



Covid-19 emergency: protecting yourself and your colleagues

January 2021

Covid-19: lockdown follows huge increase in infections and deaths

The Covid-19 pandemic, having already created an unprecedented crisis both for public health and the economy, has entered a new and deadly phase.

Around half a million people every week are now testing positive having been infected by the Covid-19 virus, and 5,000 infected people are dying each week. This 'second wave' is much more serious and much more deadly than the first wave of infection that led to lockdown in March of last year.

The NHS is in imminent danger of being overwhelmed by the huge increase in admissions of those that are infected and suffering severe symptoms, and that is why all parts of the UK have instituted lockdowns.

Across the UK, people have been told to stay at home to protect the NHS and save lives. They have been told to work from home where they can.

The main reasons that individuals are allowed to leave home are to go to work if it is not possible to work from home, shop for basic necessities, seek medical assistance, attend education or childcare, and to exercise. People in general are asked not to leave their immediate locality unless absolutely necessary.

Individuals are asked not to meet with others unless they live with them, and are advised to stay at least 2 metres social distance from anyone not from their household.

Each person that dies is a tragedy for their loved ones, and each person that experiences serious and/or prolonged symptoms means distress for them and their family and friends. The impact on society of large numbers of deaths along with a growing number that are incapacitated by the illness is huge.

And one of the salient points made by medical staff is that people of all ages are dying or are incapacitated by the virus, not just the elderly.

TSSA advice to members is initially very simple - follow what the UK Government and the devolved National Governments in Scotland and Wales are saying. If you are unsure about what that instruction is, we have included links to relevant websites in the footnote below.¹

Why are we saying this so emphatically?

At a meeting of the latest Railway Industry Coronavirus Forum (RICF) on 7th January 2021, TSSA and the other railway unions were able to ask a range of questions of industry employers and especially experts from the ORR and Railway Safety and Standards Board. Those experts have explained that whilst there is a more virulent strain of Covid-19 that is receiving so much attention at the moment, its effects are that when it enters a person's body it often causes a much more severe infection. One of the most successful ways to avoid the virus is, therefore, to obey the rules as set out by your national government with a particular emphasis on:

- Staying at home as much as possible, avoiding contact with people outside those you live with
- Maintaining 2 metre social distancing

¹ For England, see: <https://www.gov.uk/coronavirus>

For Scotland, see: <https://www.gov.scot/publications/coronavirus-covid-19-stay-at-home-guidance/>

For Wales, see: <https://gov.wales/coronavirus>

- Washing hands regularly
- Wearing face coverings where required

More detailed advice and guidance appears on the website relevant to where you live in the nations of Britain.

It is vitally important that workers understand their right to safety in the workplace. It is an employer's legal duty to introduce health and safety measures to protect workers from illness and injury - and Covid-19 safety measures are no exception.

Previous TSSA advice

Since the first National Lockdown in March 2020, TSSA has been issuing detailed advice and guidance to members and reps in relation to work situations, often following agreements that we have secured at the Railway Industry Coronavirus Forum. All of that material appears on TSSA's Website at: <https://www.tssa.org.uk/en/help-legal-advice/coronavirus/index.cfm>

As you will see in what follows in this briefing, most of that material relates to previous lockdowns and remains very relevant for where we are now. We have also included concerns that we have raised at the most recent Railway Industry Coronavirus Forum and which we are awaiting responses on (an update will be provided).

Railway Industry Coronavirus Forum (RICF)

A key development during the first Lockdown was the establishment of the Railway Industry Coronavirus Forum (RICF) in March 2020 where industry-wide issues are discussed. The body comprises the railway unions, TOCs, Network Rail, ORR and the RSSB.

Through RICE, agreements between unions and employers have been secured that apply across the industry and which remained in place even when the UK Government began to relax restrictions in July. Those agreements are still applicable in the current National Lockdown. Other agreements have been updated as situations change or have been amalgamated together to ensure that all arrangements on a subject can be found in one place.

