

## COVID-19 UK Bulletin – April 29, 2020

Client Alert | April 29, 2020

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This bulletin provides a summary and compendium of English law legal developments during the current COVID-19 pandemic in the following key areas:

- [1. Competition and Consumers](#)
- [2. Corporate Governance \(including accounts, disclosure and reporting obligations\)](#)
- [3. Cybersecurity and Data Protection](#)
- [4. Disputes](#)
- [5. Employment](#)
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Links to various English law alerts prepared by Gibson Dunn during this period are also included in the relevant sections.

As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, any member of the UK COVID-19 Taskforce (listed at the end of this bulletin), or one of the taskforce co-leads:

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### 1. COMPETITION AND CONSUMERS

#### Merger control

##### ***UK Competition and Markets Authority (CMA) guidelines on merger assessment during COVID-19 pandemic***

On 22nd April 2020, the CMA issued guidance on its expected approach to merger control during the COVID-19 pandemic. We have summarised some of the key points below.

***The CMA's overall approach remains unchanged:*** The guidance suggests that the CMA's overall approach remains unchanged i.e. the timescales under which the CMA is required to operate and its approach to assessment have not been altered. However, adjustments are being made to the usual process to accommodate remote working measures.

***Timing of notifications:*** The CMA has acknowledged that the pre-notification process may take longer than usual, due to difficulties in obtaining information from both

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transacting parties and third parties. Further, it has highlighted that it may not be able to formally start the “clock” for a transaction’s review if third parties have been unable to “meaningfully engage” with the CMA’s investigation. The CMA is encouraging parties to discuss in advance the timing of a notification. However, it has not adopted a blanket approach encouraging delays to filings. Instead, it is encouraging added consideration as to whether some filings could be postponed, e.g. where a merger is “not particularly well-advanced and may not ultimately proceed”.

**Substantive assessment.** The CMA has stated that there will not be a relaxation of the normal standards during the COVID-19 pandemic. However, since the CMA’s merger assessment is forward-looking, the impacts of the COVID-19 pandemic will be factored into the CMA’s substantive assessment, where appropriate. Any conclusions will, however, need to be evidence led. Further, a merger control investigation typically takes into account long-lasting structural impacts of a merger on the relevant market(s). Short term, transient changes in market dynamics (e.g. industry wide economic shocks, even if “significant”) may not, in themselves, be sufficient to override competition concerns identified on this basis. This suggests that the CMA will need to make some calls about the likely extent and duration of certain impacts caused by the COVID-19 pandemic. The CMA has acknowledged that considerable uncertainty exists in some markets, which may raise challenges in this respect.

**Failing firm defence:** the CMA has issued a “refresher” document summarising how it is likely to approach “failing firm” defence claims (i.e. situations where firms are failing financially and claim that they would exit the market absent the merger in question). This is in anticipation of an increase in the frequency of such claims in the coming weeks/months. The CMA’s guidance flags that it does not intend to relax existing standards in the current climate, noting that the failing firm test has been applied “stringently” to date and that “relatively few cases” have met the relevant criteria so far. It also notes that a higher evidential bar exists during a Phase 1 review compared to Phase 2 review. Given the implications of a “failing firm” scenario (i.e. the clearance of a transaction that could otherwise raise significant competition concerns), it also highlights that such claims are only likely to be accepted where supported by a “*material body of probative evidence, which the merging parties can expect the CMA to test thoroughly*”. The guidance clearly states in this respect that unsupported assertions concerning the financial health of a business or the absence of alternative purchasers are highly unlikely to be sufficient. The CMA has recommended early engagement with the case team where parties anticipate making such claims, in particular to discuss what information is required to inform the CMA’s assessment. The publishing of the guidance follows the CMA’s previous announcement, discussed in our [COVID-19 UK Bulletin – 22 April 2020](#), that it had provisionally cleared Amazon’s minority investment in Deliveroo. This announcement represented somewhat of a U-turn in the CMA’s treatment of the case, based on a successful failing firm claim.

