

SCHEDULE 1

Tier 3 restrictions

PART 1

Restrictions on gatherings

Participation in gatherings indoors and in private dwellings

- 1.—(1) No person may participate in a gathering in the Tier 3 area which—
 - (a) consists of two or more people, and
 - (b) takes place in a private dwelling or in any indoor space.
- (2) No person living in the Tier 3 area may participate in a gathering outside that area which—
 - (a) consists of two or more people, and
 - (b) takes place in a private dwelling or in any indoor space.
- (3) Sub-paragraphs (1) and (2) do not apply if any of the exceptions set out in paragraph 4 or 5 apply.

Participation in gatherings outdoors

- 2.—(1) No person may participate in a gathering in the Tier 3 area which—
 - (a) takes place outdoors in a place which satisfies the conditions in sub-paragraph (4) and consists of more than six people, or
 - (b) takes place in any other outdoor place and consists of two or more people.
- (2) No person living in the Tier 3 area may participate in a gathering outside that area which—
 - (a) takes place outdoors in a place which satisfies the conditions in sub-paragraph (4), and consists of more than six people, or
 - (b) takes place in any other outdoor place and consists of two or more people.
- (3) Sub-paragraphs (1) and (2) do not apply if any of the exceptions set out in paragraph 4 or 6 apply.
- (4) Subject to sub-paragraph (5), a place satisfies the conditions in this sub-paragraph if it is a public outdoor place, and
 - (a) no payment is required by any member of the public to access that place, or
 - (b) the place falls within one of the following categories—
 - (i) outdoor sports grounds or sports facilities;
 - (ii) botanical gardens;
 - (iii) gardens or grounds of a castle, stately home or historic house.
- (5) A place does not satisfy the conditions in sub-paragraph (4) if it is a fairground or funfair.

Organisation or facilitation of gatherings

- 3.—(1) No person may hold, or be involved in the holding of, a relevant gathering in the Tier 3 area.
- (2) For the purposes of sub-paragraph (1) a person who only participates in a gathering by attending it is not to be taken as being involved in the holding of the gathering.

Status: This is the original version (as it was originally made).

(3) A gathering is a “relevant gathering” for the purposes of this paragraph if it falls within sub-paragraph (4) or (5).

(4) A gathering falls within this sub-paragraph if it—

- (a) consists of more than 30 persons,
- (b) takes place indoors, and
- (c) would be a gathering of the kind mentioned in section 63(1) of the Criminal Justice and Public Order Act 1994⁽¹⁾ (powers to remove persons attending or preparing for a rave) if it took place in the open air.

(5) A gathering falls within this sub-paragraph if (not falling within sub-paragraph (4)) it—

- (a) consists of more than 30 persons,
- (b) takes place—
 - (i) in a private dwelling,
 - (ii) on a vessel, or
 - (iii) on land which satisfies the condition in sub-paragraph (6), and
- (c) is not a gathering in relation to which any of the exceptions set out in paragraph 4, 5 or 6, so far as capable of applying to the gathering, apply.

(6) Land satisfies the condition in this sub-paragraph if it is a public outdoor place which is not—

- (a) operated by a business, a charitable, benevolent or philanthropic institution, or
- (b) part of premises used for the operation of a business, a charitable, benevolent or philanthropic institution, or a public body.

(7) In sub-paragraph (5)(b)(ii) “vessel” means any ship, boat, barge, lighter or raft and any other description of craft, whether used in navigation or not, but does not include government vessels, vessels used for public transport or houseboats.

(8) In applying for the purposes of sub-paragraph (5)(c) the exceptions set out in paragraph 4, the following do not apply—

- (a) paragraph 4(3)(a), so far as relating to gatherings in public outdoor places operated by public bodies;
- (b) paragraph 4(3)(b).

General exceptions in relation to gatherings

4.—(1) These are the exceptions referred to in paragraphs 1 and 2.

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 7).

Exception 2: permitted organised gatherings

(3) Exception 2 is that—

- (a) the gathering is a permitted organised gathering (see paragraph 9), and

(1) 1994 c. 33.

