

This is an update to the [alert](#) on the restrictions announced by the UK government which we published on 25 March 2020.

Confusion Over “Essential”

On 23 March, the UK government announced the closure of a range of business and other premises – largely those whose business involved interaction with the general public. The Guidance issued by government explaining the effect of the decision included a detailed list of businesses which had to close, but also included the sentence “non-essential businesses and premises must now shut”. We faced many questions through 24 and 25 March from companies asking what this sentence meant for them.

Clarification

UK government ministers have clarified the position. A new version of the [Guidance](#) (which refines the list of premises which must close) does not include the sentence about non-essential businesses. Speaking in Parliament, the Health Secretary said that everyone who could work from home must, but those who could not work from home could go to work (if their employer was not in one of the categories listed), noting that “it is important that they do, to keep the country running”. He underlined the requirement to put in place the required health and social distancing measures at the workplace.

What Is the Government Trying to Achieve?

Alongside the clear public health objective to reduce to the absolute minimum the human interactions which risk spreading COVID-19, the government also wants to keep as much of the economy functioning as possible. The support measures put in place are designed to preserve the fabric of the economy (solvent companies with an employee base), so that those most affected can resume economic activity as quickly as possible when the epidemic measures are withdrawn. It is clearly better for the prospects of economic recovery if as little of the economy as is consistent with controlling COVID-19 has been mothballed.

How Should I Assess What to Do With My Business?

Businesses and premises on the list of those the government has said should close, should do so.

Everyone who can work from home should do so (and ministers have been clear that they expect companies to make the effort to enable this to happen).

The government has been clear that it is not requiring other businesses to close. It is, however, the employer’s responsibility to ensure the health and safety of employees to the maximum extent possible in the workplace.

Implications of My Decisions?

The support packages the government has announced are substantial, but not unqualified. In particular, the government is likely to be careful not simply to transfer the national wage bill onto the taxpayer. Announcing the worker retention scheme (details of which have yet to be published), the Chancellor of the Exchequer said that it would be a “grant to cover most of the wages of people who are not working but are furloughed and kept on payroll, rather than being laid off”. At least until we see the details of the scheme, company management would be prudent to operate according to what the Chancellor said, and take decisions on the basis that the worker retention scheme applies **only** to employees for whom there is an established case that they would otherwise be laid off or made redundant.

Clearly, if the government has required your business to close, your employees are likely to be at risk of being laid off.

If the government has not required your company to close, but the effect of the measures taken or the crisis more broadly has led to your business not needing its usual complement of staff (say, you are a supplier to the restaurant trade), it is likely that you could demonstrate the case that you would otherwise have to lay employees off.

We would recommend documenting such decisions carefully, showing, for example, that you have considered questions such as:

- What is the economic impact on my business or this part of my business?
- Can I show what has caused the impact?
- Can I operate my business in a manner consistent with the Public Health England [Guidelines](#)?
- If only part of my business does not need its usual complement of staff, could I redeploy those employees elsewhere in the company?
- In the absence of the government’s job retention scheme, would I have had to make employees redundant or laid them off and, if so, why?

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