## Antitrust

### **Government Order – Exemption of certain health care agreements**

The Government has granted a formal “exclusion order” (which exempts certain types of agreements in specific sectors from competition law), this time applying to certain agreements whose purpose is to assist the NHS in addressing the effects or likely effects of COVID-19 on the provision of health services to patients in Wales. The order applies to agreements between one or more NHS bodies and one or more independent providers or an association of independent providers or between two or more independent providers. Only certain activities are permitted, and conditions apply.

At the time of writing, four exclusion orders have been enacted. Other orders concern the groceries sector (grocery chain retailers, suppliers and logistics service providers), existing ferry transport operators in the Isle of Wight and agreements to assist the NHS in addressing the effects or likely effects of COVID-19 on the provision of health services to

patients in England. Again, only certain activities are excluded under these orders and conditions apply.

*As mentioned previously, whilst some co-operation may be tolerated in the current environment, this is not without limits. Careful assessment is required as to whether a particular co-operation will be tolerated and safeguards must be put in place to ensure that the co-operation goes no further than strictly necessary to deal with critical issues. Companies facing issues with supply or distribution or considering co-operating with competitors should consult with counsel.*

## **European Commission announces measures to assist agri-food sector**

The European Commission has announced a number of measures to assist the agri-food sector, which it aims to adopt by the end of April. Prior to adoption, Member States will need to be consulted and vote on the measures. They are, therefore, subject to change.

The package is said to include: (i) measures for private storage aid in the dairy and meat sectors; (ii) flexibility in the implementation of certain market support programmes and the EU's school scheme; and (iii) derogations from certain EU competition rules applicable to the milk, flowers and potatoes sectors. The latter will allow for certain self-organisation measures to be adopted to stabilise the market, and will be subject to conditions. The full detail of the proposals will be unveiled at the time of their final adoption.

For further details see [here](#).

## **Consumer protection**

### **CMA COVID 19 Taskforce – Update on complaints received and CMA response**

An update was published by the CMA on 24 April 2020 regarding the CMA's COVID-19 taskforce's activities, briefly describing the nature and extent of complaints received and the CMA's response to date.

As of 19 April 2020, the CMA had received just under 21,000 COVID-19 related complaints. The vast majority of complaints currently are said to relate to cancellations and refunds, relating to "large businesses". Complaints related to cancellations and refunds are now said to account for 4 out of 5 of the complaints being received. The CMA has also written to 187 firms (which accounted for 2,500 complaints) about large price rises for personal hygiene products, such as hand sanitiser, and food products.

The CMA identified in the update its primary concerns currently in the areas of: (i) unfair practices in relation to cancellations and refunds (particularly when consumers are being obliged to cancel holiday, travel and other plans); and (ii) unjustifiable price increases (particularly for essential goods). On the former, the CMA is said to be particularly concerned about firms refusing refunds; introducing unnecessary complexity into the process for obtaining refunds; charging high administration or cancellation fees; and pressuring consumers into accepting vouchers instead of cash refunds.

The taskforce is said to be continuing to collect evidence, including allegations of unjustifiable price rises further up the supply chain. The CMA is due to announce shortly how it intends to tackle issues around cancellations and refunds.

**What does this mean for you?** Companies should be mindful of the need to continue to comply with competition and consumer laws throughout the crisis. If you receive an enquiry letter / information request from the CMA, or believe that a supplier is acting unfairly, our lawyers would be happy to assist you in responding and interacting with the authority on the issues identified. They would also be able to assist with advice on what can and cannot be done in the current circumstances.

## 2. CORPORATE GOVERNANCE (INCLUDING ACCOUNTS, DISCLOSURE AND REPORTING OBLIGATIONS)

### Impact of COVID-19 on UK AGMs

Lexis Nexis has issued [research](#) looking at the impact of COVID-19 on AGMs in the UK. Data captured from 95 AGM notices issued by FTSE 350 and AIM 50 companies between 27 March 2020 and 15 April 2020 shows the following:

- Changing the date of AGMs: The vast majority of the companies in the data set (92%) did not change the date of their AGM (although some of these may not have previously decided a specific date by the time the crisis accelerated).
- Form of AGM: The majority of the companies in the data set (75%) opted to hold physical meetings, but restricted physical attendance to specific individuals only (usually senior officers or employees of the company to ensure the meeting was quorate). In terms of hybrid or virtual-only meetings, just 2% of the companies in the data set opted to hold meetings in this format. Virtual meetings raise potential legal issues.
- Amending articles of association: A majority of companies in the data set (80%) have not announced amendments to their articles of association, with a few companies yet to announce their arrangements (9%) and a limited number of companies proposing amendments. So far, only FTSE 350 companies have proposed amendments to their articles, with the majority of those being FTSE 100 companies.
- Adaptions to the procedure of meetings: All companies in the data set made changes to the way their AGM should be conducted (e.g. encouraging voting by proxy and adapting the way that shareholder questions are handled at the meeting).

