EXPLANATORY NOTES

Commercial Rent (Coronavirus) Act 2022

Chapter 12

£11.50

COMMERCIAL RENT (CORONAVIRUS) ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Commercial Rent (Coronavirus) Act 2022 which received Royal Assent on 24 March 2022 (c. 12).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

These Explanatory Notes relate to the Commercial Rent (Coronavirus) Act 2022 which received Royal Assent on 24 March 2022 (c. 12)

Overview of the Act

1 The purpose of the Commercial Rent (Coronavirus) Act 2022 is to support landlords and tenants in resolving disputes relating to rent owed by businesses which were required to close during the COVID-19 pandemic. The Act enables arbitration to be used to resolve these disputes if landlords and tenants cannot agree a way forward.

Policy background

2 COVID-19 and the associated closure measures have had a significant impact on the economy, particularly on the income of the hospitality, leisure and retail sectors. As a result of restrictions on businesses during the pandemic and the temporary protections put in place to help businesses manage rents during coronavirus related restrictions, a significant amount of rent debt has built up relating to commercial tenancies.

3 The Government worked with business leaders to publish a voluntary Code of Practice in June 2020 that encouraged both landlords and tenants to work together to resolve unpaid rent, and updated the Code in November 2020 and April 2021.

4 Some tenants and landlords have utilised the voluntary Code of Practice and whilst there is indication that, overall, rent collection is increasing, it remains below average levels, especially in certain sectors.

5 This legislation supports landlords and tenants, who cannot otherwise agree, in resolving disputes relating to the rent owed, to facilitate a return to normal market operation.

Business Protection Measures

6 In 2020, the Government introduced measures to help businesses who were unable to pay their rent due to the impact of coronavirus. These were a moratorium on forfeiture (which prevents landlords from evicting business tenants on the basis of unpaid rent), a restriction on landlords' abilities to seize goods to recover unpaid rent, and restrictions on the use of winding-up petitions and statutory demands (which have applied to and beyond commercial landlords and tenants). These measures were introduced to offer temporary relief, although the periods for which they applied were extended as restrictions continued.

Call for Evidence

7 A Call for Evidence was published in April 2021 following the extension of government measures that had been introduced over the pandemic to protect businesses against the economic shocks of Coronavirus-related restrictions.

8 The Call for Evidence gathered data on the state of negotiations between commercial landlords and tenants regarding these outstanding rent arrears, as well as ongoing lease terms. The Call for Evidence also sought views from interested parties on six options: one to allow the current measures to lapse on 30 June 2021 and five options to manage the exit from the current measures, including the option to ringfence rent debt and introduce a backstop of binding arbitration (which was the preferred option, particularly favoured by tenants).

9 Out of the respondents to the Call for Evidence, the total rent that tenants claimed to owe was over £570m, while the total rent that landlords claimed they were owed was over £1.7bn. Both landlord and tenant stakeholders agreed that the voluntary nature of the Code of Practice meant it was less effective, and 49.2% of respondents were in favour of binding adjudication, whilst only 27.4% were against it.

Arbitration

10 The Act provides certainty to both tenants and landlords by setting out a process for resolution, where agreement has not been reached, of rent accrued during the period of closure measures. The Secretary of State approves suitable arbitration bodies, which will in turn maintain a list of suitably qualified and independent arbitrators and administer arbitrations, to which either the landlord or tenant can apply. A statutory arbitration process is then applied, making provision for tenant and landlord to state their case, for types of award the arbitrator can give and the principles that govern this award.

11 The Act provides that arbitration will be available in respect of business tenancies where the business tenant was required by COVID-19 related regulations, to close its premises or business in whole or part. For all tenancies affected by COVID-19, the parties are free to reach agreement and the Act will have no effect on those agreements. For those tenancies within the scope of the Act, failing agreement, either party can apply for arbitration. If the arbitrator decides that there is unpaid rent for the protected period and that the tenant's business is viable or would be a viable business but for the protected rent debt, then the arbitrator will consider the circumstances and the proposals of the parties and reach a decision. The arbitrator's award may provide for some or all the ringfenced debt to be paid by instalments and/or to be reduced. The arbitrator's award may also reduce any interest payable by the tenant under the terms of the tenancy.

12 The arbitrator considers the proposals put forward by the parties against the statutory principles. Where only the proposal of one of the parties is consistent with the principles, the arbitrator must make the award in that proposal. Where the proposals of both parties are consistent with the principles, the arbitrator must adopt the one they consider is most consistent. Where neither party's proposal is consistent, the arbitrator must make whatever award they consider is appropriate applying the principles. The principles encourage the resolution of these debts, ensuring that those with the means to pay protected rent debt while remaining viable will be required to do so. Preservation of the viability of the tenant needs to be consistent with preserving the solvency of the landlord, so a balance is achieved.

13 The arbitration process incorporates and builds on provisions from the existing Arbitration Act 1996 and provides for an effective, streamlined process, compatible with the rights of the parties to a fair process.

Temporary moratorium on certain remedies and insolvency arrangements

14 The Act establishes a system of resolving protected rent debt that considers the circumstances of tenants and landlords in the context of the pandemic.

15 If landlords used other measures to recover protected rent debt, there would not be a genuine opportunity to use the Act's system. Therefore, the Act introduces a moratorium on the use of certain remedies and measures whilst the application period for arbitration is open or arbitration under this legislation is in progress.

16 During arbitration, certain remedies (including those restricted already) and measures are temporarily unavailable, to give priority to the arbitration process. In addition, where debt claims for or including protected rent debt have been started on or after 10 November 2021, they will be stayed if one of the parties applies for a stay and the claims are not concluded. Where a debt claim has been concluded before the Act was in force, the judgement debt may be subject to arbitration so far as it relates to protected rent debt. Bankruptcy petitions presented based on statutory demands or claims made on or after 10 November 2021 and resulting orders made are void.

Revised Code of Practice

17 Ahead of the binding arbitration system under this Act, the Government published a revised Code of Practice on 9 November 2021, which provides guidance for negotiations between landlords and tenants, including those which fall outside the scope of this Act. This replaces the Code of Practice issued on 19 June 2020 and updated on 6 April 2021.

18 The revised Code of Practice applies to all commercial leases held by businesses that have been seriously affected by the COVID-19 pandemic and supports negotiations between parties.

Legal background

19 During the pandemic, the Government introduced a range of measures to assist businesses struggling to pay their rent, including:

a. a moratorium on forfeiture of commercial leases under section 82 of the Coronavirus Act 2020;

b. restrictions on the use of the Commercial Rent Arrears Recovery (CRAR) regime (which enables landlords to recover rent arrears through the seizure of tenants' goods, established by the Tribunals, Courts and Enforcement Act 2007 and Taking Control of Goods Regulations 2013/1894) by amendments, most recently the Taking Control of Goods (Amendment) (Coronavirus) Regulations 2021/300;

c. restrictions on the service of winding up petitions under Schedule 10 to the Corporate Insolvency and Governance Act 2020 (this measure was tapered as of 1 October 2021, still preventing winding up on the basis of unpaid rent).

20 All of these measures were temporary. The moratorium on forfeiture of commercial leases and measure regarding CRAR ended on 25 March 2022, and protection against winding-up petitions (in certain circumstances) on 31 March 2022.

21 The Act establishes a system of binding arbitration to resolve disputes between landlords and tenants about arrears under business tenancies, where the premises or the tenant business has been subject to mandatory closure under regulations made under the Public Health (Control of Disease) Act 1984 during the COVID 19 pandemic. Rent under such tenancies can be considered by the arbitrator if it relates to a period (or part of this period) starting on 21 March 2020 (when the first such restrictions came into force in England and Wales respectively) and ending for a business when the regulations providing for closure of the business or restrictions on operating or use of premises for the relevant sector were lifted.

