

## UK GOVERNMENT MEASURES TO HELP AND SUPPORT BUSINESS DURING COVID-19 - AN UPDATE

*This Client Alert is an update of part of a document first published on 25 March 2020.*

The UK has introduced a series of measures to help support people, jobs and businesses in the face of COVID-19.

This Client Alert provides an overview of some of steps taken by the UK Government (the Government) and outlines how those steps are expected to work in practice.

For information on **Judicial and Regulatory Measures** and **Tax Measures** please see our separate client alerts on each of these topics.

The Government has launched a tool to help businesses and the self-employed to identify what financial support is available to them: [Government Business Coronavirus Support Finder](#)

The Government publishes a status table relating to the provisions of the Coronavirus Act 2020 (the Coronavirus Act). Part One of the Coronavirus Act facilitates legislative and regulatory changes to support the UK's response to the pandemic. Part Two makes provision for 'switching off' provisions when they are not needed, and for suspending and subsequently reviving provisions. The table indicates which powers have been activated and which are currently in force: [Coronavirus Act 2020 Status](#).

The Department of Health and Social Care has published its first [two monthly report on which powers under the Coronavirus Act have been used to date](#).

The Government has published details of how much funding has been made available to date under the various initiatives described below: [Statistics on coronavirus funding for business](#)

### **A Plan for Jobs**

Delivering his Summer Economic Update in Parliament, on 8 July 2020, the Chancellor of the Exchequer announced a package of measures to support jobs. These measure include:

- a Job Retention Bonus to incentivise employers to retain staff after the Coronavirus Job Retention Scheme finishes; [see below](#);
- a Kickstart Scheme to create fully subsidised jobs for young people; [see below](#);
- a £1.6 billion package to scale up employment support schemes, training and apprenticeships; [see below](#);

- bringing forward work on £8.8 billion of new infrastructure, decarbonisation and maintenance projects, including a £3 billion 'green investment package'; [see below](#);
- measures to protect the hospitality and tourism sectors; [see below](#); and
- temporary reductions in stamp duty reserve tax to stimulate the property market and Value Added Tax to help suppliers of food, non-alcoholic drinks, accommodation and attractions; see our [Tax update](#) for further information.

### **Kickstart Scheme**

The Government will fund six-month job placements for young people aged 16-24, claiming Universal Credit and at risk of long-term unemployment. Funding available for each six-month job placement will cover 100% of the National Minimum Wage for 25 hours a week plus the associated employer National Insurance contributions and employer minimum automatic enrolment contributions; this can be augmented by employers at their discretion.

### **Employment support schemes, training and apprenticeships**

The Government proposes to spend £1.6 billion on various measures to support jobseekers. Those measures include:

- Bonuses to employers of £2,000 for each new apprentice hired under the age of 25 and a £1,500 payment for each new apprentice hired aged 25 and over, from 1 August 2020 to 31 January 2021;
- A £111 million investment to triple the scale of traineeships in 2020-21;
- £17 million of funding to triple the number of sector-based work academy placements in 2020-21;
- Nearly £900 million to double the number of work coaches to 27,000; and
- An additional £32 million investment in the National Careers Service.

### **Green Investment Package**

On 8 July 2020 the Chancellor announced a £3 billion 'green investment package'. £2 billion of this will go to fund a Green Homes Grant Scheme, under which homeowners and landlords in England will be able to apply for vouchers to help pay for 'green' improvements such as insulation; the Government will provide £2 for every £1 homeowners and landlords spend, up to £5,000 per household. For those on the lowest incomes, the scheme will fully fund energy efficiency measures of up to £10,000 per household. The remaining £1 billion will be spent on improving public buildings, including schools and hospitals.

### **Support for the Tourism and Hospitality Sectors**

On 8 July, the Chancellor of the Exchequer announced measures to support the hospitality sector, which accounts for 2.4 million jobs in over 150,000 businesses. Value added tax (VAT) will be reduced from 20% to 5% on goods and services supplied by businesses in those sectors, at a cost to the Exchequer of up to £2.4 billion. In addition he launched the 'Eat Out to Help Out' scheme, under which participating restaurants and food outlets can provide a 50%

discount on food and non-alcoholic drinks on Mondays to Wednesdays throughout August, and will be reimbursed by the Government up to a maximum of £10 per head. Further details and guidance on how to register for the scheme can be found [here](#).

### **Support for Culture, the Arts and Heritage Institutions**

On 5 July 2020 the Government announced a package of funding for national cultural institutions in England and investment in cultural and heritage sites to restart construction work paused as a result of the pandemic. The package included:

- £1.15 billion for cultural organisations in England, through £270 million of grants and £880 million of loans;
- £100 million of targeted support for the national cultural institutions in England and the English Heritage Trust;
- £120 million capital investment to restart construction on cultural infrastructure and for heritage construction projects in England which was paused due to the coronavirus pandemic; and
- an extra £188 million for the devolved administrations in Northern Ireland (£33 million), Scotland (£97 million) and Wales (£59 million).

