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# Tech Lite

Summer 2020

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# Tech Lite Summer 2020

## Introduction

In this Summer 2020 edition, we explore what is emerging from lockdown and take a detailed look at the following:

- COVID-19 – one code we could do without?
- Is the North West a favourite for foreign investment?
- The boom of e-commerce
- Business continuity in uncertain times
- Coronavirus job retention scheme & flexible furlough



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# COVID-19 - One Code We Could Do

## The dictionary definition of a virus is:

1. "an infective agent that typically consists of a nucleic acid molecule in a protein coat is too small to be seen by light microscopy and is able to multiply only within the living cells of a host" and
2. "a piece of code which is capable of copying itself and typically has a detrimental effect, such as corrupting the system or destroying data".

While Tech businesses are ideally placed to deal with the second type of a virus, it was extremely difficult to foresee the impact and effect the first type of virus could cause locally and globally. We have seen lots of positives and opportunities emerging from the pandemic over recent months.

As such, we believe now is an exciting time for the Tech Sector. In this article, we examine some of these opportunities.



## 1. Manchester, the North West and the UK continues to thrive in the Tech Sector

Investors continue to back the UK's most promising tech teams, despite the challenges posed by COVID-19. [thebusinessdesk.com](https://www.thebusinessdesk.com) has revealed Manchester "as the vanguard of digital cities", noting that Manchester is the home to several unicorn companies including The Hut Group, Boohoo.com, AutoTrader UK and On the Beach Holidays, as well as up and coming unicorns, UKFast, F2G and VST Enterprises.

We've seen this trend reflected over the last few months, winning new tech clients and assisting existing clients with:

- investments in tech businesses;
- taking new products to market including both virus prevention and containment innovations;
- research and development, innovation and collaborations;
- digital modernisations; and
- the deployment of cashless payment systems and solutions,

all of which has been driven in response to the pandemic. For a more detailed analysis of this, see our article [Is the North West favourite for foreign investment?](#)



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## 2. Home Working

The pandemic could have been a continuity nightmare for many businesses as they had to turn into virtual offices with very little warning, we became a virtual law firm overnight – with the timeframe being no exaggeration! Now for many, working from home is the 'new normal'.

Businesses have embraced technology, from video conferencing facilities, to platform and software services and tech companies have shown their agile nature, responding to meet such changing requirements quickly. However, with lockdown restrictions slowly lifting, what will be the new normal tomorrow?



## 3. Broadband Stability

Underpinning the ability for businesses to operate remotely is broadband stability. Thankfully, we haven't seen significant broadband issues despite the increased capacity placed on localised networks, which has produced one of the first chances to really test broadband capabilities and the early results are positive. On the whole broadband has been stable despite the almost overnight increase in demand. All of this is welcomed news as we face uncertainty as to how long the country will take to emerge fully from lockdown and to understand what the new working landscape will be like. We anticipate more flexible and agile working methods, providing further innovation opportunities to businesses and work-life balances for employees.

## 4. Online Opportunities

The change in the working environment has enabled the "to do when time permits" projects to be ignited as furloughed individuals, entrepreneurs and tech companies are seizing the opportunities that either the downtime or rapid nature of COVID-19 have provided. One area that we have noticed an increase in activity with is e-commerce offerings. Whether that is established businesses enhancing and developing their online presence or new start-ups offering online services, they have responded to the emerging needs of businesses, parents and consumers to provide; distance learning products, virtual fitness classes and large-scale online entertainment as well as live streaming. We anticipate this trend to continue and take a detailed look at the e-commerce boom in our article [2020: the boom of e-commerce](#).



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## 5. Cashless Payments

Social distancing measures have meant a shift towards contactless payments, with the contactless limit being raised to £45 in a bid to reduce unnecessary human interaction with the exchange of cash. As retail outlets begin to reopen, many stores (including Topshop and Dorothy Perkins) have announced that upon reopening, they will not be accepting cash as payment for items. Payment providers and fintech's (already very pro-active in the tech sector) will no doubt see an increase in the demand for their technology, providing fertile ground for further growth in this area.

## 6. Health Tech, & Cyber Security

Urgent response to the pandemic has arguably been felt most in the healthcare sector. From the NHS track and trace app, to online GP consultations and appointments to reduce face to face contact, these developments demonstrate how tech products continue to weave (eventually) seamlessly into our day to day lives.

