

EXPLANATORY MEMORANDUM TO

THE BUSINESS TENANCIES (PROTECTION FROM FORFEITURE: RELEVANT PERIOD) (CORONAVIRUS) (ENGLAND) REGULATIONS 2021

2021 No. 283

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.

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 June 2021. This is an extension of the moratorium, which currently will end on 31 March 2021, 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 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 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 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 30th of June (or such later date as may be specified in regulations).
- 6.2 The relevant period was extended to 30 September 2020 by the Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) Regulations 2020 (S.I. 2020/602). It was further extended to 31 December 2020 by the Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No.

2) Regulations 2020 (S.I. 2020/994). It was extended again to 31 March 2021 by the Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No. 3) Regulations 2020 (S.I. 2020/1472).

6.3 These Regulations provide that the relevant period is extended to 30 June 2021. They also revoke S.I. 2020/1472.

6.4 A full impact assessment has not been produced for this instrument due to the temporary nature of the provision.

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 was due to end on 30 June 2020; however, it was extended by statutory instrument until 30 September 2020 and further extended until 31 December 2020. A further statutory instrument extended the moratorium until 31 March 2021. This new instrument will extend the moratorium until 30 June 2021 to provide continued support for businesses, particularly as many are continuing to struggle with rent payments as they are reopening.

7.2 Commercial rent is generally paid quarterly in advance. 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 with breathing space in the current uncertain economic climate, and a measure of certainty ahead of quarterly rent periods.

7.3 Similarly, measures were introduced to prevent landlords from circumventing the policy intent of the moratorium through use of the Commercial Rent Arrears Recovery (CRAR) process. CRAR is a statutory procedure which allows landlords of commercial premises to recover rent arrears by taking control of the tenant's goods and selling them. Amendments to the Taking Control of Goods Regulations 2013 extended the amount of outstanding rent required for landlords to be able to use CRAR. That was a first increase from an amount equal to 7 days' rent to 90 days in April, then a further increase in June to 189 days in line with the original extension to the moratorium until 30 September 2020. A further amendment was made when the moratorium was extended until 31 December, to increase the amount of outstanding rent required for landlords to use CRAR to 276 days' from 29 September until 24 December and to 366 days' from 25 December onwards.

7.4 Commercial property rent is paid in advance on set quarter days, with the next rent payments falling due on 25 March and 24 June. In order to ensure the practical effect of the restriction on CRAR is not lost once further rent falls due in March and June and continue to protect tenants with arrears accrued from the March 2020 quarter, the Ministry of Justice intends to lay a Statutory Instrument to amend Regulation 52 of the Taking Control of Goods Regulations 2013 to increase the minimum amount of rent that must be due before CRAR is used as follows: from when that instrument comes into force on 25 March until 23 June (inclusive), the minimum amount will be 457 days' rent. From 24 June, the minimum amount will be 554 days' rent. This measure continues to apply while the moratorium is in force.

- 7.5 As part of the Corporate Insolvency and Governance Act 2020, the Government introduced a temporary ban on the use of winding-up petitions and statutory demands for rent payments by landlords. A winding-up petition is a legal notice put forward to the court by a creditor. The creditor petitions to the court if they are owed more than £750 and it has not been paid for more than 21 days. The application, in effect, asks the court to liquidate the company as they believe the company is insolvent. Statutory demands for payment are a written formal demand for payment within 21 days. If this payment is not made, the creditor is able to issue a winding-up petition. The temporary ban was introduced as there was evidence of landlords effectively circumventing the policy intent of the moratorium and using aggressive rent recovery tactics (for example, issuing a statutory demand for payment) to pursue unpaid rent. These are currently in place until 31 March 2021; the Government is therefore considering the future of these measures in light of the extension of the moratorium on restrictions on the use of CRAR.
- 7.6 The Government had previously announced that the extension that the previous extension until 31 March 2021 would be the final extension to the measures. However, this was before the discovery of the new UK variant of Covid-19 and the national restrictions announced by the Prime Minister on 4 January 2021. These restrictions have prevented many tenant businesses from being able to trade normally and have undermined negotiations regarding rent arrears and ongoing lease terms because tenants have lacked certainty regarding when they may be able to resume trading. This has necessitated the introduction of a further extension to give time for the current restrictions to be relaxed and for tenants to be able to negotiate with their landlords with some certainty over their ability to trade and so pay rent and accumulated rent arrears.
- 7.7 We have seen that turnover is not yet fully recovered, particularly in vulnerable sectors such as hospitality. Rent collection increased in June, September, and December although remained lower than normal. While September rent collection showed a marked improvement from the June quarter, rent collection remains lower than pre-Covid levels, estimated by Remit Consulting to be 20% lower than 2019 levels, and there are concerns the ongoing national restrictions will further worsen this particularly for those sectors forced to close.
- 7.8 The current measures cannot be targeted to only cover specific types of businesses or sectors without new primary legislation.
- 7.9 Analysis by Government officials suggested that without further intervention, increased business closures and job losses across a range of sectors would be expected, particularly if the current provisions expire before the relaxation of current restrictions as per the Prime Minister's roadmap. An extension is needed to give tenants time to be able to negotiate with their landlords with some certainty over their ability to trade and so pay rent and accumulated rent arrears.
- 7.10 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, published in June 2020, was designed to increase negotiations and help to mitigate pressures on landlords. The Government will be publishing further guidance to support this Code and help facilitate negotiations between landlords and tenants shortly.
- 7.11 Through the Budget, the Government continues to provide unprecedented financial support to protect jobs through the Coronavirus crisis, including extending the

Coronavirus Job Retention Scheme until September and new ‘Restart Grants’ of up to £18,000 for highly impacted businesses. To protect jobs further, the Government has decided that business owners affected by the pandemic will therefore now be protected from eviction until 30 June due to the continuing national lockdown.

- 7.12 The measures provided for commercial tenants differ to those for the residential sector. From 29 August 2020 to 31 March 2021, residential landlords are required to give tenants six months’ notice of eviction in most cases (with exceptions for anti-social behaviour, six months’ plus worth of rent arrears and other serious grounds). Government also confirmed on 10 September that if an area is in a local lockdown that includes a restriction on gathering in homes, evictions will not be enforced by bailiffs.

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 June 2021. Given the ongoing economic challenges and businesses adapting to the end of the job retention scheme, there is a high risk that – without extension of these protections beyond September – businesses 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 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 to 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 an unprecedented package of support to UK businesses and the commercial real estate sector, through the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme and the Coronavirus Corporate Financing Facility. These programmes continue to 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 Stephen Boyle at the Ministry of Housing, Communities and Local Government, Email: Stephen.Boyle@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rachel Campbell, Deputy Director, Cities and Local Growth Unit at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Eddie Hughes MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.