

Key legal changes due to the Covid 19 pandemic



Guide to what we know so far

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SHORTLISTED

"Deal of The Year (Over £10m)"
"Private Equity/ Venture Capital Deal"
"Corporate Lawyer of The Year"

Employment

It is clear that the coronavirus pandemic has had a significant impact on the employment sector, with very real and immediate considerations for employers, employees and anyone else in a working context. PDT's Employment team has seen a surge in related activity, particularly regarding (1) managing vulnerable employees and others with particular considerations (2) introducing changes from temporary reductions of hours or pay to, where unavoidable, dismissals (3) furlough and related documentation including furlough agreements and (4) getting to grips with the *can* and *can't do's* of the Job Retention Scheme.

In addition, it is vital for employers to break down, assess and understand their needs and objectives in the short and medium to long term. This is as we move from lockdown, into a "post-lockdown transition period" and looking forward to the next 6 – 12 months. We continue to work with clients in this wider context to review their options and implement next steps to best protect their business, and workforce, in both the immediate and longer term.

Recent employment-related changes have come thick and fast: and this can make it challenging for employers to keep up to date. So, here are the key things you need to know:

Overview

- Generally, many matters relating to the current lockdown restrictions are covered by the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#). It came into force on 26 March 2020 and will expire after 6 months.

Health and safety

- Employers have existing duties to ensure the health, safety and welfare of their employees. In the current climate, you must pay particular attention to employees who are classed as vulnerable or shielding, pregnant, undertaking higher risk roles and/or raising specific health and safety concerns.

Coronavirus Job Retention Scheme

- The scheme provides employers with the ability to furlough employees and reclaim certain wage costs. It currently operates until the end of June 2020. Furlough must be confirmed to employees in writing and we recommend using a furlough agreement (or similar). Government guidance, which all employers should read, is regularly updated and can be found here: <https://bit.ly/2WoRUuR>

Statutory Sick Pay (SSP)

- SSP provisions, relating to coronavirus, have been temporarily changed in relation to (1) who can claim SSP because they have symptoms, are self-isolating or shielding (2) claiming SSP from day 1, instead of day 4, of absence and (3) a provision for certain employers to reclaim up to 2 weeks' SSP per employee. For more information: <https://bit.ly/2xwhwqg>

Holiday

- Employees will be entitled to carry over up to four weeks of statutory holiday entitlement into the next two holiday years, if it was not reasonably practicable for them to take their holiday as a result of the effects of coronavirus.



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Commercial

Our commercial team continues to support clients with their day-to-day legal requirements during lockdown. We have seen businesses which have been able to operate during lockdown focusing on familiar commercial and operational issues and the story is very much one of legal continuity in the face of operational change and challenges. Terms of sale and supply need to be negotiated and documented, and disputes arising from commercial agreements assessed and dealt with according to the terms agreed between the parties.

COVID-19 has of course created a number of new and urgent needs for those businesses, and our team has seen a rise in referrals to our other departments, such as our employment team, who are assisting our clients to implement furlough for parts of their workforce, and our property department for assistance in dealing with leasehold property issues. Many clients are trying to avoid permanent structural changes to their businesses and are hoping to be able to resume activity once “lockdown” is eased, and thus the focus is on maximising continuity.

Reviewing supply chain obligations

- Of course, COVID-19 has clearly caused substantial supply chain difficulties for many businesses, as well as a consequential need for clients to rapidly reconfigure the administrative side of the business. Many of our clients have therefore been reviewing their obligations to customers, as well as their rights under agreements with their suppliers and with providers of products and services used in the “back office”, to determine what contractual rights and obligations they have when performance is interrupted, delayed or prevented by the pandemic.

Adapting Force majeure clauses

- We have seen a substantial number of enquiries regarding “force majeure” clauses in contracts, which can relieve one or more of the parties to a contract of their obligations on a temporary basis where performance is interrupted by factors beyond their control. These clauses are used infrequently and so have not traditionally been a focus of negotiations for lawyers or their clients or for commentary from the courts. A result of this lack of focus is that parties to a contract often have very different views on what these clauses actually do and their views may not actually correspond to the exact wording of the contract each has signed. For these reasons, we are recommending that clients who are either experiencing disruption or anticipating it in future should get out copies of their agreements with suppliers and customers and review them with us to understand whether, and to what extent, parties can avoid their obligations as a result of the pandemic.
- Read our article on [force majeure clauses and what to do if your business is likely to be affected by the pandemic.](#)

Review contracts and terms of supply

- Where clients are paying for goods and services which have become “surplus to requirements” as a result of changes in the marketplace or changes in how businesses are working, we’re recommending that contracts and terms of supply are reviewed to see what leverage clients have to terminate or to extract concessions and additional value.

