



COVID-19

This guidance is aid ECA Members to consider the implications of the announcement by Welsh Government on 7th April 2020 on social distancing in the workplace and what is expected for **construction is highlighted in yellow**.

<https://gov.wales/taking-all-reasonable-measures-maintain-physical-distancing-workplace>

1. Taking all reasonable measures to maintain physical distancing in the workplace

7 April 2020 This guidance is issued under regulation 7A of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the "Coronavirus Regulations")^[1]. It is aimed at any person who required by the Coronavirus Regulations to take all reasonable measures to ensure that a distance of 2 metres is maintained on particular premises.

It is guidance and will most probably be treated in retrospect as being all but conclusive evidence of compliance. Non-compliance should be fully evidence and justified.

The Coronavirus Regulations impose a number of restrictions on businesses and other services -

- premises which sell food and drink for consumption on the premises have had to close (although premises can be used to sell food and drink for consumption off the premises subject to restrictions);
- certain public-facing businesses and services have had to close subject to very limited exceptions (the list of businesses that had to close is in Parts 2 and 3 of the Schedule to the Regulations and includes cinemas, hair salons and holiday accommodation);
- other public facing businesses and services (listed in Part 4 of the Schedule and including food retailers, pharmacies and petrol stations) can remain open but must take all reasonable measures to ensure that a distance of 2 metres is maintained between person on the premises and waiting to enter the premises (except between members of the same household or a carer and person cared for);
- all other shops must close other than to offer online services or services by phone or post;
- **in any other workplace that remains open, the person responsible for the work must take all reasonable measures to ensure that a distance of 2 metres is maintained between person on the premises and waiting to enter the premises (except between members of the same household or a carer and person cared for)**^[2];
- persons responsible for places of worship, crematoriums, cemeteries and community must – in the limited circumstances in which some of those places may be open – take all reasonable measures to ensure that a distance of 2 metres is maintained between person on the premises and waiting to enter the premises (except between members of the same household or a carer and person cared for).

The purpose of this Guidance is to help businesses and other organisations understand what kind of reasonable measures they can take to ensure that persons on their premises stay 2 metres apart. Maintaining a distance of 2 metres between persons who are not in the same household is

an important aspect of the measures we must all take to minimise the risks of the spread of COVID 19. It is something we should aim to do in all aspects of our daily lives. But the Welsh Government has chosen to impose a legal requirement on workplaces to ensure that everything reasonable is done to minimise transmission of coronavirus. The guidance is intended to assist people in understanding what “taking all reasonable measures” means and what to do if it is not possible to maintain a distance of 2 metres in certain circumstances.

The Welsh Government wishes to make clear that while the requirement to take all reasonable measures to maintain a distance is an objective test that is intended to be applied consistently, it is **neither an absolute rule that has to be applied all of the time in all circumstances, nor is it a test that will apply in the same way in all circumstances.**

This is not about the whether the businesses subject to this requirement work, it is about the way they work. It is about taking proportionate action where it is practicable to do so.

The regulations enable the Welsh Ministers to issue guidance on taking all reasonable measures to maintain a 2 metres distance to those persons responsible for premises where that requirement applies. **Regard must be had to this guidance. The Guidance may incorporate guidance, codes of practice or other documents published by other bodies such as trade associations, industry bodies or a trade union. In the coming days the Welsh Government will be looking closely at these other resources and will update this guidance to formally incorporate helpful documents. This could then include reference to the CLC SOP v.1.**

PLEASE REMEMBER - The general message from the Welsh Government remains the same:

- where possible stay at home to save lives
- minimise the risk of transmission in the workplace

In addition to the restrictions and requirements imposed on businesses and services, the Coronavirus Regulations also impose strict requirements on individuals. Under the Regulations it is not lawful –

- to leave your home without a reasonable excuse (a reasonable excuse includes shopping for food and other essentials, accessing health care services, exercising no more than once a day or travelling to work only if is *not* reasonably practicable to work from home) **see our template letter in case your personnel get stopped by the police**
- to be part of a public gathering of more than 2 persons unless—
 - the persons are in the same household;
 - the gathering is essential for work;
 - you are attending a funeral (but funerals are subject to other restrictions);
 - it is necessary as part of moving house;
 - it is necessary to provide care to a vulnerable person or to provide emergency assistance to someone; or
 - the gathering is necessary to fulfil another legal obligation.

