



Critical COVID-19 Issues Facing the UK Real Estate Industry

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The New UK Coronavirus Act 2020

The Coronavirus Act 2020 - Overview

- Enables the UK Government to respond to the COVID-19 pandemic and manage the effects of the disease
- Protecting health:
 - Healthcare workforce: increases in health and social care workforce through emergency registrations (e.g. retired medical practitioners) and volunteering
 - Powers to make directions for containment and delay of the spread of the virus: detention/isolation of infectious persons; closure of ports, childcare facilities, educational institutions, events, gatherings and premises generally; video link court and tribunal hearings; postponement of elections
 - Powers associated with continuity of food supply
 - See also the Health Protection (Coronavirus) Regulations of February 2020 (Public Health Act)
- Protecting individuals: sick pay, protection from eviction
- Protecting businesses: protection of business tenancies; employee costs
- Further business and other support measures in addition to the Act

The Coronavirus Act 2020 - Timings and Extensions

- In force 25 March 2020 – except provisions to be brought into force by separate regulation, including emergency volunteering, amendments to NHS/local authority care duties and powers, registration of deaths, food supply
- Duration of 2 years, subject to government discretion to extend for a maximum of 6 months or curtail duration
- Six-monthly Parliamentary review to determine whether the Act should remain in force
- Individual provisions can be suspended and reactivated, for different areas or purposes



Impact of the CVA 2020 on Commercial Landlords and Tenants

The Coronavirus Act 2020 – Commercial Leases

- Applies to all “*relevant business tenancies*”
- Protection given is that no right of re-entry or forfeiture can be exercised by a landlord where the tenant of a relevant business tenancy fails to pay rent during the relevant period
- The right to forfeit is not lost or waived however ***unless*** this is done by express written waiver by the landlord
- **Key Point 1:** The protection from eviction is a deferral of the right to forfeit—not a waiver.

Rent and Rent Concessions

- Tenant therefore remains liable to pay the rent.
- However, many tenants have been approaching landlords for a waiver/rent holiday or the ability to pay monthly rather than quarterly.
- Does a landlord have to agree?
- What concessions are happening?
- Tenant is liable still to pay, including interest on late payment.

What Is a Relevant Business Tenancy?

- Two types:
 - A tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies
 - A tenancy to which that Part of the 1954 Act would apply “if any relevant occupier were the tenant”
- **Key Point 2:** Policy purposes behind the Coronavirus Act confirm that it is intended that *all* commercial leases where the tenant is in occupation are covered by these provisions.

What Is Covered by “Rent”?

- **Key Point 3:** Rent = any sum a tenant is liable to pay under a relevant business tenancy

Payment	Non-payment covered?
VAT on rent?	Yes
Service charges?	Yes
Insurance premia?	Yes
The costs if landlord has to do essential repairs?	Yes
Professional fees?	Yes

What Is the Relevant Period?


- **Key Point 4:** The relevant period begins 26th March and ends on 30th June 2020 but can be extended.

Some Interesting Questions?

- What if the landlord itself holds a leasehold interest?
- What if the landlord has a right to forfeit for a breach that is not due to non-payment?
- What other action (aside from forfeiture) could a landlord take?

Questions?





Impact of the CVA 2020 on the Private Residential Sector

The Coronavirus Act 2020 – PRS and BTR – Extended Notice Periods

- Residential tenants in the Build to Rent and Private Rented sectors have increased protection from eviction for the period from and including 26 March 2020 to and including 30 September 2020.
- The period for increased protection can be extended beyond 30 September 2020 by statutory instrument.
- The statutory notice to quit required for rent act tenancies, secure tenancies, assured and assured shorthold tenancies, agricultural, flexible, introductory and demoted tenancies has been increased in all cases to three months.
- The extended three month notice period can be pushed out to six months by statutory instrument should ministers see fit.