Territorial extent and application

22 The Act will extend to England and Wales, and limited provisions to Northern Ireland and Scotland. The Act will apply in England and Wales. Limited provisions extend to Scotland and Northern Ireland, to ensure that certain insolvency proceedings could not be brought, or measures applied in Scotland or Northern Ireland, in respect of protected rent debt in England and Wales.

23 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Part 1: Introductory provisions

Section 1: Overview

24 This section sets out the overall purpose and structure of the Act. Subsection (1) of this section sets out that the Act provides for a process of arbitration to be available to resolve disputes about relief for the tenant from payment of certain debts due to the landlord under a business tenancy. These debts are described as "protected rent debts" throughout the Act and resolution by arbitration is available in those cases where the tenant and landlord are not able to reach mutual agreement.

25 Subsection (2) introduces the different provisions of the Act and explains what they provide for:

a. Sections 2 to 6 of Part 1 provide definitions of key terms used for the purposes of this Act;

b. Part 2 establishes a process of statutory arbitration which can lead to awarding the tenant relief from payment of a protected rent debt;

c. Part 3 provides for temporary restrictions on the availability of certain remedies that would otherwise be available to a landlord, and of certain insolvency measures that would otherwise be available to the parties, in relation to a protected rent debt.

26 Subsection (3) clarifies that nothing in the Act affects the ability of tenants and landlords at any time to reach agreement on the payment of a protected rent debt (or any other matter relating to the tenancy), nor does it prevent such an agreement having effect and being enforced. This means that while the Act enables relief from payment of protected rent debt through arbitration, it does not prevent the parties to a business tenancy from agreeing relief from payment through another process, whether before or during the arbitration process. Where they do reach agreement, arbitration under this Act is not be available.

Section 2: "Rent" and "business tenancy"

27 This section provides the definitions for rent and business tenancy for the purposes of this Act.

28 Subsection (1) defines "rent" as including an amount payable by the tenant to the landlord for possession and use of the premises, a service charge, including a payment towards an insurance premium, and any interest on an unpaid amount of rent as defined in (a) and (b) in this subsection.

29 Subsection (2)(a) explains that a reference to an amount under subsection (1) includes VAT.

30 Subsection (2)(b) states that the reference to "landlord" in subsection (1) includes a person acting for the landlord, such as a managing agent.

31 Subsection (2)(c) defines service charge for the purpose of subsection (1). This may include an amount payable in respect of certain services and costs which may relate to the premises or common parts, where required to be paid under the tenancy, and may include insurance costs, which is defined in subsection (3).

32 Subsection (3) also explains what is meant by "the relevant costs" mentioned in subsection (2)(c).

33 Subsection (4) states that an amount drawn down by the landlord from a tenancy deposit to meet part or all rent debt is treated as unpaid rent debt unless repaid by the tenant. Where the Act refers to paying rent then, for this situation, this should be understood to mean making good a shortfall in the deposit.

34 Subsection (5) defines a "business tenancy" as a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies. That is, a tenancy comprised of property which is or includes premises that are occupied by the tenant for business purposes, or business and other purposes, under section 23 of that Act.

35 Subsections (6) and (7) define Welsh and English business tenancies so that different provision may be made in respect of each.

Section 3: "Protected rent debt"

36 This section sets out what is meant by "protected rent debt" within the context of the Act.

37 Subsection (2) provides two conditions to be met for rent due to be considered "protected rent". The first of these is that the tenancy was adversely affected by coronavirus (the definition of this is set out in section 4). The second condition is that the rent due was attributable to a period of occupation within the "protected period" defined in section 5.

38 Subsection (3) states that rent consisting of interest due in respect of an unpaid amount (as described in section 2(1)) is attributable to the same period of occupation as that unpaid amount for the purposes of subsection (2) of section 3. This means that if a tenant is paying interest on rent due, the interest is considered to be from the same period of occupancy as the rent.

39 Subsection (5) sets out that if rent due is only partly attributable to a period of occupation as described in subsection (2), then only the rent due which is attributable to that period qualifies as "protected rent". This means that if there is rent due which is attributable to occupation by the tenant both outside the protected period as well as within the protected period, then only that which was within the protected period is regarded as "protected rent" for the purposes of the Act. The Act does not provide any protection for non-payment of the portion which is not reasonably attributable to the protected period. Whereas the portion which is attributable to the protected period can be addressed under the Act's system (if other eligibility criteria are met), notwithstanding any provision in the lease requiring payment in full.

40 Subsection (6) states that unpaid protected rent is to be treated as including an amount drawn down from the tenancy deposit, as referred to in section 2(4). This means that the arbitrator can consider and make an award about this full amount and, depending on the award, the tenant may be relieved from having to make good any shortfall in the deposit.

Section 4: "Adversely affected by coronavirus"

41 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

42 This section defines when a business tenancy is "adversely affected by coronavirus" for purposes of the Act.

43 Subsection (1) provides the conditions for when a business tenancy is adversely affected by coronavirus. This subsection means that if the whole or part of a business carried on in the premises comprised in the tenancy, or if the whole or part of the premises themselves, were subject to a closure requirement under coronavirus regulations during a "relevant period", then they are considered as being adversely affected by coronavirus.

44 The term "closure requirement" is defined in subsection (2)(a) and means a requirement to close either premises (or parts of premises) or businesses (or parts of businesses) specified in regulations and expressed as an obligation to close. Subsection (4) states that, for the purposes of subsection (2), it does not matter if certain limited activities were allowed as an exception to the closure requirement. If certain activities were allowed by regulations, this should be disregarded when determining whether a tenancy was adversely affected by coronavirus and so the tenancy still falls within the scope of arbitration under the Act. The concept of closure for these purposes is therefore relatively broad. However, the closure must have been required by regulations.

45 Under subsection (2)(b), a "relevant period" began at or after 2pm on 21 March 2020 and ended at or before 11.55 p.m. on 18 July 2021 for premises in England, or 6 a.m. on 7 August 2021 for premises in Wales. This means that if a business was subject to a closure requirement for any period within these times, then they meet the test. Many types of business were required to close for some periods within these times; they are adversely affected by coronavirus.

46 For the purposes of subsection (2)(a), subsection (3) states that a requirement to close either the whole or part of the business or premises at particular times every day can be regarded as a closure requirement. For example, some businesses were required to close their premises at a certain time in the evening until a certain time in the morning, during a relevant period.

47 Subsection (5) states that in a situation where a business is carried on not only at the premises named in the tenancy but also elsewhere, then this Act only applies to the portion of the business that was carried on at the tenancy premises. For example, if a tenant runs a restaurant business partly at the tenancy premises but also from the tenant's own owned premises, then the relevant business for the Act's purposes is just that part that was conducted at the tenancy premises.

48 Subsection (6) sets out that "coronavirus regulations" for the purposes of this section, must have been made under the power in section 45C of the Public Health (Control of Disease) Act 1984, either alone or under other powers too.

Section 5: "Protected period"

49 This section sets out what is meant by "protected period" and "specific coronavirus restriction" for the purposes of the Act.

50 Subsection (1) defines "protected period" as beginning with 21 March 2020 and ending with the day identified by subsection (2). That is, the last day of the protected period is the last day on which the business or part of the business, or premises or part of the premises, was subject to a closure requirement or a specific coronavirus restriction imposed by coronavirus regulations, in England or Wales as applicable. For England the last day cannot be later than 18 July 2021 and for Wales, 7 August 2021.