### Home Office guidance relating to modern slavery risks and reporting

The Home Office has issued [guidance](#) for businesses on how to address and report on modern slavery risks during the COVID-19 pandemic. It reminds businesses that during the pandemic it is essential that they continue to identify and address the risk of modern slavery in their operations and supply chains. The guidance also alerts businesses of the need to consider how fluctuations in demand and changes in their operating model may lead to new or increased risks of labour exploitation.

The guidance goes on to state that businesses may delay the publication of their modern slavery statement by up to 6 months if they are unable to publish their statement within the usual timeframe due to challenges presented by the pandemic. The reason for any such delay should be clearly identified in the modern slavery statement when issued.

The guidance also notes that work to address new or increased risks may take precedence over previously planned activities and may mean that businesses are not able to meet the goals set in earlier modern slavery statements, and that businesses should use their next statement to demonstrate how they monitored their risks during this period and adapted their activities and priorities in response.

The guidance notes that some workers may be more vulnerable to modern slavery during the pandemic and that issues to consider include the health and safety of workers (i.e. implementing Government policies throughout the supply chain, which may include adopting social distancing measures and paying statutory sick pay in order to prevent the spread of coronavirus), supporting suppliers (including paying for orders already in production where possible), grievance procedures (workers should still be able to access grievance procedures and new or adapted procedures should be made available where necessary), recruitment (ensuring that rigorous checks are maintained to ensure that

vulnerable workers are not exploited) and emerging risks (businesses may need to undertake new risk assessments or reconsider the prioritisation of previously identified risks).

## **Guidance issued by the International Corporate Governance Network (ICGN)**

The ICGN has issued a Statement of Shared Governance Responsibilities during the COVID-19 pandemic, which broadly speaking emphasises the need for members to:

- prioritise employee safety and welfare while meeting short-term liquidity requirements to preserve financial health and solvency;
- pursue a long-term view on social responsibility, fairness and sustainable value creation and publicly define a social purpose as we all adjust to a new reality;
- take a holistic and equitable approach to capital allocation decisions, considering the workforce, stakeholders and providers of capital; and
- communicate comprehensively with all stakeholders to instil confidence and trust in a company's approach to build resilience into strategy and operations.

Further information can be found [here](#).

## **FCA updates its Primary Markets Bulletin**

The FCA has updated the Shareholder meetings and Corporate transactions and admission sections of its [Primary Markets Bulletin No.27](#) to take account of its [Statement of Policy](#) of 8 April 2020 and accompanying Technical Supplements, in which the FCA announced a series of measures to assist London listed companies with raising new share capital during the COVID-19 crisis, whilst retaining an appropriate degree of investor protection. Please see our [COVID-19 UK Bulletin – 16 April 2020](#) for a summary of the FCA Statement of Policy.

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## **3. CYBERSECURITY AND DATA PROTECTION**

### **Data protection**

#### ***European Data Protection Board (EDPB) publishes guidelines on health data processing, location data and contact tracing in relation to COVID-19***

On 22 April 2020, EDPB published two sets of guidelines. The [first](#) relates to the processing of health data for the purposes of COVID-19-related scientific research, the legal basis for such processing, adherence to data protection principles, data subject rights and international transfer of health data. The [second](#) covers requirements for the proportionate use of location data and contact tracing tools for the purposes of modelling the spread of COVID-19 and contact tracing. It emphasises a preference for anonymised data, but goes on to provide general legal analysis of the use of personal data in this context, as well as an analysis guide for app developers.

Organisations using health data, location data and/or contact tracing tools should have regard to these guidelines.

