



## Bursting Bubbles : The One Day of Christmas

22 December 2020

On 3 December, Family Law published my article summarising Government Guidance on the formation of Christmas Bubbles for a five-day period between 23 and 27 December 2020.

In light of the Prime Minister's announcement on Saturday, 19 December, that Guidance has now changed with effect from 00:00 on Sunday, 20 December. What follows is a summary of the new Guidance, which is law, for England only (each of the four countries of the UK has its own regime, details of which are available on the appropriate Government websites).

First, and importantly, minor children of separated parents may still move between their parents' homes, even if one or both parents lives in a Tier 4 area (although as noted below neither household may then form a Christmas Bubble). And, buried in the exceptions to the general travel restrictions is clarification (from all four Governments) that this includes such children moving across borders; so, for example, a child may move between her separated parents if one parent lives in, say, Edinburgh and the other in Berwick-upon-Tweed.

### Christmas Day Bubble

If you live in an area currently in Tiers 1, 2 or 3 you may still form a Christmas Bubble:

- On Christmas Day only;
- With a maximum of two other households (which may not include anyone from an area in Tier 4).

So, outside Tier 4, up to three households may come together for the day of 25 December only - overnight stays are not permitted.

However, the Guidance urges the public to "*think very carefully about the risks and only form a Christmas Bubble if you feel you absolutely need to*".

Having thought very carefully about the risks, should you elect to form a Christmas Bubble you must then:-

- Stop all unnecessary social contact outside your immediate household as soon as possible and for at least five days before you meet other households in your bubble;
- Meet with your Christmas Bubble in a private home or garden, at a place of worship, or an outdoor public space;

- Stay local “*wherever possible*”; and
- Only meet people not in your Christmas Bubble outside according to the Tier in which you live.

You cannot leave a Tier 4 area to join a Christmas Bubble in a Devolved Administration. Neither may you visit or leave a Tier 4 area in order to see others over Christmas or on Christmas Day.

### Support and Childcare Bubbles

The rules governing formation of Support and Childcare Bubbles are explained in my previous piece and what appears below are those parts of the new Guidance which impact on these.

#### Support Bubble

- If you are in an existing Support Bubble within Tier 4 you may see each other on Christmas Day;
- Existing Support Bubbles count as one household towards the maximum three household limit (applicable in Tiers 1, 2 and 3 only) for forming Christmas Bubbles; and
- Outside Tier 4, the two households in a Support Bubble can choose to join separate Christmas Bubbles, but should avoid contact with each other both before and after Christmas Day.

#### Childcare Bubble

- You can continue to use a Childcare Bubble on Christmas Day, including in a Tier 4 area, “*only if reasonably necessary for the purposes of childcare and where there are no reasonable alternatives*”; and
- If you want to meet socially with the other household in your Childcare Bubble, they must be included in your Christmas Bubble, provided neither of you live in a Tier 4 area. You and the other household in your Childcare Bubble would then count as two households towards the three household limit for Christmas Bubbles.

### Children of separated parents

As has been the case throughout the pandemic, minor children whose parents do not live together are at liberty to continue to move between their parent’s houses. As for Christmas,

- Children (under-18) whose parents do not live together may be part of both parents’ Christmas Bubbles (should their parents choose to form separate bubbles); and
- If one or both parents live in a Tier 4 area, children may continue to move between their parent’s houses, but then neither household is permitted to join a Christmas Bubble with others.

The word *may* is emphasised above. As noted in the Guidance published by the President of the Family Division in March of this year<sup>[1]</sup> this exception to the mandatory ‘stay at home’ requirement does not mean that children *must* be moved between homes and the decision whether a child is to move between parental homes is for the child’s parents to make after a sensible assessment of all the relevant circumstances.

It is also worth remembering that for those families where a Child Arrangements Order (CAO) is in force, the President also states that parents, acting in agreement, are free to decide that the arrangements set out in a CAO should be varied temporarily. If the parents are not able to agree, the Guidance states that if one parent “*is sufficiently concerned that complying with the [child arrangements order] arrangements would be against current [Public Health England] advice, then that parent may exercise their parental responsibility and vary the arrangement to one that they consider to be safe*”.

It is said that such unilateral decision making to vary (or otherwise fail to adhere to) a CAO will, if necessary, be considered by the court in due course and determinations made as to whether parents

have acted reasonably and sensibly in the light of the prevailing Government guidance, together with any specific evidence relating to the child or family.

Where, either as a result of parental agreement or one parent unilaterally varying the arrangements, a child does not spend time with the other parent as ordered, the courts will expect alternative arrangements to be put in place, such as indirect contact via Face-Time and the like, or by telephone. The President's Guidance states that the "*key message*" where Coronavirus restrictions cause the "*letter*" of a court order to be varied is that the "*spirit*" of the order should nevertheless be adhered to by making safe alternative arrangements for the child to have contact with the other parent.

### University students

Students who return home for the university vacation are considered to be part of the household to which they have returned, and (unlike any minor siblings) there is no exemption for them to move between their parent's homes.

### No board games on Boxing Day

I ended my first piece with a seasonal vision of families playing a board game of Christmas Bubbles on Boxing Day. Up to three households may play this game of chance moving individual pieces around the board and forming them up into households, Christmas, Support and Childcare Bubbles, whilst catering for Alternative Christmas Bubbles, children of separated parents, returning undergraduates and aged grandparents all in desperate compliance with the (ever changing) rules.

Now those Christmas Bubbles will burst at midnight on Christmas Day and, really, you shouldn't be playing games at all; other than, perhaps, Patience.

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[1]President of the Family Division and Head of Family Justice [England and Wales] Coronavirus crisis: Guidance on compliance with Family Court child arrangement orders, 24 March 2020.