COMMERCIAL RENT (CORONAVIRUS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Commercial Rent (Coronavirus) Bill as brought from the House of Commons on 13 January 2022 (HL Bill 92).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The purpose of the Commercial Rent (Coronavirus) Bill is to support landlords and tenants in resolving disputes relating to rent owed by businesses which were required to close during the COVID-19 pandemic. The Bill enables arbitration to be used to resolve these disputes if landlords and tenants cannot agree a way forward.

Policy background

2 COVID-19 and the associated closure measures have had a significant impact on the economy, particularly on the income of the hospitality, leisure and retail sectors. As a result of restrictions on businesses during the pandemic and the temporary protections put in place to help businesses manage rents during coronavirus related restrictions, a significant amount of rent debt has built up relating to commercial tenancies.

3 The Government worked with business leaders to publish a voluntary Code of Practice in June 2020 that encouraged both landlords and tenants to work together to resolve unpaid rent, and updated the Code in April 2021.

4 Some tenants and landlords have utilised the voluntary Code of Practice and whilst there is indication that, overall, rent collection is increasing, it remains below average levels, especially in certain sectors.

5 This legislation will support landlords and tenants, who cannot otherwise agree, in resolving disputes relating to the rent owed and facilitate a return to normal market operation.

Business protection measures

6 In 2020, the Government introduced measures to help businesses who were unable to pay their rent due to the impact of coronavirus. These were a moratorium on forfeiture (which prevents landlords from evicting business tenants on the basis of unpaid rent), a restriction on landlords' abilities to seize goods to recover unpaid rent, and restrictions on the use of winding-up petitions and statutory demands (which have applied to and beyond commercial landlords and tenants). These measures were introduced to offer temporary relief, although the periods for which they applied have been extended as restrictions continued.

Call for Evidence

7 A Call for Evidence was published in April 2021 following the extension of government measures that had been introduced over the pandemic to protect businesses against the economic shocks of Coronavirus-related restrictions.

8 The Call for Evidence gathered data on the state of negotiations between commercial landlords and tenants regarding these outstanding rent arrears, as well as ongoing lease terms. The Call for Evidence also sought views from interested parties on six options: one to allow the current measures to lapse on 30 June 2021 and five options to manage the exit from the current measures, including the option to ringfence rent debt and introduce a backstop of binding arbitration (which was the preferred option, particularly favoured by tenants).

9 Out of the respondents to the Call for Evidence, the total rent that tenants claimed to owe was over £570m, while the total rent that landlords claimed they were owed was over £1.7bn. Both landlord and tenant stakeholders agreed that the voluntary nature of the Code of Practice meant it was less effective, and 49.2% of respondents were in favour of binding adjudication, whilst only 27.4% were against it.

Arbitration

10 The Bill aims to provide certainty to both tenants and landlords by setting out a process for resolution, where agreement has not been reached, of rent accrued during the period of closure measures. The Secretary of State will approve suitable arbitration bodies, which will in turn maintain a list of suitably qualified and independent arbitrators and administer arbitrations, to which either the landlord or tenant can apply. A statutory arbitration process is then applied, making provision for tenant and landlord to state their case, for types of award the arbitrator can give and the principles that govern this award.

11 The Bill provides that arbitration will be available in respect of business tenancies where the business tenant was required by COVID-19 related regulations, to close its premises or business in whole or part. For all tenancies affected by COVID-19, the parties are free to reach agreement and the Bill will have no effect on those agreements. For those tenancies within the scope of the Bill, failing agreement, either party can apply for arbitration. If the arbitrator decides that there is unpaid rent for the protected period and that the tenant would be a viable business but for the protected rent debt, then the arbitrator will consider the circumstances and the proposals of the parties and reach a decision. The arbitrator's award may provide for some or all the ringfenced debt to be paid by instalments and/or to be reduced, and there may be relief with regard to interest payable.

12 The arbitrator will consider the proposals put forward by the parties against the statutory principles. Where only the proposal of one of the parties is consistent with the principles, the arbitrator must adopt that in the award. Where the proposals of both parties are consistent with the principles, the arbitrator must adopt the one they consider is most consistent. Where neither party's proposal is consistent, the arbitrator must make whatever award they consider is appropriate. The principles encourage the resolution of these debts, ensuring that those with the means to pay rent while remaining viable will be required to do so. Preservation of the viability of the tenant needs to be consistent with preserving the solvency of the landlord, so a balance is achieved.

13 The arbitration process incorporates and builds on provisions from the existing Arbitration Act 1996 and provides for an effective, streamlined process, compatible with the rights of the parties to a fair process.

Temporary moratorium on certain remedies and insolvency arrangements

14 The intent of the Bill is to establish a system of resolving protected rent debt that considers the circumstances of tenants and landlords in the context of the pandemic.

15 If landlords were to use other measures to recover protected rent debt, then there would not be a genuine opportunity to use the Bill's system. Therefore, the Bill introduces a moratorium on the use of certain remedies and measures whilst the application period for arbitration is open or arbitration under this legislation is in progress.

16 During arbitration, certain remedies (including those restricted already) and measures will be temporarily unavailable, to give priority to the arbitration process. In addition, where debt claims have been initiated after 10 November 2021, they will be stayed if one of the parties applies for it and the claims are not concluded; and where concluded before the Bill is in force the debt may be subject to arbitration. Bankruptcy petitions presented based on statutory demands or claims made on or after 10 November 2021 and resulting orders made will be void.

Revised Code of Practice

17 Ahead of the binding arbitration system under this Bill, the Government published a revised Code of Practice on 9 November 2021, which provides guidance for negotiations between landlords and tenants, including those which fall outside the scope of this Bill. This replaces the Code of Practice issued on 19 June 2020 and updated on 6 April 2021.

18 The revised Code of Practice applies to all commercial leases held by businesses that have been seriously affected by the COVID-19 pandemic and will support negotiations between parties.

Legal background

19 During the pandemic, the Government introduced a range of measures to assist businesses struggling to pay their rent, including:

a. a moratorium on forfeiture of commercial leases under section 82 of the Coronavirus Act 2020.

b. restrictions on the use of the Commercial Rent Arrears Recovery (CRAR) regime (which enables landlords to recover rent arrears through the seizure of tenants' goods, established by the Tribunals, Courts and Enforcement Act 2007 and Taking Control of Goods Regulations 2013/1894) by amendments, most recently the Taking Control of Goods (Amendment) (Coronavirus) Regulations 2021/300.

c. restrictions on the service of winding up petitions under Schedule 10 to the Corporate Insolvency and Governance Act 2020 (this measure has been tapered as of 1 October 2021, but still prevents winding up on the basis of unpaid rent).

20 All of these measures were intended to be temporary. The moratorium on forfeiture of commercial leases and measure regarding CRAR are due to end by 25 March 2022, and protection against winding-up petitions (in certain circumstances) on 31 March 2022.