51 The term "specific coronavirus restrictions" is defined in subsection (3) as a restriction or requirement other than a closure requirement (as defined in section 4) imposed by coronavirus regulations. This restriction must relate to the way that the whole or parts of a businesses could operate or the way that the whole or parts of a premises could be used.

52 Subsection (4) states that for this purpose, general restrictions applying more widely than to specific businesses or premises are not "specific coronavirus restrictions". If a restriction applied to businesses generally or workplaces generally, then it would not be a specific coronavirus restriction. A requirement to display or provide information would also not be a specific coronavirus restriction.

53 The terms "closure requirement" and "coronavirus regulations" in this section have the same definitions as is set out in section 4.

Section 6: "The matter of relief from payment"

54 Subsection (1) sets out that the arbitrator will decide relief from payment with reference to two questions. Firstly, is there is any protected rent debt and secondly, if so, should the tenant be given any relief in respect of the payment of that debt and if so, what type of relief.

55 The definition of "relief from payment" in relation to a protected rent debt is set out in subsection (2). Relief from payment means any, or a combination, of the following:

a. writing off the whole or part of the debt;

b. giving additional time to pay the debt or allowing the debt to be paid in instalments – payment must be within 24 months (see section 14(7)); and

c. reducing or cancelling the interest owed in relation to the debt.

56 This means that any relief from payment granted by the arbitrator will be in respect of the protected rent debt, and the debt will remain rent debt.

Part 2: Arbitration

Approved arbitration bodies

Section 7: Approval of arbitration bodies

57 Subsection (1) provides for the Secretary of State to approve an arbitration body or bodies to carry out the functions of an "approved arbitration body" as set out in section 8. It is a function of an approved arbitration body to deliver arbitration as a dispute resolution service to settle commercial rent disputes under this Act.

58 Subsection (2) sets out the requirement for the Secretary of State to approve only those arbitration bodies which are suitable to become an "approved arbitration body" and carry out the functions under section 8.

59 Subsection (3) enables the Secretary of State to withdraw approval granted under subsection (1) if an arbitration body ceases to be deemed suitable by the Secretary of State.

60 Subsection (4) states that should the Secretary of State decide that an arbitration body is no longer suitable, as mentioned in subsection (3), the Secretary of State must notify the arbitration body of an intent to withdraw the approval given under subsection (1) and give the body an opportunity to make representations before the approval is withdrawn.

61 Subsection (5) provides that where an approval under subsection (1) is withdrawn, the Secretary of State must make arrangements in relation to fees and expenses, including requiring the body to repay any fees and expenses paid to it, for example for any matters not dealt with, or determining the fees and expenses that the body should be entitled to.

62 Subsection (6) provides that if the Secretary of State withdraws approval of an arbitration body, this does not invalidate the actions of that body before the withdrawal. This means that the withdrawal of approval would not undo anything done by or in relation to the body until that point, including the appointment of an arbitrator, and that awards made would still stand. Where any proceedings were ongoing, it would be for the arbitrator (whether the same one or a replacement arbitrator appointed by the successor body) to decide the extent to which the previous proceedings should stand (see section 27(4) of the Arbitration Act 1996).

63 Subsection (7) requires the Secretary of State to maintain a list of approved arbitration bodies and to publish it.

Section 8: Functions of approved arbitration bodies

64 This section sets out what functions an "approved arbitration body" (as defined in section 7) is to perform.

65 Subsection (1) lists the main functions of an approved arbitration body. Paragraph (a) places a duty on an approved arbitration body to maintain a list of arbitrators who are available to carry out arbitration under the Act and, in the opinion of the approved arbitration body, appear to be suitable on the basis of their qualifications and experience to carry out arbitration under the Act.

66 Subsection (1)(b) provides that, where a reference for arbitration is made to an approved arbitration body, that body is to appoint an arbitrator or a panel of arbitrators from the list referred to in subsection (1)(a) to resolve the matter of relief from payment of a protected rent debt in the case concerned. Where an appointed arbitrator resigns, dies or otherwise ceases to hold office, that body is to appoint another arbitrator from their list to fill the vacancy (paragraph (c)).

67 Subsection 1(d) provides for the approved arbitration body to set, collect and pay its fees and the fees of an arbitrator appointed by it. The body must also publish on its website the fees payable in relation to a reference made to it for arbitration under the Act (subsection 6).

68 Subsection (1)(e) requires an approved arbitration body to oversee (which would include administering) arbitrations for which it has appointed an arbitrator or panel of arbitrators.

69 Subsection (1)(f) provides for an approved arbitration body to remove an arbitrator appointed by it from a case on any one of the grounds listed in subsection (2). Those grounds are that:

a. circumstances exist that give rise to justifiable doubts as to the impartiality or independence of the arbitrator (paragraph (a));

b. the arbitrator does not possess the qualifications required for the arbitration (paragraph (b));

c. the arbitrator is physically or mentally incapable of conducting the arbitration or there are any other justifiable doubts as to their capacity to do so (paragraph (c));

d. the arbitrator has refused or failed to properly conduct an arbitration case, or has unreasonably delayed the conduct of the proceedings or the making of an award, and that substantial injustice has been or will be caused to the parties as a result (paragraph (d)).

70 Under section 74 of the Arbitration Act 1996, approved arbitration bodies have certain immunity from liability in relation to the function of appointing an arbitrator. Modifications made by paragraph 2(g) of Schedule 1 to the Act to section 74 of the Arbitration Act 1996 ensure immunity is provided on the same basis in relation to the function of removing an arbitrator.

71 Subsection (3) requires the approved arbitration body to ensure that an arbitrator or panel of arbitrators appointed by it is independent from the parties to the arbitration.

72 Where an arbitrator resigns, dies or otherwise ceases to hold office, subsection (4) requires the approved arbitration body to make arrangements in relation to the repayment of any fees and expenses paid to the arbitrator, for example for matters not undertaken, or in relation to the fees and expenses that the arbitrator should be entitled to.

73 Subsection (5) requires an approved arbitration body, where requested by, or as agreed with, the Secretary of State to provide reports to the Secretary of State on the exercise of its functions under section 8, and on how arbitrations administered by the body under the Act are progressing and on awards made. This requirement enables the Secretary of State to monitor arbitration schemes.

References to arbitration by tenant or landlord

Section 9: Period for making a reference to arbitration

74 This section sets out the process for referring a dispute about relief from payment to arbitration.

75 Subsection (1) states that this section applies when a tenant and landlord are in a dispute about the matter of relief from payment of a protected rent debt. The definition of "matter of relief from payment" is provided in section 6 and the definition of "protected rent debt" is provided in section 3.

76 Subsection (2) states that either the landlord or the tenant can refer a dispute to arbitration within 6 months of this Act being passed by Parliament.

77 Subsection (3) provides the Secretary of State with a power to extend the 6-month period for making a reference to arbitration by regulations. This power can be exercised separately for English or Welsh business tenancies, or collectively. Regulations to make this extension are subject to the negative resolution procedure (subsection (4)).

Section 10: Requirements for making a reference to arbitration

78 This section makes provision in relation to steps to be taken by a landlord or tenant before making a reference to arbitration; when a reference to arbitration may not be made and the specific circumstances in which an arbitrator may not be appointed and no formal proposal may be made.

79 Subsection (1)(a) requires that before a reference to arbitration is made, the landlord or tenant must notify the other party of their intention to refer the dispute as to the matter of relief from payment to arbitration. Paragraph (b) provides for the respondent to be able to reply to the notification within 14 days of receiving it.