Decisions on awards will be made working alongside expert independent figures from the sector including the Arts Council England and other specialist bodies such as Historic England, National Lottery Heritage Fund and the British Film Institute.

On 12 July 2020 the Government announced changes to the planning system which will require Councils to take the temporary impact of coronavirus into account when considering permission for change of use, redevelopment or demolition of a theatre, concert hall or live music performance venue in order to protect the sector. These arrangements will remain in place until 31 December 2022.

### **Support for Universities**

On 16 July 2020 the Government announced that Universities in England facing severe financial difficulties as a result of the coronavirus will now be able to apply for further support under a new restructuring regime; the regime will only provide support in the form of repayable loans after all other finance options have been exhausted and when there is a case to do so. It will be made available subject to specific conditions that align with wider Government objectives, including, somewhat controversially, a requirement of assurance that providers are fully complying with their legal duties to secure freedom of speech.

An independently-chaired Higher Education Restructuring Regime Board will be established, including members with specialist knowledge external to Government. The Education Secretary will draw on the expertise of the Board on individual cases before making a decision on whether to intervene.

Further details on the regime can be found [here](#):

## Recovery Roundtables

The Government has announced the formation of new 'recovery roundtables', chaired by the Business Secretary, bringing together businesses, business representative groups and leading academics to consider measures to support economic recovery. Each group will focus on one of the following key themes:

- The future of industry: How to accelerate business innovation and leverage private sector investment in research and development;
- Green recovery: How to capture economic growth opportunities from the shift to net zero carbon emissions;
- Backing new businesses: How to make the UK the best place in the world to start and scale a business;
- Increasing opportunity: How to level up economic performance across the UK, including through skills and apprenticeships; and
- The UK open for business: How to win and retain more high-value investment for the UK.

Membership of the working groups, which aim to be representative of UK industry, has not yet been announced but will consist of approximately 20-25 participants. There will also be an opportunity for other parties and individuals interested in this initiative to share written submissions with the Business Department.

The first roundtables were held in the period between 10 and 13 June; details of the issues discussed and how to contribute to the discussion can be found [here](#).

## Lockdown powers for Local Authorities

On 17 July 2020 the Government introduced the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (the Regulations) that came into force on 18 July 2020, granting local authorities powers to respond to new outbreaks of coronavirus in the local authority's area. The Regulations include powers for local authorities to:

- restrict access to, or close, individual premises;
- prohibit certain events (or types of event) from taking place; and
- restrict access to, or close, public outdoor places (or types of outdoor public places).

To make a direction under the Regulations a local authority needs to be satisfied that the following conditions are met:

- the direction responds to a serious and imminent threat to public health in the local authority's area;
- the direction is necessary to prevent, protect against, control or provide a public health response to the incidence or spread of coronavirus in the local authority's area; and

- the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.

The Regulations effectively delegate the powers granted to the Government in the Coronavirus Act to order a lockdown to local authorities, enabling a more localised approach to imposing and relaxing restrictions, but they also contain provisions allowing the Secretary of State for Health and Social Care to direct a local authority to issue a direction where he considers the conditions above have been met, and to direct a local authority to revoke an existing direction (with or without a replacement direction) where he considers the above conditions are no longer met.

### **Coronavirus Business Interruption Loan Scheme (CBILS)**

Lenders<sup>1</sup> accredited with the British Business Bank may provide:

- an overdraft (up to 3 years),
- a term facility (up to 6 years),
- an invoice finance facility (up to 3 years), and
- an asset finance facility (up to 6 years),

... for up to £5 million.

The Government will pay the interest and any lender fees for the first 12 months.

To be eligible under CBILS a business must:

- carry out business activity in the UK, with turnover of no more than £45 million<sup>2</sup> a year; of which more than 50% must arise from trading activity;
- be seeking support for trading "primarily" in the UK;
- operate within an eligible sector<sup>3</sup>;
- have a borrowing proposal which, were it not for the COVID-19 pandemic, would be considered viable by the lender; and
- self-certify that it has been adversely impacted by COVID-19.

At the discretion of a lender, unsecured lending is possible for facilities of £250,000 and under. Otherwise, a lender may seek a personal guarantee, but that guarantee may not include a principal private residence and will cap recovery under a personal guarantee at 20% of the balance outstanding after the application of the proceeds from the disposal of the assets of the business. From 6 April 2020, there is no need to show that, were it not for the CBILS, the borrower has insufficient security to raise finance.

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<sup>1</sup> For accredited lenders, please see [CBILS Accredited Lenders](#)

<sup>2</sup> More than one company in a group can apply for support under the CBILS, provided that the consolidated group turnover does not exceed £45 million.

<sup>3</sup> This excludes insurers, reinsurers (not insurance brokers), public sector bodies, grant-funded further education establishments and state-funded primary and secondary schools.

The CBILS terms, as summarised above, are applicable from 6 April 2020; a facility offered between 23 March 2020 and 6 April 2020 will benefit retrospectively from the enhanced terms.

