

November 2020

The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020

Restrictions on movement and restrictions on gatherings (including visitation)

Summary	P1-2
Restrictions on movement	P2 - 5
Restrictions on gathering	P5 - 7
Explainer: service implications	P7-8

Summary

This factsheet provides information on Regulations published on 3rd November 2020 detailing the new 'lockdown' restrictions (https://www.legislation.gov.uk/ukxi/2020/1200/pdfs/ukxi_20201200_en.pdf). These restrictions came into force on 5th November 2020 and will last until at least 2nd December 2020.

The Regulations cover restrictions on leaving the home, informally referred to as the lockdown restrictions, as well as restrictions on gathering indoors and outdoors which primarily affect the issue of visitation. Government guidance, which was issued on 31st October (<https://www.gov.uk/guidance/new-national-restrictions-from-5-november>) attempts to provide detailed commentary and guidance on how to implement the restrictions. In the event that there is any conflicting information between government guidance and the Health Protection Regulations, it is the Regulations that will take precedence.

Please note that the following legal provisions will have different implications depending on individual circumstances within your service. **If you are one of our legal network partners, please contact us to obtain specific advice on how the following provisions may relate to your services or the people you support.**

Who is this factsheet for?

This factsheet is written for frontline care provider organisations and groups which convene for the purposes of care and assistance for vulnerable people (including Gateway Award clubs or day services). It is designed to highlight key aspects of the law which may help you to navigate different scenarios relating to the restrictions.

It will highlight what considerations you may need to have in mind when navigating the restrictions. Access Social Care are also producing specific factsheets and resources for people with care and support needs, their families, and representatives.

We focus in this factsheet on the Regulations as this is the law that underpins any government guidance. Care home guidance is due to be updated in line with these Regulations. We will add resources on this guidance throughout November. Guidance was last issued on 28th October <https://www.gov.uk/guidance/new-national-restrictions-from-5-november> and we await the care home updates.

Restrictions on movement

Regulation 5 states that a person cannot leave or be outside of their home 'without reasonable excuse'. 'Home' also includes gardens, garages and outhouses. There are 13 exceptions to this (some with sub-category exceptions) which are detailed in Regulation 6. These are more detailed and greater in number than we saw in the restrictions on movement in March 2020.

Some of these exceptions are more relevant for the people you support (for example exception 4 on medical need, or exception 5 on respite care) but for completeness we have summarised all 13 exceptions.

It is important to note that **these exceptions are not exhaustive and leaving home for another reason could be deemed reasonably necessary in the circumstances.**

Exception 1: Leaving home necessary for 'certain purposes'

This includes

- shopping (including shopping for a 'vulnerable person')
- withdrawing money
- to 'take exercise' outside or visit a public outdoor place for 'open air recreation': this can be alone, with members of the same household or their linked household (more below). Additionally, it allows for exercise as part of providing informal childcare for a child aged 13 or under. Finally, it allows to exercise with one other person who is **not** a member of their household or linked household.

Open air recreation was referred to informally during the first national lockdown as the 'sunbathing exception' – it covers meeting up to sit in a local park on a

bench, for example, where exercise is not involved.

An important part of this exception is that **if a disabled person has a need for continuous care while carrying out any of these activities, their carer does not 'count' as an additional person if they are there in their caring capacity.** This does not have to be a paid carer and could be a family member or friend. Similarly, children under 5 are also not 'counted' and are exempt from being considered as an additional person

- Visiting church or another place of worship taking part in Remembrance Sunday services
- Movement relating to buying and selling property or moving in and out of rental properties.
- Collection of takeaway food or visiting local refuse centres

Exception 2: Work, volunteering, education, and training

This exception outlines that it is reasonably necessary to leave home to work, provide voluntary or charitable services where it is not possible to do this from home. It also includes leaving home for education or training or **providing care or assistance to a vulnerable person.**

The exception also covers providing emergency assistance to a vulnerable person, attend court, access public services such as social services or attend food banks. A 'vulnerable person' includes anyone over 70 and anyone under 70 with an underlying health condition, which includes, for example, people with a 'chronic neurological condition' (e.g. a learning disability or cerebral palsy) or other conditions such as diabetes.

Exception 3: Elite athletes

This exception solely covers movement of elite athletes (or their parents if the athlete is under 18).

Exception 4: Medical need

It is reasonably necessary to leave home to:

- Seek medical assistance, including blood tests and vaccinations, or to donate blood.
- Avoid injury or illness, or escape risk of harm
- Attending a birth
- **To visit a person receiving treatment in hospital, or staying in a hospice or care home, where the person visiting is a close family member or friend. This**

reflects the same regulations that we saw in relation to Tiers 1, 2 and 3 which permitted visits to care homes. It also permits a close family member or friend to accompany a person to an outpatient medical appointment.

