

Commercial Rent (Coronavirus) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Department for Business, Energy and Industrial Strategy, have been ordered to be published as HL Bill 92 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Grimstone of Boscobel has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Commercial Rent (Coronavirus) Bill are compatible with the Convention rights.

Commercial Rent (Coronavirus) Bill

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Make provision enabling relief from payment of certain rent debts under business tenancies adversely affected by coronavirus to be available through arbitration; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

INTRODUCTORY PROVISIONS

1 Overview

- (1) This Act enables the matter of relief from payment of protected rent debts due from the tenant to the landlord under a business tenancy to be resolved by arbitration (if not resolved by agreement). 5
- (2) In this Act—
- (a) sections 2 to 6 define for the purposes of this Act the terms “protected rent debt”, “the matter of relief from payment” and other key terms used in this Act; 10
 - (b) Part 2 provides for statutory arbitration between the landlord and the tenant under a business tenancy in relation to the matter of relief from payment of a protected rent debt;
 - (c) Part 3 provides for temporary restrictions on the availability of certain remedies and insolvency arrangements that would otherwise be available in relation to a protected rent debt. 15
- (3) Nothing in this Act is to be taken as—
- (a) affecting the capacity of the parties to a business tenancy to resolve by agreement, at any time, the matter of relief from payment of a protected rent debt (or any other matter relating to the tenancy), or 20
 - (b) preventing an agreement resolving the matter of relief from payment of a protected rent debt from having effect or being enforced.

2 “Rent” and “business tenancy”

- (1) “Rent”, in relation to a business tenancy, means an amount consisting of one or more of the following—
- (a) an amount payable by the tenant to the landlord under the tenancy for possession and use of the premises comprised in the tenancy (whether described as rent or otherwise); 5
 - (b) an amount payable by the tenant to the landlord under the tenancy as a service charge;
 - (c) interest on an unpaid amount within paragraph (a) or (b).
- (2) In subsection (1)— 10
- (a) a reference to an amount includes any VAT chargeable on that amount;
 - (b) a reference to the landlord includes a person acting for the landlord (such as a managing agent);
 - (c) “service charge” means an amount—
 - (i) which is payable (directly or indirectly) for services, repairs, maintenance, improvements, insurance costs or the landlord’s management costs (including management costs of a superior landlord which the landlord is required to pay), and 15
 - (ii) which is a fixed amount or an amount that varies or may vary according to the relevant costs (or a combination of the two). 20
- (3) In subsection (2)(c)—
- (a) “insurance costs” includes costs incurred by the landlord in connection with insuring against loss of rent or in complying with obligations under the tenancy either to insure the whole or any part of—
 - (i) the premises comprised in the tenancy, and 25
 - (ii) any common parts of a property which includes those premises, or to pay the costs of such insurance incurred by any superior landlord,
 - (b) “the relevant costs” means the costs or estimated costs incurred or to be incurred by or on behalf of the landlord in connection with the matter for which the service charge is payable and for this purpose— 30
 - (i) “costs” includes overheads, and
 - (ii) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
- (4) An amount drawn down by the landlord from a tenancy deposit to meet the whole or part of a rent debt is to be treated as unpaid rent due from the tenant to the landlord (and such rent is “paid” where the tenant makes good any shortfall in the deposit). 35
- (5) “Business tenancy” means a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies. 40

3 “Protected rent debt”

- (1) A “protected rent debt” is a debt under a business tenancy consisting of unpaid protected rent.
- (2) Rent due under the tenancy is “protected rent” if—
- (a) the tenancy was adversely affected by coronavirus (see section 4), and 45

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- (b) the rent is attributable to a period of occupation by the tenant for, or for a period within, the protected period applying to the tenancy (see section 5).
- (3) Rent consisting of interest on an unpaid amount within section 2(1)(a) or (b) is to be regarded for the purposes of subsection (2)(b) as attributable to the same period of occupation by the tenant as that unpaid amount. 5
- (4) A period of occupation by the tenant that began, or ended, at a time during a particular day is to be treated as including the whole of that day.
- (5) If any rent due under the tenancy is attributable to a period of occupation by the tenant of which only part is of the description in subsection (2)(b), then so much of the rent as can be reasonably attributed to that part of the period is protected rent. 10
- (6) An amount treated by section 2(4) as unpaid rent is to be regarded as unpaid protected rent if the rent debt that was satisfied (in whole or part) by drawing it down from the tenancy deposit would otherwise have been a protected rent debt. 15
- 4 “Adversely affected by coronavirus”**
- (1) A business tenancy was “adversely affected by coronavirus” for the purposes of section 3(2)(a) if, for any relevant period –
- (a) the whole or part of the business carried on by the tenant at or from the premises comprised in the tenancy, or 20
- (b) the whole or part of those premises, was of a description subject to a closure requirement.
- (2) For this purpose –
- (a) “closure requirement”, means a requirement imposed by coronavirus regulations which is expressed as an obligation – 25
- (i) to close businesses, or parts of businesses, of a specified description, or
- (ii) to close premises, or parts of premises, of a specified description; and 30
- (b) “relevant period” means a period beginning at or after 2 p.m. on 21 March 2020 and ending at or before –
- (i) 11.55 p.m. on 18 July 2021, for business tenancies comprising premises in England, or
- (ii) 6 a.m. on 7 August 2021, for business tenancies comprising premises in Wales. 35
- (3) A requirement expressed as an obligation to close premises, or parts of premises, of a specified description every day at particular times is to be regarded for the purposes of subsection (2)(a) as a closure requirement.
- (4) It is immaterial for the purposes of subsection (2)(a) that specific limited activities were (as an exception) allowed by the regulations to be carried on despite the obligation to close (and accordingly the fact they were permitted or carried on is to be disregarded in determining whether the tenancy was adversely affected by coronavirus). 40
- (5) Where the premises comprised in the tenancy were occupied by the tenant for the purposes of a business not carried on solely at or from those premises, the 45

reference in subsection (1)(a) to the business carried on at or from the premises is to so much of the business as was carried on at or from the premises.

