



# Coronavirus arrears recovery scheme and new Code of Practice announced

The government has introduced draft legislation to Parliament which will establish a binding arbitration process for commercial landlords and tenants with regard to rent arrears resulting from periods of enforced lockdown during the COVID-19 pandemic.

The Commercial Rent (Coronavirus) Bill was put before Parliament on 9 November and is expected to come into force in March 2022. In the meantime, the Government has announced a new Code of Practice for landlords and tenants setting out “a clear process for settling outstanding debts before the new arbitration process comes into force”. This replaces the ‘Code of Practice for commercial property relationships’ which was published in June 2020 and updated in April 2021.

The legislation may well be amended during the approval process but at present the main provisions are as follows:

- The arbitration process will apply to businesses that were “mandated” to close “in full or in part”.
- It does not apply to tenants who voluntarily chose to close and will only apply to tenants whose businesses are viable (or would otherwise be viable if they received relief from COVID arrears).
- The scheme will apply to rent as well as all other amounts due under business tenancies, including service charge, interest and rent deposit top ups but only to sums which relate to a “protected period”.
- The “protected period” is the period during which a tenant’s business was subject to restrictions as a result of the Coronavirus Regulations and runs from 21 March 2020 until the earlier of (i) 18 July 2021 and (ii) the last day that the tenant’s business was subject to the restrictions.
- Either the landlord or the tenant can apply for arbitration in relation to arrears which relate to a protected period where negotiations have failed however there is a limited window for referral.
- A referral to arbitration must be made within six months from the date that the Bill comes into force.
- The arbitrator will be able to write off or defer repayment of debts subject to a maximum deferral period of 24 months.
- Landlords will be prevented from issuing new proceedings at court against commercial tenants, including County Court judgments, High Court judgments and bankruptcy petitions, in relation to any rent covered by the new process until the 6 month window for invoking the arbitration scheme has expired or, if later, any arbitration which was commenced has been concluded (existing proceedings issued before 10 November 2021 can continue).

The draft legislation and Code of Practice are based on the underlying principles of preserving viable businesses (but not at the expense of landlords) and encouraging landlords and tenants to work together to reach their own agreements. According to Business Secretary Kwasi Kwarteng, the government expects “tenants capable of paying rent to do so”.

The Bill does still need to be ratified and the Code of Practice is not (as yet) binding but the measures will provide further protection to businesses which have accumulated debts as a result of enforced closures. The availability of arbitration should however be seen as a last resort. The government’s existing moratorium on eviction, in place until 25 March 2022, has already provided time for landlords and tenants to negotiate how to share the cost of commercial rent debts caused by the pandemic so it remains to be seen what effect the legislation will have in practice but these negotiations will now be underpinned by the new Code, providing landlords and tenants with a clear process for settling outstanding debts before the new arbitration process comes into force. The new Legislation will also establish a legally-binding arbitration process for those commercial landlords and tenants who are not able to reach agreement. As the CEO of the British Retail Consortium, Helen Dickinson OBE, has said:

“ *While we support the principle of compulsory arbitration, the devil will be in the detail on issues around what tenant viability really means in practice and the power of arbitrators.* ”



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