Exception 5: Support and respite

It is reasonably necessary to leave the home for the purposes of **respite care being provided to a vulnerable person or a person with a disability, or a short break for a looked after child.**

It is also reasonably necessary to leave the home to attend support groups of up to 15 people (for example drug or alcohol recovery groups) where this group meets in a place other than a private household.

Exception 6: End of life

It is reasonably necessary to visit somebody who is dying where that person is a member of the same household, close family member or friend.

Exception 7: Funerals and visits to burial grounds

It is reasonably necessary to leave home to attend a funeral, attend a commemorative event celebrating the life of somebody who has died or visit a burial ground or garden of remembrance (visits to burial grounds and gardens of remembrance should be to close family members, friends or where the deceased was a person in the same household before they died).

Exception 8: marriages, civil partnerships and alternative wedding ceremonies

It is reasonably necessary to leave home to attend a marriage, civil partnership or alternative wedding ceremony. Note that some gatherings for this purpose are only permitted where one of the parties to the marriage is seriously ill and not expected to recover.

Exception 9: Contact with children

It is reasonably necessary to leave home to facilitate contact between children whose parents live separately. This exception also covers siblings who live separately where they are also a looked after child, helping a child to access educational facilities and accessing childcare. Accessing childcare relates to registered childcare providers as well as informally provided childcare for children under the age of 13 in accordance with the 'linked childcare household' regulation (more below).

Exception 10: Animal welfare

It is reasonably necessary to leave home to access veterinary services or exercise pets, such as walking dogs.

Exception 11: Returning home from holiday

This exception covers people returning from holiday where they travelled to their destination prior to 5th November 2020.

Exception 12: Prison visits

It is reasonably necessary to leave home to visit a close family member or friend who is in prison.

Exception 13: Visits to hospitals, hospices, or care homes

It is reasonably necessary to leave home to visit a person receiving treatment in hospital, or staying in a hospice or care home, where the person visiting is a member of that person's close family or a friend. Unlike exception 4 above this does not relate directly to medical need.

Exceptions to restrictions on movement: summary

Government is promoting the message to stay home for the duration of these restrictions. We know how important this is over the winter months as the second wave of COVID-19 spreads. We have heard from our legal network partners that navigating issues such as visitation or seeing family members outside of a care home has been challenging, and hope that this summary is useful to understand the ways in which a person you support can continue to access the community or receive visits during the period of restrictions.

Restrictions on gatherings – Part 3

These regulations revoke the contents of the three sets of regulations previously in place for Tier 1 (medium risk), Tier 2 (high risk) and Tier 3 (very high risk) areas. These were the main legal frameworks for issues such as visitation and are now no longer in force.

Part 3 of the Regulations at Regulation 8 sets out circumstances in which gatherings are permitted indoors or outdoors. It is important to note that **unlike restrictions on movement above, the reasons for gathering below do consist of an exhaustive list**. This means that every gathering would have to come within one of these exceptions for it to be permitted.

You can gather outdoors with one other person. It is possible to have a third or fourth person gathering outdoors **if the third or fourth person are present to care for a person with a disability who needs continuous care**. This means that if you are caring for a person with either 1:1 or 2:1 care needs when in the community, up to two carers can go out into the community with the person you care for in order to meet one other person (family member or friend for example).

Exceptions to the ban on indoor and outdoor gathering (Regulation 11)

Exception 1: same or linked households

Members of the same household, or linked households, can gather indoors.

Exception 2: Gatherings necessary for certain purposes

This mirrors the provisions in the restrictions on movement around leaving home for the purposes of work, the provision of voluntary or charitable services, the purposes of education or training, providing emergency assistance, enabling one or more people to escape risk of injury, harm or illness or **to provide care or assistance to a vulnerable person**.

Exceptions 3 and 4: Legal obligations, court hearings and criminal justice accommodation

These exceptions permit court hearings, fulfilling legal obligations or gathering in criminal justice accommodation.

Exception 5: Support groups

This exception applies to support groups which take place outside of a private home and where it is reasonably necessary to be physically present. The groups must consist of no more than 15 people. This also includes day centres, which can stay open.

Additionally, it includes groups convening for the purposes of drug and alcohol addiction recovery, victims of crime and new parent support groups, those facing issues relating to sexuality or identity and groups convening for vulnerable young people. Additionally, it includes support for carers of people with a long term or terminal illness, or carers of those who are vulnerable (**so this may include carer support groups**).

Exception 6: Respite care

Respite care and short breaks can continue over the duration of these restrictions.

