

## Covid-19 Pandemic - What to Expect in Prison

Whilst prisoners have basic rights under the European Convention on Human Rights and the Prison Rules 1999, these are not absolute rights. They can legally be interfered with when it is necessary on a number of grounds, including for public safety or the protection of health, and the law allows such interference. The restrictions that are currently in place are being justified on public health grounds, with the Ministry of Justice and HMPPS maintaining that their priority is providing a safe environment for those working and living in prisons. This makes it difficult to challenge the limitations being imposed on those in custody.

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There is little guidance publicly available on the operation of prisons during the pandemic. The main documents are: COVID-19 Operational Guidance – Exceptional Regime & Service Delivery; COVID-19: National Framework for Prison Regimes and Services; Preventing and controlling outbreaks of COVID-19 in prisons and places of detention; and HMPPS Cohorting & Compartmentalisation Strategy for prisons during COVID-19. PAS can provide copies if requested. This centralised approach guides and governs how HMPPS and prisons are broadly operating during the pandemic, however each individual prison is allowed to operate independently according to their local circumstances, under the advice of their local Public Health England team. This means that regimes can vary greatly, both between prisons and even within the same one, just at a different time, depending on factors such as local restrictions, outbreak status, and a prison's ability to deliver different parts of the regime like education.

Now that England has returned to a tiered system of restrictions, regimes may vary more greatly than they did during the second lockdown, particularly as tiers are reviewed regularly. This means that there are no hard and fast rules on what to expect in prison currently. Notwithstanding this, basic elements of the prison regime are expected to continue, unless wholly unworkable.

- *Reverse cohorting*

All prisoners arriving at a prison from the community must be isolated from the rest of the prison population for 14 days, or until two negative test results are received within a period of at least seven days, although this is only available in prisons with routine prisoner testing in place. Reverse cohorting also applies to prisoners transferring from a prison deemed high risk to a lower risk prison, and those who have been out of the prison for longer than a single day. Prisoners who are reverse cohorting should receive a standard regime including access to showers and exercise, but access to other activities can be limited as contact with others must be limited.

- *Protective Isolation*

Prisons are following the general public health guidance on self-isolation. All prisoners who are symptomatic must isolate for a minimum of 10 days, preferably within a single cell, from the day the symptoms begin until they are symptom free (aside from a cough or loss of taste or smell as these can linger) and well. Any contact of a symptomatic or confirmed Covid-19 case must isolate for 14 days, in line with government guidance for those in the community. Those in protective isolation should receive regular health and wellbeing checks.

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The regime offered to those in protective isolation can vary depending on the local circumstances. Access to showers and open air are expected to continue where they can be delivered in a covid safe way, however this is subject to advice from the local public health team and in particular the Outbreak Control Team's advice if involved. As health partners operate at a local level, they may adopt different approaches to other similar teams, applying national health guidance in a different manner, and this can result in varied outcomes.

- *Shielding*

Prisons must offer shielding facilities for any prisoner that is clinically extremely vulnerable who wishes to shield. This can either be done through a designated Shielding Unit or separate shielding regimes for each prisoner in an individual cell. Those shielding must be offered the opportunity to exercise in the open air daily and be offered additional support.

- *Testing*

Arrangements should be made for any prisoner with symptoms of Covid-19 to be tested immediately.

According to the Government, weekly testing will be available to staff in prisons starting this month, although no date for this has been provided.

- *Face masks*

Under HMPPS' face mask strategy of October 2020 there are three tiers of activity or area which govern whether a face mask must be worn by prison staff. Tier One covers nationally determined use of face masks, where their use is mandatory as part of national Safe Operating Procedures. This tier includes tasks like searching, escorts and delivering meals. Tier Two covers locally determined use, where a risk assessment in a specific prison has detected areas or activities of increased risks making it necessary for the mandatory use of face masks. This could include areas with poor ventilation or if there is an outbreak. Tier Three is individual choice, where staff are not required to wear a face mask but can choose to do so if they wish.

This means that staff do not always have to wear a face mask whilst in the prison, but only where either national or local policy requires them to. There will also be staff members who are exempt from wearing a face mask for health reasons, either physical or mental, and therefore do not have to wear a mask at all.

- *Access to healthcare*

Prisoners should still be able to access healthcare services, albeit there might be a delay if they are dealing with an outbreak or working with a reduced team due to isolation or sickness. Face to face appointments are allowed where they are needed, but alternative methods of assessment and advice are preferred where possible.

- *Activity and progression*

All unnecessary contact, including education, group worship, and offending behaviour courses, was suspended during the initial lockdown. Although prisons could reintroduce them where risk assessments were conducted and approved by HMPPS after this was lifted, not all prisons did so. Access to some education, work, faith services and gym can be provided now, where risk assessments have been completed, in addition to 'domestic entitlements' which includes exercise/time in the open air, but it will be dependent on local circumstances, including which tier the prison is in and whether there are any positive cases. Equally, offender behaviour programmes can be reintroduced but they will likely be conducted on a 1-2-1 basis or in small groups to allow for social distancing.

- *Visits*

Social visits had been re-established in the summer, albeit significantly different to how they were before, however they were all suspended when the second national lockdown was imposed. Such visits will gradually start again in various parts of the country but not in Tier 3 areas where non-essential travel and the mixing of households is prohibited. Prisons may be willing to make exceptions for compassionate reasons. Prisoners should receive £5 pin credit a month to support family contact.

Many prisons now have secure video call facilities, known as purple visits, which are free for both prisoners and their families.

Prisoners can receive legal or official visits if absolutely necessary, but alternatives such as video links should be used where possible.

- *Release schemes*

The End of Custody Temporary Release scheme is no longer operating however temporary release under a Special Purpose Licence for Covid-19 purposes is still available for pregnant women, women with their babies in custody, and those defined by the NHS guidelines as clinically extremely vulnerable.

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HDC (Home Detention Curfew) is operating and some ROTL (Release on Temporary Licence) is accessible depending on the location and nature of the ROTL.

Although restrictions are being imposed on public health grounds, it does not mean that a prisoner cannot challenge them. Any prisoner who feels that they are unjustly being denied elements of their regime can submit a complaint. Certain situations, though probably limited, may give rise to a possible legal challenge in court. Prisoners can contact PAS either by letter or call the telephone advice line for advice.

PRISONERS' ADVICE SERVICE  
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