21 The Bill will establish a system of binding arbitration to resolve disputes between landlords and tenants about arrears under business tenancies, where the premises or the tenant business has been subject to mandatory closure under regulations made under the Public Health (Control of Disease) Act 1984 during the COVID 19 pandemic. Rent under such tenancies can be considered by the arbitrator if it relates to a period (or part of this period) starting on 21 March 2020 (when the first such restrictions came into force in England and Wales respectively) and ending for a business when the regulations providing for closure of the business or restrictions on operating or use of premises for the relevant sector were lifted.

Territorial extent and application

22 The Bill will extend to England and Wales, and limited provisions to Northern Ireland and Scotland. The Bill will apply in England and Wales.. Limited provisions extend to Scotland and Northern Ireland, to ensure that certain insolvency proceedings could not be brought, or measures applied in Scotland or Northern Ireland, in respect of protected debt in England and Wales.

23 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.

24 An LCM is required for Wales, as some aspects of the Bill interact with devolved matters.

25 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Introductory Provisions

Clause 1: Overview

26 This clause sets out the overall purpose and structure of the Bill. Subsection (1) of this clause sets out that the Bill will provide for a process of arbitration to be available to resolve disputes about relief for the tenant from payment of certain debts due to the landlord under a business tenancy. These debts are described as "protected rent debts" throughout the Bill and resolution by arbitration is available in those cases where the tenant and landlord are not able to reach mutual agreement.

27 Subsection (2) introduces the different provisions of the Bill and explains what they provide for:

a. clauses 2 to 6 provide definitions of key terms used for the purposes of this Bill;

b. Part 2 establishes a process of statutory arbitration which can lead to awarding the tenant relief from payment of a protected rent debt;

c. Part 3 provides for temporary restrictions on the availability of certain remedies that would otherwise be available to a landlord, and of certain insolvency measures that would otherwise be available to the parties, in relation to a protected rent debt.

28 Subsection (3) clarifies that nothing in the Bill affects the ability of tenants and landlords at any time to reach agreement on the payment of a protected rent debt (or any other matter relating to the tenancy), nor does it prevent such an agreement having effect and being enforced. This means that while the Bill would enable relief from payment of protected rent debt through arbitration, it does not prevent the parties to a business tenancy from agreeing relief from payment through another process, whether before or during the arbitration process. Where they do reach agreement, arbitration under this Bill would not be available.

Clause 2: "Rent" and "business tenancy"

29 This clause provides the definitions for rent and business tenancy for the purposes of this Bill.

30 Subsection (1) defines "rent" as including an amount payable by the tenant to the landlord for possession and use of the premises, a service charge, including a payment towards an insurance premium, and any interest on an unpaid amount of rent as defined in (a) and (b) in this subsection.

31 Subsection (2)(a) explains that a reference to an amount under subsection (1) includes VAT.

32 Subsection (2)(b) states that the reference to "landlord" in subsection (1) includes a person acting for the landlord, such as a managing agent.

33 Subsection (2)(c) defines service charge for the purpose of subsection (1). This may include an amount payable in respect of certain services and costs which may relate to the premises or common parts, where required to be paid under the tenancy, and may include insurance costs, which is defined in subsection (3).

34 Subsection (3) also explains what is meant by "the relevant costs" mentioned in subsection (2)(c).

35 Subsection (4) states that an amount drawn down by the landlord from a tenancy deposit to meet part or all rent debt will be treated as unpaid rent debt unless repaid by the tenant.

Where the Bill refers to paying rent then, for this situation, this should be understood to mean making good a shortfall in the deposit.

36 Subsection (5) defines a "business tenancy" as a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies. That is, a tenancy comprised of property which is or includes premises that are occupied by the tenant for business purposes, or business and other purposes, under section 23 of that Act.

Clause 3: "Protected rent debt"

37 This clause establishes what is meant by "protected rent debt" within the context of the Bill.

38 Subsection (2) provides two conditions to be met for rent due to be considered "protected rent". The first of these is that the tenancy was adversely affected by coronavirus (further definition of this is supplied in clause 4). The second condition is that the rent due was attributable to a period of occupation within the "protected period" defined in clause 5.

39 Subsection (3) states that rent consisting of interest due in respect of an unpaid amount (as described in clause 2(1)) is to be regarded as attributable to the same period of occupation as that unpaid amount for the purposes of subsection (2) of clause 3. This means that if a tenant is paying interest on rent due, the interest is considered to be from the same period of occupancy as the rent.

40 Subsection (5) sets out that if rent due is only partly attributable to a period of occupation as described in subsection (2), then only the rent due which is attributable to that period qualifies as "protected rent". This means that if there is rent due which is attributable to occupation by the tenant both outside the protected period as well as within the protected period, then only that which was within the protected period is regarded as "protected rent" for the purposes of the Bill. The Bill does not provide any protection for non-payment of the portion which is not reasonably attributable to the protected period, whereas the portion which is attributable to the protected period can be addressed under the Bill's system (if other eligibility criteria are met) notwithstanding any provision in the lease requiring payment in full.

41 Subsection (6) states that unpaid protected rent is to be treated as including an amount drawn down from the tenancy deposit, as referred to in clause 2(4). This means that the arbitrator can consider and make an award about this full amount and, depending on the award, the tenant may be relieved from having to make good any shortfall in the deposit.

Clause 4: "Adversely affected by coronavirus"

42 This clause defines when a business tenancy is "adversely affected by coronavirus" for purposes of the Bill.

43 Subsection (1) provides the conditions for when a business tenancy is adversely affected by coronavirus. This subsection means that if the whole or part of a business carried on in the premises comprised in the tenancy, or if the whole or part of the premises themselves, were subject to a closure requirement under coronavirus regulations during a "relevant period", then they are considered as being adversely affected by coronavirus.

44 The term "closure requirement" is defined in subsection (2)(a) and means a requirement to close either premises (or parts of premises) or businesses (or parts of businesses) specified in regulations and expressed as an obligation to close. Subsection (4) states that, for the purposes of subsection (2), it does not matter if certain limited activities were allowed as an exception to the closure requirement. If certain activities were allowed by regulations, this should be disregarded when determining whether a tenancy was adversely affected by coronavirus and hence falls within the scope of arbitration under the Bill. The concept of closure for these purposes is therefore relatively broad. However, the closure must have been required by regulations.

45 Under subsection (2)(b), a "relevant period" began at or after 2pm on 21 March 2020 and ended at or before 11.55 p.m. on 18 July 2021 for premises in England, or 6 a.m. on 7 August 2021 for premises in Wales. This means that if a business was subject to a closure requirement for any period within these times, then they meet the test. Many types of business were required to close for some periods within these times; they are adversely affected by coronavirus.

46 For the purposes of subsection (2)(a), subsection (3) states that a requirement to close premises or parts of premises at particular times every day can be regarded as a closure requirement. For example, some businesses were required to close their premises at a certain time in the evening until a certain time in the morning, during a relevant period.