Exception 7: Visiting a person in a care home, hospice or hospital and those giving birth

This is an important exception, in **that a person in a care home, hospital or hospice can receive visits and otherwise gather indoors or outdoors with a close family member or friend**. Guidance issued to support these regulations has previously indicated that this is to be considered as part of individual risk assessments, and has suggested that visitors may want to be limited to one or two constant visitors. You are able to deviate from this suggestion in the guidance if the individual risk assessment or best interests process establishes that something else is required.

This exception also includes accompanying a person to an outpatient medical appointment.

Finally, this exception covers attending a person giving birth.

Exception 8: Marriages and civil partnerships

This allows up to six people to gather for the purposes of a marriage, civil partnership or alternative wedding ceremony. Note that some gatherings for this purpose are only permitted where one of the parties to the marriage is seriously ill and not expected to recover. Precautions must be observed as identified with the organisers risk assessment.

Exception 9, 10 and 11: End of life and funerals

Exception 9 allows for a person to visit somebody who is dying, where they are a close family

member, friend or member of the same household.

Exception 10 allows for up to 30 people to gather for the purposes of a funeral. Precautions including must be observed in line with the organisers risk assessment.

Exception 11 allows for up to 15 people to attend commemorative events to celebrate the life of somebody who has died.

Exception 12: Elite sports

This mirrors the exceptions in relation to restrictions on movement for elite athletes.

Exception 13: Children

This mirrors the exceptions in relation to facilitating contact with children and parents where the parents are separated or contacted between siblings where the children are looked after children.

Exception 14: Remembrance Sunday

This allows for a gathering to take place outdoors to commemorate remembrance Sunday. You can only attend if you are there as part of work, volunteering, part of the armed forces, veterans or carers of veterans, or attending as one household (including linked households).

Linked households and linked childcare households

These exceptions under Regulation 12 apply to single caregiver households who can choose to form a 'support bubble' with one other household, and households who need to link with another household for the purposes of informal childcare. These linked households must stay the same, and one household must only link with one other household (the linked household for the purposes of informal childcare cannot also link with a second household).

Explainer: What does this mean for our service?

There are a number of exceptions which came into force on 5th November that were not reflected in the first restrictions we saw in March 2020. For organisations providing care and support, here are the key elements of the Regulations to have in mind when navigating the next 4 weeks:

- **People you support can still access the community** to carry out activities described in this factsheet, for example to go shopping or meet a family member. Your staff will not be counted towards the limit on numbers (2) when outdoors.
- **People you support can still have visits from family members and friends**

When indoors, it is up to your service to assess the level of risk when determining how many people should visit somebody if the person being supported is in a care home. Guidance suggests that one single constant visitor should be the aim in care homes, with a **suggested** maximum of two.

Individualised risk assessments should be carried out for each person in relation to arranging visits, exploring ways to remove possible barriers to visitation if any exist.

If the person you support has been assessed as lacking capacity to decide who they see during the period of these restrictions, this process should be followed in that person's best interests in consultation with any family members.

- Family or friends of the person you support can travel in order to make a visit. It does not matter which Tier that family member or friend was previously in prior to 5th November 2020.
- **Informal support groups** attached to your service such as carers groups can continue to meet (up to 15 people).
- **Gateway Award clubs**, or charitable activities convening for people with care and support needs, can continue to meet both indoors and outdoors.
- **Care Act considerations:** A person may have a **right to be supported to maintain family relationships** if they have an eligible need for this support under the Care Act. All decisions taken about someone's care and support must also be made with a view to promote their wellbeing, and regular family contact can be essential for a disabled person's wellbeing. Providers should actively take steps to support and facilitate family contact where the person has an eligible need for this, and/or it is necessary to promote their wellbeing. In some instances, for example if the person is defined as extremely clinically vulnerable, this contact may be deemed more suitable via phone or video call. But each person must have an individual risk assessment to explore this.
- **Equality Act considerations:** Under the Equality Act, care providers and all public bodies must make **reasonable adjustments** for a disabled person, to ensure the person is not disadvantaged by policies or actions just because they are disabled.

For example, a person with a learning disability and/or autism may experience significant distress if they or their parent were to wear a face mask. In this case, even if you would normally ask that visitors and service users wear face masks when seeing each other, you are able to adjust this policy for the person in question.

If you are one of our Legal Network members we encourage you to get in touch with us through our webform at <https://www.accesscharity.org.uk/need-help> if you would like to discuss any of the contents of this factsheet, or have a query about the impact of these regulations on your services.

If you are a care provider organisation or helpline and would like to find out more about our Legal Network, please visit <https://www.accesscharity.org.uk/typeform#non>