In addition to the legal requirements, the Welsh Government has issued guidance that we all must follow to keep everyone as safe as possible and to minimise the risk of spreading the virus. The guidance includes information about -

- staying 2 metres (c 6 1/2 ft) away from other people in all circumstances;
- washing your hands regularly and especially as soon as you get home from a lawful trip outside your home.

The guidance is available [here](#):

[1] The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 were originally made on 26 March and were amended by the Health Protection (Coronavirus Restrictions) (Wales)

Regulations 2020 on 3 April. A consolidated version of the Regulations (incorporating the amendment made) can be found [here](#).

[2] Note that this restriction was inserted by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 and came into force at 1 minute past midnight on 7 April. Most of the other restrictions came into force on 26 March.

General principles

This Guidance applies to **everyone** who is required by the Coronavirus Regulations to take all reasonable measures to ensure that a distance of 2 metres is maintained between people on premises.

As outlined above, the requirement applies in a very broad range of circumstances, including, as from 7 April, every workplace which remains open. This includes for example public services, health and social care premises, schools and childcare settings, call centres, hospitality centres, **commercial and industrial premises, construction sites and other open sites such as roadworks and outdoor places** including livestock markets.

In the case of premises listed in Part 4 of Schedule 1 to the Coronavirus Regulations (public facing businesses and services that are allowed to remain open) and in the case of places of worship, crematoriums, cemeteries and community centres, the duty in law applies to the person responsible for the premises. In the case of other workplaces, the duty falls on the person responsible for the work being undertaken in the workplace; that is the person responsible for management control. It would not, for example, fall on the owner of a leased factory space or office. However, everybody in a workplace has a personal responsibility to comply with the 2 metre requirement to ensure that the risk of transmission of coronavirus across Wales is reduced.

Reasonable Measures

There are a number of measures being taken to slow the spread of the coronavirus and to minimise community transmission. They all involve a trade-off between risk of transmission and the need for the economy, and society generally, to keep functioning.

The first and most important measure taken was to ensure that those exhibiting symptoms stay at home to isolate themselves from others. Also fundamental was the need to shield our most vulnerable people, and it was particularly important to make it clear that older people and those with specified pre-existing conditions should stay at home.

In recent weeks that message has become a more general one. The Regulations made on 26 March contained a general proposition that everybody should stay at home. But that is subject to numerous exceptions – reasonable justifications – that acknowledge we may need to go out to work, to exercise and to buy food, among other things.

So there has been a gradual expansion in the restrictions and actions taken to minimise risk of transmission across society. Restrictions and actions that are often inter-related. They started with stopping social activities, requiring certain businesses, such as pubs, to close; before expanding to imposing restrictions on public facing businesses such as supermarkets to try and maintain physical distancing where it can be done.

This principle of taking all reasonable steps to maintain physical distance is now being broadened to all workplaces. **This requires people to take “all reasonable measures” to maintain a distance of two metres between those in the workplace.**

While that is an objective test that is intended to be applied consistently, it is not an absolute rule that has to be applied all of the time in all circumstances. In addition it is not a measure that will apply in the same way in all circumstances.

