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Policy paper

# Supporting businesses with commercial rent debts: policy statement

Published 4 August 2021

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## 1. Introduction

The government will legislate to ringfence rent debt accrued during the pandemic by businesses affected by enforced closures and set out a process of binding arbitration to be undertaken between landlords and tenants.

This is to be used as a last resort, after bilateral negotiations have been undertaken and only where landlords and tenants cannot otherwise come to a resolution. Ahead of the system being put in place, we will publish the principles which we will seek to put into legislation in a revised Code of Practice, to allow landlords and tenants time to negotiate on that basis.

Section 82 of the Coronavirus Act 2020, which prevents landlords of commercial properties from being able to evict tenants for the non-payment of rent, will continue until 25 March 2022, unless legislation is passed ahead of this, in order to provide sufficient time for this new process to be put in place.

Government is clear that those tenants who have not been affected by closures and who have the means to pay, should pay. Additionally, government expects commercial tenants to begin paying rent as per their lease from the point of restrictions being lifted for their sector.

As soon as legislation is passed, the commercial tenant protection measures will only apply to ringfenced arrears. This includes rent debt accrued from March 2020 by commercial tenants affected by COVID-19 business closures until restrictions for their sector are removed.

This means that landlords will be able to evict tenants for the non-payment of rent prior to March 2020 and after the end of restrictions for their sector and who have not been affected by business closures during this period.

The measures announced by government – the extension of current provisions, publication of a strengthened Code of Practice, and the development of a system of binding arbitration – triggers the start of a return to ‘business as usual’, by balancing protecting landlords and supporting those businesses most in need.

It will ensure that many viable businesses can continue to operate, and that debts accrued as a result of the pandemic are quickly resolved to mutual benefit.

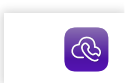
## 2. Aims

Many businesses have struggled to pay rent to landlords during the pandemic and have built up debt. That is why the government introduced a moratorium on the eviction of commercial tenants until the end of June 2021.

We welcome negotiations between commercial landlords and their tenants to resolve any outstanding debts. To provide even more certainty, we are setting out a plan to encourage the resolution of these debts.

The government will legislate to ringfence rent debt accrued from March 2020 for tenants who have been forced to close as a result of COVID-19 business measures until trading restrictions are removed, and introduce a system of binding arbitration to be undertaken where agreement cannot be reached. This will be introduced in this Parliamentary session.

Alongside this, to support negotiations between tenants and landlords further before the new legislation is enacted, the government has:



- extended the current protections for commercial tenants against eviction to 25 March 2022, unless legislation is passed ahead of this
- extended to 25 March 2022 (unless legislation is passed ahead of this) the restriction on the use of the Commercial Rent Arrears Recovery (CRAR), which restricts the ability of landlords to seize goods owned by the tenant in lieu of rent owed unless the tenant has more than 554 days' worth of rent arrears
- extended the restrictions against serving a winding up petition on the basis of a statutory demand implemented through the Corporate Insolvency and Governance Act 2020 until 30 September 2021

Combined, we believe that these measures will provide the breathing space needed for successful negotiation between tenants and landlords.

### 3. Support to date

Through the Budget, the government continues to provide unprecedented financial support to protect jobs through the COVID-19 pandemic, including extending the Coronavirus Job Retention Scheme until September, the new Recovery Loan Scheme, and new 'Restart Grants' of up to £18,000 for highly impacted businesses.

All non-essential retail businesses and personal care premises were permitted to open from 12 April, and to provide flexibility as they reopen, we extended opening hours for retail between Monday and Saturday from 7am to 10pm until 21 June. Additionally, hospitality venues were permitted to serve customers outdoors from 12 April, which was extended to indoor hospitality from 17 May.

Retail, leisure and hospitality businesses were also able to benefit from 100% business rates relief until 30 June 2021, followed by 66% business rates relief for the period from 1 July 2021 to 31 March 2022, capped at £2 million per business for properties that were required to be closed on 5 January 2021, or £105,000 per business for other eligible properties.

The government has already taken action to protect businesses from eviction. For the duration of the pandemic until the end of June 2021, we had put in place a moratorium on the eviction of commercial tenants who have been impacted by the pandemic and have been unable to pay rent owed to their landlord. This, along with our wide-ranging package of support, has prevented the unnecessary failure of thousands of businesses which were required to close in order to stem the spread of virus, and protected millions of jobs.



To protect jobs further, the government has decided that commercial tenants affected by the pandemic will therefore now be protected from eviction until 25 March 2022, unless legislation is passed ahead of this, to provide landlords and tenants in England additional time to negotiate and settle outstanding rental arrears until such time that new measures can be put in place.

In the interim we expect businesses that are open and trading as normal to pay their full rent unless otherwise agreed, as periods of normal operation will not be covered by further legislation.

