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# Resolving Disputes Over Covid Commercial Rent Arrears



# Reaching a resolution without going to Court

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**It is estimated that around £7.5bn worth of commercial rent arrears have accumulated as a direct result of the Coronavirus pandemic. Whilst parties have successfully negotiated deals to settle outstanding rent debts, many have not.**

The government are proposing to bring in a Statutory Arbitration Scheme to resolve commercial rent arrears which have built up during the course of the pandemic. We can guide those who are facing these disputes, through the new legislation, providing hands-on practical support to help you reach a satisfactory outcome.

## **How did we get here?**

When the pandemic emerged in March 2020, the response was swift. In the interests of public health, the government ordered numerous businesses across the UK to close. This inevitably had a profound impact on landlords and tenants. Those in the hospitality, leisure

and retail sectors have been particularly affected, after being unable to trade for prolonged periods. All the while, rents have continued to fall due for payment.

To protect tenants, the government introduced measures in March 2020 to curtail landlords' enforcement options in relation to non-payment of rent, and these measures have been extended several times throughout the pandemic. The government announced in June 2021 that legislation would be introduced to support the resolution of commercial rent debts accrued during the pandemic.

The Commercial Rent (Coronavirus) Bill is expected to become law in March 2022. This new law will 'ringfence' certain commercial rent arrears which built up during the pandemic. The government's policy aim is to preserve viable businesses and the jobs they support, although ringfenced arrears should be paid wherever possible.



## The Statutory Arbitration Scheme

The Bill also introduces a binding Statutory Arbitration Scheme to resolve disputes relating to those ringfenced arrears. It encourages parties to reach an agreement outside of court, and make reasonable proposals, which is often a cheaper and quicker process than court proceedings.

The new scheme will only apply to tenants who were forced to close, or subject to restricted opening hours, as a result of COVID-19 rules. This means it will apply to tenants in the hospitality and leisure sectors, and non-essential retailers for example, but not supermarkets or pharmacies who could stay open throughout the pandemic.

The arbitrator, in a similar role to a judge, but acting outside of court, will apply the new arbitration scheme rules to the specific facts of each case, and consider any proposals from the landlord and / or tenant. They will then make a decision about how the dispute should be resolved (this is referred to as an 'award'). An arbitrator's award can write off some or all the ringfenced arrears, and/or allow repayment over 2 years.



To allow time for the disputes to be resolved through this new scheme, tenants will be protected from a number of the usual landlord enforcement options in relation to the ringfenced arrears. Current restrictions on insolvency options, forfeiture and commercial rent arrears recovery (CRAR) will be extended, and there will be further protections preventing landlords from issuing court proceedings or drawing down on a tenancy deposit in relation to the relevant ringfenced arrears.

Alongside the new Bill, the government has also published a new Code of Practice. This includes guidance for landlords and tenants for resolving commercial arrears disputes, irrespective of whether they can be referred to arbitration under the new scheme.

## How we can help

We can assess if your arrears dispute could be resolved under the new arbitration scheme, explain what that means in practice, and help you navigate your options.

Although the proposed rules may change as the Bill is considered by Parliament, we now have a good idea of what it will look like. This might help you reach an agreement about your arrears dispute before the new law comes into force, which would give you certainty about the extent of the debt liability and your cash-flow position, limit risk and exposure to costs, and give you time to focus on running your business.



# Guiding you through the process

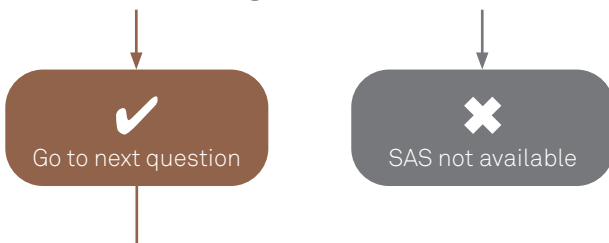
## Part 1: Will the scheme apply to your arrears?

Are there “protected rent debts” which can be referred to arbitration under the new Statutory Arbitration Scheme (“SAS”)?

