

POLITICS HOTELS & LEISURE OFFICE RETAIL UK & IRELAND WALES

'Tenants that can pay should pay': new laws to settle Covid rent debts announced

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Arbitration law and updated code of practice welcomed by hospitality industry



Business Secretary Kwasi Kwarteng

What Government announces new arbitration law to settle lockdown rent disputes

Why 20% of Covid rent arrears cases have not yet reached an agreement

What next Arbitration law will come into force on 25 March 2022

An arbitration law and a new code of practice have been set out to settle remaining disputes between landlords and tenants over unpaid rent accrued during the Covid-19 lockdowns.

The government also made clear that tenants that can pay should pay – the first time it has been explicit in its expectations since rent moratoriums were introduced.

Here is everything you need to know about the latest announcements.

What is the new code of practice?

The code of practice provides landlords and tenants with a guide for settling outstanding debts before the new arbitration process comes into force.

The new code [is an updated version of the current voluntary code of practice](#). It now applies only to rent arrears that occurred while businesses were forced to close. Debts accrued at other times will not be in scope.

The code 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.

[Commercial tenants are protected from eviction until 25 March 2022](#), which gives time for landlords and tenants to negotiate how to share the cost of commercial rent debts caused by the pandemic.

Melanie Leech, chief executive at British Property Federation, said: "The code gives yet further confirmation that those tenants who can afford to pay their rent should do so



and will not be able to continue to abuse the moratoriums designed to protect the most vulnerable tenants in distress.

"I urge those tenants who can demonstrate they cannot afford to pay their rent in full but who have not yet engaged with their landlord to do so now, using the framework this code provides."

What is the new arbitration process?

From 25 March 2022, subject to parliamentary passage, a legally-binding arbitration process will come into force for commercial landlords and tenants who have not already reached an agreement.

The arbitration process is a last resort option for disputes over arrears accrued between March 2020 and April 2021. Businesses will be assessed by a third party to determine how they have been impacted by the pandemic and whether they are able to pay.

It is understood that the onus will be on the tenant to prove they cannot pay the debts. The tenant will have to prove their business would normally be viable and demonstrate the impact of the closure on their business.

The result of arbitration will be a legally-binding agreement the landlord and tenant must adhere to.

Arbitration: the fine print

- 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.

- Both parties are expected to have behaved reasonably up until arbitration and to have made every effort to reach an agreement.

- Arbitrators will have to go through an approval process to demonstrate their impartiality and competency to resolve disputes. The government will publish a list of approved bodies in due course. Landlords and tenants within scope will be able to apply directly to any approved arbitration body for their dispute resolution if negotiations have failed.
- The law will come into force in England and Wales. Northern Ireland will have a power in the bill to introduce similar legislation. Scotland has adopted an alternative approach to commercial evictions since the start of the pandemic.
- The window to apply for arbitration will be “6 months from the date legislation comes into force, with a maximum time frame to repay of 24 months.” It is unclear if this means that debts which have not been repaid within 24 months may be written off, or if 24 months is the longest period to repay that an arbitrator can order.

“We expect tenants capable of paying rent to do so”

Finally, the government also announced that from today it would protect commercial tenants from debt claims, including bankruptcy petitions, county court and high court judgements issued against them in relation to rent arrears accrued during the pandemic.

Business Secretary Kwasi Kwarteng said: “Today’s measures provide commercial landlords and tenants with the clarity and certainty they need to plan ahead and recover from the pandemic. 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.”

Analysis

According to the British Property Federation, an agreement has been reached on the treatment of rent arrears in more than 80% of cases since the start of the pandemic. Hopefully, the number of disputes these measures are intended to resolve is dropping day by day.

But the arbitration law is still significant even if few make use of it. The government may well be hoping that now tenants and landlords can see the full extent of the arbitration process they would have to go through (and the fact that they would have to wait until 2022 for it to begin), they decide to come together and reach an agreement beforehand instead.

Kate Nicholls, CEO of UK Hospitality, said: "Vitaly important is the emphasis on ongoing negotiation to share the burden of the impact of lockdowns and restrictions that prevented hospitality businesses from trading for so much of the last 18 months.



Kate Nicholls agreed that arbitration should be a “last resort”

“We share government’s view that arbitration should be a last resort and this process must take into account the exceptional and existential level of pain that hospitality businesses have faced over the last 18 months. It must not impact this industry’s ability to rapidly recover and create jobs throughout the country.”

James Walters, associate solicitor in real estate disputes at Irwin Mitchell, said, “It is very unclear how these proposals will work in practice. They suggest that landlords with unpaid Covid-19 rent debts may struggle to recover them, especially if it is perceived that they are in a better financial position than their tenants.

That caution should be taken to ensure that landlords are treated fairly in this process. No previous notice was given of

the government's announcement of a halt to enforcement proceedings today, which may lead to landlords and tenants incurring unnecessary costs."

