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By Ali Shalchi

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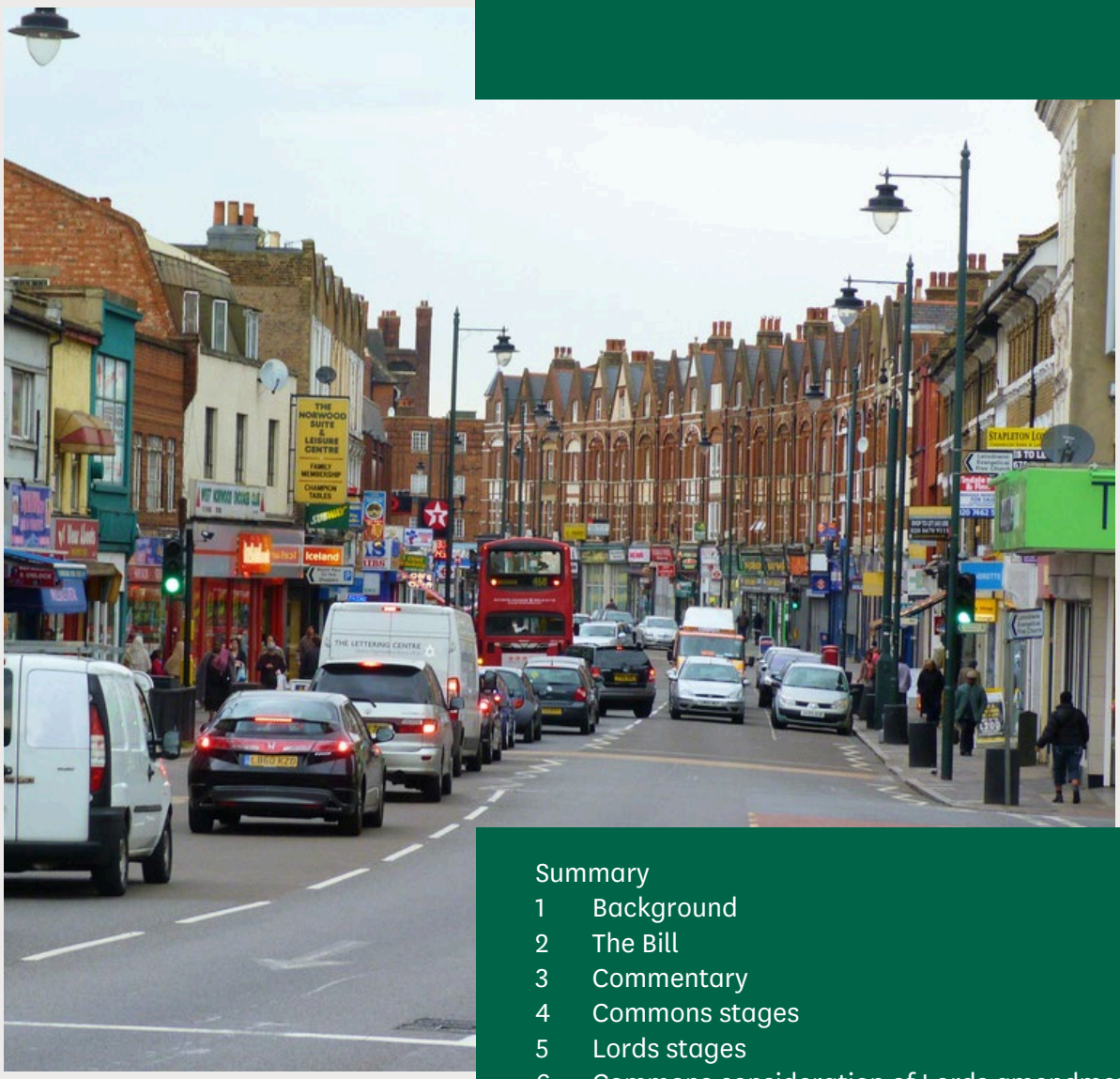
Commercial Rent (Coronavirus) Act 2022



Contents

Summary

The Commercial Rent (Coronavirus) Act 2022 was a Government Bill introduced in the House of Commons on 9 November 2021. It received its third reading on 13 January 2022 and was introduced in the Lords the following day.

The Bill completed its Lord stages on 15 March, and the Commons considered Lords amendments on 23 March. Royal Assent was granted on 24 March 2022, with most of the Act coming into force on that day.

The Act introduces a binding arbitration scheme available to landlords and tenants unable to reach agreement on commercial rent debts built up during periods of coronavirus restrictions in England and Wales. Either party has six months to refer a dispute to arbitration, to be administered by Government-approved arbitration bodies.

The issue

Many non-essential businesses were forced to close as part of measures to control the spread of coronavirus. Losing their source of income meant that many fell behind on their rent.

The Treasury initially estimated that the total amount of business rent arrears could be around £9 billion (pdf) by March 2022. Data suggested that pubs and bars, restaurants, clothes retailers and hotels owed the most.

Initial Government action

To help viable business survive during the pandemic, the Government brought in three main temporary measures to help businesses falling behind on their rent. These were restrictions on (1) landlords forfeiting business leases; (2) using the statutory Commercial Rent Arrears Recovery procedure; and (3) presenting winding-up petitions.

In June 2020 the Government, in consultation with industry bodies, introduced a voluntary UK-wide Code of Practice to help commercial landlords and tenants come together to negotiate on rent arrears. A Call for Evidence was then published in April 2021 seeking views on six options for resolving rent debts built up during the pandemic, including allowing some or all its temporary measures to expire, and introducing binding or non-binding arbitration processes.

In response to the Call for Evidence, on 16 June the Government that it would introduce legislation to establish a binding arbitration system to resolve disputes, where landlords and tenants could not agree on a solution. The temporary restrictions on enforcing rent arrears would be extended to March 2022.

The Act

On 9 November 2021 the Commercial Rent (Coronavirus) Bill 2021-22 was introduced to the House of Commons, alongside an updated Code of Practice which explained the Bill's processes and set out the principles that should guide the landlord and tenant in negotiating rent debts. In it the Government indicated that it hoped to pass the Bill by 25 March 2022, to allow the arbitration process to begin afterwards. Restrictions on the enforcement on rent debts would also be extended during the timeframe for references to arbitration. The Bill initially consisted of thirty clauses and three Schedules.

When passed, the Act contained 31 sections (due to the removal of one clause at Commons Report stage and the addition of two at Lords Report stage) divided into four parts:

- **Part 1** (sections 1 to 6) gives an overview of the Act and defines the key terms used in it. It extends to England and Wales only, except for parts of it that interact with Part 3 and so extend to Scotland and Northern Ireland;

- **Part 2** (sections 7 to 22, and Schedule 1) introduces and sets the boundaries of a binding arbitration process to be used when business landlords and tenants can't agree how to deal with outstanding rent arrears. It extends to England and Wales only;

- **Part 3** (sections 23 to 27, and Schedules 2 and 3) extend existing restrictions on enforcing business rent arrears, to ensure they cannot be used to undermine the arbitration process. It extends to England and Wales, with certain provisions also extending to Scotland and Northern Ireland; and

- **Part 4** (sections 28 to 31) deals with the scope and extent of the Bill. It extends to the whole of the UK.

The Government's view was that a legislative consent motion was required from the Welsh Senedd (only) in respect of devolved matters. This was obtained on 8 March 2022.