- (6) In this section “coronavirus regulations” means regulations –
- (a) made under section 45C of the Public Health (Control of Disease) Act 1984 (whether or not also made under any other power), and 5
 - (b) expressed to be made in response to the threat to public health posed by the incidence or spread of coronavirus.

5 “Protected period”

- (1) The “protected period”, in relation to a business tenancy adversely affected by coronavirus, is the period beginning with 21 March 2020 and ending with – 10
- (a) where the business tenancy comprises premises in England –
 - (i) if subsection (2) identifies a day earlier than 18 July 2021, that day, or
 - (ii) in any other case, 18 July 2021,
 - (b) where the business tenancy comprises premises in Wales – 15
 - (i) if subsection (2) identifies a day earlier than 7 August 2021, that day, or
 - (ii) in any other case, 7 August 2021.
- (2) The relevant day for the purposes of subsection (1)(a)(i) or (b)(i) is the last day on which (or for part of which) – 20
- (a) the whole or part of the business carried on by the tenant at or from the premises, or
 - (b) the whole or part of those premises,
- was of a description subject to either a closure requirement or a specific coronavirus restriction. 25
- (3) In subsection (2) “specific coronavirus restriction” means a restriction or requirement (other than a closure requirement) imposed by coronavirus regulations which regulated any aspect of –
- (a) the way a business, or a part of a business, of any specified description was to be carried on, or 30
 - (b) the way any premises, or any part of premises, of a specified description were or was to be used.
- (4) But for the purposes of subsection (3) –
- (a) requirements to display or provide information on premises (or parts of premises), and 35
 - (b) restrictions applying more generally than to specific descriptions of businesses or premises (or parts of businesses or premises),
- are not specific coronavirus restrictions.
- (5) In this section “closure requirement” and “coronavirus regulations” have the same meaning as in section 4. 40

6 “The matter of relief from payment”

- (1) References to the matter of relief from payment of a protected rent debt are to all issues relating to the questions –
- (a) whether there is a protected rent debt of any amount, and

- (b) if so, whether the tenant should be given relief from payment of that debt and, if so, what relief.
- (2) “Relief from payment”, in relation to a protected rent debt, means any one or more of the following—
 - (a) writing off the whole or any part of the debt; 5
 - (b) giving time to pay the whole or any part of the debt, including by allowing the whole or any part of the debt to be paid by instalments;
 - (c) reducing (including to zero) any interest otherwise payable by the tenant under the terms of the tenancy in relation to the whole or any part of the debt. 10

PART 2

ARBITRATION

Approved arbitration bodies

7 Approval of arbitration bodies

- (1) The Secretary of State may approve one or more bodies to carry out the functions under section 8 (and a body which is for the time being so approved is referred to in this Act as an “approved arbitration body”). 15
- (2) The Secretary of State may only approve a body which the Secretary of State considers to be suitable to carry out those functions.
- (3) The Secretary of State may withdraw an approval given under subsection (1) if the Secretary of State considers that the body is no longer suitable to carry out those functions. 20
- (4) Where the Secretary of State proposes to withdraw an approval given under subsection (1), the Secretary of State must notify the body in question and give the body an opportunity to make representations. 25
- (5) Where an approval given under subsection (1) is withdrawn from a body, the Secretary of State must make arrangements relating to—
 - (a) the repayment of any fees or expenses already paid to the body (if any), and
 - (b) the body’s entitlement (if any) to fees or expenses. 30
- (6) The withdrawal of an approval given under subsection (1) does not affect the validity of anything done by or in relation to the body in question before that withdrawal.
- (7) The Secretary of State must maintain and publish a list of approved arbitration bodies. 35

8 Functions of approved arbitration bodies

- (1) An approved arbitration body has the following functions—
 - (a) to maintain a list of arbitrators who—
 - (i) are available to act as arbitrators under this Part (whether alone or as a member of a panel of arbitrators), and 40

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- (ii) appear to the body to be suitable, by virtue of their qualifications or experience, to act as such,
- (b) to appoint an arbitrator or panel of arbitrators from that list to deal with the matter of relief from payment of a protected rent debt referred to the body for arbitration under this Part, 5
- (c) where an arbitrator appointed by the body resigns, dies or otherwise ceases to hold office, to appoint another arbitrator from that list to fill the vacancy,
- (d) to set, collect and pay its fees and the fees of an arbitrator appointed by it, 10
- (e) to oversee any arbitration in relation to which it has appointed an arbitrator or panel of arbitrators, and
- (f) to remove an arbitrator appointed by it from a case on any one of the grounds in subsection (2).
- (2) The grounds for removal are – 15
- (a) that circumstances exist that give rise to justifiable doubts as to the impartiality or independence of the arbitrator;
- (b) that the arbitrator does not possess the qualifications required for the arbitration;
- (c) that the arbitrator is physically or mentally incapable of conducting the arbitration or there are justifiable doubts as to their capacity to do so; or 20
- (d) that the arbitrator has refused or failed to properly conduct the arbitration, or to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the parties. 25
- (3) An approved arbitration body must ensure that an arbitrator or panel of arbitrators appointed by it under subsection (1)(b) is independent from the parties to the arbitration.
- (4) Where an arbitrator resigns, dies or otherwise ceases to hold office, an approved arbitration body must make arrangements relating to – 30
- (a) the repayment of any fees or expenses already paid to the arbitrator (if any), and
- (b) the arbitrator’s entitlement (if any) to fees or expenses.
- (5) Where requested by, or as agreed with, the Secretary of State, an approved arbitration body must provide a report to the Secretary of State containing details of – 35
- (a) the exercise by the approved body of its functions under this section, and
- (b) any arbitrations overseen by the approved body under subsection (1)(e), including the progress of, and any awards made in relation to, such arbitrations. 40
- (6) An approved arbitration body must publish on its website the fees payable in relation to arbitrations referred to it under this Part.

