

COVID ALERT LEVEL HIGH (TIER 2) RESTRICTIONS

https://www.legislation.gov.uk/ukxi/2020/1104/pdfs/ukxi_20201104_en.pdf

Please note that these will be superseded by the new national restrictions from Nov 5th to 2nd Dec but may resume after that date.

Summary : ‘The Rule of One Household’ indoors, Rule of 6 outdoors.

Dojo should be able to use the ‘permitted organised gatherings’ exception (*Exception 2*) to train but individuals should attend on their own/ with their household and not mix. This will have implications for paired practice.

Please note conditions for this exception including Qualifying Groups and read the guidance.

Please note :this is a first look at the new ‘Tier 2’ regulations.- please note it isn’t legal advice. Members are advised to check the latest regulations and Guidance as the situation is fluid. It is also possible for Councils to impose additional restrictions locally.

This is an explanation of the relevant law and guidance, not an analysis of any Covid-related risks of training, and members and dojo still need to conduct their own analysis of risk.

Tier 2 (Alert level High) restrictions essentially replicate the previous localised restrictions for the North East, which are now revoked.

An informal site allowing you to look up which Tier you are in by postcode:

<https://dracos.co.uk/made/local-lockdown-lookup/>

Official version: <https://www.gov.uk/find-coronavirus-local-restrictions>

What the regulations do:

Essentially they ban ‘gatherings’ of 2 or more people who are not from the same household, both in private dwellings and now in **any other indoor setting**.

Contravening a Tier 2 restriction is an offence with a fixed penalty notice of £400 to £6400.

They then introduce a number of **exceptions**. (Schedule 1 para 4) These appear to be an exhaustive list. The main exceptions to look at for dojo purposes are as follows:

- Members of the same household or linked households (*exception 1*)
- Is a ‘permitted organised gathering’ which the person is attending alone or as a member of a qualifying group (*exception 2*)
- Supervised activities for children (*exception 3 c ii*)

NB there is also “Is a “permitted indoor sports gathering” in *exception 16* (but this is restricted to events for disabled people so won’t apply to most dojo).

The 'rule of six' continues to apply outdoors, with similar exceptions relevant to sports clubs.

NB the Regulations also prevent a person living within the restricted area from attending any such gathering **outside** of the area. You must follow the rules for your area wherever you are.

If you are from a lower ‘Tier’ in a higher tier area, you must follow the restrictions for the area.

What is a gathering? There is a gathering when two or more people are present together in the same place in order to engage in any form of social interaction with each other, or to undertake any other activity with each other.

What is a ‘permitted organised gathering’?

This is a gathering which takes place on premises operated by a business, a charitable, benevolent or philanthropic institution or a public body.

What is a permitted indoor sports gathering, and do dojo come within ‘gatherings’ or organised sport gatherings?

Organised sports gatherings are specifically restricted to those organised for people with disabilities in *Exception 3* and so therefore **dojo would fall within exception 2 provided that they take place on premises operated by a business, charity, public body or a community hall/ benevolent institution.**

Regulations and guidance often appear to use the term ‘indoor sports’ and ‘indoor team sports’ as if they are the same thing.

In previous similar legislation the BKA has taken the view that as we are not practising the ‘contact and combat’ aspects of our arts, dojo are operating under the generic ‘gathering’ provisions following the [Indoor Facilities Guidance](#). In this sense we would be what is used be termed in previous guidance an ‘exercise class’; however this is not a term actually used within these Regulations.

What are the implications of this for practice?

This means that participants **should not mix outside of their households** before, after, or whilst participating in a dojo session.

This may also be problematic for paired practice even if one can socially distance by 1m+; but should allow **iaido** to take place and solo kihon in **jodo and kendo**. This is because the interaction involved in paired practice may fall within the concept of ‘otherwise mingling’ which **invalidates the exception** for ‘qualifying groups’; given the definition of ‘gathering’ includes ‘undertaking an activity together’.

What is a qualifying group?

In these regulations a qualifying group is people in the same household or 'linked' households only. It is therefore much more restricted than the 'Rule of Six'.

What is a linked household?

This is where one household has formed a 'support bubble' with a single adult household.

What is the meaning of 'mingling' within the regulations and why does it matter?

It isn't defined and so it will be up to the police to take a view and the courts to decide. The dictionary definition is 'to mix together'.

