



Coronavirus Act 2020 – Business Premises: what you need to know

Background

On 23 March 2020 the government ordered the closure of all non-essential businesses and venues that involved “prolonged close social contact”. The effect was to shut down restaurants, bars, city centres and high streets throughout the country.

Emergency legislation came into force on 25 March 2020, in the form of the Coronavirus Act 2020 (the Act), to protect business tenants affected by the closures. Section 82 of the Act contains dramatic, albeit temporary, protection in cases of non-payment of rent.

Many businesses are inseparable from the premises they trade from. Where the business can't continue because the premises is closed, but the lease can be forfeited for non-payment, the risk arises that the temporary challenge of Covid-19 will lead to the permanent failure of an otherwise viable business. Prior to 25 March 2020 the non-payment of any sum reserved as rent would, subject to the terms of the lease and certain procedural restrictions, entitle a landlord to forfeit a business tenancy by the issuing of possession proceedings or by re-entering the premises and taking possession. A forfeiture would immediately bring an end to the tenancy unless and until the tenant claimed, and was granted, relief from forfeiture.

Coronavirus Act 2020 and business premises

Section 82 of the Act prevents forfeiture of business tenancies for non-payment of rent during the ‘relevant period’, currently 25 March 2020 to 30 June 2020, which may be subject to extension. The pertinent provisions are:

- The right of re-entry or forfeiture for non-payment of rent may not be enforced by court proceedings or physical re-entry.
- Forfeiture proceedings commenced before 25 March 2020 are also suspended in both the High Court and county courts.
- Non-payment of rent during the relevant period cannot be relied upon by a landlord in any future disputed lease renewal proceedings.
- A landlord is not to be regarded as waiving the right to forfeiture during the relevant period other than by an express waiver in writing.

In addition to the Act, procedural limitations have been imposed on all possession proceedings including forfeiture for rent arrears. On 27 March 2020 CPR PD 51Z came into force, staying all proceedings for, and to enforce, possession for 90 days from the date the practice direction came into force. Claims for injunctive relief are not affected by the stay. The practice direction ceases to have effect on 30 October 2020.

This is a dramatic scheme of protection for business tenants and is likely to have wide reaching ramifications for landlords of business premises – on the same day the legislation came into force Primark refused to pay rent due for the next three months, reported to be some £33,000,000, and JD Sports has joined them in failing to pay its quarterly rent due on 25 March. A number of landlords are known to have been struggling financially and it is unclear what effect these regulations will have on their solvency.

Will these changes have the desired effect?

The interpretation of these provisions in practice will need to be monitored closely. Of note, Section 82 is not limited to business tenants under Part 2 of the Landlord and Tenant Act 1954. Although the section only mentions ‘tenants’ in its operative parts, it includes in Section 82(1) the concept ‘relevant business tenancy’ which is defined in Section 82(12) to include ‘relevant

occupiers’, as meaning ‘*a person, other than the tenant, who lawfully occupies premises*’. Considering that a tenant of an underlease, granted without the consent of the superior landlord, will still have security of tenure provided the criteria contained in Section 23 of the LTA 1954 are satisfied, it is unclear whether this category of occupier excludes sub-tenancies granted without consent of the landlord.

Further, if business premises are closed for significant periods, rent arrears may not be the only breach that gives rise to the right to forfeiture. Unless the tenant takes action, premises may be left unoccupied, unsecured and could fall into disrepair or be subject to squatting.

It is important to note that these provisions do not affect the terms of the Lease. They simply affect the manner of enforcement available for breaches. It remains important for Landlords and Tenants to ascertain the provisions of their own Leases and, where relevant, Lease Agreements, to understand their obligations.

Landlords faced with non-payment, should consider whether steps can be taken to secure premises themselves or to undertake necessary repairs. Furthermore, the liability to pay rent is unaffected and, at the end of the relevant period, the right to re-entry or forfeiture will immediately become available if the arrears are not paid. There is currently no adjustment period provided for in the Act and, more remarkably, there is no apparent bar against enforcement of rent arrears as a debt claim.

Injunctive relief remains available for both landlords and tenants. Landlords may require access to repair or secure premises and, conversely, should a landlord (of a relevant business tenancy) exercise a physical re-entry during the relevant period, the tenant should seek immediate injunctive relief to regain possession.

Useful links

- Guidance on what businesses are permitted to remain open and what restrictions are to be in place is available at <https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>
- Coronavirus Act 2020 c.7
<http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>

- Practice Direction 51Z <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51z-stay-of-possession-proceedings.-coronavirus>

Philippa Daniels
Anthony Katz

2 April 2020

36 Commercial
Email: clerks@36commercial.co.uk

36 Commercial - Key Contacts:

Steven Newbery (Commercial Practice Manager)

steven@36commercial.co.uk

Tel: +44 (0) 207 421 8051

Mobile: 07786 023 245

George Scanlan (Commercial First Junior)

George@36commercial.co.uk

Tel: +44 (0)202 421 8051

<https://36group.co.uk/commercial>