80 Subsection (2) provides that the landlord or tenant cannot make a reference to arbitration before:

a. the end of 14 days after the day on which a response is received under subsection (1)(b), or

b. if no response is received, the end of 28 days beginning with the day the notification under subsection (1)(a) was served.

81 Subsection (3) provides that a reference to arbitration cannot be made, an arbitrator cannot be appointed and any formal proposals under section 11(2) or (4) cannot be made, if the tenant which owes a protected rent debt is subject to:

a. a company voluntary arrangement (CVA) that has been approved under section 4 of the Insolvency Act 1986, where that CVA relates to any protected rent debt,

b. an individual voluntary arrangement (IVA), that is approved under section 258 of the Insolvency Act 1986 and relates to any protected rent debt, or

c. a compromise or arrangement, that has been sanctioned under section 899 or 901F of the Companies Act 2006 and relates to any protected rent debt.

82 Subsection (4) requires a reference for arbitration under this Act to be made to an approved arbitration body.

83 Subsection (5) provides that, after a reference for arbitration has been made, an arbitrator cannot be appointed and formal proposals under section 11(2) or (4) cannot be made if the tenant that owes protected rent is a debtor under certain arrangements on which a decision has not yet been made. These arrangements are where a tenant is a debtor under a proposed CVA or IVA, or a compromise or arrangement to be sanctioned under Part 26 or Part 26A of the Companies Act 2006. Once a decision has been made, the arbitration may proceed if the CVA, IVA, arrangement or compromise is not approved or sanctioned. If it is approved or sanctioned then subsection (3) applies and an arbitrator cannot be appointed or a formal proposal under section 11(2) or (4) made, so the arbitration cannot proceed.

84 The aspects of this section which relate to a CVA and a compromise or arrangement under Part 26 or Part 26A of the Companies Act 2006, apply to limited liability partnerships, as well as to companies.

Proposals for resolving the matter of relief from payment

Section 11: Proposals for resolving the matter of relief from payment

85 This section makes provision in relation to the making of proposals for resolving the matter of relief from payment of protected rent debt. Subsection (1) requires the tenant or landlord, when making a reference for arbitration, to submit a formal proposal for resolving the dispute about relief from payment.

86 Subsection (2) allows the other party to submit a formal proposal in response within 14 days of receiving a proposal made under subsection (1) (assuming the reference is not dismissed by the arbitrator for a reason set out in section 13(2) or (3)).

87 Subsection (3) requires a formal proposal made under subsection (1) or (2) to be accompanied by supporting evidence.

88 Subsection (4) allows either party to submit one revised formal proposal within 28 days of them having given their original formal proposal. A revised formal proposal must also be accompanied by any further supporting evidence (subsection (5)).

89 Subsection (6) allows for the periods mentioned in subsections (2) and (4) to be extended where the parties agree to do so, or where the arbitrator considers that it would be reasonable in all the circumstances to do so.

90 Subsection (7) provides that a "formal proposal" is one which is made on the assumption the reference is not dismissed for a reason set out in section 13(2) or (3) and must state that it is for the purposes of this section and be given to both the other party and the arbitrator.

Section 12: Written statements

91 Subsections (1) and (2) require written statements provided to the arbitrator by a party or another person relating to a matter relevant to the arbitration to be verified by a statement of truth.

92 Subsection (3) allows an arbitrator to disregard such a written statement if it is not verified by a statement of truth.

Arbitration awards

Section 13: Arbitration awards available

93 This section sets out the different awards that an arbitrator may make when deciding on the outcome of a dispute on relief from payment that has been referred to them by the landlord or tenant under this Act.

94 Subsection (2) provides that in cases where the arbitrator determines that the matter has already been resolved by agreement before the reference was made, the tenancy in question is not a business tenancy, or that there is no protected rent debt (as defined in section 3), then the arbitrator must dismiss the reference.

95 Subsection (3) requires the arbitrator to dismiss a reference if they have assessed the viability of the tenant's business and found that at the time of the assessment the business is not viable and would not be viable even if the tenant was given relief from payment of any kind.

96 Subsections (4) and (5) set out what the arbitrator must do in cases where an assessment of viability is made, and the arbitrator determines that the tenant's business is viable or would become viable if the tenant is provided with relief from payment of any kind. In these instances, the arbitrator must consider whether the tenant should receive any relief from payment of a protected rent debt and if so, what kind of relief. An award must then be made in accordance with section 14.

Section 14: Arbitrator's award on the matter of relief from payment

97 This section sets out how an arbitrator should resolve the payment of a protected rent debt as required by section 13(5)(b).

98 Subsection (2) states that before making an award, the arbitrator must consider any final proposal put forward by a party under section 11.

99 The arbitrator must consider the final proposals against the principles outlined in section 15. Subsection (3) applies where both parties have put forward final proposals. If the arbitrator considers that both proposals are consistent with the principles, the arbitrator is required to make the award in line with whichever of the proposals they consider to be most consistent with the principles (paragraph (a)). If the arbitrator considers that only one of the final proposals is consistent with the principles, the arbitrator must make the award set out in that proposal (paragraph (b)).

100 Subsection (4) provides that where only the party making the arbitration reference puts forward a final proposal, the arbitrator must make the award set out in that proposal if the arbitrator considers it is consistent with the principles in section 15.

101 Subsection (5) states that where neither proposal put forward by the parties is consistent with the principles, the arbitrator must make an award that they consider appropriate applying the principles in section 15.

102 Subsection (6) provides that an award under this section may either give the tenant relief from payment of the debt, or state that the tenant will not be given relief from payment.

103 Subsections (7) and (8) provide that where an award under subsection (6)(a) gives the tenant time to repay the debt, including in instalments, the dates for payment must be within a period of 24 months, with such period beginning on the day after that on which the award is made.

104 Subsection (9) sets out expressly how an arbitral award affects the terms of the tenancy regarding rent, only in respect of protected rent.

105 Subsection (10) sets out how an arbitral award affects the liability of the tenant or other person such as a guarantor or former tenant. It sets out expressly that a tenant will not be in breach of covenant and so at risk of forfeiture for failure to pay the rent if the tenant complies with the award. If a guarantor or former tenant ultimately pays then they are only liable for the amount in the award and not the original debt, and that applies whether a guarantor has technically provided a guarantee or indemnity. It also sets out expressly that an amount payable under an award should be treated as rent payable under the tenancy, for the purposes of the tenancy.

106 Subsection (11) defines "final proposal" to mean a revised formal proposal put forward by a party under section 11(4), or if there is no revised formal proposal by a party, the formal proposal made by the party under section 11(1) or (2).

Section 15: Arbitrator's principles

107 Subsection (1)(a) states that the first principle is that any award should be aimed at:

a. preserving the viability of the tenant's business in cases that fall under section 13(4)(a), or

b. restoring and preserving the viability of the tenant's business in cases which fall under section 13(4)(b),

so far as that is consistent with preserving the landlord's solvency. Provision as to an arbitrator's assessment of viability and solvency is set out under section 16.

108 This means that, providing it preserves the landlord's solvency, an award providing relief from payment should prescribe the amount and type of relief of payment that would preserve or restore viability of the tenant's business, taking into account the second principle in subsection (1)(b).

109 Subsection (1)(b) states that the second principle is that, so far as it is consistent with the principles in subsection (1)(a), tenants should be required to pay protected rent in full and without delay. This means that tenants that can pay the protected rent debt, should pay.