1. Does the tenant occupy under a business tenancy? (a tenancy to which the Landlord and Tenant Act 1954 would apply, even if contracted out)



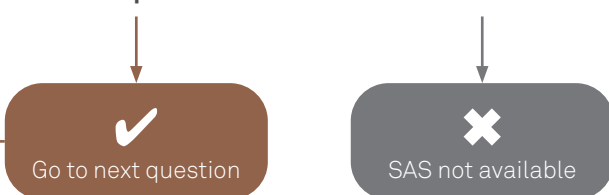
2. Between 21 March 2020 and 18 July 2021, was all or part of the tenant’s business subject to closure requirements? (businesses subject to restricted opening hours, or carrying out limited activities despite being required to close are still treated as being subject to closure requirements e.g. a restaurant operating takeaway services).



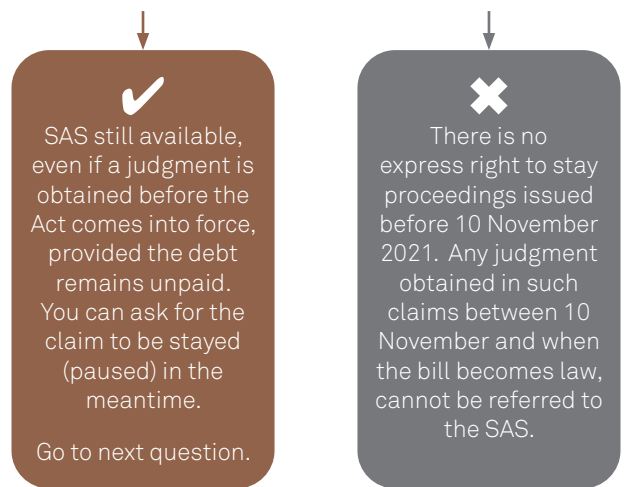
3. Are there arrears of rent due (including rent, service charge, insurance rent, interest and/ or VAT)?



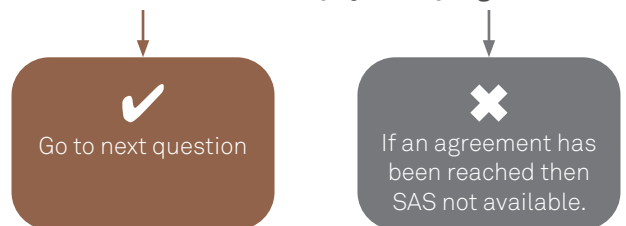
4. Do the arrears relate to any period between 21 March 2020 and 18 July 2021 or, if earlier, the last day that all or part of the tenant’s business carried on at all or part of the premises were subject to closure requirements or coronavirus restrictions regulating the way the business was carried on/ the use of the premises?



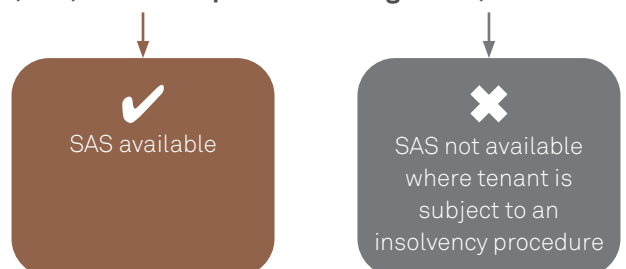
5. If court proceedings have been issued, was the claim made after 9 November 2021?



6. No agreement has been reached between the landlord and the tenant about relief (e.g. an agreed write off or instalment repayment programme)



7. The tenant is not subject to a relevant insolvency procedure in relation to the protected rent debt (CVA, IVA or compromise arrangement)



There is a protected rent debt which can be referred to arbitration under the SAS

# Want to know more?

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Look out for future updates on the relevant timescales and steps under the arbitration scheme, and what options you have if you can't use the new scheme but still have an unresolved rent arrears dispute.

Contact the team if you would like to discuss.

*This note is based on the Bill as it's currently drafted, although it's possible there will be some changes before it becomes law.*

## Get in touch

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