47 Subsection (5) states that in a situation where a business is carried on not only at the premises named in the tenancy but also elsewhere, then this legislation only applies to the portion of the business that was carried on at the tenancy premises. For example, if a tenant runs a restaurant business partly at the tenancy premises but also from the tenant's own owned premises, then the relevant business for the Bill purposes is just that part that was conducted at the tenancy premises.

48 Subsection (6) sets out that "coronavirus regulations" for the purposes of this clause, must have been made under the power in section 45C of the Public Health (Control of Disease) Act 1984, either alone or under other powers too.

Clause 5: "Protected period"

49 This clause sets out what is meant by "protected period" and "specific coronavirus restriction" for the purposes of the Bill.

50 Subsection (1) defines "protected period" as beginning with 21 March 2020 and ending with the day identified by subsection (2). That is, the last day of the protected period is the last day on which the business or part of the business, or premises or part of the premises, was subject to a closure requirement or a specific coronavirus restriction imposed by coronavirus regulations, in England or Wales as applicable. For England the last day cannot be later than 18 July 2021; and for Wales, 7 August 2021.

51 The term "specific coronavirus restrictions" is defined in subsection (3) as a restriction or requirement other than a closure requirement (as defined in clause 4) imposed by coronavirus regulations. This restriction must relate to the way that a whole or parts of a businesses could operate or the way that the whole or parts of a premises could be used.

52 Subsection (4) states that for this purpose, general restrictions applying more widely than to specific businesses or premises are not "specific coronavirus restrictions". If a restriction applied to businesses generally or workplaces generally, then it would not be a specific coronavirus restriction. A requirement to display or provide information would also not be a specific coronavirus restriction.

53 The terms "closure requirement" and "coronavirus regulations" in this clause have the same definitions as is supplied in clause 4.

Clause 6: "The matter of relief from payment"

54 Subsection (1) sets out that the arbitrator will decide relief from payment with reference to two questions. Firstly, is there is any protected rent debt and secondly, if so, should the tenant be given any relief in respect of the payment of that debt and if so, what type of relief.

55 The definition of "relief from payment" in relation to a protected rent debt is supplied in subsection (2). Relief from payment means any of the following:

a. writing off the whole or part of the debt;

b. giving additional time to pay the debt or allowing the debt to be paid in instalments – payment must be within 24 months (see clause 14(7)); and

c. reducing or cancelling the interest owed in relation to the debt.

Relief from payment may be any one or a combination of these.

56 This means that any relief from payment granted by the arbitrator will be in respect of the protected rent debt, and the debt will remain rent debt.

Part 2: Arbitration

Approved arbitration bodies

Clause 7: Approval of arbitration bodies

57 Subsection (1) provides for the Secretary of State to approve an arbitration body or bodies to carry out the functions of an "approved arbitration body" as set out in clause 8. It will be a function of an approved arbitration body to deliver arbitration as a dispute resolution service to settle commercial rent disputes under this Bill.

58 Subsection (2) sets out the requirement for the Secretary of State to approve only those arbitration bodies which are suitable to become an "approved arbitration body" and carry out the functions under clause 8.

59 Subsection (3) enables the Secretary of State to withdraw approval granted under subsection (1) if an arbitration body ceases to be deemed suitable by the Secretary of State.

60 Subsection (4) states that should the Secretary of State decide that an arbitration body is no longer suitable, as mentioned in subsection (3), the Secretary of State must notify the arbitration body of an intent to withdraw the approval given under subsection (1) and give the body an opportunity to make representations before the approval is withdrawn.

61 Subsection (5) provides that where an approval under subsection (1) is withdrawn, the Secretary of State must make arrangements in relation to fees and expenses, including requiring the body to repay any fees and expenses paid to it, for example for any matters not dealt with, or determining the fees and expenses that the body should be entitled to.

62 Subsection (6) provides that if the Secretary of State withdraws approval of an arbitration body, this does not invalidate the actions of that body before the withdrawal. This means that the withdrawal of approval would not undo anything done by or in relation to the body until that point, including the appointment of an arbitrator, and that awards made would still stand. Where any proceedings were ongoing, it would be for the arbitrator (whether the same one or a replacement arbitrator appointed by the successor body) to decide the extent to which the previous proceedings should stand (see section 27(4) of the Arbitration Act 1996).

63 Subsection (7) requires the Secretary of State to maintain a list of approved arbitration bodies and to publish it.

Clause 8: Functions of approved arbitration bodies

64 This clause sets out what functions an "approved arbitration body" (the definition of this term is provided in clause 7) is to perform.

65 Subsection (1) lists the main functions of an approved arbitration body. Paragraph (a) places a duty on an approved arbitration body to maintain a list of arbitrators who are available to

carry out arbitration under the Bill and, in the opinion of the approved arbitration body, appear to be suitable on the basis of their qualifications and experience to carry out arbitration under the Bill.

66 Subsection (1)(b) provides that, where a reference for arbitration is made to an approved arbitration body, that body is to appoint an arbitrator or a panel of arbitrators from the list referred to in subsection (1)(a) to resolve the matter of relief from payment of a protected rent debt in the case concerned. Where an appointed arbitrator resigns, dies or otherwise ceases to hold office, that body is to appoint another arbitrator from their list to fill the vacancy (paragraph (c))

67 Subsection 1(d) provides for the approved arbitration body to set, collect and pay its fees and the fees of an arbitrator appointed by it. The body must also publish on its website the fees payable in relation to a reference made to it for arbitration under the Bill (subsection 6).

68 Subsection (1)(e) requires an approved arbitration body to oversee (which would include administering and putting in place monitoring systems) arbitrations for which it has appointed an arbitrator or panel of arbitrators.

69 Subsection (1)(f) provides for an approved arbitration body to remove an arbitrator appointed by it from a case on any one of the grounds listed in subsection (2). Those grounds are that:

a. circumstances exist that give rise to justifiable doubts as to the impartiality or independence of the arbitrator (paragraph (a));

b. the arbitrator does not possess the qualifications required for the arbitration (paragraph (b));

c. the arbitrator is physically or mentally incapable of conducting the arbitration or there are any other justifiable doubts as to their capacity to do so (paragraph (c));

d. the arbitrator has refused or failed to properly conduct an arbitration case, or has unreasonably delayed the conduct of the proceedings or the making of an award, and that substantial injustice has been or will be caused to the parties as a result (paragraph (d)).

70 Subsection (3) requires the approved arbitration body to ensure that an arbitrator or panel of arbitrators appointed by it is independent from the parties to the arbitration.

71 Where an arbitrator resigns, dies or otherwise ceases to hold office, subsection (4) requires the approved arbitration body to make arrangements in relation to the repayment of any fees and expenses paid to the arbitrator, for example for matters not undertaken, or in relation to the fees and expenses that the arbitrator should be entitled to.

72 Subsection (5) requires an approved arbitration body, where requested by, or as agreed with, the Secretary of State to provide reports to the Secretary of State on the exercise of its functions under clause 8, on how arbitrations administered by the body under the Bill are progressing and on awards made. This requirement will enable the Secretary of State to monitor arbitration schemes.

