



Health and Safety Executive (HSE) information for the Scottish Government on the Coronavirus (Covid-19) response

As the GB-wide regulator for health and safety at work, HSE is constantly reviewing the fast-moving situation and working with partners in all three nations to support the efforts to tackle COVID-19. HSE recognises that social distancing is fundamentally a public health issue; however, it is also a workplace issue and we are applying the expertise and flexible powers at our disposal under the Health and Safety at Work etc Act 1974 (HSWA) to protect people at work. The regime is described at **Annex 1**.

A joint statement is being prepared on how we are working with the Scottish Government, Scottish local authorities and Police Scotland. Specific examples of HSE's COVID-19 response including activity in Scotland are listed at **Annex 2**.

Application of the health and safety regulatory regime to meet the challenge of COVID-19

HSE regulates COVID-19 risks using HSWA which provides a robust framework requiring the control of risks to workers from any source, including the virus. We are using well-established models for enforcement decision-making to ensure our actions on COVID-19 risks are proportionate and practical.

All social distancing concerns reported to HSE by workers and their families are assessed to decide what action is required. In Scotland we have already processed well over 100 concerns. Where HSE is the appropriate enforcing authority to deal with the concern, we will investigate further so a decision can be made about what kind of enforcement is required, in line with our published Enforcement Policy Statement. The range of enforcement options is described in Annex 1. In all cases where we have investigated, we have checked that employers have taken action in line with our advice or, where we have written to them, have made the improvements we required.

HSE regulation of COVID-19 risks applies generic guidance published by Public Health bodies (in England, Wales and Scotland) and on [gov.uk](https://www.gov.uk), as well as interpretation of the standards specific to certain industries available on gov.uk and the websites of stakeholders, industry bodies or other regulators e.g. for the [Waste Industry](#) and the [Food Industry](#).

How does it apply in Scotland where public health responsibility is devolved and HSE has workplace health and safety jurisdiction?

HSE has the policy lead for the regulation of health and safety at work in Great Britain. This includes setting the risk-based regulatory approach that should be adopted by Local Authorities (LAs) under health and safety legislation. Inspection and enforcement of health and safety law is allocated to either HSE or LAs by the Health and Safety (Enforcing Authority) Regulations 1998, according to the main work activity being undertaken.



The Scottish Government emergency public health legislation gives powers to LAs to enforce social distancing in all premises. HSE and LAs have agreed local enforcement arrangements for the emergency legislation complimentary to health and safety law at **Annex 3**.

Statutory reporting of work-related COVID-19 deaths under the Reporting of Injuries Diseases Dangerous Occurrences Regulations 2013 (RIDDOR)

HSE has issued updated [guidance](#) in response to enquiries about reportability of COVID-19 cases among workforces. All COVID-19 RIDDOR reports HSE receives are assessed to determine whether they are reportable. This work reflects the challenges associated with identifying whether the workplace was the most likely source of infection. Where reports meet our Incident Selection Criteria the incident will be investigated in line with existing legislation and HSE's protocols. HSE will provide guidance to LAs who also receive reports of COVID-19 deaths in premises they enforce under health and safety legislation.

Remote working from home

Employers have the [same health and safety responsibilities for home workers](#) as for any other workers. Employers should be aware of risks that may arise from social isolation, stress, or lack of supervision. Being away from managers and colleagues could make it difficult for workers to get proper support.

HSE's approach to non-Covid-19 related regulatory activity in the current climate

HSE's regulatory approach takes a flexible and proportionate account of the risks and challenges arising from the pandemic and is changing over time. As a consequence, HSE:

- initially suspended targeted inspection activity of high-risk industries that are not part of the major hazard sectors, including construction and manufacturing, though with plans developing for coming out of the lockdown targeted inspection work is being planned
- carried out a short pause on our offshore oil and gas and onshore chemical, explosives and microbiological industry inspection activities to allow duty holders time to overcome immediate challenges. We subsequently re-prioritised our regulatory work on key critical areas and activities. We will continue to regulate major hazard industries throughout this time using remote where possible in conjunction with visits;
- will endeavour to undertake regulatory activities which do not require site visits as normally as possible, for example Approvals and Authorisation work for biocides and pesticides, statutory permissioning activities such as Licensing, Safety Case / Report Assessments, Thorough Reviews, Combined Operations Notifications,



