**COVID-19 GUIDANCE FOR THIRD SECTOR ORGANISATIONS**

We have been able to compose this free guidance for organisations, with the help of Funding Central who identified common legal concerns of not for profit organisations during this unprecedented time as follows:

1. The requirement to complete a legally compliant risk assessment
2. Concern that organisations are at risk of litigation
3. Concerns about becoming insolvent

We hope this guidance will help with your concerns. The guidance is set out on the following pages of this document.

We will continue to make amendments and additions to this document based on feedback we receive from you.

Please note that the guidance does not constitute legal advice in any circumstance and should be referred to as guidance only.

1. **The requirement to complete Risk Assessments before staff return to work**

The UK Government is requiring all organisations to conduct a coronavirus (Covid-19) risk assessment and to make a 'five steps to safer working' declaration. This includes a declaration that you have carried out a coronavirus risk assessment and shared the results with staff.

Covid-19 associated risks must be assessed before staff can return to work. If you have more than five employees, you must have a system that makes a record of significant findings and controls.

You are required to:

• identify circumstances that might cause transmission of the virus

• consider who could be at risk of contracting the virus

• analyse the probability of exposure

• take action to remove, mitigate or control the risk

Additional risk assessments must be undertaken for specific workers, including those who are vulnerable and at risk of developing severe symptoms of Covid-19.

Organisations are also recommended to consult with workers on health and safety matters, for their contribution to the assessment.

Organisations with more than 50 employees must publish their risk assessments and display a poster verifying compliance with the five steps to safer working.

The Health and Safety Executive (HSE) has not yet provided a Covid-19 pandemic risk assessment template. Our subscription covers unlimited access to our risk assessment services and Covid-19 Risk Assessment Toolkit. Please contact us for more information or to subscribe to our services.

**2. Organisations are at risk of litigation**

While the government lifts the lockdown in phased stages, organisations embarking on the transition to normality are facing a number of hurdles. The initial task is that of competently completing Health and safety risk assessments to establish realistic, workable social isolation measures in the workplace.

Next there is concern about the ability of not for profit organisations to take on adequate business to meet expenditure, accrued debt, loan and rent arrears. There is also concern about the uncertainty with the anticipated second spike and lockdown.

Many organisations have had to adapt rapidly and make swift decisions during this incredibly volatile, rapidly changing and unprecedented environment. Some examples include decisions relating to (inter alia)

1. Staff issues, redundancies, reducing staff working hours, changing shifts, childcare issues, changing contracts, disability continuing support
2. Procurement of contracts
3. Contractual exchange of goods and / or services
4. Insolvency issues, for example, will trading at this time be regarded as unlawful if there is a real possibility your organisation may become insolvent

Understandably, many of us are worried about the difficult business decisions we have made or are yet to make and the potential legal implications that could arise

In the circumstances, how can we be certain that the choices that are in the best interests of our organisations and service users will not leave us accountable for making those decisions? How can we mitigate the risk of existing or potential litigation from escalating out of hand in case of decisions we have already made?

We can help. Please contact us or click here to sign up to our legal subscription services.

**3. Insolvency issues**

The Government has now published the much anticipated [**Corporate Insolvency and Governance Bill**](https://publications.parliament.uk/pa/bills/cbill/58-01/0128/cbill_2019-20210128_en_1.htm) (the “**Bill**”), which will introduce various new corporate restructuring tools as well as the temporary changes to insolvency law to help organisations in financial distress since the onset of the COVID-19 pandemic. The Bill applies to private companies as well as not for profit organisations.

Under the new rules, you can apply for more time to avoid debt enforcement action, and limit the rights of contractors to terminate supply agreements with your organisation.

The Bill also temporarily suspends some provisions in order to reduce the risk that directors and trustees are personally liable during the crisis, and places restrictions on winding up petitions where a charity cannot pay its bills as a result of the pandemic.

It also introduces new procedures to help viable charities restructure if they are struggling with debt.

Click here for more information about the Bill and how it can help your organisation.

The Bill has now received Royal Assent and some of its key provisions are as follows:

* Moratoriums, where eligible directors can apply for legal authorisation to postpone enforcement action by creditors, by filing certain documents at Court. The initial period of a moratorium is 20 business days, although this can be extended with creditor consent to up to a year, or to a date at the discretion of the Court. The directors remain in control, but an insolvency practitioner acts as “monitor”.
* limitation of insolvency termination clauses (or other clauses triggered by insolvency) in a supply contract with a company in an insolvency process (including a free standing moratorium)
* Temporary relief from the effects of statutory demands and winding-up petitions arising from the financial effect on the debtor caused by the coronavirus. Winding-up orders made on or after 27 April 2020 will be void if the Court would not have made the order had the Bill been in force. For winding-up petitions presented on or after 27 April 2020, the automatic avoidance of asset dispositions during the period between presentation and a winding-up order will be suspended.
* Temporary suspension of a director’s liability for wrongful trading during the coronavirus pandemic; the court will assume that the director was not responsible for any worsening of the company’s financial position between 1 March 2020 and one month after the coming into force of the Bill.
* New arrangements and reconstructions for organisations in financial difficulty, which complement (but offer greater flexibility than) schemes of arrangement

For more information, click here.

Further support is available at the [Insolvency Service](https://www.gov.uk/government/publications/corporate-insolvency-and-governance-bill-2020-factsheets)

To read the Bill, click here

**4. Employment Law: Coronavirus Job Retention Scheme Update**

**Update: Changes to Furlough Rules, 1 July 2020**

On 1 July 2020, the Government introduced changes to the Coronavirus Job Retention Scheme (CJRS), enabling organisations to claim a portion of their wage bills while so they can retain employees, ‘flexible furloughing’.

Key points:

**•** the new CJRS closes to ‘new entrants’ on 30 June 2020

**•** to be eligible, employees must have been placed on furlough no later than 10 June 2020, and completed the minimum three-week furlough period by 30 June 2020

**•** the number of employees an employer can claim for in any claim period under the revised CJRS cannot exceed the maximum number they have claimed for under any previous claim under the original CJRS

**•** employers have until 31 July 2020 to make any claims in respect of the period to 30 June 2020

**•** the CJRS will end on 31 October 2020; possible ‘run-off’ claims, in respect of the period to 31 October 2020, may be expected for a period after 31 October

**•** from 1 August 2020, the amount of the CJRS grant will reduce, with employers required to contribute to ensure that furloughed employees continue to receive 80% of their normal wages or salary, subject to a cap of £2,500 per month while on furlough

**•** ‘flexible furlough’ is possible from 1 July 2020: employees can return to work on a part-time work/part-time furlough basis; this contrasts with the position under the original CJRS

For help with all employment matters or issues with staff, both Covid and non-Covid related, contact us or click here to subscribe to our services.