



# Commercial Rent (Coronavirus) Act 2022

## 2022 CHAPTER 12

### PART 2

#### ARBITRATION

##### *Approved arbitration bodies*

#### **7 Approval of arbitration bodies**

- (1) The Secretary of State may approve one or more bodies to carry out the functions under section 8 (and a body which is for the time being so approved is referred to in this Act as an “approved arbitration body”).
- (2) The Secretary of State may only approve a body which the Secretary of State considers to be suitable to carry out those functions.
- (3) The Secretary of State may withdraw an approval given under subsection (1) if the Secretary of State considers that the body is no longer suitable to carry out those functions.
- (4) Where the Secretary of State proposes to withdraw an approval given under subsection (1), the Secretary of State must notify the body in question and give the body an opportunity to make representations.
- (5) Where an approval given under subsection (1) is withdrawn from a body, the Secretary of State must make arrangements relating to—
  - (a) the repayment of any fees or expenses already paid to the body (if any), and
  - (b) the body’s entitlement (if any) to fees or expenses.
- (6) The withdrawal of an approval given under subsection (1) does not affect the validity of anything done by or in relation to the body in question before that withdrawal.
- (7) The Secretary of State must maintain and publish a list of approved arbitration bodies.

## 8 Functions of approved arbitration bodies

- (1) An approved arbitration body has the following functions—
  - (a) to maintain a list of arbitrators who—
    - (i) are available to act as arbitrators under this Part (whether alone or as a member of a panel of arbitrators), and
    - (ii) appear to the body to be suitable, by virtue of their qualifications or experience, to act as such,
  - (b) to appoint an arbitrator or panel of arbitrators from that list to deal with the matter of relief from payment of a protected rent debt referred to the body for arbitration under this Part,
  - (c) where an arbitrator appointed by the body resigns, dies or otherwise ceases to hold office, to appoint another arbitrator from that list to fill the vacancy,
  - (d) to set, collect and pay its fees and the fees of an arbitrator appointed by it,
  - (e) to oversee any arbitration in relation to which it has appointed an arbitrator or panel of arbitrators, and
  - (f) to remove an arbitrator appointed by it from a case on any one of the grounds in subsection (2).
- (2) The grounds for removal are—
  - (a) that circumstances exist that give rise to justifiable doubts as to the impartiality or independence of the arbitrator,
  - (b) that the arbitrator does not possess the qualifications required for the arbitration,
  - (c) that the arbitrator is physically or mentally incapable of conducting the arbitration or there are justifiable doubts as to their capacity to do so, or
  - (d) that the arbitrator has refused or failed to properly conduct the arbitration, or to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the parties.
- (3) An approved arbitration body must ensure that an arbitrator or panel of arbitrators appointed by it under subsection (1)(b) is independent from the parties to the arbitration.
- (4) Where an arbitrator resigns, dies or otherwise ceases to hold office, an approved arbitration body must make arrangements relating to—
  - (a) the repayment of any fees or expenses already paid to the arbitrator (if any), and
  - (b) the arbitrator's entitlement (if any) to fees or expenses.
- (5) Where requested by, or as agreed with, the Secretary of State, an approved arbitration body must provide a report to the Secretary of State containing details of—
  - (a) the exercise by the approved body of its functions under this section, and
  - (b) any arbitrations overseen by the approved body under subsection (1)(e), including the progress of, and any awards made in relation to, such arbitrations.
- (6) An approved arbitration body must publish on its website the fees payable in relation to arbitrations referred to it under this Part.

### *References to arbitration by tenant or landlord*

## **9 Period for making a reference to arbitration**

- (1) This section applies where the tenant and the landlord under a business tenancy are not in agreement as to the resolution of the matter of relief from payment of a protected rent debt.
- (2) A reference to arbitration may be made by either the tenant or the landlord within the period of six months beginning with the day on which this Act is passed.
- (3) The Secretary of State may by regulations made by statutory instrument extend the period allowed by subsection (2) for making references to arbitration in the case of—
  - (a) English business tenancies,
  - (b) Welsh business tenancies, or
  - (c) English business tenancies and Welsh business tenancies.
- (4) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.

