ORR	RSD Internal Guidance	RIG-2020-01
	ORR's health and safety regulatory approach to COVID-19 in Railway Systems *RIG-2020-01*	

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RIG postholder/owner	Paul Appleton		
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Keywords	COVID-19, coronavirus, Rail Industry Coronavirus Forum (RICF).		
Summary	ORR has a responsibility to ensure rail industry duty holders meet their health and safety obligations to protect their workforce and their customers from exposure to COVID-19. Industry's health and safety duties sit alongside their public health duties, where we are not the enforcing authority. To help inspectors navigate this boundary consistently, the guidance contains some regulatory principles for our inspectors to follow. This guidance also provides industry, passengers, workers and Government with transparency about how we will regulate the health and safety management of COVID-19.		
Original consultation	Paul Appleton, Ben Davies, Matt Farrell, Martin Jones, Anna O'Connor and Tom Wake		
Subsequent consultations (reviews only)	September 2021 Paul Appleton, Sukhninder Mahi, Matthew Farrell, Tim Gill, Ian Skinner & Tom Wake		

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Detail

Context

1. The railway industry's duties sit at the boundary between health and safety legislation (enforced by ORR), public health legislation on COVID-19 (enforced by other authorities) and non-enforceable public health guidance and advice. Some of these requirements have specific differences in England, Wales and Scotland.

Regulatory principles for COVID-19 health and safety

2. The following regulatory principles have been developed for inspectors in their considerations of COVID-19 matters.

3. The scope of Health & Safety at Work Act etc 1974 (HSWA) includes the management of risks attributable to the spread of a virus that is prevalent in the wider community, such as COVID-19. Whilst ORR has enforcement functions under HSWA 1974, it does not enforce public health legislation or any associated UK Government or devolved administration public health guidance.

4. COVID-19 is both a public health and workplace health issue. Railway operators have duties to reduce the risk of infection so far as is reasonably practicable (sfairp) to staff and passengers.

5. We expect railway operators to have consulted, and to use, the latest relevant guidance published by ORR and the UK, Scottish, and Welsh Governments (as geographically appropriate) when developing / reviewing their risk assessments and control measures. This is because that guidance has been informed by, and issued with, the endorsement of medical/scientific advice.

6. ORR staff shall use relevant guidance published by ORR and the UK, Scottish, and Welsh Governments (as geographically appropriate) to help inform our benchmark and decision making.

Workers

7. ORR will ensure that railway operators' arrangements reduce worker exposure to COVID-19 sfairp. This is effectively worker on worker protection; and passenger on worker protection. Such arrangements need to ensure the principles of prevention to minimise the likelihood of worker exposure to COVID-19, sfairp, as part of a suitable and sufficient risk assessment which also takes into account the relevant guidance.

8. ORR will consider action where railway operators have not carried out a suitable and sufficient risk assessment, or are not taking action in accordance with their risk assessment to control COVID-19 health risk to workers sfairp. Action will include explaining and encouraging; but may include enforcement action in line with our enforcement policy statement.

Passengers

9. COVID-19 is a public health issue, and face masks or face coverings, enhanced cleaning and social/physical distancing are public health solutions to manage the incidence and risk of transmission within society. You can find more information here [Coronavirus advice | Office of Rail and Road (orr.gov.uk)](#) including links to the Governments' guidance.

10. However, ORR will consider action where railway operators do not have arrangements in place that are generally capable, sfairp, of achieving the social/physical distancing principles described in relevant guidance. Arrangements will include active promotion of the controls, and measures to facilitate passenger compliance.

11. ORR recognises that on occasion the arrangements will fail due to passenger behaviour etc. and we do not expect operators to go beyond the normal steps to manage passenger behaviour. We do not expect under health and safety legislation railway operators to 'police' measures described in government guidance. Railway operators may have public health responsibilities regarding physical distancing and other protection arrangements.

What action does ORR expect railway operators to take to manage COVID-19 risk?

12. *Risk assessment*: Consider the health risk associated with COVID-19 for workers and passengers; record risks, and detail controls; consulting relevant guidance as necessary. ORR will use ORR, UK, Scottish and Welsh Government guidance (as geographically appropriate) to help inform the benchmark when determining what is reasonably practicable.

13. *Workers*: Implement reasonably practicable arrangements to reduce COVID-19 risk for workers, including achieving the intent of relevant guidance. This should include arrangements to achieve social/physical distancing and other COVID-19 related protection measures, sfairp, and use of mitigation when not achievable. This would include considering how to manage the impact of foreseeable public behaviour on worker safety.

14. *Passengers*: Implement arrangements sfairp to promote and facilitate social/physical distancing and other mitigation measures for passengers using the railway. Whilst this may include making physical changes, increasing communications etc, it does not include (under h&s duties) 'policing' the passenger's implementation of the controls, such as ensuring social/physical distancing is achieved or that face coverings are used.

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Action (optional)	**Inspectors and IA's should note this RIG and apply the usual principles when determining enforcement action, taking into account ORR's guidance** Coronavirus advice	Office of Rail and Road (orr.gov.uk)