Amendments in the Commons

Twelve amendments were made to the Bill in the Commons - all Government amendments made at Report stage without a division. These amendments:

- removed (at the request of the Northern Ireland Government) the power for them to make regulations for purposes corresponding to the purposes of the Bill in Northern Ireland; and

- made several changes intended to be minor or clarificatory, such as clarifying the definition of "service charge" and which party is responsible for paying arbitration fees.

No other amendments were tabled in the Commons that were pressed to a division.

Amendments in the Lords

Twenty amendments were made to the Bill in the Lords – all Government amendments made without a division. These comprised:

- six amendments made at Committee stage, which clarified:
  - the meaning of a business being "adversely affected by coronavirus);
  - that an arbitrator's award of relief alters the effect of tenancy terms;
  - that the power under clause 27 (current section 28) to apply the Act to any future closure requirements can be used for mandated closured after the protected period in the Bill, whether before or after the Bill is passed, and whether or not the closure requirement has ended when regulations are made; and
  - that references to the tenant include any other persons who are liable under a business tenancy for payment of rent.
- thirteen amendments made at Report stage, which mainly:
  - clarified areas of Welsh Government competence under the Bill; and
  - responded to concerns in a report of the Delegated Powers and Regulatory Reform Committee on clause 27 (current section 28) regarded the application of the Bill to any future closures. The changes sought to ensure that delegated powers in that clause

cannot be used to change the operation of the arbitration process or policy.

- one amendment made at Third reading, ensuring that arbitration bodies removing arbitrators have immunity unless they act in bad faith.

No other amendments were tabled in the Commons that were pressed to a division.

Commons consideration of Lords amendments

The Commons approved all Lords amendments made in a short debate on 23 March 2022. Shadow Minister Seema Malhotra expressed Labour's support for the amendments made but noted ongoing concerns about the costs of arbitration proceedings, ensuring enough arbitrators are available, and ensuring decisions are fair and consistent. Royal Assent was obtained the following day.

Commentary

The Act enjoyed cross-party support throughout its passage in Parliament. On 24 March, Minister Paul Scully explained that the Government now expected the Act's scheme to administer around 2,800 cases, significantly less than the 7,500 initially estimated.

On 23 February 2022 the Government issued draft guidance to arbitrators on how to administer cases. At Lords Report stage Minister Lord Grimstone said the guidance had been well-received by stakeholders, and he expects final guidance to be published by the Government as soon as possible after Royal Assent.

A Government press release issued on 24 March noted that the Act seeks to "help the market return to normal as quickly as possible".

1 Background

This section was written before the Act's Commons second reading debate on 24 November 2021. It therefore refers to the Act and its measures as proposed legislation.

On 9 November 2021, the Government introduced the Commercial Rent (Coronavirus) Bill 2021-22 in the House of Commons. Second reading was on 9 November and the Bill emerged from Committee stage without amendment on 14 December. The Bill, Explanatory Notes, Impact Assessment and Delegated Powers Memorandum can be found on the Bill page.

The Bill introduces a legally binding arbitration system to support business tenants and landlords in England and Wales to resolve disputes around rent arrears built up during the coronavirus pandemic. The arbitration scheme applies in England and Wales, although other parts of the Bill extend to Scotland and Northern Ireland.

1.1 Government intervention

Many non-essential businesses were forced to close as part of measures to control the spread of coronavirus. Losing their source of income meant that many fell behind on their rent.

The Government's view was that a viable business should not be forced to close because of the health measures imposed to try and control the spread the coronavirus.[1] Three main temporary restrictions were brought in to help business who had fallen behind on rent:

1. **Forfeiture**. Where a business tenant fails to pay rent, their landlord will usually have a right to terminate their lease early and force the tenant to leave. This is called forfeiture. Section 82 of the Coronavirus Act 2020 provides that that a landlord's right to forfeit a lease for non-payment of rent could not be exercised for three months. The restriction has since been extended on multiple occasions and is now due to expire on 25 March 2022.

[1] Ministry of Housing,Communities & Local Government, Code of Practice for commercial property relationships during the COVID-19 pandemic, June 2020, see Ministerial Foreword

2. **Commercial Rent Arrears Recovery** (CRAR). Available from 2014, CRAR is a statutory process which allows business landlords to recover rent owed by seizing a tenant's assets. Before the pandemic, it could be used where there was 7 days' unpaid rent. This was extended to 90 days from March 2021.[2] The period was gradually extended and since June 2021 has stood as 554 days (around 18 months).[3] It is due to return to 7 days on 25 March 2022.

3. **Winding-up petitions.** Before the pandemic, someone owed £750 or more by a business that could not pay could apply to the court for an order to close down (wind up) that business. From March 2020, a court could not make a winding up order where the cause of non-payment of the debt was related to coronavirus. In October 2021 the rules were relaxed, but winding-up orders still cannot be made for commercial rent debts related to coronavirus. This restriction is due to expire on 31 March 2022.[4]

Together, these restrictions made it much harder for landlords to take action to enforce commercial rent debts. This resulted in levels of debt building up.

1.2 The June 2020 Code of Practice

On 19 June 2020 the Government, in consultation with a "steering group" of seven industry bodies,[5] introduced a voluntary UK-wide "Code of Practice for commercial property relationships during the COVID-19 pandemic" to "support businesses to come together to negotiate affordable rental agreements." The Code said the tenants who are pay to pay their rent should continue to do so, and those that couldn't should "communicate with their landlord and pay what they can".[6]

It encouraged tenants and landlords to try and agree a fair solution to deal with rent arrears, bearing in mind the circumstances of each. Suggested solutions included rent deferrals and reductions, or lease variations. The suggested principles to be taken account in negotiations were: (1) taking a transparent and collaborative approach; (2) being mutually supportive ("a unified approach"); (3) recognising that Government support is there to help business meet their commitments; and (4) acting reasonably and responsibly.[7]

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[2] By The taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020 Control of Goods (Amendment) (Coronavirus) Regulations 2021

[3] By The Taking Control of Goods (Amendment) (Coronavirus) Regulations 2021

[4] See section 3 of our briefing on the Corporate Insolvency and Governance Act 2020

[5] Comprising the British Chambers of Commerce, British Property Federation, British Retail Consortium, Commercial Real EstateFinance Council Europe, Reco, Royal Institution for Chartered Surveyors, and UKHospitality

[6] See Code of Practice, Ministerial Foreword

[7] Ministry of Housing, Communities & Local Government, Code of Practice for commercial property relationships during the COVID-19 pandemic, June 2020 (updated April 2021)

On 6 April 2021 the Code of Practice was updated to add a template form to be used during negotiations. The form helps tenants set out the impact the pandemic has had on their financial situation, and is intended to act as an aid to negotiations or (if court action is required) to facilitate a prompt outcome of the case.[8]

This Code of Practice was withdrawn and replaced with another Code of Practice in November 2021 (see section 1.5 below).

1.3 The Call for Evidence

Alongside the updated Code of Practice, and in recognition of the threat of accumulated rent debts to the future survival of many tenant businesses, in April 2021 the Government launched a Call for Evidence asking how and when it should withdraw its temporary measures restricting forfeiture and CRAR to best preserve businesses and jobs.[9] At the time, both measures were due to expire on 30 June 2021.

The Call for Evidence sought views on six options:

1. Allowing current measures to expire at the end of June 2021 without replacing them;
2. Allowing the forfeiture measure to expire but retaining the measures on CRAR and winding-up petitions;
3. Tailoring existing measures depending on how big an impact Covid restrictions had had on their businesses;
4. Encouraging more formal mediation between landlords and tenants;
5. Introducing a non-binding arbitration process to resolve disputes; or
6. Introducing a binding arbitration process.

