

DOC 3: Issues and options for amending alert level two

As set out in the main Cabinet paper the following are areas that have either been discussed by Cabinet as key issues to resolve or are areas identified by officials as likely to be contentious or raise specific issues.

The general assumption is that other than these specific issues that all other elements of alert level two which are already in our published regulations (as set out in Doc 2) remain as drafted, subject to changes agreed by Cabinet or any consequential amendments needed. Possible amendments are discussed below.

A. Reasonable measures*1. 2m physical distancing*

- **Option 1:** Retain the current legal approach where physical distancing is a general requirement under the reasonable measures to be taken. Some additional steps could be taken to strengthen statutory guidance and emphasise an expectation that retail premises and offices should ensure 2m distancing. This may not have the same impact as changing regulations (it may be possible to strengthen the wording in the regulations around 2m whilst keeping it as part of the general requirement). It might be argued that with a lack of wage support schemes that this more flexible approach will allow for more places to make the case it is not reasonable to require them to operate at 2m distancing because they would otherwise be economically unviable.
- **Option 2:** Reinstate the requirement for 2m physical distancing as a specific step in the regulations that must be taken before other measures (previous approach). This would have the most impact. Even though the way it is drafted is intended to provide for flexibility, this was poorly understood by some stakeholders. This approach does include some qualifiers in the legal text and guidance about when this might not be reasonable (including where it would affect economic viability, such as in pubs), but despite this approach it has been interpreted as relatively inflexible (particularly by unions). A strict interpretation can mean risk averse organisations reduce capacity or services (for example reducing the offer of in person support for vulnerable groups, in public services, or on public transport) when this was not the intention. Guidance can be reviewed to ensure these intended flexibilities are elevated and made clearer, including where financial viability is at risk.

If Option 2 is selected then there has been a specific request to remove public transport from those premises covered by obligations in the regulations that apply to a 'regulated premises'. This is because it is claimed unions adopt an inflexible interpretation of the 2m rule, which prevents driver training and activity of train staff, leading to some stations skipped. It is proposed that an alternative solution could be that train staff are specifically included in the statutory guidance as an example of where 2m is not reasonable and other mitigations can be put in place. This will provide transport operators with a specific reference point to ensure unions and others do not over-interpret the

provisions. Removing public transport vehicles as 'regulated premises' entirely would have the net effect of removing them from all reasonable measures there to protect staff and customers. Specifically excluding public transport from 2m only (but not other reasonable measures) would create a precedent that a specific exclusion is required, and thus reducing flexibility for other sectors.

- **Option 3:** Specify 2m distancing as a requirement for specific premises only OR exempt certain premises from 2m distancing. This adds complexity, but does allow for specific settings to be identified. Clear rationale would be needed that may be difficult to defend (e.g. why is 2m explicitly required in a large shop, but not in a pub?). This is not recommended.

2. *Specific measures applicable to licensed premises*

Assuming this returns as a specific set of reasonable measures to agree which of previous measures should be reinstated (noting Doc 4 discusses the Covid pass):

- **Controlling entry.** Assume this stays to ensure table service.
- **Table service.** Assume this stays as key mitigation. Would be difficult to not do this whilst also closing nightclubs.
- **Collecting contact details.** There is not a clear benefit of reinstating this from a public health perspective given the majority of clusters in hospitality have been associated with staff or a group of individual/friends who came together at that venue. It is not clear this would be of benefit to contact tracing teams who are prioritising stretched resources during very high case rates on vulnerable settings. Warn and inform would be used instead. While there could be some benefit in behavioural terms from people providing details, there are likely to be data protection issues should data be collected without a clear purpose and intent to use it.
- Assume these mandatory conditions continue to **apply to licenced premises and BYO** places only (with general reasonable measures applying elsewhere)

3. *Other reasonable measures*

- **Option 1:** Retaining the current range of illustrative reasonable measures in regulations and emphasising in guidance and stakeholder communications this now means additional protections are required by 27 December. These are not always followed as they are illustrative. Option 2 below might be a fall-back if there are any signs this strengthened advice is not being followed
- **Option 2:** Specifying new reasonable measures that must apply to specific premises (e.g. retail or offices). This can be a blunt tool as it mandates measures for all premises in a sector even though they may be materially different in size and layout. For example one-way systems may be effective in

some settings, but can create difficult problems in others (e.g. people doubling back). While it can increase adherence, it may also create new anomalies.