## **10 Requirements for making a reference to arbitration**

- (1) Before making a reference to arbitration—
  - (a) the tenant or landlord must notify the other party (“the respondent”) of their intention to make a reference, and
  - (b) the respondent may, within 14 days of receipt of the notification under paragraph (a), submit a response.
- (2) A reference to arbitration must not be made before—
  - (a) the end of the period of 14 days after the day on which the response under subsection (1)(b) is received, or
  - (b) if no such response is received, the end of the period of 28 days beginning with the day on which the notification under subsection (1)(a) is served.
- (3) A reference to arbitration may not be made, an arbitrator may not be appointed, and no formal proposal under section 11(2) or (4) may be made, where the tenant that owes a protected rent debt is subject to one of the following—
  - (a) a company voluntary arrangement which relates to any protected rent debt that has been approved under section 4 of the Insolvency Act 1986,
  - (b) an individual voluntary arrangement which relates to any protected rent debt that has been approved under section 258 of that Act, or
  - (c) a compromise or arrangement which relates to any protected rent debt that has been sanctioned under section 899 or 901F of the Companies Act 2006.
- (4) A reference to arbitration must be made to an approved arbitration body.
- (5) After a reference to arbitration has been made, an arbitrator may not be appointed, and no formal proposal under section 11(2) or (4) may be made, during any period where the tenant that owes a protected rent debt is the debtor under one of the following—
  - (a) a company voluntary arrangement which relates to any protected rent debt that has been proposed and is awaiting a decision under section 4 of the Insolvency Act 1986,

- (b) an individual voluntary arrangement which relates to any protected rent debt that has been proposed and is awaiting a decision under section 258 of that Act, or
  - (c) a compromise or arrangement which relates to any protected rent debt that has been applied for and is awaiting a decision under section 899 or 901F of the Companies Act 2006.
- (6) This section, so far as relating to a company voluntary arrangement and a compromise or arrangement under section 899 or 901F of the Companies Act 2006, applies to limited liability partnerships (as well as to companies).

*Proposals for resolving the matter of relief from payment*

## **11 Proposals for resolving the matter of relief from payment**

- (1) A reference to arbitration must include a formal proposal for resolving the matter of relief from payment of a protected rent debt.
- (2) The other party to the arbitration may put forward a formal proposal in response within the period of 14 days beginning with the day on which the proposal under subsection (1) is received.
- (3) A formal proposal under subsection (1) or (2) must be accompanied by supporting evidence.
- (4) Each party may put forward a revised formal proposal within the period of 28 days beginning with the day on which the party gives a formal proposal to the other party under subsection (1) or (2).
- (5) A revised formal proposal must be accompanied by any further supporting evidence.
- (6) The periods in subsections (2) and (4) may be extended—
  - (a) by agreement between the parties, or
  - (b) by the arbitrator where the arbitrator considers that it would be reasonable in all the circumstances.
- (7) In this section “formal proposal” means a proposal which is—
  - (a) made on the assumption that the reference is not dismissed for a reason set out in section 13(2) or (3),
  - (b) expressed to be made for the purposes of this section, and
  - (c) given to the other party and the arbitrator.

## **12 Written statements**

- (1) This section applies to any written statement provided to the arbitrator by a party (whether made by the party or another person) which relates to a matter relevant to the arbitration.
- (2) The written statement must be verified by a statement of truth.
- (3) The written statement may be disregarded by the arbitrator if it is not so verified.

### *Arbitration awards*

#### **13 Arbitration awards available**

- (1) This section sets out the awards open to the arbitrator on a reference under this Part.
- (2) If the arbitrator determines that—
  - (a) the parties have by agreement resolved the matter of relief from payment of a protected rent debt before the reference was made,
  - (b) the tenancy in question is not a business tenancy, or
  - (c) there is no protected rent debt,the arbitrator must make an award dismissing the reference.
- (3) If, after assessing the viability of the tenant’s business, the arbitrator determines that (at the time of the assessment) the business—
  - (a) is not viable, and
  - (b) would not be viable even if the tenant were to be given relief from payment of any kind,the arbitrator must make an award dismissing the reference.
- (4) Subsection (5) applies if, after making that assessment, the arbitrator determines that (at the time of the assessment) the business—
  - (a) is viable, or
  - (b) would become viable if the tenant were to be given relief from payment of any kind.
- (5) In that case the arbitrator must resolve the matter of relief from payment of a protected rent debt by—
  - (a) considering whether the tenant should receive any relief from payment and, if so, what relief, and
  - (b) making an award in accordance with section 14.