Coming out of “lockdown”

- There is evidently a strong political desire to ease the current “lockdown”, with an announcement trailed by government seemingly before any actual planning has taken place. Businesses are therefore starting to consider how they will emerge from lockdown, including how they will obtain working capital, bring staff back into work, obtain new orders and deal with arrears and unpaid debts as support measures are withdrawn. We would encourage clients who have not done so to consider these issues and start discussions with financiers, suppliers, employees and trade creditors. Where the one-time costs of the lockdown threaten otherwise viable businesses, directors should get professional advice from a licensed insolvency practitioner as early as possible. In particular, a company voluntary arrangement may be an option for businesses to reduce and rescheduled many of the one-time costs resulting from the lockdown. PDT are able to provide advice and refer our clients to experienced and capable practitioners.



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Corporate

There has undoubtedly been a sudden stop to the transactional M&A work. The team has closed a few deals that were already well advanced, and which were not put on hold, but there are very few new deals being discussed at present. Instead we are having more conversations with clients regarding housekeeping matters with many clients seeing the down time as an opportunity to improve their internal organisation.

Rise in corporate 'housekeeping'

- We have seen our clients' focus turning to tidying up their existing documentation, drawing up documents that need to be put in place and general company 'housekeeping'. You may want to consider some housekeeping exercises, which we will be happy to assist with, for example updating, amending or creating shareholder agreements, Articles of Association, company registers.



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Conversations with consolidators

- We have also been having conversations with a number of entities that are looking at the opportunities that this pandemic may bring in particular with the opportunity to acquire businesses at reduced valuations that can then be consolidated into a larger organisation to take advantage of increased buying power and economies of scale. As we come out of this lockdown we are hopeful that there could be a rapid upturn in the M&A activity that we are seeing.



Insolvency and Corporate Restructuring

The key areas for consideration are:

Statutory declarations via video link

- As well as our corporate team, our insolvency team have seen the implication of the pandemic on signing documents. A short-term change has relieved this pressure from the introduction of the [Temporary Insolvency Practice Direction](#), which was specifically brought in to allow statutory declarations via video link, which has never been done before.
- The Practice Direction also makes it clear, parties are still free to issue Winding Up and Bankruptcy Petitions in accordance with the Insolvency Act 1986 (IA 1986), but the manner in which hearings have been listed has been amended to allow for them to be heard remotely to comply with social distancing and lockdown measures.
- This solution is set to expire on 1 October 2020, but it will be interesting to see whether this will be extended as a long-term implication of the pandemic. It is a modern way of thinking so it will be interesting to see if this will be applied to all documents in the future from a long-term perspective.

Planning for the withdrawal of government support

- We expect that if uncertainty continues in the medium and long term and government support begins to be withdrawn, many businesses will be forced to make painful structural changes which have been temporarily put on hold. Furlough arrangements may become redundancies and pressures on cash as government support is withdrawn and normal debt-collection regimes become fully available again may force viable businesses to restructure within the protection of a formal insolvency proceeding such as an Administration, or to manage the immediate crisis caused by the epidemic by measures such as a company voluntary arrangement.
- Our company-commercial and insolvency teams expect to be fully engaged in helping clients reconfigure their businesses and protect directors and shareholders during what will surely be a difficult process of transition.

Future developments

- As the pandemic has developed, the government has made a number of statements relating to the further support for companies and their directors, which, if enacted, could include:
 - the suspension of wrongful trading provisions of IA 1986, to apply retrospectively from 1 March 2020;
 - possible amendments to insolvency legislation, such as a moratorium for companies from creditor action while they seek rescue or restructure and protection of supplies to enable companies to continue trading during the moratorium; and
 - a temporary ban on the use by landlords of statutory demands (made in the period 1 March 2020 to 30 June 2020) and winding-up petitions (presented in the period 27 April 2020 to 30 June 2020) where a company is unable to pay its bills due to the Coronavirus. This temporary ban is the subject of the Corporate Insolvency and Governance Bill 2020 currently making its way through parliament.



