



REAL ESTATE | Government extends suspension of commercial property evictions and introduces new code of practice for June quarter

The UK government has confirmed today that it will be renewing the package of measures it introduced for tenants in the commercial property sector unable to pay their rent due to the COVID-19 pandemic, including extending the moratorium on forfeiture and the restrictions on issuing statutory demands and winding up petitions from 30 June until 30 September 2020. Secondary legislation will also be enacted to prevent landlords from using commercial rent arrears recovery unless they are owed 189 days of unpaid rent (the previous threshold was 90 days). The time period for this measure will similarly be extended to the end of September. The measures are expected, but mean that landlords' remedies against tenants for unpaid rent will continue to be significantly restricted for the next 3 months.

In addition, a voluntary code of practice has been published to help facilitate discussions between commercial property landlords and tenants in relation to rent negotiations. The code sets out expectations that landlords and tenants should share the costs and risks arising from the COVID-19 pandemic in a measured way. It is not intended to undermine or alter the legal relationship between landlords and tenants or override arrangements which have already been put in place. Importantly the code states that tenants who are in a position to pay in full should do so, and if they cannot pay in full they should pay what they can, although of course this needs to be read in the context of the landlords having reduced options available to them to secure payment. Landlords are also expected to show leniency to businesses where they can afford to. The code makes clear that tenants should justify their claims to assistance. They should, for example, demonstrate they have already made use of the business assistance schemes introduced by the UK Government and that they would be viable but for the COVID lockdown. The code advises that any service and insurance charges payable under a lease should continue to be paid in full but that they should be reduced accordingly where the lack of use of

a property has lowered the service charge costs incurred.

For landlords, this code of practice is unlikely to materially change the status quo, as the majority of landlords have not been indifferent to the impact of the coronavirus crisis on their tenants and have already been proactively working to find ways to restructure their rent payments to assist in the short to long term, including agreeing rent holidays, rent reductions and rent deferrals. Disappointingly, given that the code asks landlords to continue to exercise restraint, it does not offer them protection from enforcement action by lenders if they are unable to service debt due to tenants defaulting, which is a significant concern for landlords given their financial commitments and fiduciary duties. UK Finance has published a statement that its members will continue to support commercial landlords including amendments to facilities and capital payment holidays but no formal measures have been introduced by the government. Although we welcome the code as giving landlords and tenants a structure for their discussions to navigate the effect of the pandemic, we cannot help but notice the contradiction with the legislation itself which severely curtails a landlord's ability to protect its own interests should tenants choose to disregard their lease obligations and the principles outlined in the code.

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