#### **14 Arbitrator’s award on the matter of relief from payment**

- (1) This section applies where the arbitrator is considering how to resolve the matter of relief from payment of a protected rent debt as required by section 13(5).
- (2) Before determining what award to make the arbitrator must consider any final proposal put forward to it by a party under section 11.
- (3) Where both parties put forward final proposals under section 11—
  - (a) if the arbitrator considers that both proposals are consistent with the principles in section 15, the arbitrator must make the award set out in whichever of them the arbitrator considers to be the most consistent;
  - (b) if the arbitrator considers that one proposal is consistent with the principles in section 15 but the other is not, the arbitrator must make the award set out in the proposal that is consistent.
- (4) Where only the party making the reference to arbitration puts forward a final proposal under section 11, the arbitrator must make the award set out in the proposal if the arbitrator considers that the proposal is consistent with the principles in section 15.

- (5) Otherwise, the arbitrator must make whatever award the arbitrator considers appropriate (applying the principles in section 15).
- (6) An award under this section may—
- (a) give the tenant relief from payment of the debt as set out in the award, or
  - (b) state that the tenant is to be given no relief from payment of the debt.
- (7) Where an award under subsection (6)(a) gives the tenant time to pay an amount (including an instalment), the payment date must be within the period of 24 months beginning with the day after the day on which the award is made.
- (8) In subsection (7) “the payment date” means the day specified in the award as the day on which the amount concerned falls due for payment.
- (9) An award giving the tenant relief from payment of a protected rent debt is to be taken as altering the effect of the terms of tenancy in relation to the protected rent constituting the debt.
- (10) Subsection (9) means, in particular, that—
- (a) the tenant is not to be regarded as in breach of covenant by virtue of—
    - (i) non-payment of an amount written off by the award, or
    - (ii) failure to pay an amount payable under the terms of the award before it falls due under those terms;
  - (b) a guarantor of the tenant’s obligation to pay rent, or a former tenant who is otherwise liable for a failure by the tenant to pay rent, is not liable in respect of anything mentioned in paragraph (a)(i) or (ii);
  - (c) a person other than the tenant who is liable for the payment of rent on an indemnity basis is not liable—
    - (i) to pay any unpaid protected rent written off by the award, or
    - (ii) to pay an amount payable under the terms of the award before it falls due under those terms;
  - (d) any amount payable under the terms of the award is to be treated for the purposes of the tenancy as rent payable under the tenancy.
- (11) In this section “final proposal” means—
- (a) the revised formal proposal put forward by a party under section 11(4), or
  - (b) if there is no revised formal proposal put forward by a party, the formal proposal put forward by the party under section 11(1) or (2).

## 15 Arbitrator’s principles

- (1) The principles in this section are—
- (a) that any award should be aimed at—
    - (i) preserving (in a case falling within section 13(4)(a)), or
    - (ii) restoring and preserving (in a case falling within section 13(4)(b)), the viability of the business of the tenant, so far as that is consistent with preserving the landlord’s solvency, and
  - (b) that the tenant should, so far as it is consistent with the principle in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay.

- (2) In considering the viability of the tenant’s business and the landlord’s solvency for the purposes of subsection (1), the arbitrator must disregard anything done by the tenant or the landlord with a view to manipulating their financial affairs so as to improve their position in relation to an award to be made under section 14.
- (3) For the purposes of this section, the landlord is “solvent” unless the landlord is, or is likely to become, unable to pay their debts as they fall due.

## **16 Arbitrator: assessment of “viability” and “solvency”**

- (1) In assessing the viability of the business of the tenant, the arbitrator must, so far as known, have regard to—
  - (a) the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party,
  - (b) the previous rental payments made under the business tenancy from the tenant to the landlord,
  - (c) the impact of coronavirus on the business of the tenant, and
  - (d) any other information relating to the financial position of the tenant that the arbitrator considers appropriate.
- (2) In assessing the solvency of the landlord, the arbitrator must, so far as known, have regard to—
  - (a) the assets and liabilities of the landlord, including any other tenancies to which the landlord is a party, and
  - (b) any other information relating to the financial position of the landlord that the arbitrator considers appropriate.
- (3) In making an assessment under subsection (1) or (2), the arbitrator must disregard the possibility of the tenant or the landlord (as the case may be)—
  - (a) borrowing money, or
  - (b) restructuring its business.