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Commercial Dispute Resolution

The Dispute Resolution team has been approaching the crisis business as usual. For the most part, this has been down to the Court's swiftly adapting new technology to ensure that justice can continue to be administered. The team has already successfully organised and participated in remote hearings, which have involved the parties to the dispute, their legal representatives and of course the judges, all sitting in separate locations around the country. Our Debt Recovery team also remains extremely busy.

Of course, the impact of the pandemic on the economy has forced the government to make temporary legislative changes, which have had an impact on how we advise our clients as to how to proceed with their claims, and how they are likely to be handled by the Courts.

The key areas for consideration are:

Technological challenges are not a ground for adjournment

- One of the finest examples of how the Courts have adapted is in [Re Blackfriars Ltd \[2020\] EWHC 845 \(Ch\) \(6 April 2020\)](#), whereby a Deputy District Judge refused to grant the claimant an adjournment of a five week trial due to take place in June 2020, worth approximately £250,000,000 and involving up to 13 expert witnesses, and instead ordered the parties to explore technical solutions so that the hearing might proceed.

Possession Proceedings Practice Direction

- With the 'high street' already facing significant challenges, the closure of many business premises as a result of the government imposed lockdown could not have come at a worse time. Welcome news to commercial tenants, and those funding them, was the implementation of [Practice Direction 51Z](#), which came in to effect from the 27 March 2020. From that date, for a period of 90 days, all possession proceedings have been stayed (although this Practice Direction was amended on 18 April 2020 so that some applications, and proceedings against certain trespassers, were excluded from the stay).
- Landlords should be aware that they may still issue possession proceedings, but should be advised those proceedings, as with most other possession proceeding, will be stayed until the 30 June 2020.



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Commercial Real Estate

The Government and lenders have responded in various ways to deal with issues such as non-payment of rent, repossessions and the need for further debt.

While property exchanges and completions and real estate finance deals are not directly prohibited by the Government's lockdown measures, parties are facing obvious challenges because of the social distancing requirements. Parties are unable to physically move-in or move out of premises. Property valuers, inspectors and surveyors are not regarded as key workers and so cannot conduct site visits. Lenders are busy managing their existing portfolios, making it difficult for borrowers to obtain mortgage offers. Lenders are also understandably cautious about valuations, meaning drawdown delays are inevitable. The Land Registry and local authorities are inundated. If property transactions haven't been aborted because of the pandemic, processes have nevertheless slowed down.

The key areas for consideration are:

Resolving rent payment issues

The biggest changes we are seeing in the real estate market is related to tenants not being able to pay rent and how to deal with concessions which suit both tenants and landlords. There are two aspects to this, the first being how do existing relationships continue and the second is how do landlord's tie potential new tenants in as soon as possible.

- Looking at tenants it is clear the current pandemic has caused significant hardships in the commercial leasing sector, with many businesses struggling to meet their rent obligations. We have seen that forfeiture for non payment of rent is temporarily prohibited but this does not permanently relieve the obligations on tenants to pay rent as all leasehold obligations stay in place. There is no 'one size fits all' approach to provide either a landlord or tenant comfort but our advice is to have an honest discussion between parties setting out what the financial situation is and how to move forward with a sensible approach. For example: parties may agree a rent waiver whereby a landlord may agree to forgo any rent due from a tenant for a certain period. This can be either in full or partially by way of a rent reduction. Although this assists a tenant it will have a significant impact on a landlord. Other possibilities are rent deferral agreements; extension of the term to compensate landlords; changes in payment dates (i.e. quarterly to monthly); landlords applying rent deposits with a tenant topping this up at a later date; or even relief packages which may be available from the government.

- If a lease has not yet been entered into but both parties have signed up to an agreement committing to a lease at an agreed point in the future it may not be practical for the lease to start on a date set prior to the pandemic. An agreement for lease can either be varied, or if not yet exchanged, additional wording can be agreed to provide parties to make allowances for potential delays caused by the Covid-19 pandemic. Although the inclusion of this clause does not cover every eventuality it may be helpful if parties are concerned they are not / may not be able to complete on a date specified in the agreement due to coronavirus related reason.

Statutory restrictions on Landlords' rights for non-payment of rent

- [Commercial landlords may not terminate a lease due to non-payment of rent / service charges until 30 June 2020](#). This moratorium may be extended by the Government.
- Landlords should be aware that despite the statutory restrictions on forfeiture imposed by [Coronavirus Act 2020](#) (CVA 2020), they still have the ability to pursue other actions, including:
 - debt claims;
 - drawing down on rent deposits;
 - claiming against guarantors

Commercial Real Estate Cont.

