

## Guidance for public health bodies explaining HSE's role in test, trace and outbreak response

### HSE scope

1. This guidance has been created by HSE to help colleagues with a public health role to understand how HSE can support regulatory action to control the transmission of coronavirus (COVID-19).
2. HSE is the health and safety regulator in England, Wales and Scotland. The principle legal requirements are in the Health and Safety at Work etc. Act 1974 (HSWA).
3. HSE shares workplace regulation with local authorities. Broadly put HSE is the enforcing authority in manufacturing, schools and universities, custodial settings and health and social care (but not for patient safety in England). Local Authority Environmental Health is the regulator in retail, hospitality, warehousing, most sport and leisure settings, residential accommodation and childcare.
4. The long-standing relationship with colleagues in Environmental Health teams means there are good local connections with HSE. HSE is used to working with public health teams in situations such as Legionnaire's disease outbreaks, so again good relationships generally exist at local level.

### HSE's regulatory role in the pandemic

5. Organisations with duties under HSWA must ensure they protect workers and others from the risk of transmission of coronavirus in the workplace. The duty is qualified by "so far as is reasonably practicable". The 'reasonably practicable' qualification means that HSE must take into account a costs/ benefits consideration when considering what risk control measures would be proportionate to the risks.
6. HSE has been very actively involved in regulating workplace risks from coronavirus. Most relevant to the Test, Trace and Outbreak response might be the interventions HSE has been conducting with workplaces in response to concerns raised by workers and others, about measures such as social distancing. By the end of June 2020 HSE had responded to more than 2000 workplace social distancing concerns as well as carrying out hundreds of spot check contacts with businesses and reviewing thousands of reported cases of COVID-19 disease in workers to identify those on which it has now started an investigation.
7. Frontline teams in HSE have been briefed about the Test, Trace and Outbreak arrangements and stand ready to support colleagues in public health teams where that is appropriate.

### **HSE support to Public Health teams**

8. HSE is not at the core of the public health response to the pandemic and it would not be an appropriate use of HSE resource proactively to join Health Protection Boards or Outbreak Control Teams. HSE will respond to situations in individual workplaces case-by-case, when it may be beneficial to join outbreak management groups.
9. HSE has had several requests to share its database of businesses it inspects with local authorities to help them plan for their public health role. HSE is working on a practical way to share data and will let local authorities know when it has a solution.

#### *Test and Trace*

10. HSE does not have a role in establishing or enforcing Testing, Tracking or Tracing arrangements. HSWA powers should not be used for purposes other than those set out in the Act so their use for example to require data disclosure for the purposes of any tracking or tracing scheme or to constrain the movement of anyone identified by the scheme would be unlawful.
11. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) require that where a person at work (a worker) has been diagnosed as having COVID-19 attributed to an occupational exposure to coronavirus the case should be reported to the Health and Safety Executive. While a positive test will indicate the presence of COVID-19, it does not confirm that the exposure was work related and of itself does not make the case reportable under RIDDOR. Duty holders will need to make suitable enquiries before considering whether to report considering [guidance on HSE's website](#).
12. Workers may be told by the tracing service they must self-isolate because of contact with a colleague who has tested positive. Workers will then inform their employer. Businesses may then seek to establish that their workplace risk controls preclude the application of the "contact" definition. Businesses may argue that, where the only contact has been in the workplace, there is no need for other workers to self-isolate.
13. HSE will not normally have knowledge of what controls were in place at the time of any recent contact. It is for businesses to make the case with public health officials if they believe it would be disproportionate for co-workers to self-isolate. HSE may receive requests to examine current controls and endorse the risk control measures. Where there has been a single confirmed case in the workforce it will not normally be a priority for HSE to be involved in making a judgment about whether the business is complying with infection control requirements.

#### *Outbreak*

14. HSE may be able to input to the risk assessment when a Health Protection Team is considering a cluster or potential outbreak, if the common factor under consideration is a workplace which falls to HSE for enforcement. HSE may be able to help public health officials to understand whether the workplace is likely to be a source of infection transmission or whether they should be looking for other possible connections between the cases.
15. Public Health officials may have HSE local contact details from existing relationships. If there is any uncertainty, then colleagues in Environmental Health are very likely to have a point of contact or at least to have access to the Helix website where HSE publishes contact details of its 'Enforcement Liaison Officers'.
16. If there has been prior HSE involvement in the workplace on coronavirus matters, then HSE will share information with the Health Protection Team. If there has been no prior contact with the workplace then HSE will consider contacting the workplace to establish what risk controls are in place. In the scenario of a cluster HSE will give investigation a medium priority. HSE will gather what information it can remotely before considering a site visit.
17. If HSE is contacted once an outbreak has been declared, then an intervention to understand what risk controls are in place will be given high priority by HSE. If HSE holds information about a workplace involved in an outbreak that information will be shared with Public Health officials.
18. When dealing with social distancing and other measures to control the risk of transmission in the workplace the most common action taken by HSE is to give verbal advice to a business or to write a formal enforcement letter. This is in line with the proportionate application of the law; especially noting that, in terms of the personal health outcome for an infected worker, the consequence of infection is not normally serious and that none of the many guidelines on covid risk controls in the workplace have a statutory status.
19. HSE has powers to stop activities which involve a risk of serious personal injury (Prohibition Notice) and to require improvements to risk control where there is a breach of the law (Improvement Notice). The minimum statutory period for compliance with an Improvement Notice is 21 days. HSE would be acting outside of the law if it used those powers to act on public health matters which are outside the purpose of HSWA.

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