

## INFRASTRUCTURE, CONSTRUCTION AND UTILITIES

# COVID-19: Public Health Measures and Essential Services in Infrastructure, Construction and Utilities: FAQs

2 April 2020

On 27 March 2020 the Taoiseach [announced](#) that *“with effect from midnight tonight, for a two-week period until Easter Sunday, 12 April, everybody must stay at home in all circumstances, except for the following situations”, firstly, “to travel to and from work, or for purposes of work, only where the work is an essential health, social care or other essential service and cannot be done from home.”*

On 28 March 2020 the Government published the [List of essential service providers under new public health guidelines](#) (the “List”). This is a live document which organisations should keep under review.

Regulations are expected to be signed shortly pursuant to the [Health \(Prevention and Protection and other Emergency Measures in the Public Interest\) Act 2020](#) to give these measures legislative effect.

## WHO IS PERMITTED TO TRAVEL FOR THE PURPOSES OF WORK FOR AN ESSENTIAL SERVICE?

Only employees who are essential to the provision of essential services (and cannot work from home) are permitted to travel to work. This is expressed as being subject to compliance with the guidance set out in the List.

## WHAT ARE ESSENTIAL SERVICES?

The List should be reviewed in full, but we have set out below some extracts most relevant to entities that operate in infrastructure, construction and utilities.

### Electricity, Gas and Water

- electric power generation, transmission and distribution
- extraction and distribution of gas
- water collection, treatment and supply

- sewerage; waste collection, remediation activities and other waste management treatment and disposal activities

### Construction

- essential health and related projects relevant to the COVID-19 crisis, and supplies necessary for such projects
- repair/construction of critical road and utility infrastructure
- delivery of emergency services to businesses and homes on an emergency call-out basis in areas such as electrical, plumbing, glazing and roofing

### Transport Storage and Communication

- land transport (for example, bus, rail and taxi services)
- road, rail, sea and air freight
- sea and air passenger services; ports and airports
- warehousing and support activities for transportation including cargo-handling
- postal and courier activities
- network control and critical maintenance (including roads)
- safety related functions

### Information and Communications

- ... data centres and related services

### Professional, Scientific and Technical activities

- engineering, technical testing activities and analysis
- scientific research and development activities
- regulation, inspection and certification services necessary to support essential services

### Administrative and Support Services

Where necessary to support other essential services:

- employment placement and human resources associated with the recruitment and deployment of workers
- security activities to assist in the delivery of essential services and the securing of premises closed to the public
- cleaning of buildings and industrial cleaning activities
- business support activities which are necessary to support essential services included on this list; payroll and payment services necessary for the operation of businesses; data processing, hosting and related activities

## WHAT IF I AM A SUPPLIER TO AN ESSENTIAL SERVICE?

The List states that *“if you carry out an*

*activity that is necessary for the continued provision of an essential service by another organisation or you are part of an essential supply chain, you should continue to carry out that activity. To the maximum extent possible, that should be done remotely. The Government also recognises that many companies in Ireland are critical to global supply chains that are responding to the COVID-19 crisis, and many companies also perform critical global roles in other aspects of medicine, as well as security, cyber, cloud and data centre infrastructure. It is intended that these essential global roles are encompassed within this national guidance."*

## IF I AM NOT ENGAGED IN AN ESSENTIAL SERVICE, WHAT FLEXIBILITY IS PROVIDED TO ENABLE WINDING DOWN?

If you are not engaged in an essential service, there was a grace period until 6pm on Monday 30 March 2020 to make necessary arrangements to wind down activities in an orderly way. That was required to be done in a way that minimised travel and personal interaction.

The List also states that *"In exceptional circumstances, it is accepted that some extra time will be needed for a wind down of activity, or necessary for a site to continue to operate at a reduced level of activity, for example in complex manufacturing processes or very large construction projects."*

## WHAT SHOULD EMPLOYERS DO?

The List states that:

- you should refer to this guidance to decide whether your organisation is providing an essential service; it is not necessary to seek official authorisation;
- if you are providing an essential service, you should identify those employees (including sub-contractors and so on) who are essential to the provision of that service and notify them (this can be done by category of employee or by individual; it could include all employees of the organisation); and
- if you are providing an essential service, latest public health guidance should be followed at all times.

The guidance indicates that all organisations that provide essential services should have business continuity and resilience plans in place. The Department of Business, Enterprise and Innovation has provided advice on [Business Continuity Planning](#). This should take account of the possibility that key workers or key facilities may be impacted by COVID-19. Companies may also wish to refer to our recent [briefing](#) which commented on business interruption insurance.

In addition, the summary message about essential services available [here](#) states that:

- all essential services should ensure safe working conditions are in place
- specific advice will be available from the [Health and Safety Authority](#)

This Health and Safety Authority site includes [Advice for Employers](#).

## WHAT SHOULD EMPLOYEES DO?

The List states that:

- if your employer notifies you that you are an essential employee, or that you belong to a category of essential employees, you are permitted to travel to and from work; and
- when travelling to and from work, you should at all times bring with you either a work identification or a letter from your employer indicating that you are an essential employee, as well as one other form of identification.