- As the Government continues to seek to protect UK business operations during the ongoing pandemic, [commercial landlords are now temporarily banned from issuing statutory demands](#) and winding up petitions against tenants unable to pay rent due to the impact of the Covid-19 crisis. It is important to note the restriction does not prevent winding up petitions being made across the board, but simply that these will not be possible where a tenant's inability to pay is a direct result of the current Covid-19 crisis.

Takeaway food service without planning permission

- The Government are temporarily allowing pubs and restaurants to be used for the sale of takeaway food, without having to obtain planning permission. Establishments do not need prior approval, but should inform the local planning authority when the new use began and when it will end. However, legal advice should be taken before relying on this Government measure, because an existing planning condition may prevent takeaway use. Additionally, tenants may be prohibited by their landlords from changing or amending the use of the premises. Any permission granted by landlords will need to be properly documented.

Developers and Housebuilders call for relief

- For developers and housebuilders there is uncertainty as to the long term impacts of the pandemic on the industry. Short term there is a call for immediate relief in the following areas:
 - automatic extensions of the deadline for commencement of development under planning permissions;
 - the introduction of a statutory review process for affordable housing and other planning obligations based on new viability considerations; and
 - extension to the Community Infrastructure Levy payment deadlines.
- These practical issues will alleviate some of the short term pressure. As soon as there is any further information we will provide the relevant update.

Land Registry update

- The Land Registry have announced that they will accept deeds that have been signed in pen and witnessed in person (but not witnessed via video call). Each party must send an email to their conveyancer with the final agreed version of the document and a scanned or photographed copy of the signed signature page.



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Pharmacy and Healthcare

£300,000,000 of funding into Community Pharmacy

- The Government have agreed to [advance £300,000,000 of funding into Community Pharmacy](#). A word of warning for existing and prospective pharmacy owners – the advance is almost certainly going to be clawed back at some future point from later payments due to contractors.



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PDT Solicitors support for your business in these trying times.



It is an understatement to say that we are in trying times at the moment. Covid-19 is a real concern not least because of its impact on our staff and their families but also in terms of how we continue to provide you with the personal support and legal guidance you need in these unprecedented times.

We consider many of our clients to be genuine friends, and take great pleasure in seeing your businesses succeed, grow, develop and fulfil their potential. We have a deep understanding of your business and take our responsibility as your trusted legal advisor seriously.

In this time of uncertainty, whether the crisis has increased or reduced your capacity, we are all aware it is not business as usual for any of us, but we are doing all we can to keep providing the same level of service you can expect from PDT and deliver the same quality in all the work we do for you.

PDT Solicitors Covid 19 Legal Hub

Covid-19 is a health story. It's a business story. It's an economic story. But at the heart of it all, the Covid-19 crisis is a human story. We have implemented a number of measures to ensure our staff are keeping connected with each other, staying current in this ever changing climate and able to fulfil their roles via remote working. We have a daily firm wide catch up, groups organising virtual social events and continuous sharing of the fast changing guidelines and policy. In response to the crisis PDT Solicitors have launched a [Covid19 legal advice hub](#) which provides legal advice and important updates to help you navigate the ever-changing government guidelines and policy as the pandemic develops.

We are here and ready to take your call if you need us.

We can help you with: [Corporate Services](#), [Commercial Law](#), [Commercial Dispute Resolution](#), [Employment Law](#), [Insolvency & Restructuring](#), [Commercial Real Estate](#) and [Debt Recovery](#).



**We listen. We care.
We support.**

Our aim is to look after you and provide confident, conscientious advice.



**We have a strong eye
for business**

We look to advise not just on legal aspects but the commercial factors that impact your business.



**We act swiftly,
without fuss**

We provide speedy, practical, no fuss services within a sensible structured fee proposal



**We select our lawyers
carefully**

We work hard at developing and supporting all our lawyers to help them develop confidence in the services they provide.



**We are experienced
and considered**

We consistently work on high quality, complex work and deliver measured, clear and relevant solutions.



**We are there when
you need us**

We work with you to get the transaction done and to support you in your business objectives.

