

Commercial Rent (Coronavirus) Bill

Explanatory Notes on Lords Amendments

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Commercial Rent (Coronavirus) Bill as brought from the House of Lords on 16 March 2022.
- 2 These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 92, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1 to 20 were tabled in the name of the Minister.

Commentary on Lords Amendments

Lords Amendment to Clause 2: "Rent" and "business tenancy"

Lords Amendment 1

- 6 Lords Amendment 1 would define the meaning of Welsh and English business tenancies so that different provision may be made in relation to Welsh or English business tenancies.

Lords Amendment to Clause 4: "Adversely affected by coronavirus"

Lords Amendment 2

- 7 Lords Amendment 2 would ensure that the provision (subsection (3) of clause 4) specifying that a requirement to close at particular times is a closure requirement, would apply to either closure of businesses or premises (previously it only referred to premises).

Lords Amendments to Clause 9: Period for making a reference to arbitration

Lords Amendments 3 and 4

- 8 Lords Amendment 3 would clarify that the power to extend the time limit for making a reference to arbitration could be exercised separately for English or Welsh business tenancies, as well as for both.
- 9 Lords Amendment 4 would delete the definition of "the period for making references to arbitration" in subsection (5) which would be redundant if Amendment 6 to clause 23 is made (decoupling the moratorium period from the period for making reference to arbitration).

Lords Amendment to Clause 14: Arbitrator's award on the matter or relief from payment

Lords Amendment 5

- 10 Lords Amendment 5 would set out expressly how an arbitral award affects the terms of the lease regarding rent, in respect of protected rent only, including how it affects the liability of the tenant or other person such as a guarantor or former tenant. In particular it would be explicit that a tenant will not be in breach of covenant and thus at risk of forfeiture for failure to pay the rent originally owed if the tenant complies with the award; and that if a guarantor or former tenant ultimately pays then they are only liable for the amount in the award and not the original debt, and that applies whether a guarantor has technically provided a guarantee or an indemnity.

Lords Amendments to Clause 23: Temporary moratorium on enforcement of protected rent debts

Lords Amendments 6 and 7: separating the moratorium period from the arbitration

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period

- 11 Lords Amendment 6 would decouple the moratorium period from the arbitration period, so that the moratorium period is no longer defined directly by reference to the period for making a reference to arbitration under clause 9(2). Instead, the period would end six months from Royal Assent, unless extended.
- 12 Lords Amendment 7 would mean that the six-month moratorium period may be extended in accordance a new clause regarding the alteration of the moratorium period ("Alteration of moratorium period", which would be inserted by Lords Amendment 8).

Lords Amendment after Clause 23: Alteration of moratorium period

Lords Amendment 8

- 13 Lords Amendment 8 would insert a new clause into the Bill (Alteration of moratorium period). The insertion of this new clause would mean that any extension of the moratorium period under clause 23(2) for Welsh business tenancies would need to be made by regulation and would require the consent of Welsh Ministers in respect of devolved matters. The moratorium period must be the same length as the arbitration period, and the power could only be used if the arbitration period is extended.
- 14 For English business tenancies, extending the arbitration period would automatically extend the moratorium period.

Lords Amendments to Clause 27: Power to apply Act in relation to future periods of coronavirus control

Lords Amendments 9 to 15.

- 15 Lords Amendment 9 would align the drafting of a term in clause 27 with the language used in clause 4.
- 16 Lords Amendment 10 would enable the Secretary of State to make regulations to reapply the Act either just for English business tenancies or just Welsh business tenancies (as well as for both) and, in the case of Welsh business tenancies, to exclude provisions of the Act from being re-applied which deal with devolved matters in Wales.
- 17 Lords Amendment 11 would ensure that the power to reapply the provisions in the event of future mandated closures would be exercisable in respect of business closures requirements imposed after the protected period in the Bill (which ends on 18 July 2021 for England and 7 August 2021 for Wales) but before the Bill comes into force, and which may not have ended when regulations are made. Lords Amendment 11 would also ensure that the drafting in clause 27 is consistent with corresponding provisions in clause 4 in respect of what counts as a closure requirement.
- 18 Lords Amendments 12 to 14 were in response to the report of the Delegated Powers and Regulatory Reform Committee. Amendment 12 would remove the ability of minister to specify which provisions would not apply in the future and would therefore minimise the changes that could be made to the operation of the arbitration process or policy. Lords Amendment 13 would limit the power to reapply the Act in the future, so that the Act could only be modified where it is necessary to make it work in the specific circumstances. The

