

Responding to concerns about social distancing in the workplace during the Covid 19 emergency

Background

1. Government messages to the general population about limiting the transmission of COVID-19 virus have emphasised a two-metre social distancing rule. HSE is receiving concerns from people about the application of the rule in their workplace. This guidance supports an HSE response to those concerns.
2. This guidance is intended to guide decision-making by HSE regulatory staff. It is not written to support duty holders with the task of preparing a COVID-19 risk assessment or to explain the HSE role in social distancing to an audience other than those with regulatory expertise.
3. The guidance rests on the HSE Enforcement Policy Statement and Enforcement Management Model and assumes an expert understanding of both documents. Specific aspects of the HSE enforcement framework are emphasised in the document because of their relevance to the enforcement of COVID-19 social distancing measures. Regulators may well find that in a specific case other factors are also relevant.
4. The focus of this guidance through out is the application of the law to the protection of people in the workplace. Those people may be employees, self-employed or even volunteers but the focus is the risk in a workplace setting. HSE is not a public health regulator and does not have an enforcement remit in relation to health risks to the general population.
5. Enforcement decisions around social distancing measures are founded on the legal duty on employers to ensure the health and safety of workers, and of other persons who might be affected by the conduct of their undertaking or their premises, 'so far as is reasonably practicable'. This guidance seeks to explore that concept in relation to COVID-19 infection risk. Inspectors may find it unusual to take a view on the national public interest into consideration when weighing the costs and benefits of risk control measures. In fact, this approach is not so different from the normal consideration of costs and benefits local to the workplace and the worker.

Legal requirements

6. Emergency legislation has been passed in England, Scotland and Wales in relation to controlling risks from COVID-19. The law in Scotland and Wales creates limited enforcement powers in relation to social distancing in the workplace for other enforcing authorities. Where there is more specific legislation, HSE would not expect to exercise its powers in relation to social distancing measures. HSE does not have enforcement powers under any of the new legislation. Annex 1 contains details of the relevant law.

Risk Factors

7. COVID-19 virus transmits when someone breathes in aerosolised droplets from an infectious person or when they touch a surface that is contaminated by the virus and then transfer the infection to their eyes, nose or mouth. People are not at risk of air-borne infection unless they are within a metre of someone who aerosolises the virus e.g. by coughing or unless they touch a contaminated surface and then transfer the infection. The two-metre rule ensures people are not in reach of each other and will therefore not spread the virus by touch. Risk controls should focus on these factors. The idea that the two-metre rule relates to protection from respiratory risk is likely to be a common misunderstanding which inspectors may have to explain to concerned workers.

Risk controls

8. If an employer is following the relevant Public Health guidance for their sector in terms of controlling the public health risks, they will generally be taking reasonably practicable precautions to control workplace risks. Annex 2 contains a reminder of relevant guidance, as at the end of March 2020.

Responding to Concerns

9. In considering whether a Concern merits investigation the factors in Annex 3 should be considered.

Hierarchy of control

10. Employers should consider the control of COVID-19 infection in the context of the familiar hierarchy of control. Annex 4 sets out some examples of thinking in the hierarchy.

Initial Enforcement Expectation

11. The [Enforcement Management Model](#) should be applied when considering the initial enforcement expectation.
12. The measures taken to prevent the spread of COVID19 should be treated in the same way as any other risks to health.
13. The working population is generally healthier than the population at large. Workers in defined vulnerable groups (i.e. in receipt of an NHS letter) should not be in work but shielding in their own homes. For healthy people a COVID-19 infection should be treated as a 'significant health effect' which could result in the person being unable to perform their normal duties for more than 3 days, causing non-permanent or reversible health effects.
14. If the duty holder meets all the standards the likelihood of receiving the infection at work is Remote. If the social distancing controls are deficient then the likelihood may rise to Possible or Probable.

15. Where Welfare facilities are absent, so the duty holder fails to meet a defined legal standard the IEE is of an Improvement Notice before duty holder factors are taken into account.

Duty Holder and Strategic Factors

16. Duty Holder Factors should be applied within the relevant flow chart in the EMM having considered the initial enforcement expectation.

17. Inspection history, general conditions, the attitude and intention (for economic advantage) of the duty holder and the inspector's confidence in the duty holder can be applied to the relevant flowchart.

18. It is very unlikely that HSE will have evidence of actual harm in relation to COVID-19 infection. Cases of COVID-19 amongst the workforce should not be regarded as evidence of actual harm unless there is reasonable evidence of the infection being acquired in the workplace. Separate guidance is available on relevant RIDDOR reporting requirements.

19. The EMM gives weighting to the protection of people in vulnerable groups. In the case of COVID-19 infection the vulnerable group is defined by those in receipt of a letter from the NHS advising them to shield. Generally, this definition will be sufficient to define vulnerability, but inspectors may need to take account of vulnerabilities specific to workplace risks.

20. Careful consideration should be given to the Public Interest, the effect of the action on other duty holders and the functional impact of the enforcement decision.

- a. Where a Principal Inspector believes the enforcement decision should be to require the provision of PPE then they should consult with the relevant Head of Operations. Heads of Operations will consider the scarcity of PPE in the supply chain and the potential burden on other priority users of PPE from increased demand in the PPE market.
- b. Principal Inspectors should also consider whether the intended enforcement action contributes to enabling the effective UK response to the pandemic. This consideration is particularly relevant where the business is part of a critical industry whose contribution might be limited by enforcement action e.g. education & childcare, health & social care, key public services, local and national government, food and other necessary goods supply and manufacture, public safety and national security, transport, communications, finance and utilities, manufacture and supply of medical equipment and supplies.

Industry Benchmarks

A number of industry documents are listed in Annex 5. Some documents have been generated by industry bodies without consultation with HSE. Relevant OPSTD Sector teams should be consulted if enforcement action is considered based on these standards. CD Sector has circulated guidance about the relevant industry

standard in a separate document, as has Energy Division in relation to Oil and Gas industry standards.

Fee for Intervention

Where consideration of an enforcement decision through the Enforcement Management Model results in an enforcement outcome of letter or notice, inspectors should consider whether they have formed an opinion in relation to a material breach and apply the cost recovery process as necessary.