

# COVID-19: GOVERNMENT ANNOUNCES NEW LAWS AND A CODE OF PRACTICE TO RESOLVE DISPUTES RELATED TO COMMERCIAL RENT DEBTS ARISING DUE TO COVID-19

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## UK Real Estate Alert

By: Steven D. Cox, Bonny Hedderly, P. Wayne Smith

### SUMMARY

On 9 November 2021, the UK business secretary announced new laws, and a code of practice (Code of Practice), to resolve the remaining commercial rent debts accrued due to the pandemic. The Government's intention is to have the new laws in place for when the protection from eviction, extending to commercial tenants, comes to an end in March 2022. See our [previous alert](#) for background.

The new laws, which are being introduced in March 2022, will provide a legally binding process to resolve the remaining commercial rent debts.

Until then, the new Code of Practice will set out how landlords and tenants should negotiate a way forward in relation to outstanding debts.

The changes are intended to protect tenants from rent debt claims against them and help the market return to normality.

### CODE OF PRACTICE AND COMMERCIAL RENT (CORONAVIRUS BILL)

Commercial tenants are protected from eviction until 25 March 2022, pursuant to government intervention last year which was stated to "provide firms with breathing space and help protect jobs when certain businesses had to close in full or in part during the pandemic." This intervention provided time for landlords and tenants to negotiate how to share the cost of commercial rent debts caused by the pandemic.

The [Code of Practice](#) now underpins that and sets out a clear process for settling outstanding debts before a new arbitration process, established by the [Commercial Rent \(Coronavirus\) Bill](#) (the Bill), comes into force.

The Bill establishes a legally binding arbitration process for commercial landlords and tenants who have not already managed to reach an agreement on how to deal with any unpaid rents. The Bill aims to support the resolution of commercial rent debt accrued during COVID-19. Once the Bill becomes law, it will introduce a system of binding arbitration (explained in the ["Binding arbitration process"](#) section).

Whilst the binding arbitration system is designed to meet the Government's aims as set out in the Code of Practice, as with any Bill, it is subject to passage through Parliament and the details of the Bill may be subject to alteration or change. We will be monitoring progress closely.

Whilst the British Property Federation believe that a significant amount (around 80%) of rent disputes have been resolved, the [call for evidence](#) suggested that in a minority of cases, some landlords and tenants have been unable to resolve their disputes over rent arrears. The expectation by the government is that the Bill will help bring these cases to a swift resolution.

## WHAT DOES THE CODE OF PRACTICE SET OUT?

The Code of Practice sets out that, in the first instance, tenants unable to pay in full should negotiate with their landlord in the expectation that the landlord waives some or all rent arrears where they are able to do so.

The Code of Practice aligns with the Bill and sets out what the arbitration process will look like, the kind of evidence that will be considered, and the key principles of fairness, affordability and viability that it will adhere to.

The Code of Practice states that, where it is affordable, a tenant should aim to meet their obligations under their lease in full. It also makes clear that the preservation of the tenant business's viability should not come at the expense of the landlord's solvency. It explicitly states that tenants should never have to take on more debt – or restructure their business – in order to pay their rent.

The Code of Practice goes into detail as to how both landlords and tenants should negotiate, and the intention is that, where possible, they should resolve rent disputes before the Bill comes into force. Some commentators have suggested that the new process may have unintended consequences, because it could be suggested that without the “last resort” threat of court action being available to landlords, the tenants may not want to come to the table and may now have less incentive to negotiate. Also, the new law does not come into force until March 2022, so this could increase the backlog of cases already in the system.

## WHO DOES THE CODE OF PRACTICE APPLY TO?

Alongside the published Bill, this Code of Practice can be used by any business to help them negotiate and resolve rent disputes even if they fall outside of scope for arbitration. The Bill will apply to commercial rent debts related to the mandated closure of businesses, such as gyms; pubs and restaurants; retail (including supply chains); leisure; manufacturing, industrial and logistics and ports during the pandemic. Debts accrued at other times will not be in scope. So this will not apply during periods when businesses could open, but trading was limited (for example, where retail was open) due to limited footfall.

This Code of Practice is relevant to commercial rent debts (including service charges and insurance) accrued since March 2020.

The legislation will apply to England and Wales, and Northern Ireland will have the power to make similar legislation. Whilst it will not apply substantively to Scotland, the use of the Code of Practice as set out in the “Negotiation, Behaviours, Principles, Affordability and Viability” sections will still be expected to be adhered to where appropriate.

## THE ARBITRATION PROCESS

For those tenancies that have failed to reach agreement, and fall within scope of the Bill, either party can apply for arbitration unilaterally as a backstop after negotiations have failed. Parties are free to continue to negotiate outside of the legal arbitration process once it comes into force. The Code of Practice signposts tenants and landlords to forms of alternative dispute resolution, such as mediation, if they wish to pursue this.

The window to apply for arbitration will be six months from the date legislation comes into force, with a maximum time frame to repay of 24 months.

The legal arbitration process will be delivered by private arbitrators in accordance with guidelines set out in the legislation. Approved bodies will be published in due course, and landlords and tenants will be able to apply directly to any approved arbitration body for their dispute resolution if negotiations have failed.

The Government announced that they are also protecting commercial tenants from debt claims, including county court judgments (each a CCJ), high court judgments and bankruptcy petitions, issued against them in relation to rent arrears accrued during the pandemic. Landlords are encouraged to attempt to reach a negotiated agreement with tenants rather than pursue a CCJ. Where a CCJ is issued, this can be considered within the legal arbitration process when this comes into effect.

### Additional Information and Links

- The [Code of Practice](#) applies across the United Kingdom. The legislation will apply to England and Wales, with a delegated power for Northern Ireland. The [new Code of Practice](#) replaces the “[Code of Practice for commercial property relationships](#)” originally published on 19 June 2020 and updated in April 2021.
- The new legal arbitration process will come into force from 25 March 2022, subject to Parliamentary passage of the Commercial Rent (Coronavirus) Bill that was introduced on the 9 November [Commercial Rent \(Coronavirus\) Bill](#). The Code of Practice applies in the interim.
- The laws will apply to businesses which were mandated to close, in full or in part, from March 2020 until the date restrictions ended for their sector. Debts accrued at other times will not be in scope.
- The Business Secretary has specified “we encourage landlords and tenants to keep working together to reach their own agreements ahead of the new laws coming into place, and we expect tenants capable of paying rent to do so”. The Government is encouraging landlords and tenants to negotiate their own agreement where possible instead of resorting to the arbitration process.
- The arbitration process is explained - '[Binding arbitration process](#).'

See also: [New measures in Bill to assist commercial landlords and tenants in resolving rent debts resulting from the COVID-19 pandemic](#).

## KEY CONTACTS



**STEVEN D. COX**  
OF COUNSEL

LONDON  
+44.20.7360.8213  
STEVEN.COX@KLGATES.COM



**P. WAYNE SMITH**  
PARTNER

LONDON  
+44.20.7360.8201  
WAYNE.SMITH@KLGATES.COM



**BONNY HEDDERLY**  
STAFF LAWYER

LONDON  
+44.20.7360.8192  
BONNY.HEDDERLY@KLGATES.COM

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