The flip side of innovation is that fraudsters are finding new opportunities to exploit weaknesses and vulnerabilities both via tech and human error. It's reported that the NHS Coronavirus contact tracing app has been subject to a phishing scam already, containing a link to a website which then asks for personal data, allowing the fraudsters access to bank accounts.



While many industries are collaborating to aid in combating such risks, such as the Chartered Trading Standards Institute, which has joined forces with other business to create the cross-industry initiative "Businesses Against Scams", there is a continued threat to business from the increase in cyber activities and remote working. One simple step business should take is to re-visit its BC&DR plan and cybersecurity measures.

**One thing is for certain;** businesses and individuals will continue to adjust as we emerge from the pandemic and re-build the economy, but with any new challenge comes an opportunity and our tech team are here to assist businesses in this changing environment.



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## Is the North West a Favourite for Foreign Investment?

# Investment

The North West has continued to maintain its reputation as being a hub of activity for investment, particularly in the tech sector.

### The statistics

According to the 2020 EY UK Attractiveness Survey, which is the latest report by Ernst & Young LLP (UK) on foreign direct investment (FDI), the UK had a strong year of investment activity in 2019, attracting 1,109 FDI projects, a 5% increase on 2018. The UK also surged ahead in digital tech investments, attracting 432 projects (a 36% increase on 2018), representing a 30% share of all European FDI projects, more than France and Germany combined.

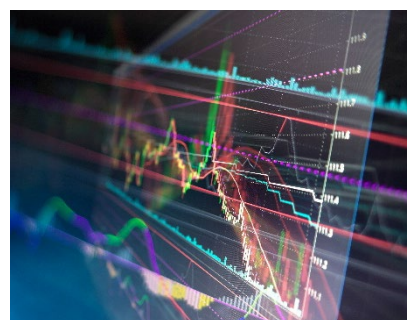
In the North West, digital (23 projects) and business services (11 projects) were also the two leading sectors for investment, accounting for 45% of investment into the region. The North West has seen an increase of projects of 3 from 2018.

### The North West

Foreign investors are attracted to the North West, with Manchester and Liverpool being the main targets. In particular, investors are attracted to the strong local skills base and excellent transport and technological infrastructure which the North West has to offer.

Bob Ward, Managing Partner for EY in the North West, said:

*"It isn't surprising that digital projects continue to top the list. The North West has seen its strongest year in the decade in terms of digital investment and has long-since been regarded as a hub for the digital and technology industry – which just serves to highlight how the region is a fantastic example of a modern, progressive economy".*



### COVID-19 and the Tech Sector

Even in this uncertain economic environment, the North West continues to excel and is utilising its strengths in sectors such as cybersecurity, eCommerce, life sciences, low carbon and digital technologies to continue to build its status as a leading destination for high-value inward investment outside of London. While not all of the tech sector has been immune to the effects of COVID-19, large parts of the sector have fared well. The general economic uncertainty created by COVID-19 has demonstrated how much of an attractive proposal a tech company can be for an investor.

As a firm, we have noticed that investment work remains strong in the lockdown which we can see in the number of new instructions we receive in private equity. It is encouraging to see that the research confirms this trend and that the North West is also well placed to recover from the impact of COVID-19. For tech businesses, investment can have a significant impact on growth. It can make the difference in launching a new product or expanding geographically. While there are other means to raise capital, investment remains an attractive proposition for the tech sector and investors alike, and the North West continues to operate as a hub for this activity.



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## 2020: The Boom of E-commerce

The UK retail market has faced considerable challenges in recent years. The default position of operating from expensive high street premises has been eroded by the growing trend to operate solely from a digital platform.

The COVID-19 pandemic has exasperated these existing challenges and fuelled a boom in e-commerce as businesses turn to technology to ensure survival and explore new opportunities.

Consumers are also creating and reinforcing new online behaviours with many browsing the internet, not just for traditional Amazon/eBay purchases, online food and clothes shopping but for alternative entertainment such as fitness classes, lessons, tutorials, equipment and supplies. For many, this switch is likely to extend beyond the reopening of non-essential shops, or when a vaccine is made available, as consumer confidence in the security of e-commerce grows and many become accustomed to the efficiency and convenience the online environment provides.

In this article, we explore the legal documents businesses looking to establish their online presence require to operate in the digital environment.

### What is an e-commerce platform?

Businesses must first decide on the type of e-commerce platform to use before converting their operations from a physical to a digital offering. E-commerce platforms are applications which provide online stores for businesses, including features such as the website design, shopping baskets, order forms, and customer accounts.