References to arbitration by tenant or landlord

Clause 9: Period for making a reference to arbitration

73 This clause sets out the process for referring a dispute about relief from payment to arbitration.

74 Subsection (1) states that this clause applies when a tenant and landlord are in a dispute about the matter of relief from payment of a protected rent debt. The definition of "matter of relief

from payment" is provided in clause 6 and the definition of "protected rent debt" is provided in clause 3.

75 Subsection (2) states that either the landlord or the tenant can refer a dispute to arbitration within 6 months of this Bill being passed by Parliament.

76 Subsection (3) provides the Secretary of State with a power to extend the 6-month period outlined in subsection (2). A statutory instrument making this extension would be subject to a negative resolution procedure (subsection (4)).

77 Subsection (5) provides that for the purposes of the Bill, references to "the period for making references to arbitration" means the period (6 months, or as extended) for the time being mentioned in subsection (2).

Clause 10: Requirements for making a reference to arbitration

78 This clause makes provision in relation to: steps to be taken by a landlord or tenant before making a reference to arbitration; when a reference to arbitration may not be made; and, the specific circumstances in which an arbitrator may not be appointed and no formal proposal may be made.

79 Subsection (1)(a) requires that before a reference to arbitration is made, the landlord or tenant must notify the other party of their intention to refer the dispute as to the matter of relief from payment to arbitration. Paragraph (b) provides for the respondent to be able to reply to the notification within 14 days of receiving it.

80 Subsection (2) provides that the landlord or tenant cannot make a reference to arbitration before:

a. the end of 14 days after the day on which a response is received under subsection (1)(b), or

b. if no response is received, the end of 28 days beginning with the day the notification under subsection (1)(a) was served.

81 Subsection (3) provides that a reference to arbitration cannot be made, an arbitrator cannot be appointed and any formal proposals for resolving the dispute under clause 11(2) or (4) cannot be made, when the tenant which owes a protected rent debt is subject to:

a. a company voluntary arrangement (CVA) that has been approved under section 4 of the Insolvency Act 1986, where that CVA relates to any protected rent debt,

b. an individual voluntary arrangement (IVA), that is approved under section 258 of the Insolvency Act 1986 and relates to any protected rent debt, or

c. a compromise or arrangement, that has been sanctioned under section 899 or 901F of the Companies Act 2006 and relates to any protected rent debt.

82 Subsection (4) requires a reference for arbitration under this Bill to be made to an approved arbitration body.

83 Subsection (5) provides that, after a reference for arbitration has been made, an arbitrator cannot be appointed and formal proposals for resolving the dispute under clause 11(2) or (4) cannot be made where a tenant which owes protected rent debt is a debtor under a proposed CVA or IVA, or compromise or arrangement to be sanctioned under Part 26 or Part 26A of the Companies Act 2006, which relates to any protected rent debt and a decision on the proposal or application has not yet been made. Once a decision has been made, the arbitration may proceed if the CVA, IVA, arrangement or compromise is not approved or sanctioned.

84 The aspects of this clause which relate to a CVAand a compromise or arrangement under Part 26 or Part 26A of the Companies Act 2006 apply to limited liability partnerships as well as to companies.

Proposals for resolving the matter of relief from payment

Clause 11: Proposals for resolving the matter of relief from payment

85 This clause makes provision in relation to the making of proposals for resolving the matter of relief from payment of protected rent debt. Subsection (1) requires the tenant or landlord, when making a reference for arbitration, to submit a formal proposal for resolving the dispute about relief from payment.

86 Subsection (2) allows the other party to submit a formal proposal in response within 14 days of receiving a proposal made under subsection (1) (assuming the reference is not dismissed by the arbitrator for a reason set out in clause 13(2) or (3)).

87 Subsection (3) requires a formal proposal made under subsection (1) or (2) to be accompanied by supporting evidence.

88 Subsection (4) allows either party to submit a revised formal proposal within 28 days of them having given their original formal proposal. A revised formal proposal must also be accompanied by any further supporting evidence (subsection (5)).

89 Subsection (6) allows for the periods mentioned in subsections (2) and (4) to be extended where the parties agree to do so, or where the arbitrator considers that it would be reasonable in all the circumstances to do so.

90 Subsection (7) provides that a "formal proposal" is one which is made on the assumption the reference is not dismissed for a reason set out in clause 13(2) or (3) and must state that it is for the purposes of this clause and be given to both the other party and the arbitrator.

Clause 12: Written statements

91 Subsections (1) and (2) requires written statements provided to the arbitrator by a party or another person relating to a matter relevant to the arbitration to be verified by a statement of truth.

92 Subsection (3) allows an arbitrator to disregard such a written statement if it is not verified by a statement of truth.

Arbitration awards

Clause 13: Arbitration awards available

93 This clause sets out the different awards that an arbitrator may make when deciding on the outcome of a dispute on relief from payment that has been referred to them by the landlord or tenant under this Bill.

94 Subsection (2) provides that in cases where the arbitrator determines that the matter has already been resolved by agreement before the reference was made, the tenancy in question is not a business tenancy, or that there is no protected rent debt (as defined in clause 3), then the arbitrator must dismiss the reference.

95 Subsection (3) requires the arbitrator to dismiss a reference if they have assessed the viability of the tenant's business and found that at the time of the assessment the business is not viable and would not be viable even if the tenant was given relief from payment of any kind.

96 Subsections (4) and (5) set out what the arbitrator must do in cases where an assessment of viability is made, and the arbitrator determines that the tenant's business is viable or would

become viable if the tenant is provided with relief from payment of any kind. In these instances, the arbitrator must consider whether the tenant should receive any relief from payment of a protected rent debt and if so, what kind of relief. An award must then be made in accordance with clause 14.

Clause 14: Arbitrator's award on the matter of relief from payment

97 This clause sets out how an arbitrator should resolve the payment of a protected rent debt as required by clause 13(5)(b).

98 Subsection (2) states that before making an award, the arbitrator must consider any final proposal put forward by a party under clause 11.

99 The arbitrator must consider the final proposals against the principles outlined in clause 15. Subsection (3) would apply where both parties have put forward final proposals. If the arbitrator considers that both proposals are consistent with the principles, the arbitrator is required to make the award in line with whichever of the proposals they consider to be most consistent with the principles (paragraph (a)). If the arbitrator considers that only one of the final proposals is consistent with the principles, the arbitrator must make the award set out in that proposal (paragraph (b)).

100 Subsection (4) provides that where only the party making the arbitration reference puts forward a final proposal, the arbitrator is required to make the award set out in the proposal if the arbitrator considers it is consistent with the principles in clause 15.

101 Subsection (5) states that where neither proposal put forward by the parties is consistent with the principles, the arbitrator must make an award that they consider appropriate applying the principles in clause 15.