While the CIBLS is in place, where a business was previously supported by the Enterprise Finance Guarantee (EFG) any refinancing will be governed by the CIBLS (and new EFGs will not be entered into).

The Government will underwrite this scheme, initially for a 6-month period.

As at 12 July 2020, 54,538 loans worth £11.85 billion had been made under CBILS.

### **CBILS for "Large Businesses" (CLBILS)**

This is an extension of the CBILS, available from 20 April 2020, where a company or group has an annual turnover over £45 million.

Where annual turnover is not more than £250m, funding of up to £25 million is available; where turnover exceeds £250 million, funding of up to £50 million could be obtained; the Government has now increased that amount to £200 million to help ensure those large firms which do not qualify for the Bank of England's Covid Corporate Financing Facility (CCFF) have enough finance to meet cashflow needs during the outbreak. Borrowers will be asked to agree to not pay dividends and to exercise restraint on senior pay.

Businesses with turnovers in excess of £500m were originally not eligible for the scheme but it has now been extended to include them.

As at 12 July 2020, 412 loans worth £2.73 billion had been made under CLBILS.

The Loan Market Association (LMA) has issued a note on CLBILS and intercreditor considerations on 25 June to address potential intercreditor considerations where a loan provided under the CLBILS forms part of a company's financing structure.

The issues raised include notably the need for any Accredited Lender to check whether a borrower is permitted to incur further indebtedness and whether consents from other lenders are required and that the Accredited Lender must rank at least *pari passu* to any other senior obligations. Parties may need to consider the formulation of covenants, including the carve-out of the negative pledge and any permitted guarantee concept.

Additionally, the LMA stressed a number of intercreditor considerations, including checking that further incurring indebtedness is permitted or if any consents are required, whether the borrower is a "Financing Vehicle" as defined in the scheme facility, defining what is included in the relevant security package, undertakings to ensure that the accredited lender continues benefiting from a *pari passu* share of all future security granted, undertakings to ensure that after the scheme facility is entered into there is no ability for the borrower to incur debt that ranks senior to the scheme facility, agreeing on the rights of repayment, prepayment and cancellation of debt, procedures for enforcement of security interests, possibility for creditors to amend or waive the terms of their finance document.

### **COVID-19 Corporate Finance Facility (CCFF)**

The Bank of England (BoE) will (via a dealer) acquire commercial paper (CP) issued directly into Euroclear and/or Clearstream, with a term of up to 1 year, "on terms comparable to those

prevailing in markets in the period before the COVID-19 economic shock”, from any company that can demonstrate it had or would have qualified for an investment grade rating on 1 March 2020.

Eligibility decisions will be made by the BoE’s risk management staff, taking into account a number of different factors.

A UK-incorporated company, including with a foreign-incorporated parent and with a genuine business in the UK, will normally be regarded as potentially being eligible.

A company with significant employment in the UK or with its headquarters in the UK would normally be eligible.

The BoE will also consider whether a company generates significant revenues in the UK, serves a large number of customers in the UK or has a number of operating sites in the UK.

Commercial paper issued by banks, building societies, insurance companies and other financial sector entities regulated by the BoE or the Financial Conduct Authority is not eligible.

In evaluating an offer to purchase CP, the BoE will look:

- where available, at issuers with a minimum short-term credit rating of A-3 / P-3 / F-3 / R3 from at least one of Standard & Poor’s, Moody’s and Fitch, and DBRS Morningstar as at 1 March 2020;
- where a short-term rating is not available, at issuers with a long-term rating of BBB- / Baa3 / BBB- / BBB low or above by at least one of the major credit ratings agencies, or at an assessment by the BoE of the issuer’s financial strength; and
- at whether firms have different ratings from different agencies, and if one of those is below investment grade, the commercial paper will not be eligible.

For an Issuer Eligibility Form, Issuer Undertaking and Confidentiality Letter, Guarantee (for where the Issuer is not the primary entity in the group) and Legal Opinion, Application Forms (and further guidance) see: [BoE Covid Corporate Financing Facility](#)

If a company does not already have an established CP programme it will need to establish a CP programme to participate in the CCFF, standard form ICMA-based documentation is available.

The scheme was originally to remain open to new issuers until 31 December 2020; the BoE has now confirmed that it will close to new drawings in March 2021.

On 26 May 2020 the BoE issued a consolidated market notice which included provision for changes to the scheme announced on 19 May 2020.

Under the revised scheme:

- Any business that wishes a drawing from the CCFF to extend for a term extending beyond 19 May 2021 will need to provide a letter addressed to HM Treasury that commits to showing restraint on the payment of dividends and other capital

distributions and on senior pay during the period in which their commercial paper is outstanding.

- These commitments are intended to create incentives for, and promote the ability of, businesses to repay their borrowings from the CCFF where they mature after the Facility is expected to close.
- A business that has drawn under the CCFF is now able to repay drawings early if it chooses to do so (prior to 1 July 2020, without the payment of an additional fee).
- This gives businesses greater flexibility to exit the Facility in an orderly way where they are able to access alternative sources of funding, for example in capital markets.
- From Thursday, 4 June 2020, the BoE will publish the names of new borrowers and the amounts issued every week, in the interest of transparency.

