

WEBINAR

Covid-19: Update on Legislation and Legal Issues

Wednesday, 1 April 2020 | 8:30 am to 9:30 am



Peter Osborne

*Consultant, Head of Knowledge Team and
Head of Digital Services*

+353 1 611 9159

Peter.Osborne@mccannfitzgerald.com

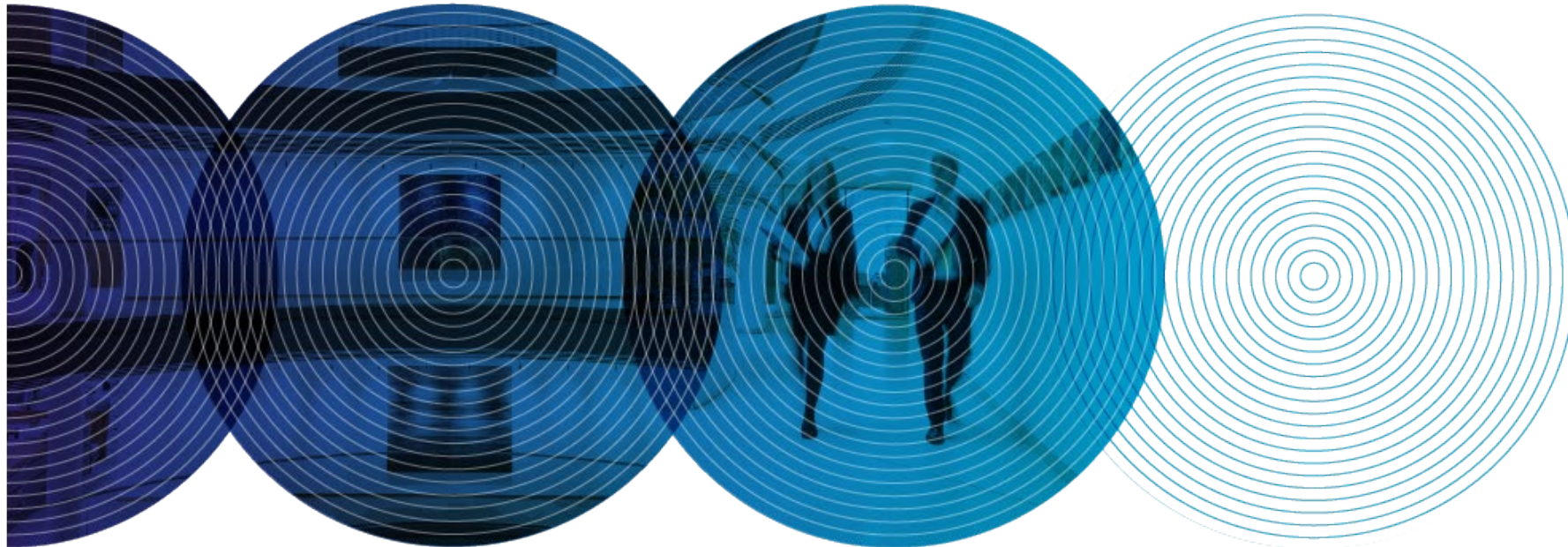
MCCANN FITZGERALD

COVID-19

Update on Legislation and Legal Issues

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Introduction

- Welcome to this McCann FitzGerald Knowledge Network online event
- Resources
 - McCann FitzGerald
 - Other
- National governance and our legislature
- COVID-19: the legislative response
- COVID-19: legal and practice issues arising and anticipated
- **Future online events:** an MPD event and an employment law webinar coming soon...



"On the Internet, nobody knows you're a dog."

