Department for
Business, Energy
& Industrial Strategy

Commercial Rent (Coronavirus) Act 2022 Guidance

Guidance to arbitrators and approved arbitration bodies on the exercise of their functions in the Act

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INTRODUCTION

1.1. The Commercial Rent (Coronavirus) Act 2022 (the 'Act') establishes an arbitration system to resolve certain unpaid rent debt attributable to the pandemic, enabling an arbitrator to award particular forms of relief from payment, where the matter has not been resolved by agreement between the parties. Part 2 of the Act sets out the statutory arbitration process that will apply in such circumstances in England and Wales.

1.2. Part 1 of this guidance is issued to arbitrators on a statutory basis under section 21(1)(a) of the Act and concerns the exercise of arbitrators' functions under Part 2 of the Act. Part 2 of this guidance is issued on a non-statutory basis and is primarily intended to guide approved arbitration bodies in relation to the exercise of their functions under section 8 of the Act.

1.3. The Act provides a specific arbitration procedure to be followed which differs from usual arbitration practice. That is the procedure that the parties must follow and which the arbitrator must uphold. The Arbitration Act 1996 (the 'AA96') also applies to arbitration under the Act. However, to the extent there is any inconsistency between the Act and the AA96, the Act (i.e. the Commercial Rent (Coronavirus) Act 2022) will prevail (see section 94(2) of the AA96). Note that for the purposes of arbitration under the Act, Schedule 1 to the Act modifies certain provisions of the AA96. Those modifications are without prejudice to the operation of sections 94 to 98 of the AA96 which make provision in relation to statutory arbitration.

1.4. Part 1 of the Act defines key terms for the purposes of the Act. These underpin the Act's arbitration scheme and are addressed in this guidance. Part 2 of the Act establishes the arbitration process applying to in-scope disputes and sets out the functions of arbitrators and approved arbitration bodies. Part 3 of the Act provides for temporary restrictions on the availability of certain remedies and measures in relation to protected rent debt, during the period whilst references can be made to arbitration or arbitration is ongoing. Part 3 is outside of the scope of this guidance, except where it provides for certain debts to be considered within the Act's arbitration.

PART ONE: statutory guidance to arbitrators

IMPORTANT: Part 1 of this document is statutory guidance is issued under section 21(1)(a) of the Act and is intended to guide arbitrators in relation to the exercise of their functions under Part 2 of the Act.

2. Summary of the arbitration process from the perspective of an arbitrator

2.1. Arbitration under the Act is to determine, in the absence of agreement between the parties, whether a tenant should be granted relief from payment of certain rent debts and if so, what relief.

2.2. The arbitration process in the Act can be divided into three stages:

2.2.1. Stage 1: the pre-arbitration stage;

2.2.2. Stage 2: the arbitrator's assessment of whether the dispute is eligible for arbitration under the Act;

2.2.3. Stage 3: the arbitrator's assessment of the matter of relief from payment of a protected rent debt.

2.3. At Stage 1, the pre-arbitration stage, before a party can make a reference to arbitration, they must comply with certain requirements, including notifying the other party of their intention to make a reference, allowing the prescribed period of time to elapse before making the reference and ensuring the reference is made to an arbitration body approved by the Secretary of State (a list of the approved arbitration bodies has been published on gov.uk at https://www.gov.uk/government/publications/apply-for-role-of-arbitration-body-to-manage-rent-related-disputes-process-and-form.

2.4. The reference to arbitration must be accompanied by a formal proposal for resolving the dispute with supporting evidence. The approved arbitration body has (among others) the functions of maintaining a list of arbitrators that appear suitable by virtue of their qualifications and experience, and of appointing arbitrators to arbitrations under the Act. Stage 1 is intended to give the parties an opportunity to negotiate and potentially settle the dispute before going to arbitration.

2.5. At Stage 2, having been appointed by the approved arbitration body, the arbitrator is to determine whether the dispute is eligible for arbitration. In order to be eligible:

2.5.1. The tenancy in question must be a "business tenancy";

2.5.2. The rent debt in dispute must be a "protected rent debt";

2.5.3. The parties must not have reached agreement on the matter of relief from payment of the "protected rent debt"; and

2.5.4. It must be the case that the tenant's business is viable or would be viable if given relief from payment of the protected rent debt.

2.6. The assessment of the viability of the tenant's business at Stage 2 is to establish whether the tenant's business is viable or would become viable if given relief from payment. The arbitrator will need to consider such information as is provided by the parties and as the arbitrator considers appropriate, to properly assess and determine this point. Detailed guidance on making the viability assessment at Stage 2 is set out in Section 6 of this guidance. Note that the viability of the tenant's business is also part of the arbitrator's assessment at Stage 3.