As at 15 July 2020, the data collected and published by the BoE on CCFF are as follows:

Total amount of CP purchased since 9 July	£684m
Sum of settled CP purchases, less redemptions	£18,498m
Nominal sum of CCFF drawing capacity of businesses approved for CCFF issuance	£81,270m
Businesses approved for CCFF issuance	196
Of which: Businesses with outstanding CP held by the CCFF:	67
Of which: Businesses with no outstanding CP held by the CCFF:	129
Businesses (additional to the fourth row above) that have applied to the CCFF and that have been approved as eligible in principle but have yet to be fully approved for CCFF issuance	82

## Future Fund

Where a UK-based business has raised at least £250,000 equity investment over the last five years from third party investors, a convertible working capital loan with a term of up to 36 months, of between £125,000 and £5 million and carrying a minimum coupon of 8%, will be made available by the Government and the British Business Bank on a matched funding basis.

The working capital loan will convert, at a minimum discount rate of 20% (Discount Rate), when the company next raises equity capital at least equal to the aggregate amount of the bridge funding of which the Government-backed convertible loan forms part (a 'qualifying funding round'). On a sale or IPO, the loan will, depending which route provides the highest return to the bridge funding lenders, either convert into equity at the Discount Rate to the price set by the most recent non-qualifying funding round, or be repaid at a redemption premium equal to 100% of the principal amount of the bridge funding.

The fund opened on 20 May 2020; as at 12 July, 750 applications had been submitted; 429 convertible loans had been made with an aggregate value of £419.6 million, surpassing the original £250 million funding made available by the Government.

On 30 June the Government announced changes to the scheme's eligibility criteria which will mean that UK companies who have participated in highly selective accelerator programmes,



such as TechStars or Y-Combinator, and were required, as part of that programme, to have parent companies outside of the UK will now be able to apply for investment.

### **Bounce-Back Loans (BBLs)**

Small business can apply to an accredited lender, using a simple online form, for a loan of between £2,000 and £50,000. It is understood that a lender will not have to perform a forward-looking test, which has hindered take-up of the CBILS, of a business' viability.

BBLs are 100% guaranteed by HM Treasury which pays any fees and interest for the first 12 months (after which interest will be due at a low standardised level of interest to be agreed between lenders and HM Treasury). No repayments are due during the first 12 months.

In a letter sent on 1 May 2020 to accredited lenders under the CBILS the Chancellor set an interest rate of 2.5% for BBLs and outlined legislative and regulatory changes to support the delivery of the scheme. The BoE will be providing participants in the Term Funding scheme with additional incentives for SMEs to extend the term of some of the funding they access via Term Funding to align with the 6-year term of loans made through the BBL scheme. Banks subject to the UK leverage ratio will be able to exclude BBLs from the leverage ratio exposure measure.

As at 12 July 2020, 1,047,611 loans worth a total of £31.70 billion have been made under the BBL scheme.

### **Trade Credit Insurance (TCI)**

TCI insures suppliers selling goods against the risk of purchaser default, giving businesses the confidence to trade with one another. As of April 2020 over £171 billion of business activity was insured, covering transactions between around 13,000 suppliers and 650,000 buyers. Due to Coronavirus many businesses are struggling to pay bills, and risk having credit insurance withdrawn or premiums increasing to unaffordable levels. To prevent this, the Government decided to temporarily guarantee business-to-business transactions currently supported by TCI, ensuring the majority of insurance coverage will be maintained across the market. On 4 June the Government announced the establishment of the Trade Credit Reinsurance Scheme (TCRS), providing up to £10 billion of government backing. It will operate until the end of this year, and is backdated to 1 April 2020. It will be delivered through a reinsurance agreement open to all insurers currently operating in the UK market, covering both domestic and overseas trade with payment terms of up to 2 years. The TCRS rules will also require participating insurers to comply with certain undertakings regarding the conduct of their business during the period of the scheme: insurers will have to agree to forgo profits and refrain from paying dividends or bonuses for senior staff. Once the scheme ends there is expected to be a review of the whole TCI market to ensure it can continue to function.

### **Coronavirus Job Retention Scheme (CJRS)**

"Any employer" can apply to HM Revenue and Customs (HMRC) for a grant to cover up to 80% of each furloughed employee's wages of up to £2,500 per month (plus associated employer national insurance contributions and pension contributions (up to the minimum automatic enrolment employer pension contribution)).

An employee must either be on PAYE payroll and notified to HMRC on a RTI submission:

- (a) on or before 19 March 2020, or
- (b) as of 28 February 2020 and then (i) made redundant or stopped working between 28 February 2020 and 19 March 2020 and (ii) reemployed by that employer and put on furlough.