Whilst large enterprises can build and maintain their e-commerce platform; this is not generally an option for SME's and new start-ups due to the considerable development and maintenance costs that are often involved, and the expertise required to service the platform on an ongoing basis.



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## Platform as a service (PaaS) agreement

The common alternative to developing your own e-commerce platform is to access platform applications and cloud-based infrastructure, which allows you to deploy your software applications and/or services. A PaaS structure removes the need to buy and maintain your own infrastructure, as software applications and services can be managed on top of the infrastructure that the PaaS provider supplies.

Examples of PaaS services include Microsoft Azure and Amazon's AWS Elastic Beanstalk. The benefits of PaaS solutions include:

- the accessibility by multiple users;
- scalable; and
- easy to run without extensive system administration knowledge.

Whilst a PaaS solution caters for the operation of an e-commerce site, e-commerce providers must also consider how they supply their goods/services. Businesses operating in the e-commerce sector should have:

- e-commerce terms and conditions of supply;
- website terms and conditions;
- privacy policy; and
- cookies policy.



## E-commerce terms and conditions of supply

Whether your businesses supply goods, services and/or digital content, e-commerce terms and conditions are required. They differ depending on whether your business supplies consumers or other companies. E-commerce terms and conditions of supply set out the essential terms on which an online business operates, covering matters such as payment, refunds, specifications and standards of the goods, services or digital content, risk, delivery, warranties and termination rights. Business to consumer terms and conditions not only need to cater for the enhanced rights consumers are entitled to under consumer law. Still, they must be in a style that is non-legalistic in nature. The critical concerns of e-commerce providers will be to ensure that their terms and conditions:

- are fit for purpose and minimise potential liability to third parties to the extent possible;
- cover the order process for the goods, services and/or digital content being provided via the platform or website;
- cover the nature of what is being supplied whether that be goods, services and/or digital content or a mixture;
- ensure that title to any goods are retained until they have been paid for. This means that until payment is received, the ownership of the goods will remain with the supplier;
- adequately deal with the cancellation rights of both parties, and how refunds are to operate; and
- comply with consumer legislation where the supply is to consumers.





## Website terms of use

Website terms of use set out the rules that users of a website must comply with when accessing and using the website. They prohibit the unauthorised reproduction of site content and restrict behaviour such as hacking, introducing viruses, and uploading defamatory content. As the majority of e-commerce sites allow users to create accounts, they will also govern the use of such accounts and provide remedies for the business in the event of a breach by the user. If a website is interactive, allowing users to generate content or interact with the website, then it is advisable to have the ability to remove the material or suspend/terminate a user's right of access. The terms can also address issues such as disclaimers to minimise the risk of liability in the event of misstatements or misuse of the website.

## Privacy policy

A website privacy policy informs users about how the website collects, uses and stores personal data through the access to, and use of, the website. Such policy enables e-commerce businesses to comply with their obligations under data protection legislation to ensure transparency in the collection and use of personal data.

## Cookies policy

E-commerce websites will use a variety of different cookies, for example, to store what shoppers have put in their basket (should an error occur) retain account information such as usernames, passwords and delivery addresses and can track pages/items viewed. A cookies policy informs users what cookies are active on the website, what the cookies are for, the information they collect or track and the reason for this. It should also inform users on how to deactivate cookies. An important point to note is that permission must be given before any non-essential cookies being set on a user's device. For more information on cookies [click here](#).



**We have a wealth of experience in assisting clients who are first-time e-commerce providers and establish trading e-commerce businesses.**

**We offer a packaged service for start-up businesses to get your e-commerce trading 'off the ground' and we also offer bespoke drafting for complex e-commerce sites and platforms.**



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## Business Continuity in Uncertain Times

Whilst business continuity and disaster recovery plans (BC&DR) traditionally involve implementing established processes and procedures to enable "business as usual" in the event of interruption, failure or disruption of essential services, the current climate has required a business to think outside the box literally.

The implementation of lockdown measures meant businesses had to apply a variety of continuity measures, irrespective of whether these were set out in their BC&DR plans. This has meant that such plans have had to evolve.

These evolving BC&DR plans can be broken down in 3 stages:

1. The Reactive Stage;
2. The Triage/Crisis Management Stage;
3. The Pro-active Stage.



**Reactive Stage** – this is the first stage of the BC&DR plan. Unfortunately, with COVID-19 and The Government announcement that *"anyone who could work from home must"* with very little time to migrate to home working, many businesses probably felt like they were running around like headless chickens, trying to get things in order as the mass exodus from office premises began.