## ARE THESE MEASURES REQUIRED BY LAW, OR ARE THEY A CHANGE IN LAW UNDER MY CONTRACT?

Regulations made under the new powers provided by the [Health \(Prevention and Protection and other Emergency Measures in the Public Interest\) Act 2020](#) are expected to soon be made in order to give the recently announced measures legislative effect.

Contracts may provide mechanisms to manage circumstances in which the performance of a party's obligations are impacted by reason of a public body exercising authority under law, or by the introduction of a new law.

What constitutes 'law' or 'change in law' under a contract, and whether the law / change in law is one that triggers an entitlement to relief (whether in the form of costs, or further time to fulfil obligations, or otherwise) is a question that can only be determined following scrutiny of the individual contract concerned. You may wish therefore to ensure that you are familiar with any such provisions in your contract in anticipation of current measures being placed on a legislative footing.

You may also consider, however, that the exceptional circumstances brought about by the COVID-19 pandemic (as well as the range of financial reliefs that the Government has introduced) are such that parties may wish to cooperate to agree innovative or exceptional interim solutions, mechanisms for which are not necessarily contemplated in their existing contracts. Whichever the approach taken, parties should ensure that they do

not inadvertently breach the conditions of their contracts and that, in reaching alternative arrangements, they comply with any relevant notice, record keeping and change management provisions under their contracts.

## SOME FURTHER PRACTICAL CONSIDERATIONS

- In many cases it will be clear whether a given activity carried out by certain entities (and/or their contractors and sub-contractors) is an essential service.
- For others, determining whether their activity is an essential service will require more careful consideration. This may include deciding (i) which aspects of the activity are an essential service, and (ii) which employees or classes of employees are required to attend the work site for those essential aspects. We recommend that entities document the basis for their decision, referencing the specific Government advice on which they based their decision, and any other advice they received. We suggest that some entities, particularly those involved in infrastructure projects, may wish to liaise with the relevant public or awarding authority to ascertain their view on whether the activity is an essential service. That said, we do not think it will be viewed as appropriate to delay any action reasonably required to comply with the public health guidance on the basis that the view of a (probably very busy) public authority is awaited.
- Workers who travel to work because they are required for an essential service need a letter from their employer indicating that their work is an essential service and that they are permitted to travel to work. If travelling, they may be asked by Gardaí to produce this as evidence that they are travelling for a permitted purpose and are not in breach of provisions which may be included in the anticipated Regulations.
- It is necessary to comply with the current public health guidance in respect of workers who are attending the work place. To assist with those who continue to travel to work, the Government indicated [here](#) that a [Workplace Protection and Improvement Guide](#) has been put in place by the National Standards Authority of Ireland, and that the Health and Safety Authority is currently discussing with public health officials what further guidance may be required to support essential businesses to continue to work, while implementing the Department of Health / HSE public health recommendations.
- Employers should also be aware of

their existing duties to employees under statutory requirements, common law duty of care principles, and employee contracts. Further information is contained in our briefings, [Updated Employment FAQs](#)

and [HSA Advice - 5 Key Questions](#).

## Key Contacts



**Alex McLean**  
Partner  
+353 1 920 1195  
alex.mclean@arthurcox.com



**Niamh O'Higgins**  
Partner  
+353 1 920 1090  
niam.ohiggins@arthurcox.com



**Aaron Boyle**  
Partner  
+353 1 920 1213  
aaron.boyle@arthurcox.com



**Karen Killoran**  
Partner  
+353 1 920 1097  
karen.killoran@arthurcox.com



**Mary Liz Mahony**  
Associate  
+353 1 920 1066  
maryliz.mahony@arthurcox.com



**Niamh McGovern**  
Associate  
+353 1 920 1208  
niamh.mcgovern@arthurcox.com



**Kate Monaghan**  
Associate  
+353 1 920 1156  
kate.monaghan@arthurcox.com



**Nicole Ridge**  
Associate  
+353 1 920 1863  
nicole.ridge@arthurcox.com



**Maeve Crockett**  
Associate  
+353 1 920 1284  
maeve.crockett@arthurcox.com



**Ciara Dooley**  
Associate  
+353 1 920 1855  
ciara.dooley@arthurcox.com



**Fiona Ridgway**  
Associate  
+353 1 920 2064  
fiona.ridgway@arthurcox.com



**Kim O'Neill**  
Associate  
+353 1 920 2121  
kim.oneill@arthurcox.com



**Brian Gillespie**  
Associate  
+353 1 920 2011  
brian.gillespie@arthurcox.com



**Sinead Flanagan**  
Associate  
+353 1 920 1372  
sinead.flanagan@arthurcox.com



**Claudia O'Sullivan**  
Associate  
+353 1 920 1315  
claudia.osullivan@arthurcox.com



**Dearbhaile O'Brien**  
Associate  
+353 1 920 1447  
dearbhaile.obrien@arthurcox.com



**Fionn O'Dea**  
Associate  
+353 1 920 1740  
fionn.odea@arthurcox.com



**Katrina Donnelly**  
Professional Support Lawyer  
+353 1 920 2122  
katrina.donnelly@arthurcox.com