

CORONAVIRUS (COVID-19) AND SBCC CONTRACTS

In light of the current pandemic and the ongoing uncertainty and concern across the construction industry, the Joint Contracts Tribunal (JCT) has published guidance on the Coronavirus and its impact on JCT contracts. The attached note is very insightful and offers assistance to those operating under that suite of contracts to allay some immediate concerns on the contractual front. As JCT's Scottish counterpart, SBCC thought it useful to circulate this guidance to its members in an effort to address some of the most pressing questions which have arisen across the industry.

However, of course, there are important distinctions which must be drawn between the position under JCT and SBCC contracts, not least as a result of the difference in approach from the Scottish and UK Governments. Accordingly, this brief note is intended to be read by SBCC contract users in conjunction with the attached JCT guidance.

Of course, the starting point is that the Coronavirus Act 2020 applies across the UK, and both the UK and Scottish governments have passed similar regulations in this connection; namely the *Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*, and the *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*. However, in England, government guidance remains that, in respect of construction work which cannot be done from home, workers can still travel for work purposes, provided they are not showing coronavirus symptoms and neither the worker nor any one in their household are self-isolating. This guidance in England was clarified on 6 April 2020, providing:

"Where it is not possible to follow the social distancing guidelines in full in relation to a particular activity, consider whether that activity needs to continue for site to operate. Where face-to-face contact is essential, keep it to 15 minutes or less wherever possible." [Emphasis added.]

Also on 6 April 2020, the Scottish government marked a clear distinction in its approach to construction work, publishing its *"Coronavirus (COVID-19): construction sector guidance"*, providing:

"Advice from the Chief Medical Officer is that all non-essential business premises, sites and attractions should close...The construction sector and its supply chain is considered a non-essential business sector, except where supporting an essential sector as listed..."

Whilst there has been debate regarding the legal standing of the Scottish government's guidance, it is a clear departure from the position in England, and therefore an important consideration for users of SBCC contracts.

For the avoidance of any doubt, the legislation applicable in Scotland relevant to the construction industry is as follows:-

- The Coronavirus Act 2020, with the Coronavirus Act (Scotland) 2020 dealing with any devolved matters therein; and
- The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (No. 103), with 2Nr. Amendment regulations thereto (No. 106 and No. 126).

Whilst these legislative distinctions are important; and the legal implications of the Scottish government's guidance to the construction industry remain to be determined; the guidance in the attached note, particularly under the heading 'Understanding and complying with JCT contract provisions' is likely to be of interest to SBCC contract users, where the import of the JCT and SBCC provisions on extensions of time, suspension of the works, and termination of contractor's employment are aligned.

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