Grants will be backdated to 1 March 2020. The Government have confirmed that furloughed workers planning to take paid parental or adoption leave are entitled to pay based on their usual earnings rather than a furloughed pay rate, if their period of family-related pay begins on or after 25 April. This applies to Maternity Pay, Paternity Pay, Parental Bereavement Pay and Adoption Pay.

The CJRS operates under Directions from time to time to HMRC by the Chancellor of the Exchequer using powers conferred by the Coronavirus Act 2020.

From 30 June 2020, the scheme will close to new entrants; from that date an employer will only be able to furlough employees who have been furloughed for a full 3 week period prior to 30 June (i.e. the last date for furloughing an employee is 10 June 2020). Any claim in respect of the period to 30 June 2020 must be made by 31 July 2020.

From 1 July 2020, an employer can bring previously furloughed employees back to work for any amount of time and any shift pattern, while still being able to claim CJRS grant for their normal hours not worked (subject to a minimum claim period of a week).

The Government has clarified that employers can claim a grant for individuals who are not employees, as long as they're paid via PAYE. The eligible groups include:

- office holders (including company directors);
- salaried members of Limited Liability Partnerships (LLPs);
- agency workers (including those employed by umbrella companies);
- contingent workers in the public sector; and
- contractors with public sector engagements in scope of IR35 off-payroll working rules (IR35).

Individuals who are paid through PAYE but not necessarily employees in employment law, can continue to be furloughed from 1 July as long as the employer has previously submitted a claim for them for a furlough period of at least 3 weeks between 1 March and 30 June 2020.

The Coronavirus Job Retention Scheme will close on 31 October 2020.

From 1 August 2020, the level of grant will be reduced each month. To be eligible for the grant employers must pay furloughed employees 80% of their wages, up to a cap of £2,500 per month for the time they are being furloughed.

The timetable for changes to the scheme is set out below. Wage caps are proportional to the hours an employee is furloughed. For example, an employee is entitled to 60% of the £2,500 cap if they are placed on furlough for 60% of their usual hours.

	July	August	September	October
<b>Government contribution:</b> employer NICs and pension contributions	Yes	No	No	No
<b>Government contribution:</b> wages	80% up to £2,500	80% up to £2,500	70% up to £2,187.50	60% up to £1,875
<b>Employer contribution:</b> employer NICs and pension contributions	No	Yes	Yes	Yes
<b>Employer contribution:</b> wages	-	-	10% up to £312.50	20% up to £625
<b>Employee receives</b>	80% up to £2,500 per month	80% up to £2,500 per month	80% up to £2,500 per month	80% up to £2,500 per month

The Government continues to update its guidance for both employers and employees on the Job Retention Scheme: [Government Advice on Coronavirus Job Retention Scheme](#).

As at 12 July 2020, 9.4 million jobs have been furloughed by 1.2 million employers, at a total cost of £28.7 billion.

On 8 July the Chancellor of the Exchequer announced the introduction of a job retention bonus (JRB) of £1000 to UK employers for every furloughed employee who remains continuously employed through to the end of January 2021. Employees must earn above the Lower Earnings Limit (£520 per month) on average between the end of the Coronavirus Job Retention Scheme and the end of January 2021. Payments will be made from February 2021. Further detail about the scheme will be announced by the end of July,

## Self-employment Income Support (SEIS) Scheme

A grant may be claimed by a self-employed person who has submitted an income tax self-assessment tax return for the tax year 2018-19, traded in the tax year 2019-20, is trading when an application is made (or would be trading except for COVID-19), intends to continue to trade in the tax year 2020-21, has lost trading/partnership trading profits due to COVID-19, whose self-employed trading profits are less than £50,000 and who obtains more than half of his or her income from self-employment.

A grant may be up to £2,500 per month, originally for three months, of 80% of the person's average profits over three tax years (where applicable) the first of which began on 6 April 2016 and the last of which ended on 5 April 2019.

The SEIS scheme operates under a Direction issued on 1 May 2020 to HMRC by the Chancellor of the Exchequer using powers conferred by the Coronavirus Act. The Direction sets out the method of calculating SEIS: [SEIS Scheme Direction](#)

The SEIS is to be extended, with applications opening in August 2020, for a second and final grant. The final grant will also be paid out in a single instalment covering three months' worth of average monthly profits. To be consistent with the CJRS, the value of the final grant will be 70% of average profits, up to a total of £6,570.

The Government provides [online guidance](#) on how to claim under the SEIS scheme.

On 15 July the Government published its latest set of official statistics on the SEIS scheme, from which it transpires that:

- 3.4 million self-employed individuals were identified as potentially eligible for the SEIS scheme;
- By 12 July 2.7million of the potentially eligible population (79%) had claimed a SEIS grant, with the value of these claims totalling £7.4 billion. The average value per claim was £2,900;
- The sector with the highest number of potentially eligible individuals and the highest proportion of claims is the construction industry. By 30 June construction workers had made 867,000 claims for SEIS totalling £3.1bn; and
- The two regions with the highest number of claims are London (484,000) and the South East (373,000), reflecting their relative sizes, although London has the lowest take-up rate amongst the UK countries and regions.

