

Termination: managing the way out of a contract

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13 August 2020



Structure of Session

The right to terminate

- at common law
- under the contract

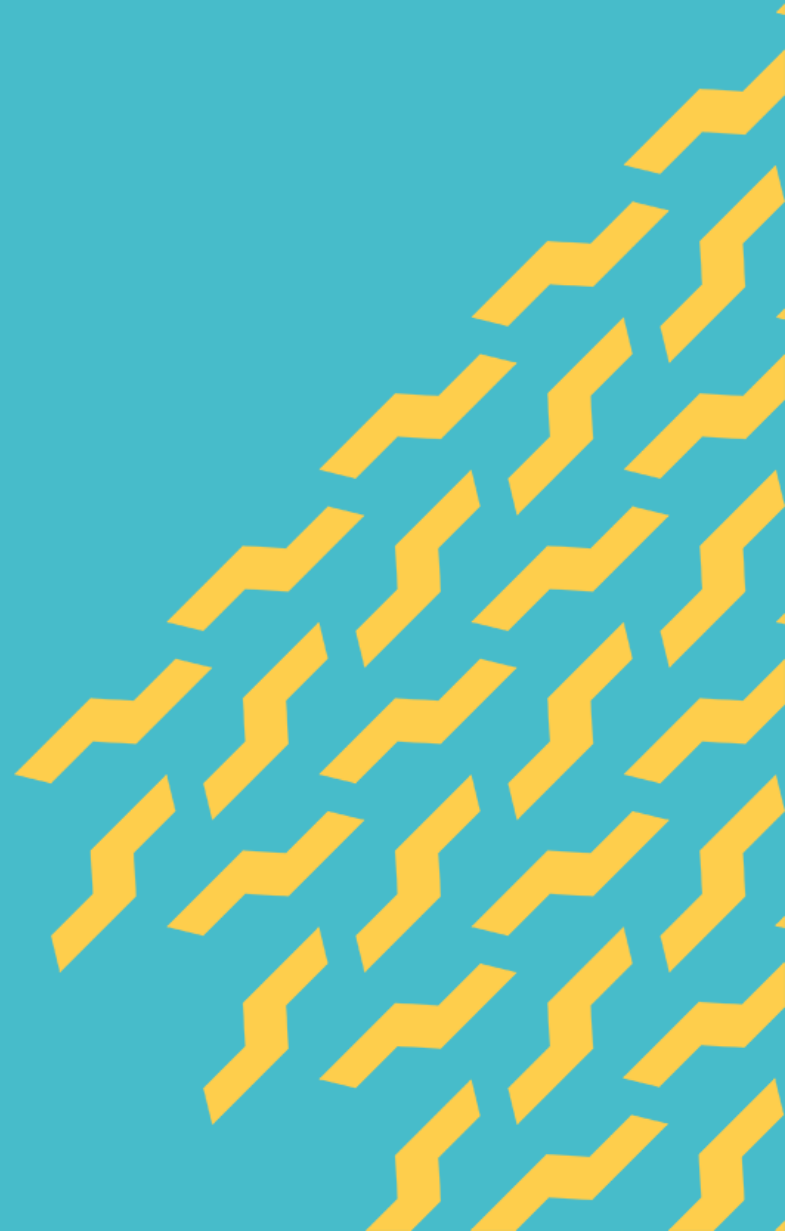
The consequences of termination

- legal consequences
- practical steps

Corporate Insolvency and Governance Act 2020

Q&A

The right to terminate



The right to terminate Common law

How termination for repudiatory breach works

Party A commits a repudiatory breach, showing intention not to be bound

Party B elects to accept the repudiation

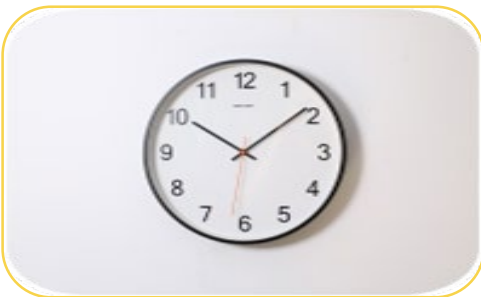
Contract and obligations end

The right to terminate Common law (2)