On 16 June, after reviewing the responses, then Chief Secretary to the Treasury, Steve Barclay, announced to the House of Commons that the Government would extend the forfeiture and CRAR restrictions until March 2022 and introduce legislation "to establish a backstop so that where commercial negotiations between tenants and landlords are not successful, tenants and landlords go into binding arbitration".[10] This is Option 6.

[8] See Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government, Guidance: Code of practice for the commercial property sector, updated 6 April 2021

[9] Ministry of Housing, Communities & Local Government, Commercial rents and COVID-19: call for evidence, April 2021

[10] HC Deb 16 June 2021, vol 697, col 308

1.4 Call for Evidence: data

Data on the Call for Evidence responses was published by the Government on 4 August 2021.[11] The Call for Evidence attracted 508 responses: 60% from tenants (77% of whom had under 250 employees), 26% from landlords, and 14% from others (such as trade bodies and lawyers).

The most preferred option for landlords by far (chosen by 79%) was Option 1 (allowing the current measures to expire) whereas most tenants (57%) opted for Option 6 (binding arbitration) followed by Option 3 (tailoring existing measures) which was chosen by around 27%.

A slight majority (52.9%) of tenants believed that no or very few landlords (0-20%) were engaging with the Code of Practice. A significant group of tenants stated that they had commonly experienced landlords refusing to negotiate. Landlords said a small majority of their tenants (56.5%) were engaging with the Code. Where negotiations did happen, the most common outcomes were more time to pay arrears, writing-off some rent arrears, and reducing their rent going forwards.

The total rent tenant respondents claimed to owe was £571 million. The total rent landlords claimed they are owed was £1.7 billion. For tenant respondents, the highest levels of rent owed was by those who operated pubs and bars, followed by restaurants and clothes retailers, as shown in the chart below.

About half of tenants (46.7%) said they would not be able to fully repay their rent arrears.

[11] Ministry of Housing, Communities and Local Government, Consultation outcome: Call for evidence on commercial rents: responses and analysis, updated 4 August 2021

Note: rent arrears are those that tenants say they owe.
Source: MHCLG, Call for evidence on commercial rents: responses and analysis, Table 3, 4 August 2021.

1.5 The November 2021 Code of Practice

The Government is implementing its commitment to introduce a binding arbitration process through the Bill. On the day the Bill was introduced to the House of Commons, the Government also withdrew the June 2020 Code of Practice and replaced it with a new "Code of practice for commercial property relationships following the COVID-19 pandemic" (the new Code) which aligns its guidance with the Bill and advises landlords and tenants on how to negotiate.[12]

The binding arbitration process being introduced under the Bill applies only to England and Wales (and grants Northern Ireland a power to make similar legislation) but sections of the new Code are "expected to be adhered to" in Scotland. [13]

The new Code repeats what was stated in the June 2020 Code about landlords and tenants negotiating with transparency and collaboration, taking a unified approach, and acting reasonably and responsibly. It adds that parties should negotiate with the aim of achieving a "swift resolution" to avoid costly or burdensome processes.

[12] Department for Levelling Up, Housing & Communities, Code of practice for commercial property relationships following the COVID-19 pandemic, 9 November 2021
[13] Ibid, para 19

The new Code also sets out three key principles to be considered when considering rent arrears built up due to coronavirus-related restrictions. If the dispute ends up being resolved through binding arbitration under the Bill, these principles should also be followed. They are:

- that the aim should be to preserve viable tenant businesses;
- but preserving the viability of the tenant's business shouldn't be at the expense of the landlord's solvency; and
- where it's affordable for a tenant to fully meet its rent payments, it should do so without delay; and any rent relief should be no greater than is necessary for the tenant business to afford the payment.[14]

1.6 Commercial rent arrears: the current situation

There are no Government statistics on levels of commercial rent debt.

Property trade body the British Property Federation published a study in June 2021 of 16,320 businesses in the retail, hospitality and leisure sectors. It found that:

- Commercial rent arrears of £7.5 billion were accrued between March 2020 and June 2021;
- 50% of business rents since March 2020 had been paid;
- Property owners and tenants had reached agreement on a further 27% of this debt - these agreements included new payments plans, waivers, rent holidays and deferrals;
- 23% of rent owed since March 2020 remained unresolved; and
- 14% of tenants were refusing to speak with landlords on rent debt arrears.[15]

Another study published by management consultants Remit Consulting estimated that as at 30 June 2021, £6.4 billion of commercial rents arising since March 2020 were unpaid, equating to around £1 in every £6 of rent due. Levels of rent collection were 50.8% in the retail sector and only 24.1% in the leisure sector (e.g. gyms).[16] This figure - £6.4 billion – is cited by the Government in its Impact Asssessment for the Bill.[17] The Impact Assessment also notes Treasury analysis that the total amount of deferred rent liabilities

[14] Department for Levelling Up, Housing & Communities, Code of practice for commercial property relationships following the COVID-19 pandemic, 9 November 2021

[15] British Property Federation, British Property Federation: Government must lift moratoriums on commercial property owner rights, 11 June 2021

[16] Remit Consulting, Remit Consulting reveals a shortfall of £6.4 billion in rent income for investors since start of the pandemic, as just half of commercial property rents were collected on June Quarter Day, 2 July 2021

[17] Impact Assessment, see for example paragraph 6

(business rent arrears) could be around £9 billion by March 2022, although it expects the actual figure to be lower.[18]

Hospitality trade body UKHospitality estimated in June 2021 that hospitality businesses had accrued around £2.5 billion in rent arrears during the course of the coronavirus pandemic.[19]

[18] Impact Assessment, Annex B and para 198

[19] UKHospitality, UKHospitality welcomes new Government measures to solve the rent debt crisis, 16 June 2021

2 The Bill

This section was written before the Act's Commons second reading debate on 24 November 2021. It therefore refers to the Act and its measures as proposed legislation, and does not cover amendments made during its passage.

The Bill consists of thirty clauses and three Schedules divided into four parts:

- **Part 1** gives an overview of the Bill and defines the key terms used in it. It extends to England and Wales only, except for parts of it that interact with Part 3 and so extend to Scotland and Northern Ireland;
- **Part 2** (and Schedule 1) introduces and sets the boundaries of a new binding arbitration process to be used where business landlords and tenants can't agree how to deal with outstanding rent arrears. It extends to England and Wales only;
- **Part 3** (and Schedules 2 and 3) expand existing restrictions on enforcing business rent arrears, to ensure they cannot be used to undermine the arbitration process. It extends to England and Wales, with certain provisions also extending to Scotland and Northern Ireland; and
- **Part 4** deals with the scope and extent of the Bill. It extends to the whole of the UK, except for clause 28 which is only relevant to Northern Ireland.

2.1 Part 1: introductory provisions

Part 1 defines the key terms used in the Bill. **Clause 1** makes clear that the Bill's new binding arbitration process doesn't affect the ability of the landlord and tenant to come to their own separate agreement on rent arrears and have it enforced.

The rest of Part 1 explains the kind of rent debts which can be referred to arbitration under the Bill.

Only debts of "rent" under "business tenancies" can be referred. "Rent" includes both services charges and interest on unpaid amounts, and

"business tenancies" are leases of property occupied by the tenant at least partly for business purposes.[20] An obvious example is a shop.