## **17 Timing of arbitrator’s award**

- (1) Subject to subsection (2), the arbitrator must make an award under section 14 as soon as reasonably practicable after—
  - (a) where both parties have put forward a final proposal, the day on which the latest final proposal is received, or
  - (b) otherwise, the last day on which a party may put forward a revised formal proposal (see section 11(4)).
- (2) Where an oral hearing is held (see section 20), the arbitrator must make an award within the period of 14 days beginning with the day on which the hearing concludes.
- (3) The period in subsection (2) may be extended—
  - (a) by agreement between the parties, or
  - (b) by the arbitrator where the arbitrator considers that it would be reasonable in all the circumstances to do so.
- (4) In this section “final proposal” has the same meaning as in section 14(11).

## 18 Publication of award

- (1) This section applies when the arbitrator has made an award on a reference under this Part.
- (2) The arbitrator must publish the award together with the reasons for making it, subject as follows.
- (3) The arbitrator must exclude confidential information from anything published under this section, unless the arbitrator has been notified by the person to whom it relates that the person consents to its publication.
- (4) In subsection (3) “confidential information” means information which the arbitrator is satisfied is—
  - (a) 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
  - (b) 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*

## 19 Arbitration fees and expenses

- (1) In this section references to arbitration fees are to—
  - (a) the arbitrator’s fees and expenses (including any oral hearing fees), and
  - (b) the fees and expenses of any approved arbitration body concerned.
- (2) The Secretary of State may by regulations made by statutory instrument specify limits on arbitration fees, which may differ depending on the amount of protected rent debt in question.
- (3) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The applicant must pay arbitration fees (other than oral hearing fees) in advance of the arbitration taking place.
- (5) When the arbitrator makes an award under section 13 or 14, the arbitrator must (subject to subsection (6)) also make an award requiring the other party to reimburse the applicant for half the arbitration fees paid under subsection (4).
- (6) The general rule in subsection (5) does not apply if the arbitrator considers it more appropriate in the circumstances of the case to award a different proportion (which may be zero).
- (7) Except as provided by subsection (5) and section 20(6), the parties must meet their own legal or other costs.
- (8) Legal or other costs incurred in connection with arbitration (including arbitration fees) are not recoverable by virtue of any term of the business tenancy concerned.
- (9) In this section, “applicant” means the party which made the reference to arbitration.



## **20 Oral hearings**

- (1) An oral hearing must be held where either or both of the parties make a request to the arbitrator.
- (2) An oral hearing must be held within the period of 14 days beginning with the day on which the arbitrator receives a request under subsection (1).
- (3) The period in subsection (2) may be extended—
  - (a) by agreement between the parties, or
  - (b) by the arbitrator where the arbitrator considers that it would be reasonable in all the circumstances to do so.
- (4) Where both parties request an oral hearing, the parties are jointly and severally liable to pay the hearing fees in advance.
- (5) Where one of the parties requests an oral hearing, that party must pay the hearing fees in advance.
- (6) When the arbitrator makes an award under section 13 or 14, the arbitrator must (subject to subsection (7)) also make an award requiring the other party to reimburse the applicant for half the hearing fees.
- (7) The general rule in subsection (6) does not apply if the arbitrator considers it more appropriate in all the circumstances to award a different proportion (which may be zero).
- (8) An oral hearing must be held in public unless the parties agree otherwise.

### *Guidance*

## **21 Guidance**

- (1) The Secretary of State may issue guidance to—
  - (a) arbitrators about the exercise of their functions under this Part, and
  - (b) tenants and landlords about making a reference to arbitration under this Part.
- (2) The Secretary of State may revise any guidance issued under this section.
- (3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

### *Modification of Part 1 of the Arbitration Act 1996*

## **22 Modification of Part 1 of the Arbitration Act 1996**

Schedule 1 modifies Part 1 of the Arbitration Act 1996 in relation to arbitrations under this Part.