2.7. At Stage 3, having established that the dispute is eligible for arbitration, the arbitrator is to resolve the matter of relief from payment of the protected rent debt. This stage differs from the usual form of arbitral proceedings involving statements of claim and defence. Instead, when making a reference to arbitration the applicant is required to include (at Stage 1) a formal proposal (together with supporting evidence) for resolving the matter of relief from payment. The respondent has the option to submit their own formal proposal. The formal proposals may be revised once. All formal proposals must be accompanied by supporting evidence. Assessment of those formal proposals and supporting evidence is the main way in which the arbitrator is to resolve the dispute between the parties. The arbitrator does this by applying the principles:

2.7.1. that the award should be aimed at preserving or restoring and preserving the viability of the tenant's business so far as that is consistent with preserving the landlord's solvency; and

2.7.2. that the tenant should, so far as consistent with the above, be required to meet its obligations to pay the protected rent debt in full and without delay.

2.8. The aim is to preserve the tenant's viability whilst preserving the landlord's solvency.

2.9. The principles are applied to the parties' final proposals and the arbitrator must make an award as per the final proposal that is most consistent with the principles. Where only one final proposal is consistent with the principles, or only one final proposal has been received and that proposal is consistent, the award must be as per that proposal. If no final proposal is consistent, then the arbitrator may make whatever award they consider appropriate applying the principles. See section 7 of this guidance for further details.

2.10. It is mandated by the Act that the above procedure prevails over the provisions of the AA96. However, the AA96 will apply to the extent it is not inconsistent with the Act (subject to the modifications made to the AA96 by Schedule 1 to the Act (i.e. the Commercial Rent (Coronavirus) Act 2022) - see section 94(2) of the AA96; see also Annex B for a summary of the modifications).

3. Stage 1: the pre-arbitration stage

3.1. Before an arbitrator is appointed under the Act, the parties must first follow the process for making a reference to arbitration. The process is set out in Part 2 of the Act and is summarised below.

Who can make a reference to arbitration?

3.2. Either the landlord or the tenant can refer the matter to arbitration.

3.3. A reference may not be made where the tenant is subject to any of the following which relates to protected rent debt:

3.3.1. A company voluntary arrangement that has been approved under section 4 of the Insolvency Act 1986 ('CVA');

3.3.2. An individual voluntary arrangement that has been approved under section 258 of the Insolvency Act 1986 ('IVA'); or

3.3.3. A scheme of arrangement or restructuring plan that has been sanctioned under section 899 or 901F of the Companies Act 2006 ('compromise or arrangement').

3.4. If the tenant is a debtor under a CVA, IVA, or a 'compromise or arrangement' relating to any protected rent which has been proposed or applied for and is awaiting a decision, then the parties may refer a matter to arbitration. However, an arbitrator may not be appointed, no formal proposal may be made by the respondent, and neither party may make a revised formal proposal, whilst the decision is pending.

3.5. If the CVA, IVA, or 'compromise or arrangement' is approved or sanctioned, then the arbitration cannot progress, as an arbitrator may not be appointed and no formal proposals may be made by the respondent, or no revised formal proposal may be made by either party. If the CVA, IVA, or 'compromise or arrangement' is not approved or sanctioned then, once this decision has been made, an arbitrator can be appointed, and the respondent can make a formal proposal and either party may make a revised formal proposal, so that the arbitration can proceed.

By when must a reference to arbitration be made?

3.6. The reference must be made within 6 months beginning with (and so including) the day on which the Act was passed i.e. by 23 September 2022. The Secretary of State may make regulations to extend that period.

To whom must the reference be made?

3.7. A reference to arbitration must be made to one of the arbitration bodies approved by the Secretary of State (the 'approved arbitration bodies'). The Secretary of State will maintain and publish a list of these bodies. https://www.gov.uk/government/publications/apply-for-role-of-arbitration-body-to-manage-rent-related-disputes-process-and-form

What steps must be taken before a reference is made?

3.8. The party intending to make a reference to arbitration (the 'applicant') must first notify the other party (the 'respondent') of its intention to do so. We recommend that this is done via a letter of notification. We also recommend that the applicant use this as a final opportunity to settle the dispute and so the letter of notification should include an offer of settlement supported by any appropriate evidence in line with the behaviours, principles and documentation set out in the Commercial rent code of practice following the COVID-19 pandemic (the 'Code of Practice') which can be accessed here: https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic.

3.9. Within 14 days of receipt of this notification, the respondent may submit a response, although the respondent does not have to respond. We recommend that the respondent also uses the response as a final opportunity to settle the dispute so should either accept the applicant's offer included with the letter of notification or submit their own offer. If the respondent is submitting their own offer that should be supported by any appropriate evidence in line with the behaviours, principles and documentation set out in the Code of Practice[1].