The new arbitration process should only be used for business tenants who are behind on their rent because of coronavirus-related restrictions (**Clause 3**).[21] This means tenancies which are "adversely impacted by coronavirus" because the tenant was forced by coronavirus-related laws to fully or partly close their business or premises between 21 March 2020 (the date of the first lockdown in England and Wales), and 18 July 2021 in England or 7 August 2021 in Wales (when restrictions were lifted) (**Clause 4**).[22]

Clause 5 provides that to be eligible for arbitration the rent debt must relate to this period. If coronavirus restrictions on a particular business were lifted earlier than 18 July (in England) or 7 August (in Wales), the rent debt must relate to the period before the restrictions were lifted.[23] Any rent debts accrued outside of this period could not be referred to arbitration under the Bill (they would not be not "protected rent debts") – landlords will be able to enforce these debts using the ordinary channels once the Government's temporary measures are withdrawn (which is currently scheduled for the end of March 2022).

Clause 6 provides that any arbitration relating to protected rent debts will determine whether the tenant should be given "relief from payment" of that debt. This could include any one or more of: writing-off some or all of the debt, giving more time to pay the debt, or reducing or removing the interest payable on the debt.[24]

2.2 Part 2: arbitration

Choosing the arbitrators – clauses 7 and 8

The Secretary of State[25] is given the power to approve the arbitration bodies they consider suitable to administer the new process. **Clause 7** provides that a list of approved arbitration bodies must be published.[26]

Clause 8 sets out requirements for the arbitration bodies. The arbitration body must have suitable arbitrators they can appoint to deal with cases on protected rent debts. The body must oversee ongoing cases and (if necessary) deal with any resignations, deaths and new appointments of arbitrators, or

[20] See Clause 2(5) and section 23 of the Landlord and Tenant Act 1954
[21] Clause 3 – "Protected rent debt"
[22] See Clause 4 – "Adversely affected by coronavirus"
[23] See Clause 5 – "Protected period"
[24] See Clause 6 – "The matter of relief from payment"
[25] Currently the Secretary of State for Business, Energy and Industrial Strategy
[26] Clause 7

removals during a case if the grounds for removal are met (such as a lack of impartiality or independence).[27]

The arbitration body will also set and collect fees for administering the arbitrations – details on its fees must be published on its website.[28]

Making a reference to arbitration – clauses 9 and 10

Clause 9 provides that where a business landlord and tenant can't agree on how to deal with protected rent debts, either of them will be permitted to refer the matter to arbitration by a body approved by the Secretary of State within 6 months of the passing of the Bill. The Secretary of State can extend the 6 month period by secondary legislation, using the negative parliamentary procedure.[29]

Clause 10 states that before making a reference to arbitration, the tenant or landlord must notify the other of their intention to make a reference, and give them 14 days to respond. If no response is received, they can make a reference 28 days after giving the notification.[30]

But a reference to arbitration cannot be made (or, if already made, cannot be progressed) if the tenant is going through certain insolvency proceedings (a company voluntary arrangement, individual voluntary arrangement, or a Companies Act 2006 insolvency compromise or arrangement) which relate to the protected rent debt. If the tenant comes out of those proceedings and the protected rent debt has not been dealt with as part of it, the arbitration can proceed.[31]

Proposals and statements – clauses 11 and 12

Clause 11 provides that the person (landlord or tenant) making a reference to arbitration must send with the reference a formal proposal for dealing with the protected rent debts (such as a payment plan or proposal to write some debt off), along with supporting evidence. This must be sent to the arbitrator and the other party. The other party then has 14 days to submit its own formal proposal. After that, each then has 28 days to put forward revised proposals. These 14 and 28-day deadline are extendable if both parties agree or by the arbitrator if they think it reasonable to do so.[32]

Clause 12 requires that written statements provided by the parties during the arbitration must be verified by a statement confirming that the facts stated within the document are true.[33]

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[27] Clause 8
[28] Ibid
[29] Clause 9
[30] Clause 10
[31] Ibid, subsections (3) and (5)
[32] Clause 11
[33] Clause 12

Arbitration awards – clauses 13 to 16

Clause 13 states that if the appointed arbitrator finds that the parties had agreed on how to deal with the protected rent debt before the reference to arbitration, they must dismiss the case. They must also do so if they find that the case does not relate to a business tenancy or a protected rent debt.[34]

Under clause 13, the arbitrator would also be required to dismiss the case if they found that the tenant's business was not viable, and would remain unviable regardless of any award they make. If, however, the business was viable (or could become viable if given appropriate relief from rent), the arbitrator should consider whether to make an award on relief from payment.[35]

Clauses 15 and 16 provide further detail on how decisions should be made. In deciding what award to make, the arbitrator must apply two clear principles. The first principle is that the award they make should be aimed at preserving the tenant's business (if it is viable) or restoring and preserving it (if it is not currently viable, but could be if given the right amount of relief from payment). This must be done so far as it is consistent with preserving the landlord's solvency (meaning able to pay their debts).[36]

When assessing whether the tenant's business is viable, the arbitrator should consider the tenant's assets and liabilities, previous rental payments made, the impact of coronavirus on its business, and any other information on the tenant's financial position they consider appropriate. In assessing the landlord's solvency, the arbitrator must consider the landlord's assets and liabilities and any other information on the landlord's financial position they consider appropriate (**Clause 16**).[37]

The second principle the arbitrator is that, so far as it is consistent with the first principle, the tenant should be required to pay its rent debt in full and without delay.[38]

Clause 14 sets out that the arbitrator's job is to consider the proposals put forward by both parties, and to make the award set out in the proposal that is more consistent with these two principles. If neither are consistent, the arbitrator must make the award they consider appropriate by applying the principles. Any award giving the tenant time to pay an amount must have a payment deadline within 24 months from the day on which the award is made.[39]

[34] Clause 13
[35] Ibid
[36] Clause 15(1)(a) and (3)
[37] Clause 16
[38] Clause 15(1)(b)
[39] Clause 14(3) to (8)

Timing and publication – clauses 17 and 18

Clause 17 provides that the arbitrator must make their award (decision) "as soon as reasonably practicable" after both parties have put forward (or could have put forward) their revised proposals. If an oral hearing is held, the award must be made within 14 days.[40]

This can be extended if both parties agree or the arbitrator thinks it would be reasonable to do so.[41] Once made, the arbitrator must publish details of the award together with their reasons for making it, excluding any confidential information (**Clause 18**).[42]

Fees and hearings – clauses 19 and 20

Clause 19 provides the Secretary of State with the power to make secondary legislation specifying limits on the fees of arbitrators and arbitration bodies, under the negative parliamentary procedure.[43]

Generally, the person making the reference (the applicant) must pay these fees in advance. When making an award, the arbitrator can require the other party to reimburse the applicant for half of these fees, or such other amount they consider appropriate. Otherwise, each party must meet its own legal and other costs.[44]

If one party requests an oral hearing, it must be held within 14 days of the arbitrator receiving the request (or such other period as the parties agree or the arbitrators considers appropriate). The party requesting the hearing must pay the costs of the hearing in advance, but can be reimbursed by the arbitrator for half of these fees (or whatever amount they consider appropriate) when making their award. Where both parties have requested the oral hearing, they are both responsible for its cost. The hearing must be in public unless both parties agree otherwise (**Clause 20**).[45]

Guidance and modifying the Arbitration Act 1996 – clauses 21 and 22 and Schedule 1

The Secretary of State has the power to issue (and revise) guidance to arbitrators on how to exercise their functions, or to tenants and landlords on how to make a reference. Any such guidance must be published (**Clause 21**).[46]

The process for arbitrations (such as on procedural or evidential matters, on enforcing awards and appeals) would be governed by the Arbitration Act 1996. **Clause 22** of the Bill incorporates Schedule 1, which would amend the

[40] Clause 17(1) and (2)
[41] Clause 17(3)
[42] Clause 18
[43] Clause 19(1) to (3)
[44] Ibid, (4) to (6)
[45] Clause 20
[46] Clause 21

application of the 1996 Act to make it consistent with the process set out in the Bill. For example, the process for appointing arbitrators is excluded since the Bill already includes provisions for appointing them (in clauses 7 and 8).[47]

2.3 Part 3: moratorium on certain remedies and insolvency arrangements

Restrictions on enforcing protected rent debts - clause 23 and Schedule 2

From the day the Bill receives Royal Assent until the day that the arbitration under Part 2 concludes (or if the debt has not been referred to arbitration, the last day when it could have been referred) the landlord would be restricted from taking certain steps to try and recover the protected rent debt. This period is known as the "moratorium period".