110 When an arbitrator considers the viability of a tenant's business and the landlord's solvency, they must disregard anything that the tenant or landlord has done to manipulate their financial affairs to improve their position regarding an award. This is to stop 'gaming' of the system and ensures that awards are made based on financial information that accurately represents the status of the tenant's business and the landlord.

111 Subsection (3) sets out what is meant by landlord's solvency for the purposes of this section. A landlord is considered solvent unless they are, or will become, unable to pay their debts as they fall due.

Section 16: Arbitrator: assessment of "viability" and "solvency"

112 This section sets out the aspects which an arbitrator must consider when determining the viability of a tenant's business, and the solvency of a landlord.

113 Subsection (1), paragraphs (a) to (c) provide examples of evidence which the arbitrator must, so far as known, consider as part of their assessment of viability of a tenant's business. Paragraph (d) allows the arbitrator to consider any other information which they consider appropriate to determine the financial position of the tenant.

114 Subsection (2) provides examples of evidence that the arbitrator must, so far as known, take into account when assessing the solvency of the landlord. Paragraph (a) includes "liabilities of the landlord" which would cover rent owed to a superior landlord. Paragraph (b) allows the arbitrator to consider any other information which they consider appropriate to determine the financial position of the landlord.

115 Subsection (3) states that when conducting their assessment under subsection (1) or (2), the arbitrator must disregard the possibility of the tenant or the landlord borrowing money or restructuring their business. This means that tenants or landlords will not have to accrue more debt or reduce their workforce (if applicable) to prove that they are, or can become, viable or solvent.

Section 17: Timing of arbitrator's award

116 This section makes provision in relation to the time in which arbitrators must make an award. Subsection (1) provides the timings where no oral hearing has been held. In that case, where both parties have put forward final proposals (as defined in section 14(11)), the award should be made as soon as reasonably practicable after the day on which the latest final proposal has been received. Otherwise, the award should be made as soon as reasonably practicable after the last day on which a revised formal proposal can be made (as outlined in section 11(4)).

117 In each case where an oral hearing is held, the arbitrator must make an award within 14 days of the hearing concluding. Subsection (3) states that this period can be extended if both parties agree to it, or the arbitrator considers it reasonable in all the circumstances.

Section 18: Publication of award

118 This section requires the arbitrator to publish an award made under the Act and the reasons for making it.

119 Subsection (3) states that the arbitrator should exclude confidential information as part of any publication under this section unless consent is given by the person to whom the information relates.

120 Subsection (4) defines "confidential information" for the purposes of subsection (3). This is information which the arbitrator is satisfied is commercial information relating to a party or to any other person which if disclosed would, or might, significantly harm the legitimate business interests of the person to which it relates, or information relating to the private affairs of an individual which if disclosed would, or might, significantly harm that individual's interests.

Arbitration fees and oral hearings

Section 19: Arbitration fees and expenses

121 Subsection (1)(a) and (b) state that any references to "arbitration fees" in this section are to the fees and expenses to be paid to the arbitrator (including any oral hearing fees) and the fees and expenses of any approved arbitration body.

122 Subsection (2) gives the Secretary of State power to make regulations specifying limits on the arbitration fees to be paid by parties. This could include introducing a sliding scale for arbitration fees depending on the amount of protected rent debt being considered in an arbitration case.

123 Regulations made under subsection (2) are subject to the negative resolution procedure in Parliament (subsection (3)).

124 Subsection (4) requires arbitration fees to be paid upfront by the applicant before arbitration can take place. This requirement provides certainty to the arbitrator or panel of arbitrators and the approved arbitration body that their fees and expenses will be paid.

125 Subsection (5) provides the general rule that when making an award (under sections 13 or 14) the arbitrator should require the other party to the arbitration to reimburse the party that made the reference to arbitration for half of the arbitration fees (other than oral hearing fees

which are dealt with in Section 20). That is subject to subsection (6), which states that the general rule in section 19(5) does not apply if the arbitrator considers it appropriate to award a different proportion in the circumstances of the case. That proportion may be between (and including) 0% and 100% of the fees.

126 Subsection (7) requires parties to meet their own legal and other costs incurred, except where the arbitrator has made a determination in relation to the reimbursement of arbitration fees and/or oral hearing fees.

127 Subsection (8) clarifies that no term of a lease may be used to recover costs incurred in connection with arbitration (including arbitration fees).

128 Subsection (9) provides the meaning of "applicant" for the purposes of this section, which is the party making the reference to arbitration.

Section 20: Oral hearings

129 Subsection (1) gives one or both parties in arbitration the right to request an oral hearing, which must take place within 14 days of an arbitrator receiving the request (subsection (2)).

130 Subsection (3) allows the 14-day period for holding a hearing to be extended if both parties agree to it, or the arbitrator considers it reasonable in all the circumstances.

131 If both parties have requested a hearing they are both responsible for paying the costs in advance of the hearing taking place (subsection (4)). If the oral hearing is only requested by one party, that party is responsible for paying the costs of the oral hearing in advance (subsection (5)).

132 Where one party has paid the hearing fees in advance, subsection (6) lays down the general rule that the arbitrator, when making an award under sections 13 or 14, should require the other party to reimburse half of the hearing fees. However, subsection (7) gives the arbitrator a power to award reimbursement of such other proportion of the hearing fees if they consider it appropriate (for example, the arbitrator could increase the amount of arbitration fees payable by one party where it had not complied with a direction by the arbitrator).

133 Subsection (8) requires that oral hearings be held in public unless there is agreement between the parties to arbitration that it ought to be held in private. The procedure for the hearing, whether held in public or private, will be for the arbitrator to determine (under the arbitrator's general power to decide all procedural and evidential matters under section 34 of the Arbitration Act 1996, as modified by paragraph 2(c) of Schedule 1 to the Act). For example, under that general power the arbitrator can decide to sit in private when hearing evidence or submissions on confidential or sensitive matters.

Guidance

Section 21: Guidance

134 Subsection (1) gives the Secretary of State the power to issue guidance to arbitrators about the exercise of their functions and to landlords and tenants about making a reference to arbitration under this Act. Subsection (2) allows the Secretary of State to revise that guidance. This guidance would, for example, be able to give arbitrators and the parties guidance on the type of information to be provided to the arbitrator (including in relation to the assessment of the tenant's viability), on the process to be followed and on the handling of arbitration cases.

135 Any guidance issued or revised under this section must be published.

Modification of Part 1 of the Arbitration Act 1996

Section 22: Modification of Part 1 of the Arbitration Act 1996

136 The provisions of Part 1 of the Arbitration Act 1996 will apply to arbitration under Part 2 of this Act, as a statutory arbitration, by virtue of section 94(1) of the Arbitration Act. Those provisions will not apply to the extent that they are inconsistent with the provisions of this Act. In addition, section 22 introduces Schedule 1 to the Act which contains modifications to to Part 1 of the Arbitration Act 1996 as it will apply in relation to arbitrations under this Act. Those modifications are needed to ensure that arbitrations under this Act work as intended. For example, paragraph 1(c) of Schedule 1 omits sections 16 to 19 (appointment of arbitrators) of the Arbitration Act 1996, which are inconsistent with sections 7 and 8 of the Act relating to approved arbitration bodies and the appointment of arbitrators.

137 The provisions of the Arbitration Act 1996 that will apply, as modified, include those dealing with the general duty of the arbitrator and of the parties (sections 33 and 40), immunity of the arbitrator (section 29), procedural and evidential matters (section 34), settlement of cases (section 51), the effect of an award (section 58), enforcement of the award (section 66), appeals (sections 67 to 69) and immunity of arbitral institutions (section 74).

