

UK - CORONAVIRUS ACT 2020 BUSINESS TENANCIES – PROTECTION FROM FORFEITURE FOR NON PAYMENT OF SUMS DUE UNDER THE LEASE

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WHAT IS PROPOSED FOR BUSINESS TENANCIES ?

A section in the Coronavirus Act 2020 (the "Act"), which is the government's emergency legislation, will stop landlords from enforcing their right to forfeiture of business tenancy for non-payment of rent (including any sum a tenant is liable to pay under a relevant business tenancy), either by peaceable re-entry or court proceedings. The non-payment of rent does not need to be demonstrably Covid-19 related.

WHEN WILL THIS APPLY?

From Thursday 26 March 2020 until 30 June 2020. This end date can be extended by statutory instrument.

WHAT IS THE CHANGE?

During this period, a landlord cannot enforce a right of re-entry or forfeiture for non-payment of any sum due under a relevant lease.

WHO DOES THIS APPLY TO?

It applies to all business tenancies within the meaning of the Landlord and Tenant Act 1954 (the "1954 Act"), of not less than six months, whether or not they have opted out of the protections afforded by the 1954 Act; and to any tenancy to which the Act would apply if any relevant occupier (eg. subtenant) were the tenant.

IS THERE ANY ENCOURAGEMENT TO NEGOTIATE DEALS?

Ordinarily, landlords who wish to forfeit a lease have to take care not to waive (compromise) their right to forfeit, for example, by accepting rent or negotiating payment terms with tenants after the right to forfeit has arisen. This legislation facilitates discussions between landlords and tenants by providing that no conduct by the landlord during the relevant period will waive a right of re-entry or forfeiture under a business tenancy for non-payment of rent, other than an express waiver in writing by the landlord. In other words, a landlord's right to forfeit a lease for non-payment of rent will be preserved during the relevant period, albeit that the landlord will not be entitled to enforce that right until after 30 June 2020 (or later if this date is extended).

WHAT ABOUT COURT PROCEEDINGS THAT WERE COMMENCED PRIOR TO THIS LEGISLATION?

Where a landlord commenced forfeiture proceedings prior to this new legislation taking effect, although a court may make an order for possession during the period when the legislation

applies, that order cannot take effect before 30 June 2020. Or, if an order for possession is due to take effect during the relevant period (as a consequence of proceedings commenced prior to the legislation), that date will be pushed back to take effect after the relevant period.

Further, in 1954 Act business lease renewal proceedings, where a landlord is opposing a new lease on the grounds of a persistent delay in the payment of rent, the Court must disregard any failure to pay rent during the period when the legislation applies.

WHAT IS NOT AFFECTED BY THIS LEGISLATION?

- A business tenant's liability for rent, including any interest on rent arrears, remains unchanged (unless the parties have agreed a concession); the Act simply prevents landlords from forfeiting business leases for non-payment of sums due under a lease
- A landlord's right to forfeit a business tenancy for other breaches unrelated to the payment of rent or other sums due under the lease is preserved*
- A landlord's right to exercise CRAR (commercial rent arrears recovery) – a statutory procedure which allows landlords of commercial premises to recover rent arrears by taking control of the tenant's goods and selling them – is still available, as is the ability to draw down a rent deposit
- Winding up proceedings can still be commenced against tenants who are in arrears
- Rights of lenders are preserved

→ *Note, however, that a new practice direction, PD51Z, was introduced on 27 March 2020 that applies to court proceedings for possession (including forfeiture). Its effect is to suspend all new and existing court proceedings for possession brought under CPR Part 55, and all proceedings seeking to enforce an order for possession by a warrant or writ of possession, for a period of 90 days from 27 March 2020. It is therefore unlikely that any business tenant will be evicted before the end of June 2020, unless a landlord chooses to forfeit a lease by peaceable re-entry