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meaning of a "necessary modification" is defined in Amendment 15. Amendment 14 would limit the scope of the power so that different provision may be made for England and Wales but not for other different purposes.

- 19 Lords Amendment 15 would require the power to be exercised only with the consent of Welsh Ministers so far as it relates to the reapplication, in respect of Welsh business tenancies, of the moratorium provisions in Schedule 2 (excluding paragraph 3(6) and (7)) and certain provisions in so far as relating to these.
- 20 Lords Amendment 16 would ensure consistency of expression throughout this clause.

Lords Amendment after Clause 27: Concurrent power for Welsh Ministers to apply moratorium provisions again

Lords Amendment 17

- 21 Lords Amendment 17 would insert a new clause which provides that Welsh Ministers could use the power to reapply the moratorium provision concurrently with the Secretary of State if the Act is re-applied in relation to Welsh business tenancies. The amendment includes various consequential amendments.
- 22 Restrictions in Schedule 7B of the Government of Wales Act 2006 prevent the Senedd from removing a Minister of the Crown function that is exercised concurrently or jointly with a Minister of the Crown without the consent of the UK Government. Lords Amendment 17 would also disapply the relevant restrictions in respect of the concurrent power, by adding the Commercial Rent (Coronavirus) Act to the list of enactments in paragraph 11(6)(b) of Schedule 7B. This would allow the Senedd to alter the concurrent arrangements without needing the UK Government's agreement.

Lords Amendment to Schedule 1: Modifications of the Arbitration Act 1996 in relation to arbitrations under this Act

Lords Amendment 18

- 23 Lords Amendment 18 would make it clear that approved arbitration bodies will have immunity from incurring liability for anything done or omitted in the discharge or purported discharge of their statutory function under clause 8(1)(f) of the Bill to remove arbitrators, unless the act or omission is shown to have been in bad faith. In addition, it would clarify that an approved arbitration body will not be liable, by reason of having removed an arbitrator, for anything done or omitted by the arbitrator (or their employees or agents) in the discharge of their functions as arbitrator. Section 74 Arbitration Act 1996 essentially provides immunity to arbitration bodies in relation to their function of appointing an arbitrator. This Amendment would apply section 74 to the approved arbitration body's function under the Bill of removing an arbitrator, on the same basis as it currently applies to the function of appointing an arbitrator.

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Lords Amendment to Schedule 2: Temporary moratorium on enforcement of protected rent debts

Lords Amendment 19

- 24 Lords Amendment 19 would ensure that references to the tenant in paragraph 3 of Schedule 2 include any other persons who are liable under a business tenancy for payment of rent. Paragraph 3 of Schedule 2 contains a provision specifying that the moratorium on debt claims applies to both tenants and anyone who guarantees the tenant's obligation. This amendment would (i) also apply this provision to former tenants who remain liable to the landlord under privity of contract, as well as those who remain liable under an authorised guarantee agreement and (ii) make clear that the provision applies in respect of a guarantee or indemnity.

Lords Amendment to Schedule 3: Winding-up and Bankruptcy petitions

Lords Amendment 20

- 25 Schedule 3 contains a provision specifying that the moratorium on winding-up petitions and bankruptcy order petitions applies both to tenants and anyone who guarantees the tenant's obligation. Lords Amendment 20 would mean that former tenants who remain liable to the landlord, either under an authorised guarantee agreement or under privity of contract, may not be subject to a winding-up petition or bankruptcy order petition by the landlord in relation to protect rent debt during the Bill's moratorium period. It would also make explicit that this applies whether a guarantee or indemnity is given.

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