Part 3: Moratorium on Certain Remedies and Insolvency Arrangements

Section 23: Temporary moratorium on enforcement of protected rent debts

138 This section introduces Schedule 2, which establishes several provisions to prevent a landlord from taking certain remedies during "the moratorium period" (as defined in subsection (2)) with relation to protected rent debt. The restricted remedies are set out in subsection (1).

139 Schedule 2 also makes provision relating to the landlord's right to appropriate rent during the moratorium period. This means that if the landlord exercises their right to appropriate rent, the payment must be used towards unprotected rent debt before being used towards protected rent debt. Schedule 2 also makes provision relating to debt claims issued before the Act was passed but after 10 November 2021, the date in an announcement of the policy; and for the appropriation of rent debt before the Act was passed.

140 Subsection (2) defines "the moratorium period" for this purpose. This period begins on the day on which this Act was passed and ends either within six months beginning with that day if the matter is not referred to arbitration (unless this period is extended); or when the arbitration concludes, if the matter is referred to arbitration.

141 Subsection (3) provides that the six-month moratorium period where a matter is not referred to arbitration, can be extended by regulations made under section 24.

142 Subsection (4) provides the circumstances when an arbitration is concluded for the purposes of subsection (2)(b). Arbitration is concluded when either the proceedings are abandoned or withdrawn with the agreement of both parties; or the time period for appealing the decision of the arbitrator expires after an arbitration award without an appeal being brought; or any appeal brought within that period is finally determined, abandoned or withdrawn.

143 As set out in clause 14, an amount payable under an award is treated as rent payable under the tenancy. Therefore, if an arbitration award is made with which the tenant does not comply, remedies may be exercised in the same way as with other unpaid rent under the lease.

144 The use of "arbitration" in this section means arbitration provided for by Part 2 of the Act.

Section 24: Alteration of moratorium period

145 This section sets out how the moratorium period under section 24(2) may be extended.

146 Subsection (2) provides that for English business tenancies, extending the period for making references to arbitration (under section 9) would automatically extend the moratorium period.

147 For Welsh business tenancies an extension of the moratorium period would need to be made by regulations and would require the consent of Welsh Ministers in respect of devolved matters (under subsection 6).

148 Under subsection 4, the power to extend the moratorium period can only be exercised if the period for making references to arbitration is extended in respect of Welsh business tenancies by virtue of section 9(3)(b) or (c), and the moratorium period for Welsh business tenancies must be the same length as the extended period for making references to arbitration.

149 Subsection (7) sets out that regulations made under subsection (4) are subject to the negative resolution procedure.

Section 25: Temporary restriction on initiating certain insolvency arrangements

150 This section puts in place restrictions on a landlord or tenant entering into certain insolvency arrangements, when a matter relating to protected rent debt has been referred to arbitration.

151 Subsection (2) sets out which insolvency arrangements are restricted and states that these arrangements are restricted only so far as they relate to whole or part of the protected rent debt.

152 From the appointment of the arbitrator until 12 months after an award under section 14 – which gives relief from payment or states that no relief from payment is to be given - no proposal for a CVA or an IVA, or application for a compromise or arrangement under Part 26 of 26A of the Companies Act 2006 can be made. If an award is made dismissing the reference to arbitration then this period runs to the day on which the award is made. If an award under section 14 is set aside on appeal, the period runs to the day on which the appeal decision is made. If the parties withdraw or abandon the arbitration proceedings, the period runs to the day that they do so.

153 This applies to CVAs or restructurings under Part 26 or 26A of the Companies Act in respect of companies and limited liability partnerships.

Section 26: Temporary restriction on initiating arbitration proceedings

154 This section prevents a tenant or landlord from unilaterally invoking arbitration proceedings in relation to a protected rent debt, other than arbitration under Part 2 of this Act, within the moratorium period. The parties can agree to use arbitration other than that under Part 2 of the Act.

155 Subsection (2) states that "the moratorium period" has the same definition as given in section 23.

Section 27: Temporary restriction on winding-up petitions and petitions for bankruptcy orders

156 This section introduces Schedule 3, which contains provisions relating to winding-up petitions and petitions for bankruptcy orders. In a similar way to the previous sections, the provisions in this Schedule restrict a landlord's ability to use these measures during the moratorium period for the protected rent debt. Schedule 3 also addresses certain bankruptcy petitions presented and resulting orders made from 10 November 2021 until the commencement of the Act.

Part 4: Final Provisions

Section 28: Power to apply Act in relation to future periods of coronavirus control

157 This section gives a power to the Secretary of State to make regulations to re-apply this Act in the future in the case of business tenancies adversely affected by closure requirements in relation to coronavirus.

158 Under subsection (2) regulations to re-apply the Act may be made in respect of either English or Welsh business tenancies, or both.

159 Subsection (3) sets out the test for a business tenancy to be adversely affected by a closure requirement for the purposes of subsection (1). This enables the power to be used in respect of closure requirements that were imposed after the protected period set out in the Act, but before the Act came into force.

160 Subsection (4) sets out what a "closure requirement" means in this section.

161 Subsection (5) sets out the meaning of "coronavirus" under the Act.

162 Subsection (6) makes it clear that the power can be used in respect of closure requirements which may not have ended when regulations are made.

163 Subsection (8) provides that any regulations made under this section may:

a. provide for provisions to apply with necessary modifications, as set out in the regulations;

b. make different provisions for England and Wales;

c. make incidental, supplemental, consequential, saving or transitional provisions.

164 Subsection (9) defines the meaning of "modifications" and limits the power to modify the Act to those changes that are necessary to make the Act work in the specific circumstances.

165 Subsection (10) requires the power to be exercised with the consent of Welsh Ministers so far as it relates to the re-application, in respect of Welsh business tenancies, of the moratorium provisions in Schedule 2 (excluding paragraph 3(6) and (7)), section 23 so far as it relates to Schedule 2 (excluding paragraph 3(6) and (7)) and Parts 1 and 4, so far as they relate to these provisions.

166 Subsection (11) sets out that the regulations are to be made by statutory instrument and are subject to the affirmative resolution procedure.

Section 29: Concurrent power for Welsh Ministers to apply moratorium provisions again

167 This section provides that Welsh Ministers can use the power in section 28, concurrently with the Secretary of State, so far as it relates to the re-application, in relation to Welsh business tenancies, of Schedule 2 (excluding paragraph 3(6) and (7)), section 23 so far as it relates to Schedule 2 (excluding paragraph 3(6) and (7) and Parts 1 and 4, so far as they relate to these provisions.

168 Subsection (2) sets out various consequential amendments.

169 Subsection (3) adds the Act to the list of enactments at paragraph 11(6)(b) of Schedule 7B of the Government of Wales Act 2006. Restrictions in Schedule 7B prevent the Senedd from removing a Minister of the Crown function that is exercised concurrently or jointly with a Minister of the Crown without the consent of the UK Government. This allows the Senedd to alter the concurrent arrangements without needing the UK Government's agreement.

Section 30: Crown application

170 This section provides that the Act binds the Crown.

Section 31: Extent, commencement and short title

171 This section sets the territorial extent of the Act; that is the jurisdictions for which the Act forms part of the law.

172 The table in Annex A sets out a summary of the position regarding territorial extent and application in the United Kingdom.

173 Parts 1 to 3 of the Act extend to England and Wales only (except as provided in subsections (2) and (3)).

174 Part 4 of the Act extends to the whole of the United Kingdom.

175 The provisions of section 25 relating to restructuring under the Companies Act 2006 extend to the whole of the United Kingdom, and those relating to company voluntary arrangements extend to England and Wales and Scotland only. Paragraph 1 of Schedule 3 and section 27 (as far as it relates to that paragraph), which relate to winding up, extend to England and Wales and Scotland only. This is to reflect the extent of the relevant provisions of the Companies Act 2006 and Insolvency Act 1986 respectively, so that the measures are unavailable in respect of protected rent debt as intended. Part 1 extends to Scotland and Northern Ireland, in so far as relevant to the above provisions that extend to each of these jurisdictions.