If you do 'mix', it means that you cannot rely on the exceptions in Schedule 1 and may be committing an offence.

There has never been a useful definition of 'meeting people' in the coronavirus legislation either: but it seems clear from recent Guidance that if you are in a qualifying group, you are not deemed to be 'meeting others' in your club etc as long as you are not 'socializing' (or mingling) between groups.

Supervised activities for children: If I have juniors attending my dojo session, can I use the 'supervised children's activities' exception?

There is an exception (3cii) for **under 18s activities** to the 'Rule of One etc' indoors; covering sessions run for children in particular. While there may well be more than one interpretation of this clause, I would suggest that from the way this is drafted, it is intended to apply to activities run solely or at least mainly for under 18s. The [FAQs advice](#) on Sport England's website takes a similar view in respect to indoor team sports. On this reading, the exemption would therefore cover 'kids kendo' and other junior only sessions but not adult sessions where attendance of a junior was incidental, so under 18s within a session being run for adults should comply with the general rules.

What's the difference between regulations and guidance?

- **Regulations** are the law. If you break them you can be subject to a fine or prosecution.
- **Guidance** is what the government says you *should* do. It's not the law.

BUT!

For clubs and businesses the line may not be that simple:

Clubs insurance may require following guidelines- and certainly if there was any sort of claim against you, then to be able to show that you followed government guidance would be a good defence.

Businesses may be ***required in the regulations*** to follow government guidance in their risk assessments and covid 19 compliance measures when they open- so *indirectly* the guidance *is* the law.

This is precisely what these regulations do: the exemptions specifically rest on the organisers following the covid secure indoor facilities guidance.

NB Where a matter comes before a court, they will look at what is in the Regulations and not the Guidance - unless the Regulations incorporate the Guidance directly.

Is squad training covered under the Elite athlete training exemption?

No (but it may be able to take place under exemption 2 for iaido at least).

The definition of elite athlete has been fairly consistent throughout the various sets of Covid regulations. An elite athlete is one who:

- Derives a living from competing in a sport

Or

- Is a senior representative (ie candidate for participation in Olympics etc) nominated by a relevant sporting body
- A member of the senior training squad for a relevant sporting body
- 16+ on an elite development pathway leading to professional status or Olympic participation.

A *relevant sporting body* is one that nominates people to compete in the Olympic, Paralympic or Commonwealth games.

I do not think this applies to the BKA- so training for the Nationals or even squad training would not appear to be covered by this exception .

What is the position of coaches where there are single participants and 'qualifying groups' of 1 household?

Obviously coaching may involve a degree of interaction, although coaches should try to stay socially distanced as much as possible. *Exemption 3* applies to someone who is present at a gathering for work or to provide voluntary services. There does not appear to be a definition of 'voluntary services' , but Sport England takes the view that coaches should not be counted in the numbers for qualifying groups.

Can I go and train in a group of 6 or do paired practice with a dojo in a Tier 1 area?

These Regulations prohibit a resident of a Tier 2 area from 'gathering' in a Tier 1 area if they could not legally do so in their own area.

Therefore if you visit a dojo in a Tier 1 area you can still not do paired practice with a member of another household, and if you did it would be an offence.

Please note non essential travel from Tier 2 areas is advised against in the guidance.

Note: Indoor Leisure Centres are included in the Regulations as a business subject to closure at 10pm.

Guidance:

The available guidance on the new system can be found here:

<https://www.gov.uk/guidance/local-covid-alert-levels-what-you-need-to-know#local-covid-alert-level-high>

Local COVID alert level: high

This is for areas with a higher level of infections where some additional restrictions are in place.

This means on top of restrictions in alert level medium:

- you must not socialise with anybody outside of your household or support bubble in any indoor setting, whether at home or in a public place
- you must not socialise in a group of more than 6 outside, including in a garden or other spaces like beaches or parks (other than where specific exemptions apply in law)....
- exercise classes and organised sport can continue to take place outdoors. These will only be permitted indoors if it is possible for people to avoid mixing with people they do not live with or share a support bubble with, or for youth or disability sport
- you can continue to travel to venues or amenities that are open, for work or to access education, but should look to reduce the number of journeys you make where possible
- You must:wear a face covering in those areas where this is mandated
- You should continue to:follow social distancing rules

Sport and physical activity

In line with [guidelines from national sporting bodies](#), you can take part in sport and physical activity outdoors.

