



Covid-19: guidance to reps and members on the introduction of the Government's Plan B

December 2021

Introduction

In February 2021 the UK Government published its Roadmap¹ out of Lockdown and by 17th July 2021 had removed virtually all of the legal restrictions that underpinned the measures that had been put in place to cut virus transmission and protect each of us. This action was taken just days after 40,000² positive cases had been reported in one day alone amidst a surge in infections that was detectable for at least a month before that date.

In its place, the Government urged restraint and caution,³ acknowledging that the pandemic was not over whilst claiming that its decision did not mark a return to normal. Instead, cautious guidance was put in place, but which ended up being largely ignored as face mask wearing stopped in many situations, social distancing became a thing of the past and hand washing was overlooked. The one thing that continued was the vaccination programme.

Since July 2021, daily Covid cases have continued to be reported at a level of at least 19,000 a day, with daily averages increasing in October and November to at least 30,000 and at the time of writing over 88,376,000 cases have been announced.⁴ At the same time, the UK death toll from Covid has continued to steadily rise, increasing by nearly 18,000 since July and currently standing at 146,937 (as at 16th December and based on “within 28 days of a positive test”).

The arrival of the Omicron variant

A new variant of Covid was reported to the World Health Organization (WHO) on 24 November 2021 by researchers in South Africa and within days the WHO had marked it as a Variant of Concern. Scientists are concerned that the changes seen in the biology of the variant could mean that the virus is more transmissible or could be more likely to infect people even if they have been vaccinated or had a previous infection.⁵ The first case in the UK was identified on 27th November 2021 but by 16th December that had increased to 11,708⁶ amidst concerns about the potential for hospital admissions to rise significantly and fears that the NHS may be overwhelmed.

¹ See Executive Summary at: <https://www.gov.uk/government/publications/covid-19-response-spring-2021/covid-19-response-spring-2021#roadmap>

² See: <https://coronavirus.data.gov.uk/> which reported 42,302 positive tests on 14th July, 245,830 in the seven days up that date, an 53% increase in hospital admissions and a rising death toll (229 in the seven days to 14th July). Website viewed at 1035 on 15th July 2021.

³ See: <https://www.gov.uk/government/publications/covid-19-response-summer-2021-roadmap/moving-to-step-4-of-the-roadmap> (Updated 12th July 2021 and viewed at 1041, 15th July 2021)

⁴ See: <https://coronavirus.data.gov.uk/> (Viewed 1030, 17th December 2021)

⁵ UK Parliament publication: COVID-19: The Omicron Variant, published 3rd December 2021 at: <https://post.parliament.uk/covid-19-the-omicron-variant/>

⁶ See: <https://www.bbc.co.uk/news/live/uk-59679703>

What is UK Government doing?

On 8th December, the Prime Minister announced⁷ the move to Plan B in England, a series of measures designed to reduce transmission and slow the spread of the Omicron variant.

Those measures include:

- Wearing face masks is now compulsory in most public indoor venues (including public transport), other than hospitality. A full list of venues can be found at: <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own>
- NHS Covid Pass to be mandatory in specific settings, using a negative test or full vaccination via the NHS Covid Pass. Information on the NHS Covid Pass can be found at: <https://www.nhs.uk/conditions/coronavirus-covid-19/covid-pass/>
- Vaccines and testing seen as the best lines of defence:
 - More information on vaccinations and boosters can be found at: <https://www.nhs.uk/conditions/coronavirus-covid-19/coronavirus-vaccination/>
 - Information on testing is available at: <https://www.nhs.uk/conditions/coronavirus-covid-19/testing/>
- People asked to work from home if they can. UK Government advice can be found at: <https://www.gov.uk/guidance/working-safely-during-covid-19/offices-factories-and-labs#offices-2-1>

What is happening in Scotland and Wales?

The Scottish First Minister has announced a series of measures that will apply in the nation and which can be found at: <https://www.gov.scot/coronavirus-covid-19/>

In Wales, the First Minister has announced a range of measures under the title of ‘keep Wales safe this Christmas’ and which are available to read at: <https://gov.wales/coronavirus>

Measures that have been announced in Scotland and Wales incorporate those in England but are immediately clearer and appear to go further. In Wales, from 27th December 2021, 2 metre social distancing will return in offices alongside extra

⁷ See: <https://www.gov.uk/government/news/prime-minister-confirms-move-to-plan-b-in-england>

measures, such as one-way systems and physical barriers, to protect customers and staff.⁸

Additional UK Government advice in the workplace

On top of the instructions about working from home if you can and wearing face coverings in indoor public settings, the UK Government has also published additional guidance,⁹ some of which you may be familiar with:

- **Limit close contact with other people.** The new UK Government guidance does not require social distancing to be observed but does suggest that it is a personal choice and could be reinforced by the use of rapid Lateral Flow Tests, especially if meeting people for prolonged periods in a close contact environment. This equally applies if meeting vulnerable people;¹⁰
- **Wash your hands regularly,** preferably with soap and water but you can also use hand sanitiser.

Railway Industry Coronavirus Forum resumes

The Railway Industry Coronavirus Forum (RICF) has now resumed its fortnightly meetings to monitor the situation and enable discussion and agreement on the introduction of measures related to protection and mitigation against CV19

The RICF is made up of representatives from TOC and Network Rail employers who, along with the ORR's Rail Safety Regulator, meet with the railway trade unions and where issues listed by either said can, hopefully, be resolved.

Since the end of November, the RICF has agreed the following measures:

- **Use of face masks.** TSSA's website (<https://www.tssa.org.uk/get-help/coronavirus>) has a copy of the agreed protocol: "Face Covering Updated Guidance for Employees: - 30 November 2021." You will find more information on this subject later in this document.

