

The Commercial Rent (Coronavirus) Bill

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Introduction

The 25 March 2022 expiry of the current protection from eviction enjoyed by commercial tenants is fast-approaching.

In light of the same, a new [Code of Practice](#) has been introduced, which looks to provide commercial landlords and tenants with a clear and conciliatory process for settling outstanding rent debts before the new legally-binding arbitration process, as introduced by the [Commercial Rent \(Coronavirus\) Bill](#) ('the Bill') is expected to come into force next year.

From 25 March 2022, new laws introduced by the Bill will make provision for those cases where parties to a business tenancy have been unable to reach agreement; in enabling relief from payment of [protected rent debts](#) due under a business tenancy to be resolved by arbitration.

This article provides an overview of the most fundamental provisions of the Bill.

The Bill

Part 1: Introductory Provisions

A 'protected rent debt' is defined as rent due in circumstances where:

- (a) the tenancy was adversely affected by coronavirus; and
- (b) the rent is attributable to a period of occupation within the protected period.

For the purposes of (a), a tenancy was 'adversely affected by coronavirus' if, in the period between 2pm on 21 March 2020 and 11.55pm on 18 July 2021,¹ the business or the business premises was obliged, pursuant to coronavirus regulations,² to close.

For the purposes of (b), the 'protected period' begins with 21 March 2020 and ends either with the last day on which closure of the business or of the business premises was mandated, providing that day is earlier than 18 July 2021; or, in any other case, 18 July 2021.

Part 2: Arbitration

Where the parties to a business tenancy are not in agreement as to the resolution of the matter of relief from payment of a protected rent debt, a reference to arbitration may be made by either of them within the period of six months beginning with the day on which the Bill comes into force.

Formalities

Prior to any such reference, the respondent party must be notified of the intention to make a reference to arbitration and that party may, within 14 days of such notification, submit a response. Thereafter, the reference to arbitration can only be made after 14 days has passed since the respondent's response (if any) has been received; otherwise, after 28 days has passed since the respondent was notified of the intention to refer the matter to arbitration.

The reference itself must include a formal proposal (with supporting evidence) for resolving the matter of

relief from payment of a protected rent debt; and the respondent party may put forward a formal proposal in response within 14 days of having received the other party's proposal.³ Before determining what award to make the arbitrator must consider any final proposal put forward to it by a party.

Fees

The onus is on the party making the reference to arbitration, or seeking an oral hearing of the arbitration, to pay the fees for the same in advance. Where a request for an oral hearing is made by one or both parties, an oral hearing must be held.

Where an award is made, the arbitrator must also require the respondent to the arbitration (or in the case of an oral hearing, the party who did not request the same (if any)) to reimburse the other party for half of the arbitration (or oral hearing) fee, or such other amount as the arbitrator considers appropriate in the circumstances.

Award

The arbitrator must dismiss the reference if he or she determines that the tenant's business is not viable, and would not be viable even if the tenant were to be given relief from payment. Otherwise, the arbitrator must consider whether the tenant ought to be entitled to receive any relief from payment and either award, or deny, such relief.⁴

Principles

Underpinning the process is the principle that any award should seek to preserve (or to restore and preserve, if necessary) the viability of the business of the tenant, so far as that is consistent with preserving the landlord's solvency; bearing in mind that the tenant ought to meet its obligations to pay any protected rent in full and without delay.

For these purposes, the arbitrator must, so far as is known, have regard to:⁵

- (a) the assets and liabilities of the tenant;
- (b) the previous rental payments made under the tenancy;
- (c) the impact of coronavirus on the business of the tenant;
- (d) the assets and liabilities of the landlord; and
- (e) any other information relating to the financial position of the tenant and/or landlord that the arbitrator considers appropriate.