The Coronavirus Act 2020 – PRS and BTR – Exceptions and Impact

- The legislation does not expressly cover company lets, occupational licences or long residential leases (although the provisions of the Protection from Eviction Act 1977 would still apply, requiring a court order to be obtained before a tenant could be physically evicted or the locks changed).
- In practice, a landlord now has to wait three months before court proceedings for possession can be commenced, which even on the accelerated timetable for s.21 possession notices under ASTs took 8-12 weeks under normal circumstances.
- There is anecdotal evidence of these provisions now causing difficulties in the rental market as tenants are unable to or refuse to move.
- Note that in keeping with the treatment of commercial tenancies, there is no right for tenants to withhold rent.

Questions?





Additional Government Measures

Overview

- Business rates relief for retail, hospitality and leisure premises and private childcare nurseries
- One-off grants for small businesses as well as retail, hospitality and leisure businesses
- Business interruption loan schemes: for large businesses (between £45 million and £500 million annual revenues) and SMEs (up to £45 million annual revenues) – SMEs also receive a grant covering the first 12 months' interest payments and lender fees
- Bank of England debt purchase facility for larger businesses (no annual revenue limit)
- Employee costs: reimbursement of sick pay, support for job retention
- Deferred payment of VAT
- Support for charities providing vital services

Business Rates Relief (1)

- Exemption from payment of business rates for the 2020/2021 tax year – limited eligibility
- Local council should apply this automatically, no rateable value limit
- Retail, hospitality and leisure businesses:
 - Shops
 - Restaurants, cafes, bars, pubs
 - Cinemas, live music venues
 - Assembly or leisure property (sports clubs, gyms, spas)
 - Hospitality property (hotel, guest house, self-catering)
- Nurseries: if on Ofsted's Early Years Register and providing care and education of under 5s, but not if local-authority funded

Business Rates Relief (2)

- Those **not eligible** are premises used for providing:
 - Financial services (e.g. banks, building societies, cash points, bureaux de change, short-term loan providers);
 - Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors);
 - Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers); and
 - Post office sorting offices.

Grant Funds – Small Businesses and Retail, Hospitality and Leisure

- Small businesses are eligible if on 11 March 2020 they were in receipt of Small Business Rate Relief or Rural Rate Relief - £10,000 grant per property.
- Retail/hospitality/leisure businesses are eligible if property rateable value was below £51,000, and they meet the conditions of the Expanded Retail Scheme – £10,000 per property with a rateable value of £15,000 or below and £25,000 per property with a rateable value between £15,000 and £51,000.

Employee Costs (1)

- Coronavirus statutory sick pay rebate scheme:
 - Employers can reclaim up to two weeks' sick pay paid on and after 13 March 2020, starting with the first day of sickness
 - Rebate is at the statutory amount
 - Covers sick pay paid to employees unable to work because they have coronavirus or are self isolating at home
 - All types of employment contracts covered
 - Employer is eligible if on 28 February 2020, if:
 - It had created and started a PAYE payroll system
 - It had fewer than 250 employees
 - End date not yet determined

Employee Costs (2)

- Coronavirus Job Retention Scheme
 - A firm may furlough its employees and apply for a grant covering
 - 80% of usual monthly wage costs up to £2,500 per person;
 - Associated Employer National Insurance contributions; and
 - Minimum automatic enrolment employer pension contributions.
 - Applies for 3 months from 1 March 2020
 - Key issue for hospitality workers: HMRC says their share of service charge is not included in calculation of monthly wage as it is a discretionary bonus – can be 30-50% of wages.