At Myerson, we decided to close our doors for the foreseeable future, the evening the announcement was made. We communicated this to staff in a mixture of ways; in person, to those who were still at the office, by email and text message. Those of us that remained in the office grabbed laptop's, pens, paper, anything we thought we would need to work from home (for the short term).

Our IT team jumped into action, ensuring we had the means to operate from home. Fortunately, for us, this all went remarkably smoothly. Not every business will have had the same level of success, with some hitting a panic button as they were required to turn into virtual businesses overnight. The effects of a global pandemic with enforced lockdown are not really the scenarios catered for in most BC&DR plans but will, no doubt, be in future plans.

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# Business Continuity

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**Triage/Crisis Management Stage** – from the initial reactions to lockdown, we quickly moved into triage and crisis management stage. This is where businesses got the additional critical infrastructure in place to facilitate operating remotely whilst also triaging other essential systems required to get fully operational, rolling out new methods of working and communicating. In the COVID-19 environment, we have seen businesses embracing virtual meetings via Microsoft Teams and Zoom and businesses diversifying and providing their services virtually.

**Pro-active Stage** – this stage is no doubt where most businesses will now be. This involves companies taking a pro-active approach to ensure continuity of operations in the new normal working environment we find ourselves in. This post lockdown environment (unlike the pre-lockdown environment) isn't as static as it used to be, it's agile, and will change and adapt to respond to the new challenges presented post-lockdown.

Over the coming weeks and months, we will see businesses and staff migrating back to office premises; however, this is unlikely to be on mass as businesses must put social distancing measures in place. The working environment will be very different.

Businesses may need to cater for split shift patterns, to provide two operating environments simultaneously to allow members of staff to work from home and the office, or, in some cases make the decision to have some staff working from home on a permanent basis. All of which means that business operating systems and IT infrastructure may need to change for the long term.

The evolving working environment will bring opportunities for the tech sector, especially software and IT infrastructure providers, as:

- new technologies are sought as businesses look to make efficiencies;
- existing IT contracts (which may be historic) may not be structured or able to adapt to the new climate and therefore may need to be updated or new contracts entered into with clients;
- licensing structures may need to be reconsidered (for example does a terminal subscription model reflect how a business is actually using the software?);
- businesses become more receptive to cloud services wanting the extra security and rapid scalability cloud services provider; and
- businesses look to implement multi-sourcing and require software providers to collaborate with each other.


Businesses should continue to audit their operations and review areas of weakness to ensure the systems and agreements they have in place are robust and appropriate in the emerging and post-lockdown environment we are entering.



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## COVID-19 Job Retention Scheme & Flexible Furlough

The Coronavirus Job Retention Scheme is changing – with an end date of 31st October, employers are being expected to contribute from August and a new "flexible furlough" option.

On 12th June 2020, HMRC released further guidance that explains in detail how the Coronavirus Job Retention Scheme (CJRS) will alter from 1st July 2020. In this article, we summarise the key changes that employers need to be aware of.

### Which employees can employers claim for, from 1st July?

From 1st July, only employees that you have successfully claimed a previous grant for will be eligible for further grants under the scheme (i.e. they have been furloughed for at least three consecutive weeks at any time between 1st March and 30th June 2020).

It is now too late to place employees on furlough for the first time. 10th June 2020 was the last date on which an employee could be newly placed on furlough and qualify for the CJRS (unless they are returning from forms of family leave, for which special rules apply).

### How many employees can an employer claim for under the Coronavirus Job Retention Scheme?

From 1st July 2020, you cannot claim for a greater number of employees than the maximum number you claimed under any single prior claim.

For example, if an employer has submitted three claims before 30th June, in which it furloughed 5, 15 and 25 employees respectively, the most it can furlough in a single claim from 1st July will be 25. Alternatively, where an employer has been rotating ten employees, with five employees on furlough and five employees in work at one time, from 1st July, that employer can only claim for a maximum of five employees at one time. There are exceptions to this rule for employees returning from forms of family leave.

### What costs will the Coronavirus Job Retention Scheme cover from 1st July onwards?

In June and July, The Government will continue to pay 80% of wages up to a cap of £2,500, plus employers' National Insurance Contributions (ER NICs) and pension contributions.