#### ***Information Commissioner's Office's (ICO) guidance on location data and contact tracing***

Organisations using location data and/or contact tracing tools should also have regard to the ICO's [blog](#) on compliance with data protection requirements under the GDPR. The ICO offers tools for organisations in the planning and development phase for projects adopting new technology and offers to perform audits of the measures and processes implemented once the project is operational.

## ***Google and Apple's contact-tracing initiative***

Google and Apple have launched a joint initiative to use Bluetooth technology to help reduce the spread of COVID-19. The initiative is designed to help authorities create contact-tracing apps which exchange data between devices via Bluetooth and which individuals will be able to download via their app stores. Phase 1, in May 2020, involves Apple and Google releasing application programming interfaces to enable Android-iOS interoperability.

The ICO published an [Opinion](#) stating that Phase 1 aligns with data protection requirements, provided app developers take their own measures to comply therewith. It will continue to be involved in subsequent Phases.

## ***Council of Europe's analysis of ECHR rights***

The Council of Europe published a [toolkit](#) for ECHR member states, which recognised that government measures may infringe on ECHR rights and freedoms. In particular, while it recognised the importance of personal data in containing the COVID-19 epidemic and accompanying exceptions to rights under data protection legislation, it emphasised that measures should be proportional and time-limited.

## **Cybersecurity**

### ***Video conferencing***

The National Cyber Security Centre (NCSC) has published [Video conferencing services: security guidance for organisations](#), in light of the increase in home working. The guidance encourages organisations to review their existing services before considering new services, and performing security risk assessments in either case. It includes guidance on configuring the service including access to remote meetings and conferences and helping staff access services securely. Links to existing guidance on various security considerations, beginning with Software as a Service security guidance for performing risk assessments, are included. The NCSC had already published [guidance](#) on preparing an organisation for home working.

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## **4. DISPUTES**

### **Operation of the courts and remote hearings**

On 16 April 2020, the Senior Master of the Queen's Bench Division issued the Court's [fifth coronavirus bulletin](#) for court users, reviewing the impact of the pandemic on service of documents from foreign courts, requests for taking of evidence from foreign courts and registration of foreign judgments. It reports that service of judicial and extra-judicial documents that relate to proceedings outside of the UK is currently suspended, and that the processing of requests for service on parties out of the jurisdiction is likewise currently suspended, although parties are reminded that they can attempt service without the intervention of the Foreign Process Section provided that the manner of service complies with the Service Regulation, the Hague Service Convention or any other applicable bilateral treaty (in accordance with CPR 6.40).

Practice Direction 51Z: Stay of Possession Proceedings (first issued on 27 March 2020) was [amended](#) with effect from 18 April, in order to clarify that certain claims and applications are excluded from the 90-day stay.

Earlier in April, the Lord Chancellor approved a temporary [Insolvency Practice Direction](#) (IPD), with the stated purpose of providing workable solutions for court users during the current COVID-19 pandemic and avoiding, as far as possible, the need for parties to attend court in person. It supplements the July 2018 Practice Direction on Insolvency

Proceedings and applies to all insolvency proceedings in the Business and Property Courts (BPC) (subject to variations outside London). Among other provisions, the temporary IPD directs that all applications, petitions and claim forms (with the exception of petitions for winding-up and bankruptcy before an ICC Judges sitting in the Rolls Building) currently listed for hearing before 21 April 2020 are adjourned, and are to be re-listed according to the order of priority set out therein. Where parties consider that the matter in question is urgent, they may apply to have it re-listed following the listing procedure set out in the temporary IPD. All insolvency hearings are to be conducted remotely unless ordered otherwise. The Chief London ICC Judge has issued a Guidance Note that sets out a list of hearings which will be deemed urgent in the BPC, being:

- applications made pursuant to section 17 of the Company Directors' Disqualification Act 1986;
- applications made pursuant to section 216 (restriction on re-use of company names) of the Insolvency Act 1986;
- public interest winding-up petitions;
- applications to convene a meeting for members' scheme of arrangement;
- capital reduction claims; and
- cross-border merger claims.