We can help you with:



Corporate Services

- Buy-ins, Buy-outs
- Acquisitions & disposals
- Mergers & joint ventures
- Corporate restructuring
- International business
- Strategic advisory work
- Corporate & Commercial transactional matters
- Private equity
- Partnerships and LLPs
- Shareholder arrangements

Commercial Services

- Intellectual property rights
- Data protection and GDPR
- General terms and conditions
- Bespoke or proforma contracts
- Distribution agreements
- Framework agreements
- Franchise agreements
- Confidentiality and nondisclosure agreements
- Maintenance and support agreements
- Software licensing and development agreements
- Hosted service and software-as-a-service agreements

Commercial Dispute Resolution

- Pre-litigation advice
- Contract disputes
- Professional negligence disputes
- Intellectual property disputes
- Insurance disputes
- Shareholder disputes
- Partnership disputes
- Landlord and tenant disputes
- Commercial property and land disputes
- Agency and franchising disputes
- Rejection and acceptance of goods and services
- Client or counterparty insolvency

Commercial Real Estate

- Freehold and leasehold acquisitions and disposals
- Investment acquisitions and disposals
- Multiple unit stock transfer purchases/sales
- New leases / lease renewals
- Management of the premises/estate
- Landlord and tenant property portfolio management
- Property, land and construction disputes
- Land options
- Promotion agreements
- Planning and infrastructure

Employment Law

- Settlement agreements
- Dismissals, disciplinarys & grievances
- Employment contracts & handbook policies/procedures
- Redundancies, restructures & TUPE
- Performance management & succession planning
- Ill-health & incapacity
- Whistleblowing
- Working time & time off
- Family-related rights
- Agency, company & partnership issues
- Atypical working
- Benefits & rewards

Asset & Invoice Financing

- Debt refinancing
- Banking and asset based finance
- Factoring documentation
- Security documentation
- Financing of MBO/MBI's
- Development of new finance products
- Advising on credit issues/client reviews
- Security documentation
- Debt recovery, including enforcing guarantees, indemnities and legal charges, claims on fraud and freezing assets as well as complex debtor litigation and sales ledger recovery work

Insolvency & Restructuring

- Administration
- Receivership
- Liquidation and Voluntary Arrangements
- Advising on the validity of security and insolvency appointments
- Insolvency litigation
- Directors' disqualification
- Bankruptcy
- Debt Recovery

Pharmacy & Healthcare

- Share sales and acquisitions
- Asset sales and acquisitions
- Joint ventures
- Finance and security
- Lease renewals and assignments
- Freehold sales and purchases
- Fitness to practice
- NHS contract applications and transfers

Developer & Housebuilder

- Plot sales
- Planning strategy
- Preparing contracts
- Land options
- Promotion agreements
- Planning and infrastructure
- Joint ventures
- Management structures
- Construction & Conveyancing
- Affordable housing

Corporate Law & Deals Investment Shares Mergers & Acquisitions Buy-ins
Buy-outs International Business Corporate Restructuring Corporate
Finance Debt Refinancing Strategic Advisory Work Transactional Matters
Commercial Services Terms of Business Partnerships and LLPs Commercial
Documentation Commercial Agreements Research & Development
Agreements Data Protection & GDPR Intellectual Property Franchise
Agreements Software Licensing and Development Agreements
Commercial Real Estate Acquisitions & Disposals Plot Sales New Leases &
Lease Renewals Landlord and Tenant Matters Portfolio Management
Property Investment Secured Finance Insolvency & Corporate
Restructuring Insolvency Investigations Administration & Receiverships
Individual Insolvency Directors Disqualification Bankruptcy Debt Recovery
Corporate & Commercial Disputes Contract Disputes Partnership Disputes
Property & Land Disputes Employment Law Employment Dispute
Resolution Employment Documentation Employment Contracts
Settlement Agreements Redundancies, restructures & TUPE Dismissals
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Agreements Data Protection & GDPR Intellectual Property Franchise
Agreements Software Licensing and Development Agreements
Commercial Real Estate Acquisitions & Disposals Plot Sales New Leases &
Lease Renewals Landlord and Tenant Matters Portfolio Management
Property Investment Secured Finance Insolvency & Corporate
Restructuring Insolvency Investigations Administration & Receiverships
Individual Insolvency Directors Disqualification Bankruptcy Debt Recovery
Corporate & Commercial Disputes Contract Disputes Partnership Disputes
Property & Land Disputes Employment Law Settlement Agreements



Contact us to discuss how we can help your business

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