

New UK Rules Governing Unpaid Commercial Rent

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Landlords and tenants have both had their own struggles with paying or recovering rent during the COVID-19 pandemic.

Rent arrears accrued during 2020 as sectors, such as retail and hospitality, remained closed for a large part of the year and in an effort to support businesses get back on their feet, landlords were prohibited from forfeiting leases, petitioning to wind up their tenants or exercising CRAR rights.

Since restrictions have lifted, tenants must now pay rent as it falls due, and landlords can exercise all of their rights and remedies in respect of post-pandemic rents, but for accrued arrears there remains restrictions on landlords recovering that rent by forfeiture, CRAR or winding up petitions (unless the landlord is able to show that non-payment is non-COVID related).

The UK government announced earlier this year, that it proposed to introduce legislation setting out a binding arbitration process. The details of which were published yesterday. Alongside the [Commercial Rent \(Coronavirus\) Bill](#) and the [explanatory notes](#), the Government has also issued a new [Code of Practice](#).

Although the Code is voluntary and the draft legislation is not expected to become law until March 2022, the message behind both is that landlords and tenants should discuss and negotiate a solution in respect of accrued COVID rent arrears before the Bill becomes law.

There are a number of aspects in the arbitration regime that both tenants and landlords will be keen to avoid, such as the costs of appointing the arbitrator and their fees, legal costs in preparing pre-action offers and evidence on viability and affordability, and for tenants – will they really want to risk an arbitrator ruling on whether their business is viable?

A new, and unexpected development in the draft legislation is the impact on debt claims. Over the past few months we have seen an increasing number of landlords attempting to recover unpaid rent by issuing court proceedings and obtaining judgment. Although such proceedings are not prohibited, once the Bill becomes law a tenant (or landlord) can apply for those proceedings to be stayed and a judgment obtained in the interim can be referred to arbitration, and enforcement will be prohibited.

Landlords will need to consider the impact of this part of the draft legislation because although not yet

law, it will have an impact on their current strategy given the potential for there to be arbitration costs on top of court fees, delays in recovery and a reduced payment if arbitration is initiated and reduces a judgment debt.

It must of course be said that the Bill is subject to parliamentary scrutiny and the detail may change.

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National Law Review, Volume XI, Number 315

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