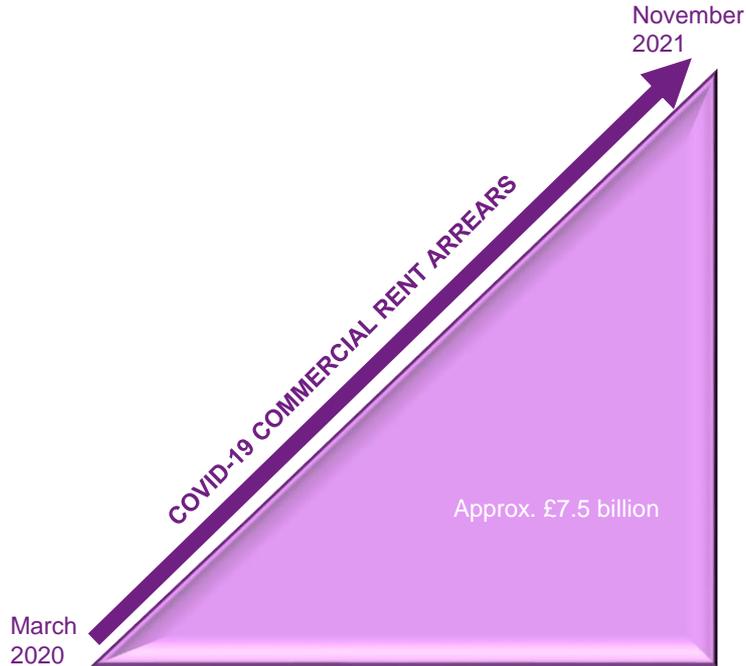


# Snapshot

**The Commercial Rent (Coronavirus) Bill and new Code of Practice for COVID-19 rent arrears**

# Up to November 2021



- COVID-19 regulations forcing the closure of, or restrictions on, certain businesses and/or premises
- Restrictions on the use of forfeiture, Commercial Rent Arrears Recovery and winding-up petitions – due to expire March 2022
- Voluntary Code of Practice
- Some parties have negotiated settlement of arrears, others have not
- Some tenants have tried to persuade the courts that the pandemic should relieve them of their contractual commitments to pay rent – so far those arguments have been unsuccessful

