

Construction Law Update

Planning for COVID-19 Site Closures

At the date of writing, the official advice from Robert Jenrick, the Secretary of State for Housing, Communities and Local Government, is that individuals working on construction sites can continue to do so but must follow Public Health England's guidance on social distancing.

However, mayor of London Sadiq Khan has stated that *"In my view, the only construction workers that should be working are those that we need for safety"* and Scottish first minister Nicola Sturgeon has advised that building sites should now close.

It is therefore looking increasingly likely in the coming days and weeks that construction sites may be forced to close due to COVID-19 measures being implemented by the Government. It would be prudent for all parties in the contractual chain to prepare for this and so the team at Hawkswell Kilvington has put together the following practical tips to assist you with such preparation.

Practical tips for potential site closures

1. [Safety and wellbeing](#)

The safety and wellbeing of personnel is paramount in these testing times. It is important that measures are put in place to restrict the potential transfer of coronavirus from person to person.

Helpfully, the Construction Leadership Council has produced an important code of practice dealing with Site Operating Procedures during the COVID-19 epidemic. Key points of consideration include:

- On-site personnel should remain at least two (2) metres apart from each other at all times;
- Staggered start times on site to reduce/avoid congestion in particular areas;

- On-site personnel should travel alone to work (i.e. drive or cycle) and avoid using public transport, if at all possible;
- Systems that require touching should be disabled (for example, scanners and other security systems);
- Hold site inductions outdoors;
- Enhanced cleaning procedures and use of taps, washing facilities, and hand sanitisers;
- Use of stairs as opposed to lifts or hoists.

2. [Insurance](#)

You should check any relevant insurance policies and discuss matters with your insurers, including any evidence they may require in support of a claim, at an early stage.

3. [Effective communication](#)

It is important that effective communication is maintained with the various personnel involved in a construction project. You should therefore develop a form of *"Command Centre"* to communicate with your design team, contractors, subcontractors and supply chain to discuss any impacts of COVID-19 and other specific concerns.

Ensure that you have a system in place for communication with everyone in your contractual chain before, during, and after a period of shutdown. In light of the impact of COVID-19 on peoples' lives, it is inevitable that online systems and telecommunications will be integral to any effective system of communication with others. Reliance upon and/or increased resource in such systems should also be considered.

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4. [Applications for payment](#)

Payment is always key, but now than ever. However, if you don't make applications for payment in time or in accordance with the provisions of your contract, you are unlikely to be paid. Therefore, you must make sure you get it right!

Check the payment provisions in your contracts and make sure you know when payment applications must be submitted, and in what format. Put systems in place to ensure that you know when you must make applications for payment. You should also put procedures in place to ensure that key workers who will need to submit the applications have access to the relevant resources.

5. [Payment and Pay Less notices](#)

If you are the paying party, you do not want the application for payment issued to you to automatically become due because you have failed to issue a valid or effective payment notice or pay less notice. Therefore, it is imperative to have robust systems in place to keep on top of applications that have been issued to you, and to enable you to respond to those applications by issuing any required payment notices or pay less notices on time. .

6. [Issuing required notices](#)

There are a number of other notices that may need to be issued under the terms of your contract that are very important. These could include notices explaining why sites have had to close or why you have been unable to continue with your work(s), as well as notices dealing with extensions of time and additional payment. Issuing notices of this sort will, in most cases, also require additional information and evidence to be provided in order to back up your claim. Therefore, it is important to ensure such evidence is obtained and sufficient records are kept.

Make sure you don't fall at the final hurdle! Complying with contractual requirements relating to the format and delivery of notices can be just as important as the timing and content of a notice. You must read the contract provisions carefully, taking particular notice of the timescale for issuing the notice, the address to which the notice is to be sent, in what form i.e. by post or email and whether a specific postal method is required.

7. [Check your contract provisions dealing with time, money, suspension, termination and title for goods and materials](#)

It is important for you to review your contract and understand how it deals with the circumstances we are experiencing. These are unprecedented times, and, unless you have only just entered into it, your contract is unlikely to specifically refer to COVID-19. However, it may provide provisions dealing with epidemics and pandemics.

In addition to the above, you should also review your contract to see how it deals with any claims for time or money as well as suspension or termination.

If your contract does set out specific requirements, you must understand these and ensure that all the requirements are fulfilled. These requirements are likely to include items that will need to be adhered to over period of time rather than just one initial notice. This could include submitting evidence within a specified period of time, revised programmes outlining delay and submitting regular progress reports. You should ensure that key individuals have access to the software and records necessary to submit this evidence and documentation. Complying with such requirements could be key to mitigating the overall impact on your company. Therefore, preparing for this is imperative. Preparation could include ensuring there are electronic copies of key documents accessible by key workers even when off site.

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8. [Record-keeping](#)

Document your sites effectively by taking photographs and videos of the works, equipment, materials and general site conditions. Also, ensure that all of your site records are up to date and stored securely in an appropriate place.

This will leave no doubt as to the level of completeness and quality of the work that you were undertaking in the lead up to any shutdown; and could be key should there be any subsequent dispute in respect of the same.

You should also ensure effective record-keeping in relation to the impact of COVID-19 on site personnel. Maintain detailed records of the workforce and ascertain why individuals are unable to work (i.e. imposed restrictions, self-isolation, confirmed cases of COVID-19 etc). If you find that there is a reduced workforce at this time, [record it](#).

Finally, ensure that all on-site personnel are kept informed of all steps that must be taken if they start displaying symptoms of COVID-19 and consider what measures can be put in place to minimise transference. Again, the steps and measures to be taken should be effectively documented and clearly communicated to all on-site personnel.

9. [Site Maintenance and security](#)

Ensure sites can be secured quickly and effectively. Think about what you may need to take away from sites for security purposes and ensure good systems are in place to protect sites when they are shut down.

10. [Programming the works](#)

Up-to-date programmes showing the current status of the works should be produced. Contemporaneous programmes should take account of the impact that a potential shutdown could have.

We all hope any shutdown will not last too long, but it is likely that COVID-19's impact upon programmes will result in delays spanning many weeks, if not months.

11. [Re-Commencement Procedures](#)

Ensure re-commencement procedures are put in place to allow for a quick and effective re-start of works on-site. It might well be the case that any re-commencement on-site will have an element of social distancing being required; so procedures and measures should be considered and maintained.

Summary

These are unprecedented times and the current situation is fluid. There is currently a great deal of uncertainty surrounding the issue of whether construction sites can and/or should remain open. We hope that the practical steps and tips set out above will be of assistance to those parties dealing with the potential closure of a construction site. Finally, and most importantly, stay safe everyone.

Whilst the above provides general guidance, if you need any specific guidance or support, please do not hesitate to contact any member of the Hawkswell Kilvington team.

This article contains information of general interest about current legal issues, but does not provide legal advice. It is prepared for the general information of our clients and other interested parties. This article should not be relied upon in any specific situation without appropriate legal advice. If you require legal advice on any of the issues raised in this article, please contact one of our specialist construction lawyers.

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