102 Subsection (6) provides that an award under this clause may:

a. give the tenant relief from payment of the debt, or

b. state that the tenant will not be given relief from payment.

103 Subsections (7) and (8) provide that where an award under subsection (6)(a) gives the tenant time to repay the debt, including in instalments, the dates for payment must be within a period of 24 months, with such period beginning on the day after that on which the award is made.

104 Subsection (9) gives the meaning of "final proposal" for this clause, with it being a revised formal proposal put forward by a party under clause 11(4), or if there is no revised formal proposal by a party, the formal proposal made by the party under clause 11(1) or (2).

Clause 15: Arbitrator's principles

105 Subsection (1)(a) states that the first principle is that any award should be aimed at:

a. preserving the viability of the tenant's business in cases that fall under clause 13(4)(a), or

b. restoring and preserving the viability of the tenant's business in cases which fall under clause 13(4)(b),

106 so far as that is consistent with preserving the landlord's solvency. Provision as to an arbitrator's assessment of viability and solvency is set out under clause 16.

107 This means that, providing it preserves the landlord's solvency, an award providing relief from payment should prescribe the amount and type of relief of payment that would preserve or restore viability of the tenant's business taking into account the second principle.

108 Subsection (1)(b) states that the second principle is that, so far as it is consistent with the principles in subsection (1)(a), tenants should be required to pay protected rent in full and without delay. This means that tenants that are able to pay the protected rent debt, should pay.

109 When an arbitrator considers the viability of a tenant's business and the landlord's solvency, they must disregard anything that the tenant or landlord has done to manipulate their financial affairs to improve their position regarding an award. This is to stop 'gaming' of the system and ensures that awards are made based on financial information that accurately represents the status of the business or landlord.

110 Subsection (3) sets out what is meant by landlord's solvency for the purposes of this clause. A landlord is considered solvent unless they are, or will become, unable to pay their debts as they fall due.

Clause 16: Arbitrator: assessment of "viability" and "solvency"

111 This clause sets out the aspects which an arbitrator must consider when determining the viability of a tenant's business, and the solvency of a landlord.

112 Subsection (1), paragraphs (a) to (c) provide examples of evidence which the arbitrator must, so far as known, consider as part of their assessment of viability of a tenant's business. Paragraph (d) allows the arbitrator to consider any other information which they consider appropriate to determine the financial position of the tenant.

113 Subsection (2) provides examples of evidence that the arbitrator must, so far as known, take into account when assessing the solvency of the landlord. Paragraph (a) includes "liabilities of the landlord" which would cover rent owed to a superior landlord. Paragraph (b) allows the arbitrator to consider any other information which they consider appropriate to determine the financial position of the landlord.

114 Subsection (3) states that when conducting their assessment under subsection (1) or (2), the arbitrator must disregard the possibility of the tenant or the landlord borrowing money or restructuring their business. This means that tenants or landlords will not have to accrue more debt or reduce their workforce (if applicable) to prove that they are, or can become, viable or solvent.

Clause 17: Timing of arbitrator's award

115 This clause makes provision in relation to the time in which arbitrators must make an award. Subsection (1) provides the timings where no oral hearing has been held. In that case, where both parties have put forward final proposals (as defined in clause 14(9)), the award should be made as soon as reasonably practicable after the day on which the latest final proposal has been received. Otherwise, the award should be made as soon as reasonably practicable after the last day on which a revised formal proposal can be made (as outlined in clause 11(4)).

116 In each case where an oral hearing is held, the arbitrator must make an award within 14 days of the hearing concluding. Subsection (3) states that this period can be extended if both parties agree to it, or the arbitrator considers it reasonable in all the circumstances.

Clause 18: Publication of award

117 This clause requires the arbitrator to publish an award made under the Bill and the reasons for making it.

118 Subsection (3) states that the arbitrator should not include information that is confidential as part of any publication under this clause unless consent is given by the person to whom the information relates.

119 Subsection (4) defines "confidential information" for the purposes of subsection (3), which is information which the arbitrator is satisfied is commercial information relating to a party or to any other person the disclosure of which would, or might, significantly harm the legitimate business interests of the person to which it relates, or information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that individual's interests.

Arbitration fees and oral hearings

Clause 19: Arbitration fees and expenses

120 Subsection (1)(a) and (b) state that any references to "arbitration fees" in this clause cover the fees and expenses to be paid to the arbitrator (including any oral hearing fees) and the fees and expenses of any approved arbitration body concerned.

121 Subsection (2) gives the Secretary of State power to make regulations, if needed, specifying limits on the arbitration fees to be paid by parties. This could include introducing a sliding scale for arbitration fees depending on the amount of protected rent debt being considered in an arbitration case.

122 A statutory instrument made under subsection (2) would be subject to a negative resolution procedure in Parliament (subsection (3)).

123 Subsection (4) requires arbitration fees to be paid upfront by the applicant before arbitration can take place. This requirement provides certainty to the arbitrator or panel of arbitrators of the parties' that their fees and expenses will be paid.

124 Subsection (5) provides the general rule (when making an award under clause 13 or 14) that the arbitrator should also make an award requiring the other party to the arbitration to reimburse the party that made the reference to arbitration for half the arbitration fees. That is subject to subsection (5A) which

states that the general rule in clause 19(5) does not apply if the arbitrator considers it appropriate to award a different proportion in the circumstances of the case. That proportion may be between (and including) 0% and 100% of the fees.

125 Subsection (6) requires parties to meet their own legal and other costs incurred except where the arbitrator has made a determination in relation to the reimbursement of arbitration fees and/or oral hearing fees.

126 Subsection (6A) clarifies that no term of a lease may be used to recover costs incurred in connection with arbitration (including arbitration fees).

127 Subsection (7) provides the meaning of "applicant" for the purposes of this clause, which is the party making the reference to arbitration.

Clause 20: Oral hearings

128 Subsection (1) gives one or both parties in arbitration the right to request an oral hearing, which must take place within 14 days of an arbitrator receiving the request (subsection (2)).

129 Subsection (3) allows the 14-day period for holding a hearing to be extended if both parties agree to it, or the arbitrator considers it reasonable in all the circumstances.

130 Both parties are responsible for paying the costs in advance of the hearing taking place if both parties have requested a hearing (subsection (4)). If the oral hearing is only requested by one party, they are responsible for paying the costs of the oral hearing in advance (subsection (5)).

131 Where one party has paid the hearing fees in advance, subsection (6) lays down the general rule that the arbitrator, when making an award under clause 13 or 14, is to make an award requiring the other party to reimburse half of the hearing fees. However, subsection (6A) gives the arbitrator a power to award reimbursement of such other proportion, including zero, of the hearing fees as the arbitrator considered appropriate (for example, the arbitrator could increase the amount of arbitration fees payable by one party where it had not complied with a direction by the arbitrator)

132 Subsection (7) requires that oral hearings be held in public unless there is agreement between the parties to arbitration that it ought to be held in private. The procedure for the hearing, whether held in public or private, will be for the arbitrator to determine (under the arbitrator's general power to decide all procedural and evidential matters under section 34 of the Arbitration Act 1996, as modified by paragraph 2(c) of Schedule 1 to the Bill).