Members should also note that whilst the agreement specifies a number of places where masks are not required to be worn, UK Government guidance makes it clear that employers cannot prevent an employee deciding to wear a face covering. It also states that it is an offence (criminal law) for an employer to prevent an employee wearing a mask even if it is not required.¹¹

⁸ See: <https://gov.wales/new-advice-keep-wales-safe-christmas>

⁹ See: <https://www.gov.uk/guidance/covid-19-coronavirus-restrictions-what-you-can-and-cannot-do#limit-close-contact-with-other-people>

¹⁰ See: "Limit close contact with other people" at: <https://www.gov.uk/guidance/covid-19-coronavirus-restrictions-what-you-can-and-cannot-do#limit-close-contact-with-other-people>

¹¹ See: "Staff in indoor settings" at: <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own>

- **Pay arrangements and sickness absence monitoring.** TSSA’s website has a copy of an agreement reached between the trade unions and employers. For clarity purposes, this means that:
 - Staff required to self-isolate having come into contact with someone who has Covid will be paid company sick pay
 - A member who develops Covid 19, confirmed by a PCR test, will be paid company sick pay irrespective of whether they have been fully vaccinated
 - the recording of absence related to Covid will not trigger detrimental Managing for Attendance (sickness absence) processes and the days off sick will not be added to the days missed through other illnesses.
NOTE: For clarity, some sickness absence processes are based on ‘instances’ (which could be a period of time like a week) whilst others are measured through the number of days)
- **Driver Training Arrangements.** The issue here is about in cab training when more than one person could be in the cab of a train in order to carry out training, development or assessment activities.

At the RICF’s meeting on 15th December 2021, an agreement was reached that repeated Paragraph 3.3 of the “Cab access - transitioning away from bubbles and testing” document agreed at RICF at the beginning of September 2021. Paragraph 3.3:

“It is acknowledged that a small proportion of employees will continue to be anxious about participating in in-cab training, development or assessment activities, for example, due to not being fully vaccinated or personal factors that cause legitimate concern. Therefore, employers with support from trade unions will encourage such employees to raise their personal concerns with their employer directly or through their local representatives so that the individual’s specific circumstances will be discussed and reasonable adjustments considered as part of the employer’s individual risk assessment process.

Note for guidance: The request for employees to identify themselves is legitimate, as it enables the employer to continue to satisfy their obligation(s) to the employee with regards to their health, safety and wellbeing in the workplace. The employee should be assured that identifying themselves will be treated confidentially, not be associated with any stigma or lead to them being treated unfairly. This will enable the employer to discuss the reasonable adjustments necessary to mitigate the risk of transmission in the workplace and/or to address individual circumstances.”

Apart from vaccination status, personal factors that could cause legitimate concern covers a variety of circumstances such as an employee's own health and medical condition as well as those of any family members with whom they live - eg, someone who would have previously been classified as clinically vulnerable. The NHS has updated advice for people who are especially vulnerable from CV19 and which can be found at: <https://www.nhs.uk/conditions/coronavirus-covid-19/people-at-higher-risk/who-is-at-high-risk-from-coronavirus/>

The requirement for someone raising a legitimate concern in connection with in cab training is that a personal risk assessment is undertaken which the member and their TSSA rep should be involved with putting together. As part of its deliberation, it must consider how the risk of infection in a train cab is increased without the use of mitigating measures, including the use of face masks, thorough cleaning arrangements, provision of hand sanitiser, adequate ventilation, etc.

Members with a legitimate personal concern should raise those issues with their manager. TSSA will support members in this process. Members should not be subject to duress or pressure when they raise a concern, as indicated in the quote above from Paragraph 3.3.

NOTE: In the event that members find themselves subject to duress or pressure, TSSA will not only use internal company procedures because of the company's failings, we will also seek legal advice about appropriate remedies and look to ballot members for industrial action over legitimate safety concerns.

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 prevent the spread of infection through the transmission of aerosols, droplets or touching surfaces that may

be infected? Can the task be undertaken by having a larger separation distance in the absence of social distancing rules?

- Engineering Controls: Can you use equipment to undertake a task and avoid individuals doing it manually? 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 revise existing risk assessments or introduce new ones 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, it is required by the Consultation with Employees Regulations 1996 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 transmissible strain of the virus.

Use of dynamic risk assessments

In the past, 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.

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.

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

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. 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.

The latest UK Government advice on ventilation can be found at:

<https://www.gov.uk/government/publications/covid-19-ventilation-of-indoor-spaces-to-stop-the-spread-of-coronavirus/ventilation-of-indoor-spaces-to-stop-the-spread-of-coronavirus-covid-19> See the section on “Ventilation on the workplace...” and note the reference to the use of CO2 monitors when assessing poorly ventilated areas.

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. This includes in relation to 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 (Network Rail, for instance, calls it the SafeWork Procedure). 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 require additional guidance prior to stopping work, please contact TSSA.

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.

More on the use of face coverings

As the Omicron variant spreads, TSSA believes that there is a need to revise the arrangements around the use of face masks in order that they do not only apply in specific indoor settings where members meet customers without a screen between them. Instead, we believe that they should also in offices and other indoor spaces where employees work together. This may seem redundant when many staff are now working from home if they can. However, within the railway industry there are still staff in tickets offices, control centres and other locations who are required to carry on their job alongside colleagues. In such workplaces, it is imperative that staff wear face masks unless they have Perspex screens in place to provide a separation of some form or are seen to be part of bubble that is subjected to regular CV19 testing.