

Coronavirus (COVID-19): Key Information For Construction Professionals in Ireland

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At 9pm on St Patrick's Day, the Taoiseach addressed the nation in a manner the like of which is seen only once in a generation.

In that address, it was made clear in the strongest terms that the most significant impact of COVID-19 is yet to come and that the nation and businesses must be prepared.

All businesses are struggling with balancing staff welfare and operational continuity. At its core, for businesses, COVID-19 is a staff welfare and health and safety issue, and it is this issue above all that must guide the actions taken at this time.

In light of the crisis now faced, businesses need to do everything they can to reduce the impact this will have on operational capability to ensure economic activity continues to be maximised where possible. This is an economic duty to the nation and to the construction industry, such that prosperity can return and life carry on as normal, as soon as possible, for businesses and for the livelihoods they support.

What can construction professionals do to prepare and respond to COVID-19?

Employee Welfare & Health and Safety

- This is an evolving situation and the guidelines will change. In particular, it seems certain that there will be a significant increase in the measures that have already been recommended in respect of social distancing. This will dictate the measures that you, as an employer, will need to implement in the work place, whether that be increased remote working, staggering work or break times, or banning/limiting travel.

- As stated by the Health and Safety Authority, employers are required to ensure, so far as is reasonably practicable, that an appropriate assessment of the risk for COVID-19 in the workplace is carried out and that suitable control measures be identified and implemented to mitigate the risk of infection. Such measures must also be communicated to all relevant employees and others at the place of work.
- Whatever actions you take, an audit trail of those actions should be maintained so that it can be referred back to in the future, if necessary.
- You should also, at a minimum, keep up to date on a daily basis and comply with the advice published on the relevant measures to take on the websites of the Department of Health <https://www.health.gov.ie>, and the Health and Safety Authority <https://www.hsa.ie>.

Operational Continuity

- It is vital, that as much as possible, business continuity is achieved. This will only be achieved by putting the right structures in place to facilitate continuity and this can only be done by effective planning.
- For construction professionals in particular, there are core areas that need to be addressed in order to achieve business continuity, these are obviously all inter-related, but can be broadly be categorised as follows:
 - Internal operational & HR;
 - IT Systems;
 - Client Projects;
 - Financial;
 - Legal;
 - Insurance.

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- It would be advisable to have at least one contact or designated person from each of the above categories available to you, such that continuity plans can be created and appropriately implemented – plans must be proportionate, robust and as sustainable as possible given the uncertainty we are currently facing.
- Guidelines, FAQs for employers, a ‘checklist’ for business continuity and other useful information is provided by The Department of Business, Enterprise and Innovation <https://dbei.gov.ie/en/>. The Department’s website also sets out information in relation to some of the financial and other supports that are available to business at this time.

Contractual & Project Issues

- This is a fundamental matter as it goes to the heart of what keeps businesses working: cash-flow.
- Maintaining good communication with your client at all times is key and structures should be put in place to maintain good communication i.e. weekly calls, videoconferencing etc.
- However, in order to assess your risk, you will also need to conduct a review of the contracts that you have in place on live projects. This will become even more critical should measures be taken that result in the closure of places of work, including construction sites, which results in works being delayed, suspended or terminated.
- The items of particular importance to review in your contracts are as follows:
 - **Delay** – there will likely be provisions in relation to the programme of works and the services you are required to provide in line with that programme. In particular, there may be provisions in relation to notifying the client if performance of your services will be or is likely to be delayed. You may, for example, be required to notify the cause of the delay and its likely duration. There may also be provisions in relation to the impact of such delay on your fee. Only

your contract will tell you what has to be done and what the impacts are, so you need to read it carefully.

- **Suspension** – the contract may permit the client to suspend the provision of your services at its option. Such suspension may impact your cash flow as it will be highly unlikely that the contract will provide for you to be paid anything during the period of suspension.
- **Termination** – many professional appointments provide the ability for the client to terminate the appointment “at will”. It is important to know which of your contracts contain these provisions so that your risk in this regard can be identified. The other important matter is what the consequences of termination are – the most likely scenario is that you will be entitled to the portion of the fee commensurate with the services that have actually been provided.
- **Force Majeure** – is there a force majeure provision contained within your contract? If so, COVID-19 may fall under the definition of force majeure. You may need to consider what the effect of this is and what rights and entitlements arise or are extinguished as a result.
- **Claims** – there may be requirements (including conditions precedent) that must be fulfilled such that you obtain, or maintain, your entitlement to claim for additional cost. Such requirements usually provide that notices need to be provided within a certain period that set out the nature of the claim and the likely time and cost impacts. These notices may then need to be updated on an ongoing basis.
- **Notices** – if you are required to serve notices under the contract in relation to any of the matters outlined above, ensure that the notice is served in the

manner prescribed and to the individual identified in the contract so that it constitutes a valid notice under the contract.

- **Collateral Warranties** – you will need to carefully consider the number and content of the collateral warranties you have provided on live projects. In relation to the terms, you will need to check whether you have provided any greater liability than that which you have under the main appointment. The best position would be that an equal rights of defence and no greater liability clause has been included, and that no additional indemnity or other provisions have been given in favour of the beneficiary.
- Legal advice should be obtained at the earliest possible time should a query arise in relation to any aspect of the contracts that are in place on live projects so that the right decisions are taken to ensure you are insulated as much as possible from the effects of COVID-19 on your business.

Insurance matters:

Lastly, you should review all of your policies of insurance to identify whether you may be covered for the effects of COVID-19 on your business operations. Speaking with your brokers and legal advisors in the first instance is strongly recommended.

For further information please contact:



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