Wells Notifications, Land Use Planning Applications, Hazardous Substances Consents, etc.;

- will continue to investigate work related deaths, (including with Police Scotland and the Crown Office and Procurator Fiscal Service, as appropriate), the most serious major injuries and dangerous occurrences and reported concerns from the workforce, or the public, where people are being exposed to risks from work activities. Where appropriate, we will act to secure compliance with the law. We will conduct as much of our investigation activity using technology as possible, without compromising the collection of evidence and our ability to secure effective control of risk and, where appropriate, justice;
- will do as much of our regulatory intervention work as we can remotely, but we will still mobilise to site, including offshore, where it is necessary to provide public assurance that hazards are being effectively managed and to secure compliance with the law. Where a site visit is required social distancing guidelines will be followed; and
- will continue to work closely with and across sectors to enable them to put practical measures in place to support work, while remaining compliant with public health and health and safety requirements.

HSE is keeping the situation under constant review and updates will be communicated to duty holders through engagement with stakeholders, via our website and/or using our full range of online and offline communication channels.

The involvement of employers and unions in consultation

The HSE Board is based on a tripartite representation of both employer and Trades Union interests. HSE works with employer and worker representative bodies and intermediaries in the development and publication of standards and guidance. When inspectors make site visits, they will establish contact with employee as well as management representatives.

In Scotland, HSE chairs the Partnership on Health and Safety in Scotland (PHASS) – the specific tripartite forum for the Scottish health and safety community. [A joint statement has been issued with PHASS](#). HSE has also agreed to meet the STUC every few weeks and there is a dedicated email address for unions to raise concerns relating to COVID-19.

Moving forward into the next phase of the COVID-19 response and recovery

HSE has contributed to guidance for businesses as current restrictions are eased under the UK Government's Safer Workplaces programme, coordinated by the Department for Business, Energy and Industrial Strategy. We have advised on the necessary safety measures that will need to adopt covering: work primarily outside or in open spaces; non-food retail businesses; leisure and well-being services;



indoor work within close proximity; factories and industry-based work; distribution, transport and storage; and businesses with peripatetic workers.

HSE's expertise on risk and practicability of control measures is based on the scientific evidence as well as our experience to date of regulating during the COVID-19 pandemic. HSE's input aims to ensure that guidance:

- provides confidence and assurance for workers;
- supports practical implementation for employers and consistency across GB; and
- can be enforced under the Health and Safety at Work etc Act 1974.

HSE's work to provide assurance that workers can return to work safely has already produced sector-based guidance and a regulatory model that seeks to build worker confidence. This model will rely on an appropriate mix of advice, guidance and information, inspection, investigation and enforcement.

We understand that there has been liaison between the governments of all four nations about the development of that guidance.

Where the Scottish Government, Scottish regulators or industry bodies are developing more detailed guidance - that offers workplace standards that HSE can apply and enforce under our legislation - we would welcome the opportunity to advise and comment on it, taking into account the work described above that we have already done.

Additional measures

Advice, guidance and information

HSE will map existing material, work with stakeholders, intermediaries to understand where businesses need greater clarity and then facilitate work with industry to meet the demand, promoting good practice such as the example pictured at **Annex 4**.

In workplaces enforced by local authorities such as retail and warehousing, HSE has strong direct links with stakeholders and intermediaries. HSE's trusted voice and role as an operational regulator, along with its supporting audience-based communications, will enable us to deliver a balanced strong, rational and emotional case for the importance of work and the economy.

Enforcement

Workers should be reassured to know HSE will take appropriate enforcement action where the risk justifies it. Knowing that enforcement is a possibility drives business to compliance. HSE can require employers to control risk, it cannot require workers to attend a workplace.



HSE is developing its regulatory strategy that will prioritise actions to impact on the confidence of workers to return to work.

HSE expects that the benefits of this programme of activities will be to establish social distancing on the same footing as other workplace risk controls with which workers and businesses are familiar and in the great majority of cases confident.