One of the first agreements was the *Emergency Working Principles* (agreement dated 27 March 2020) that ran until replaced on 30 July (available on TSSA Website) by an updated document of the same name and which expired on 19 September 2020. However, the RICE continues to meet and the "spirit" of the agreement remains in place with aspects like how Clinically Extremely Vulnerable people are treated and Covid related absences not counting towards managing for attendance type monitoring.

At the RICE meeting on 7th January 2021, the trade unions were promised a revised written commitment on several issues contained within the Emergency Working Principles and similar to the 20th December 2020 RICE Tier 4 Restrictions Guidance which appears on TSSA's Website. Once we have the new document, it will be published on TSSA's Website.

Increased risk to BAME and other members

In addition to the above, a group made up of the trade unions, railway employers, ORR and RSSB was constituted in 2020 to put a set of guiding principles together in relation to combatting the increased risks of Covid 19 being experienced by Black, Asian and Minority Ethnic members (as well as all employees with increased vulnerabilities due to age, gender and staff with underlying health conditions). Incorporated into the principles are:

- obligations on employers
- factors that should be considered when looking at the risk to BAME employees
- use of self-assessment vulnerability questionnaires
- issues of confidentiality
- voluntary participation
- the involvement of trade union reps
- protections against subsequent detrimental actions.

The guiding principles are best found in a RSSB document under the title of “*Good practice guidance: Assessing employee vulnerability to Covid-19*”. RSSB have agreed to TSSA putting the document on the Union’s website.² It can also be found at:

<https://www.rssb.co.uk/en/what-we-do/key-industry-topics/health-and-wellbeing/occupational-health/assessing-employee-vulnerability-to-covid-19> .

A set of principles put forward by the TOC employers which are very similar to those published by the RSSB have not so far been agreed because of certain omissions.

A note about “principles” documents

On several occasions in this guidance we refer to RICF “principles” documents. The status of those documents is that employers are required to put them into practice in their company by producing a local version that suits their particular circumstances but within the parameters of the agreed document.

For instance, in the Social Distancing Agreement that appears below, employers must carry out risk assessments and involve the appropriate reps in that process (it is a legal duty) but the risks assessed are likely to be different to those that appear in another organisation. Those differences may be due to factors such as how the workplace is laid out, the numbers of staff who work there and the type of work that they do.

Similarly, in the In Cab Assessment Agreement the employer proposal must include, for instance, the Opt Out element for Driver Managers.

Testing for Covid-19 infection

The key symptoms of Covid-19 to watch out for are:

- a high temperature
- a new, continuous cough

² At: <https://www.tssa.org.uk/en/help-legal-advice/coronavirus/index.cfm>

- a loss of or change to your sense of smell or taste

If you have these symptoms, you should NOT go to work. Instead, you should self-isolate, stay at home, and get tested. Only if you get a negative test result should you then go to work.

Please be aware that some people infected with Covid-19 have no symptoms but are still highly infectious, and some have other symptoms to those listed above.

If you live in an area where voluntary mass testing is taking place and you go for a test without having symptoms, you do not need to be off work or wait for the test result - you can go to work as usual. You are also under no obligation to inform your employer if you choose to be tested in such circumstances.

Whatever your reason for a test, if the result is positive you should follow the relevant isolation period in line with current government guidance and inform your employer immediately.

More information on testing can be found at: <https://www.gov.uk/guidance/coronavirus-covid-19-getting-tested>

Work from Home

The Government's instruction during the current National Lockdown is that everyone should stay at home. There are permitted reasons why people can leave their home which can be found at: <https://www.gov.uk/guidance/national-lockdown-stay-at-home#hands-face-space>

If you can work from home, then you should do so.

Not all employees, however, can work from home and it is for this reason that amongst the permitted reasons are when someone has to go to work.

However, if working from home would compromise your health and wellbeing, you should discuss with your line manager how you could work in your normal workplace. In some cases, it may be possible to work at an alternative location by agreement if that means less risk to you.