Physical distancing is intended to supplement a range of other actions being taken to seek to minimise risk. These include staying away from others when exhibiting symptoms, working from home where practicable, erecting barriers between people where suitable or **wearing personal protective equipment where guidance says it is necessary.**

In summary, when proportionate action can be taken to reduce the spread of the virus it should be taken. The Welsh Government has expanded the physical distancing requirements in legislation because of concerns that some employers who could take steps to keep staff further apart have not done so. But many employers have already done what they can and there are also working environments where physical distancing is not possible – and in consequence there may be circumstances where few or even no reasonable measures can be taken. For example in relation to the provision of public facing essential services (including operation and maintenance of Critical National Infrastructure), factory settings, construction sites, the provision of health and social care services and the production and distribution of food.

In these instances we are asking employers to take reasonable measures to ensure that a distance of 2 metres is maintained between people on premises, including outdoor sites, to minimise the risk of transmission and the risk to workers.

What constitutes a reasonable measure?

In considering the context for how the test is to be applied, the starting point is that it applies to workplaces that are allowed to operate and the Welsh Government wants to continue to operate. In fact many of these workplaces are vital and *must* continue to function. That the test applies to both hospitals and food shops should help illustrate the fact that this is not about stopping work, it is about all employers doing what they can in the workplace to change the way they work.

If physical distancing can be achieved this will play a part, along with other actions, to minimise community transmission; but we should be clear that if physical distancing is not a reasonable measure in the particular workplace context, then it is not a requirement. And whether it is a reasonable measure will depend on the nature of the workplace.

The most effective way of ensuring physical distancing it is to enable some or all staff to work from home, some or all of the time. As “reasonable measures” there is an expectation that employers should be as flexible as possible and make adjustments wherever that is possible. This may include issuing staff with laptops or mobile phones and facilitating communication from wherever members of staff may be.

However there will be instances where working from home is not possible – for example in relation to the provision of public facing essential services, factory settings, construction sites, the provision of health and social care services, provision for the children of critical workers and vulnerable children in schools and childcare settings and where there are safeguarding concerns. Although physical distancing may be made easier by allowing some staff to work from home, the reasonable measures required in these instances will need to be taken in the workplace.

There is no hard and fast rule of what constitutes a reasonable measure. This can vary within different functions of an organisation as well as between sectors. This guidance does not provide exhaustive advice of what should be done in every eventuality, but outlines considerations that businesses and organisations should reflect in determining measures.

The test of whether a measure is reasonable is an objective one. It will be for a business to justify the reasonable measures that they have adopted and to demonstrate how they have considered that these are proportionate and minimise the risks faced by workers who have to continue to attend work in their workplace.

Considerations

Cost – is the cost of the measure proportionate to the number of people whose risk is reduced by the measure? For example, it would not be proportionate to extend a premises or to require additional fleet vehicles, but splitting shifts could be done at minimal cost

The nature of the work – are the measures practical, or would they so undermine the delivery of the service or undertaking of the business that they would be counterproductive? For example when providing services to children, they may not understand the measures and may face risk as a result of them – this would include ensuring children are safeguarded.

Can measures be put in place without compromising the health and safety of others? If measures would increase the health and safety risk, for example in the case of operating machinery, these would not be reasonable measures.

The nature and capacity of those in a workplace – where a service or business is responsible for looking after or working with children or vulnerable adults, it would not be reasonable to institute rigid physical distancing. In addition, safeguarding of children and vulnerable adults must not be compromised.

Measures should command staff's confidence that due consideration has been given to the level of risk that they face. Employers may wish to introduce mechanisms to receive feedback on the measures that they have introduced. **And evidence where they are measures introduced by the main contractor/client.**

Examples of measures

The nature of measures that are reasonable will be specific to the individual workplace, will reflect the physical environment and the nature of the business being conducted.

As an example, most medical practitioners and carers can't stay 2 metres away from a patient when giving treatment. But they can stay 2 metres away from the patient for much of the time; they can stay 2 metres away from other medical practitioners or carers most of the time; and measures can be taken to ensure patients stay 2 metres away from each other while waiting to see them. This is what we mean by reasonable measures and taking measures like that should be applied consistently. But stopping treatment would obviously not be a reasonable measure, and *would not* and *should not* be required.