Coronavirus Large Business Interruption Loan Scheme (CLIBLS) (1)

- Due to launch end April 2020
- Details not yet fully available
- Available to UK-based businesses with between £45 and £500 million annual turnover (further conditions – see later)
- Provides access to financing of up to £25 million at commercial rates from accredited commercial lenders
- Government support to the lender: guarantee of 80% of the financing

Coronavirus Large Business Interruption Loan Scheme (CLIBLS) (2)

- Further conditions:
 - Business cannot secure regular commercial financing.
 - Business must show it has been adversely affected by the crisis.
 - Business must make a borrowing proposal to the lender that the lender would consider viable but for the crisis.
 - The lender must believe the loan will be used to trade out of any short-term or medium-term difficulty.
 - Not open to banks, insurers and reinsurers, public bodies, grant-funded further-education establishments or state-funded schools.
- Application details not yet published

SMEs – Coronavirus Business Interruption Loan Scheme (CBILS) (1)

- Announced 23 March 2020
- Available to UK-based small and medium-sized businesses (SMEs) with up to £45 million annual turnover (further conditions—see later)
- Provides access to funding from accredited commercial lenders, backed by Government-owned British Business Bank:
 - Loans, overdrafts, invoice finance and asset finance
 - Up to £5 million
 - For up to 6 years
- Government support:
 - To the SME: Business Interruption Payment covering the first 12 months' interest plus any lender-levied fees
 - To the lender: guarantee of 80% of the loan/overdraft/finance

SMEs – Coronavirus Business Interruption Loan Scheme (CBILS) (2)

- Further conditions:
 - SME must generate more than 50% of its income from trading activity
 - SME must show it has been adversely affected by the crisis
 - SME must make a borrowing proposal to the lender that the lender would consider viable but for the crisis
 - The loan must be used primarily for trading in the UK
 - Not open to banks, insurers and reinsurers, public bodies, grant-funded further-education establishments or state-funded schools
 - Unclear that CIBLS would be available to a subsidiary of a wider group outside the UK
- Applications through British Bank website: <https://www.british-business-bank.co.uk>
- Over 40 accredited lenders with further accreditations expected

SMEs – Coronavirus Business Interruption Loan Scheme (CBILS) (3)

- Four key issues:
 - Is letting a trading activity? No firm guidance in CBILS, but treated for tax purposes as an investment, not trading activity
 - Is a personal guarantee required?
 - Loans under £250,000: lender may not require this in any form
 - Loans £250,00 and over:
 - Lender may require this but not against a principal private residence
 - Lender may also not claim against the guarantee to recover more than 20% of the outstanding loan.

SMEs – Coronavirus Business Interruption Loan Scheme (CBILS) (4)

- SMEs part of a larger group – unlikely to benefit, group revenues usually taken into account as well
- Speed of access:
 - Reports of applications by over 28,000 SMEs
 - Slow takeup but accelerating
 - Reports of lender delays in responding to applications, confusion over rules – staff training to speed up processes
 - Delay in payments

COVID-19 Corporate Financing Facility (1)

- Bank of England purchase of short-term debt from large companies
- Support for companies affected by a short-term funding squeeze
- Support for corporate finance markets overall
- Delivered through commercial lenders, backed by the Bank of England
- Operates for 12 months from 17 March 2020

COVID-19 Corporate Financing Facility (2)

- Bank of England instrument: commercial paper, an unsecured, short-term debt instrument issued by the company
- Conditions of purchase:
 - Maturity: one week to 12 months
 - Credit rating (if available) of A-3, P-3, F-3, R3 from one of Standard & Poor's, Moody's, Fitch or DBRS
 - Issued directly into Euroclear or Clearstream
 - Governed by English law, subject to jurisdiction of English courts
- Participation is via a bank

COVID-19 Corporate Financing Facility (3)

- Eligibility:
 - Non-financial companies only
 - Companies and their finance subsidiaries that make a material contribution to the UK economy
 - Includes companies owned by foreign-incorporated parents, as long as the companies have genuine UK business, and companies with significant employment in the UK
 - Companies that can demonstrate they were in sound financial health before the crisis
- Application: Bank of England website
- Further information:
<https://www.bankofengland.co.uk/news/2020/march/the-covid-corporate-financing-facility>

Questions?





**For more information,
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