- (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⁽²⁾,
or
 - (ii) supervised activities for children;
 - (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;
 - (f) to provide care or assistance to a vulnerable person, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006⁽³⁾;
 - (g) for the purposes of arrangements for access to, and contact between, parents and children where the children do not live in the same household as their parents or one of their parents;
 - (h) for the purposes of arrangements for contact between siblings where they do not live in the same household and one or more of them is—
 - (i) a child looked after by a local authority, within the meaning of section 22 of the Children Act 1989⁽⁴⁾, or
 - (ii) a relevant child, within the meaning of section 23A⁽⁵⁾ of that Act;
 - (i) for the purposes of arrangements for prospective adopters (including their household) to meet a child or children who may be placed with the prospective adopters as provided for by an adoption placement plan drawn up in accordance with the Adoption Agencies Regulations 2005⁽⁶⁾ (see regulation 35(2) of those Regulations);
 - (j) to facilitate a house move.

Exception 4: legal obligations and proceedings

- (5) Exception 4 is that the person concerned is fulfilling a legal obligation or participating in legal proceedings.

Exception 5: criminal justice accommodation

- (6) Exception 5 is that the gathering takes place in criminal justice accommodation.

Exception 6: support groups

- (7) Exception 6 is that the gathering—
 - (a) is of a support group (see paragraph 11(1)),
 - (b) consists of no more than 15 persons, and

(2) 2006 c. 21.

(3) 2006 c. 47.

(4) 1989 c. 41.

(5) Section 23A was inserted by the Children (Leaving Care) Act 2000 (c. 35).

(6) S.I. 2005/389.

Status: This is the original version (as it was originally made).

- (c) takes place at premises other than a private dwelling.

Exception 7: births

(8) Exception 7 is that the person concerned is attending a person giving birth (“M”) at M’s request.

Exception 8: marriages and civil partnerships etc

(9) Exception 8 is that the gathering consists of no more than 15 persons and—

- (a) it is for the purposes of—
 - (i) the solemnisation of a marriage, formation of a civil partnership or conversion of a civil partnership into a marriage, in accordance with the Marriage Act 1949(7), the Marriage (Registrar General’s Licence) Act 1970(8) or the Civil Partnership Act 2004(9), or
 - (ii) an alternative wedding ceremony (see paragraph 11(2)), and
- (b) the gathering organiser or manager takes the required precautions in relation to the gathering (see paragraph 10).

Exception 9: funerals

(10) Exception 9 is that—

- (a) the gathering is for the purposes of a funeral,
- (b) the gathering consists of no more than 30 persons,
- (c) the gathering takes place at premises, other than a private dwelling, which—
 - (i) are operated by a business, a charitable, benevolent or philanthropic institution or a public body, or
 - (ii) are part of premises used for the operation of a business, a charitable, benevolent or philanthropic institution or a public body, and
- (d) the gathering organiser or manager takes the required precautions in relation to the gathering (see paragraph 10).

Exception 10: commemorative event following a person’s death

(11) Exception 10 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 10).

Exception 11: protests

(12) Exception 11 is that the gathering is for the purposes of protest and—

- (a) it has been organised by a business, a charitable, benevolent or philanthropic institution, a public body or a political body, and

(7) 1949 c. 76.

(8) 1970 c. 34.

(9) 2004 c. 33.

- (b) the gathering organiser takes the required precautions in relation to the gathering (see paragraph 10).

Exception 12: elite sports

- (13) Exception 12 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 13: other sports

(14) Exception 13 is that the person concerned is taking part in an outdoor sports gathering (see paragraph 11(3)(a)) or a permitted indoor sports gathering (see paragraph 11(3)(b)).

Exception 14: Remembrance Sunday

- (15) Exception 14 is that—
 - (a) the gathering takes place to commemorate Remembrance Sunday,
 - (b) the persons attending the gathering are limited to—
 - (i) persons there as part of their work,
 - (ii) persons providing voluntary services in connection with the event,
 - (iii) members of the armed forces,
 - (iv) veterans of the armed forces or their representatives or carers,
 - (v) spectators who participate in the gathering alone or as a member of a qualifying group, and
 - (c) the gathering organiser or manager takes the required precautions in relation to the gathering (see paragraph 10).

Exceptions in relation to indoor gatherings

5.—(1) These are the exceptions relating only to indoor gatherings.

Exception 1: visiting a dying person

- (2) Exception 1 is that the person concerned (“P”) is visiting a person whom P reasonably believes is dying (“D”), and P is—
- (a) a member of D’s household,
 - (b) a close family member of D,
 - (c) a friend of D.