In a judgment dated 20 April 2020 ([Municipio De Mariana & Ors v BHP Group Plc \[2020\] EWHC 928 \(TCC\)](#)), the Technology and Construction Court gave guidance on decisions regarding adjournment and remote hearings, identifying inter alia the following principles: that regard must be had to the importance of the continued administration of justice, as justice delayed is justice denied; that there should be rigorous examination of the possibility of a remote hearing before the court accepts that a just determination cannot be achieved in such a hearing; and that this question will inevitably be case-specific, with the need for live evidence and cross-examination being an important factor. Judge Eyre QC identified further principles relevant to the granting of time extensions, and granted the defendants an extension due to the impact of COVID-19 as he was satisfied that the defendants had shown it would take significantly longer to prepare their evidence via remote working. This justified a five to-six-week extension, despite the fact that this would mean vacating the scheduled hearing date.

On 23 March 2020 the Lord Chief Justice announced that all new jury trials would be postponed and they are yet to re-commence. On 24 April 2020, [the Courts announced](#) that a judicial working group has been established to consider ways to re-start some jury trials once it is safe to do so.

On 24 April 2020, the Judiciary of England and Wales issued [guidance on the remote conduct of costs hearings](#) for the period of the pandemic, specifically addressing detailed assessment hearings, oral review hearings of provisional assessments listed pursuant to a CPR 47.15(7) request, and application hearings in which the court is invited to certify an amount payable from a child or protected party's damages pursuant to CPR 46.4(4).

## Commercial disputes

The British Institute of International and Comparative Law (BIICL) has published a "[Concept Note](#)", arising out of a meeting between senior judges and academics, on the effect of the pandemic on commercial contracts. The note warns of the risk of a deluge of litigation and arbitration as parties trigger default clauses and counterparties maintain that they are excused from performance, placing a strain on the system of international dispute resolution and increasing the prospect of uncertainty of outcome. It reflects on the challenge posed to the strict approach traditionally taken by the common law (widely used in international commerce) using doctrines such as force majeure, material adverse change, supervening illegality and frustration—given that there is no easy analogy for the

present crisis in past case law—and on the fact that cases leaving one party a winner and the other a loser may not take full account of the market and social contextualisation of the crisis. In conclusion, the note calls for “breathing space” in the resolution of commercial contract disputes, citing procedural rules encouraging conciliation as well as various common law and civil law doctrines that may assist in producing fair outcomes between the parties while promoting the continuance of viable contracts.

## Recently-issued guidance on arbitration hearings

The International Institute for Conflict Prevention and Resolution (CPR), a global non-profit organisation which aims to prevent and resolve legal conflict more effectively and efficiently (including through the convention of best practice and industry-oriented committees, training on dispute prevention, and resolution and publication of a monthly journal), has issued a new [Annotated Modal Procedural Order for Remote Video Arbitration Proceedings](#), covering selection of videoconferencing platform, preparatory activities, requirements during the proceedings, documents and witness examinations, and enforceability.

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## 5. EMPLOYMENT

No update to our [COVID-19 UK Bulletin – 22 April 2020](#).

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## 6. ENERGY

### Oil price crash

Following a historic week for oil prices, where the West Texas Intermediate (WTI) futures contracts for May 2020 fell to almost negative US\$40 a barrel, the Brent oil price continues to fluctuate between US\$18 and US\$21. As supply continues to outstrip demand, there are concerns that the OPEC+ deal (previously reported [here](#) and discussed along with the price crash more generally in [our webinar of 27 April 2020](#)) may not be sufficient to rebalance demand and supply in the short term. Although the OPEC+ deal kicks in from 1 May 2020, some countries such as Kuwait, Algeria, Nigeria and Saudi Arabia have already commenced production cuts. As global crude storage facilities near capacity, oil companies are looking for new storage facilities, including using fleets of parked trucks.

### New Government measures

As reported in previous bulletins, UK Government bodies, including the Oil and Gas Authority (OGA) and Health and Safety Executive (HSE), have for the most part attempted to demonstrate flexibility in the face of the current crisis. The Government has now introduced new regulations (The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Coronavirus) (Amendment) Regulations 2020), which came into force on 23 April 2020, to change requirements to make copies of certain documents available for collection in person. The measures disapply the requirement where there are restrictions on movement making this impractical, and provide an alternative of making documents available by post.