# November 2021

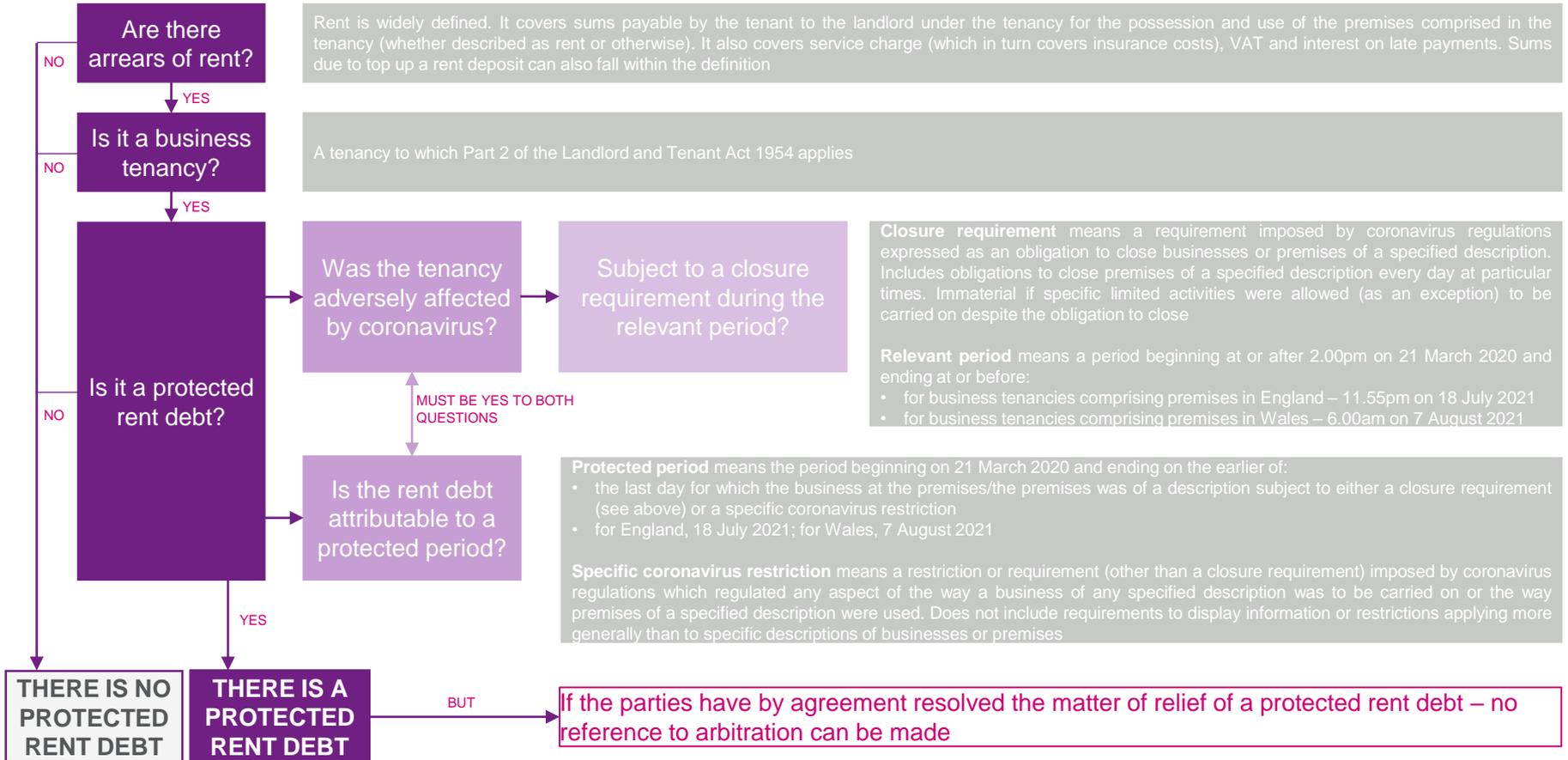
## COMMERCIAL RENT (CORONAVIRUS) BILL

- Expected to come into force March 2022
- Commercial tenancies in England and Wales
- Scheme of binding arbitration for determining what, if any, relief from COVID-19 rent arrears should be awarded
- Applies only to protected rent debt
- Reference to arbitration can be made within six months of enactment
- Arbitration award as soon as reasonably practicable (unless oral hearing)
- Relief:
  - writing off the whole or any part of the debt
  - giving time to pay/payment by instalments and
  - reducing (including to zero) any interest due
- Further restrictions on enforcement action/insolvency proceedings in relation to protected rent debt

## CODE OF PRACTICE

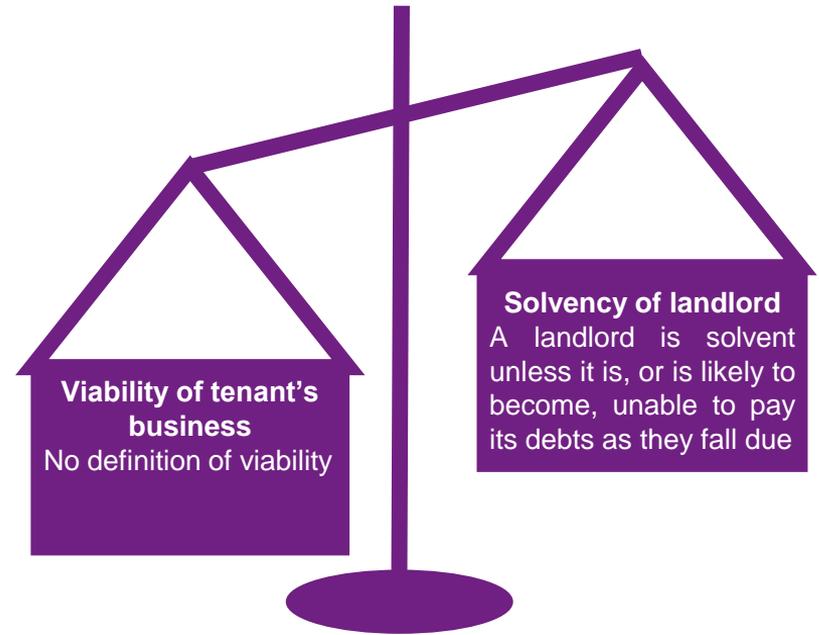
- Immediate effect
- Applies to UK tenancies
- Advice on how parties should behave and approach arrears negotiations
- Complements the Bill

# Is there a protected rent debt?



# Key principles

- Any award should be aimed at:
  - preserving (where the tenant's business is viable) or
  - restoring and preserving (where the tenant's business would become viable if given relief from payment)the viability of the business of the tenant, so far as that is consistent with preserving the landlord's solvency AND
- The tenant should, so far as to do so is consistent with the principle above, be required to meet its obligations as regards the payment of protected rent in full and without delay