Exception 2: visiting persons receiving treatment etc

- (3) Exception 2 is that the person concerned (“P”) is visiting a person (“V”) receiving treatment in a hospital or staying in a hospice or care home, or is accompanying V to a medical appointment and P is—
- (a) a member of V’s household,
 - (b) a close family member of V, or
 - (c) a friend of V.

Exception 3: informal childcare

(4) Exception 3 is that the gathering is reasonably for the purposes of informal childcare provided by a member of a household to a member of their linked childcare household (see paragraph 8).

Exception in relation to outdoor gatherings

6.—(1) This exception relates only to outdoor gatherings.

Exception: outdoor activities

(2) This exception is that—

- (a) The gathering is for the purposes of a relevant outdoor activity (see paragraph 11(6)), and
- (b) the gathering organiser takes the required precautions in relation to the gathering (see paragraph 10).

Linked household

7.—(1) For the purposes of this Part of this Schedule, a “linked household” means a household that is linked with another household in accordance with this paragraph.

(2) Where a household comprises one adult, or one adult and one or more persons who were under the age of 18 on 12th June 2020 (“the first household”), the adult may choose to be linked with one other household (“the second household”).

(3) But sub-paragraph (2) applies only if—

- (a) all adult members of the second household agree,
- (b) neither the first household nor the second household are linked with any other household for the purposes of these Regulations or any other regulations made under Part 2A of the Public Health (Control of Disease) Act 1984, and
- (c) neither of those households were, in the period beginning with 14th September 2020 and ending with 14th October 2020, linked with any other household for the purposes of any other regulations made under that Part.

(4) There is no limit on the number of adults or children who may be in the second household.

(5) The first and second households are “linked households” in relation to each other.

(6) The first and second households cease to be linked households if neither household satisfies the condition in sub-paragraph (2).

(7) Once the first and second households have ceased to be linked households, neither the first household nor the second household may be linked with any other household.

(8) The references in sub-paragraph (3) to neither household being linked with any other household does not include being linked with another household only for the purposes of informal childcare in accordance with regulations made under Part 2A of the Public Health (Control of Disease) Act 1984.

Linked childcare household

8.—(1) For the purposes of this Part of this Schedule, a “linked childcare household” means a household that is linked with another household for the purposes of informal childcare in accordance with this paragraph.

(2) Where a household includes at least one child aged 13 or under (“the first household”), that household may link with one other household (“the second household”) for the purpose of the second household providing informal childcare to the child aged 13 or under in the first household if—

- (a) neither the first household nor the second household are linked with any other household for that purpose in accordance with this paragraph or a provision of any other regulations made under Part 2A of the Public Health (Control of Disease) Act 1984, and
 - (b) all the adult members of both households agree.
- (3) The first household and the second household are “linked childcare households” in relation to each other.
- (4) The first household and the second household cease to be linked childcare households when neither household includes a child aged 13 or under.
- (5) Once the first household and the second household cease to be linked childcare households, neither household may be a linked childcare household with any other household.

Permitted organised gatherings and qualifying groups

9.—(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 10).

(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 indoor gatherings, 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 outdoor gatherings, a group of people who are participating in that gathering and 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

10.—(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.

(2) The first requirement is that the 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⁽¹⁰⁾ (whether or not the organiser or manager is subject to those Regulations).

(3) The second requirement is that the 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.

Further interpretation

11.—(1) In paragraph 4(7), “support group” means a group which is organised by a business, a charitable, benevolent or philanthropic institution or a public body to provide mutual aid, therapy or any other form of support to its members or those who attend its meetings, for example those providing support—

