

Working in the UK Construction Industry during the Coronavirus Pandemic

By Georgina Dietrich

Pupil Barrister

Some of the Legal and Practical Challenges and Solutions

1. **30 March 2020** As the world goes through the different phases of Covid-19, the message in the UK was clear – you must stay at home, unless you have one of four reasons to leave your property: shopping for groceries or essentials; any medical need, which includes providing care or help to a vulnerable person; one form of exercise per day; or travelling to and from work, if it is absolutely necessary and you cannot work from home.
2. On 24 March, First Minister Nicola Sturgeon announced that building sites should be shut in Scotland, unless they involve an essential building, such as a hospital. In Downing Street Health Secretary Matt Hancock said that construction workers, many of whom work outdoors, could and should continue working, provided they can remain two metres apart at all times. The dilemma faced in the construction industry is that a significant number of people simply cannot work from home and many workers will not get paid if they do not show up for work. This sector is also unusual because of its high proportion of self-employment (36%).
3. As a growing number of construction sites are closing to protect workers, the Chancellor of the Exchequer Rishi Sunak has introduced an Income Support Scheme for the Self-Employed which will offer a direct cash grant of 80% of profits (up to £2,500 per month) for at least three months to those who have had a trading profit under £50,000 per annum for the last three years.
4. To qualify, more than half of your income for each of those years must have come from self-employment. To minimise fraud, the government has decided to limit the scheme to those who are already in self-employment and were trading last year, i.e. excluding the newly self-employed. HMRC will identify eligible individuals and start payments in the

beginning of June, backdating payments until March 2020 (please click [here](#) for more information).

5. Whether you are a self-employed worker on site, a small or medium sized contractor, or a main contractor, Covid-19 has and will continue to impact the industry you operate in. This information bulletin looks at some of the legal and practical challenges and solutions you may wish to consider during these testing times, such as:
 - protection of workers
 - contractual performance
 - managing the risk of insolvency

Protection of Workers

6. Besides complying with all existing mandatory requirements, parties are encouraged to ensure everyone working on site is well informed of preventative measures such as hand washing and social distancing (2 metres), but also as to what they should do if they experience Covid-19 like symptoms – i.e. a high temperature and a new and continuous cough, or if they have been in close contact with someone who has these symptoms (please [click](#) here for further information).
7. Part of this effort may include updating current health and safety policies to ensure appropriate, prompt and deployable procedures are in place in case of a suspected infection. The Construction Leadership Council (CLC) has developed [Site Operating Procedures](#) specifically tailored to construction sites operating during the coronavirus pandemic with a view to introducing consistent measures on all sites of all sizes in line with the government's recommendations.
8. [The Construction \(Design and Management\) Regulation 2015 \(CDM 2015\)](#) (the "Regulation") sets out that people involved in construction work, i.e. clients, the principle contractor and contractors, including the self-employed, must ensure that there are adequate welfare facilities on site for workers under their control in order to protect themselves and/ or others from harm.
9. Requirements in [Schedule 2](#) of the Regulation state that sanitary conveniences must be kept in clean condition so far as it is reasonably practicable and that washing facilities must include a supply of hot and cold, or warm, water as well as soap or other suitable means of cleaning as well as towels or other means of drying.

10. Sadly, these basic requirements are often neglected. However, during the coronavirus outbreak it is ever more important that these requirements are adhered to (see also the government guidance for employers and businesses on coronavirus [here](#)).

Contractual Performance

11. Covid-19 is likely to have an impact on contractual performance. Projects may be delayed, for example due to travel restrictions on workers, a delay in the delivery of goods and materials or a lack of healthy workers to operate equipment (etc.).
12. Now is the time to review your contract and in particular the *force majeure* clause to ensure you do not miss the time limits for requesting an extension of time or fail to comply with any other notice requirements. It is key to document how the effects of Covid-19 have caused delay to the critical path. Also review the dispute resolution process under the contract and ascertain what cover you may have under your insurance policy.
13. Parties are encouraged to consider how they best manage their business relationships. An adversarial approach may be counterproductive in the current situation and stand in the way of finding collaborative solutions.

Managing the Risk of Insolvency

14. An estimated 20% of all small and medium sized businesses in the UK operate in the construction industry. There were 2.4 million jobs in the construction sector, i.e. 6.6% of all UK jobs in Q2 2019, with an economic output of £117 billion measured in 2018 (6% of the UK total). There are 343,000 construction businesses that have employees or that are VAT registered.¹
15. Taking this into account the employment and wage subsidy package announced by the Chancellor of the Exchequer Rishi Sunak on Friday 20 March 2020 which aims to protect millions of jobs through government grants provided under the Coronavirus Job Retention Scheme (the “Scheme”) may well benefit employees in the construction industry. The Scheme will cover 80% of the salary of retained workers, up to a total of £2,500 a month, and will be backdated to 01 March 2020. This has come just days after

¹ <https://www.ons.gov.uk/businessindustryandtrade/constructionindustry>

the government unveiled a variety of financial measures, including £350bn in loans and £20bn in other aid. Other relevant financial support measures can be found [here](#).

16. Annual MOTs for all heavy goods vehicles (HGVs) and public service vehicles (PSVs) have been suspended for up to 3 months from 21 March 2020. Please visit the Driver & Vehicle Standards Agency (DVSA) publication for further information [here](#).
17. Most recent statistics (2018) suggest that new housing orders amounted to 35% of all construction orders, commercial orders for 25% and infrastructure orders for 19%. The same year public sector work excluding housing and infrastructure has seen new orders in the sum of £8.2bn (13% of total new orders). Taking this into account, two recently published Procurement Policy Notices (PPNs) may be welcome news for some public sector construction suppliers.
18. [PPN 01/20](#) allows public authorities to enter into and modify contracts without following the usual procedures. [PPN 02/20](#) requires authorities to pay suppliers at risk as usual even if service delivery is disrupted or temporarily suspended. This is to ensure suppliers are in a position to resume normal contract delivery after the current crisis. To qualify suppliers must agree to act on an open book basis and make cost data available to the contracting authority during this period, and suppliers should continue paying employees as well as flow down funding to their sub-contractors.

Whilst every effort has been taken to ensure the accuracy of the contents of this article, the position in relation to Covid-19 is rapidly changing. This document should not be used as a substitute for obtaining legal advice. If you have a particular query, please contact the 3PB clerking team, who will be happy to direct your enquiry to the relevant person.

30 March 2020



Georgina Dietrich

*Pupil Barrister
3PB Barristers*

+44 (0)20 7853 8055
georgina.dietrich@3pb.co.uk

www.3pb.co.uk