References to arbitration by tenant or landlord

- 9 Period for making a reference to arbitration**
- (1) This section applies where the tenant and the landlord under a business tenancy are not in agreement as to the resolution of the matter of relief from payment of a protected rent debt. 5
- (2) A reference to arbitration may be made by either the tenant or the landlord within the period of six months beginning with the day on which this Act is passed.
- (3) The Secretary of State may by regulations made by statutory instrument extend the period for the time being mentioned in subsection (2). 10
- (4) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this Act “the period for making references to arbitration” is the period for the time being mentioned in subsection (2).
- 10 Requirements for making a reference to arbitration** 15
- (1) Before making a reference to arbitration –
- (a) the tenant or landlord must notify the other party (“the respondent”) of their intention to make a reference, and
- (b) the respondent may, within 14 days of receipt of the notification under paragraph (a), submit a response. 20
- (2) A reference to arbitration must not be made before –
- (a) the end of the period of 14 days after the day on which the response under subsection (1)(b) is received, or
- (b) if no such response is received, the end of the period of 28 days beginning with the day on which the notification under subsection (1)(a) is served. 25
- (3) A reference to arbitration may not be made, an arbitrator may not be appointed, and no formal proposal under section 11(2) or (4) may be made, where the tenant that owes a protected rent debt is subject to one of the following – 30
- (a) a company voluntary arrangement which relates to any protected rent debt that has been approved under section 4 of the Insolvency Act 1986,
- (b) an individual voluntary arrangement which relates to any protected rent debt that has been approved under section 258 of that Act, or
- (c) a compromise or arrangement which relates to any protected rent debt that has been sanctioned under section 899 or 901F of the Companies Act 2006. 35
- (4) A reference to arbitration must be made to an approved arbitration body.
- (5) After a reference to arbitration has been made, an arbitrator may not be appointed, and no formal proposal under section 11(2) or (4) may be made, during any period where the tenant that owes a protected rent debt is the debtor under one of the following – 40

- (a) a company voluntary arrangement which relates to any protected rent debt that has been proposed and is awaiting a decision under section 4 of the Insolvency Act 1986,
 - (b) an individual voluntary arrangement which relates to any protected rent debt that has been proposed and is awaiting a decision under section 258 of that Act, or 5
 - (c) a compromise or arrangement which relates to any protected rent debt that has been applied for and is awaiting a decision under section 899 or 901F of the Companies Act 2006.
- (6) This section, so far as relating to a company voluntary arrangement and a compromise or arrangement under section 899 or 901F of the Companies Act 2006, applies to limited liability partnerships (as well as to companies). 10

Proposals for resolving the matter of relief from payment

11 Proposals for resolving the matter of relief from payment

- (1) A reference to arbitration must include a formal proposal for resolving the matter of relief from payment of a protected rent debt. 15
- (2) The other party to the arbitration may put forward a formal proposal in response within the period of 14 days beginning with the day on which the proposal under subsection (1) is received.
- (3) A formal proposal under subsection (1) or (2) must be accompanied by supporting evidence. 20
- (4) Each party may put forward a revised formal proposal within the period of 28 days beginning with the day on which the party gives a formal proposal to the other party under subsection (1) or (2).
- (5) A revised formal proposal must be accompanied by any further supporting evidence. 25
- (6) The periods in subsection (2) and (4) may be extended –
 - (a) by agreement between the parties, or
 - (b) by the arbitrator where the arbitrator considers that it would be reasonable in all the circumstances. 30
- (7) In this section “formal proposal” means a proposal which is –
 - (a) made on the assumption that the reference is not dismissed for a reason set out in section 13(2) or (3),
 - (b) expressed to be made for the purposes of this section, and
 - (c) given to the other party and the arbitrator. 35

12 Written statements

- (1) This section applies to any written statement provided to the arbitrator by a party (whether made by the party or another person) which relates to a matter relevant to the arbitration.
- (2) The written statement must be verified by a statement of truth. 40
- (3) The written statement may be disregarded by the arbitrator if it is not so verified.

Arbitration awards

13 Arbitration awards available

- (1) This section sets out the awards open to the arbitrator on a reference under this Part.
- (2) If the arbitrator determines that— 5
 - (a) the parties have by agreement resolved the matter of relief from payment of a protected rent debt before the reference was made,
 - (b) the tenancy in question is not a business tenancy, or
 - (c) there is no protected rent debt,the arbitrator must make an award dismissing the reference. 10
- (3) If, after assessing the viability of the tenant’s business, the arbitrator determines that (at the time of the assessment) the business—
 - (a) is not viable, and
 - (b) would not be viable even if the tenant were to be given relief from payment of any kind,the arbitrator must make an award dismissing the reference. 15
- (4) Subsection (5) applies if, after making that assessment, the arbitrator determines that (at the time of the assessment) the business—
 - (a) is viable, or
 - (b) would become viable if the tenant were to be given relief from payment of any kind.20
- (5) In that case the arbitrator must resolve the matter of relief from payment of a protected rent debt by—
 - (a) considering whether the tenant should receive any relief from payment and, if so, what relief, and
 - (b) making an award in accordance with section 14. 25

