

Rule of six and three-tier system in England: fostering

The following briefing aims to provide clarity on the rule of six and the three-tier system in relation to the fostering role.

As of the 22 September 2020, the rule of six became law and the police have the power to enforce these legal limits. The rule of six means that, all households, when meeting friends and family they do not live with (or have formed a support or childcare bubble with) must not meet in a group of more than six, indoors or outdoors. In England, **children are not an exception to the rule of six**, but elsewhere in the UK, children under a certain age are (children under 12 in Northern Ireland and Scotland and children under 11 in Wales).

In addition to this, on the 14 October 2020 the government in England enforced a new three-tier local Covid-19 alert level system which can impose further local restrictions to manage the outbreak in local areas. You can find out what tier parts of the country are in [here](#).

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Guidance and regulations

The relevant guidance

- [Coronavirus \(COVID-19\): guidance for children's social care services](#)
- [Local COVID alert levels: what you need to know](#)
- [Coronavirus \(COVID-19\): Social Distancing](#)

The Health Protection (Coronavirus, Local COVID-19 Alert Level) (England) Regulations 2020

The three sets of regulations setting out the tiers of restriction are (medium = tier one, high = tier two and very high = tier three):

1. The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020 ([SI 2020/1103](#))
2. The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020 ([SI 2020/1104](#))
3. The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 ([SI 2020/1105](#))

These regulations list exceptions under which the rule of six does not apply.

Henceforth, the Coronavirus (COVID-19): guidance for children's social care services is referred to as 'the guidance' and The Health Protection (Coronavirus, Local COVID-19 Alert Level) (England) Regulations 2020 are referred to as 'the regulations'.

What does this mean for fostering?

Fostering households are largely considered as private dwellings in relation to the coronavirus guidance and regulations, and not workplaces, childcare or considered to be looking after a vulnerable person (see regulatory definitions below). There are times where exceptions the regulations apply to the fostering household/foster carer and these are in relation to:

- Contact arrangements
- Social worker visits
- Panels and reviews
- Moving to adoption
- Support groups
- Training

Short breaks (respite) are currently not an exception to the rule of six. However, this briefing includes the regulations that relate to the mixing of households and overnight stays in each tier to inform people's decision making.

Contact arrangements

Contact arrangements are an exception to the rule of six and can continue face to face, indoors or outdoors across all three tiers levels. Decisions around whether to resume/continue face to face contact should be based on a risk assessment and:

- keep the individual needs of the child at the heart,
- take into consideration the feelings of the birth family
- take into consideration the feelings of the foster family,
- include an evaluation of the local circumstances, and,
- adhere to social distancing and public health guidelines.

Our [contact checklists for foster carers and social workers](#) can help think through this decision making process.

The regulations state:

Gatherings necessary for certain purposes are an exception. These certain purposes include:

Contact with birth parents – that the gathering is '*reasonably necessary for the purposes of arrangements for access to, and contact between, parents and children where the children do not live in the same household as their parents or one of their parents*'

- In the Medium (tier one) regulations the exception is at **para 3(4)(g), Sched 1**

- In the High (tier two) regulations the exception is at **para 4(4)(g) & para 5(4)(g), Sched 1**
- In the Very High (tier three) regulations the exception is at **para 4(4)(g), Sched 1**

Contact with siblings – that the gathering is ‘*reasonably necessary for the purposes of arrangements for contact between siblings where they do not live in the same household and one or more of them is—*

(i) a child looked after by a local authority, within the meaning of section 22 of the Children Act 1989(4), or

(ii) a relevant child, within the meaning of section 23A(5) of that Act’

- In the Medium (tier one) regulations this can be found in **para 3(4)(h), Sched 1**
- In the High (tier two) regulations this can be found in **para 4(4)(h) & para 5(4)(h), Sched 1**
- In the Very High (tier three) regulations the exception is at **para 4(4)(h), Sched 1**

The guidance states:

The exemptions also allow for arrangements where children do not live in the same household as both their parents [or siblings], even if this would mean that more than six people would be present. As noted above, anyone attending these contact meetings for work or volunteering purposes (for example, a social worker or key worker) would also be exempt and thus not count towards the limit of six people.

Foster carers and social workers attending contact arrangements are therefore an exception to the rule of six.

Social worker visits

Visits from a social worker to a fostering household are an exception to the rule of six as they are for work purposes. This is the same across all the tier levels. However, additionally, the Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020 allow visits to a looked-after child, as required by the Care Planning, Placement and Case Review (England) Regulations 2010, to be carried out over the telephone, a video link or other electronic communication methods. For more information about the amendments, please read [our briefing](#).

