

# COVID-19 and real estate in England and Wales

## November 2020 snapshot

In this updated snapshot we summarise, in one place, the key COVID-19 legal developments affecting commercial real estate in England and Wales since early September 2020.

To see our previous snapshots issued on:

- 9 June 2020, please [click here](#).
- 22 July 2020, please [click here](#).
- 4 September 2020, please [click here](#).

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## Significant developments since our previous snapshot alert on 4 September 2020

The following significant developments have occurred since the date of our last snapshot alert:

- The principal lockdown restrictions in both England and Wales have changed significantly since our last alert. As Wales emerges from another national “fire breaker” lockdown, England is in the early stages of a second national lockdown.
- Various government protection measures have been extended, including the temporary moratorium on forfeiture for non-payment of rent which will now remain in place until 31 December 2020.
- Another quarter day has passed. Figures indicate rent collection is, unsurprisingly, still down.
- The High Court handed down its judgment in the Financial Conduct Authority’s test case on business interruption cover on 15 September 2020. The case considered the wording of various policies relating to business interruption cover. While the judgment was largely considered to be favourable to policyholders, leave has been granted for a “leap-frog” appeal to the Supreme Court and we wait to see what happens next.
- On 14 October 2020, Dentons launched its [Real Estate Litigation interactive possession and enforcement tool-kit](#) which is designed to help clients understand the current restrictions on, and opportunities for, leasehold enforcement action. This tool sits alongside our existing [COVID-19 Interactive Lease Tool](#) and [COVID-19 Interactive RE Agreement Tool](#) both of which have been recently updated.

## The key legal restrictions of lockdown

The key lockdown restrictions in both England and Wales have changed significantly since our last alert.

England is now in the early stages of a second national lockdown imposed pursuant to The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020/1200 (the **English Regulations**). These regulations replace the previous three-tiered system of local restrictions that had only been in place for a matter of weeks. The English Regulations came into force on 5 November 2020 and are due to expire after 28 days. They require the closure of non-essential businesses, while also tightening up restrictions on gatherings and re-introducing restrictions on individual movement.

Meanwhile, Wales has recently emerged from a national “fire breaker” lockdown. That lockdown has been replaced with The Health Protection (Coronavirus, Restrictions) (No. 4) (Wales) Regulations 2020 (the **Welsh Regulations**) which came into force on 9 November 2020 and introduced a more relaxed system of restrictions which see most businesses able to re-open subject to compliance with measures to mitigate the spread of coronavirus.



Restriction	English Regulations	Welsh Regulations
<b>Requirement for businesses to shut premises</b>	Most non-essential businesses (including restaurants, leisure and entertainment venues, non-essential shops, holiday accommodation, places of worship, community centres, and crematoriums and burial grounds) are required to shut, though there are numerous exceptions, including for distance selling and the sale of food and drink for consumption off the premises.	<p>The only businesses and services required to remain closed are concert halls, sexual entertainment venues, theatres and venues licensed to sell alcohol where music is provided for dancing. There are some exceptions to this rule including, for example, the ability to carry out maintenance work to such premises to ensure that they will be suitable for use as and when they re-open.</p> <p>Of the premises allowed to open, a significant number are classified as regulated premises (for example, shops, banks, cafés, bars, restaurants). The person responsible for regulated premises must:</p> <ul style="list-style-type: none"> <li>• take all reasonable measures to ensure that the two metre rule is observed;</li> <li>• take any other reasonable measures to minimise the risk of exposure to coronavirus;</li> <li>• provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus; and</li> <li>• take into account relevant official guidance.</li> </ul>
<b>Restrictions where premises sell or supply alcohol for consumption on the premises</b>	Such premises are generally required to shut (see above).	<p>The sale or supply of alcohol (whether for consumption on or off the premises) between 10pm and 6am is prohibited.</p> <p>In addition, where premises are licensed to sell or supply alcohol for consumption on the premises or where customers are allowed to consume their own alcohol on the premises, a number of other provisions may apply, including requirements to:</p> <ul style="list-style-type: none"> <li>• close before 10.20pm each evening and not to open before 6am; and</li> <li>• control entry to the premises, allocate a limited time period for customers to stay on the premises and require customers to be seated when ordering, being served and consuming food or drink on the premises.</li> </ul> <p>There are a number of exceptions and conditions to the above.</p>
<b>Restrictions on movement</b>	<p>No person may leave or be outside the place they are living without a reasonable excuse. There are numerous exceptions including:</p> <ul style="list-style-type: none"> <li>• activities in connection with the purchase, sale, letting or renting of residential properties; and</li> <li>• leaving home to fulfil legal obligations.</li> </ul>	<p>No person living outside Wales may enter or remain in Wales without a reasonable excuse.</p> <p>No person living in Wales may leave Wales without a legal excuse.</p> <p>There are a number of exceptions to the above, including in both cases where movement is required to meet a legal obligation and also for activities in connection with the purchase, sale, letting or rental of residential accommodation.</p>

### Restriction on indoor gatherings

Prohibited.