The key challenge is to build confidence by aligning consistency of messaging about tackling the risks from the virus in the workplace with wider advice and perceptions created by the general public health message. For example, those perceptions have generated some expectation of PPE being a common control mechanism in the workplace. HSE is succeeding in helping workers to understand that risk controls short of PPE can be entirely adequate except in some specific workplaces and circumstances.

Health & Safety Executive
May 2020

The regulation of health and safety across GB

How does the current system work?

HSE works with stakeholders and intermediaries to establish standards for risk management in workplaces and to publish guidance. The foundation of the regulatory framework is that the great majority of businesses can effectively self-regulate if they have access to the information and support they need. More detail is available in [Regulation of health and safety at work](#).

HSE conducts inspections and investigates incidents and concerns raised with it. These activities secure compliance where necessary and ensure the system learns where improvements are necessary to standards, guidance or communication.

Enforcement methods and how they take effect

Inspectors appointed under the act (HSE and local authority officers) have powers to:

- Prohibit an activity creating risk of serious injury or health effect. This action has immediate effect and remains in place even if there is a formal appeal.
- Require improvement to risk controls where there is a breach of legal requirements. The requirement can be put in place as soon as the need is identified. The minimum period for responding to the action is 21 days. There is a formal appeal process which can suspend the compliance period.
- Write formally advising that action is taken to improve risk control. Formal written advice is always followed-up by HSE to ensure action has been taken.
- Report a business to the Crown Office and Procurator Fiscal Service which has fallen significantly below the expected standards, recommending prosecution. Prosecution is usually in addition to formal action prohibiting or requiring improvement. Prosecution can take months to reach a conclusion. Prosecution is a less immediate process, but an important one for the most serious failures.

The role of whistleblowing

HSE has a hotline and online form for reporting workplace concerns. The most serious concerns alleging significant risk are dealt with by inspectors either by phone or making a site visit. Concerns can normally be dealt with anonymously and without disclosure.

The scale and frequency of inspections

HSE conducts around 15,000 - 20,000 inspections every year across GB with a proportionate number in Scotland. Inspections are targeted on industries and topics which are known to cause the greatest harm to workers. Some inspections are organised around campaigns which amplify their impact through communications activities.



Annex 2

Examples of specific activity carried out by HSE in response to COVID-19

RPE/PPE supply chain:

- HSE has reviewed public health guidance for workers including general infection prevention and control, secondary care, handling clinical waste and the prevention of infection from the deceased.
- HSE has put together a dedicated team to manage its involvement in the PPE supply chain - as the market surveillance authority - to ensure support for the swift technical and legal assessment of proposed supplies of PPE. HSE is also working closely with Office for Product Safety and Standards (OPSS) and Medicines and Healthcare products Regulatory Agency (MHRA) to ensure that the delineation between PPE and medical devices is understood by purchasers, suppliers and users so that the correct assessments are made of equipment from previous unused sources.
- HSE is engaging with Amazon / eBay and Alibaba as the platforms are setting up mechanisms for the NHS to buy PPE directly.

Social distancing:

- In Scotland, the Health Protection (Coronavirus Restriction) (Scotland) Regulations 2020 (as amended) give powers to the police and LAs to ensure reasonable social distancing in all workplaces in Scotland. HSE met Scottish Government, Police Scotland and Local Authority representatives to ensure a coordinated enforcement approach. (Annex 3).
- HSE has issued updated guidance in response to a considerable number of queries asking about reportability of COVID-19 cases among workforces. A dedicated e-mail address has been created, and all COVID-19 RIDDOR reports HSE receives is directed to this account for assessment of reportability. This work reflects the challenges associated with identifying whether the workplace was the source of infection.
- Health Protection Scotland produced guidance on infection control at offshore platforms. HSE was consulted on this, agreeing an approach with Oil and Gas UK. The approach also applies to platforms outside of Scotland.
- HSE delivered a webinar for HSE inspectors and another for LA Environmental Health Officers for workplaces under their respective enforcing authority responsibility to drive a consistent approach to policy and enforcement of social distancing.



- HSE and LAs hold regular dial ins to share experience of regulating social distancing in Scotland.