Organised indoor exercise classes are only permitted if it is possible for people to avoid mixing in with people you do not live with or share a support bubble with). There are exceptions to enable disability and youth sport and physical activity indoors, in any number.

You should follow the guidance on:

- the return of [recreational team sport](#)
- the return of [outdoor sport and recreation in England](#)

The [Community halls guidance](#) was last updated on 13th October and it is clear that there can be organised activities in community halls which exceed the numbers permitted in qualifying groups overall if they are covered by an exemption; as long as those attending socially distance and do not socialise in groups of over the number permitted (the guidance was written for national applications and talks about groups of 6, but until changed I assume one has to read it as subject to local restrictions):

“Community facilities following [COVID-19 Secure guidance](#) can host more than 6 people in total, but no one should visit or socialise in a group of greater than 6. Further information on social contact rules, social distancing and the exemptions that exist can be found on the guidance on meeting with others safely. These rules do not apply to workplaces or education settings, alongside other exemptions. See more [details on what has changed](#).”

However there more detailed advice does seem to assume that any activity not run by a business or charity etc will mean that social distancing is unlikely to be adhered to and therefore the general tone of the advice is to assume that these activities should be restricted to 6:

“COVID-secure community facilities are permitted to hold social groups, clubs and activities in groups of no more than 6. Community facilities can host multiple groups of 6, subject to capacity, but groups must not mix socially or form larger groups.

However, we strongly advise that activities where there is a significant likelihood of groups mixing and socialising (and where it will be difficult to prevent mingling and therefore breaking the law) should not take place in a community facility. These may include but are not limited to:

- formal or informal clubs and hobby clubs (e.g. women’s institute, veteran’s associations, freemasons, sewing clubs, book clubs, crafts clubs, reading groups)
- amateur choirs and orchestras
- informally organised sport activities on facilities grounds (professionally organised sport activities are exempt)”

The groups listed here are ones where there is a large social element to the activities and venues may be persuaded to allow dojo to operate if evidence is provided of the purpose being to train, a dojo specific covid risk assessment, BKA return to practice advice and track record of responsible behaviour using the venue.

APPENDIX 1 -THE REGULATIONS

https://www.legislation.gov.uk/ukxi/2020/1104/pdfs/ukxi_20201104_en.pdf?utm_source=hootsuite&utm_medium=social&utm_campaign=post

PART 2: Tier 2 restrictions

Tier 2 restrictions 3.—(1) Tier 2 restrictions apply in relation to the Tier 2 area in accordance with Schedule 1.

(2) In these Regulations—

(a) references to “Tier 2 restrictions” are references to the restrictions and requirements set out in Schedule 1; ...

SCHEDULE 1- Regulation 3 -Tier 2 restrictions

PART 1 Restrictions on gatherings Participation in gatherings indoors

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.

(3) Sub-paragraphs (1) and (2) do not apply if any of the exceptions set out in paragraph 4 apply.

Participation in gatherings outdoors 2.—(1) No person may participate in a gathering in the Tier 2 area which— (a) consists of more than six people, and (b) takes place outdoors. (2) No person living in the Tier 2 area may participate in a gathering outside that area which— (a) consists of more than six people, and (b) takes place outdoors. (3) Sub-paragraphs (1) and (2) do not apply if any of the exceptions set out in paragraph 5 apply. (4) This paragraph does not permit a person to participate in a gathering in the Tier 2 area in contravention of paragraph 1(2) or 2(2) of Schedule 1 to the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020.

Exceptions in relation to indoor gatherings restricted by paragraph 1 4.—

(1) These are the exceptions referred to in paragraph 1.

Exception 1: same or linked households

(2) Exception 1 is that all the people in the gathering— (a) are members of the same household, or (b) are members of two households which are linked households in relation to each other (see paragraph 6).

Exception 2: permitted organised gatherings

(3) Exception 2 is that— (a) the gathering is a permitted organised gathering (see paragraph 8), and (b) the person concerned **participates in the gathering alone or as a member of a qualifying group.** Exception **3: gatherings necessary for certain purposes** (4) Exception 3 is that the gathering is **reasonably necessary—**

- (a) for work purposes or for the provision of **voluntary** or charitable services;
- (b) for the purposes of education or training;
- (c) for the purposes of— (i) childcare provided by a person registered under Part 3 of the Childcare Act 2006(a), (ii) **supervised activities for children**, or (iii) informal childcare provided by a member of a household to a member of their linked childcare household (see paragraph 7);
- (d) to provide emergency assistance;
- (e) to enable one or more persons in the gathering to avoid injury or illness or to escape a risk of harm;
- ...