Risk: wrongful termination = damages liability



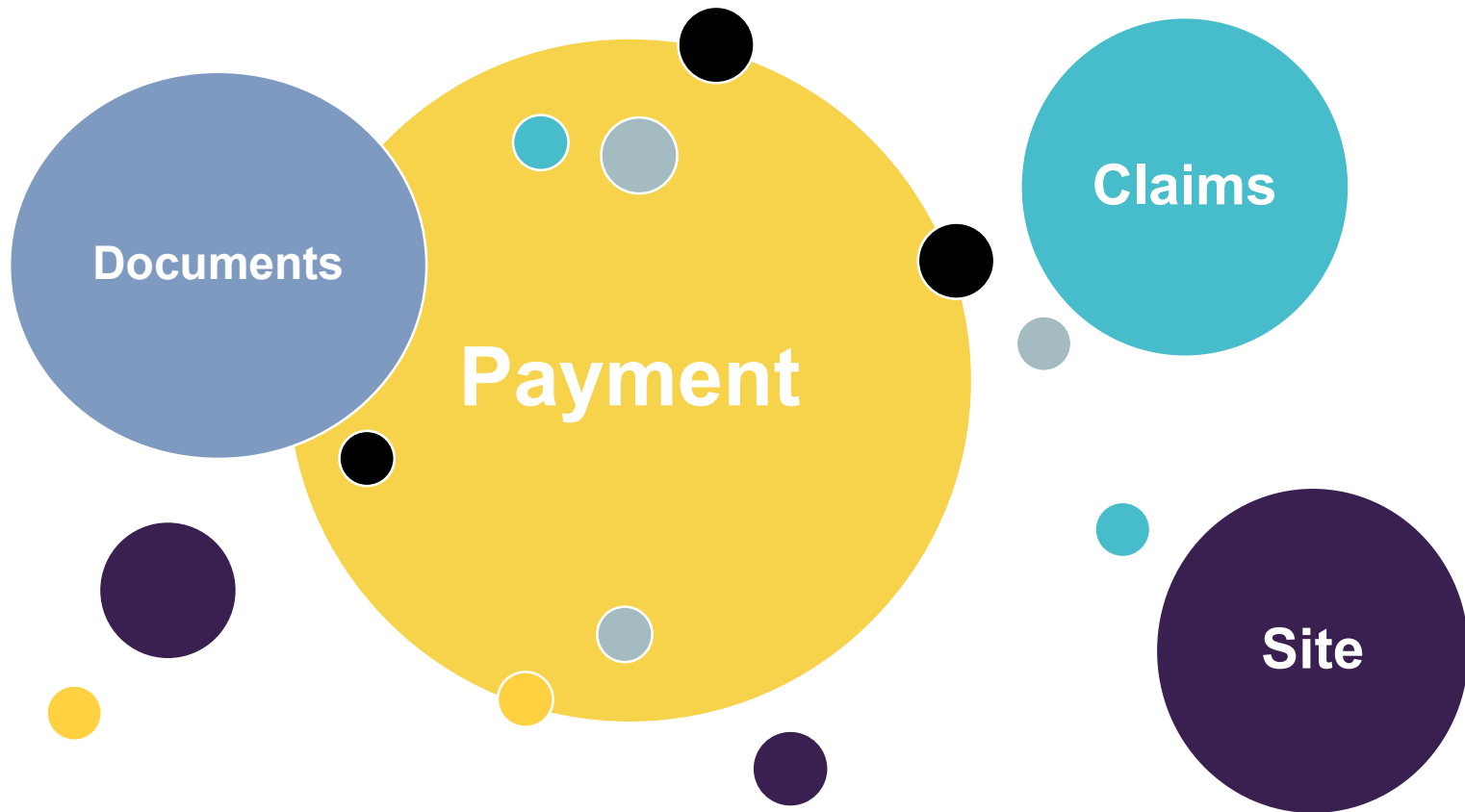
Ensure the breach is repudiatory
If not, termination is wrongful



Ensure the contract is not affirmed
Or it will be too late to accept the repudiation

The right to terminate Common law (3)

Future performance ends, but what happens next?