The regulations state:

Gatherings necessary for certain purposes are an exception. These certain purposes include for work purposes – that the gathering is ‘*reasonably necessary for work purposes or for the provision of voluntary or charitable services’*

- In the Medium (tier one) regulations this can be found in **para 3(4)(a), Sched 1**
- In the High (tier two) regulations this can be found in **para 4(4)(a) & para 5(4)(a), Sched 1**
- In the Very High (tier three) regulations the exception is at **para 4(4)(a), Sched 1**

The guidance states:

The use of virtual visits should be the exception and can be used as a result of public health advice or when it is not reasonably practicable to have a face-to-face visit otherwise for a reason relating to the incidence or transmission of coronavirus (COVID-19). This could include in the event of local restrictions, self-isolation or social distancing advice due to coronavirus (COVID-19).

As good practice, children and young people should be told why a face-to-face visit is not possible and be advised of their right to advocacy or support.

This does not provide blanket cover for all such visits to be held virtually. Wherever possible, visits should be held face-to-face. This can include considering whether it is possible to move the time or location of the meeting within the statutory timescales.

Panels and reviews

Any panel or review meeting in fostering would also be an exception to the rule of six. Exceptions apply differently, depending on where meetings take place.

If the panel or review meeting occurs in the fostering household, then the work exception (listed above) applies to social workers or other individuals leading or participating in the meeting and going into the foster carer's home for work purposes.

Where panel or review meetings happen outside of the foster home, and the foster carer attends another venue to join the meeting, it is the foster carer that is an exception to the rule of six as they are in attendance for work purposes.

This is the same across all three tiers. As the tiering provisions state, face-to-face meetings should only be happening where entirely essential and appropriate risk assessments taken.

Moving to adoption

The regulations provide exceptions to the rule of six and to the rule of household mixing for the purpose of making arrangements for prospective adopters (including their household) to meet a child or children who may be placed with them for adoption.

The regulations state:

Gatherings necessary for certain purposes are an exception. These certain purposes include for work purposes – that the gathering is *'reasonably necessary for the purposes of arrangements for prospective adopters including their household to meet a child/children who may be placed with them for adoption as provided for by an adoption placement plan in accordance with reg 35(2) of the AARs 2005.'*

- In the Medium (tier one) regulations this can be found in **para 3(4)(i), Sched 1**

- In the High (tier two) regulations the exception can be found at **para 4(4)(i) & para 5(4)(i), Sched 1**
- In the Very High (tier three) regulations the exception is at **para 4(4)(i), Sched 1**

Foster carers can also be present at the introductory meetings, if their presence is reasonably necessary for the purposes of the introductory meetings. This ensures that foster carers and approved adopters can continue take part in adoption introductory meetings and prevent unnecessary delays to children moving in with their adoptive family.

Support groups

Support groups for foster carers are an exception to the rule of six across all three tier levels. However, some restrictions still apply.

The regulations state:

Gatherings necessary for certain purposes are an exception. These certain purposes include: *that the gathering—*

(a) is of a support group [defined below]

(b) consists of no more than 15 persons, and

(c) takes place at premises other than a private dwelling.

- In the Medium (tier one) regulations this can be found in **para 3(7), Sched 1**
- In the High (tier two) regulations the exception can be found at **para 4(7) & para 5(7), Sched 1**
- In the Very High (tier three) regulations the exception is at **para 4(7), Sched 1**

Training

Training is an exception to the rule of six.

The regulations state:

Gatherings necessary for certain purposes are an exception. These certain purposes include for work purposes – that the gathering is '*reasonably necessary for the purposes of education or training*'

- In the Medium (tier one) regulations this can be found in **para 3(4)(b), Sched 1**
- In the High (tier two) regulations this can be found in **para 4(4)(b) & para 5(4)(b), Sched 1**
- In the Very High (tier three) regulations the exception is at **para 4(4)(b), Sched 1**

Short breaks

Short breaks are currently not an exception to the rule of six or mixing of households. The rules in relation to the mixing of households apply differently across the tiers. The Fostering Network has created the following resource for foster carers and fostering services detailing some [factors to consider when resuming planned breaks](#). Figure 1 (below) outlines the differences across the tiers in a more visual format.

The regulations state:

If you live in a tier one area you can stay at other people's houses but rule of six applies and you have to socially distance from people who aren't in your household. You could travel to a tier two area, but the tier two restrictions would apply.

- Medium regs para 1: *(1) No person may participate in a gathering in the Tier 1 area which consists of more than six people.*

If you live in a tier two area you cannot meet with members of another household indoors. You can still meet people outdoors (including in someone's garden) but rule of six and social distancing applies. You could travel to a tier one area, but the tier two restrictions would still apply to you.