176 This section also provides for this Act to come into force on the day it is passed, except for the provisions on winding up in paragraph 1 of Schedule 3 and section 27 (so far as it relates to that paragraph). These aspects of the Act come into force on 1 April 2022, once the existing moratorium ends on 31 March 2022.

Schedule 1: Modification of the Arbitration Act 1996 in relation to arbitrations under this Act

177 This Schedule makes modifications to provisions in the Arbitration Act 1996 as it would apply to arbitration under Part 2 of this Act.

178 Paragraph 1 provides a list of sections, subsections or wording of the Arbitration Act 1996 which should be treated as though omitted when applying to arbitration under Part 2 of the Act.

179 Paragraph 2 inserts and substitutes wording in specified provisions of the Arbitration Act 1996, so as to modify their effect with regards to arbitrations made under Part 2 of this Act.

180 Paragraph 3 makes clear that the modifications made under paragraphs 1 and 2 of this Schedule do not affect the operation of sections 94 to 98 of the Arbitration Act 1996 in relation to other provisions of this Act.

Schedule 2: Temporary moratorium on enforcement of protected rent debts

Preliminary: interpretation

181 Paragraph 1(1) sets out that this Schedule applies to protected rent debt under a business tenancy.

182 Sub-paragraph (2) provides the definitions for terms used in this Schedule.

Making a debt claim

183 Paragraph 2(1) prevents a landlord from making a debt claim for protected rent debt, during the moratorium period.

184 Sub-paragraph (2) sets out that "debt claim" for this purpose means a claim to enforce a debt in civil proceedings.

Debt claims made before the day on which this Act is passed

185 The use of "arbitration" in this section means arbitration provided for by Part 2 of the Act.

186 Paragraph 3 applies to debt claims relating entirely or partly to protected rent debt which were made on or after 10 November 2021, but before the day on which this Act was passed.

187 Sub-paragraph (2) states that either the landlord or the tenant can apply for the proceedings on the debt claim to be stayed, so that the payment of the protected rent debt can be resolved through other means. This includes, but is not limited to, arbitration under this Act. Sub-paragraph (3) means that if such an application is made, the court must stay the proceedings.

188 If a judgement is made in favour of the landlord during the period set out in paragraph 3(1), then if the judgement debt remains unpaid, the debt (so far as it relates to protected rent debt) can be resolved through arbitration under Part 2 of this Act, or otherwise by negotiation, and the judgement debt may not be enforced until the end of the moratorium period. If relief from payment of a protected rent debt is awarded through arbitration, or otherwise agreed, the effect of the judgement debt is to be altered in line with the award or agreement.

189 If the judgement is registered under section 98 of the Courts Act 2003 and relates to protected rent only, then it must be cancelled once the moratorium period has ended, if the court is made aware that relief from payment has been granted.

190 "Debt claim" used in this paragraph has the same meaning as it does in paragraph 2.

191 "Tenant" is defined to include guarantors, anyone else who is liable on an indemnity basis for payment of rent under a business tenancy, and former tenants who are liable for the payment of rent under a business tenancy. The effect of this is that paragraph 3's provisions on debt claims issued between 10 November 2021 and the Act's commencement, apply to claims against tenants; and also against guarantors, including where an indemnity has been provided, and former tenants whether they remain liable under an authorised guarantee agreement or due to privity of contract.

Using CRAR (the commercial rent arrears recovery power)

192 Paragraph 4(1) sets out that a landlord must not use CRAR in relation to a protected rent debt during the moratorium period.

193 Sub-paragraph (2) gives further details on what cannot be done with regards to CRAR within the moratorium period for the protected rent debt. The landlord cannot authorise an enforcement agent to act for them, and neither can an agent give an enforcement notice.

194 Sub-paragraph (3) explains that "CRAR" and "notice of enforcement" have the same meaning as they do in the Tribunals, Courts and Enforcement Act 2007 which contains the CRAR process.

195 Sub-paragraph (4) inserts new wording into that Act to signpost there that CRAR may not be exercisable to recover certain debt, due to the provisions in this paragraph of this Act.

Enforcing a right of re-entry or forfeiture

196 Paragraph 5(1) provides that a landlord is prevented from enforcing a right under the tenancy to forfeit for non-payment of the protected rent during the moratorium period.

197 Sub-paragraph (2) protects the landlord from being considered to have waived the right to forfeit unless they do so expressly in writing, during the moratorium period. The landlord is also protected from being taken to have waived the right to forfeit prior to the Act being passed, by section 82(2) Coronavirus Act 2020.

198 Section 30 of the Landlord and Tenant Act 1954 sets out grounds on which a landlord can oppose an application for a new lease under Part 2 of that Act. One of the grounds is persistent delay in paying rent (section 30(1)(b)). Sub-paragraph (3) provides that non-payment of protected rent before the moratorium period has ended, is to be disregarded for purposes of section 30(1)(b) of that Act.

199 Paragraph 6 provides that if a tenant applies for relief from forfeiture as a sub-tenant under a superior lease, the court, when determining whether to grant relief from forfeiture and the terms of relief, must disregard any failure of the tenant to pay protected rent.

Using a landlord's right to appropriate rent

200 Paragraph 7 applies in relation to rent being paid during the moratorium period at a time when the tenant owes the landlord an unprotected rent debt as well as a protected rent debt, and the tenant has not exercised their right to use the payment to pay any particular rent debt owed to the landlord.

201 Sub-paragraph (2) states that, in this case, the landlord must appropriate the payment to meet the unprotected rent debt before it can be used to meet the protected rent debt.

202 Sub-paragraph (3) provides the definition of "unprotected rent debt".

203 Paragraph 8 applies in relation to rent paid during the period set out in sub-paragraph (2), at a time when the tenant owes the landlord an unprotected rent debt as well as a protected rent debt, and the tenant has not exercised their right to use the payment to pay any particular rent debt owed to the landlord.

204 The time period referred to begins with the day after the last day of the protected period for the debt and ends the day before the moratorium period starts.

205 Sub-paragraph (3) states that, in this case, during the moratorium period, the landlord must appropriate the payment to meet the unprotected rent debt before it can be used to meet the protected rent debt.

206 If a landlord used their right to appropriate rent debt during the period set out in sub-paragraph (2), sub-paragraph (4) states that the appropriation does not have the effect of allowing protected rent to be treated as paid first, and the payment should be treated as having been used for the unprotected rent debt first.

207 Sub-paragraph (5) explains that "unprotected rent debt" has the same meaning as it does in paragraph 7.

Using a tenant's deposit to apply towards unpaid rent debt

208 Paragraph 9 applies in cases where a tenancy deposit is available to the landlord for the purpose of recovering rent debt.

209 Sub-paragraph (2) means that the landlord cannot recover any protected rent debt from a tenancy deposit during the moratorium period.

210 Sub-paragraph (3) states that in cases where a landlord has already used a tenancy deposit to recover protected rent debt before the beginning of the moratorium period, the tenant is not required to top up the deposit to address any shortfall before the end of that period.