### Reimbursement of Statutory Sick Pay

An employer with under 250 employees on 28 February 2020 may reclaim up to two weeks' statutory sick pay per eligible employee who has been off work due to sickness absence because of COVID-19. Employers can make claims under the scheme from 26 May 2020. The scheme has been extended to cover employees self-isolating because they have been informed by the authorities that they have been in contact with an infected person.

Employers can check if they can claim back Statutory Sick Pay paid to employees due to coronavirus (COVID-19) on the [Government's website](#).

### Corporate Insolvency and Governance Act

On 25 June 2020, the Corporate Insolvency and Governance Act 2020 (the Act) received royal assent, and came into force on 26 June 2020. Some of the measures in the Act will come into effect immediately. Other measures will come into effect once the secondary legislation comes into force. We have prepared [an overview](#) of its provisions, including [a guide](#) to the easements it grants to companies in terms of lengthening of deadlines and various other relaxations.

Broadly, the provisions of the Act are intended to:

- introduce a moratorium during which no legal action can be taken or continued against a company without leave of the court. The Government has now published [guidance on how to apply for a moratorium](#).
- suspend *ipso facto* (Termination) clauses which allow a supplier to stop (or threaten to stop) supplying a company that has entered a restructuring or insolvency process; these rights are to be suspended, subject to safeguards to ensure that continued supplies are paid for, and suppliers can be relieved of the requirement to supply if it causes hardship to their business;

- remove, from 1 March 2020 to 30 June 2020, the threat of personal liability arising from wrongful trading for directors who continue to trade a company through the coronavirus pandemic with the uncertainty that the company may not be able to avoid insolvency in the future;
- introduce a new "restructuring plan", including a new 'cross class cram down' provision to override dissenting creditors in certain circumstances;
- suspend the ability to petition for the winding-up of a company (from 27 April 2020 to 30 September 2020);
- void statutory demands (from 1 March 2020 to 30 September 2020);
- permit a company that is under a legal duty to hold an AGM or general meeting to hold a meeting by other means even if its constitution would not normally allow that alternative means; and
- confer power on the Secretary of State to further extend deadlines for making filings at Companies House (Companies House has already used to the full the flexibility available to it using its power under the current law).

The moratorium, suspension of *ipso facto* termination clauses and suspension of the wrongful trading regime are not available to a bank, investment firm, insurer, payment and e-money institution or certain market infrastructure bodies. Furthermore, a firm that safeguards client money will not be able to take advantage of the moratorium or the suspension of the wrongful trading regime.

The Government has published [guidance](#) outlining how the measures introduced by the Act will affect public limited companies (PLCs) and *Societas Europaea* (SEs) filing accounts with Companies House.

### Takeover protection

The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2020 (SI 2020/627) expands the public interest grounds upon which the Secretary of State may intervene in a relevant merger, special merger or European relevant merger (as defined, in respectively, in sections 23, 59 and 68(2) of the Enterprise Act 2002) to include the "need to maintain in the United Kingdom the capability to combat, and to mitigate the effects of, public health emergencies". The Government's stated intention is to enable the Government to protect businesses directly involved in a pandemic response (e.g. a vaccine research company or a personal protective equipment manufacturer) from an outwardly hostile takeover approach or from a sale (e.g. if financially distressed) to "malicious parties".

### Commercial Leases

The Government has introduced measures to safeguard the UK high street. Some landlords are thought to have been putting tenants under undue pressure by using aggressive debt recovery tactics. To stop this the Government imposed a temporary ban on the use of statutory demands (made between 1 March 2020 and 30 June 2020) and winding up petitions presented from 27 April to 30 June, where a company cannot pay its bills due to coronavirus; this has now been extended until 30 September.

The Government also provided tenants with more breathing space to pay rent by preventing landlords using Commercial Rent Arrears Recovery (CRAR) unless they are owed 90 days of unpaid rent: this has now been increased to 189 days. Similar protection is available for private tenants, who have the benefit of a temporary prohibition on evictions; this has now been extended until 23 August 2020.

The Government has announced a new fund, the Reopening High Streets Safely Fund (RSHHF), providing funding of £50 million for councils to support UK high streets, as part of the phased reopening of non-essential retail stores. On 5 June, the Government published [guidance on the operation of the RHSSF](#).

The Government has published [a code of practice](#) for commercial property relations during the COVID19 pandemic (the Code) to encourage commercial tenants and landlords to work together to protect viable businesses.

The Code is voluntary in nature and is relevant for all commercial leases held by businesses in any sector which have been impacted by the coronavirus pandemic.

It encourages tenants to continue to pay their rent in full if they are in a position to do so and advises that others should pay what they can, whilst acknowledging that landlords should provide support to businesses if they too are able to do so.

It will apply across the UK and encourages tenants and landlords to be transparent in their discussions and to act reasonably and responsibly whilst recognising the impact that coronavirus has had on businesses' finances.

The Code represents best practice within the sector for responding to Covid-19 and is endorsed by the leading representative bodies who formed the Code's steering group.