However, the staffing costs that The Government will cover are being gradually tapered through to the closure of the CJRS on 31st October 2020, with employers being required to contribute as follows:

- From 1st August: employer national insurance and pension contributions.
- From 1st September: 10% of employee wages (up to £312.50) plus employer national insurance and pension contributions.
- From 1st October: 20% of employee wages (up to £625) plus employer national insurance and pension contributions.

For a more in-depth look at how employers' costs under the scheme will be changing, please see our previous update [here](#).



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## What is flexible furlough?

From 1st July 2020 employees can be placed on a part-work, part-furlough working arrangement called "flexible furlough". Any working hours will be paid in full (along with the usual deductions for tax and NICs) at an employee's normal rate by the employer. Any time spent on furlough will be reimbursable under the scheme (subject to the relevant caps and employer contributions).

The Government grant and wage cap will be decreased in line with the hours an employee does not work. For example, an employer can claim 50% of the £2,500 cap if their employee is only furloughed for 50% of their typical hours in July.

Employers are required to agree flexible furlough plans with employees (or reach collective agreement with a trade union) and ensure this agreement is confirmed in writing.



## What are the claim periods for furlough?

The new HMRC guide [Steps to take before calculating your claim using the Coronavirus Job Retention Scheme](#) examines a series of considerations, investigations and calculations that are needed before submitting a claim under the revised CJRS.

The key points include:

- claim periods starting before 1st July must end on or before 30th June, even if an employee is continuously furloughed throughout June and into July. Separate claims will need to be submitted to cover the period in June and period in July;
- 31st July is the last day that employers can submit claims for periods ending on or before 30th June.
- the first-time employers will be able to make claims for days in July will be 1st July;
- claim periods starting on or after 1st July must start and end within the same calendar month and must last at least seven days unless the claim is for the first few days or the last few days in a month.
- when claiming for employees who are flexibly furloughed, employers should not claim until they are sure of the exact number of hours employees will have worked during the claim period. If the employee works for more hours than reported to HMRC, employers will have to repay some of the grant; and
- employers need to include all of the employees they want to furlough for each claim period because they will not be able to make another claim for the same period or one that overlaps with it.



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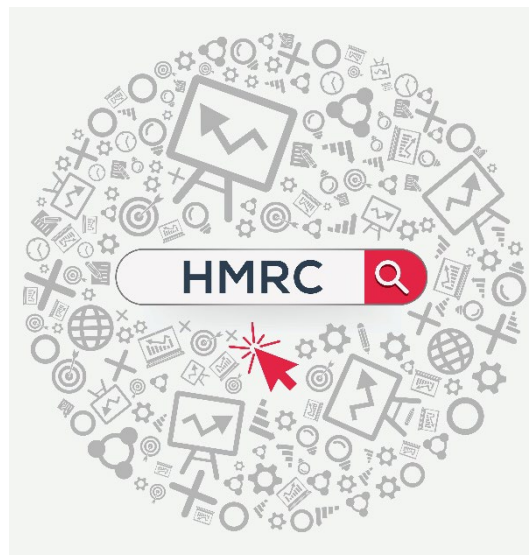




## What costs will be covered for flexible furlough?

If an employee is flexibly furloughed, the employer will be responsible for paying them at their normal rate for any hours worked, with reimbursement under the CJRS limited to those hours spent on furlough. Employers need to know their employee's usual hours (see below) and must record the actual hours that employees work, as well as their furloughed hours, in each claim period. Any claim under CJRS is limited to a claim for unworked hours (and is subject to the applicable cap and employer contribution).

HMRC has given a working example of how an employer should calculate a claim for someone on flexible furlough. HMRC has also issued a detailed guide, Calculate how much you can claim using the Coronavirus Job Retention Scheme, which examines the mechanics of claim calculation under the revised CJRS. An online calculator is also available.



## How do we work out an employee's usual hours?

The HMRC guidance provides calculation methods for a range of different types of employees, such as fixed hours, variable hours and piece work. The approach is potentially complicated and so The Government's guidance Steps to take before calculating your claim using the Coronavirus Job Retention Scheme should be carefully followed.

The new document HMRC guidance Changes to the Coronavirus Job Retention Scheme summarises the revisions taking effect from 1<sup>st</sup> July 2020 under the CJRS. To implement the revised CJRS, a further Treasury Direction will be required. To date, this has not been released. We will report when this direction is available.

The Coronavirus pandemic is an ongoing issue that continues to unfold, and The Government's guidance is often subject to regular amendments. We strongly advise that employers remain alert and keep checking to make sure that you have the most current and up to date position.



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