If you believe that your employer is refusing to let you work from home and instead is unnecessarily coercing or compelling you to go to your normal (or another) workplace, please contact your TSSA rep.

If you are have a medical condition that makes you particularly vulnerable to either contracting the Covid-19 infection, or you would experience much more serious consequences were you to be infected, you should stay at home. Some employers are insisting that staff leave their homes and go to work if they have not got a letter from the NHS advising them to stay at home. In these circumstances, contact your GP.

Wash hands, make space, cover face

Hand Washing: The frequent washing of hands continues to be an important element of measures that should be taken to prevent the spread of the virus. If you are in your workplace (as opposed to working from home) you should have ready access to hand

washing facilities where it is reasonably practicable for your employer to provide this. You should wash your hands using soap frequently and thoroughly for at least 20 seconds. Hot water is NOT necessary. Only where ready access to hand washing cannot easily be provided, hand sanitiser can be used as an alternative, but you should be aware that it is not as effective as hand washing.

Social Distancing: You should maintain at least a 2 metre separation between yourself and your colleagues and any other persons in your workplace, including passengers. It should be emphasised that this is the MINIMUM distance that must be maintained. However, the virus can travel much further than 2 metres, and a greater separation distance should be maintained wherever possible.

RICF Agreements (available on TSSA Website) relating to social distancing are:

- Social Distancing Agreement, known as “*Principles for managing the risk of exposure to COVID 19 to passengers and employees across the GB mainline rail industry*”. Finally agreed on 7th May 2020, this arrangement continues to apply to all TOCs (including ScotRail, Caledonian Sleeper and Merseyrail) and Network Rail. It was also adopted by Transport for London for the Elizabeth Line (Crossrail). Members and reps should also consult “*TSSA Guidance on RICF Social Distancing Agreement*” which is also on the Website;
- In Cab Assessments. A handful of agreements were reached in this area but, for TSSA, one of the main ones was that related to the position of Driver Managers (known in some companies as Driver Team Managers, Driver Standards Managers, etc) which resulted in an agreement known as the “*COVID-19 Competence Training & Assessment Arrangements for On-board Trainers & Assessors*”. Agreed at RICF on 26th June 2020, it was later incorporated without change (in relation to the right to opt out) into an agreement called “*COVID-19 Additional Measures: Driver Training & Competence Development*” (agreed 17th September 2020) that drew together all of the agreements regarding in cab training. That document continues to apply and TSSA has provided Website guidance on its application.

Face coverings: the RICF Agreement related to face coverings is known as “*Guidance on the Wearing of Face Coverings by Employees Updated*” (updated 30th July 2020). It contains information for staff about when face coverings are expected to be worn by railway employees:

- when in a train carriage whether working, including traveling “pass” or travelling to/from work;
- on station platforms;
- on station concourses;
- information points/booking offices without a glass or Perspex barrier
- when travelling in road transport such as taxis/buses/coaches.

The agreement continues to apply and is available on TSSA’s Website.

Masks - as well as visors and gloves - should be made available by your employer and instructions about their use, safe disposal and any cleaning instructions (for non-disposable varieties) must be adhered to.

NOTE: TSSA raised questions at RICF on 7th January 2021 about the standard of face masks which in England are usually made of only two layers following Government advice. With the increased virulence of the new strain of CV19, the Union feels that the recommendation from the World Health Organisation (already used by the Welsh Government) for three layers of protection should be adopted. The ORR has undertaken to look into this matter.

NHS Test & Trace

Many members will have downloaded the NHS Test & Trace App which should notify them about getting tested if they have been close to someone with Covid-19. It will also notify others if they have been tested positive. Details about the app can be found at:

<https://www.nhs.uk/conditions/coronavirus-covid-19/testing-and-tracing/>

Problems with the app - and what is “Covid Secure”?