14 Arbitrator’s award on the matter of relief from payment

- (1) This section applies where the arbitrator is considering how to resolve the matter of relief from payment of a protected rent debt as required by section 13(5). 30
- (2) Before determining what award to make the arbitrator must consider any final proposal put forward to it by a party under section 11.
- (3) Where both parties put forward final proposals under section 11—
 - (a) if the arbitrator considers that both proposals are consistent with the principles in section 15, the arbitrator must make the award set out in whichever of them the arbitrator considers to be the most consistent; 35
 - (b) if the arbitrator considers that one proposal is consistent with the principles in section 15 but the other is not, the arbitrator must make the award set out in the proposal that is consistent.
- (4) Where only the party making the reference to arbitration puts forward a final proposal under section 11, the arbitrator must make the award set out in the proposal if the arbitrator considers that the proposal is consistent with the principles in section 15. 40

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- (5) Otherwise, the arbitrator must make whatever award the arbitrator considers appropriate (applying the principles in section 15).
- (6) An award under this section may –
- (a) give the tenant relief from payment of the debt as set out in the award,
or 5
 - (b) state that the tenant is to be given no relief from payment of the debt.
- (7) Where an award under subsection (6)(a) gives the tenant time to pay an amount (including an instalment), the payment date must be within the period of 24 months beginning with the day after the day on which the award is made.
- (8) In subsection (7) “the payment date” means the day specified in the award as the day on which the amount concerned falls due for payment. 10
- (9) In this section “final proposal” means –
- (a) the revised formal proposal put forward by a party under section 11(4),
or
 - (b) if there is no revised formal proposal put forward by a party, the formal proposal put forward by the party under section 11(1) or (2). 15
- 15 Arbitrator’s principles**
- (1) The principles in this section are –
- (a) that any award should be aimed at –
 - (i) preserving (in a case falling within section 13(4)(a)), or 20
 - (ii) restoring and preserving (in a case falling within section 13(4)(b)),
the viability of the business of the tenant, so far as that is consistent with preserving the landlord’s solvency, and
 - (b) that the tenant should, so far as it is consistent with the principle in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay. 25
- (2) In considering the viability of the tenant’s business and the landlord’s solvency for the purposes of subsection (1), the arbitrator must disregard anything done by the tenant or the landlord with a view to manipulating their financial affairs so as to improve their position in relation to an award to be made under section 14. 30
- (3) For the purposes of this section, the landlord is “solvent” unless the landlord is, or is likely to become, unable to pay their debts as they fall due.
- 16 Arbitrator: assessment of “viability” and “solvency”** 35
- (1) In assessing the viability of the business of the tenant, the arbitrator must, so far as known, have regard to –
- (a) the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party,
 - (b) the previous rental payments made under the business tenancy from the tenant to the landlord, 40
 - (c) the impact of coronavirus on the business of the tenant, and
 - (d) any other information relating to the financial position of the tenant that the arbitrator considers appropriate.

- (2) In assessing the solvency of the landlord, the arbitrator must, so far as known, have regard to—
 - (a) the assets and liabilities of the landlord, including any other tenancies to which the landlord is a party, and
 - (b) any other information relating to the financial position of the landlord that the arbitrator considers appropriate. 5
- (3) In making an assessment under subsection (1) or (2), the arbitrator must disregard the possibility of the tenant or the landlord (as the case may be)—
 - (a) borrowing money, or
 - (b) restructuring its business. 10

17 Timing of arbitrator’s award

- (1) Subject to subsection (2), the arbitrator must make an award under section 14 as soon as reasonably practicable after—
 - (a) where both parties have put forward a final proposal, the day on which the latest final proposal is received, or
 - (b) otherwise, the last day on which a party may put forward a revised formal proposal (see section 11(4)). 15
- (2) Where an oral hearing is held (see section 20), the arbitrator must make an award within the period of 14 days beginning with the day on which the hearing concludes. 20
- (3) The period in subsection (2) may be extended—
 - (a) by agreement between the parties, or
 - (b) by the arbitrator where the arbitrator considers that it would be reasonable in all the circumstances to do so.
- (4) In this section “final proposal” has the same meaning as in section 14(9). 25

18 Publication of award

- (1) This section applies when the arbitrator has made an award on a reference under this Part.
- (2) The arbitrator must publish the award together with the reasons for making it, subject as follows. 30
- (3) The arbitrator must exclude confidential information from anything published under this section, unless the arbitrator has been notified by the person to whom it relates that the person consents to its publication.
- (4) In subsection (3) “confidential information” means information which the arbitrator is satisfied is—
 - (a) commercial information relating to a party or to any other person the disclosure of which would, or might, significantly harm the legitimate business interests of the person to which it relates, or
 - (b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that individual’s interests. 40

*Arbitration fees and oral hearings***19 Arbitration fees and expenses**

- (1) In this section references to arbitration fees are to—
 - (a) the arbitrators' fees and expenses (including any oral hearing fees), and
 - (b) the fees and expenses of any approved arbitration body concerned. 5
- (2) The Secretary of State may by regulations made by statutory instrument specify limits on arbitration fees, which may differ depending on the amount of protected rent debt in question.
- (3) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (4) The applicant must pay arbitration fees (other than oral hearing fees) in advance of the arbitration taking place.
- (5) When the arbitrator makes an award under section 13 or 14, the arbitrator must (subject to subsection (6)) also make an award requiring the other party to reimburse the applicant for half the arbitration fees paid under subsection (4). 15
- (6) The general rule in subsection (5) does not apply if the arbitrator considers it more appropriate in the circumstances of the case to award a different proportion (which may be zero).
- (7) Except as provided by subsection (5) and section 20(6), the parties must meet their own legal or other costs. 20
- (8) Legal or other costs incurred in connection with arbitration (including arbitration fees) are not recoverable by virtue of any term of the business tenancy concerned.
- (9) In this section, "applicant" means the party which made the reference to arbitration. 25

20 Oral hearings

- (1) An oral hearing must be held where either or both of the parties makes a request to the arbitrator.
- (2) An oral hearing must be held within the period of 14 days beginning with the day on which the arbitrator receives a request under subsection (1). 30
- (3) The period in subsection (2) may be extended—
 - (a) by agreement between the parties, or
 - (b) by the arbitrator where the arbitrator considers that it would be reasonable in all the circumstances to do so.
- (4) Where both parties request an oral hearing, the parties are jointly and severally liable to pay the hearing fees in advance. 35
- (5) Where one of the parties requests an oral hearing, that party must pay the hearing fees in advance.
- (6) When the arbitrator makes an award under section 13 or 14, the arbitrator must (subject to subsection (7)) also make an award requiring the other party to reimburse the applicant for half the hearing fees. 40

- (7) The general rule in subsection (6) does not apply if the arbitrator considers it more appropriate in all the circumstances to award a different proportion (which may be zero).
- (8) An oral hearing must be held in public unless the parties agree otherwise.