The restrictions are that during the moratorium period the landlord cannot:

- go to court to get a judgement requiring the tenant to pay it the protected rent debt. This restriction applies retrospectively, so as soon as the Act is passed, any existing claims already going through the courts from 10 November 2021 can be paused. Any court judgements already issued relating to claims made from 10 November 2021 cannot be enforced until the end of the moratorium period;
- use CRAR;
- forfeit the lease; or
- draw down on any available tenancy deposit to recover the rent debt. If they have already done so before the moratorium period, the tenant is not required top-up any shortfall in the deposit until the moratorium period ends.

Where a tenant owes both protected and unprotected rent debts to the landlord, any payments made during the moratorium period (or between the lifting of coronavirus restrictions on that business and the start of the moratorium period) should be treated as payments towards the unprotected debt.[48]

Restrictions on initiating insolvency and arbitration proceedings – clauses 24 and 25

Where a protected rent debt dispute has been referred to arbitration, no proposals for a company voluntary arrangement, individual voluntary arrangement, or applications for a Companies Act 2006 insolvency compromise or arrangement can be made during the "relevant period"

[47] See clause 22, and the Explanatory Notes, paras 137 and 138

[48] Clause 23 and Schedule 2

(**Clause 24**). These restrictions mostly apply in Scotland and Northern Ireland as well as England and Wales.[49]

The "relevant period" is the period between the arbitrator being appointed and ending with:

- when the arbitrator makes an award dealing with the protected rent debt, 12 months after the award is made;
- where the arbitrator dismisses the reference to arbitration, the day of the dismissal;
- where the arbitrator makes an award but it is set aside (dismissed) on appeal, the day of the appeal decision; or
- the day arbitration proceedings or abandoned or withdrawn.

Neither the landlord not tenant can refer a dispute about protected rent debt to arbitration using any process other than under Part 2 of the Bill during the "moratorium period", unless both parties agree (**Clause 25**).

Restrictions on winding-up petitions and bankruptcy orders – clause 26 and Schedule 3

During the "moratorium period", landlords cannot apply for winding-up petitions against tenant companies. As this restriction is already in place until the end of March 2022 for commercial rent debts, this provision would extend the restriction until the end of the moratorium period (for protected rent debts only).[50] The restriction on winding-up petitions applies in Scotland as well as England and Wales (**Clause 26**).

Where the tenant is an individual, the landlord will not be able to apply for a bankruptcy order against them relating to protected rent debts (or court judgements relating to protected rent debts). This will apply retrospectively from 10 November 2021, so any such order made between 10 November and the day the provision comes into force is deemed void.[51]

2.4 Part 4: final provisions

Future closure requirements – clause 27

The Bill recognises the possibility that future restrictions on businesses are possible.

The Secretary of State is empowered to make secondary legislation to allow the provisions of the Bill to apply to business tenancies whose premises is forced to close by any coronavirus restrictions in the future. Any such

[49] See the table in the Explanatory Notes Annex, p26 for specific details
[50] Schedule 3, para 1
[51] Ibid, paras 2 and 3

restrictions would be made by statutory instrument under the affirmative parliamentary procedure (**Clause 27**).

Northern Ireland – clause 28

The arbitration procedure under Part 2 of the Bill doesn't apply in Northern Ireland, but **clause 28** empowers the Northern Ireland executive to make regulations for similar purposes. This would allow the Northern Ireland government to tailor its own system to the situation there. The consent of the Northern Ireland Assembly is required for any legislation made under this clause.

A legislative consent motion is being sought from the Northern Ireland Assembly to allow for this clause to expand the areas on which it can legislate.[52]

Clauses 29 and 30

Clause 29 clarifies that the Act applies to the Crown (the Crown Estate is a large landowner and will for example be a landlord in many tenancies).

Clause 30 sets out the territorial extent of the Bill, as described in the beginning of this section. It also provides that the Bill comes into force on the day it receives Royal Assent, except for paragraph 1 of Schedule 3, as described in clause 26 (on winding-up orders) which have effect from 1 April 2022, after the expiry of the current restrictions on winding-up orders.

[52] See the table in the Explanatory Notes Annex

3 Commentary

This section was written before the Act's Commons second reading debate on 24 November 2021. It therefore refers to the Act and its measures as proposed legislation, and covers initial commentary only.

3.1 Impact Assessment

The Government's Impact Assessment for the Bill notes that it considered three main options: (1) do nothing and simply allowing current measures to expire in March 2022; (2) introduce a voluntary non-binding arbitration process; and (3) introduce an arbitration process with a binding outcome which in enforceable by the courts. Within option 3, two sub-options were considered: either (a) making the binding arbitration process available only to tenants who were forced to close during the pandemic; or (b) opening up the process to all businesses which closed (whether forcibly or voluntarily). The Bill reflects Option 3a.

The other options

The Government's concern about the first option is that it could create a "wave of unnecessary insolvencies and job-losses"[53]. Most respondents to the Call for Evidence – being mostly tenants - were against this option.[54] Other costs of Option 1 include are strain on the court system once restrictions end, reduced investment (e.g. fewer rent payments to landlords if they evict their business tenants), reduced footfall in high streets or shopping centres (due to tenant evictions), and reduced demand on suppliers (if tenant businesses are forced to close).

Option 2 would likely avert some insolvencies and redundancies, but fewer than if the third option was chosen.[55] The main reason given in the Call for Evidence for opposing this option is that it would not be effective unless it was binding.[56] The costs of this policy (which are shared with Option 3) would be the cost of appointing an arbitrator, lost working time spent on arbitration,

[53] Impact Assessment, para 13
[54] Ibid, para 28
[55] Ibid, para 20
[56] Ibid, para 37

the costs of legal representation, and one-off familiarisation costs.[57] Wider costs which the Government recognises are rent payments lost by landlords as a result of the arbitration, potentially reduced investment by landlords as a result, and the fact that the policy arguably rewards "less productive" firms by helping them avoid some of their rent debts (because a more productive or profitable firm may not have fallen behind on rent debts as much or needed the arbitration process).[58]

The preferred option

Option 3 was also considered to create more certainty for businesses[59] and it was the option most preferred by 57% tenant respondents to the Call for Evidence. 63% of respondents said this option would enable trade by building certainty and helping to resolve conflicts and re-establish cash-flows.[60]

The Government estimates 15,500 businesses to be within the scope of Option 3a (and therefore the Bill's arbitration procedure).[61] Around 7,500 cases would be expected to go to arbitration, and it would take between 3 and 15 months to resolve all arbitration cases.[62] Option 3b would significantly widen the scope of the regime and so the estimate is that it would have taken 6 to 35 months to deal with all cases under option 3b.[63]

Other costs of Option 3a (the Government's preferred option) include lost working time, legal representation (£9.2 million), and arbitration costs (£24.4 million). The average cost of an arbitration case (including lost hours and legal costs) is expected be around £3,250.[64] There would also be familiarisation costs to businesses and arbitrators.