NHS advice is to use the app at all times, including while at work, except if you:

- are working behind a fixed Perspex (or equivalent) screen and are fully protected from other people;
- Your phone is stored in a locker or left in a vehicle (for example).

The advice can be found at <https://faq.covid19.nhs.uk/article/KA-01100/en-us> and indicates that by leaving your phone in a locker close to other phones (in other lockers) it can create false positives that lead people to think they have been exposed to the virus, even though their phone is not with them.

Some employers require staff to keep their mobile phones switched off for safety reasons when they are in the workplace which often means that they are instructed to leave them in their lockers.

With the advent of the Coronavirus, employers have also started to certify some offices and depots as “Covid Secure” and have used that statement to reject claims by members to be able to keep their phones on at work.

However, the issue that has arisen is that despite staff being told that their workplace is “Covid Secure”, employers have not thought to tell them what that means and many people have questioned how secure it really is, especially when they do not see:

- Perspex (or equivalent) screens in place as stipulated by the NHS advice about phones;
- Social distancing measures not in place (or not being observed);
- Employers not engaging with union health and safety reps about risk assessments leading to no transparency in those measures;
- Hand washing facilities readily available.

There have also been examples of premises that have claimed to be “Covid Secure” only for a colleague to come to work unknowingly carrying the virus who then puts their colleagues at risk but who only find out about the matter on the train home when they put their phones on.

Consequently, staff report that they have a lack of confidence and trust in the label “Covid Secure”.

TSSA’s view is that the title “Covid Secure” is not the same thing as Covid Safe which many people associate together. Instead, Covid Secure should be renamed as a “Covid

Controlled Environment” meaning that control measures have been (or should have been) implemented but a risk still remains, especially if those mitigating measures - like screens, maintaining 2 metre social distancing, etc, are not adhered to. The point that must always be borne in mind is that ALL of the control measures have to be adhered to reduce the risk from CV19 - in other words, the control measures are not any one element but the sum of all its parts, ie all of all measures.

TSSA has been pursuing these issues through the Railway Industry Coronavirus Forum and through discussions with individual railway companies. The RICF has issued three separate statements about the use of the Test & Trace App with the latest one appearing on TSSA’s website.

TSSA is currently in discussions with Network Rail and on the issue of Test and Trace and will contact reps and members in due course.

In terms of social distancing, the TOCs and Network Rail agreed the RICF Social Distancing Principles Agreement on 4th May 2020 (see above). Employers should be complying with that Agreement by implementing their own proposals but within the parameters of the Agreement. Where reps are aware that they are not, they should be reporting the fact to their Company Council/National Council rep and/or their TSSA organiser. TSSA will raise the issue with the company and then refer the matter to the ORR Railway Safety Regulator.

TSSA will also consider entering into a dispute situation and, if necessary, ballot our members for industrial action.

Reps aware of issues should be contacting their TSSA organiser for guidance;

The purpose of the RICF Social Distancing principles are echoed in the subsequent (September 2020) Health & Safety Executive (HSE) advice on "Covid 19 Secure" workplaces which can be found at: <https://www.hse.gov.uk/coronavirus/working-safely/index.htm>

The factors listed by the HSE to establish “Covid 19 Secure” workplaces are that the following should have taken place prior to an employer making this claim:

- Risk assessment
- Social distancing
- Cleaning, hygiene and handwashing
- Talk to workers and provide information
- Working from home
- Vulnerable workers

TSSA recommends that reps and members should consider whether all of these factors have been taken account of by their employer and that they are their colleagues have been consulted about those measures (see the section in this advice about Risk Assessments). Where they have not been, reps are advised to seek guidance from their TSSA organiser.

Risk Assessment

You should be able to have sight of a risk assessment relating to any work activity which could be impacted upon by the risk of infection from Covid-19. TSSA health and safety reps should have been consulted about any risk assessment undertaken.

