

Coronavirus Act 2020 - Implications for the Construction Industry - Part 2

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After racing through the parliamentary stages at a speed which, at normal times, would be unheard of, the Coronavirus Bill 2020 became law on 25 March 2020. However, these are not normal times. The Coronavirus Act gives the Government sweeping new powers which include restrictions on public gatherings, the movement of transport and the closure of ports and airports.

The construction industry has been in chaos this week with widespread uncertainty as to whether construction sites should remain open for work on non-essential sites. As previously reported [\[here\]](#), the Government has said that construction sites can stay open and work can continue if it is done safely. However, employers are asked to ensure their workers on-site are able to follow the public health guidance. This is the problem. Maintaining social distancing on a construction site is a challenge. The Government's stance has put the responsibility for the decision squarely back with employers, contractors and sub-contractors.

A growing number of contractors are making the decision to close sites. However, making the decision to halt works is not an easy one and there will be consequences. But can the Government force sites to close?

Section 52 of the Coronavirus Act 2020 confers powers on the Secretary of State to issue directions in relation to "events, gatherings and premises". These broad powers are set out in Schedule 22 of the Act. In order to protect against or delay the transmission of Coronavirus, the Secretary of State may issue a direction "*imposing prohibitions, requirements or restrictions in relation to the entry into, departure from, or location of persons in, premises in England.*" The requirement to close or restrict movement into or out of premises can be in respect of specified premises, or premises of a specified description. Premises is widely defined, including "any place", and will almost certainly cover a construction site. Before making a direction, the Secretary of State must have regard to any relevant advice given by the Chief Medical Officer.

The requirements can be imposed on a broad range of people. They can apply not only to the owner or occupier of premises but also to any other person involved in managing entry into or out of the premises. Non-compliance, without reasonable excuse, will be an offence resulting in a fine on summary conviction.

Where a site needs to be shut down, consideration will need to be given as to how this can be done quickly and safely. Security and any relevant insurance conditions must also be borne in mind.

In the light of the mixed messages this week, it is difficult to predict if, and when, any direction may be made by the Government and the extent of any restrictions imposed on construction sites. Clearly this will be of relevance to employers, contractors and sub-contractors who will already be poring over their contract documentation and deliberating over what notifications may need to be made.

Each case will depend on the particular wording of the relevant contract. Under a JCT D&B 2016 contract, a direction under these powers may well be a Relevant Event entitling a contractor to additional time. Some parties may decide to use the situation as an opportunity to suspend and then if appropriate to terminate a contract.

We are in uncharted waters and no action should be taken without careful consideration of the contract documents and the possible ramifications.

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