### **Business Rates Holiday**

Retail, hospitality, leisure businesses and nurseries in England will be granted a holiday from business rates for the 2020 to 2021 tax year.

A business rates re-evaluation planned for 2021 has been postponed, and rateable values will now remain unchanged until 2022 to reduce uncertainty for firms.

### **Insurance Claims**

Where a policy is activated, or cover is excluded, by reference to a "notifiable disease", the relevant clause may have been triggered on 5 March 2020 when COVID-19 was made a "notifiable disease".

Medical advice issued by the Government on 17 March 2020 was, according to HM Government, sufficient to enable a claim to be made if a company has an insurance policy that covers both pandemics and government-ordered closure.

The closure of premises (including most workplace canteens) on 21 March 2020 by virtue of the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 may also ground an insurance claim.

Ongoing uncertainty as to the effect of Covid-19 on the ability to claim under an insurance policy has let the FCA to apply to the High Court for additional clarification; for further details on this please see our [Judicial and Regulatory Measures update](#).

### **Small Business Grant Funding (SBGF), Hospitality, Leisure and Rental Grant Funding (HLRGF) and Local Authority Discretionary Grants Fund (LADGF)**

£10,000 for each business in receipt of small business rate relief or rural rate relief is available under the SBGF scheme, and £25,000 where the rateable value of business premises is between £15,000 and £51,000, under the HLRG scheme.

The Government announced on 12 June that it would bring forward the payment of two grants to local authorities which were due to be made in 2020/21: an additional support grant, worth £1.6 billion and due to be paid on 3 April 2021, and the business rates relief compensation grant, worth £1.8 billion and due to be paid in instalments starting in April 2021, in order to avoid cash flow problems for local authorities. In addition, extra funding of £63 million is to be made immediately available to local authorities in England specifically to help people struggling with food and other essentials due to COVID-19.

On 2 May 2020, the Government announced that the LADGF had been set up to accommodate certain small businesses outside the scope of the SBGF scheme. Up to £617 million will be made available, an additional 5% uplift to the £12.33 billion funding previously announced for the SBGF and the HLRGF.

On 13 May 2020 the Government published more details of the LADGF. Local authorities may disburse grants to the value of £25,000, £10,000 or any amount under £10,000. The grants are primarily aimed at small and micro businesses, businesses with relatively high on-going fixed property-related costs, and businesses which occupy property with a rateable value or annual rent or mortgage payments below £51,000. They will have to demonstrate that they have suffered a significant fall in income due to the COVID-19 crisis.

The Government has asked local authorities to prioritise certain types of businesses such as small businesses in shared offices or flexible workspaces, regular market traders with fixed building costs, such as rent, who do not have their own business rates assessments, bed and breakfasts which pay council tax instead of business rates and charity properties.

LADGF was originally only available to businesses that are not eligible for other support schemes but they could still apply for the CJRS; the Government has now confirmed recipients of SEIS may also access the fund. Grant income received by a business is taxable, but only businesses which make an overall profit once grant income is included will be subject to tax. It is anticipated that the first payments under LADGF will be received by businesses by early June. The Government has now published [guidance on how to apply to the LADGF](#).

As at 12 July 2020, £10.708 billion has been made available under the SBGF and RHLGF schemes in respect of over 870,000 business properties.

### **The Business and Planning Bill**

The Government has introduced the [Business and Planning Bill](#) (the Bill) to implement a range of measures to help businesses to implement safer ways of working to manage the ongoing risks from Covid-19, in particular the need for social distancing. The Bill includes measures to:

- facilitate BBLs by disapplying 'unfair relationships' provisions in the Consumer Credit Act 1974 for lending made under the BBL Scheme;
- make it easier for premises in England serving food and drink to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing;
- make temporary changes to the law relating to planning in England, as well as new, permanent provision for certain planning proceedings in England to be considered by means of more than one procedure to support the planning and safe construction of new development following the impact of Covid-19; and
- make changes to HGV and PCV licensing in Great Britain and Northern Ireland and roadworthiness testing for heavy vehicles in Great Britain to avoid a backlog of checks and tests , whilst maintaining safety standards.

### **Community Investment Levy (CIL)**

The Community Infrastructure Levy Regulations 2010 (as amended) provide some flexibility for local authorities to defer the payment of CIL. However, under the current regulatory regime, delaying payment would result, in some cases, in mandatory interest charges for the late payment of CIL. To address this, the Government has laid the Community Infrastructure Levy (Coronavirus) (Amendment) (England) Regulations 2020 which will give authorities more discretion to defer CIL payments for small and medium sized developers without having to impose additional costs on them, for example by introducing instalment plans. [See further](#).

### **Support for Freight and Passenger Services**

The Government has agreed a joint commitment with France and the Republic of Ireland to 'strengthen partnership and share best practices' to ensure the continued movement of freight across the continent during the pandemic. Up to £17 million will be available for critical routes between Northern Ireland and Great Britain and further funding will be available for 26 routes between Britain, France, Belgium, Spain, The Netherlands, Denmark, Germany, Norway and Sweden, including Eurotunnel.