- (a) to victims of crime (including domestic abuse);
 - (b) to those with, or recovering from, addictions (including alcohol, narcotics or other substance addictions) or addictive patterns of behaviour;
 - (c) to new parents;
 - (d) to those with, or caring for persons with, any long-term illness or terminal condition or who are vulnerable;
 - (e) to those facing issues related to their sexuality or identity including those living as lesbian, gay, bisexual or transgender;
 - (f) to those who have suffered bereavement.
- (2) In paragraph 4(9), a gathering is for the purposes of an “alternative wedding ceremony” if—
- (a) it is for the purposes of a ceremony, including a ceremony based on a person’s faith or belief or lack of belief, to mark the union of two people, other than a ceremony conducted for a purpose mentioned in paragraph 4(9)(a)(i), and
 - (b) it takes place—
 - (i) at premises, other than a private dwelling, which are operated by a business, a charitable, benevolent or philanthropic institution or a public body,
 - (ii) at premises, other than a private dwelling, which are part of premises used for the operation of a business, a charitable, benevolent or philanthropic institution or a public body, or
 - (iii) in a public outdoor place not falling within sub-paragraph (i) or (ii).
- (3) In paragraph 4(14)—
- (a) an “outdoor sports gathering” means a gathering—
 - (i) 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,
 - (ii) which takes place outdoors, and

⁽¹⁰⁾ S.I. 1999/3242.

(iii) in respect of which the gathering organiser or manager complies with the required precautions (see paragraph 10);

(b) 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—

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

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

(iii) in respect of which the gathering organiser or manager of the relevant premises complies with the required precautions (see paragraph 10),

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

(4) For the purposes of sub-paragraph (3)—

(a) “relevant premises” means premises (other than a private dwelling)—

(i) which are operated by a business, a charitable, benevolent or philanthropic institution or a public body, or

(ii) which are part of premises used for the operation of a business, a charitable, benevolent or philanthropic institution or a public body;

(b) a person has a disability if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities.

(5) Regulations 3 to 5 of the Equality Act 2010 (Disability) Regulations 2010⁽¹¹⁾ apply in considering for the purposes of sub-paragraph (6)(b) whether a person has an impairment.

(6) In paragraph 6⁽²⁾ “relevant outdoor activity” means a physical activity which is carried on outdoors and for which a licence, permit or certificate issued by a public body to carry on the activity, or for any equipment used for the purposes of the activity, must be held by—

(a) the gathering organiser, or

(b) any person taking part in the activity.

(7) In sub-paragraph (7), the reference to a licence does not include a licence to drive a motor vehicle in the United Kingdom or to serve food or alcohol.

Part 1 of this Schedule: general interpretation

12.—(1) This paragraph applies for the purposes of this Part of this Schedule.

(2) A gathering takes place when two or more persons are present together in the same place in order—

(a) to engage in any form of social interaction with each other, or

(b) to undertake any other activity with each other.

(3) A gathering takes place in the Tier 3 area if any part of the place where it takes place is in the Tier 3 area.

(4) A place is indoors if it would be considered to be enclosed, or substantially enclosed, for the purposes of section 2 of the Health Act 2006⁽¹²⁾, under the Smoke-free (Premises and Enforcement) Regulations 2006⁽¹³⁾.

⁽¹¹⁾ S.I. 2010/2128.

⁽¹²⁾ 2006 c. 28. Section 2 was amended by paragraph 4 of Schedule 2 to the Public Health (Wales) Act 2017 (2017 anaw 2).

⁽¹³⁾ S.I. 2006/3368, to which there are amendments which are not relevant to these Regulations.

Status: This is the original version (as it was originally made).

- (5) A place is a “public outdoor place” if it is an outdoor place to which the public have, or are permitted, access (whether on payment or otherwise) and includes—
- (a) land laid out as a public garden or used for the purpose of recreation by members of the public;
 - (b) land which is “open country” as defined in section 59(2) of the National Parks and Access to the Countryside Act 1949(14), as read with section 16 of the Countryside Act 1968(15);
 - (c) land which is “access land” for the purposes of Part 1 of the Countryside and Rights of Way Act 2000(16) (see section 1(1) of that Act)(17);
 - (d) any highway to which the public has access;
 - (e) Crown land to which the public has access.
- (6) References to a “private dwelling”—
- (a) include references to a houseboat and any garden, yard, passage, stair, outhouse or other appurtenance of the dwelling;
 - (b) do not, except in paragraph 9(2), include references to the following—
 - (i) accommodation in a hotel, hostel, campsite, caravan park, members club, boarding house or bed and breakfast accommodation;
 - (ii) care homes;
 - (iii) children’s homes, within the meaning of section 1 of the Care Standards Act 2000;
 - (iv) Residential Family Centres, within the meaning of section 4 of that Act;
 - (v) educational accommodation;
 - (vi) accommodation intended for use by the army, navy or air force;
 - (vii) criminal justice accommodation.
- (7) “A charitable, benevolent or philanthropic institution” means—
- (a) a charity, or
 - (b) an institution, other than a charity, established for charitable, benevolent or philanthropic purposes.
- (8) “Childcare” has the same meaning as in section 18 of the Childcare Act 2006(18).
- (9) “Educational accommodation” means—
- (a) accommodation provided for students whilst they are boarding at school, and
 - (b) halls of residence provided for students attending higher education courses and equivalent accommodation provided for students attending further education courses.
- (10) “Elite sportsperson” means an individual who—
- (a) derives a living from competing in a sport,
 - (b) is a senior representative nominated by a relevant sporting body,
 - (c) is a member of the senior training squad for a relevant sporting body, or
 - (d) is aged 16 or above and is on an elite development pathway.