Guidance

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21 Guidance

- (1) The Secretary of State may issue guidance to –
 - (a) arbitrators about the exercise of their functions under this Part, and
 - (b) tenants and landlords about making a reference to arbitration under this Part.
- (2) The Secretary of State may revise any guidance issued under this section.
- (3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

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Modification of Part 1 of the Arbitration Act 1996

22 Modification of Part 1 of the Arbitration Act 1996

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Schedule 1 modifies Part 1 of the Arbitration Act 1996 in relation to arbitrations under this Part.

PART 3

MORATORIUM ON CERTAIN REMEDIES AND INSOLVENCY ARRANGEMENTS

23 Temporary moratorium on enforcement of protected rent debts

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- (1) Schedule 2 contains –
 - (a) provision preventing a landlord who is owed a protected rent debt from using the following remedies in relation to (or on the basis of) the debt during the moratorium period –
 - (i) making a debt claim in civil proceedings;
 - (ii) using the commercial rent arrears recovery power;
 - (iii) enforcing a right of re-entry or forfeiture;
 - (iv) using a tenant’s deposit;
 - (b) retrospective provision in relation to certain debt claims made by such a landlord before the start of the moratorium period for the protected rent debt;
 - (c) provision relating to the right of such a landlord during the moratorium period to appropriate any rent paid by the tenant;
 - (d) retrospective provision in relation to the right of such a landlord to appropriate any rent paid by the tenant before the start of the moratorium period for the protected rent debt;
 - (e) provision connected with certain things mentioned in paragraphs (a) to (d).

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- (2) In this section “the moratorium period”, in relation to a protected rent debt, is the period –
- (a) beginning with the day on which this Act is passed, and
 - (b) ending –
 - (i) where the matter of relief from payment of the protected rent debt is not referred to arbitration within the period for references to arbitration, with the last day of that period, or
 - (ii) where that matter is referred to arbitration, with the day on which the arbitration concludes. 5
- (3) For the purposes of subsection (2)(b) an arbitration concludes when – 10
- (a) the arbitration proceedings are abandoned or withdrawn by the parties,
 - (b) the time period for appealing expires without an appeal being brought, or
 - (c) any appeal brought within that period is finally determined, abandoned or withdrawn. 15
- (4) In this section “arbitration” means arbitration under Part 2.

24 Temporary restriction on initiating certain insolvency arrangements

- (1) This section applies where the matter of relief from payment of a protected rent debt has been referred to arbitration. 20
- (2) During the relevant period –
- (a) no proposal for a company voluntary arrangement under section 1 of the Insolvency Act 1986 which relates to the whole or part of the debt may be made,
 - (b) no proposal for an individual voluntary arrangement under section 256A of that Act, or an application for an interim order under section 253 of that Act, which relates to the whole or part of the debt may be made, and 25
 - (c) no application for a compromise or arrangement under section 896 or 901C of the Companies Act 2006 (court orders for holding of meetings) which relates to the whole or part of the debt may be made. 30
- (3) In this section “the relevant period” means the period beginning with the day on which an arbitrator is appointed and ending with –
- (a) where the arbitrator makes an award in accordance with section 14, the day which is 12 months after the day on which that award is made, 35
 - (b) where the arbitrator makes an award dismissing a reference under section 13(2) or (3), the day on which that award is made, or
 - (c) where an award made in accordance with section 14 is set aside on appeal, the day on which that decision is made, or
 - (d) where the arbitration proceedings are abandoned or withdrawn by the parties, the day of that abandonment or withdrawal. 40
- (4) This section, so far as relating to a company voluntary arrangement and a compromise or arrangement under section 899 or 901F of the Companies Act 2006, applies to limited liability partnerships (as well as to companies).

25 Temporary restriction on initiating arbitration proceedings

- (1) The tenant or the landlord under a business tenancy may not initiate arbitration proceedings (other than an arbitration under Part 2) in relation to a protected rent debt during the moratorium period for the debt, unless the other party agrees. 5
- (2) In this section “the moratorium period” has the meaning given by section 23(2).

26 Temporary restriction on winding-up petitions and petitions for bankruptcy orders

Schedule 3 contains temporary provision in relation to winding up petitions and petitions for bankruptcy orders. 10

PART 4

FINAL PROVISIONS

27 Power to apply Act in relation to future periods of coronavirus control

- (1) The Secretary of State may by regulations provide for this Act (apart from this section) to apply again in relation to rent debts under business tenancies affected by closure requirements. 15
- (2) For this purpose a business tenancy was affected by a closure requirement if—
- (a) the whole or part of the business carried on at or from the premises comprised in the tenancy, or the whole or part of those premises, was required by regulations to close, and 20
 - (b) the requirement was imposed as a public health response to the incidence or spread of coronavirus.

