



# ADVICE FOR TENANTS ON RENTAL OBLIGATIONS AND BAN ON FORFEITURE OF COMMERCIAL PREMISES

## INTRODUCTION

The UK government has introduced emergency legislation expected to be passed into law on 25 March 2020 (The Coronavirus Bill), preventing landlords from forfeiting leases of commercial premises for arrears of rent or any other sums payable under their leases, at least until 30 June 2020. That period may be extended by government order.

Broadly, the legislation applies both to protected and to contracted out business tenancies. It also covers premises occupied by licensees, concessionaire or group companies other than the tenant. There are limited exclusions, such as unoccupied properties. It applies to both forfeiture by re-entry and by court action (pending proceedings and new proceedings).

The legislation currently only prevents action to forfeit leases for non-payment. Therefore action can still be taken to:

- a) Enforce payment by other means; and
- b) Forfeit for other lease breaches.

Contractual provisions on accrual of interest and costs will still apply as will other routes to enforce the underlying payment obligations, as distinct from the right to forfeit for non-payment.

Other impediments to enforcement by landlords are created by widespread court closures, particularly affecting the county courts.

## OTHER ENFORCEMENT ROUTES

Landlords may still seek to use some of the following options to enforce payment of rent:

- 1) **Proceedings for rent arrears** can still be issued in theory, although it may be that the courts will not be open or have the staff to process the same.
  - a) If the proceedings are not defended then a default judgment can be obtained at various points starting 14 days after service.
  - b) This can be followed by an application for a charging order to secure the judgment.



- c) A watch on post should be maintained and any proceedings responded to, in order to defend or seek time to pay.
- 2) **Claims against Guarantors** (including former tenants and pursuant to AGAs) can still be issued, subject to court operations. Points 1a), 1b) and 1c) above apply.
- 3) **Withdrawal from rent deposits** are not restricted (see deed terms for operation), and can be followed by calls for tenants or guarantors to top up deposits.
- 4) **CRAR** enforcement methods can be pursued such as:
  - a) **Notice to seize goods.** Warning has to be given, and it must be not known whether bailiffs will be operating during the shut-down.
  - b) **Notice to sub tenant** to pay direct to landlord. Warning has to be given.
- 5) **Insolvency proceedings** can still be issued.
  - a) This generally involves service of a statutory demand giving 21 days to pay before a petition can be issued.
  - b) Preventing the issue of a petition involves applying for an injunction (for a company) or challenging the demand (for individuals). This generally involves showing that the debt is genuinely disputed.
  - c) Once a winding up or bankruptcy petition is issued, it freezes bank accounts and invalidates further transactions unless court approval is obtained (in advance or after the fact).
  - d) Immediate advice should be sought if you receive a statutory demand or a threat of the issue of insolvency proceedings.
  - e) Lack of court facilities may in practice delay the issue of insolvency proceedings.

## **RISKS OF NON-PAYMENT OF RENT**

We anticipate that many tenants will be unable or unwilling to pay rent during this statutory concession period while they preserve cash to support their businesses. What are the implications of non-payment?

- 1. Break clauses:** where a tenant wishes to rely on a break clause in a lease, it should not suspend rental payment without first checking the break clause.
- a. If the break clause is unconditional then withholding rent should not prevent effective operation of the break.
  - b. If the clause is conditional on payment of all sums/rent then rent should be paid as it becomes due, unless advice is received that this is not necessary in the particular case.
  - c. If you still want to withhold rent for such a property, first obtain a written waiver of conditions in the break clause from the landlord.



**2. When the period ends:** unless the landlord has explicitly waived the right to forfeit for non-payment of these rents, that right can be exercised once the statutory concession period ends. Therefore obtain agreement to a formal repayment plan wherever possible.

This commentary is an initial summary based on the published Bill. The legislation may be amended before becoming law. Advice should be taken on the specific circumstances applying to you before action is taken based on this note.

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