The Government estimates that Option 3a (when compared with Option 1) would avoid 200 business insolvenices and 1,650 job redundancies.[65] Other benefits include avoiding the costs of court proceedings and preserving payments to other business creditors (as a result of businesses avoiding insolvency.

In England, the Impact Assessment estimates that there are around 1,200 arbitrators who are currently sklled enough to oversee arbitration cases under the Bill, and that the average arbitrator can take on 1 to 3 cases at one time. A desire to avoid overwhelming the arbitration system is one of the reasons that the wider Option 3b was not selected.[66]

[57] Ibid, paras 79-93
[58] Ibid, para 94
[59] Ibid, para 23
[60] Ibid, para 42
[61] Ibid, para 154
[62] Ibid, para 159
[63] Ibid, para 23
[64] 24.4 million divided by 7,500. See also Impact Assessment, para 163
[65] Impact Assessment, paras 171 and 176
[66] Ibid, paras 193 to 197

3.2 Stakeholder views

The Government press release announcing the Bill contained comments from four trade bodies.[67]

UKHospitality said it "welcome[d]" the November 2021 Code of Conduct introduced alongside the Bill and "share [the] government's view that arbitration should be a last resort". The new Code was also welcomed by the British Property Federation and the British Independent Retailers Association.[68]

The British Retail Consortium said they "support the principle of compulsory arbitration" but warned that "the devil will be in the detail on issues around what tenant viability really means in practice and the power of arbitrators".[69]

In the Government's Call for Evidence, two thirds of landlord respondents were against binding arbitration. The main reasons they gave were that it would be costly, time consuming and/or management intensive. Some suggested it would undermine existing legislation. Landlords' preferred option was to simply end existing temporary restrictions on enforcement, which would allow them to pursue rental debts more easily.[70]

Some landlords argue that a binding arbitration scheme could unfairly favour tenants over landlords - when the measures were extended in June 2021 and proposals for binding arbitration were announced, real estate disputes partner at law firm CMS Danielle Drummond-Bassington told Reuters that "Nothing is done here to address or recognise the financial pressure landlords are facing, or that there are tenants out there who can pay but have been taking advantage of the government's measures".[71]

"Magic Circle" law firm Freshfields Bruckhaus Deringer have described the Bill as a "a good way to resolve the problem of the pandemic rent arrears overhang".[72]

[67] Department for Business, Energy and Industrial Strategy and Department for Levelling Up, Housing and Communities, New measures in Bill to assist commercial landlords and tenants in resolving rent debts resulting from the COVID-19 pandemic, 9 November 2021

[68] Ibid

[69] Ibid

[70] Ministry of Housing, Communities and Local Government, Consultation outcome: Call for evidence on commercial rents: responses and analysis, updated 4 August 2021, para 3.6

[71] Reuters, UK extends COVID ban on business evictions until 2022, 16 June 2021

[72] Freshfields Bruckhaus Deringer, The Commercial Rent (Coronavirus) Bill: resolving remaining COVID-19 commercial rent debts? 12 November 2021

4 Commons stages

4.1 Second reading

The Second reading debate took place on Wednesday 24 November 2021, following which the Bill passed without a division. Seven MPs spoke in the debate (including Paul Scully for the Government, Ruth Cadbury and Seema Malhotra for the Labour frontbench, and Sarah Olney for the Liberal Democrats).

Mr Scully introduced the Bill, saying it would "put an end to the temporary protections and clear up the unpaid rent debt that is stalling commercial tenants and landlords and preventing them from prospering".[73]

For Labour, Mrs Cadbury said Labour "welcome[s]" the Bill but raised four areas where she believed further scrutiny was required. The first was on making sure levels of arbitration fees were not excessive. The second was on ensuring there was a fair and reasonable method for arbitrators to assess the "viability" of businesses. The third was on transparency and consistency in the arbitration and appeals process, and the last was ensuring that the arbitration process can be in place by March 2022.[74]

Mrs Malhotra asked the Government how they will ensure businesses are aware of their ability to use the arbitration process, and requested that the Government "go much further in the provision of support in respect of business rates reform and the other costs and supply-chain issues that are hitting businesses and consumers hard."[75]

Mrs Olney said the Liberal Democrats also "welcome" the Bill, but expressed regret that the Bill was not passed sooner. She also said she wants to see "more discussion" on how arbitrators assess business viability, arguing it is "difficult to see how we can have one set of guidance that covers the viability of every kind of business of every size and every sector."[76]

[73] HC Deb 24 November 2021, vol 704 col 386
[74] Ibid, col 389
[75] Ibid, col 395-398
[76] Ibid, col 392-394

4.2 Committee stage

The Commercial Rent (Coronavirus) Bill Public Bill Committee met four times, on 7, 9 and 14 December. The Committee comprised 17 members (10 Conservatives and 7 Labour).[77]

On 7 December, the Committee heard witness evidence from representatives of the following organisations:

- from a mainly tenant perspective, trade bodies UKHospitality, the British Retail Consortium; UKactive; the Federation of Small Businesses; and the British Independent Retailers Association
- From a mainly landlord perspective, the British Property Federation and Lightstone Properties; and
- The Chartered Institute of Arbitrators.[78]

Eight amendments and one new clause were tabled at Committee stage, all by the shadow frontbench (Ruth Cadbury and Seema Malhotra).[79] However, only Amendment 4 was pressed to a division.[80]

As originally drafted, clause 19 of the Bill gives the Secretary of State the option of specifying limits on arbitration fees by making regulations. Amendment 4 would have amended this to **require** the Secretary of State to set such limits. Mr Scully said the Government rejected this amendment because they "do not want to specify cost limits unless there is a need to do". Mrs Malhotra however said she would push the amendment to a vote because it is an "important issue", whereupon the amendment was defeated along party lines by 7 to 10 votes.[81]

During the course of Committee stage written evidence was received raising concerns about certain provisions from a number of organisations.[82] These included concerns about:

- the Bill's proposed timing and implementation;
- whether guarantors, intermediate tenants and former tenants are or should be included within the scope of the Bill's measures;
- whether the definition of "business tenancy" under the Bill is too narrow;

[77] Official report, Public Bill Committee, Commercial Rent (Coronavirus) Bill, p3
[78] Ibid, p4
[79] Commercial Rent (Coronavirus Bill), Amendment Paper, Tuesday 7 December 2021
[80] Official report, Public Bill Committee, Commercial Rent (Coronavirus) Bill, p70-71
[81] Ibid
[82] See the "Written evidence" part of the "Publications" section on the Bill page

- whether the Bill should make greater provision for arbitration hearings to be held in private; and

- whether service charges should be included as protected rents.

At the conclusion of Committee stage, Mrs Cadbury noted that some of the expert evidence raised "significant concern" about some of the Bill's provisions, and asked the Government to "address some of the detailed and expert points that they raise". Mr Scully said the Government would "continue to engage with stakeholders, including arbitration services, landlords and tenants, to ensure that we get it right".[83]

The Bill was then reported back to the House, in anticipation of Report stage, without amendment.

4.3 Report stage and third reading

Report stage and third reading took place on 12 January 2022, without any divisions. Only Minister Paul Scully and Shadow Minister Seema Malhotra spoke.

