

The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (as amended by The Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021)

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These Regulations came into force on 29 March 2021 and expire on 30 June 2021. They apply to England only. All previous Health Protection (Coronavirus) Regulations are revoked, save for transitional provisions.

The Tier system no longer applies; instead, there are three sets of restrictions, described as Step 1, Step 2 and Step 3. Each set of restrictions is listed in a separate Schedule to the Regulations, and the areas to which the restrictions apply are listed in Schedule 4. On implementation, the whole of England will be in the Step 1 area. The Regulations have to be reviewed every 35 days, and the Government has indicated its intention that the country will move from one Step to the next on those review dates, if the level of transmission and resulting hospital admissions are deemed to have dropped appropriately. The structure of the Regulations does, however, allow some areas to be moved from one Step to another if local conditions require.

On 12 April 2021, the Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 came into force. These move the whole of England from Step 1 to Step 2.

Definitions

Child: person aged under 18.

Childcare: uses the meaning in the Childcare Act 2006, and excludes care provided by a parent, relative, foster carer or children's home.

Informal childcare: is defined in Regulation 4(8) as any form of care for a child aged 13 or under that is not registered childcare. It includes education and supervised activities.

Parent: includes any person with parental responsibility or who has care of the child.

Permitted organised gathering: a gathering that takes place on premises which are operated by a business, charity or public body or is outdoors and organised by a business, charity or public body and the organiser has taken the required precautions (Regulation 5). The required precautions are described in Regulation 6 as carrying out a risk assessment and taking all reasonable precautions to prevent transmission of coronavirus.

Public outdoor place: public parks and gardens (whether freely accessible or for which an entrance fee is charged), open country, access land or a highway.

Relevant outdoor activities: activities for which a licence, permit or certificate is required.

Support group: a group or one-to-one support, aid or therapy organised by a business, charity or public body, for example, for victims of crime, persons suffering from addictions, new parents, carers, persons with a disability, LGBT+ persons, people suffering bereavement, vulnerable young people (this list is not exhaustive).

Vulnerable person: person over 70 or younger person with significant health conditions, including asthma, diabetes, having a weakened immune system or "seriously overweight" (BMI >40). Includes a pregnant person. Does not automatically include children in need.

Linked households

There are two types of linked households:

- A single person, or a single parent of children (under 18 on 12 June 2020 only), or a couple with a child under one year old on 2 December 2020, or a couple with a disabled child needing continuous care and aged under five on 2 December 2020, or a household that includes a disabled person or disabled persons who need continuous care but only one adult carer, may form a *linked household* with another household of any size and composition (Regulation 3). Regulation 3 has been amended to clarify that this linking option applies to all households that include a child under one or a disabled child under five, so is available for families with more than one child.
- A family with a child aged 13 or under may link with another household to provide informal childcare for that child, becoming a *linked childcare household* (Regulation 4).

All adult members of a household must agree to the linking arrangements, and all members of a household must be linked to the same second household. There is an exception to this that allows a child of separated parents to be a member of the households of each parent. Changes to linking arrangements can take place with the consent of all members of the households, but there must be a break of 10 clear days between the ending of one linking arrangement and the start of the next.

A household may be linked with only one second household to form a *linked household*, but may also be linked with a different household for the purposes of informal childcare to form a *linked childcare household*.

Note that in the Guidance these linked households are referred to as “bubbles”.

Restrictions on travel

There are no restrictions on travel within the UK imposed by these Regulations (although they apply to England only and there may be Regulations made in other parts of the UK that would prevent a person travelling from England).

Travel outside the UK is not permitted without a reasonable excuse, and nobody may travel to an “embarkation point” for the purposes of travel outside the UK without reasonable excuse. Reasonable excuses are set out in Schedule 5 and include travel for work, to fulfil a legal obligation, to attend the wedding or funeral of a close family member, to arrange contact between a child and their parent or between siblings if one is a looked after or relevant child, or to arrange for prospective adopters to meet a child who may be placed with them. Travellers are required to complete a declaration form and may be subject to testing and isolation requirements on their return.

Travel within the Common Travel Area (CTA) (United Kingdom, Republic of Ireland, Isle of Man and Channel Islands) is permitted by the English Regulations but may be subject to local restrictions. Travel onwards from the CTA to areas outside the UK is not permitted without a reasonable excuse.

Step 2

Restrictions on gatherings

No gatherings indoors are permitted in Step 2.

Note that the definition of “indoors” is that used in the smoking legislation, and will include shelters, tents, marquees, etc, with a roof and more than two closed sides. Unfortunately, some pubs and restaurants have invested in pods or shelters for individual groups, which cannot be defined as outdoors under these Regulations and gatherings in such pods will be unlawful.

Although non-essential retail has been reopened under Step 2, shops are indoors and gatherings are not permitted in shops, ruling out groups of friends going on shopping trips together.

Gatherings outdoors (which does include private gardens), must not consist of more than six people.

