

Government extends tenant protections and introduces new code of practice

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Please note: the information contained in this legal update is correct as of the original date of publication

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The code, which has been developed by the Government in collaboration with the retail, hospitality and property sectors, will apply until 24 June 2021 to all commercial leases that have been seriously impacted by the current crisis (although it is expected that the hospitality, leisure and parts of the retail sector will need it most).

Under the code, in all dealings with each other, both landlords and tenants should act reasonably, swiftly, transparently and in good faith. Tenants who are able to pay rent in full should do so. However, tenants who are unable to pay in full should seek agreement from their landlords to pay what they can. When seeking concessions, tenants should be transparent and provide their landlords with relevant financial information about their business. Landlords should provide concessions where they reasonably can (taking into account their own fiduciary duties and financial commitments) and, if they refuse, they should provide a reasonable explanation taking into account the information provided by the tenant.

The code suggests various options for new rental arrangements (e.g. rent-free periods, rent deferrals, monthly rents or rent payments in arrears, rents linked to turnover etc.) and suggests other arrangements that could be offered in return (e.g. the removal of a tenant's break right or the extension of a lease).

The code also considers service charge and insurance arrangements and says that, unless otherwise agreed, service charge and insurance should be paid in full by tenants. Where possible, the frequency of tenant service charge payments should be spread over shorter periods and where there is a known net reduction in overall service charge due to lack of use of a property, this reduction should be passed on to tenants as soon as possible ahead of the end of year reconciliation.

A full copy of the code can be viewed from [here](#).

The code recognises that it does not (and cannot) change the underlying legal relationship between landlords and tenants. This is where the various tenant protections come into play. The changes to those tenant protections are as follows:

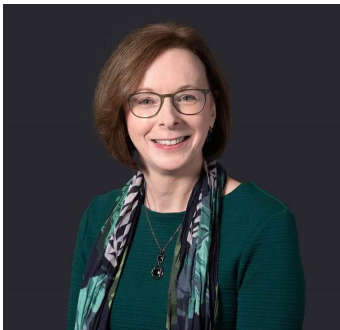
1. The provision of the Coronavirus Act which prevents a landlord from forfeiting (i.e. terminating) a lease for non-payment of rent (and other sums due under a lease) has been extended from 30 June to 30 September 2020.
2. The Regulations which prevent a landlord from exercising the statutory procedure known as Commercial Rent Arrears Recovery (or CRAR) (which allows a landlord to instruct an enforcement agent to take control of a tenant's goods and sell them to recover an equivalent value to the rent arrears outstanding) unless a minimum of amount of unpaid rent is owed have been similarly extended. In

addition, the minimum amount of unpaid rent has been increased from 90 days to 189 days. This is significant as it covers the whole periods for which rent is traditionally paid in advance on 25 March and 24 June (so a landlord will not be able to exercise CRAR even if a tenant has paid no rent on those quarter days).

3. The Corporate Governance and Insolvency Act (which came into force on 26 June 2020) was amended at the last minute to extend the temporary ban on the use of statutory demands and winding-up petitions where a company cannot pay its bills due to coronavirus until 30 September 2020 (the original Bill provided that this ban would end on the later of 30 June 2020 or one month after the Bill comes into effect).

Somewhat ominously, the Minister for Regional Growth and Local Government states in his introduction to the new code of practice that these legal tenant protections cannot last forever. Whilst the Government clearly hopes (and expects) that this is where the voluntary code will come into its own and that landlords and tenants will continue to act fairly and reasonably towards each other, only time will tell if that is a case of the triumph of hope over experience.

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