND QUALIFICATIONS

As indicated above the General Permitted Development Order already grants automatic planning permission for changes between certain use classes.

This includes changes involving some of the newly added *sui generis* uses. Between 1 September 2020 and 31 July 2021 references in the GPDO to uses and use classes are to be interpreted by reference to the use classes as they still existed on 31 August 2020. In addition, during this period, references to uses and use classes in the context of applications for prior approval and making modifying or cancelling an Article 4 Direction (a local direction restricting permitted development rights) are to be read as references to the use classes subsisting on 31 August 2020. Until at least 31 July 2021 it will therefore be possible to utilise permitted development rights involving some of the newly added *sui generis* uses.

An Article 4 Direction made before 1 September 2020 and relating to uses or use classes specified in the Use Classes Order as it existed on 31 August 2020 is still to be read as referring to those uses or use classes.

Any planning application submitted before 1 September 2020 which relates to uses or use classes specified in the Use Classes Order as it existed on 31 August 2020 is still to be determined by reference to those uses or use classes.

SITE SPECIFIC CONSIDERATIONS

There may be site specific restrictions of the sort referred to above which still affect use of permitted development rights relating to newly added *sui generis* uses.

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