Engagement/communication

- HSE has published a [PHASS statement on Coronavirus](#) to reflect the position that the Scottish TUC, CBI Scotland and other PHASS member-organisations are independently-constituted. The statement has been agreed in the specific context of the Fair Work Agenda in Scotland which facilitates Scottish TUC engagement with the Scottish government and its communications on COVID-19. PHASS, chaired by HSE, is acting as an information-sharing mechanism – with regular dial in meetings. Scottish Government are represented on PHASS.
- Communications activity is continuing to promote advice and guidance on specific health as safety issues to protect workers. HSE is seeing historic highs in our social and web metrics, traffic and subscribers with people coming to HSE for authoritative advice and guidance on health and safety, PPE and social distancing.
- HSE has issued operational policy positions to industry stakeholders on a wide range of issues including gas safety, lifting equipment and other statutory inspection regimes, lone working and workstation assessments, first aid requirements, health surveillance requirements and driver welfare.
- Critical updated guidance has included (not exhaustive):
 - new [video guidance on disposable respirators](#) (how to ensure a proper fit) aimed at all healthcare workers
 - temporary arrangements for regulation of chemicals
 - managing staffing and fatigue at onshore major hazard establishments during the coronavirus outbreak
- Since the lockdown began on 23 March, we've issued 34 external bulletins delivering guidance and advice during the outbreak to 42 different sector and topic subscriber lists.



Annex 3

Social distancing at work: how HSE works with Scottish Local Authorities

As the regulator for health and safety at work, HSE is constantly reviewing the fast-moving situation to support the GB-wide effort to tackle COVID-19 by applying our expertise and the powers at our disposal under the Health and Safety at Work etc Act 1974 to protect people at work.

HSE recognises that social distancing is fundamentally a public health issue, for the protection of society, supported by measures in the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, as amended which give specific powers to 'relevant persons' (including local authority officers and the Police) to ensure social distancing in all workplaces in Scotland. HSE has no powers under these regulations nor to make decisions between essential and non-essential businesses.

HSE is treating COVID-19 as a workplace health issue with regard to the protection of workers from infection. HSE can and will enforce under HSWA to ensure social distancing in the workplace in relation to workers (not members of the public). Powers given to other authorities under Scottish public health legislation have not altered the formal *vires* of HSE under HSWA and HSE will therefore continue to use its powers alongside others, contributing to the overall resources and effort.

Where HSE identifies employers who are not taking action to comply with the relevant public health guidance to control COVID-19 health risks to workers, HSE will consider a range of actions to improve control of workplace risks including the provision of specific advice to employers through to issuing enforcement notices. These actions will be taken under existing health and safety law (HSWA).

There is already a sensible approach to demarcation of workplace enforcement between HSE and local authorities under the *Health and Safety (Enforcing Authority) Regulations 1998 (EA Regs)*. HSE will continue to investigate concerns about the lack of social distancing between workers, in premises allocated to HSE under those regulations. Local authority officers will continue to enforce social distancing in premises allocated to local authorities under the *EA Regs*. Any concerns received about social distancing by local authorities for premises that HSE is the allocated enforcement body, should be passed to HSE via the normal concerns route www.hse.gov.uk/contact/concerns.htm. HSE's procedure is to refer relevant concerns to local authorities. This will prevent multiple regulators dealing with the same premises and ensure that any measures required can be implemented without creating additional health and safety risks to industrial processes with which HSE are already familiar.

Where premises are listed in Schedule 1 of the Health Protection (Coronavirus) (Restrictions) (Scotland) (Amendment) Regulations 2020, as amended and are also



premises allocated to HSE by the *EA Regs*, such as motor vehicle repair services, then the local authority should take the lead on matters relating to social distancing precautions for the protection of members of the public who visit the premises and liaise with HSE if worker safety issues arise.

A framework agreement between Police Scotland and local authorities supports the referral of complaints about lack of reasonable social distancing at work to the relevant local authority. Local authorities will ensure that those complaints relevant to HSE are referred quickly through the normal route.

Through the existing liaison arrangements, HSE and local authorities are sharing experience of appropriate social distancing advice and enforcement that will also inform how businesses should assess risks to health and safety in preparation for a return to work.

Annex 4

Examples of simple good practice measures taken by businesses

A production line before reorganisation to achieve social distancing



And after the line has been lengthened and workstations staggered

