



# TENANT RENT ARREARS AND COVID-19

**Petrol stations have been exempt from closure restrictions during the COVID-19 period. However, many petrol retailers have been hit hard by the closure of occupational tenant businesses, including car washes and MoT centres. Robert Botkai of Winckworth Sherwood assesses the legal situation**



Non-essential retail in England was closed for longer than it was open in the 2020-21 financial year (closed for at least 29 out of 52 weeks and longer in some areas with higher restrictions). The Government introduced legislation on March 25, 2020 to protect commercial tenants from eviction for non-payment of rent.

The Government encouraged landlords and tenants to negotiate rent concessions and deferrals as businesses were impacted by restrictions. The principles of the Government's expectations were published in a code of practice in June 2020.

In practice, we have seen many such agreements. Often a landlord will expect something tangible in return for a rent concession, such as the removal or change of a break option.

## What is the Government planning to do now?

The Government intends to legislate to ring-fence rent debt accrued from March 2020 for tenants forced to close as a result of the COVID-19 business measures and introduce a system

of binding arbitration to be undertaken where agreement cannot be reached.

Alongside this, to support negotiations between tenants and landlords further before the new legislation is enacted, the Government has:

- extended the current protections for commercial tenants against eviction to December 31, 2021 in Wales and March 25, 2022 in England, unless legislation is passed ahead of this;
- extended to March 25, 2022 (unless legislation is passed ahead of this) the restriction on the use of the commercial rent arrears recovery (CRAR) procedure. CRAR is a statutory procedure which allows landlords of commercial premises to recover rent arrears by taking control of the tenant's goods and selling them;
- extended the restrictions against serving a winding up petition on the basis of a statutory demand until March 31, 2022.

## The new legislation

On August 4, 2021, the Government published its policy statement outlining the proposed new legislation to address arrears, estimated as of June 2021 to have reached £7.5 billion.

The new legislation will only apply to arrears incurred since March 2020 by commercial tenants affected by COVID-19 business closures.

The legislation will not apply to landlords claiming:

- Rent arrears accrued prior to March 2020; and/or
- Rent that their tenants failed to pay after the end of restrictions for their sector and who have not

been affected by business closures during this period

The Government expects landlords to share the financial burden with tenants. It will expect terms to be agreed between landlords and tenants impacted to defer or waive rent arrears.

Where agreement cannot be reached, both landlord and tenant will need to undertake a binding arbitration. Arbitrators will have jurisdiction to make cost orders and there will be cost consequences for those found not to have negotiated in the spirit of the legislative principles.

In the interim period and until the legislation comes into force, the Government will publish a revised Code to include the principles of the new legislation encouraging landlords and tenants to negotiate along these lines.

The new legislation should provide some welcome clarity. However, there is uncertainty for more nuanced businesses such as those who may have continued to trade profitably but refused to pay rent. It is also interesting to note that the Government, through legislation, is interfering with contractual arrangements settled by landlords and tenants. But we are in unusual times!

Readers are welcome to contact me or any member of the commercial real estate and licensing Team, at Winckworth Sherwood for more information on this or any other legal issue.

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