The Government has announced £5.7 million funding to safeguard air passenger services between Great Britain and Northern Ireland. Londonderry/Derry City Airport (DCY) and Belfast Airport will both receive support and Aer Lingus and Loganair will receive subsidies to keep the Belfast to London and DCY to London routes open.

On 18 May, the Government announced that it had signed agreements with six operators to provide up to £35 million in funding to help ensure there is enough free capacity to prevent disruption to the flow of goods. Sixteen of the most important routes covering the Channel, the Short Strait, the North Sea and routes between Great Britain and Northern Ireland which were previously threatened with closure due to a drop in demand as a result of Coronavirus will now be designated as Public Service Obligation routes for a period of up to nine weeks.

### **FAQs**

The Government has published a list of FAQs providing considerable detail on permissible behaviour during the lockdown: [Coronavirus Outbreak What You Can and Can't Do FAQs](#)



## Immigration

The Home Office has published the latest guidance to individuals affected by travel restrictions associated with coronavirus. If an individual's 30-day visa to travel to the UK for work, study or to join family has expired, or is about to expire, individuals can request a replacement visa with a revised date free of charge until the end of this year.

The Government has announced [temporary policy concessions for Tier 4 sponsors, Tier 4 students and short-term study students](#) in response to the outbreak of Coronavirus. The concessions will all be kept under regular review and will be withdrawn once the situation returns to normal. The Government have now confirmed that the temporary concessions will remain in force until at least 31 July 2020.

## International Travel

The Government has provided guidance on international travel during the COVID-19 pandemic. The Foreign and Commonwealth office initially advised against all but essential travel, worldwide, but has now published a list of countries exempted from that advice.

Since 8 June anyone entering the UK, whether as a visitor or a returning resident, must fill in a contact locator to provide contact and travel information so they can be contacted if necessary and to self-isolate for 14 days; since 10 July there is no requirement to self-isolate if arriving and staying in England from a country or territory on the travel corridors list: the list of countries can be found [here](#).

Separate arrangements exist for [agricultural workers travelling to England for seasonal work](#).

Travellers to the UK should be aware that the wearing of face coverings (although not necessarily face masks) is now mandatory on public transport in England, and will be mandatory in shops and supermarkets with effect from 24 July.

## Infection Control Fund

A new £600 million infection control fund has been introduced to tackle the spread of COVID-19 in care homes, in addition to £3.2 billion of financial support made available to local authorities to support key public services since the start of the crisis. The fund, which is ring fenced for social care, will be given to local authorities to ensure care homes can continue to reduce transmission.

## Dairy Response Fund 2020

The Government, acting through the Department for Environment, Food & Rural Affairs, Defra, has launched the Dairy Response Fund 2020, a new fund to provide financial support to dairy farmers in England, demands for whose products decreased dramatically during the closure of bars, restaurants and cafes. Eligible farmers will be entitled to receive a one-off payment equal to 70% of their lost income during April and May, up to a maximum of £10,000 each. The fund will be administered by the Rural Payments Agency (RPA), and applications must be received before midnight on Friday 14 August 2020.

The Government had already relaxed certain elements of UK competition law for the industry to enable retailers, suppliers and logistics services to work together. Now they have also launched a £1 million marketing campaign to boost milk consumption and help producers to reduce their surplus stock.

## London

The Government has agreed a £1.6 billion funding and financing package for Transport for London (TfL) to protect key services with the mayor of London, Sadiq Kahn. The funding is made up of a grant of £1.095 billion and a loan of £505 million and runs until October 2020. The agreement includes increasing service levels as soon as possible to ensure people comply with social distancing guidelines while on the network. The package contemplates the re-introduction of fares on buses and the reinstatement of the congestion charge. Concessions for the over 60s and under 18s will be suspended, and the Mayor has also agreed to increase fares next year by one percent above inflation. The whole financial position and structure of TfL will be the subject of a wholesale review, and two Government representatives will be appointed to TfL's Board, finance committee and programmes and investment committee to monitor value for money for the taxpayer.

The London Transition Board formed to coordinate London's transition from lockdown to recovery from COVID-19, met for the first time on 9 June 2020, jointly chaired by the Secretary of State for Housing, Communities and Local Government and the Mayor of London.

The Board is made up of senior leaders from across the capital working with central government and is tasked with providing strategic direction for the next phase of the response to COVID-19 as London begins to reopen its economy while still controlling the virus.

A new London Transition Management Group has been formed to report directly to the London Transition Board and coordinate and provide updates on the work being done by different agencies and sub-groups. It will respond to any subsequent waves of infections, should they arise, and incorporates the Strategic Co-ordination Group emergency planning arrangements set up in March.

Separately, a new London Recovery Board has also been set up by the Mayor to oversee the capital's wider economic and social long-term recovery.

## Other Measures

We will endeavour to keep you informed of any new measures that are adopted in the coming days and weeks.

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