The right to terminate Under the contract

- Why terminate?
- Most standard forms contain contractual provisions relating to termination
- Primarily two types of provision:
 - Termination for convenience
 - Termination due to an event of default
- Contractual provisions will not necessarily displace common law rights
- Provisions are likely to allow for termination by the Contractor or the Employer
- Consequences will be different depending on the circumstances

The right to terminate Under the contract (2)

Before considering termination:

- Check the contract provisions:
 - Circumstances required
 - Notices
 - Default and cure
 - Consequences
- Also consider:
 - The relationship with the other party
 - Is it more profitable to continue with the contract?
 - Other rights or remedies in addition to or as an alternative to termination
 - Negotiation / dispute resolution

Consequences of termination



Consequences of termination

Legal consequences

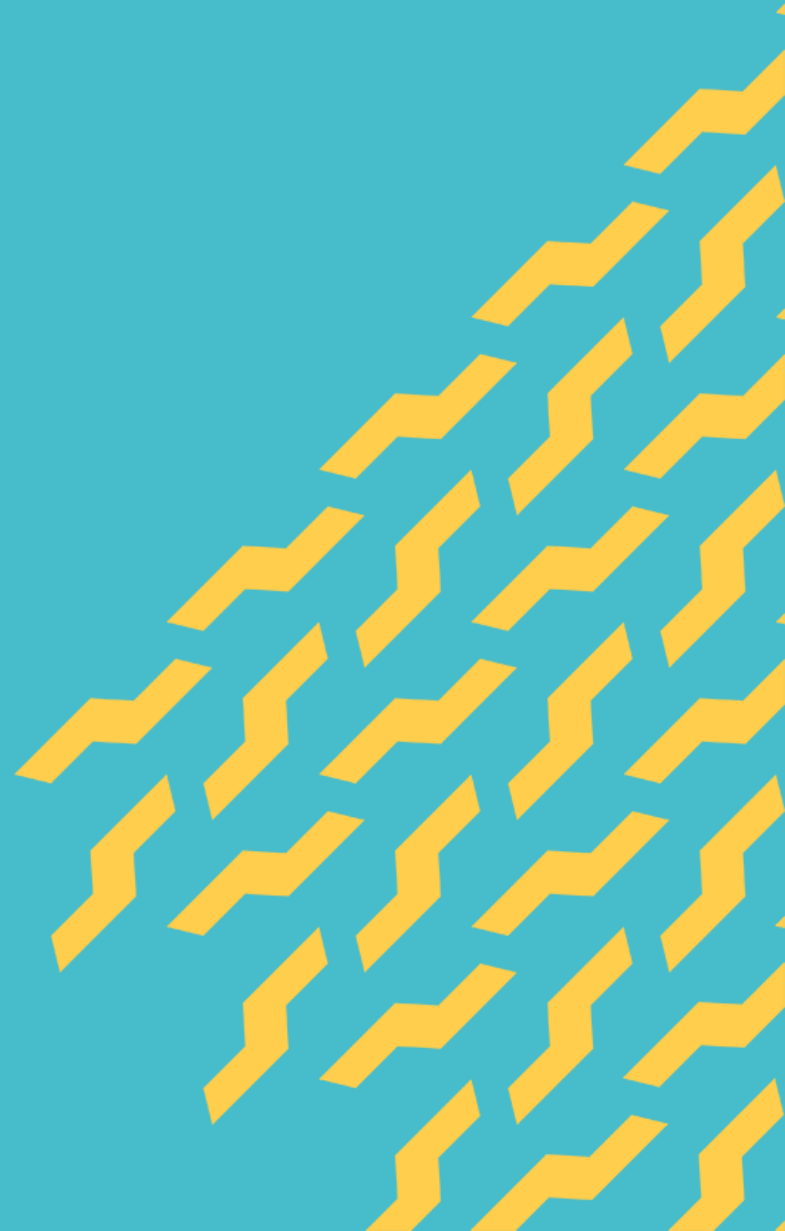
- Obligation to perform main contractual duties ceases
- Some terms will survive and there are likely to be accrued rights
- At common law, the party alleging repudiatory breach may claim damages
- Under the contract, entitlements should be set out. These are likely to differ between termination for convenience and termination for default
- What happens if you terminate wrongfully?

Consequences of termination (2)

Practical consequences

- Preparing the ground for termination
- Securing the Site / disorderly behaviour
- Plant, equipment and materials
- Documentation and data
- Payment
- Notices to third parties
- Subcontractors
- Dispute resolution
- Bonds

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Impact on termination

1. Suppliers of goods and services cannot use contractual provisions to terminate on the basis of customer insolvency, or action a right to terminate already accrued during insolvency period, e.g.