B. Gathering in private dwellings

4. Regulations versus guidance

A move from regulations to guidance could be argued in this area on the basis these were extraordinary measures taken during the most uncertain periods of a new pandemic. The rationale might be that after nearly two years people understand how to reduce contacts and should be trusted to act responsibly. Regulations in this area have also become very complex and did not reflect the complexity of social support networks. However, given household transmission has always been a major issue, this carries significant risk if guidance is not followed and there is not enough of a change in behaviour. Nonetheless, while full adherence by all with household mixing (either via rules or guidance) may not be as high as previously, some adherence will, as part of the wider package of protections, make a contribution to limiting transmission. There are also now additional protections with vaccination and the wider use of LFTs compared to previous waves.

- **Option 1:** to take gathering rules in private dwellings out of regulations (subject to retaining offence for large gatherings to enable enforcement should large parties take place) and move to guidance. Guidance could either:
 - *Retain the general approach in alert level two.* For example highlighting that alert level two the previous rules meant up to three households could gather indoors, so that would be a good guide. As being closest to alert level two, if broadly followed it would have expected impact.
 - *Adopt a more flexible approach, focussed on minimising contacts.* This would extend the same guidance for the Christmas period about minimising social contacts, but does not provide any benchmarks / numbers or relate back to alert level two rules on household mixing. There is a risk the public interpret this too broadly and it does not deliver similar benefits to alert level two.
- **Option 2:** to keep gathering rules in private dwellings in regulations to ensure consistency with previous approaches. Issues are whether this would be adhered to by the public and the lack of visible enforcement could undermine other regulations or adherence to wider rules or guidance. On the other hand legal restrictions have to date had a greater impact than guidance.

C. Gathering in public places

5. Rule of 6

- **Option 1:** Retain the rule of 6 in public places (e.g. pubs, restaurants, etc. as well as beer gardens). This would also mean that there would be a 'permitted group' of 6 people (or a household if more than 6) allowed to sit together in

different public places (or 'regulated settings') without 2m physical distancing. This is important for hospitality, but also for cinemas, theatres or other places if they are required to also re-introduce physical distancing.

- **Option 2:** Remove the rule of 6 from regulations. This would mean there are no limits on who can gather together in public places (regulated settings), but there could be a requirement for 2m physical distancing (if that option is chosen). This either means every person needs to be 2m apart or the venue having to decide on what a 'permitted group' looks like (this may be possible where table service is a feature as tables can be spaced out, but would be very difficult for a cinema or theatre to implement).
- **Option 3:** Adopt a new number. The rule of 6 was selected for the purposes of alignment across the UK, but does not have a particular public health rationale. If keeping consistency with alert level two as previously enacted and public understanding, the rule of 6 is very well understood by the public. Any reintroduction of rules in England could revert to the same rule of 6.

6. *Gathering outdoors*

- **Option 1:** Retain alert level two measures limiting gatherings to the rule of 6 or a household (if more than 6), with that providing consistency with other places (assuming kept the same). If moving to guidance for private dwellings this may seem inconsistent as there would be different rules in gardens and the general outdoors.
- **Option 2:** Remove restrictions on gathering outdoors and rely on guidance to align with any change to private dwellings. There may be a risk of very large gatherings so a limit on the maximum number of people may be needed to provide an enforcement option (see para 8).

7. *Gathering in holiday accommodation*

In line with the regulations and previous approaches it is assumed this would follow any decision on gathering in private dwellings. Therefore if there are no legal restrictions on gathering in private dwellings the same would be true of holiday accommodation.

