

Short Sited - What Next for the Construction Industry?

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At a time of such uncertainty and unprecedented change, it is vital that there is clarity about what is expected of us.

The Prime Minister's address to the nation on Monday night was watched by over 27 million people seeking that clarity. He announced a lockdown in the UK for three weeks in order to fight the spread of the coronavirus. Individuals can only leave their homes to shop for basic necessities (as infrequently as possible), for any medical need, to exercise once a day and to travel to and from work but only where this is absolutely necessary and cannot be done from home.

Under the banner of responding to the virus and supporting the NHS, emergency legislation in the form of the Coronavirus Bill was introduced on 19 March. Having made its way through the House of Commons at breakneck speed, it is expected that the committee stage, report stage and third reading will take place in the House of Lords today and it will receive Royal Assent today or tomorrow.

The legislation will provide the Government with wide ranging powers, having the potential to materially restrict civil liberties. Key features of the legislation include restrictions on public gatherings, the movement of transport and the closure of ports and airports. In practice, we are likely to see troops on the street in peacetime and individuals being arrested for not self-isolating.

Where does this leave construction sites and their workers? Certainly, construction workers are not listed on the key workers list and they cannot work from home.

Following the Prime Minister's address, a growing list of developers and contractors have suspended work on construction sites in order to limit the spread of the virus. Whether closure of sites is required as a legal or simply a moral duty is far from clear.

The closure of construction sites was not expressly required and it appears that the Government has left the door open for sites to remain open provided that the social distancing guidelines which include workers being at least 2 metres apart from each other are followed. This is despite the reports that the Mayor of London, Sadiq Khan, called for construction sites to be shut down at the COBRA meeting before Monday's address but he was overruled.

On Tuesday morning Michael Gove confirmed that construction sites could remain open, reinforcing the tweet by Robert Jenrick, the communities and housing secretary, the evening before. Further, at the press conference on Tuesday, Matt Hancock advised that "in work, in many instances, the two-metre rule can be applied". However, he added that employers have a duty to ensure people are more than 2 metres apart.

The Construction Leadership Council has now published Site Operating Procedures to implement the Government's social distancing recommendations in order to provide a standard approach across the industry. It recommends that workers should travel to sites alone, using their own transport; site access points may need changing to enable social distancing; the number of people using toilet facilities at any one time should be restricted; the workforce should also be required to stay on site once they have entered and not use local shops. Clearly, it is not simple to keep the 2m rule when there are hundreds of contractors on site.

With such lack of clarity, the industry is perhaps in the position of waiting to see who blinks first. Developers, main contractors, subcontractors? In a time beyond this pandemic, those businesses that survive can expect to face a multitude of legal claims. At this time, more than ever, it is important for all parties to consider carefully contractual responsibilities and obligations.

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