In paragraph (b) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

- (3) The regulations may— 25
- (a) specify provisions of this Act which are not to apply;
 - (b) provide for provisions of this Act to apply with such modifications as are specified in the regulations;
 - (c) make different provision for different purposes (including different provision for England and for Wales); 30
 - (d) make incidental, supplemental, consequential, saving or transitional provision (including provision amending or otherwise modifying an Act of Parliament).
- (4) The regulations— 35
- (a) are to be made by statutory instrument, and
 - (b) may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.

28 Crown application

This Act binds the Crown (but without prejudice to section 2(5) which secures that the business tenancies to which this Act applies are those to which Part 2 of the Landlord and Tenant Act 1954 applies). 40

29 Extent, commencement and short title

- (1) Parts 1 to 3 extend to England and Wales only (except as provided by subsection (2) and (3)).
- (2) The following provisions extend to England and Wales, Scotland and Northern Ireland – 5
 - (a) in section 24 –
 - (i) subsections (1), (2)(c) and (3), and
 - (ii) subsection (4) so far as relating to a compromise or arrangement under section 899 or 901F of the Companies Act 2006,
 - (b) Part 1 so far as relating to the provisions mentioned in paragraph (a), and 10
 - (c) this Part.
- (3) The following provisions extend to England and Wales and Scotland only –
 - (a) in section 24 –
 - (i) subsection (2)(a), and 15
 - (ii) subsection (4) so far as relating to a company voluntary arrangement,
 - (b) paragraph 1 of Schedule 3 and section 26 so far as relating to that paragraph, and
 - (c) Part 1 so far as relating to the provisions mentioned in paragraph (a) and (b). 20
- (4) This Act comes into force on the day on which it is passed (except as provided by subsection (5)).
- (5) Paragraph 1 of Schedule 3, and section 26 so far as relating to that paragraph, comes into force on 1 April 2022. 25
- (6) This Act may be cited as the Commercial Rent (Coronavirus) Act 2022.

SCHEDULES

SCHEDULE 1

Section 22

MODIFICATIONS OF THE ARBITRATION ACT 1996 IN RELATION TO ARBITRATIONS UNDER THIS ACT

- | | | |
|---|--|----|
| 1 | Part 1 of the Arbitration Act 1996 has effect in relation to arbitrations under this Act as if the following were omitted – | 5 |
| | (a) in section 14 (commencement of arbitral proceedings), subsections (1) and (2); | |
| | (b) in section 15 (arbitral tribunal), in subsection (1), the words “or umpire”; | 10 |
| | (c) sections 16 to 19 (appointment of arbitrators); | |
| | (d) in section 20 (chairman), subsections (1) and (2); | |
| | (e) section 21 (umpire), | |
| | (f) in section 22 (decision-making where no chairman or umpire), subsection (1); | 15 |
| | (g) in section 23 (revocation of the arbitrator’s authority), subsections (1), (2), (3)(a), (4) and (5)(a); | |
| | (h) in section 25 (resignation of arbitrator), subsections (1) and (2); | |
| | (i) in section 27 (filling of vacancy), subsections (1) to (3); | |
| | (j) in section 30 (competence of tribunal to rule on its own jurisdiction), in subsection (1), the words “Unless otherwise agreed by the parties”; | 20 |
| | (k) in section 37 (power to appoint experts, legal advisers or assessors), in subsection (1), the words “Unless otherwise agreed by the parties”; | |
| | (l) in section 38 (general powers exercisable by the tribunal), subsections (1) to (4); | 25 |
| | (m) in section 39 (power to make provisional awards), in subsection (2)(a), the words “or the disposition of property”; | |
| | (n) in section 48 (remedies), subsections (1), (2) and (5)(b) and (c); | |
| | (o) in section 49 (interest), subsections (1) to (3), (5) and (6); | |
| | (p) in section 51 (settlement) – | 30 |
| | (i) in subsection (1), the words “unless otherwise agreed by the parties”; and | |
| | (ii) in subsection (2), the words “if so requested by the parties and not objected to by the tribunal”; | |
| | (q) in section 52 (form of award), subsections (1) and (2); | 35 |
| | (r) in section 58 (effect of award), in subsection (1), the words “Unless otherwise agreed by the parties”; | |
| | (s) in section 68 (challenging the award: serious irregularity), in subsection (2)(e), the words “vested by the parties”. | |

- 2 Part 1 of the Arbitration Act 1996 has effect in relation to arbitrations under this Act as if –
- (a) in section 20 (chairman), in subsection (3), at the beginning there were inserted “Where there is a chairman,”;
 - (b) in section 22 (decision-making where no chairman), in subsection (2) for “If there is no such agreement” there were substituted “Where there are two or more arbitrators with no chairman”;
 - (c) in section 34 (procedural and evidential matters), in subsection (1) after “matters”, there were inserted “(including in relation to oral hearings held in public)”;
 - (d) in section 35 (consolidation of proceedings and concurrent hearings), in subsection (2), for the words from “Unless” to “has no” there were substituted “The tribunal also has”;
 - (e) in section 37 (power to appoint experts, legal advisers or assessors), in subsection (1)(a), after “tribunal may” there were inserted “, where agreed by the parties”;
 - (f) in section 68 (challenging the award: serious irregularity), in subsection (2)(c), the words “procedure agreed by the parties” were substituted by “statutory procedure”.
- 3 The modifications under paragraphs 1 and 2 are without prejudice to the operation of sections 94 to 98 of the Arbitration Act 1996 in relation to other provisions.