### Impact of COVID-19 on workers and sites

A survey of oil industry executives by the consultancy Simon-Kucher reported that the focus of many companies is to cut capital expenditure by, on average, 35% due to the current crisis. It is therefore unsurprising that companies continue to scale back plans and production on-site, continuing a trend which was already visible before the current crises. In particular, recent news includes:

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Maersk Drilling warns that it plans to cut 300 jobs, as business slows and demand collapses.

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Shell has exited from a joint venture with Gazprom Neft to develop fields in Yamalo-Nenets, onshore Russian Federation.

However, not all projects are at a standstill, and some companies are expanding operations or, at least, continuing business as usual. There remains some activity in Australia and Africa in particular, and we expect to see activity pick up as some COVID-19 measures are loosened and companies that have capital to deploy in the current challenging market identify opportunities.

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## 7. FINANCE

No update to our [COVID-19 UK Bulletin – 22 April 2020](#).

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## 8. FINANCIAL SERVICES REGULATORY

### Financial services regulatory client alert

[COVID-19: Further Developments on the UK Financial Conduct Authority's Expectations of Solo-Regulated Firms](#).

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## 9. FORCE MAJEURE

No update to our [COVID-19 UK Bulletin – 22 April 2020](#).

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## 10. GOVERNMENT SUPPORT SCHEMES

### Bounce Back Loans Scheme

On 27 April 2020, the Government announced the launch of the Bounce Back Loans Scheme (the BBLs) for small and medium sized businesses (SMEs) from 4 May 2020. An SME will be able to borrow between £2,000 and £50,000 under the BBLs. The loans will be interest free for the first 12 months and the Government will guarantee the entirety of the loan. The Government will also be responsible for any lender-levied fees and no repayments of principal (or interest) will be due on the loans within the first 12 months. The loans will have maturity periods of up to six years and the Government has announced that it will work with lenders to keep interest rates as low as possible. The BBLs will be available to SMEs that are UK businesses that: (i) were not undertakings in financial difficulty as at 31 December 2019; and (ii) have been negatively impacted by the COVID-19 pandemic. Together with the 100% Government guarantee, this loosening of financial viability criteria is intended to allow more SMEs to access the BBLs, particularly those that were not eligible for loans under the Coronavirus Business Interruption Loans Scheme. Finally, any businesses that obtained loans under the Coronavirus Business Interruption Loans Scheme can apply to transfer their loans to the BBLs (thereby benefitting from the Government 100% guarantee) at any time until 4 November 2020 through their lenders.

### New Government measures to further protect Tenants

The Government has announced that it will implement additional measures (over and above those previously announced imposing a moratorium on landlord evictions) to be included in the Corporate Insolvency and Governance Bill 2020. For more information, see

the update in [Real Estate](#) below.

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## 11. INSOLVENCY

No update to our [COVID-19 UK Bulletin – 22 April 2020](#).

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## 12. INTERNATIONAL TRADE AGREEMENTS (PRIVATE AND PUBLIC)

No update to our [COVID-19 UK Bulletin – 22 April 2020](#).

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## 13. LOCKDOWN AND PUBLIC LAW ISSUES

### Virtual Parliament

Both Houses of Parliament returned from Easter recess on 21 April 2020 and both the House of Commons and the House of Lords passed measures to allow for virtual participation of its members in proceedings. Currently limited to statements and questions, the House of Commons [approved](#) a motion extending hybrid virtual proceedings to legislation, which would allow MPs to debate key legislative business such as the Finance Bill, and approved a further motion to introduce remote voting.

### Restrictions Regulations Amendments

The Government introduced amendments to the existing lockdown regulations through [The Health Protection \(Coronavirus. Restrictions\) \(England\) \(Amendment\) Regulations 2020](#). Coming into force on 22 April 2020, the regulations provide minor corrections and clarifications that, according to the Explanatory Memorandum “respond to concerns as to effective implementation raised by key stakeholders, such as Government departments, trade bodies, county councils, and the National Police Chief’s Counsel, following introduction of the measures.” For example, permitted reasons to be outside one’s home now include to access all types of money services businesses and to visit a cemetery to pay respects.

