Health and Safety Executive (HSE) response to request for information from the Scottish Parliament Justice Committee on working safely during the coronavirus outbreak

1. Coronavirus is fundamentally a public health issue. HSE is basing its approach under the Health and Safety at Work etc Act 1974 on the scientific advice provided through public health bodies. 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.

2. The principal measures to prevent transmission are the same as in public places: maintaining social (physical) distancing and good hygiene practice. (For the Committee’s information, the regulatory enforcement position in relation to social distancing in Scotland is at Annex 1.)

3. Control of risk should be considered under the hierarchy of control that will be familiar to health and safety professionals. Its application to social distancing and hygiene measures for workers is summarised at Annex 2.


5. Scottish Courts and Tribunals staff responsible for the working environment, (e.g. health and safety, facilities management and personnel policy managers will no doubt already be advising the Jury trials Working Group on what steps to take to resume a level of service. They may wish to use the generic guidance to structure an approach to consider the complex issues involved in restarting trials. The guidance also advises involving employees and their representatives.

6. In addition, HSE contributed to the 8 guides for different types of work published on 11 May https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19. They provide more tailored advice under a range of headings, including managing social distancing at work and managing visiting members of the public. Some of the scenarios will be very relevant to the circumstances in the Scottish courts.

7. The Committee will know that Scottish Government guidance remains that non-essential businesses should stay closed but HSE is also working with the Scottish Government, industry and trade unions on additional sectoral guidance that will be published when it is ready over the next few weeks.

HSE, May 2020
Annex 1: Social distancing at work: how HSE works with Scottish Local Authorities

As the regulator for health and safety at work, HSE is constantly reviewing the fast-moving situation to support the GB-wide effort to tackle COVID-19 by applying our expertise and the powers at our disposal under the Health and Safety at Work etc Act 1974 to protect people at work.

HSE recognises that social distancing is fundamentally a public health issue, for the protection of society, supported by measures in the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, as amended which give specific powers to ‘relevant persons’ (including local authority officers and the Police) to ensure social distancing in all workplaces in Scotland. HSE has no powers under these regulations nor to make decisions between essential and non-essential businesses.

HSE is treating COVID-19 as a workplace health issue with regard to the protection of workers from infection. HSE can and will enforce under HSWA to ensure social distancing in the workplace in relation to workers (not members of the public). Powers given to other authorities under Scottish public health legislation have not altered the formal vires of HSE under HSWA and HSE will therefore continue to use its powers alongside others, contributing to the overall resources and effort.

Where HSE identifies employers who are not taking action to comply with the relevant public health guidance to control COVID-19 health risks to workers, HSE will consider a range of actions to improve control of workplace risks including the provision of specific advice to employers through to issuing enforcement notices. These actions will be taken under existing health and safety law (HSWA).

There is already a sensible approach to demarcation of workplace enforcement between HSE and local authorities under the Health and Safety (Enforcing Authority) Regulations 1998 (EA Regs). HSE will continue to investigate concerns about the lack of social distancing between workers, in premises allocated to HSE under those regulations. Local authority officers will continue to enforce social distancing in premises allocated to local authorities under the EA Regs. Any concerns received about social distancing by local authorities for premises that HSE is the allocated enforcement body, should be passed to HSE via the normal concerns route www.hse.gov.uk/contact/concerns.htm. HSE’s procedure is to refer relevant concerns to local authorities. This will prevent multiple regulators dealing with the same premises and ensure that any measures required can be implemented without creating additional health and safety risks to industrial processes with which HSE are already familiar.

Where premises are listed in Schedule 1 of the Health Protection (Coronavirus) (Restrictions) (Scotland) (Amendment) Regulations 2020, as amended and are also premises allocated to HSE by the EA Regs, such as motor vehicle repair services, then the local authority should take the lead on matters relating to social distancing
precautions for the protection of members of the public who visit those premises and liaise with HSE if worker safety issues arise.

A framework agreement between Police Scotland and local authorities supports the referral of complaints about lack of reasonable social distancing at work to the relevant local authority. Local authorities will ensure that those complaints relevant to HSE are referred quickly through the normal route.

Through the existing liaison arrangements, HSE and local authorities are sharing experience of appropriate social distancing advice and enforcement that will also inform how businesses should assess risks to health and safety in preparation for a return to work.
Annex 2

Application of a HSWA control hierarchy to social distancing

Employers should consider means to avoid the need for social distancing e.g. require working from home wherever possible.

Adequate control

Key control measures are:

A. Work organisation

Ensure workers are either time-sequence or spatially separated, and when separation is achieved by the latter, there is a minimum separation distance maintained between individuals of two metres, in line with public health guidance, wherever this is reasonably practicable.

Time-based separation measures may be applied in combination with spatial separation distancing measures to maximise control of risk. For example, staff clock-on for shift in smaller groups so that separation distances can be maximised and to minimise the size of gathering.

When considering means for achieving spatial separation to meet public health guidelines, where necessary, this should include measures such as re-designing the workplace and / or process flow. This could include maximising the floor space to increase separation distances between workers, for example bringing into use parts of the workplace that are presently not utilised, some flexibility can be allowed.

B. Hygiene measures

Ensure the application of suitable hygiene measures, in line with public health guidance. Specifically, the regular, thorough washing of workers’ hands with soap and water, in particular after touching ones face, using a tissue to cough or sneeze in, after touching surfaces that are potentially contaminated and before eating and drinking. And also the regular adequate cleaning of surfaces that are frequently touched by multiple workers e.g. door handles, some work equipment etc.

Where it is not reasonably practicable to maintain social distancing of workers in line with public health guidance or there are items in the workplace that are touched or handled so repeatedly and over such a duration by multiple workers it is not reasonably practicable to rely on good hygiene by handwashing alone consideration may be given to personal protective equipment. In most workplaces the use of PPE specifically for protection against COVID-19 infection will be very rare.
Employees should be given suitable and sufficient information, instruction, training and supervision so they are aware of the risks, the control measures and how to use and maintain them. This should include awareness of the symptoms of the disease and the need for the employer and employees to be aware of any worker health concerns to ensure that workers experiencing symptoms or living with someone who is symptomatic, self-isolate, in accordance with public health guidance.

Employers should implement arrangements to ensure that work place controls are properly applied and where relevant maintained.