Guidance

Clause 21: Guidance

133 Subsection (1) gives the Secretary of State the power to issue guidance to arbitrators and to landlords and tenants about arbitrations under this Bill. Subsection (2) allows the Secretary of State to revise that guidance. This guidance would, for example, be able to give arbitrators and the parties guidance on the type of information to be provided to the arbitrator, on the process to be followed and on the handling of arbitration cases.

134 Any guidance issued or revised under this clause must be published.

Modification of Part 1 of the Arbitration Act 1996

Clause 22: Modification of Part 1 of the Arbitration Act 1996

135 The provisions of Part 1 of the Arbitration Act 1996 will apply to arbitration under Part 2 of this Bill, as a statutory arbitration, by virtue of section 94 (1) of the Arbitration Act. Those provisions will not apply to the extent that they are inconsistent with the provisions of this Bill. They will also operate subject to modifications made to those provisions by paragraphs 1 and 2 of Schedule 1 to this Bill. The provisions of the Arbitration Act 1996 that will apply, as modified, include those dealing with the general duty of the arbitrator and of the parties (sections 33 and 40), immunity of the arbitrator (section 29), procedural and evidential matters (section 34), settlement of cases (section 51), the effect of an award (section 58), enforcement of the award (section 66) and appeals (sections 67 to 69).

136 Clause 22 introduces Schedule 1 to this Act, which contains a number of modifications to Part 1 of the Arbitration Act 1996 as it will apply in relation to arbitrations under this Bill. Those modifications are needed to ensure that arbitrations under the Bill work as intended. For example, paragraph 1(c) of Schedule 1 omits sections 16 to 19 (appointment of arbitrators) of the Arbitration Act 1996, which are inconsistent with clauses 7 and 8 of the Bill relating to approved arbitration bodies and the appointment of arbitrators.

Part 3: Moratorium on Certain Remedies and Insolvency Arrangements

Clause 23: Temporary moratorium on enforcement of protected rent debts

137 This clause introduces Schedule 2, which establishes several provisions to prevent a landlord from taking certain remedies during "the moratorium period" (as defined in subsection (2)) with relation to protected rent debt. The restricted remedies are set out in paragraph (a) of subsection (1).

138 Schedule 2 also makes provision relating to the landlord's right to appropriate rent during the moratorium period. This means that if the landlord exercises their right to appropriate rent, the payment must be used towards unprotected rent debt before being used towards protected rent debt. Schedule 2 also makes provision relating to debt claims issued before the Bill is passed as an Act but after 10 November 2021, the date in an announcement of the policy; and for the appropriation of rent debt before the Bill is passed as an Act.

139 Subsection (2) defines "the moratorium period" for this purpose. This period begins on the day which this Bill is passed and ends either when the arbitration concludes, if the matter is referred to arbitration; or if the matter is not referred to arbitration, the last day of the 6-month period in which a matter could be referred to arbitration (as set out in clause 9).

140 Subsection (3) provides the circumstances when an arbitration is concluded for the purposes of subsection (2)(b). Arbitration is concluded when either the proceedings are abandoned or withdrawn by the parties - this cannot be done unilaterally; or the time period for appealing the decision of the arbitrator expires after an arbitration award without an appeal being brought; or any appeal brought within that period is finally determined, abandoned or withdrawn.

141 The protected rent debt in respect of which any relief from payment is given by the arbitrator remains in the nature of rent, once arbitration is concluded. Therefore if an arbitration award is made with which the tenant does not comply, remedies may be exercised in the same way as with other unpaid rent under the lease.

142 The use of "arbitration" in this clause means arbitration provided for by Part 2 of the Bill.

Clause 24: Temporary restriction on initiating certain insolvency arrangements

143 This clause puts in place restrictions on a landlord or tenant entering into certain insolvency arrangements, when a matter relating to protected rent debt has been referred to arbitration.

144 Subsection (2) sets out which insolvency arrangements are restricted and state that these arrangements are restricted only so far as they relate to whole or part of the protected rent debt. From the appointment of the arbitrator until 12 months after an award no proposal for a CVA or an IVA, or application for a compromise or arrangement under Part 26 of 26A of the Companies Act 2006 can be made.

145 This applies to CVAs or restructurings under Part 26 or 26A of the Companies Act, in respect of companies and limited liability partnerships.

Clause 25: Temporary restriction on initiating arbitration proceedings

146 This clause prevents a tenant or landlord from unilaterally invoking arbitration proceedings in relation to a protected rent debt, other than arbitration under Part 2 of this Bill, within the moratorium period. The parties can agree to use arbitration other than that under Part 2 of the Bill.

147 Subsection (2) states that "the moratorium period" has the same definition as given in clause 23.

Clause 26: Temporary restriction on winding-up petitions and petitions for bankruptcy orders

148 This clause introduces Schedule 3, which contains provisions relating to winding-up petitions and petitions for bankruptcy orders. In a similar way to the previous clauses, the provisions in this Schedule restrict a landlord's ability to use these measures during the moratorium period for the protected debt. Schedule 3 also addresses certain bankruptcy petitions presented and resulting orders made from 10 November until the Bill is passed.

Part 4: Final Provisions

Clause 27: Power to apply Act in relation to future periods of coronavirus control

149 This clause confers a power to the Secretary of State to apply aspects of this Bill in the case of closure requirements subsequent to those covered by the Bill, in relation to coronavirus.

150 For this purpose, subsection (2) states that a business tenancy was affected by a closure requirement when regulations required the closure of either the premises in the tenancy (or parts of those premises) or the business (or parts of the business), as a response to the incidence or spread of coronavirus. This subsection also sets out what is meant by "coronavirus".

151 Subsection (3) sets out that any regulations made under subsection (1) may:

a. Specify certain provisions in the Bill which will not apply;

b. Provide for provisions to apply with modifications, as set out in the regulations;

c. Make different provisions for different purposes (including for England and Wales);

d. Make any other provisions which may be required.

152 Subsection (4) sets out that the regulations are to be made by statutory instrument and are subject to the affirmative resolution procedure.

Clause 28: Crown application

153 This clause provides that the Bill binds the Crown.

Clause 29: Extent, commencement and short title

154 This clause sets the territorial extent of the Bill; that is the jurisdictions for which the Bill forms part of the law.

155 The table in Annex A sets out a summary of the position regarding territorial extent and application in the United Kingdom.