McCann FitzGerald Resources (1)

- Knowledge Hub: new legislation, new case law and legal and regulatory current awareness. Enquiries to knowledgehub@mccannfitzgerald.com

The screenshot shows the user interface of the McCann FitzGerald Knowledge Hub. At the top left, the logo 'McCANN FITZGERALD' is displayed above a home icon and the text 'My Knowledge Hub'. On the top right, there is a 'Practice Areas' dropdown menu and three icons: a magnifying glass for search, a star for favorites, and a person icon for user profile. The main content area features a large blue banner with the 'Knowledge Hub' logo and a background image of a modern building. To the right of the banner, a personalized greeting says 'Hello, Peter', followed by a message: 'This is your personalised Knowledge Hub brought to you by the McCann FitzGerald Knowledge Team. Knowledge Hub provides up-to-date information on legislation, case law and other legal and regulatory developments. To customise your personal settings, please click here.' Below this is a search bar with a 'Search' button and a link to 'Learn about site search'. At the bottom, there are three sections: 'LEGISLATION', 'CASES', and 'CURRENT AWARENESS', each with a dropdown menu set to 'All Practice Areas'.

McCann FitzGerald Resources (2)

- McCann FitzGerald COVID-19 micro-site (<https://www.mccannfitzgerald.com/knowledge/covid-19>)
- 40+ briefings available and growing daily, searchable and with filters
- Check daily

Filter by:

<p>31 March 2020</p> <p>COVID-19: Commercial Contracts and Frustration</p>	<p>31 March 2020</p> <p>COVID-19: Increasing Risk of Cyber Fraud</p>	<p>31 March 2020</p> <p>COVID-19: Financial Services Round-Up for 23 – 29 March 2020</p>
<p>30 March 2020</p> <p>COVID-19: Government Directs that only Essential Workers may Travel</p>	<p>27 March 2020</p> <p>COVID-19: Competition Law During the Crisis</p>	<p>27 March 2020</p> <p>COVID-19: Exemptions from Planning Control</p>
<p>27 March 2020</p> <p>COVID-19: Business Interruption Policies at Centre of New Dispute with Insurers</p>	<p>26 March 2020</p> <p>COVID-19: The Test for Mandatory Interlocutory Injunctive Relief from the Irish Courts</p>	<p>26 March 2020</p> <p>COVID-19: Civil Liability for Failing to Take Precautions and Exposing Others to...</p>

Selected Other Online Resources, Useful for Remote Working

- Bloomsbury online [**subscription service**]: online access to Irish books, by practice area
- Irish Statute Book [**free service**]: online access to all Irish legislation (but little of it is consolidated)
- Oireachtas [**free service**]: a great site for debates, Bills and documents laid before either House
- Better Regulation [**subscription service**]: excellent for legislation (consolidated) and for its aggregation service for news and commentaries
- Europa [**free service**]: the website of the EU institutions, including a link out to EUR-Lex for EU legislation (including consolidated versions of key instruments)
- ICLR (UK service) [**subscription service**]: reasonable free access permitted to monitor some UK caselaw without a subscription
- BAILII [**free service**]: a good source of Irish and UK caselaw
- Twitter [**free service**]: there isn't any consistent *#hashtag*, so it's necessary to check each account separately, but for example see the CRO's https://twitter.com/cro_ie feed for the latest news
- (1) Lexis PSL and (2) PLC services [**subscription services**]: great quality, but expensive

National Governance and our Legislature

- As is clear in recent events, the Taoiseach and ministers remain in office pending replacement, with full powers (Article 28.11.2° of the Constitution)
- The business of Government can proceed
 - Making SIs, granting statutory approvals, etc is possible and lawful
 - However, the convention is not to introduce new policy or to commit to new spending as a ‘caretaker’ – clearly, each of these conventions is being challenged in current circumstances
- Current position: new (33rd) Dáil but, until last Sunday, the ‘old’ (32nd) Seanad – Taoiseach’s nominees required for the new (33rd) Seanad (being elected currently)
- New legislation: see the firm’s COVID-19 micro-site (mentioned earlier) for a suite of briefings and analysis of effects

COVID-19: Legislative Response (1)

- Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020
(enacted 20 March 2020)
- Emergency Measures in the Public Interest (Covid-19) Act 2020
(enacted 27 March 2020)