SCHEDULE 2

Section 23

TEMPORARY MORATORIUM ON ENFORCEMENT OF PROTECTED RENT DEBTS

- Preliminary: interpretation* 25
- 1 (1) This Schedule applies in relation to a protected rent debt under a business tenancy.
- (2) In this Schedule –
- (a) references to “the protected debt” or “the debt” are to the whole or any part of that protected rent debt; 30
 - (b) “the business tenancy” is the business tenancy under which the protected debt arose;
 - (c) “the landlord” and “the tenant” refer respectively to the landlord and the tenant under that tenancy;
 - (d) “the moratorium period”, in relation to the protected debt, has the meaning given by section 23(2); 35
 - (e) a reference to doing something “in relation to” the protected debt includes, where appropriate, its being done on the basis of the debt.
- Making a debt claim*
- 2 (1) The landlord may not, during the moratorium period for the debt, make a debt claim to enforce the protected debt. 40

- (2) In this paragraph “debt claim” means a claim to enforce a debt in civil proceedings (including by a counterclaim or any other way of claiming payment of a debt in such proceedings).

Debt claims made before the day on which this Act is passed

- 3 (1) This paragraph applies to proceedings on a debt claim which— 5
- (a) is made on or after 10 November 2021 but before the day on which this Act is passed,
 - (b) is made by the landlord against the tenant, and
 - (c) relates to, or to debts which include, the protected rent debt.
- (2) Either of the parties to the business tenancy may apply to the court for the proceedings on the debt claim to be stayed in order to enable the matter of payment of the protected rent debt to be resolved (whether by arbitration or otherwise). 10
- (3) Where such an application is made in respect of proceedings on a debt claim the court must stay the proceedings (unless it is satisfied that they are not proceedings to which this paragraph applies). 15
- (4) Sub-paragraphs (5) to (7) apply if judgment on the debt claim is given in favour of the landlord during the period described in sub-paragraph (1)(a).
- (5) So long as the judgment debt so far as relating to the protected rent debt, or any interest on it, is unpaid, then— 20
- (a) the matter of relief from payment of the judgment debt so far as relating to the protected rent debt, or any interest on it, may be resolved by arbitration under Part 2 of this Act or by agreement (as if that part of the judgment debt and any interest on it were a protected rent debt), despite the judgment having been given, 25
 - (b) the judgment debt, so far as relating to the protected rent debt or any interest on it, may not be enforced or relied on by the landlord before the end of the moratorium period for the protected rent debt, and
 - (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 award or agreement. 30
- (6) Where it comes to the attention of the officer of the court in which the judgment is entered that—
- (a) the judgment relates solely to the protected rent debt,
 - (b) relief from payment of the protected rent debt has been awarded under Part 2 of this Act or agreed, and 35
 - (c) the moratorium period for the protected rent debt has ended,
- the officer must send a request to the registrar to cancel the entry in the register of judgments under section 98 of the Courts Act 2003.
- (7) Following receipt of a request under sub-paragraph (6), the registrar must cancel the entry. 40
- (8) In this paragraph—
- “debt claim” has the same meaning as in paragraph 2;
 - “tenant” includes a person who has guaranteed the obligations of the tenant under a business tenancy. 45

Using CRAR (the commercial rent arrears recovery power)

- 4 (1) The landlord may not, during the moratorium period for the protected debt, use CRAR in relation to the debt.
- (2) This means that during that period –
- (a) an authorisation to exercise CRAR on behalf of the landlord in relation to the protected debt may not be given, 5
 - (b) a notice of enforcement may not be given in relation to the protected debt on behalf of the landlord, and
 - (c) the protected debt is to be disregarded in calculating the net unpaid rent for the purposes of section 77 of the Tribunals, Courts and Enforcement Act 2007 (the rent recoverable using CRAR). 10
- (3) In this paragraph “CRAR” and “notice of enforcement” have the same meaning as in Chapter 2 of Part 3 of that Act.
- (4) In section 77 of that Act, after paragraph (b) of subsection (1) insert “; 15
- (c) it is not excluded from recovery using CRAR by paragraph 4 of Schedule 2 to the Commercial Rent (Coronavirus) Act 2022 (temporary moratorium on enforcement of protected rent debts).”

Enforcing a right of re-entry or forfeiture

- 5 (1) The landlord may not, during the moratorium period for the protected debt, enforce, by action or otherwise, a right of re-entry or forfeiture for non-payment of the debt. 20
- (2) No conduct by or on behalf of the landlord during the moratorium period, other than giving an express waiver in writing, is to be regarded as waiving a right of re-entry or forfeiture, under the business tenancy, for non-payment of the debt. 25
- (3) For the purposes of determining whether the ground mentioned in section 30(1)(b) of the Landlord and Tenant Act 1954 (persistent delay in paying rent which has become due) is established in relation to the business tenancy, any failure to pay the debt during the moratorium period is to be disregarded. 30
- 6 (1) This paragraph applies where –
- (a) a superior landlord enforces, by action or otherwise, a right of re-entry or forfeiture in relation to a superior tenancy during the moratorium period, and
 - (b) the tenant applies for relief from forfeiture in relation to its interest in the property comprised in the tenancy. 35
- (2) For the purposes of determining whether to grant the tenant relief from forfeiture and, if so, the terms of such relief, the court must disregard any failure to pay the protected rent debt.

Using landlord’s right to appropriate rent

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- 7 (1) This paragraph applies in relation to a payment of rent under a business tenancy which is paid during the moratorium period for the debt at a time when –

- (a) the tenant owes the landlord an unprotected rent debt in addition to the debt, and
 - (b) the tenant has not exercised the tenant’s right to appropriate the payment to any particular rent debt owed to the landlord.
- (2) The landlord’s right to appropriate the payment must be used to apply the payment to meet the unprotected rent debt before it is applied to the protected rent debt. 5
- (3) In this paragraph an “unprotected rent debt” is a debt consisting of –
 - (a) rent that is not protected rent, or
 - (b) interest on rent that is not protected rent. 10
- 8 (1) This paragraph applies in relation to any payment of rent under a business tenancy which was paid during the period mentioned in sub-paragraph (2) at a time when –
 - (a) the tenant owed the landlord an unprotected rent debt in addition to the debt, and 15
 - (b) the tenant had not exercised the tenant’s right to appropriate the payment to any particular rent debt.
- (2) The period relevant for the purposes of sub-paragraph (1) is the period –
 - (a) beginning with the day after the last day of the protected period for the debt, and 20
 - (b) ending with the day before the first day of the moratorium period for the debt.
- (3) During the moratorium period for the debt, the landlord’s right to appropriate the payment must be used to apply the payment to meet the unprotected rent debt before it is applied to the protected rent debt. 25
- (4) If the landlord used that right during the period mentioned in sub-paragraph (2) to appropriate the rent to the debt, then –
 - (a) the appropriation of the payment to the debt is ineffective to the extent of the unprotected rent debt, and
 - (b) the payment is to be treated for all purposes as having been appropriated to the unprotected rent debt first. 30
- (5) In this paragraph “unprotected rent debt” has the same meaning as in paragraph 7.