156 Parts 1 to 3 of the Bill extend to England and Wales only (except as provided in subsection (2) and (3).

157 Part 4 of the Bill extends to the whole of the United Kingdom.

158 The provisions of clause 24 relating to restructuring under the Companies Act 2006 extend to the whole of the United Kingdom, and those relating to company voluntary arrangements extend to England and Wales and Scotland only. Paragraph 1 of Schedule 3 and clause 26 (as far as it relates to that paragraph), which relate to winding up, extend to England and Wales and Scotland only. This is to reflect the extent of the relevant provisions of the Companies Act 2006 and Insolvency Act 1986 respectively, so that the measures are unavailable in respect of protected rent debt as intended. Part 1 extends to Scotland and Northern Ireland, in so far as relevant to the above provisions that extend to each of these jurisdictions.

159 This clause also provides for this Bill to come into force on the day it is passed, except for the provisions on winding up in paragraph 1 of Schedule 3 and clause 26 (so far as it relates to that paragraph). These aspects of the Bill will come into force on 1 April 2022, once the existing moratorium ends on 31 March 2022.

Schedule 1: Modification of the Arbitration Act 1996 in relation to arbitrations under this Act

160 This Schedule would make modifications to provisions in the Arbitration Act 1996 as it would apply to arbitration under Part 2 of this Bill.

161 Paragraph 1 provides a list of sections, subsections or wording of the Arbitration Act 1996 which should be treated as though omitted when applying to arbitration under Part 2 of the Bill.

162 Paragraph 2 inserts and substitutes wording in specified provisions of the Arbitration Act 1996, so as to modify their effect with regards to arbitrations made under Part 2 of this Bill.

163 Paragraph 3 makes clear that the modifications made under paragraphs 1 and 2 of this Schedule do not affect the operation of sections 94 and 98 of the Arbitration Act 1996 in relation to other provisions of this Bill.

Schedule 2: Temporary moratorium on enforcement of protected debts

Preliminary: interpretation

164 Paragraph 1(1) sets out that this Schedule applies to protected rent debt under a business tenancy.

165 Sub-paragraph (2) provides the definitions for terms used in this Schedule.

Making a debt claim

166 Paragraph 2(1) prevents a landlord from making a debt claim relating to protected debt, during the moratorium period.

167 Sub-paragraph (2) sets out that "debt claim" for this purpose means a claim to enforce a debt in civil proceedings.

Debt claims made before the day on which this Act is passed

168 Paragraph 3 applies to debt claims relating entirely or partly to protected debt which were made on or after 10 November 2021, but before the day on which this Bill is passed.

169 Sub-paragraph (2) states that either the landlord or the tenant can apply for the proceedings on the debt claim to be stayed, so that the payment of the protected rent debt can be resolved through other means. This includes, but is not limited to, arbitration under this Bill. Sub-paragraph (3) means that if such an application is made, the court must stay the proceedings.

170 If a judgement is made in favour of the landlord during the period set out in paragraph 3(1), then if the judgement debt remains unpaid, the debt (so far as it relates to protected debt) can be resolved through arbitration under Part 2 of this Bill, or otherwise by negotiation, and the judgement debt may not be enforced until the end of the moratorium period. If relief from payment of a protected rent debt is award through arbitration, or otherwise agreed, the effect of the judgement debt is to be altered in line with the award or agreement.

171 If the judgement is registered under section 98 of the Courts Act 2003 and relates to protected rent only, then it must be cancelled once the moratorium period has ended, if the court is made aware that relief from payment has been granted.

172 "Debt claim" used in this paragraph has the same meaning as it does in paragraph 2.

Using CRAR (the commercial rent arrears recover power

173 Paragraph 4(1) sets out that a landlord must not use CRAR in relation to a protected rent debt during the moratorium period.

174 Sub-paragraph (2) gives further details on what cannot be done with regards to CRAR within the moratorium period for the protected rent debt. The landlord cannot authorise an enforcement agent to act for them, and neither can an agent give an enforcement notice.

175 Sub-paragraph (3) explains that "CRAR" and "notice of enforcement" have the same meaning as they do in the Tribunals, Courts and Enforcement Act 2007 which contains the CRAR process.

176 Sub-paragraph (4) inserts new wording into that Act to signpost there that CRAR may not be exercisable to recover certain debt, due to the provisions in this paragraph of this Bill.

Enforcing a right of re-entry or forfeiture

177 Paragraph 5(1) provides that a landlord is prevented from enforcing a right under the tenancy to forfeit for non-payment of the protected rent during the moratorium period.

178 Sub-paragraph (2) protects the landlord from being taken during the moratorium period to have waived the right to forfeit . The landlord is also protected from being taken to have waived the right to forfeit prior to the Bill being passed, by section 82(2) Coronavirus Act 2020.

179 Section 30 of the Landlord and Tenant Act 1954 sets out grounds on which a landlord can oppose an application for a new lease under Part 2 of that Act. One of the grounds is persistent delay in paying rent (section 30(1)(b)). Sub-paragraph (3) provides that non-payment of protected rent before the moratorium period has ended, is to be disregarded for purposes of section 30(1)(b) of that Act.

180 Paragraph 6 provides that if a tenant applies for relief from forfeiture as a sub-tenant under a superior lease, the court, when determining whether to grant relief from forfeiture and the terms of relief, must disregard any failure of the tenant to pay protected rent.

Using a landlord's right to appropriate rent

181 Paragraph 7 applies in relation to rent being paid during the moratorium period at a time when the tenant owes the landlord an unprotected rent debt as well as a protected rent debt, and the tenant has not exercised their right to use the payment to pay any particular rent debt owed to the landlord.

182 Sub-paragraph (2) states that, in this case, the landlord must appropriate the payment to meet the unprotected rent debt before it can be used to meet the protected rent debt.

183 Sub-paragraph (3) provides the definition of "unprotected rent debt".

184 Paragraph 8 applies in relation to rent being paid during the period set out in sub-paragraph (2), at a time when the tenant owes the landlord an unprotected rent debt as well as a protected rent debt, and the tenant has not exercised their right to use the payment to pay any particular rent debt owed to the landlord.

185 The time period referred to begins with the day after the last day of the protection period for the debt and ends the day before the moratorium period starts.

186 Sub-paragraph (3) states that, in this case, during the moratorium period, the landlord must appropriate the payment to meet the unprotected rent debt before it can be used to meet the protected rent debt.

187 If a landlord used their right to appropriate rent debt during the period set out in sub-paragraph (2), sub-paragraph (4) states that the appropriation does not have the effect of allowing protected rent to be treated as paid first, and the payment should be treated as having been used for the unprotected debt first.

188 Sub-paragraph (5) explains that "unprotected rent debt" has the same meaning as it does in paragraph 7.

Using a tenant's deposit to apply towards unpaid rent debt

189 Paragraph 9 applies in cases where a landlord is able to use a tenancy deposit for the purpose of recovering rent debt.

190 Sub-paragraph (2) means that the landlord cannot recover any protected rent debt from a tenancy deposit during the moratorium period.

191 Sub-paragraph (3) states that in cases where a landlord has already used a tenancy deposit to recover protected rent debt before the beginning of the moratorium period, the tenant is not required to top up the deposit to address any shortfall before the end of that period.

