



Guidance on responsible contractual behaviour in the performance and enforcement of contracts impacted by the Covid-19 emergency (published 7 May 2020)

Update, 30 June 2020

Guidance and recommendations to continue to apply

1. The Covid-19 emergency continues to require all of us to work together in the national interest to protect the health and safety of everyone in the United Kingdom, our vital public services including the NHS, jobs and our economy.
2. Therefore, the guidance and recommendations set out in the *Guidance on responsible contractual behaviour in the performance and enforcement of contracts impacted by the Covid-19 emergency* published on 7 May 2020 will continue to apply, unless further amended or withdrawn. It (and this updated guidance) remains non-statutory.
3. Parties to contracts should **act responsibly and fairly, support the response to Covid-19 and protect jobs and the economy** as set out in the note of 7 May.
4. Three specific issues are considered further in this guidance: payment, extensions of time and the avoidance and resolution of disputes.

Issue 1 – Payment

5. Responsible and fair behaviour in contractual arrangements impacted by Covid-19 will support the performance and viability of contracts. That includes cashflow being maintained where appropriate and avoiding disputes and financial distress for the parties.
6. The Government has introduced a package of financial support for businesses and individuals to help with the preservation of cashflow. In addition, for public bodies, the Government published *Procurement Policy Note – Supplier relief due to COVID-19* (PPN 02/20) (now updated by *Procurement Policy Note – Recovery and Transition from COVID-19* (PPN 04/20)) which provides guidance on providing relief to suppliers, including, where appropriate, continuity of payment. For PFI, PPP and PF2 contracts, the Government published *Supporting vital service provision in PFI /PF2 (and related) contracts during the COVID-19 emergency* which makes it clear that the principles of PPN 02/20 apply to PFI, PPP and PF2 contracts.
7. In a wider context, the Government continues to promote and operate the Prompt Payment Code. In addition, the Public Procurement Review Service will investigate complaints about late payment in contracts with public bodies. In public procurement, non-compliance by suppliers with payment standards set out in *Procurement Policy Note 04/19* is generally required to be taken into account by central Government departments (and their arm's length bodies) when selecting suppliers for large contracts.
8. The Government understands the importance of prompt, fair and effective payments in contracts. Parties are therefore strongly encouraged to make prompt

payments in accordance with contractual terms, legal requirements and applicable guidance. This is important for all suppliers, but particularly so where they are SMEs or individuals who may not have the same resources as large businesses. Contracting authorities should pay suppliers as quickly as possible to maintain cash flow and protect jobs.

9. It is recognised that more work continues to be required to improve payment culture in the UK. The Government is reviewing what more can be done to change payment culture for the better.

Issue 2 – Extensions of time (and associated costs)

10. It is recognised that parties to some contracts may find it difficult or impossible to perform those contracts in accordance with their agreed terms as a result of the impact of Covid-19 – including through illness in the workforce, the effects of restrictions on movement of people and goods, revised ways of working necessary to protect health and safety and the closure of businesses.

11. Parties to commercial contracts should consider carefully, and reasonably, what reliefs may be available, including whether an extension of time for performance should be granted, how additional costs should be dealt with and whether terms should be renegotiated to preserve the viability of the contract to accommodate the impact of Covid-19.

Issue 3 – Avoidance and resolution of disputes

12. An equitable adjustment or accommodation in contractual arrangements impacted by Covid-19 should be considered in preference to a formal dispute.

13. The Government strongly encourages parties to seek to resolve any emerging contractual issues responsibly, through negotiation, an early neutral evaluation or mediation, before these escalate into formal intractable disputes.

14. Parties should also consider their commercial practices and how they deal with potential disputes, including signing up to initiatives such as the RICS *Conflict Avoidance Pledge* (www.rics.org/uk/products/dispute-resolution-service/conflict-avoidance-pledge/).

15. Many fast-track dispute resolution procedures have been developed in response to the Covid-19 emergency. In addition to the *Low Value Disputes Model Adjudication Procedure* developed by the Construction Industry Council and the Royal Institution of Chartered Surveyors (RICS), the Centre for Effective Dispute Resolution (CEDR) and the Chartered Institute of Arbitrators (CI Arb) have recently created the *Pandemic Business Dispute Resolution Service*. Other fast-track dispute resolution services are available.

Other guidance and recent legislation

16. For public bodies, updated information and guidance on providing relief (including payment) to suppliers has recently been published in *Procurement Policy Note – Recovery and Transition from COVID-19* (PPN 04/20).

17. For the construction sector, on 7 May the Construction Leadership Council issued practical guidance for all companies involved in the construction supply chain on how to minimise potential disputes (www.constructionleadershipcouncil.co.uk).

18. For commercial leases, on 19 June the Government published a code of practice to help commercial landlords and tenants map out plans for economic recovery during the coronavirus pandemic (www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector).

19. For insolvency, on 25 June the *Corporate Insolvency and Governance Act* received Royal Assent.

20. The Competition and Markets Authority is monitoring business practices during the Covid-19 emergency and unfair business practices can be reported at www.coronavirus-business-complaint.service.gov.uk.

Future state of contractual arrangements

21. The Government recognises that lessons on how parties to contracts have responded to Covid-19 need to be learned quickly. There are three particular objectives: (i) support the restart of the economy, (ii) prevent unnecessary insolvencies and (iii) support the long-term viability of contracts and businesses. Government is reviewing how its procurement processes and the contract terms it offers to suppliers can adapt to Covid-19 risks, the impact on supply chains and new ways of working and support economic recovery. The Government will work with the market to do that and strongly encourages all parties to commercial contracts to reflect those objectives. The Government has set up Project Speed to cut through red tape and get things done.

Further information and advice

22. Further information and advice on Covid-19 is available on GOV.UK.

23. The impact of this guidance will continue to be kept under review, including the need for further measures. Enquiries about this note can be directed to info@crowcommercial.gov.uk.

Cabinet Office
30 June 2020