Employers are legally obliged to undertake risk assessments in order to reduce the risk of Covid-19 transmission and infection to the lowest reasonably practicable level by taking preventative measures in the following order of priority:

- **Eliminate:** Does the activity need to be done at all in the current Covid-19 crisis? Can it be cancelled, or postponed?
- **Substitute:** Can the task be re-designed to ensure for example a 2 metre separation? Can the task be undertaken by having a larger separation than 2 metres?
- **Engineering Controls:** Can you use equipment to undertake a task and avoid individuals doing it manually and therefore having to do it with less than 2 metres separation? Can a suitable screen be used?
- **Administrative Controls:** Can the time spent on the task be minimised? Can staff be rotated to avoid long periods of exposure?
- **Personal Protective Equipment:** only after all of the above measures have been tried and found ineffective in controlling the risks of infection must PPE be resorted to. It must be suitable for the task, and it staff must be properly trained in undertaking the task using the PPE.

It is important to consider what other risks may arise if preventative/control measures are introduced in respect of Covid-19. For example, if you wear a visor, can you see well enough to perform your duties safely?

The law on risk assessments

What should happen when an employer wants to implement the risk assessment principles from any of the RICF Agreements is that they must first consult the relevant union reps.

Consultation under the Safety Reps and Safety Committee Regulations 1977 (SRSC Regs) 1977 should take place with the recognised trade union's health and safety reps but TSSA's position - and as advised to all members - is that staff reps should be included when safety reps are not available (or perhaps do not have the relevant knowledge of the subject of the risk assessment).

Where employees are not covered by collective bargaining, the requirements of the Consultation with Employees Regulations 1996 is that either the affected group nominate a rep or all members of the group are consulted.

The important point under both bits of legislation is that consultation takes place in "good time" which means that reps and staff - those who often know the job and its pitfalls really well - should be involved from an early stage in putting the risk assessment together.

It is not good enough - and breaches the official Code of Practice and the law - if an employer presents what is in essence a fait accompli or fails to consult at all.

TSSA takes this matter very seriously and will engage with the Rail Regulator at the ORR over any breaches of legislation. We will also consult our members over industrial action where your health and safety is put at risk

Further guidance is available in the TSSA Reps Bulletin on Consultation on Risk Assessment which appears on the Union's Website. Reps are also recommended to contact their TSSA organiser for support and guidance over risk assessments to ensure that their employer does the right thing.

Reviewing existing Covid-19 risk assessments

In addition to the above, TSSA believes existing risk assessments relating to Covid-19 should be revisited in the light of the increased risk posed by a more virulent strain of the virus and the recognition being given to how it can be spread by aerosol transmission as well as droplets. These factors have been raised at RICF and general agreement is due to be confirmed in writing. Further information will be released on this matter.

Use of dynamic risk assessments

TSSA has specifically raised at RICF the issue of dynamic (on the spot) risk assessments in which a member can assess a situation that would create risk for them. One example of this would be a member working in a revenue protection capacity on a train where they are confronted by a carriage sufficiently full of passengers that would compromise the employee maintaining social distancing rules. Our approach is that in this sort of circumstance, the member should be able to refrain from the activity without recrimination, something that also accords with legal protections under Section 44 of the Employment Rights Act 1996. We are waiting for the employers to confirm in writing their general acceptance of this approach.

Working on passenger trains

Unless you are a driver or guard, you should not be working on a train or travelling by train on work business unless there is a clear need for you to do so in order to ensure the provision of a safe and secure essential train service. Should it be necessary for you to work or travel on work business on a passenger train in service, a risk assessment must have been undertaken and consulted upon. Contact with passengers must be minimised, and you must maintain at least a 2 metre separation between yourself and your colleagues and any other persons including passengers.

Travelling in road vehicles whilst at work

Unless absolutely necessary, only one person should travel in any road vehicle (except buses) whilst travelling on work business. If it is necessary for more than one person to travel in a road vehicle (including a bus), you must maintain at least a 2 metre separation between yourself and any other persons in the vehicle. If you cannot maintain the 2 metre separation between you and the driver of a road vehicle (such as a taxi), there must be a screen between you.

