

EXPLANATORY MEMORANDUM TO

THE BUSINESS TENANCIES (RESTRICTION ON FORFEITURE: RELEVANT PERIOD) (CORONAVIRUS) (ENGLAND) REGULATIONS 2020

2020 No. 602

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument prevents landlords of commercial properties from being able to evict tenants due to non-payment of rent until 30 September 2020. This is an extension of the three-month moratorium, which will end on 30 June 2020, introduced in response to the COVID-19 pandemic.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 It is not possible in the case of this instrument to comply with the 21-day rule which requires relevant instruments to be laid before Parliament for at least 21 days prior to coming into force. It was necessary to gather evidence on the impact of the pandemic and the initial moratorium before agreeing a way forward with the sector. As part of this the Department analysed evidence on the percentage of rent paid at the quarterly rent payment date of 25 March 2020, and the percentage of businesses who expect to be in a position to pay rent at the next rent payment date of 24 June 2020.
- 3.2 These Regulations are part of a package that seeks to create the conditions under which otherwise viable businesses who need more time to pay rent are protected. We have worked with the sector to create a Code of Practice that encourages businesses that can pay rent do so. This will help ensure the impact of the moratorium is mitigated and landlords are treated fairly. In order to ensure maximum impact we are aiming to announce them in tandem, with the Code of Practice having been developed at pace.
- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 Section 82 of the Coronavirus Act 2020 (“the Act”) provides that a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise, during the relevant period. “Relevant period” is defined in subsection 12 as the period starting with the day after Royal Assent and ending with 30 June 2020 (or such later date as may be specified in regulations). These Regulations specify a later date so the relevant period is extended to 30 September 2020.
- 6.2 Section 82(2) of the Act provides protection for landlords so that, during the relevant period, no conduct by or on behalf of a landlord, other than giving an express waiver in writing, is to be regarded as waiving a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent.

7. Policy background

What is being done and why?

- 7.1 On 26 March the Coronavirus Act 2020 received Royal Assent and section 82 of that Act came into force, introducing a three-month moratorium on the ability of landlords of commercial properties to evict tenants by forfeiting the lease due to non-payment of rent. This moratorium is due to end on 30 June 2020. This instrument will extend the moratorium until 30 September to provide continued support for businesses, particularly as some sectors will not be able to re-open by 30 June.
- 7.2 The moratorium is not a rent holiday and tenants remain liable for payment of any rent arrears. It protects tenants of commercial leases when many have reduced or no income due to restrictions imposed by the Government to prevent the spread of coronavirus. The moratorium also protects businesses by providing them breathing space in the current uncertain economic climate, and a measure of certainty ahead of quarterly rent periods.
- 7.3 We also expect, based on the experience of other countries, that turnover will be significantly down when restrictions are lifted. We anticipate rent collection rates at the June quarter date to be lower than in other years, and lower than the March quarter date given ongoing closures and continued economic challenges. There is a high risk that without extension of the moratorium beyond June businesses that would otherwise be viable would be unable to pay their rent and so be evicted.
- 7.4 The Government encourages all commercial landlords and tenants to communicate with one another at as early a stage as possible to discuss the repayment of rent during these unprecedented times. The sector-led Code of Practice for landlords and tenants will help to mitigate pressures on landlords.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 There is no statutory requirement for the Department to consult. However, the Department has engaged closely with representative bodies of landlords and commercial tenants through regular meetings with sector bodies to understand the impact of the moratorium and coronavirus in order to inform the government position on commercial property. The Department has also engaged with officials in the Devolved Administrations to align approaches.

11. Guidance

11.1 Not applicable.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that those who are commercial tenants will continue to be protected from eviction for non-payment of rent until 30 September. Given the ongoing closures and economic challenges, there is a high risk that without extension of these protections beyond June such organisations that would otherwise be viable would fold. The impact of reduced rental income is causing some financial distress among commercial landlords. However, this is a temporary measure and the Government is working to mitigate the impact (see 12.3).

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of the short and temporary nature of the moratorium. The instrument is not a regulatory provision under the Better Regulation Framework. However, the Government recognises the current challenges facing commercial landlords and the significant impact recent changes are having on their business models. The Government has worked with the sector to create a Code of Practice that encourages businesses that can pay rent do so. This will help ensure the impact of the moratorium is mitigated and landlords are treated fairly. We have also worked closely with lenders to ensure that flexibility is being shown to commercial landlords. For example, UK Finance issued a statement on 29 May that confirmed its members' continued support for commercial landlord customers, including amendments to facilities and capital payment holidays. Government has also provided support to UK businesses and the commercial real estate sector, including £330 billion of guarantees through the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme and the Coronavirus Corporate Financing Facility. These programmes support business lending through grants and government-backed loans and are available to landlords in distress.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. The impact will be temporary, and it will potentially benefit small businesses by providing them breathing space in the current uncertain economic climate, and a measure of certainty ahead of the next quarterly rent period.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause.

15. Contact

15.1 Daisy Daventry at the Ministry of Housing, Communities and Local Government, Telephone: 0303 444 1301 or email: daisy.daventry@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Fisher, Deputy Director for Regeneration and Investment at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Simon Clarke at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.