
Covid-19: the situation in the United Kingdom



June 2020

This note summarises the main provisions relevant to businesses with operations in the United Kingdom that have been brought in as a result of the Covid-19 crisis. If you would like more detailed advice, please visit <https://www.mills-reeve.com/insights/foresight/coronavirus> or contact us – see contact details at the end of this note.

People

Since the start of the lock-down in the UK, the Government has taken steps to support employment across all sectors of the economy. A widely adopted furlough scheme offers support to employers, enabling them to retain staff while they were unable to work. Under the scheme, staff entered a formal arrangement not to carry out any work for their employer for at least three full weeks. Employers are entitled to claim for 80% of employee wages together with employee tax and pension contributions up to a cap of £2,500 (c.\$3,000) per month.

The scheme closes to new entrants on 30 June. For those already using the scheme, it has been extended in a revised form to 31 October. Flexible furloughing becomes an option from 1 July, so that staff can return to work on reduced hours. From 1 August, employers will be expected to contribute towards the costs of furloughed employees' wages.

Taxation

Recognising the serious cash flow difficulties caused by the Covid-19 outbreak, the UK Government has introduced a number of options to postpone tax payments temporarily. These arrangements apply to corporate and personal taxes in different ways, and it is important to understand the details of the relevant schemes.

A particular issue arises where company directors or employees find themselves stranded in the UK. This may have the unexpected effect of the company meeting the tests for tax residence or a UK permanent establishment. It may also lead to individuals becoming resident in the UK for their personal taxation. The tax authorities are alive to these issues, and have issued guidance offering some flexibility. However, companies should consider taking advice on their particular circumstances if this is an area of concern.

Commercial relationships and contracts

An area of focus throughout the lockdown period has been contractual relationships, where employee absence, supply chain problems and restrictions on movement mean that contracts can no longer be fulfilled as expected. Non-binding Government guidance encourages contracting parties to act in a responsible and fair way during the crisis, especially when dealing with potential disputes. However, it may become necessary to take action where contractual performance is seriously affected.

Many commercial contracts include *force majeure* wording that offers a party in difficulty the opportunity to suspend performance. Termination and material adverse change clauses may also assist in certain situations. The detail of these clauses varies considerably and it is necessary to consider the wording of the clause in relation to the

circumstances faced in each situation. English law also provides a frustration doctrine, which can act to release parties from contracts that have become impossible to perform. Care is needed when relying on any of these clauses and principles, as failure to observe requirements, serve appropriate notices, gather evidence, etc could lead to unexpected liability for breach of contract.

Insurance

Difficulties arising from the crisis may be covered by insurance. Credit and political risk insurance may cover situations where counterparties have defaulted on contractual obligations due to financial distress, for example. Insured parties may wish to try renegotiation with their counterparties as a first step, but should consult with their insurers and obtain their consent to any such arrangements. Failure to do so could discharge the insurer from liability.

Many businesses are turning to their business interruption insurance policies for assistance with losses incurred during periods of closure and social distancing. However, the terms of many business interruption policies do not provide cover for pandemics, and there is no intention to legislate to alter the scope of cover retrospectively.

Insolvency

Changes to the UK's insolvency regime are being fast-tracked through Parliament in response to the crisis. These include short-term measures to cushion debtors, such as additional hurdles for creditors in commencing insolvency proceedings. It also introduces permanent changes to insolvency law. In particular, termination of contracts for the supply of goods or services on the basis of the insolvency of the other party will be severely restricted. We expect these changes to become law imminently.

Real estate

As soon as emergency measures began to be put in place, many commercial tenants approached their landlords to agree rental concessions. Leases are not automatically ended by the lockdown and so contractual obligations have continued. Generally, landlords and tenants have worked together in a co-operative spirit to try and get over this unprecedented period of time – for example, many landlords have agreed to rent being paid monthly in advance instead of quarterly. Even so, the Government stepped in with a statutory block on landlords ending commercial leases until 30 June 2020 should tenants not pay sums due under their leases. This is to be extended to 30 September and the Government has issued a voluntary Code of Practice for commercial property relationships to promote productive discussions between landlords and tenants when it comes to paying rents. The Government also provided similar protections for residential tenants and these too have been extended until the 23 August.

Some sector-specific relief from property taxes has been introduced. Premises used primarily for retail, hospitality and leisure purposes can take advantage of a 12-month holiday on local property taxes.

Easing of the initial Government mandated closures of premises has now started. However, strict guidelines are in place and business premises need to be Covid-19 Secure in order to be open for trade. These limit the numbers of staff, visitors or customers that can be in a building and so are inevitably having an impact on trading. The relaxations are occurring at different speeds within the countries of the United Kingdom.

Health and safety and workplace data privacy

As premises re-open and staff return to work, extra attention to ensure a safe environment is essential. Extensive guidance has been issued to enhance security within workplaces. Employers have legal duties in respect of workplace health and safety and failure to meet these duties can result in criminal convictions and claims for damages. Appropriate planning and adherence to applicable guidance is therefore essential.

Many employers are considering workplace testing as part of their risk assessment and mitigation measures. With health data about individuals attracting an enhanced level of protection under data protection law, employers must ensure that they plan appropriately. This will normally begin with a data protection impact assessment. Transparency must be at the heart of any testing programme, and the use of any third party service providers will need proper assessment and safeguards.

Travel and transport

Rules applicable to travel change regularly in response to the evolving situation. A 14-day quarantine period currently applies to most travellers arriving in the UK, although this rule is facing political pressure due to the adverse effect it is likely to have on economic recovery. The wearing of face coverings on public transport services is mandatory.

Regulatory compliance

Many regulators and public authorities are taking a pragmatic approach to compliance, and have issued guidance to give comfort as to how to manage practical difficulties faced by businesses. Arrangements for accepting electronic (rather than “wet ink”) signatures and electronic documents rather than paper copies have been introduced.

Companies House, the company registry, has introduced some help on filings, although it will normally be necessary to apply for the relevant extensions and flexibilities quickly.

For data protection, guidance issued by the Information Commissioner emphasises its intention to take a flexible and supportive approach to enforcement. The data privacy regulator aims to assist businesses in weathering the crisis, and focus its enforcement effort on the most serious threats to the public. Likewise, in the life sciences sector, remote methods of carrying out routine compliance activity are available during the crisis. Where regulatory compliance is made more difficult or impossible during the pandemic, it may be possible to engage with the relevant authorities to address these concerns.

For more information on these issues, and more, visit our [Coronavirus Hub](https://www.mills-reeve.com/insights/foresight/coronavirus) at <https://www.mills-reeve.com/insights/foresight/coronavirus> or get in touch with me by email or phone.

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