

# LIBERTY

## LIBERTY BRIEFING ON THE THREE TIER CORONAVIRUS REGULATIONS

On 13 October 2020 Parliament will have the opportunity to debate, but not amend, a set of regulations which establish a new, tiered system of local lockdowns rules. Made under the Public Health Act 1984, these regulations establish three levels of restrictions – Tier 1 (Medium), Tier 2 (High) and Tier 3 (Very High) – that may be imposed on a defined geographic area, depending on its level of coronavirus infection.

Liberty recognises that clearly expressed local lockdown measures – coupled with support to facilitate people to be able to comply – may offer a more proportionate means of responding to the virus than blanket, national measures. However, we are concerned that the Government has lurched from one set of labyrinthine measures that abandon marginalised groups and prioritise criminal justice over public health, to another.

Parliament will debate these regulations seven months into this public health crisis. The second wave of the virus we now face was predictable. We regret that the Government did not use the opportunity presented by the summer months to prepare a response that preserves our civil liberties to the greatest extent possible, safeguards public health and protects at-risk groups.<sup>1</sup> As time passes, any initial justification for drafting extraordinarily coercive laws in haste, while circumventing the normal processes of democratic scrutiny, evaporates entirely.

Liberty recommends Parliamentarians raise the following points during the debate:

1. **Convoluting and confusing.** These regulations – which are intended to simplify and clarify the impenetrable web of laws currently in force across England – are vast and complex. In total, the regulations run to over 36,000 words and nearly 90 pages. They establish intricate exceptions for most rules. For example, in the Tier 2 (High) regulations, there are seventeen distinct and lengthy exemptions to the prohibition on indoor gatherings of two or more people<sup>2</sup> and sixteen exemptions to the prohibition on participating in gatherings of more than six people outdoors.<sup>3</sup> The lack of clarity as regards the precise contours of the law is a recipe for uneven enforcement and police overreach, and makes it difficult for the members of the public to know what is criminalised and to hold the authorities to account.
2. **Impact on marginalised communities.** Liberty is concerned that Tier 2 (High) and Tier 3 (Very High) – which impose the most onerous restrictions – may disproportionately impact marginalised communities. For example, analysis published last week found that England's poorest communities are nearly four times more likely to face local lockdown restrictions than the wealthiest areas.<sup>4</sup> It is critical that support is provided to ensure that people can still meet housing, food and other essential costs and access the care and support they need while complying with the regulations. Should they need to self-isolate, it is vital that they are not penalised by their employers and have suitable accommodation. It is also essential that barriers to accessing healthcare faced by migrants are lifted, so that people can access healthcare and share data with state agencies without fear that it may be shared with the Home Office for

---

<sup>1</sup> In a briefing sent to all MPs in June 2020, Liberty recommended that the summer recess be used to “reach consensus on the measures that remain necessary and proportionate in fighting the pandemic, and in identifying policies that will facilitate compliance with test and trace and better protect at-risk groups than the current approach”, see: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/03/Libertys-Abridged-Briefing-on-Protecting-Civil-Liberties-in-a-Pandemic.pdf>

<sup>2</sup> Schedule 1, s. 4 The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020

<sup>3</sup> Schedule 1, s. 5 The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020

<sup>4</sup> <https://www.theguardian.com/world/2020/oct/07/poorest-areas-of-england-four-times-as-likely-to-face-lockdown-as-richest>

immigration enforcement purposes. Absent targeted support, there is a significant risk that people who are already marginalised in society will disproportionately face the triple threat of illness, criminalisation, and heightened restrictions on their liberty imposed by the new regulations. **It is essential that the Government publish a rigorous Equality Impact Assessment which grapples with these issues.**

3. **Putting public health at risk.** These regulations follow a pattern established by the plethora of coronavirus laws passed to date – prioritising criminal justice over public health. All three sets of regulations hand sweeping powers to the police to regulate our everyday lives, backed by staggering fines of up to £10,000.<sup>5</sup> Public health research advocates persuading people to change their behaviour through clear, evidenced-based messages, rather than relying on coercion and control.<sup>6</sup> Indeed, empirical data gathered by academics at the London School of Economics found that in the UK, people complied with the national-wide lockdown rules based on their consent and “widespread sense of duty and solidarity”, rather than the threat of punishment.<sup>7</sup>

## CONTACT

Rosalind Comyn, Policy and Campaigns Manager (rosalindc@libertyhumanrights.org.uk)  
Sam Grant, Head of Policy and Campaigns (samg@libertyhumanrights.org.uk)

---

<sup>5</sup> See s. 6 (9), The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020; s. 6 (9) - (10), The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020; and s. 6 (9) – (10) The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020.

<sup>6</sup> As Dr Agoritsa Baka, chief expert on emergency preparedness at the European Centre for Disease Prevention and Control said in relation to proposed measures to criminalise people who do not wear face masks in shops in England, “In public health we don’t like very much the mandatory stuff. We want to persuade people to do something to change their behaviour.” See Boffey, D., *Coronavirus: England’s face mask law could backfire, says EU expert*, July 2020: <https://www.theguardian.com/world/2020/jul/16/coronavirus-englands-face-mask-law-could-backfire-says-eu-expert>

<sup>7</sup> <https://blogs.lse.ac.uk/politicsandpolicy/lockdown-social-norms/>