### 4. Rent arrears

The British Property Federation (BPF) estimate that by the 30 June 2021, £7.5 billion of commercial rent will be in arrears. Remit Consulting estimate that of 30 March, £5.3 billion of commercial rents arising since March 2020 were unpaid, of which half (£2.8 billion) were in the retail sector.

Non-essential retail in England was closed for longer than it was open in the 2020-21 financial year (closed for at least 29 out of 52 weeks, and longer in some areas with higher restrictions). In addition, seasonal sales are very important within the sector, and periods of closure coincided with two of the largest seasonal events of the retail calendar, the build-up to Christmas and Easter.

The two months prior to Christmas account for 23% of UK retail spending (ONS Retail Sales Pounds Data) and Easter retail spending in 2021 was down 18% on spending in 2019 (Statista). The retail industry as a whole is estimated to have lost £22 billion in sales during periods of closure over the last year.

We have seen that turnover is not yet fully recovered, particularly in vulnerable sectors such as hospitality. Rent collection increased in September, December and March, although remained lower than normal. The most recent data from Remit Consulting indicates that while overall commercial rent collection is at 80.7% at 90 days past the March due date, £1 billion of rent is missing from the March quarter, totalling a potential shortfall of up to £6.4 billion since the start of the pandemic.

Hospitality rent payment continues to lag behind, with just 58.6% of rent collected within the same period; this is particularly acute in the pubs, bars and restaurants sector, with just 28.4% of rent paid 90 days after the March payment date.

Whilst we have provided an unprecedented package of support, we have also been clear that we expected landlords and tenants to come together and negotiate over the past year. Agreements have been reached for many businesses, but for others, negotiations have stalled, leaving rent arrears built up which could threaten many of the valued jobs that the sector provides.

## 5. Call for evidence

On 6 April 2021 the government launched a call for evidence to gather data on the state of negotiations between landlords and tenants regarding rent arrears and ongoing lease terms, which closed on 4 May 2021. The call for evidence also sought views on steps that government could take after 30 June, ranging from a phased withdrawal of current protections to legislative options targeted at those businesses most impacted by COVID-19.

This set of measures represents the government's response to that call for evidence. A summary of responses can be viewed on the call for evidence page (<https://www.gov.uk/government/consultations/commercial-rents-and-covid-19-call-for-evidence>).



## 6. Code of Practice

In June 2020, the government published a voluntary Code of Practice (<https://www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector>) to encourage commercial tenants and landlords to work together to protect viable businesses, developed with leaders from the retail, hospitality and property sectors.

The Code sets out a framework for tenants and landlords to work through requests for concessions on rental payments. This includes considering rent deferrals and waivers, dependent on periods of closure impacting the tenant's business and ability to trade.

To monitor the overall progress of negotiations, tenants and landlords were asked to provide feedback in the call for evidence launched in April. The government believes that this Code has been successful in helping to structure negotiations between landlords and tenants; however, it is voluntary in nature and many landlords and tenants are not currently using the Code to structure negotiations.

Ahead of a system of binding arbitration being in place, we will therefore publish a revised Code of Practice setting out the principles we expect parties and arbitrators to adhere to, which we will seek to put into legislation.

## 7. Binding arbitration

### Introduction

In order to provide a long-term solution to the resolution of rent arrears, and bring certainty to both landlords and tenants, the government is outlining a plan to legislate for binding arbitration, following the call for evidence and engagement with stakeholders.

Our plan follows other countries such as Australia, and proposals for binding arbitration have been put forward by stakeholders such as the British Retail Consortium, UK Hospitality, and the British Property Federation.

The legislation will ringfence rent debt accrued from March 2020 for commercial tenants who have been affected by COVID-19 business closures until restrictions for their sector are removed, and introduce a system of binding arbitration in respect of such rent debt.

We expect terms to be agreed between landlords and tenants impacted by closures to defer or waive entirely an appropriate proportion of those rent arrears. But, where agreement cannot be reached, both the landlord and tenant will need to undertake binding arbitration.

It is the government's expectation that landlords should share the financial burden with tenants where they are able to do so and give tenants breathing space to agree new terms, but also that tenants who can pay, should pay.

This will also mean a return to normal contractual arrangements for those tenants able to pay rent debts in full and not affected by closures, and for any debts accrued outside of the ringfenced period. Tenants should clearly state in writing to their landlord how payments they make are to be treated, specifying the period of time that the payment should be apportioned to, for avoidance of doubt.

### Outline of proposed new arbitration system

The new legislation will apply to all commercial rent debt accrued as a result of COVID-19 closures and restrictions in sectors which have been impacted by Non-Pharmaceutical Interventions (NPIs).



Once those restrictions have been lifted (as in retail), tenants should begin to pay rent in accordance with the terms of their lease, or as otherwise agreed with their landlord. Where a tenant is unable to pay in full, landlords and tenants should be coming together to negotiate in good faith, using the principles set out in an updated Code of Practice.

