

The government's plans for dealing with Covid-19 rent arrears – some more details emerge

Last week, the government published a policy statement to deal with rent arrears accrued during the pandemic for those businesses affected by the pandemic.

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Please note: the information contained in this legal update is correct as of the original date of publication.

We mentioned in our article of 17 June (click [here](#)) that the government will bring in legislation to deal with rent arrears accrued during the pandemic for those businesses affected by the pandemic.

Last week, the government published a policy statement giving a bit more detail about its plans. The following key points emerge:

1. The legislation will ring-fence rent arrears accrued from March 2020 for tenants affected by Covid-19 business closures until restrictions for their sector are lifted. It will also introduce a system of binding arbitration where landlords and tenants cannot agree how to deal with those arrears.
2. Ahead of the legislation being passed, the government will publish the key principles that it will seek to put in place in a revised Code of Practice (the initial voluntary Code to encourage landlords and tenants to work together to protect viable businesses was published in June last year). This will allow landlords and tenants time to negotiate in good faith using the principles set out in the updated Code.
3. The restriction on landlords forfeiting any business lease for non-payment of rent will continue until 25 March 2022, unless the legislation is passed before then. Once the legislation is passed, the restriction on forfeiture will only apply to ring-fenced arrears. Landlords will therefore be able to forfeit for arrears accrued prior to March 2020 and after the end of the period of trading restrictions for the sector in question. They will also be able to forfeit for non-payment of rent accrued at any time where the tenant's business falls outside the scope of the new legislation.
4. Tenants who have not been forced to close during the pandemic and who have the means to pay rent, should do so. In addition, tenants should begin paying rent from the point that trading restrictions for their sector are lifted (unless otherwise agreed with their landlord).
5. The government expects landlords and tenants to agree terms to defer or waive an appropriate proportion of the ring-fenced arrears. It expects landlords to share the financial burden with tenants where they are able to do so and that tenants who can pay should do so.
6. Further details on the arbitration process and how it will work will be provided in due course. It should be seen as a last resort - the government's strong preference is for landlords and tenants to reach agreement themselves using the principles set out in the revised Code of Practice. If one party is found not to have negotiated in the spirit of these principles, an arbitrator may be able to require that party to meet all the costs of the arbitration.

So, a bit more detail, but many questions remain to be answered. For example:

1. How will the arbitration process affect the two High Court decisions earlier this year which confirmed that tenants remain bound to pay their rent in full despite the pandemic?

2. Will landlords be prevented from pursuing guarantors for all the ring-fenced arrears or from drawing down on a rent deposit to recover those arrears?
3. Will the legislation affect a tenant's ability to exercise a break clause which is conditional on paying all rent due under a lease (including all the ring-fenced arrears)?
4. How will the government ensure a consistency of approach amongst arbitrators?
5. What financial information will tenants be expected to provide to arbitrators to show the financial impact of the pandemic on their business?
6. Will the legislation benefit tenants who were not forced to close entirely during the pandemic, but for whom turnover was severely affected (e.g. restaurants who were able to provide takeaways only)?

No doubt answers to these (and many other) questions will be provided in the weeks and months ahead. For now, we can only watch and wait!

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