

Enforcement of social distancing in the workplace- applicable legislation

A. Health protection legislation

Currently, three different health protection legislative regimes are operating in England, Scotland and Wales which touch upon the issue of social distancing at work.

All legislation can be found on the [legislation.gov.uk](http://www.legislation.gov.uk) website and relevant links are posted below. Please ensure that you are working from the latest version of the guidance as it is a fast moving situation and the legislation may be further amended.

The main powers common to all three sets of legislation is provision for the closure of certain businesses, restrictions on movement and restrictions on gatherings.

The Scottish and Welsh regulations make provision in specified businesses for additional social distancing measures such as two meter distancing between persons.

HSE is not empowered to take enforcement action under any of these regulations. The police are empowered to take enforcement action and local authorities have a role with respect to business closure, and in Wales and Scotland with social distancing measures.

1. The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

English legislation <http://www.legislation.gov.uk/ukxi/2020/350/made>:

These Regulations came into force at 1 pm on 26 March 2020. They revoke the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 as they build on and extend the powers in those regulations.

The regulations are in force for an 'emergency period' which commenced on 26 March 2020 and will continue until a direction is made by the Secretary of State. They will be reviewed at least once every 21 days, the first review being 26th April 2020.

Restrictions and Closures

Regulation 4 requires certain businesses listed in Part 1, Schedule 2 and Part 2, Schedule 2 to close (with a few exceptions). Largely pubs, restaurants, theatres etc. See schedules for full lists.

Regulation 5 requires the closure (with some exceptions) of certain other sale/hire businesses (not listed in Part 3, Schedule 2), libraries, hotels, B&Bs, holiday lets, campsites, places of worship, community centres, crematoria and burial grounds.

Regulation 6 restricts movement such that people can only leave home with a reasonable excuse, (e.g. to get food, medicine, take exercise, seek medical assistance and to travel for the purpose of work where it is not reasonably possible for persons to work from home. Regulation 7 is a restriction on gatherings of more than two persons in a public place. There are exceptions, including if the gathering is 'essential for work purposes'.

Enforcement

Regulation 8 of these regulations provides that enforcement is carried out by a 'relevant person', which includes a constable or police community support officer. The secretary of state can also designate a 'relevant person'.

Local authorities can designate a 'relevant person' but only for the purposes of regulations 4 and 5, namely business closures. They are not responsible for enforcement of restrictions on movement or gatherings.

HSE has no role to take any enforcement action under these regulations and it has not been designated as such by the Secretary of State.

2. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020

Scottish legislation

<http://www.legislation.gov.uk/ssi/2020/103/regulation/3/made>

These regulations came into force on 26 March 2020.

These regulations essentially mirror the English regulations with one significant difference- they place additional duties **on certain businesses** in terms of **social distancing**.

Restrictions and Closures

Regulation 3 provides that the businesses to close are listed in Parts 1 and 2 of Schedule 1, with some exceptions.

Regulation 4 places a duty on a person responsible for carrying on a business/ providing a service listed in Part 3, Schedule 1 to:

- Take all reasonable measures to ensure a 2 meter distance is maintained between any persons on the premises (with limited exceptions)
- Take all reasonable measure to ensure that it only admits people to its premises in sufficiently small numbers to make it possible to maintain that distance
- Take reasonable measures to ensure a 2 meter distance is maintained between persons waiting to enter its premises (with limited exceptions)

The premises/ businesses listed in Schedule 1, Part 3 are permitted to remain open provided they comply with the requirements in regulation 4, and they are:

- Food retailers, including food markets, supermarkets, convenience stores and corner shops.
- Off licenses and licensed shops selling alcohol (including breweries).
- Pharmacies (including non-dispensing pharmacies) and chemists.
- Newsagents.
- Homeware, building supplies and hardware stores.
- Petrol stations.
- Car repair and MOT services.
- Bicycle shops.
- Taxi or vehicle hire businesses.
- Banks, building societies, credit unions, short-term loan providers and cash points.
- Post offices.
- Funeral directors.
- Laundrettes and dry cleaners.
- Dental services, opticians, audiology services, chiropody services, chiropractors, osteopaths and other medical or health services, including services relating to mental health.
- Veterinary surgeons and pet shops.
- Agricultural supplies shops.
- Storage and distribution facilities, including delivery drop off or collection points, where the facilities are in the premises of a business included in this Part.
- Car parks.
- Public toilets.

Workplace canteens may remain open where—

(a) there is no practical alternative for staff at that workplace to obtain food; and .

(b) all reasonable measures are taken to ensure that a distance of 2 metres is maintained between any person using the canteen

The regulation also requires certain other businesses to close (libraries, other shops, holiday lets, hotels, B&Bs, crematoria, community centres etc).

Regulations 5 and 6 are essentially the same as the English regulations and cover restrictions on movement and gatherings.

Enforcement

Regulation 7 provides that enforcement is carried out by a 'relevant person'. These are either a constable or a person designated by a local authority.

Local authorities can only designate a relevant person for the purposes of regulations 3 and 4. This means that they can enforce business closures and social distancing in certain premises.

It should be noted that the businesses in Schedule 1, Part 3 are not the same list as the businesses that local authorities have [enforcement responsibility](#) for under the Health and Safety at Work Act 1974 (HSWA).