Below is a non-exhaustive list of examples of reasonable measures which may be relevant:

- Reducing the number of people working on the premises at any one time – increasing the space between people by reducing the total number of people in attendance.
- Increasing space between staff – for example on a production line leaving 2m gaps between people and indicating spacing with markings.
- Consider appropriate provision of rest space – is there a congregation of workers at a certain time? Could additional space be provided, or staggering breaks.
- Altering tasks undertaken – making adjustments to the way that work is done, to reduce contact.
- Stagger shifts to minimise people on site and to reduce congestion at the point of shift changes
- Carrying a passenger in the back seat rather than the front seat of a taxi would be a reasonable measure

Where reasonable measures are not possible

The regulations require employers to take reasonable measures so that workers can maintain 2 metres distance from one another. They do not require all employers to enforce 2 metres distance between all workers all of the time.

There will be circumstances in which it is not possible to take reasonable measures. But employers will be expected to undertake an assessment before concluding there are no reasonable measures that they can take, and there are no blanket exemptions from this legislation. It is an important principle that employers undertake an assessment of what reasonable measures can be taken and to keep this under periodic review.

Examples of the types of situation in which it would not be possible or appropriate for people to stay 2 metres apart for the duration of their work time, include:

- Provision of personal services, including in the home.
- **Tasks that require two or more people to undertake them safely, including heavy lifting or carrying dangerous chemicals, although there may be measures that can be adopted elsewhere in the workplace.**

- Education and childcare settings – especially where young children cannot understand the concept of physical distancing and where the appropriate support from adult workers may require closer contact.
- Exceptions where close contact is required between workers and the users of services, although again there can be measures in the wider workplace which would minimise the risk of transmission.
- Where workers are required to travel together.
- Where dual working is to ensure safety.
- Working in confined spaces, for example repairing infrastructure for utilities

However, it is unlikely that no reasonable measures could be adopted at all in these circumstances. Employers and staff will be best placed to know what can be done and the concept of “taking reasonable measures” means that there is some discretion in this respect.

The key purpose of the regulations is to minimise the risk of transmission of coronavirus. Where contact or closer working is required, it is important that other measures are considered, for example:

- minimising the level of interaction
- physical barriers
- improved hygiene and reminders about the importance of hygiene
- washing hands well for 20 seconds with soap after close contact
- ensuring those with symptoms are not present on the premises

Enforcement

The Welsh Government hopes that businesses and others understand the severity of the situation we are facing as a society and will take the reasonable steps necessary.

By working together, the Welsh Government hopes that employers and employees can come to a reasonable judgment on the best way to limit close physical contact. It is in all our interests for this to happen so that important work can continue.

However, one reason why the Welsh Government has decided to go beyond guidance and include a duty in law is so that enforcement is possible, where it is necessary.

Both the police and local authorities have powers to enforce the restrictions on businesses, services and workplaces imposed by the regulations. The regulations provide for enforcement to be carried out by—

- police officers
- police community support officers
- persons designated by local authorities (for example environmental health officers)
- persons designated by the Welsh Ministers

If a responsible person is found not be taking all reasonable measures to ensure that distance of 2 metres is maintained between person on the premises concerned, that person may be subject to a fixed penalty of £60 (this reduces to £30 if paid within 14 days but is doubled to £120 for a second a subsequent breach) or may be charged with a criminal offence and ultimately convicted and be required to pay a fine.

Review

The Welsh Government will rapidly review all aspects of the regulations by 16 April. This provides an opportunity to assess the effectiveness and consequences of the provisions. It will also provide an opportunity to engage with stakeholders from all sectors to inform the process.



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ECA wishes to identify and inform the engineering services sector and ECA Members' decisions on what represents 'fair, reasonable and good contractual practice'. ECA remains committed to fair and open competition and this document is not designed to in any way dictate what may be an appropriate risk allocation, or act as a substitute for ECA Members obtaining project and context specific legal advice and making their own commercial decisions.