Ahead of the arbitration system being in place, we will publish the principles which we will seek to put into legislation, to allow landlords and tenants time to negotiate on that basis. We would encourage all landlords and tenants to seek to agree mutually beneficial solutions as soon as possible.

Once the new system is in place this will mean:

- landlords will be able to exercise their rights to evict any tenant for the non-payment of rent debt incurred prior to March 2020 and from the end of the ringfenced period
- the new legislation applies only to debt for tenants impacted by COVID-19 business closures. Landlords will be able to evict any tenant who falls outside the scope of arbitration legislation over the non-payment of rental arrears accrued at any time

- landlords will also be able to charge interest on rent incurred from the end of the ringfenced period onwards, if such interest payments are included in the terms of their lease

If a tenant breaches any other terms of their contractual agreement with their landlord (i.e., by causing damage to the property), which gives rise to a right to forfeit the landlord is still able to move to evict them. Tenants will also be bound by the decision of the arbitrator and will have to pay rent debts accrued during the ringfenced period in accordance with that decision.

Normal periods of operation will not be within scope of the further protections and binding arbitration in the legislation, and so tenants are encouraged to meet their rent payments for these periods.

## **Delivery**

The details of the process and how it works will be released in due course. We will aim to ensure that this is an impartial and manageable process which should only be used as a last resort when negotiations have failed and providing a faster and easier resolution than through the courts.

We will put in place clear rules which will help ensure impartiality and to manage the cost of the process to both landlords and tenants. The arbitration process should be seen as a last resort; our strong preference is for landlords and tenants to use the principles which we will set out in legislation and signalled through an updated Code of Practice to reach agreement.

We would expect tenants and landlords to contribute to the cost of arbitration if both are found to have negotiated in good faith. However, if any party is found not to have negotiated in the spirit of the legislative principles, arbitrators may be empowered to grant the cost of arbitration as part of their decision. Further details of the process will be released in due course.

## **8. Extension to the existing measures**

The provisions within Section 82 of the Coronavirus Act 2020 were due to expire on 30 June 2021 after subsequent 3-month extensions. These provisions have prevented commercial landlords from evicting tenants due to non-payment of rent, protecting businesses and the jobs that they support during an uncertain economic climate and enforced sector closures.

Other measures have also restricted commercial landlords in the use of CRAR (Commercial Rent Arrears Recovery), a statutory procedure which allows landlords to recover rent arrears by instructing enforcement agents to take control of the tenant's goods and sell them, as well as restricting the service of a winding-up petition on the basis of a statutory demand.



On 24 June 2021, the measures were extended by Parliament for a further 9 months, until 25 March 2022, unless legislation is passed ahead of this.

This extension is to allow sufficient time for new legislation to be drafted and undergo Parliamentary passage, and provides landlords and tenants in England additional time to negotiate and settle outstanding rental arrears, balancing protecting landlords and supporting those businesses most in need. It ensures that many viable businesses can continue to operate, and that debts accrued as a result of the pandemic are quickly resolved to mutual benefit.

Through successive amendments to the Taking Control of Goods Regulations 2013, the required amount of arrears for CRAR to be used now stands at 554 days' rent until 25 March 2022, unless legislation is passed ahead of this.

Additionally, the serving of a winding-up petition on the basis of a statutory demand has been restricted and will remain so for a further 3 months until 30 September 2021 as part of the Corporate Insolvency and Governance Act 2020, in order to protect companies from creditor enforcement action

where their debts relate to the pandemic. Further measures on the ability of landlords to use insolvency measures to recover rent arrears will be announced in due course.

Government recognises the current challenges facing commercial landlords and the significant impact recent changes are having on their business models. We also recognise that many landlords are demonstrating best practice by working closely with tenants to find solutions that work for both parties and are grateful to see these discussions taking place. Government is therefore continuing to work with the sector to ensure it is adequately supported.

Government is clear that those tenants who have not been affected by closures and who have the means to pay, should pay. Additionally, government expects commercial tenants to begin paying rent as per their lease from the point of restrictions being lifted for their sector.

## 9. Territorial extent

England, Northern Ireland and Wales are covered by the protection from forfeiture provisions in the Coronavirus Act. Section 82 relates to England and Wales, while Section 83 relates to Northern Ireland.

Officials have been working with colleagues in the devolved administrations to share details of the government's approach and to explore whether these measures could benefit businesses there, and whether they should be extended.

In Wales and Northern Ireland respectively, the moratorium on forfeiture has been extended by 3 months until 30 September 2021, whilst both administrations consider a longer-term solution.

Officials in Scotland have extended the anti-irritancy measures for non-payment of rent within the Coronavirus (Extension and Expiry) (Scotland) Bill until 30 March 2022, with two-monthly reviews from 30 September. As previously, evictions in Scotland will still be permitted but 14 weeks' notice is required rather than the standard 14 days.

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