8. *Regulated events and prohibition on larger events*

Assumption that we retain alert level two provisions that events in public places (regulated settings) outdoors up to 50 or indoors up to 30 are permitted, but it is an offence beyond that (unless one of the exemptions such as elite sport applies for athletes and support staff). This does not include staff / volunteers, children under 11 or carers, or performers. We would also assume the same exemptions as previously used (e.g. elite sports behind closed doors). There are two key issues to consider:

- *Retaining the provision that alcohol is not to be sold or consumed at a 'regulated event'.* This would then apply to all events formally organised under

the events provisions in a regulated premises. This specific provision (no alcohol) was included to avoid this small regulated event provision being used to circumvent stricter rules in licenced premises (e.g. a person organising an 'event' to be able to mix in a pub at numbers greater than the rule of 6 and not have to have table service). If excluding licenced premises from 'regulated events', but allowing alcohol, this would create anomalies whereby 30 people can gather to drink in all premises not carrying a licence (e.g. bringing own alcohol) and potential challenges from licenced premises.

- *We could ensure the same limits apply as an offence* that could then also apply to private dwellings, even if the other gathering rules for those places are moved to guidance. This will enable enforcement bodies to stop parties of more than 30 people indoors (50 outdoors).

9. *Weddings receptions and wakes*

Separate provision is made in the regulations for wedding receptions and wakes. It is assumed ceremonies will continue not to have any limit of numbers placed on them (with numbers determined by the venue and ability to socially distance as required). At alert level two wedding receptions and wakes (no other life events) are permitted at the same numbers as other regulated events, but with alcohol allowed.

- **Option 1:** Retain the alert level two caps on numbers (30 indoors, 50 outdoors) to ensure consistency with other permitted small events. This would be very short notice for anyone who has organised a reception in December or January, but would be consistent with wider rules and the risks from larger gatherings. There would be significant disruption to individuals' lives and the sector, which have had to manage with constantly changing rules.
- **Option 2:** To remove the limits for wedding receptions and wakes. These have been treated differently in the past as particularly important life events, but can be higher risk on public health grounds alone. If not including a limit, additional mitigations could be required of the sector, such as use of LFT tests. It is possible the state of the epidemic means many will not take place.

D. Business closures

10. *Closure of adult entertainment venues and ice-skating rinks*

- **Option 1:** To close both adult entertainment venues and ice-skating rinks (which would be both outdoor and indoor), but making sure rinks can stay open for professional sport. This would be consistent with the published alert level two and our previous approach. There will be the same challenges about financial support and wage costs as for nightclubs. The public health advice is that these should be closed to maintain the coherence of the alert level two package.
- **Option 2:** To keep adult entertainment venues and ice skating rinks open to the public, but request additional mitigations are put in place, on the basis

they are likely to be lower risk than nightclubs. This would reduce the demand for financial support and recognise these are a smaller number of venues concerned. While this would mean ice rinks are open to the public to skate, they would not be able to host events with more than 30 spectators indoors (50 outdoors).

E. Other issues

11. Cinemas and theatres

The scale of the issue with cinemas and theatres will depend on the decisions in other parts of the regulations. There is a comparison made with events and why they are able to operate when events cannot. This has generally been because numbers are much lower, social distancing applies, and there are other mitigations (e.g. facing forward, face coverings). Issues to consider:

- If the *rule of 6* applies and people can sit together in groups of 6 (or as a household if larger than 6) some venues may be able to continue to operate with physical distancing between those groups. If distancing is needed between each person or household this becomes more difficult and more venues would be forced to close.
- A *strict 2m distancing rule* will be more difficult to implement for these premises than one that has more flexibility (e.g. keeping two seats either side free rather than 2m).

12. Guidance on performances in hospitality venues

At previous alert levels there was guidance in place about the kind of entertainment that was permitted (which stopped many live performances). This was never restricted in regulation (other than by the requirement not to hold an event for more than 30 people and general reasonable measures).

- **Option 1:** Do not change current guidance to indicate these should stop, but to advise risk assessments should consider any additional risks and consider not having live performances.
- **Option 2:** Revert to stricter guidance in place at alert level two. This included detailed guidance around singing and live performers, keeping recorded music at lower volumes, etc. None of this was required in law (other than as a reasonable measure).