## Disregarding:

- anything done by a party to manipulate its financial affairs so as to improve its position in relation to the award to be made
- the possibility that a party may borrow money or restructure its business

# Restrictions on remedies

**Moratorium period** means the period beginning on the day on which the Act is passed and ending:

- if the matter is not referred to arbitration within the prescribed period (currently six months from the enactment of the Act), the last day of that period
- where the matter is referred to arbitration, the day on which the arbitration concludes

Action	Current position	From enactment of the Bill
Forfeiture	Current moratorium in place until 25 March 2022	Further moratorium for protected rent debt for the moratorium period
CRAR	Until 25 March 2022, minimum amount of net unpaid rent that must be owing before CRAR can be used is: <ul style="list-style-type: none"> <li>• from 25 March 2021 until 23 June 2021 (inclusive), 457 days' rent and</li> <li>• from 24 June 2021, 544 days' rent</li> </ul>	Cannot be used in relation to protected rent debt for the moratorium period
Debt claims	Until 9 November 2021, there were no restrictions  The Bill contains retrospective provisions to allow the parties to stay any debt claims made by a landlord against a tenant (or guarantor) on or after 10 November 2021 which relate to or include protected rent debt. If judgment is given in a claim initiated on or after 10 November 2021, then it will not be enforced and instead the issue of the protected rent debt can be referred to arbitration in accordance with the Bill	Landlords may not, during the moratorium period for the protected debt, make a debt claim (including by way of counterclaim) to enforce the protected rent debt
Landlord's right to appropriate rent	Currently no restrictions  The Bill contains retrospective provisions requiring any rent payments made (but not appropriated by the tenant) during the relevant period to be deemed as having been applied to any unprotected rent debt before it is applied to any protected rent debt. If the landlord has exercised its right to appropriate the rent payment during the relevant period to the protected rent debt, that will be deemed ineffective. The relevant period begins on the day after the last day of the protected period for the debt (see previous slide) and ends with the day before the first day of the moratorium period of the debt. Any exercise of the landlord's right to appropriate rent to protected rent debt contrary to these provisions will be ineffective	On receipt of a rent payment during the moratorium period for which the tenant has not exercised any right of appropriation, the landlord's right to appropriate the payment must be used to apply the payment to meet any unprotected rent debt before it is applied to any protected rent debt
Rent deposits	Currently no restrictions	Landlords may not, during the moratorium period for the debt, recover the debt from the tenancy deposit  If the landlord has recovered the debt from the tenancy deposit prior to the beginning of the moratorium period, the tenant is not required to make good any shortfall in the deposit before the end of that period

# Restrictions on insolvency and arbitration arrangements

**Moratorium period** means the period beginning on the day on which the Act is passed and ending:

- if the matter is not referred to arbitration within the prescribed period (currently six months from the enactment of the Act), the last day of that period
- where the matter is referred to arbitration, the day on which the arbitration concludes

Action	Current position	From enactment of the Bill
Winding-up petitions	Creditor must demonstrate that it has sought to negotiate the repayment of the debt and must send a notice to the company giving it 21 days to respond with proposals for paying the debt. The debt owed must be at least £10,000. Petitions cannot be brought in respect of a commercial rent debt until the end of March 2022 unless the creditor can prove that the non-payment of the debt is not related to the pandemic	The landlord may not, during the moratorium period for the debt, present a petition for the winding-up of the company unless the landlord is owed a debt by the company which is not a protected rent debt
CVAs etc.	Currently no restrictions	<p>During the relevant period:</p> <ul style="list-style-type: none"> <li>• no proposal for a CVA</li> <li>• no proposal for an IVA</li> <li>• no application for a compromise or arrangement</li> </ul> <p>in relation to the whole or part of a protected rent debt can be made</p> <p>Relevant period begins with the day on which an arbitrator is appointed and ends:</p> <ul style="list-style-type: none"> <li>• where the arbitrator makes an award, 12 months after the day on which the award is made</li> <li>• where the arbitrator makes an award dismissing the reference, the day on which that award is made</li> <li>• where an arbitrator's award is set aside on appeal, the day on which that decision is made</li> <li>• where arbitration proceedings are abandoned or withdrawn by the parties, the day of that abandonment or withdrawal</li> </ul>
Bankruptcy	Not considered here	Not considered here
Arbitration proceedings outside the Bill	Currently no restrictions	Neither the tenant nor the landlord may initiate arbitration proceedings outside the Bill in relation to the protected rent debt during the moratorium period for the debt unless the other party agrees



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