Insolvent party	Cannot terminate for insolvency
Subcontractor	Supplier
Contractor	Subcontractor
Employer	Contractor

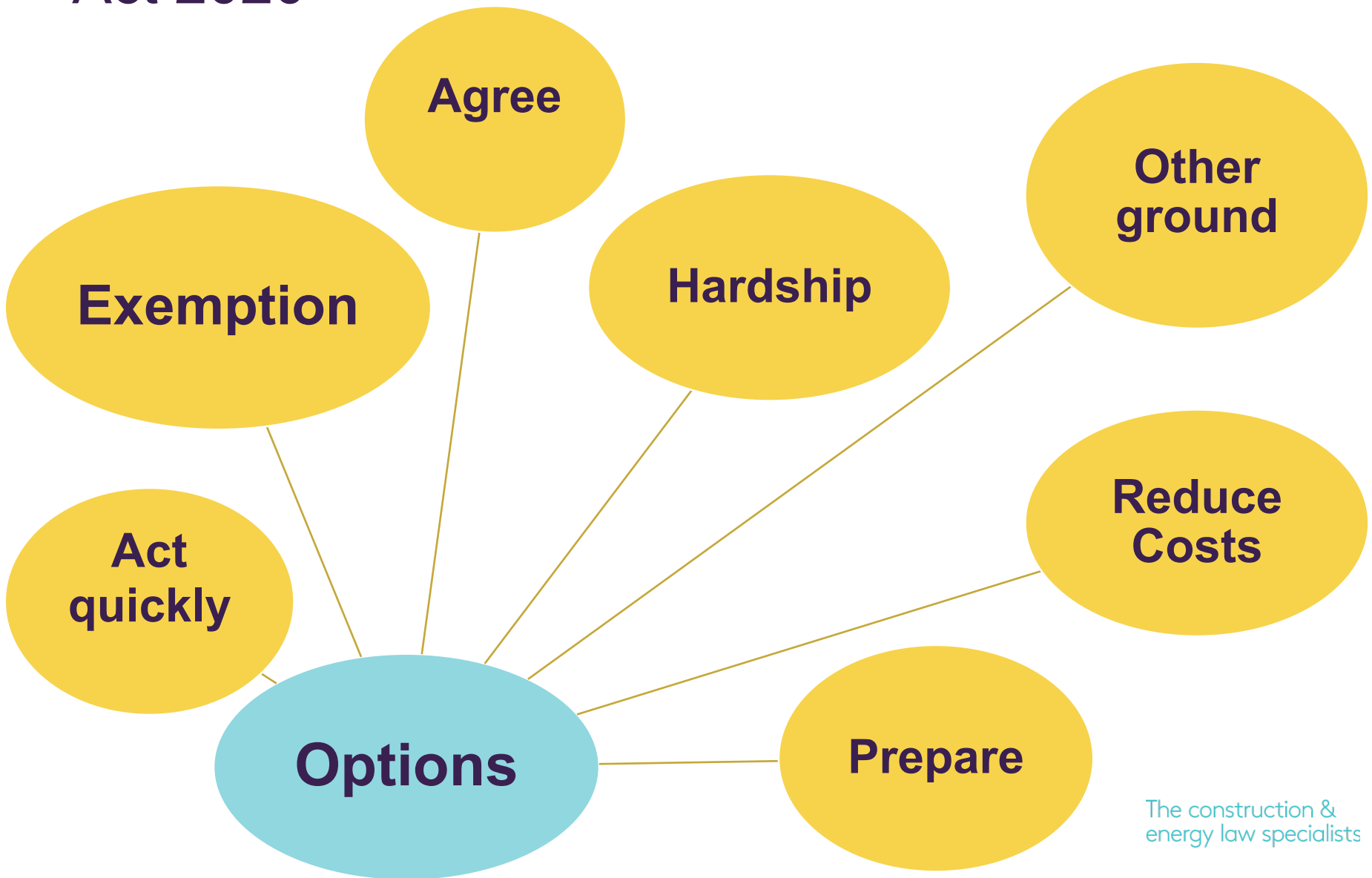
2. Customers can terminate on the grounds of insolvency PROVIDED the nature of the insolvency event meets the contractual definition
 - New “moratorium” process is not within the current standard definition
 - Winding-up petitions are temporarily banned

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The problem:



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Any questions?



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Thank you

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