Schedule 3: Winding-up and Bankruptcy Petitions

Prohibition on presenting a winding-up petition solely in relation to a protected rent debt

192 Paragraph 1 applies in relation to a protected rent debt owed by a tenant which is a company.

193 Sub-paragraph (2) provides that a landlord cannot present a winding-up petition on grounds that the company is unable to pay its debts during the moratorium period. A landlord is still able to present a winding-up petition if they are owed a debt which is not protected rent debt, as defined in this Bill.

194 Sub-paragraph (3) gives the definitions of "moratorium period", "registered company", and "unregistered company" for the purposes of this paragraph.

195 Paragraph 1 applies to limited liability partnerships as it does to registered companies.

Prohibition on presenting a bankruptcy order petition in relation to a protected rent debt

196 Paragraph 2 puts in place a restriction on landlords from petitioning for bankruptcy against a tenant such as a sole trader relating to protected rent and commenced during the relevant period.

197 This paragraph and paragraph 3 apply when a protected rent debt is owed by an individual.

198 In order to be able to petition for bankruptcy, a creditor must show that the debtor is unable to pay or has no reasonable prospects of being able to pay their debt. To show this, the creditor must either serve a statutory demand or there must be a judgment or order of a court in favour of the petitioning creditor in respect of the debt. Sub-paragraph (2) prevents a petition being presented relying on statutory demand by a landlord made during the relevant period in respect of a protected rent debt. Sub-paragraph (3) prevents a petition being presented in relation to any protected rent if the claim for the debt was issued during the relevant period.

199 Until these provisions come into force, petitions may continue to be presented based on statutory demands and claims which will not be valid once the provisions come into force. If such a petition is presented, the court may make an order to restore the position to what it would have been had the petition not been presented.

200 Once a petition is presented an interim receiver or a special manager may be appointed by the court. Sub-paragraph (5) provides that if it appears to the interim receiver or the special manager that the petition is one described in sub-paragraph (2) or (3), they must refer the matter to the court to determine whether the court should give an order to restore the position to what it would have been had the petition not been presented.

201 The interim receiver and special manager may be permitted by the court to do certain things with the debtor's estate. Sub-paragraph (6) provides that they are not liable in civil or criminal proceedings for anything done pursuant to such a court order.

202 Sub-paragraph (7) provides the definition of "relevant period" for this purpose as beginning on 10 November and ending on the day mentioned in clause 23(2)(b) (when arbitration is concluded).

203 Sub-paragraph (8) defines "claim" for the purpose of this paragraph.

204 Sub-paragraph (9) provides that this paragraph is to be treated as though it comes into force on 10 November 2021.

Orders for bankruptcy orders made before the day on which this Act is passed

205 Paragraph 3 applies when a court makes a bankruptcy order against a tenant following a petition from a landlord, after 10 November but before this Schedule comes into force. This is only for cases where the order is one that would not have been made had the Schedule been in force, i.e., one that would be affected by the provisions under paragraph 2.

206 Sub-paragraph (2) and (3) state that in this case, the order will be considered void and neither the official receiver, the trustee in bankruptcy, interim receiver or special manager are liable for any actions taken in respect of the order.

207 Sub-paragraph (4) means that a court may instruct that action is taken to restore the tenant to a position that it would have been before the petition for a bankruptcy order was made. This allows the court to undo any negative effects of the bankruptcy order and may lead to the petitioner (landlord) becoming liable for the costs of doing so.

208 Sub-paragraph (5) requires the official receiver, trustee, interim receiver or special manager to refer the matter to the court if it appears that an order is void (as under sub-paragraph (2)) and that the court should give directions (as under sub-paragraph (4)), to determine whether the court should give such directions.

Interpretation

209 Paragraph 4 provides definitions of terms used throughout this Schedule. References to the tenant in Schedule 3 include a person who has guaranteed a tenant's obligations.

Commencement

210 Clause 30(5) provides for this Bill to come into force on the day it is passed; except that paragraph 1 of Schedule 3, and clause 26 so far as relating to that paragraph, comes into force on 1 April 2022.

Financial implications of the Bill

211 This legislation does not have any financial implications.

Parliamentary approval for financial costs or for charges imposed

212 Money or Ways and Means resolutions are not required.

Compatibility with the European Convention on Human Rights

213 Lord Grimstone of Boscobel, Minister of State (Minister for Investment) at the Department for Business, Energy and Industrial Strategy has made a statement regarding the European Convention on Human Rights that the provisions of the Commercial Rent (Coronavirus) Bill are compatible with the Convention rights.

214 The Bill provides a short-term, focused solution to an unprecedented situation, where landlords and tenants are unable to agree about protected rent. The system is designed to resolve issues and protect viable business to move forwards, the public interest justifying the impact on contractual arrangements. The arbitration process is designed to be compliant with Article 6 (the right to a fair trial) and Article 8 (the right to respect for private and family life, home and correspondence). Overall the Bill provides a proportionate solution to the exceptional circumstances arising from the pandemic, compliant with Article 1 of the First Protocol to the Convention (protection of property) and Article 14 (prohibition of discrimination).

215 The Department for Business, Energy and Industrial Strategy has published a memorandum summarising the key considerations as to the Bill's compatibility with the Convention rights. This memorandum can be accessed at [https://bills.parliament.uk/bills/3064/publications].

Related documents

216 The following documents are relevant to the Bill and can be read at the stated locations:

- Impact Assessment [https://bills.parliament.uk/bills/3064/publications]
- Delegated Powers Memorandum [link to follow when published online]

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Part 1	Yes	Yes	No	In so far as relating to clause 24, 26, Schedule 3 paragraph 1	No	In so far as relating to relevant provisions of clause 24	No
Part 2	Yes	Yes	No	No	No	No	No
Part 3							
Clause 23	Yes	Yes	Yes	No	No	No	No
Clause 24	Yes	Yes	No	Yes save (2)(b)	No	(1), (2)(c), (3) and (4) (for certain purposes)No	No
Clause 25	Yes	Yes	No	No	No	No	No
Clause 26	Yes	Yes	No	Yes in respect of winding up only	No	No	No
Part 4							
Clause 27	Yes	Yes	In part	Yes	No	Yes	No
Clause 28	Yes	Yes	No	Yes	No	Yes	No
Clause 29	Yes	Yes	No		No	Yes	No
Schedule 1	Yes	Yes	No	No	No	No	No
Schedule 2	Yes	Yes	Yes, save for paragraphs 3(6) and (7)	No	No	No	No
Schedule 3							
Paragraph 1	Yes	Yes	No	Yes	No	No	No
Paragraph 2	Yes	Yes	No	No	No	No	No
Paragraph 3	Yes	Yes	No	No	No	No	No
Paragraph 4	Yes	Yes	No	No	No	No	No
Paragraph 5	Yes	Yes	No	No	No	No	No

COMMERCIAL RENT (CORONAVIRUS) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Commercial Rent (Coronavirus) Bill as brought from the House of Commons on 13 January 2022 (HL Bill 92).

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