Using tenant’s deposit to apply towards unpaid rent debt

- 9 (1) This paragraph applies where a tenancy deposit is available to the landlord for the purpose of applying towards an unpaid rent debt. 35
- (2) The landlord may not, during the moratorium period for the debt, recover the debt from the tenancy deposit.
- (3) If the landlord has lawfully recovered the debt from the tenancy deposit before the beginning of the moratorium period, the tenant is not required to make good any shortfall in the deposit before the end of that period. 40

SCHEDULE 3

Section 26

WINDING-UP AND BANKRUPTCY PETITIONS

Prohibition on presenting a winding-up petition solely in relation to a protected rent debt

- 1 (1) This paragraph applies where a landlord under a business tenancy is owed a protected rent debt and the tenant is a company. 5
- (2) The landlord may not, during the moratorium period for the debt, present a petition for the winding up of the company under section 124 of the Insolvency Act 1986 on a ground specified –
- (a) in the case of a registered company, in section 122(1)(f) of that Act, or
- (b) in the case of an unregistered company, in section 221(5)(b) of that Act, 10
- unless the landlord is owed a debt by the company which is not a protected rent debt.
- (3) In this paragraph –
- “moratorium period”, in relation to a protected rent debt, has the same meaning as in section 23; 15
- “registered company” means a company registered under the Companies Act 2006 in England and Wales or Scotland;
- “unregistered company” has the same meaning as in Part 5 of the Insolvency Act 1986. 20
- (4) This paragraph, so far as relating to registered companies, applies to limited liability partnerships.

Prohibition on presenting a bankruptcy order petition in relation to a protected rent debt

- 2 (1) This paragraph (and paragraph 3) applies where the landlord under a business tenancy is owed a protected rent debt and the tenant is an individual. 25
- (2) The landlord may not present a petition for a bankruptcy order against the tenant on a ground specified in section 268(1)(a) or (2) of the Insolvency Act 1986 where the demand referred to in those provisions related to any protected rent debt and was served during the relevant period. 30
- (3) The landlord may not present a petition for a bankruptcy order against the tenant on a ground specified in section 268(1)(b) of that Act where the judgment or order referred to in that provision related to any protected rent debt and the claim for that debt was issued during the relevant period.
- (4) If a petition mentioned in sub-paragraph (2) or (3) is presented, the court may make such order or give such directions as it thinks appropriate to restore the position to what it would have been if the petition had not been presented. 35
- (5) If it appears to the interim receiver or special manager that the petition is one mentioned in sub-paragraph (2) or (3), the interim receiver or special manager must refer the matter to the court to determine whether to make an order or give directions under sub-paragraph (4). 40
- (6) Neither the interim receiver or special manager is liable in any civil or criminal proceedings for anything done pursuant to an order made under

section 286 or 370 of the Insolvency Act 1986 in relation to a petition that relates to any protected rent debt.

- (7) The “relevant period” is the period which begins on 10 November 2021 and ends with the day mentioned in section 23(2)(b).
- (8) In this paragraph “claim” includes a counterclaim or any other way of claiming payment of a debt in civil proceedings. 5
- (9) This paragraph is to be regarded as having come into force on 10 November 2021.

Bankruptcy orders made before the day on which this Act is passed

- 3 (1) This paragraph applies where – 10
- (a) a court makes a bankruptcy order against the tenant on a petition from the landlord under section 267 of the Insolvency Act 1986,
 - (b) the order was made on or after 10 November 2021 but before the day on which this Schedule comes into force, and
 - (c) the order was not one which the court would have made had this Schedule been in force at the time. 15
- (2) The court is to be regarded as having had no power to make the order (and, accordingly, the order is to be regarded as void).
- (3) Neither the trustee, official receiver, interim receiver or special manager is liable in any civil or criminal proceedings for anything done pursuant to the order. 20
- (4) The court may make such order or give such directions as it thinks appropriate to restore the position to what it was immediately before the petition was presented.
- (5) If at any time it appears to the trustee, official receiver, interim receiver or special manager that – 25
- (a) a bankruptcy order made by the court is void by virtue of sub-paragraph (2), and
 - (b) it might be appropriate for the court to make an order or give directions under sub-paragraph (4), 30
- the trustee, official receiver, interim receiver or special manager must refer the matter to the court to determine whether to make such an order or give such directions.

Interpretation

- 4 (1) In this Schedule – 35
- “interim receiver” means a person appointed under section 286 of the Insolvency Act 1986;
 - “special manager” means a person appointed under section 370 of that Act;
 - “trustee” means the trustee of a bankrupt’s estate. 40
- (2) In this Schedule, references to the “tenant” include a person who has guaranteed the obligations of the tenant under a business tenancy.

Commercial Rent (Coronavirus) Bill

A

B I L L

To make provision enabling relief from payment of certain rent debts under business tenancies adversely affected by coronavirus to be available through arbitration; and for connected purposes.

Brought from the Commons on 13th January 2022

Ordered to be Printed, 13th January 2022

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