- High regs para 1:
 - *(1) No person may participate in a gathering in the Tier 2 area which—*
 - *(a) consists of two or more people, and*
 - *(b) takes place indoors.*
 - *(2) No person living in the Tier 2 area may participate in a gathering outside that area which—*
 - *(a) consists of two or more people, and*
 - *(b) takes place indoors.*

In tier three you cannot meet with members of another household indoors, in a private dwelling (which would include someone's garden) or in the majority of outdoor spaces. You are also advised not to travel into or out of a tier three area.

- Very high regs para 1: Participation in gatherings indoors and in private dwellings
 - *(1) No person may participate in a gathering in the Tier 3 area which—*
 - *(a) consists of two or more people, and*
 - *(b) takes place in a private dwelling or in any indoor space.*
- Very high regs para 2: Participation in gatherings outdoors
 - *(1) No person may participate in a gathering in the Tier 3 area which—*
 - *(a) takes place outdoors in a place which satisfies the conditions in sub-paragraph (4) and consists of more than six people, or*
 - *(b) takes place in any other outdoor place and consists of two or more people.*
 - *(4) Subject to sub-paragraph (5), a place satisfies the conditions in this sub-paragraph if it is a public outdoor place, and*
 - *(a) no payment is required by any member of the public to access that place, or*
 - *(b) the place falls within one of the following categories—*
 - *(i) outdoor sports grounds or sports facilities;*
 - *(ii) botanical gardens;*
 - *(iii) gardens or grounds of a castle, stately home or historic house.*

- (5) A place does not satisfy the conditions in sub-paragraph (4) if it is a fairground or funfair.

Overnight stays

There are however, exceptions for legally linked households that, once linked, are treated as a single household, therefore allowing overnight stays. Households can be linked if one of the households comprises of a lone adult (a single adult support bubble) or if the households are linked for childcare purposes (a childcare bubble).

A linked childcare household can only be formed in tiers two (high) and three (very high), where mixing inside private dwellings is against the law. In tier one (medium) areas, family and friends can continue to provide informal childcare as long as groups from different households do not exceed six people. You should, wherever possible, keep your distance from people you do not live with (unless you have formed a support bubble with them).

In relation to single adult support bubbles, the regulations state:

(1) For the purposes of this Part of this Schedule, a “linked household” means a household that is linked with another household in accordance with this paragraph.

(2) Where a household comprises one adult, or one adult and one or more persons who were under the age of 18 on 12th June 2020 (“the first household”), the adult may choose to be linked with one other household (“the second household”).

(3) But sub-paragraph (2) applies only if—

(a) all adult members of the second household agree,

(b) neither the first household nor the second household are linked with any other household for the purposes of these Regulations or any other regulations made under Part 2A of the Public Health (Control of Disease) Act 1984, and

(c) neither of those households were, in the period beginning with 14th September 2020 and ending with 14th October 2020, linked with any other household for the purposes of any other regulations made under that Part.

(4) There is no limit on the number of adults or children who may be in the second household.

(5) The first and second households are “linked households” in relation to each other.

(6) The first and second households cease to be linked households if neither household satisfies the condition in sub-paragraph (2).

(7) Once the first and second households have ceased to be linked households, neither the first household nor the second household may be linked with any other household.

(8) The references in sub-paragraph (3) to neither household being linked with any other household do not include being linked with another household only for the purposes of informal childcare in accordance with regulations made under Part 2A of the Public Health (Control of Disease) Act 1984.

- In the Medium (tier one) regulations this can be found in **para 4, Sched 1**
- In the High (tier two) regulations this can be found in **para 6, Sched 1**
- In the Very High (tier three) regulations the exception is at **para 7, Sched 1**

In relation to childcare bubbles, the regulations state:

(1) For the purposes of this Part of this Schedule, a “linked childcare household” means a household that is linked with another household for the purposes of informal childcare in accordance with this paragraph.

(2) Where a household includes at least one child aged 13 or under (“the first household”), that household may link with one other household (“the second household”) for the purpose of the second household providing informal childcare to the child aged 13 or under in the first household if—

(a) neither the first household nor the second household are linked with any other household for that purpose in accordance with this paragraph or a provision of any other regulations made under Part 2A of the Public Health (Control of Disease) Act 1984, and

(b) all the adult members of both households agree.