Report stage

21 amendments were tabled for Report stage – 12 by the Government in the name of Mr Scully, and 10 for the Opposition in the names of Seema Malhotra and Ruth Cadbury.[84]

At Report stage, Mrs Malhotra said that "Labour broadly welcomes the Bill, but we believe that the Government can and should do more on business support"[85]. Labour had therefore tabled its amendments "in a positive spirit, to continue the dialogue that we had at the earlier stages of the Bill".[86] In response, Mr Scully explained the Government's reasons for rejecting each of Labour's amendments, before turning to the 12 Government amendments.

He said that the Government amendments comprised two categories: "technical amendments tabled by the Government and the substantive amendment that we are tabling at the request of the Northern Ireland Assembly".[87] The amendments were explained as follows:

[83] Official report, Public Bill Committee, Commercial Rent (Coronavirus) Bill, p81
[84] See the Report stage Amendment Paper, Wednesday 12 January 2022
[85] HC Deb 12 January 2022, vol 706 col 610
[86] As above
[87] As above, col 617

Amendments made at Report stage

Amendment Number	What clause did it amend?	Government explanation
1, 2	2	"technical amendments to make it clear that the definition of "service charge" in clause 2 covers both fixed and variable costs, as well as costs incurred by the landlord insuring against loss of rent. That has always been our intention, and the amendments help to make it clear, ensuring that all relevant costs and charges are within the scope of the arbitration process"
3, 8	10 and 24	"make it clear that the provisions of clauses 10 and 24, in so far as they relate to company voluntary arrangements or certain restructurings, apply to limited liability partnerships. That is in addition to their usual application to companies. These are minor clarificatory amendments"
4, 5, 6, 7	19 and 20	"minor and technical" amendments which "make it clear that the general rule is that the party that has paid fees is to be reimbursed half the amount by the other party, but where appropriate, the arbitrator may determine a different proportion, including zero"
18, 19	28 and 30	"The Northern Ireland Department of Finance and Department for the Economy have requested the removal of the existing delegated power for them to make regulations for purposes corresponding to the purposes of the Bill, set out in clause 28. This decision was taken for several reasons, which include the availability of existing dispute resolution facilities, plus a lack of compelling evidence that rent debt in Northern Ireland is on a scale to require additional measures...The removal of clause 28 necessitates an amendment to the Extent provision in clause 30(2)..."
20, 21	30	The amendments "ensure that clause 24(4) [which says that the Act's restrictions on initiating insolvency arrangements apply to both companies and limited liability partnerships] extends to Northern Ireland in relation to company compromises and arrangements, but not company voluntary arrangements." This is "for consistency with the extent of the legislation covering those matters",

The twelve Government amendments described above were all agreed without a division.

Only one of the ten Opposition amendments was called for debate by the Deputy Speaker. This was New Clause 1, which would have required the Government to review, within three months of the Act being passed, whether arbitrators had been assessing cases consistently. Mr Scully responded that

this new clause "could slow down the process by adding additional steps and requirements for arbitrators that have already proved their suitability for the role". Mrs Malhotra subsequently agreed not to press the new clause to a vote, and withdrew it.[88]

Third reading

Third reading was taken immediately after Report stage. Mr Scully noted that the Bill "demonstrates the Government's commitment to supporting the orderly resolution of commercial rent debt accrued during the pandemic". Mrs Malhotra reiterated that "Labour support the Bill" but said it "could be further improved" and called the Bill's timing "disappointing, because we called for action over rent debt and wider business costs earlier last summer, ahead of the end of restrictions". The Bill was then given its third reading without a division. [89]

[88] As above, especially col 614

[89] As above, cols 620-23

5 Lords stages

The Bill was introduced to the House of Lords on 13 January 2022, the day after it completed its passage through the Commons.

5.1 Second reading

The second reading debate took place on 27 January with five peers contributing, although formal second reading took place (without a division) on 1 February 2022.[90] The debate took place in the Moses Room rather than the Lords Chamber.

Business Minister Lord Grimstone opened the debate. He noted that many landlords and tenants had decided to come to agreements on rent arrears in anticipation of this Bill, estimating that total disputed business rent arrears would be around £1.5 billion in March 2022, with about 7,500 cases expected to use the arbitration scheme. He concluded that the Bill would "support the resolution of unpaid rent debt that is preventing commercial tenants and landlords from recovering" from the pandemic.[91]

Liberal Democrat peer Lord Shipley said that the Bill "seems to balance the needs of landlords and tenants fairly". Crossbencher the Earl of Lytton agreed that the Bill was "essential" but raised concern that the Bill could set a precedent for "future "step-in" powers", leading to a loss of confidence for investors in the sector.[92]

Liberal Democrat Business spokesperson Lord Fox and Shadow Business Spokesperson Baroness Blake said the Bill was "important"[93], but Lord Fox noted that there was "other work to be done in maintaining local economies, particularly in the most underprivileged and least well-off areas".[94]

In closing, Lord Grimstone said it was "a shame that we did not have a larger audience to see us in action" but said he would "look forward to discussing it in Committee".[95]

[90] HL Deb 1 February 2022, vol 818
[91] HL Deb 27 January 2022, vol 818, col 90GC-93GC
[92] As above, col 97GC
[93] As above, col 100GC
[94] As above, col 100GC
[95] As above, col 106GC

5.2 Committee stage

The Committee stage debate took place in one sitting on 10 February 2022. 13 amendments were tabled: six in the name of Minister Lord Grimstone, four in the names of Baroness Blake and Lord Fox, one in the sole name of Baroness Blake, and two in the sole name of Lord Fox.

All six Government amendments were made to the Bill, and all non-Government amendments were not called or withdrawn.

Amendments made at Lords Committee stage

Amendment number	What clause did it amend?	Government explanation[96]
1	4	Clause 4 "sets out what is meant by a business being "adversely affected by coronavirus", with certain rent debts under such businesses' tenancies being in scope for arbitration…Subsection (3) provides important clarity that a requirement to close at particular times is a closure requirement. Amendment 1 ensures that this provision applies in relation to closure of either premises or businesses, or parts of premises or businesses."
4	14	This "would clarify that an arbitrator's award of relief from payment of protected rent alters the effect of tenancy terms as to the payment of that rent. This means that any other person liable to pay the protected rent is only liable in relation to payments required under the award. It is "intended to give clarity, as requested in a comment in written evidence in the" Commons.
8 and 9	27	"Clause 27 provides a power to apply provisions of the Bill again in order to act swiftly in the event of another wave of coronavirus requiring further mandated closures. Amendment 9 would ensure that the power can be used for mandated closure after the protected period in the Bill, whether before or after the Bill is passed, and whether or not the closure requirement has ended when regulations are made. Amendments 8 and 9 also clarify the meaning of a closure requirement, and more closely align the drafting with corresponding provisions of Clause 4. We have seen that the Covid landscape can change very quickly; Amendments 8 and 9 are therefore to ensure the power is clear and robust for any new waves.
11 and 12	Schedules 2 and 3	These amendments "would secure that references to the tenant include any other persons who are liable under a business tenancy for payment of rent", as raised in a "a helpful comment made in written evidence in the" Commons.