Handling potentially contaminated materials

Handling potentially contaminated materials such as cash should be avoided. Where it is absolutely necessary, gloves must be worn to undertake the task, and the gloves should be removed and safely disposed of each time such a task is undertaken.

Ventilation

Recent studies have shown that Covid-19 can be transmitted in aerosols when in poorly ventilated areas. Good ventilation really matters!

Stuffy rooms, stale air: If you walk into a room and the air feels stale, something is wrong with the ventilation. Not enough fresh air is being introduced, which increases your chances of getting infected by coronavirus. Recent research shows that in confined spaces there can be "airborne transmission" of the virus - with tiny virus particles lingering in the air. Legislation requires that workplaces are properly ventilated - see: The Workplace (Health, Safety and Welfare) Regulations 1992 which state: *Effective and suitable provision shall be made to ensure that every enclosed workplace is ventilated by a sufficient quantity of fresh or purified air.*

Many control centres and ticket offices in particular are in a building where the windows are sealed, air conditioning will extract stale air and pipe it to an air conditioning unit, often on the roof. Fresh air can be pulled in from outside and mixed with the old inside air, before being sent back into the building. Given the risk of Covid-19 infection, the proportion of fresh air must be maximised, preferably to 100%. But that is costly - the incoming air has to be heated in winter and cooled in summer, all of which requires energy. Find out what your air conditioning arrangements are and insist on it properly ventilating your workplace.

Watch out for 'air conditioning' that is not air conditioning!: Many workplaces have 'comfort cooling' instead of air conditioning - the simplest is a slender white box mounted on walls or ceilings. This draws in air from a room, chills it and then recirculates it back out again. This can spread the virus.

A modern air conditioning system will have filters - but do they filter out viruses, and are they checked frequently for the presence of viruses?

Watch out for draughts. Fresh air is touted as the answer, but it is not that simple. If someone sitting beside an open window is infectious, they could shed virus to others downwind. However, on balance a plentiful supply of fresh air diluting the virus is likely to outweigh any risks.

Your TSSA organiser will be able to help you ensure that your employer adhere to their availability.

Stopping or Refusing to Work

You have the legal right to refuse to begin a task or continue with a task if you believe that to do so would place you or your colleagues in serious and imminent danger of potential infection by the Covid-19 virus. The general right originates from Section 44 of the Employment Rights Act 1996.

Your employer must have a procedure in place that allows you to do this. Check on what your employer's procedure is, and familiarise yourself with it.

If you are unable to find such a procedure, report that to your TSSA rep or contact the TSSA Helpdesk (see below).

If you do refuse to commence work or stop working under these circumstances, you should immediately report this to your TSSA rep, or the TSSA Helpdesk.

If it is necessary for workers to be closer than 2 metres to another person in order to perform any work task, it is ESSENTIAL that control measures are in place - usually a physical barrier such as a screen or window, or the wearing of appropriate Personal

Protective Equipment (PPE). If you are unable to maintain a 2 metre separation AT ALL TIMES then you are advised not to commence any work activity that would result in this. You should STOP any work activity should the problem arise after starting. If necessary, remove yourself to a place of safety and report this to an appropriate manager or supervisor. You should use your employer's 'Work Safe' procedure (it may go by another title), a procedure which allows you to exercise your legal right to stop work if you are in serious and imminent danger.

Tell us what is happening where you work

If you are in a non-operational role, please complete the form on our website at:

<https://www.tssa.org.uk/en/campaigns/safe-at-work/index.cfm>

TSSA Helpdesk

Call: 0800 328 2673. The Helpdesk is open 9am-5pm Monday to Thursday and 9am-4pm on Fridays.

Or you can fill out a website form at any time here: <https://www.tssa.org.uk/en/Your-union/about-us/contact-us/contact-the-helpdesk.cfm>