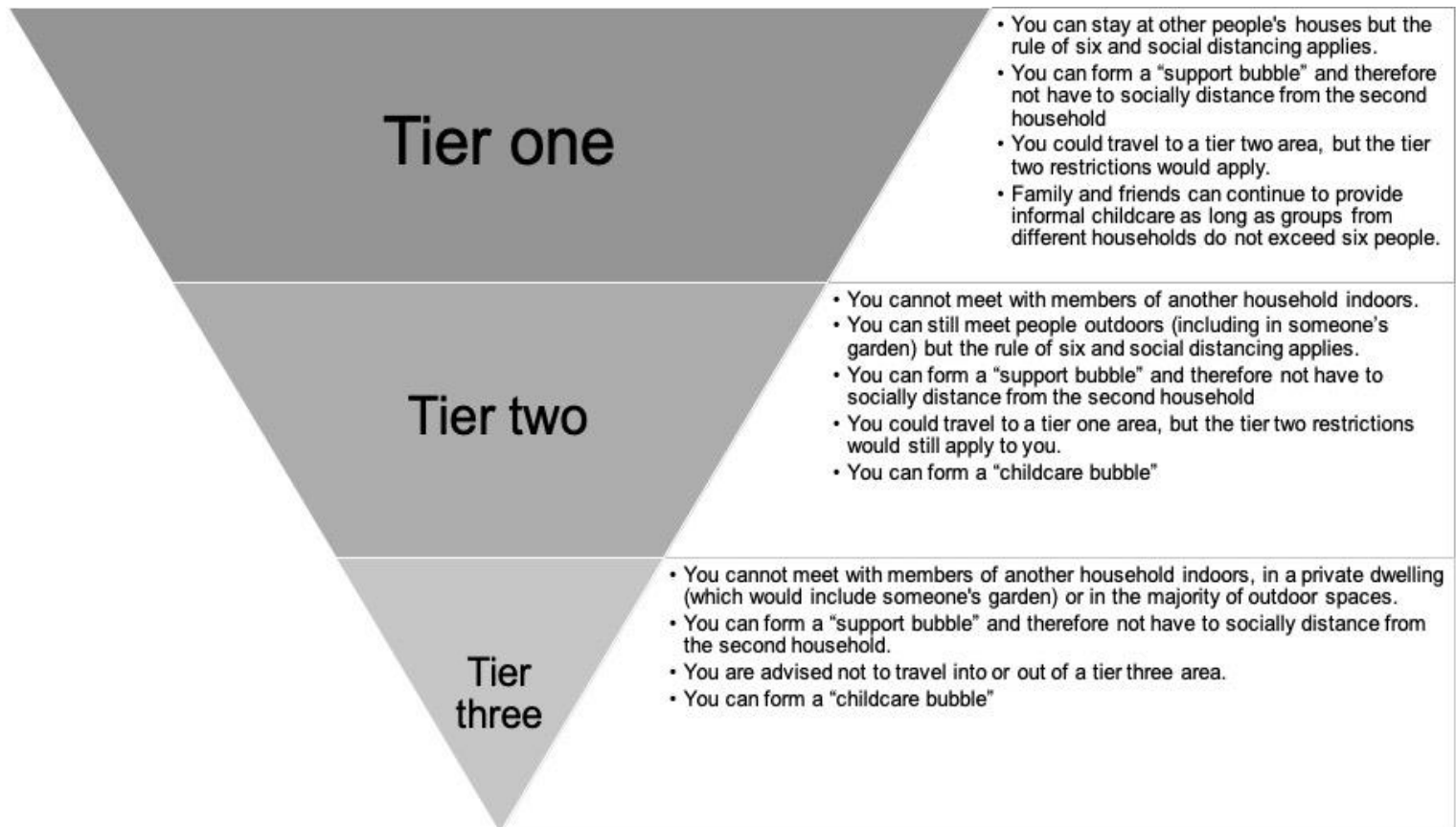
(3) The first household and the second household are “linked childcare households” in relation to each other.

(4) The first household and the second household cease to be linked childcare households when neither household includes a child aged 13 or under.

(5) Once the first household and the second household cease to be linked childcare households, neither household may be a linked childcare household with any other household.

- In the High (tier two) regulations this can be found in **para 7, Sched 1**
- In the Very High (tier three) regulations the exception is at **para 8, Sched 1**

Figure 1: overnight stays and mixing of households across the three-tier system



Useful definitions

According to The Health Protection (Coronavirus, Local COVID-19 Alert Level) (England) Regulations 2020 the following terms are defined as:

- "childcare" has the same meaning as in section 18 of the Childcare Act 2006(11). In these regulations "childcare" **does not include** care provided for a child by— a person who is a local authority foster parent in relation to the child; a person who is a foster parent with whom the child has been placed by a voluntary organisation; or a person who fosters the child privately.
- "vulnerable person" includes—
 - (a)any person aged 70 or older;
 - (b)any person aged under 70 who has an underlying health condition, including (but not limited to) the conditions listed in sub-paragraph (3);
 - (c)any person who is pregnant.
- "support group" means a group which is organised by a business, a charitable, benevolent or philanthropic institution or a public body to provide mutual aid, therapy or any other form of support to its members or those who attend its meetings.

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