There are a number of exceptions including gatherings of members of the same or linked households.

### Restrictions on outdoor gatherings

No person may participate in a gathering which:

- takes place in a public outdoor place and consists of more than two people; or
- takes place in any other outdoor place (including any outdoor part of a private dwelling) and consists of two or more people.

There are a number of exceptions including gatherings of members of the same or linked households.

Prohibited if taking place in a private dwelling (though gatherings of members of the same household and extended households are allowed).

Prohibited if taking place in holiday accommodation (though gatherings of members of the same household are allowed but **not** of extended households).

Otherwise, if not falling within the above, gatherings of up to four people are permitted (not counting children under the age of 11).

There are a number of exceptions and conditions to the above.

### Organising gatherings

There are various restrictions on organising gatherings.

Fixed notice penalties remain one of the key enforcement tools for dealing with breach of either the English or the Welsh Regulations. Both sets of regulations now have a series of different tariffs for fixed penalty notices depending on the nature of the breach. While, generally, breaches of the English Regulations attract higher fixed notice penalties, the maximum possible fixed notice penalty under both sets of regulations is £10,000 (note, however, that fines can be higher).

The Welsh Regulations continue to be more prescriptive and cover a wider range of topics than the English Regulations. For example, the Welsh Regulations legislate around the two metre rule whereas in England this remains largely a matter of guidance. Also, the Welsh Regulations incorporate rules on the wearing of face masks on public transport and in public spaces, as well as the law on self-isolation matters, which in England are dealt with in separate regulations. One common theme though in both jurisdictions is a sensitivity around the sale of alcohol. While this may not be so apparent in the current English Regulations, the previous three-tiered system of restrictions in England contained a number of relevant provisions that are echoed in what we now see in Wales. Another similarity is the increasing complexity seen in the regulations for both jurisdictions, which is likely to make enforcement more difficult.

## Key restrictions on enforcement action by commercial landlords

There continue to be significant restrictions on commercial landlords taking enforcement action against their tenants including:

- the temporary moratorium on forfeiture for non-payment of rent (being any sum payable pursuant to the tenancy) pursuant to Section 82 of the Coronavirus Act 2020 which has been extended to 31 December 2020;
- further amendments to the rules relating to Commercial Rent Arrears Recovery (CRAR) so that the minimum amount of net unpaid rent that must be owing before CRAR can be used has changed:
  - from 29 September 2020 until 24 December 2020 (inclusive), 276 days' rent; and
  - from 25 December 2020, 366 days' rent;
- the moratorium on presenting winding-up petitions to the court following a statutory demand pursuant to the Corporate Insolvency and Governance Act 2020 which has also been extended to 31 December 2020.

For help understanding what enforcement action landlords can still take, please see our [Real Estate Litigation interactive possession and enforcement tool-kit](#) which was launched on 14 October 2020 and covers not only England and Wales, but also Scotland and the Republic of Ireland.





## Impact of COVID-19 on existing and proposed real estate documentation

For information generally on the impact of COVID-19 on:

- leases, both existing and new – take a look at our [COVID-19 Interactive Lease Tool](#) which was updated on 13 October 2020; or
- other types of real estate agreement (including agreements for lease, sale, development agreements etc.), both existing and new – take a look at our [COVID-19 Interactive RE Agreement Tool](#) which was updated on 27 October 2020.

## Looking ahead

The response to COVID-19 is constantly evolving and we can expect further frequent changes to the lockdown rules in the near future. It will be interesting to see whether England reverts back to a more localised, three-tiered approach to managing COVID-19 once the current national lockdown ends in early December. Meanwhile, in Wales focus will be on just how much further the Welsh Ministers feel they can loosen restrictions as we edge towards the end of the year.

There is no doubt that the run-up to the end of 2020 and beginning of 2021 will be a key

period. During this time, we will have the next quarter day (25 December 2020) and various tenant protections (such as the moratorium on forfeiture) are due to expire (though they could be extended further). The festive period is also a crucial trading time for the retail and leisure sectors, so there will be pressure in both England and Wales to relax restrictions to boost businesses. What is clear though is that top of real estate's Christmas wish list for 2020 will be a return to "normal".

## What is going on in the market?

For information on COVID-19's impact on the real estate market:

- [please click this link](#) to view our recent webinar "How do the office and BTR markets need to adapt in response to COVID-19?";
- [please click this link](#) to view our recent webinar "COVID-19 and the industrial and logistics sector"; and
- [please click this link](#) to view our webinar "How will COVID-19 change the senior living sector in the UK and internationally?"

*NOTE: Information contained in our COVID-19 articles and publications is correct at the time of print. This is, however, a constantly evolving situation across the globe and specific advice and guidance should be sought as required.*