(14) 1949 c. 97.

(15) 1968 c. 41. Section 16 has been amended by section 111 of the Transport Act 1968 (c. 73), Schedule 27 to the Water Act 1989 (c. 15) and S.I. 2012/1659. There are other amendments to section 16 which are not relevant to this instrument.

(16) 2000 c. 37.

(17) The definition of “access land” has been amended by section 303(2) of, and Part 7 of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23).

(18) 2006 c. 21. Section 18 has been amended by the Children and Young Persons Act 2008 (c. 23), Schedule 1, paragraph 19, and Schedule 4; the Criminal Justice and Courts Act 2015 (c. 2), Schedule 9, paragraph 21, and S.I. 2010/813.

(11) “The gathering organiser”, in relation to a gathering, means the person responsible for organising the gathering.

(12) “The manager”, in relation to a gathering, means the person responsible for the management of the premises on which the gathering takes place.

(13) “A political body” means—

(a) a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000⁽¹⁹⁾, or

(b) a political campaigning organisation within the meaning of regulation 2 of the Health and Social Care (Financial Assistance) Regulations 2009⁽²⁰⁾.

(14) For the purposes of the definition of “elite sportsperson” in sub-paragraph (11)—

(a) “elite development pathway” means a development pathway established by the national governing body of a sport to prepare sportspersons—

(i) so that they may derive a living from competing in that sport, or

(ii) to compete in that sport at the Tokyo or Beijing Olympic or Paralympic Games, or, if that sport is not part of the Tokyo Olympic and Paralympic Games programme, in the Commonwealth Games to be held in Birmingham;

(b) “relevant sporting body” means the national governing body of a sport which may nominate sportspersons to represent—

(i) Great Britain and Northern Ireland at the Tokyo or Beijing Olympic or Paralympic Games, or

(ii) England, Wales, Scotland, Northern Ireland, Gibraltar, Guernsey, Jersey or the Isle of Man at the Commonwealth Games to be held in Birmingham in those sports which are not part of the Tokyo Olympic and Paralympic Games programme;

(c) “senior representative” means an individual who is considered by a relevant sporting body to be a candidate to qualify to compete on behalf of—

(i) Great Britain and Northern Ireland at the Tokyo or Beijing Olympic or Paralympic Games, or

(ii) England, Wales, Scotland, Northern Ireland, Gibraltar, Guernsey, Jersey or the Isle of Man at the Commonwealth Games to be held in Birmingham in those sports which are not part of the Tokyo Olympic and Paralympic Games programme.

(15) References to a “vulnerable person” include—

(a) any person aged 70 or older;

(b) any person aged under 70 who has an underlying health condition, including (but not limited to) the conditions listed in sub-paragraph (17);

(c) any person who is pregnant.

(16) The conditions referred to in sub-paragraph (16)(b) are—

(a) chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease, emphysema or bronchitis;

(b) chronic heart disease, such as heart failure;

(c) chronic kidney disease;

(d) chronic liver disease, such as hepatitis;

⁽¹⁹⁾ 2000 c. 41.

⁽²⁰⁾ S.I. 2009/649.

Status: This is the original version (as it was originally made).

- (e) chronic neurological conditions, such as Parkinson's disease, motor neurone disease, multiple sclerosis, a learning disability or cerebral palsy;
- (f) diabetes;
- (g) problems with the spleen, such as sickle cell disease or removal of the spleen;
- (h) a weakened immune system as a result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy;
- (i) being seriously overweight with a body mass index of 40 or above.