Exception 11: commemorative event following a person's death

(12) Exception 11 is that— (a) the gathering is for the purposes of a commemorative event to celebrate the life of a person who has died (for example, a wake or stone setting ceremony), (b) the gathering consists of no more than 15 persons, (c) the gathering takes place at premises other than a private dwelling, and (d) the gathering organiser or manager takes the required precautions in relation to the gathering (see paragraph 9).

...

Exception 15: elite sports

(16) Exception 15 is that— (a) the person concerned is an elite sportsperson, the coach of an elite sportsperson or (in the case of an elite sportsperson who is a child) the parent of an elite sportsperson, and (b) the gathering is necessary for training or competition.

Exception 16: other sports

(17) Exception 16 is that the person concerned is taking part in a permitted indoor sports gathering (see paragraph 10(3)).

...

Permitted organised gatherings and qualifying groups

8.—(1) A gathering is a permitted organised gathering for the purposes of this Part of this Schedule if sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies to a gathering if it **takes place on or at premises, other than a private dwelling, which are— (a) operated by a business, a charitable, benevolent or philanthropic institution or a public body,** or (b) part of premises used for the operation of a business, a charitable, benevolent or philanthropic institution or a public body.

(3) This sub-paragraph applies to a gathering if it takes place in a public outdoor place not falling within sub-paragraph (2) and— (a) the gathering has been organised by a business, a charitable, benevolent or philanthropic institution, a public body or a political body, and (b) the gathering organiser takes the required precautions in relation to the gathering (see paragraph 9).

(4) **A person participates in a gathering as a member of a qualifying group only if the person is a part of a qualifying group and, whilst participating in the gathering, the person does not— (a) become a member**

of any other group of persons participating in the gathering (whether or not that group is a qualifying group), or (b) otherwise mingle with any person who is participating in the gathering but is not a member of the same qualifying group as them.

(5) In sub-paragraph (4) “qualifying group”, in relation to a gathering, means— (a) in the application of this paragraph for the purposes of paragraph 4(3), a group of people who are participating in the gathering which consists only of persons who are members of the same household, or are members of two households which are linked households in relation to each other;

(b) in the application of this paragraph for the purposes of paragraph 5(3), a group of people who are participating in that gathering which— (i) consists of no more than 6 persons, or (ii) consists only of persons who are members of the same household, or are members of two households which are linked households in relation to each other.

The required precautions

9.—(1) The gathering organiser or (as the case may be) the manager in relation to a gathering takes the required precautions for the purposes of this Part of this Schedule by meeting both of the following requirements.

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(2) The first requirement is that the gathering organiser or manager has carried out a risk assessment that would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999(a) (whether or not the organiser or manager is subject to those Regulations).

(3) The second requirement is that the gathering organiser or manager has taken all reasonable measures to limit the risk of transmission of the coronavirus, taking into account—

(a) the risk assessment carried out under sub-paragraph (2), and

(b) any guidance issued by the government which is relevant to the gathering.

(3) For the purposes of paragraph 4(17), a “permitted indoor sports gathering” means a gathering which is organised for the purposes of allowing persons who have a disability and who are not elite sportspersons to take part in any sport or other fitness related activity, and—

(a) which is organised by a business, a charitable, benevolent or philanthropic institution or a public body,

(b) which takes place indoors on relevant premises, and

(c) in respect of which the gathering organiser or manager of the relevant premises complies with the required precautions (see paragraph 9).

(4) In paragraph 5(15) an “outdoor sports gathering” means a gathering—

(a) which is organised by a business, a charitable, benevolent or philanthropic organisation or a public body for the purposes of allowing persons who are not elite sportspersons to take part in any sport or other fitness related activity,

(b) which takes place outdoors, and

(c) in respect of which the gathering organiser or manager takes the required precautions (see paragraph 9).

(5) For the purposes of paragraphs 4(17) and 5(15) a person taking part in a sports gathering

does not include a spectator or the parent of a child taking part in the gathering.

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13.10.20