COVID-19: Legislative Response (2)

- Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020
 - Public health controls
(until 9 November 2020, unless extended)
 - Groups of people
 - Entry into the State
 - Exit from the State
 - Movement within the State
 - Social welfare changes
(until 9 May 2020, unless extended)
 - Protection of employment
 - Special payments (COVID-19 Pandemic Unemployment Payment)

KNOWLEDGE | 18 March 2020 | 2 MIN READ

COVID-19: Proposed Emergency Legislation

On 17 March 2020 the Irish Government published draft legislation to address aspects of the COVID-19-prompted global crisis as it is affecting Ireland.

The Health Preservation and Protection and Other Emergency Measures in the Public Interest Bill 2020 proposes measures in two broad policy areas: (a) public health and (b) social welfare.

COVID-19: Legislative Response (3)

- Emergency Measures in the Public Interest (Covid-19) Act 2020
 - Residential tenancies changes
 - Planning changes
 - Employment laws
 - Temporary wage subsidy scheme
 - Many important points of note aren't "changes"
 - Regulation of health professionals
 - Maximise available workforce
 - Adjustment to regulatory regime

KNOWLEDGE | 25 March 2020 | 3 MIN READ

COVID-19: Residential Rents to be Frozen and Terminations Suspended

The new Emergency Measures in the Public Interest (Covid-19) Bill proposes to prohibit residential rent increases and to prevent landlords from terminating residential tenancies during the COVID-19 crisis.

KNOWLEDGE | 25 March 2020

COVID-19: Planning Code Time-Limits will be Frozen

The proposed Emergency Measures in the Public Interest (Covid-19) Bill 2020 will give to the Minister for Housing, Planning and Local Government the power to freeze all time-limits in the planning code.

COVID-19: Legislative Response (4)

- Emergency Measures in the Public Interest (Covid-19) Act 2020
 - Residential tenancies changes
 - an emergency period of 3 months from enactment, subject to extension
 - no rent increase of any nature to take effect during or in respect of the emergency period
 - no termination of a residential tenancy for any reason by landlords during the emergency period
 - with limited exceptions, notice periods under notices of termination already served are to be extended by the duration of the emergency period
 - with limited exceptions, tenants over-holding are to be allowed to remain in occupation on terms and conditions applicable to date
 - Uncertainty regarding a Dáil amendment to the residential tenancies Part of the Act which, literally, appears to affect all tenancies

COVID-19: Legislative Response (5)

- Emergency Measures in the Public Interest (Covid-19) Act 2020
 - Planning changes
 - When commenced, the Minister will be empowered (a new section 251A of the Planning and Development Act 2000) to make regulations providing that the prescribed period of the current emergency is to be disregarded when “calculating any appropriate period, specified period or other time limit”
 - The ‘freeze’ will also apply to time calculations under legislation on derelict sites, vacant sites and building control
 - Employment law changes
 - Temporary Wage Subsidy Scheme
 - Changes to the redundancy payments regime
 - Many important considerations aren’t “changes”: employers’ ongoing duty of care
 - Note potential employer liability under Health Act 1947

KNOWLEDGE | 26 March 2020 | 2 MIN READ

COVID-19: Civil Liability for Failing to Take Precautions and Exposing Others to COVID-19

The Health Act 1947 is described in its long title as being an Act to make further and better provision in relation to the health of the people. During the current crisis, it naturally finds itself centre stage. However, once the immediate crisis has abated, will litigants seek to invoke one of its lesser known provisions before the courts?