Part 3 and Schedules 2 and 3: Moratorium

Where a commercial landlord is owed a protected rent debt, he may not, in relation to that debt:

- (a) make a debt claim in civil proceedings;
- (b) use the commercial rent arrears recovery power;
- (c) enforce a right of re-entry or forfeiture;
- (d) use a tenant's deposit; or
- (e) present a petition for the winding up of a tenant company under section 124 of the Insolvency Act 1986 ('the Act') on a ground specified in section 122(1)(f);

during the period beginning with the day on which the Bill is enacted, and ending:

- (a) where the matter of relief from payment of the protected rent debt is not referred to arbitration within the applicable six-month period, with the last day of that period, or
- (b) where that matter is referred to arbitration, with the day on which the arbitration concludes.⁶

There is also a moratorium on CVA and IVA proposals, and on applications under sections 896 or 901C of the Companies Act 2006, during the period between the appointment of an arbitrator under the Bill, and the granting of any arbitral award.⁷

Debt Claims

Further, the Bill (if passed) will protect commercial tenants from claims relating to any protected rent debt (or enforcement of the same) from **10 November 2021**.

Where such a claim is one that was issued **on or after 10 November 2021** but before the day on which the Bill came into force (if passed), either of the parties may apply to the Court for those proceedings to be stayed in order to enable the matter of payment of the protected rent debt to be resolved (whether by arbitration or otherwise). Where such application is made, the Court must stay the proceedings.⁸

Similarly, where a commercial landlord has obtained a judgment relating to any protected rent debt **on or after 10 November 2021** but before the day on which the Bill comes into force; and that judgment debt, or any interest on it, remains unpaid, then (if passed) the Bill provides:

- (a) the matter of relief from payment of the judgment debt may be resolved by arbitration⁹ or by agreement, despite the judgment having been given;
- (b) in any event, the judgment debt may not be enforced or relied upon by the landlord before the end of the following period:
 - i) where the matter of relief from payment of the protected rent debt is not referred to arbitration within the applicable six-month period, with the last day of that period, or
 - ii) where that matter is referred to arbitration, with the day on which the arbitration concludes,¹⁰
- (c) if relief from payment is awarded or agreed, the effect of the judgment debt is to be taken as altered in accordance with the same.

Bankruptcy Petitions

A commercial landlord may not present a bankruptcy petition against a tenant on a ground specified in section 268(1)(a) or (2) of the Act where the statutory demand upon which the petition is based relates to any protected rent debt; nor may he present a bankruptcy petition under section 268(1)(b) of the Act where the relevant judgment or order relates to a protected rent debt; and:

- (a) the statutory demand was served; or
- (b) the claim for that debt was issued

in the period beginning **10 November 2021** and ending:

- (a) where the matter of relief from payment of the protected rent debt is not referred to arbitration within the applicable six-month period, with the last day of that period, or
- (b) where that matter is referred to arbitration, with the day on which the arbitration concludes.¹¹

Conclusion

The emphasis of the newly-published Code of Practice remains upon encouraging the parties to a business tenancy to negotiate their own agreement, where possible, as to the payment of commercial rent debts which have accrued due to the mandated closure of certain businesses in the light of the pandemic. For the avoidance of doubt, the Bill is not intended to affect the capacity of the parties to a business tenancy to resolve matters by agreement, nor to prevent any agreement; and of course, outside of the legally-binding arbitration process, the parties are free to continue to negotiate between themselves.

That said, the arbitration process introduced by the Bill provides a necessary backstop after any such negotiations have broken down; and should hopefully assist the market in returning to a more usual state as quickly and efficiently as possible.

1 Different dates are applicable in Wales.

2 Regulations made under section 45C of the Public Health (Control of Disease) Act 1984 and expressed to be made in response to the threat to public health posed by the incidence or spread of coronavirus.

3 In addition, each party is entitled to put forward a revised formal proposal within 28 days of receiving the other party's formal proposal.

4 Where an award gives the tenant time to pay, the payment date must be within the period of 24 months beginning with the day after the day on which the award is made.

5 The arbitrator must disregard the possibility of the tenant or the landlord borrowing money, or restructuring its business.

6 An arbitration will be deemed to have concluded where the arbitration proceedings are abandoned or withdrawn; the time period for appealing expires without an appeal being brought; or any appeal brought within that period is finally determined, abandoned or withdrawn.

7 Or the withdrawal of the arbitration proceedings.

8 Unless the Court is satisfied that the proceedings are of a type to which these provisions do not apply.

9 This refers to arbitration under the Bill only, and not to any other form of arbitration.

10 See footnote 7 above.

11 Ibid.