

## Rights of Landlords & Tenants - Unpicking the Effect of the UK Coronavirus Act

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On 25<sup>th</sup> March 2020 the UK government passed the Coronavirus Act 2020 (the “Act”) granting emergency powers to deal with the COVID-19 pandemic. The Act includes some limited protection for commercial tenants.

### SUMMARY

There is some confusion as to the effect of the Act: it does not provide a moratorium against the enforcement of a landlord’s rights against its tenant. In its simplest terms, landlords have lost their right to forfeit for non-payment of rent until 30 June 2020. However, landlords may still take other action against tenants. In particular, landlords may commence winding up proceedings against tenants for unpaid rent.

### WHAT DOES THE ACT DO FOR BUSINESS LEASES?

Section 82 of the Act suspends rights of re-entry or forfeiture for relevant business tenancies in England and Wales as a result of non-payment of rent for the relevant period – i.e., for so long as these provisions have effect, landlords cannot terminate business leases if tenants do not pay rent. Rent in this context is defined very widely to include all sums payable under the lease, therefore including principal rent, service charges and insurance rent. These suspension of forfeiture provisions initially run from 26 March 2020 to 30 June 2020 but the period may be extended. Ordinarily landlords who have knowledge of a tenant’s breach but take actions which recognise a lease as continuing to exist risk waiving a right to forfeit; s.82(2) confirms that will not be the case during the period these provisions are in force.

### WHAT DOESN'T THE ACT DO?

The Act does not override the obligations in business leases for tenants to pay rents; failure to pay is still a breach of the lease. All remedies short of forfeiture remain available to landlords. Most business leases will include provisions for penalty interest to accrue on unpaid sums and that will still be the case during the suspension period. In theory, landlords may still use the commercial rent arrears recovery regime to take control of a tenant’s goods and sell them. Although in practice, taking such steps in the current environment will be impractical.

The Act does not provide protection for tenants beyond the relevant period; any tenant who is not up to date with their lease payments when the relevant period ends (currently intended to be 1 July 2020) faces the immediate risk of a forfeiture action by its landlord. The protections which landlords currently have against waiving their right to forfeit will also end on the same date, so landlords may need to act quickly to protect their position.

The Act only provides protection for a tenant’s failure to pay rents, not for any breaches of other lease covenants. Landlords still have the full range of remedies available to them in respect of these other breaches.

Landlords may still take other forms of action against tenants. In particular, landlords may commence winding up proceedings against tenants for unpaid rent. This is why we are continuing to see landlords taking action against tenants by seeking to commence a winding up process, for example by the landlord of Caffè Concerto’s Haymarket premises. The courts remain open and, to date, the government has not introduced measures to curb the threat of winding up petitions.

## CONCLUSION

Whilst the Act does provide some limited protection for business tenants, there are still a number of risk factors and the prudent approach for both landlords and tenants would be to negotiate specific arrangements to cover operation of leases during these uncertain times. This is consistent with the spirit of the legislation which is intended to provide a period of breathing space for landlords and tenants to reach an agreement, recognising that the liabilities will continue to accrue and be owed. The Goodwin [Real Estate Industry](#) and [Financial Restructuring](#) teams are available to assist both landlords and tenants in these difficult times.

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