Schedule 3: Winding-up and Bankruptcy Petitions

Prohibition on presenting a winding-up petition solely in relation to a protected rent debt

211 Paragraph 1 applies in relation to a protected rent debt owed by a tenant which is a company.

212 Sub-paragraph (2) provides that a landlord cannot present a winding-up petition on grounds that the company is unable to pay its debts during the moratorium period. A landlord is still able to present a winding-up petition if they are owed a debt which is not protected rent debt, as defined in this Act.

213 Sub-paragraph (3) gives the definitions of "moratorium period", "registered company", and "unregistered company" for the purposes of this paragraph.

214 Paragraph 1 applies to limited liability partnerships as it does to registered companies.

Prohibition on presenting a bankruptcy order petition in relation to a protected rent debt

215 Paragraph 2 puts in place a restriction on landlords from petitioning for bankruptcy against a tenant such as a sole trader relating to protected rent and commenced during the relevant period.

216 Paragraphs 2 and 3 apply when a protected rent debt is owed by an individual.

217 In order to be able to petition for bankruptcy, a creditor must show that the debtor is unable to pay or has no reasonable prospects of being able to pay their debt. To show this, the creditor must either serve a statutory demand or there must be a judgment or order of a court in favour of the petitioning creditor in respect of the debt. Sub-paragraph (2) prevents a petition being presented relying on a statutory demand by a landlord made during the relevant period in respect of a protected rent debt. Sub-paragraph (3) prevents a petition being presented in relation to any protected rent if the claim for the debt was issued during the relevant period.

218 Until these provisions came into force, petitions could continue to be presented based on statutory demands and claims which would not be valid once the provisions were in force. If such a petition is presented, the court may make an order to restore the position to what it would have been had the petition not been presented.

219 Once a petition is presented an interim receiver or a special manager may be appointed by the court. Sub-paragraph (5) provides that if it appears to the interim receiver or the special manager that the petition is one described in sub-paragraph (2) or (3), they must refer the matter to the court to determine whether the court should give an order to restore the position to what it would have been had the petition not been presented.

220 The interim receiver and special manager may be permitted by the court to do certain things with the debtor's estate. Sub-paragraph (6) provides that they are not liable in civil or criminal proceedings for anything done pursuant to such a court order.

221 Sub-paragraph (7) provides the definition of "relevant period" for the purposes of paragraph 2 as beginning on 10 November and ending on the day when arbitration is concluded.

222 Sub-paragraph (8) defines "claim" for the purpose of this paragraph.

223 Sub-paragraph (9) provides that this paragraph is to be treated as though it came into force on 10 November 2021.

Orders for bankruptcy orders made before the day on which this Act is passed

224 Paragraph 3 applies when a court makes a bankruptcy order against a tenant following a petition from a landlord, and the order is made after 10 November but before this Schedule came into force. This is only for cases where the order is one that would not have been made had the Schedule been in force, i.e., one that would be affected by the provisions under paragraph 2.

225 Sub-paragraphs (2) and (3) state that in this case, the order is considered void and neither the official receiver, the trustee in bankruptcy, interim receiver or special manager are liable for any actions taken in respect of the order.

226 Sub-paragraph (4) means that a court may instruct that action is taken to restore the tenant to position that it would have been before the petition for a bankruptcy order was made. This allows the court to undo any negative effects of the bankruptcy order and may lead to the petitioner (landlord) becoming liable for the costs of doing so.

227 Sub-paragraph (5) requires the official receiver, trustee, interim receiver or special manager to refer the matter to the court if it appears that an order is void (as under sub-paragraph (2)) and that the court should give directions (as under sub-paragraph (4)), to determine whether the court should give such directions.

Interpretation

228 Paragraph 4 provides definitions of terms used throughout this Schedule. References to the "tenant" in Schedule 3 include guarantors, anyone else who is liable on an indemnity basis for payment of rent under a business tenancy, and former tenants who are liable for the payment of rent under a business tenancy. The effect of this is that Schedule 3's provisions on winding up and bankruptcy apply to petitions and orders against tenants; and also, where such persons are liable for protected rent debt, against guarantors, including where an indemnity has been provided, and former tenants whether they remain liable under an authorised guarantee agreement or due to privity of contract.

Commencement

229 Section 31(4) sets out that the provisions of the Act commenced on Royal Assent; except paragraph 1 of Schedule 3, and section 27 so far as it relates to that paragraph, will come into force on 1 April 2022.

Related documents

230 The following documents are relevant to the Act and can be read at the stated locations:

- Impact Assessment https://Acts.parliament.uk/Acts/3064/publications
- Delegated Powers Memorandum https://bills.parliament.uk/bills/3064/publications

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Part 1	Yes	Yes	In so far as relating to relevant provisions of sections 25 and 27, and to Schedule 3 paragraph 1	In so far as relating to relevant provisions of section 25
Part 2	Yes	Yes	No	No
Part 3				
Section 23	Yes	Yes	No	No
Section 24	Yes	Yes	No	No
Section 25	Yes	Yes	Yes save (2)(b)	1), (2)(c), (3) and (4) for certain purposes
Section 26	Yes	Yes	No	No
Section 27	Yes	Yes	Yes, in respect of winding up only	No
Part 4				
Section 28	Yes	Yes	Yes	Yes
Section 29	Yes	Yes	Yes	Yes
Section 30	Yes	Yes	Yes	Yes
Section 31	Yes	Yes	Yes	Yes
Schedule 1	Yes	Yes	No	No
Schedule 2	Yes	Yes	No	No
Schedule 3				
Paragraph 1	Yes	Yes	Yes	No
Paragraph 2	Yes	Yes	No	No
Paragraph 3	Yes	Yes	No	No
Paragraph 4	Yes	Yes	No	No
Paragraph 5	Yes	Yes	No	No

Annex B - Hansard References

231 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	9 November 2021	https://bills.parliament.uk/bills/3064/publications
Second Reading	24 November 2021	Vol. 704 Col. 383
Public Bill Committee	7 December 2021	First sitting Second sitting
Report and Third Reading	12 January 2022	Vol 706 Col. 609
House of Lords		
Introduction	13 January 2022	Vol 817
Second Reading	27 January 2022	Vol 818 Col. 90GC
Grand Committee	10 February 2022	Vol 818 Col. 482GC
Report	9 March 2022	Vol 819 Col. 1471
Third Reading	15 March 2022	Vol 820, Col. 173
Royal Assent	24 March 2022	

Annex C - Progress of Bill Table

232 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16	Clause 16	Clause 16	Clause 16

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 17	Clause 17	Clause 17	Clause 17	Clause 17	Clause 17
Section 18	Clause 18	Clause 18	Clause 18	Clause 18	Clause 18
Section 19	Clause 19	Clause 19	Clause 19	Clause 19	Clause 19
Section 20	Clause 20	Clause 20	Clause 20	Clause 20	Clause 20
Section 21	Clause 21	Clause 21	Clause 21	Clause 21	Clause 21
Section 22	Clause 22	Clause 22	Clause 22	Clause 22	Clause 22
Section 23	Clause 23	Clause 23	Clause 23	Clause 23	Clause 23
Section 24	N/A	N/A	N/A	N/A	Clause 24
Section 25	Clause 24	Clause 24	Clause 24	Clause 24	Clause 25
Section 26	Clause 25	Clause 25	Clause 25	Clause 25	Clause 26
Section 27	Clause 26	Clause 26	Clause 26	Clause 26	Clause 27
Section 28	Clause 27	Clause 27	Clause 27	Clause 27	Clause 28
Section 29	N/A	N/A	N/A	N/A	Clause 29
Section 30	Clause 29	Clause 29	Clause 28	Clause 28	Clause 30
Section 31	Clause 30	Clause 30	Clause 29	Clause 29	Clause 31

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