General exceptions to the rules on gatherings are:

1. All members of the same household or of two *linked households*.
2. Gatherings reasonably necessary for education and training (including early years education and home schooling).
3. Gatherings necessary for work, charitable or voluntary services, to provide emergency assistance or care to a vulnerable person, to avoid the risk of harm or to move house.
4. To fulfil a legal obligation or attend court.
5. Gatherings inside prison or immigration detention accommodation.
6. Support groups of up to 15 people (children under five not counted) where it is reasonably necessary to meet physically – cannot take place in a private dwelling.
7. Respite care for a vulnerable or disabled person, or a short break for a disabled child.
8. Attending a birth at the mother’s request.
9. A gathering of no more than 15 people for a wedding or civil partnership ceremony. This can only take place in a private dwelling if one of the parties is seriously ill. In any case, the organiser must carry out a full risk assessment and take appropriate precautions.
10. Up to 30 people may gather for funerals, not in a private dwelling, and the organiser must carry out a full risk assessment and take appropriate precautions.
11. Up to 15 people may gather for a commemoration event (e.g. a wake) following a death, and the organiser must carry out a full risk assessment and take appropriate precautions.
12. Elite sports training and events.
13. Gatherings reasonably necessary to:
 - a. Arrange contact for a child who does not live with one or both of their parents.
 - b. Arrange contact between a looked after or relevant child and their siblings.
 - c. Introduce a child to prospective adoptive families in accordance with an adoption placement plan.
 - d. Place or facilitate placement of a child by social services in the care of another person, either temporarily or permanently.
 - e. Provide registered later years provision or supervised activities for a child (aged under 18 on 31 August 2020).
 - f. Provide informal childcare within a linked childcare household.

14. Parent and child groups, organised by a business, charity or public body, not taking place in a private dwelling and consisting of no more than 15 people (children under five not counted).
15. Students moving between college and home for vacation arrangements, where they will be counted as part of their vacation household. They may only move from college to vacation accommodation once before 29 April 2021. Any student at home for that vacation or who has returned home under previous Regulations may take part in a gathering on return to college.
16. Communal worship attended alone or as part of a household, as long as the attendee does not mingle with anybody outside their household, linked household or linked child care household, and the organiser must carry out a full risk assessment and take appropriate precautions.
17. Picket in accordance with trade unions legislation where the organiser must carry out a full risk assessment and take appropriate precautions.
18. Protests organised by a business, charity, public body or political body, where the organiser must carry out a full risk assessment and take appropriate precautions.
19. Nominating candidates for an election or petitioning for a referendum.
20. Campaigning for an election or referendum, where a campaigner may only meet one person and, if visiting a voter's home, must stay outside.
21. Observing an election or referendum and counting votes.
22. A gathering permitted under the Secretary of State's direction (allowed under Regulation 9 to study transmission of the virus in controlled conditions).

Exceptions to the prohibition of indoor gatherings are to visit a dying person or to visit a person receiving treatment in hospital, staying in a care home or hospice, or to take somebody to a medical appointment. There is also an exception for indoor sports activities organised by a business, charity or public body for non-elite sportspeople with a disability or for children, and for which the organiser has carried out and implemented an appropriate risk assessment. Spectators, including parents, are not permitted.

Exceptions to the "rule of six" for outdoor gatherings are:

1. Where all the members of the gathering are members of one or two households (note that two *linked households* will be treated as a single household – so four households could gather outdoors if they were two pairs of linked households).
2. A permitted organised gathering, organised by a business, charity or public body that has taken appropriate precautions. It must be attended alone or as part of a household group (including linked households).
3. An outdoor sports gathering, organised by a business, charity or public body, not for elite sportspeople, spectators not permitted, where the organiser must carry out a full risk assessment and take appropriate precautions.
4. Relevant outdoor activities (a physical activity for which the organiser must be licensed) for which the organiser must carry out a full risk assessment and take appropriate precautions.
5. A wedding/civil partnership reception of no more than 15 people, which cannot take place in a private home and for which the organiser must carry out a full risk assessment and take appropriate precautions.

Regulations relating to the closure of businesses and enforcement rules have also been amended, but these are outwith the scope of this briefing note, save to note that premises which are generally required to be closed may open for the purposes of providing some

services, for example, food banks, election support and child care, and hotel accommodation may be open for essential use (including for vulnerable people, a women’s refuge, parents having contact with a child, or people who need to self-isolate). Details are set out in Schedule 2 Part 2.

More details are set out in the Regulations

(<https://www.legislation.gov.uk/ukxi/2021/364/contents/made>) and in the Roadmap’

(<https://www.gov.uk/government/publications/covid-19-response-spring-2021>).

Regulations requiring the wearing of face coverings on public transport and in shops were made in June and July 2020 for a period of 12 months and are not revoked by these Regulations.

Further Notes summarising Step 3 will be published when relevant, which will not be before 17 May.

Note that the Guidance uses the term “bubble” where the Regulations refer to “linked households”. These terms appear to mean the same thing. This summary should not be used as definitive legal advice and specific legal advice should be sought if there are any concerns about how the Regulations apply in a particular situation.