[96] Explanations taken from HL Deb 10 February 2022, vol 818

Debate on Clause 27

Background: Committee report

In a report published on 3 February 2022, the House of Lords Delegated Powers and Regulatory Reform Committee said Clause 27 (power to apply Act in relation to future periods of coronavirus control – current section 28) "gives ministers a very broad discretion to change how the Bill would work in relation to future periods of coronavirus control. It would allow changes of a kind that would give rise to serious policy issues and which we consider ought not to be a matter for secondary legislation".[97]

The Government's response to the Committee report was published on 7 March 2022. In it, Lord Grimstone said there was a "clear rationale" for the clause, but that the Government didn't intend to use the power to change the policy intentions of the Bill, and the Government would therefore be tabling amendments for Report stage to make this clear.[98]

Committee stage debate on Clause 27

At Committee stage Lord Fox noted that Clause 27 have "drawn the ire of the Delegated Powers and Regulatory Reform Committee", accusing the Government of a "consistent practice" of granting broad discretion to Ministers. He therefore indicated that he would opposite Clause 27 being included in the Bill. Baroness Blake said she has "real concern" about Clause 27, and crossbencher Lord Thurlow said clause 27 was unnecessary because further primary legislation could be passed to deal with future closures if required.[99]

Lord Grimstone responded that Clause 27 was "important" because "the future of the pandemic is uncertain", but pledged to "carefully consider" the Committee's report "as we prepare for Report". Lord Fox agreed to withdraw his opposition to Clause 27 and allow it to pass, but said he thought he and Baroness Blake would "both consider it necessary to take this forward in the event that the Minister was unable to meet the [Committee] at least most of the way."[100]

[97] Delegated Powers and Regulatory Reform Committee, 19th Report of Session 2021-22, 3 February 2022, p3-4

[98] Delegated Powers and Regulatory Reform Committee, 21st Report of Session 2021-22, 7 February 2022, p11

[99] HL Deb 10 February 2022, vol 818, col 498-500GC

[100] As above

5.3 Report stage and third reading

Report stage

Report stage took place just under a month after Committee, on 9 March. 25 amendments were tabled for Report stage: 13 by the Government (in the name of Lord Grimstone), 10 in the name of the Earl of Lytton, and two in the names of Baroness Blake and Lord Fox.

All 13 Government amendments were made without a division, and all non-Government amendments were not called or withdrawn.

Amendments made at Lords Report stage

Amendment number	What clause did it amend?	Government explanation[101]
1, 6, 7, 16, 17, 18 (new clause), 19, 22, 23, 24, 25 (new clause)	2, 9, 23, 27 and new clauses 23A and 27A	Amendments which "are the result of extensive discussions with Welsh Ministers, who expressed their wish that the delegated powers in the Bill be redrafted to clarify areas of Welsh competence." Amends to Clause 2 inserts new definitions. Amends to: - Clause 9 "clarify that the power to extend the arbitration reference period can be exercised for English business tenancies or for Welsh business tenancies, as well as for both" - Clause 23 "decouple the moratorium period and the period for making a reference to arbitration" - Clause 27 "enable regulations under this clause to be made just for English business tenancies, or just for Welsh business tenancies, or for both... [and] also provide that the UK Government will seek the consent of Welsh Ministers on the use of powers to reapply the Act for Welsh tenancies in response to future periods of coronavirus-related business closures" and (for amendment 24) make a technical drafting change to ensure consistency. New Clause 23A "provides that the UK must seek the consent of Welsh Ministers to extend the Bill's moratorium period for Welsh business tenancies in respect of devolved matters". New Clause 27A "has been included to enable Welsh Ministers, concurrently with the Secretary of State, to use the power to reapply the relevant moratorium provisions to Welsh business tenancies".
20, 21	27	"Following careful consideration of [the] report [of the Delegated Powers and Regulatory Reform Committee], I have now made several amendments to ... limit the breadth of the Secretary of State's powers to reapply the provisions of the Bill in the future. The amended power would allow for

[101] Explanations taken from Lord Grimstone's Report stage contributions: HL Deb 9 March 2022, vol 819

> targeted modifications to accommodate new dates and to make adjustments to moratorium provisions to take account of new timeframes. However, it would not permit changes to the operation of the arbitration process or policy."

Lord Fox, speaking for the Liberal Democrats on the Government amendments, said that "Overall, we welcome this group of amendments and think them a very good improvement to the Bill as we now see it."[102] For Labour, Lord Lennie (replacing Baroness Blake who was ill with coronavirus) said he "also welcome the Government's moves".[103]

Lord Grimstone confirmed that the Welsh Government was happy with the amendments, and that the Welsh Parliament had now passed a legislative consent motion for the Bill. He also said that the Government had revised down its expectation of the number of cases that would use the Bill's arbitration scheme, from 7,500 to 2,500,[104] and that 12 arbitration bodies had applied to administer cases under the scheme.[105]

On 23 February 2022, between Lords Committee and Report stages, the Government published draft guidance to arbitrators on how the scheme would work.[106] Lord Grimstone said that this draft guidance had "been very well received by stakeholders—in particular the guidance on the assessment of the tenant's viability…My officials are having ongoing discussions with stakeholders which will inform the final version… We expect the final guidance to be published as soon as possible after Royal Assent." He also confirmed that if "the guidance needs to be updated in any respect as the scheme unfolds, we will do so and make sure that any such changes are publicised".[107]

Third reading

Third reading took place on 15 March 2022. One further Government technical amendment was made to Schedule 1 at this stage (without a division). Lord Grimstone explained:

> I said on Report that I would consider and return to a point about the extent to which arbitration bodies may have immunity. This technical amendment follows that consideration.
>
> Section 74 of the Arbitration Act essentially protects an arbitration body from incurring liability in relation to a function of appointing an

[102] As above, col 1471
[103] As above
[104] As above, cols 1471 and 1475
[105] As above, col 1474
[106] See Department for BEIS, Guidance: Arbitration on rent debt relief for businesses affected by coronavirus, 23 February 2022
[107] As above, col 1475

> arbitrator. Amendment 1 would provide that Section 74 also applies where approved arbitration bodies exercise their function of removal of arbitrators under the grounds listed in the Bill. The bodies will thereby have immunity for things done or omitted in the discharge of this function unless they act in bad faith.[108]

Lord Grimstone then recapped the amendments made to the Bill during its passage in the Lords, thanking various parties involved in passing it. He noted that the Government had engaged with…stakeholders at great length" for the Bill.[109] Lords Lennie and Fox also reiterated the Bill's cross-party support, following which the Bill was given its third reading without a division.

[108] HL Deb 15 March 2022, vol 820

[109] As above, col 175

6 Commons consideration of Lords amendments

In total, 20 amendments were made to the Bill during its passage in the Lords: 6 at Committee stage, 13 at Report stage, and one at Third reading. These were considered by the Commons on 23 March 2022, in which only Minister Paul Scully and Shadow Minister Seema Malhotra participated.

Mr Scully explained the amendments that had been made, saying he would be "pleased to see the measures in the Bill play their part in encouraging a return to normal market operation" following the pandemic. Mrs Malhotra noted that the "amendments improve the Bill and we support them all" but reiterated concerns about: the costs of arbitration proceedings, ensuring sufficient numbers of arbitrators are available, and ensuring decisions are "demonstrably fair and there is consistency of assessment".[110]

In response, Mr Scully confirmed that the Government "will monitor the affordability of the scheme by engaging regularly with arbitration bodies" and want to make sure that the "scheme is delivered in good time by skilled and capable arbitrators". He also gave an assurance that "we will work with arbitration bodies to monitor and manage capacity."[111]

The Commons then agreed all Lords amendment without a division. Royal Assent was granted the next day, on 24 March 2022.

[110] HC Deb 23 March 2022, vol 711 col 393 to 399

[111] As above

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