COVID-19: Legislative Response (6)

- Emergency Measures in the Public Interest (Covid-19) Act 2020
 - Regulation of Health Professionals
 - For a fixed period to 31 July 2020, abbreviated re-registration requirements for doctors, paramedics, pharmacists, etc returning to the register, to practise only until 31 July 2020
 - No regulatory breach for non-doctors to undertake restricted activities under the control or supervision of a doctor

KNOWLEDGE | 25 March 2020 | 2 MIN READ

COVID-19: New Laws Regarding Health Professionals

The Emergency Measures in the Public Interest (Covid-19) Bill 2020, which is being considered urgently by the Houses of the Oireachtas (the Irish parliament) on 25 and 26 March 2020, proposes a number of measures that are intended to mitigate the impact of COVID-19 on the administration of some public service functions. This briefing addresses the important proposals that the Bill makes in respect of the registration and conduct of health professionals. Other McCann FitzGerald briefings address the Bill's implications for [residential tenancies](#), [employment law](#) and [land-use planning](#).

COVID-19: Emerging and Anticipated Legal Issues (1)

- Execution of documents (e-signature etc) (attorneys!)
- Holding meetings remotely (board and general)
- Cyber-fraud
- Duties of a director
- Procurement law
- Limitation periods (other than planning)?
- Insurance cover (eg business interruption policies)

KNOWLEDGE | 13 March 2020 | 4 MIN READ

COVID-19: Taking Board Decisions without Meeting

Restrictions in travel and gatherings resulting from COVID-19 may make it inconvenient or difficult for the directors of a company to hold a physical directors' meeting. Indeed, it may not practically be possible for all or for a *quorum* of the directors to meet together by holding a "physical" (or "in-person") directors' meeting at all.

KNOWLEDGE | 5 March 2020 | 6 MIN READ

Coronavirus: Contingency Planning for Annual General Meetings

The impact of the spread of coronavirus (COVID-19) is being felt across the world, not only affecting the health of those contracting the virus, but causing disruption to daily life for the population at large by restricting travel and limiting social and other gatherings. Company directors and secretaries are well advised to modify their usual planning for their company's annual general meeting ("AGM") in light of the threat posed by the evolving COVID-19 situation.

COVID-19: Emerging and Anticipated Legal Issues (2)

- E-Signatures
 - Broadly, and subject to close care to the detailed guidance for each scenario, possible
 - Important exceptions such as deeds affecting land
 - Law Society guidance (issued yesterday) – but an anomaly?
 - A frequently useful ‘workaround’ for sealing requirements electronically is to use a natural person acting under a power of attorney – e-signatures by natural persons are the most straightforward variety
- Holding meetings remotely
 - Boards: written resolutions and e-meetings
 - General meetings: importance of proxies
 - General meetings: delay not possible if notice has been issued
 - General meetings: no general power to postpone, but possible adjournment

COVID-19: Emerging and Anticipated Legal Issues (3)

- Cyber-fraud
 - Garda concerns
 - Dispersed workforce and unusual events can heighten the risk of cyber-fraud
 - Increased vigilance and rigorous application of safeguards remain essential
- Duties of a director
 - Ongoing duty to act in good faith in what the director believes to be the interests of the company
 - Ongoing duty to have regard to the interests of the company's employees
 - Insolvency or the prospect of insolvency? Media commentary but this is a complex question (concerns about the temporary wage subsidy scheme seem overdone)

KNOWLEDGE | 31 March 2020 | 3 MIN READ

COVID-19: Increasing Risk of Cyber Fraud

The global COVID-19 (Coronavirus) pandemic continues to impact our society in many ways. In particular, it has fundamentally changed the way in which businesses operate. Pursuant to recent government advices, many businesses now find themselves operating (to some extent or entirely) remotely. In such uncertain times, it is important not to lose sight of the risks involved when staff are operating outside of an organisation, in particular the threat of cyber fraud.

COVID-19: Emerging and Anticipated Legal Issues (4)

- Procurement law
 - Implications for planned competitions, ongoing competitions and challenges
- Limitation periods
 - No general ‘pause’ yet enacted, but is this increasingly likely?
- Insurance cover
 - What do the policy terms state? A named peril, or broader language?
 - Central Bank oversight

KNOWLEDGE | 24 March 2020 | 5 MIN READ

COVID-19: The Impact on Public Procurement

COVID-19 has led to unprecedented limitations on economic and other activity within Ireland and around the world. Each contracting authority should consider the associated risks to their procurements whether planned or on-going, and determine how to proceed. This short paper outlines the general position regarding the application of procurement law during the crisis, and highlights a number of issues that should be taken into account, depending on the stage that your procurement has reached.

