



Edited by
Adam
Bernstein

BUSINESS ADVICE FOR TENANTS

STOPPING BUSINESS EVICTIONS ...AGAIN



When the coronavirus pandemic forced the government to take action back in March, one of the regulatory changes put in place was a ban on landlords seeking evictions of non-paying commercial tenants.

By Adam Bernstein



That regime was set to expire on 30 June, but, mercifully, the government extended it until the end of September.

Along with the extension, the government has launched a new code of practice to provide support to shops and local firms planning their recovery with their landlord. Very simply put, the government has extended measures that prevent struggling companies from eviction over the summer. Effectively, no business will be forced out of their premises if they miss a payment before the deadline. The change will be brought into force via a statutory instrument to amend the Coronavirus Act.

New code of practice

The new code of practice, entitled Code of practice for the commercial property sector, which can be read on [gov.uk](https://www.gov.uk) was "developed with leaders from the retail, hospitality and property sectors to provide clarity for businesses when discussing rental payments and to encourage best practice so that all parties are supported."

It should be said that the code is voluntary and applies to all commercial leases held by businesses in any sector that have been impacted by the coronavirus pandemic. The code seeks to encourage tenants to continue paying their rent in full if they are in a position to do so but advises others to pay what they can. It suggests that landlords should provide support to businesses where they are able to do so.

Fundamentally, the code asks tenants and landlords to be transparent as they debate the issues and that they "should act reasonably and responsibly" and recognise the effect that coronavirus has had on businesses' finances.

The government reckons that "the suspension of the forfeiture of evictions will come as a relief" to many businesses (especially in the retail, hospitality and tourism related sectors).

From the government's point of view, the code "represents best practice within the sector for responding to coronavirus and is endorsed by the leading representative bodies who formed the code's steering group." Members include the British Chambers of Commerce, British

Property Federation, British Retail Consortium, Commercial Real Estate Finance Council Europe, Revvo, and the Royal Institution for Chartered Surveyors.

It should also be noted that a number of other organisations have endorsed the code, including the Agricultural Law Association, British Independent Retailers Association, Central Association of Agricultural Valuers, Country Land Association, Federation of Small Businesses, Tenant Farmers Association and Tenant Farmers Association Cymru, and UKActive.

But on top of the temporary ban on evictions, the government has said that it will also bring in secondary legislation “to prevent landlords using Commercial Rent Arrears Recovery unless they are owed 189 days of unpaid rent.” This too will be in force until 30 September.

Further good news and relief for firms in a spot of bother comes via an amendment to the Corporate Insolvency and Governance Act. This will extend a temporary ban until 30 September on the use of statutory demands and winding-up petitions where a company cannot pay its bills due to coronavirus.

Key points

As the code outlines, every landlord and tenant relationship is different and so arrangements should reflect this when it comes to determining rental payments.

Tenants seeking concessions – think reductions or time to pay – are advised to be clear with their landlords about why it is needed. This, by definition, will mean being open and explaining the request with financial information about the health of the business. Landlords are entitled to protect their position and so where they refuse concessions must be clear why they are doing so. Clearly not sharing commercially sensitive information isn't going to help either side's case.

Factors that the government has outlined include the closure period that impacted tenant's business and its ability to trade other means; the effect of social distancing trading; the extra costs and obligations tenants protect customers via social distancing

measures; the needs of other stakeholders such as banks, employees, suppliers during this period; the government support that has been received and how it has been used; and the tenant's previous track record under its lease terms and any concessions to the tenant already agreed.

As the code outlines, agreeing 'new terms' will remove the right at that point of the landlord to seek an eviction.

Options for relief that could be considered include a full or partial rent-free period for a set number of payment periods; deferral of the whole or part of the rent for one or more payment periods; the payment of the rents over shorter payment periods for a set time; reducing payments to a current market rate and/or to provide for all or part of the rent to be paid as a proportion of turnover of the site, incorporating any period during which the site was closed; landlords drawing from rent deposits on the understanding that the landlord will not then require that the deposits be 'topped up' by the tenant too soon; landlords waiving contractual default interest on unpaid rents or rents paid in arrears; and tenants and landlords agreeing to split the cost of the rent for the unoccupied period between them.

But no matter the deal hammered out by either side, tenants may still have to deal with service charges (so as to keep premises safe and insured). The code recommends that these charges are lowered where the premises are being used less. However, the code notes that making premises coronavirus compliant may actually lead to an increase. Either way, fees charged shouldn't become profit generating for the landlord – they should instead reflect the true cost of the services provided.

In summary

The code of practice makes great play on tenants communicating with their landlord. Part of this will require openness and honesty about the realities of business, post coronavirus, for both parties. Taking unilateral action should be avoided for in the long run it will only end up leading to one thing – court action and eviction.