As a result, in some cases HSE may be the enforcing authority under HSWA while the local authority enforces Coronavirus social distancing measures. Equally, there may be some businesses for which the local authority is the enforcing authority for HSWA but does not have any powers under the Coronavirus legislation to enforce social distancing.

HSE has no role to take any enforcement action under these regulations.

3. The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

Welsh legislation

<http://www.legislation.gov.uk/wsi/2020/353/regulation/10/made>.

These regulations essentially mirror the English regulations again with one significant difference- they place additional duties **on certain businesses** in terms of **social distancing**.

Regulations 4, 5 and 7 makes provision for closure of businesses listed in Parts 1, 2, and 3 of Schedule 2, holiday lets and places of worship, with some exceptions.

Regulation 6 places a duty on a person responsible for carrying on a business/ providing a service listed in Part 4, Schedule 1 to:

- Take all reasonable measures to ensure a 2 meter distance is maintained between any persons on the premises (with limited exceptions)
- Take all reasonable measure to ensure that it only admits people to its premises in sufficiently small numbers to make it possible to maintain that distance
- Take reasonable measures to ensure 2 meter distance is maintained between persons waiting to enter its premises (with limited exceptions)

The premises/ businesses listed in Schedule 1, Part 4 are permitted to remain open provided they comply with the requirements in regulation 4, and they are::

- Food retailers, including food markets, supermarkets, convenience stores, corner shops and establishments selling food or drink for consumption on the premises (including establishments listed in Part 1 which, by virtue of regulation 4(1), have ceased selling food and drink for consumption on the premises).
- Off licenses and licensed shops selling alcohol (including breweries).
- Pharmacies (including non-dispensing pharmacies) and chemists.
- Newsagents.
- Homeware, building supplies and hardware stores.

- Petrol stations.
- Car repair and MOT services.
- Bicycle shops.
- Taxi or vehicle hire businesses.
- Banks, building societies, credit unions, short term loan providers and cash points
- Post offices.
- Funeral directors.
- Laundrettes and dry cleaners.
- Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health.
- Veterinary surgeons and pet shops.
- Agricultural supplies shops.
- Storage and distribution facilities, including delivery drop off points.
- Car parks.
- Public toilets.

Workplace canteens may remain open where—

(a) there is no practical alternative for staff at that workplace to obtain food; and .

(b) all reasonable measures are taken to ensure that a distance of 2 metres is maintained between any person using the canteen

Regulations 8 is essentially the same as the English regulations and cover restrictions on movement and gatherings.

Regulation 9 is unique to the Welsh regulations and makes provision for closure of public paths and land. Note that local authorities, National Resources Wales and the National Park Authority have enforcement powers for this provision only.

Regulation 10 is also unique to the Welsh regulations and grants the ‘relevant person’ a power of entry in certain circumstances.

Enforcement

Enforcement of these regulations is carried out by a ‘relevant person’. These include a constable or police community support officer or a person designated by the Welsh Ministers

Local authorities can also designate a relevant person but only for regulations 4, 6, 7 and 9(4), relating to business and public land/path closures and social distancing in certain premises.

It should be noted that the businesses in Schedule 1, Part 4 are not the same list as the businesses that local authorities have [enforcement responsibility](#) for under the Health and Safety at Work Act 1974 (HSWA).

As a result, in some cases HSE may be the enforcing authority under HSWA while the local authority enforces Coronavirus social distancing measures. Equally, there

may be some businesses for which the local authority is the enforcing authority for HSWA but not have any powers under the Coronavirus legislation to enforce social distancing.

HSE has no role to take any enforcement action under these regulations.

B. Health and safety legislation

Health and Safety at Work etc Act 1974

Under section 2 of the Health and Safety at Work etc Act 1974 (HSWA), employers have a general duty to ensure, so far as is reasonably practicable, the health, safety and welfare of their employees at work. This would extend to managing and controlling risks of infection from coronavirus in the workplace.

Section 3 of HSWA provides that employers and the self-employed have a duty to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that persons *not* in their employment who may be affected are not exposed to risks to their health or safety. This would cover members of the public (customers) and contractors.

Section 4 of HSWA imposes a duty in relation to persons who have control of non-domestic premises to ensure that they are safe and without risks to health.

If an employer is following the relevant PHE guidance for their sector in terms of controlling the public health risks, generally they will be taking reasonably practicable precautions to control workplace risks.

The Management of Health and Safety at Work Regulations 1999

Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 provides that:

(1) Every employer shall make a suitable and sufficient assessment of—

- (a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and
- (b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions [...]¹.

Regulation 4 of the Management of Health and Safety at Work Regulations 1999 provides that:

Where an employer implements any preventive and protective measures he shall do so on the basis of the principles specified in [Schedule 1](#) to these Regulations.

The preventive measures in Schedule 1 are as follows:

- (a) avoiding risks;
- (b) evaluating the risks which cannot be avoided;
- (c) combating the risks at source;
- (d) adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
- (e) adapting to technical progress;
- (f) replacing the dangerous by the non-dangerous or the less dangerous;
- (g) developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;
- (h) giving collective protective measures priority over individual protective measures;
and
- (i) giving appropriate instructions to employees.

Note that there are special provisions for pregnant workers in Regulation 16.

The Workplace (Health, Safety and Welfare) Regulations 1992

These require provision of adequate welfare facilities (hot and cold, or warm, running water and soap for washing)

Enforcement

Note that local authorities will be responsible for enforcement of HSWA in [some situations](#), in addition to the duties outlined above.