KNOWLEDGE | 27 March 2020 | 2 MIN READ

COVID-19: Business Interruption Policies at Centre of New Dispute with Insurers

The insurance industry will be at the centre of the fallout from the current public health crisis. In that context, a recent statement issued by Insurance Ireland has caused concern for some businesses affected by COVID-19.

COVID-19: Current Legal Issues (1)

- Material adverse change clauses
 - The express wording of a MAC may excuse a party from fulfilling some obligation due to circumstances resulting from COVID-19 or indeed entitle a party to terminate the relevant agreement
 - Analyse the particular events change in respect of which the parties have anticipated may be both *material* and *adverse*
 - Typically a MAC is drafted in precise terms (eg an adverse change in a party's credit rating or financial status, of specified magnitude)
 - Uncommon in M&As and then likely only to be relevant in the period between signing and completion
 - In the case of a typical generic MAC clause, it is unlikely, at present, that a party will be able to successfully invoke a MAC due to COVID-19

COVID-19: Current Legal Issues (2)

- *Force majeure* clauses
 - The starting point: judicial expectation that a binding agreement will be enforced
 - Identify what's the real impediment to performance?
 - When is a force “*majeure*”?
 - There must be impossibility of performance, not merely greater difficulty
 - Likely to be suspensory, not terminal to the contract

KNOWLEDGE | 13 March 2020 | 4 MIN READ

COVID-19: Commercial Contracts and Force Majeure

Public health concerns about COVID-19 are now having direct and significant impacts in the general economy. This briefing addresses a key question that is likely to arise for business-people where commercial relationships and commitments are strained by these extraordinary events.

COVID-19: Current Legal Issues (3)

- Frustration
 - Has a contractual obligation become incapable of performance, or illegal?
 - The doctrine won't be applied lightly – recall the judicial starting point in our system of *laissez faire* contracting
 - As with *force majeure*, mere difficulty in performance isn't enough
 - If the circumstance preventing performance has arisen from the act or default of either party, that party cannot rely on frustration (this would probably be a straightforward breach of contract)
 - The frustrating event must not have been foreseen or have been foreseeable, *at the time of contracting*
 - Effect is to be contrasted with *force majeure* – terminal for the contract, not merely suspensory

KNOWLEDGE | 31 March 2020 | 4 MIN READ

COVID-19: Commercial Contracts and Frustration

In this briefing we look at the circumstances in which the courts may say that a contract is at an end for the future (“frustrated”) because of the current COVID-19 crisis.

Synopsis (1)

- Wide and deep resources available to us all (Knowledge Hub, the McCann FitzGerald COVID-19 micro site) – check daily
- There is a lawful ‘caretaker’ Government with full powers although a new Government seems imminent
- There have to date been important legislative responses in key areas such as:
 - public health
 - employment law and wages support (further webinar to follow) (temporary wage subsidy scheme), but many important considerations aren’t “changes”
 - social welfare (eg COVID-19 Pandemic Unemployment Payment)
 - land-use planning
 - residential tenancies
 - regulation of health professionals
 - more to come? Limitation periods generally?

Synopsis (2)

- E-signatures and meeting remotely: each, broadly, is possible but read the detail!
- Heightened risk of cyber-fraud
- Ongoing duties of a director, including sensitivity to insolvency, but being pragmatic too
- Procurement, limitation periods, insurance cover?
- Commercial contracts:
 - MACs: unlikely to engage currently
 - *Force majeure*: possibly a decent argument, based on drafting and facts
 - Frustration: as for past centuries, the threshold is very high
- These are difficult times: liaise with your contacts in McCann FitzGerald for assistance