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## 14. M&A AND PRIVATE EQUITY

No update to our [COVID-19 UK Bulletin – 22 April 2020](#).

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## 15. REAL ESTATE

### New Government measures to further protect Tenants

In a major new blow to landlords/property owners, on 23 April 2020, the Government [announced](#) that it would implement additional measures (over and above those previously announced imposing a moratorium on landlord evictions) to be included in the Corporate Insolvency and Governance Bill 2020. The measures will protect tenants from winding-up proceedings and the making of winding-up orders if the debtor company is struggling to pay because of COVID-19, and will limit the issuance of statutory demands. They will also have the effect of temporarily voiding winding-up orders which are already in place and will last until 30 June 2020, subject to extension. There are also measures planned to limit use of commercial rent arrears recovery (CRAR). Details have not yet been released and the plans remain under discussion.

The new proposals have been badly received by landlords/property owners who have effectively had their “toolkit” of remedies for non-payment of rent removed until at least end June. Already reeling from historic low rent receipts for the March quarter, their problems will be further exacerbated on the June quarter and will make for difficult

discussions with their lenders whose debt service is now severely compromised.

In a nod to landlords' calls for assistance, the Government has encouraged tenants to pay if they are able to, and to enter into constructive conversation with their landlords. This has no legal teeth and provides little comfort to the industry.

## **Commercial outlook**

Cass Business School has produced a report on Real Estate lending, predicting £8 to 10 billion in debt losses in the retail sector and £22 billion of development loans affected by problems regarding construction. They forecast that property prices and the overall transaction volume will decrease. The report also notes that lenders might, unlike in the Global Financial Crash, try to recover their losses by instituting higher capital costs, and that debt funds will suffer the effects too. However, the report does show that that loans originated in 2019 were 12% lower than in the previous year, which Cass has suggested follows from uncertainty regarding Brexit.

Travelodge (owned by Goldman Sachs, Avenue Capital and GoldenTree), which owns 150 UK hotels, was widely reported to have offered landlords a very low rent payment proposal for the March quarter, which was roundly rejected by landlords (the request involving reductions of up to 80% at its most exposed locations). Secure Income REIT, a major Travelodge landlord, announced that it would be seeking legal redress. It remains to be seen whether the new Government proposals (referenced above) will allow them any viable legal options in the short term.

Landlords have also commented that they have seen an increase in "section 27" notices which indicate tenants' intention to terminate protected leases at expiry (rather than benefit from an automatic renewal on similar terms). Retailer Next has previously used this tactic and obtained significant rent reductions on its premises, leading to it opening up twice as much new space as it had expected on more beneficial terms.

## **Construction/Development**

Persimmon has followed Taylor Wimpey and Vistry Group to announce that it will begin a phased re-opening of construction sites.

## **Building Regulations**

The Government published [guidance](#) on Building Regulations on 21 April 2020, stating that they would not relax the Regulations but suggesting that building control bodies consider the exceptional circumstances. The guidance suggests that remote methods, although not to be used alone to check compliance normally, could be considered at this time.

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## **16. UK TAX**

### **Certificates of residence service**

HMRC have provided an update on how requests for certificates of residence are being processed. In short, requests continue to be processed even where they are posted to HMRC. For details, see [here](#).

### **Customs authorisations**

HMRC have provided guidance on temporary changes to customs authorisations. For details, see [here](#).

### **Employer compliance activity**

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HMRC has updated its internal Compliance and Operations Guidance manual to note the suspension of employer compliance activity until 30 April 2020. The guidance relates to the use of determinations under regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682) in collecting tax due from employers under PAYE. For details, see [here](#).

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## COVID-19 UK TASKFORCE LEADERS

Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact your usual contact or any member of the Firm's (COVID-19) UK Taskforce:

### Areas

Competition and Consumers  
Corporate Governance

Cybersecurity and Data Protection  
Disputes

Employment  
Energy  
Finance

Financial Regulatory

Force Majeure  
Government Support Schemes

Insolvency

International Trade Agreements  
Lockdown and Public Law issues  
M&A

Private Equity  
Real Estate  
UK Tax

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