3.10. If the respondent submits a response, the applicant may make a reference to arbitration once 14 days (beginning with the day after the day on which the response is received) have expired.

3.11. If the respondent does not submit a response within 14 days the applicant may make a reference to arbitration once 28 days (beginning with the day on which the applicant's notice of intention is served) have expired. If the respondent does ultimately submit a response but only after 14 days, the same timescale applies (i.e. the applicant may make a reference after the 28 day time limit). However, in such a scenario it is expected that the parties would continue to negotiate and to consider any offers made.

[1] https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic

3.12. Unless or until the above procedure has been complied with the reference may not be accepted by the approved arbitration body to which the reference has been made.

3.13. See paragraphs 12.19 to 12.20 below for further information on the service of notices.

3.14. See paragraphs 12.21 to 12.23 below for further information on the computation of time.

How is the reference made?

3.15. Once the pre-arbitration steps above have been carried out the applicant can make a reference to arbitration. A reference is made when the applicant gives notice in writing to an approved arbitration body, requesting that that body appoint an arbitrator (or arbitrators) in respect of that matter. In practice that should be done by completing the approved arbitration body's application form.[2] We recommend that the reference to arbitration (application form) should be sent by the applicant to the respondent at the same time.

3.16. The applicant must pay the arbitration fees (other than, if applicable, any oral hearing fees) in advance of the arbitration taking place and ideally at the time the reference is made (see Section 11 of this guidance as to arbitration fees).

3.17. The reference must also contain the applicant's formal proposal and supporting evidence for resolving the matter of relief from payment of a protected rent debt. See paragraph 7.4 below for further details.

Appointment of an arbitrator or tribunal

3.18. The approved arbitration bodies are required to maintain a list of arbitrators who appear to the body to be suitable by virtue of their qualifications and experience and are available to administer arbitrations under Part 2 of the Act.[3]

3.19. Once a reference to arbitration has been made, the approved arbitration body will appoint an arbitrator (or panel of arbitrators) from its list or arbitrators to deal with the matter referred to it and will oversee that arbitration. (See Section 14 of this guidance on functions of approved arbitration bodies).

[2] Section 10(4) of the Act which provides that the reference to arbitration must be made to an approved arbitration body must be read with section 14(5) of the AA96 which clarifies that the party applying for arbitration should give notice in writing to the approved arbitration body requesting the appointment be made.
[3] A full list of the functions of the approved arbitration bodies are set out in section 8 of the Act. Further detail can be found in Section 14 of this Guidance.

3.20. An appointment of an arbitrator cannot be made where the tenant is the debtor under a CVA, IVA or 'compromise or arrangement' relating to any protected rent debt which has been proposed or applied for and is awaiting a decision, or where the tenant is subject to an approved or sanctioned CVA, IVA, or 'compromise or arrangement' relating to any protected rent debt (for example if the decision to approve or sanction is made after the reference to arbitration).[4]

3.21. The parties are free to agree the number of arbitrators to form the tribunal and whether there is to be a chairman. If the parties agree on an even number of arbitrators, an additional arbitrator shall be appointed as chairman of the tribunal, unless otherwise agreed between the parties.

3.22. If there is no agreement between the parties on the number of arbitrators, the tribunal will consist of a sole arbitrator.

[4] Once an arbitrator is appointed, the parties are restricted from making a proposal or application for a CVA, IVA or compromise or arrangement for a certain period – section 24 of the Act. See paragraphs 133-135 of the Code of Practice which can be accessed here https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic.

4. Stage 2: the Eligibility Stage – key concepts

4.1. Provided the party making a reference to arbitration has followed the pre-arbitration steps outlined in Stage 1, the arbitrator appointed by the approved arbitration body must determine whether the dispute is eligible for arbitration under the Act under Stage 2.

4.2. To determine whether the dispute is eligible for arbitration under the Act, arbitrators must be familiar with the definitions of key terms in Part 1 of the Act. Those establish whether criteria in the Act are met. These definitions apply only for the purposes of the Act and are not intended to have broader application. Put another way, the key terms provide the scope of application of the Act and therefore play a key role in the determination of whether a dispute may be referred to arbitration under the Act. In short, arbitration is only available 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'. These key concepts are as follows and are covered in the sections below:

4.2.1. What is a 'business tenancy';

4.2.2. What is 'protected rent debt';

4.2.3. What is 'the matter of relief from payment';

4.2.4. Have the parties reached an agreement?

What is a Business Tenancy?[5]

4.3. Arbitration under the Act is available for certain rent debts due under 'business tenancies'. If the tenancy in question is not a business tenancy, the arbitrator must make an award dismissing the reference (see Section 5 of this guidance below for further details).

4.4. A business tenancy is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (the '1954 Act') 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 (section 23 of the 1954 Act).

[5] Section 2(5)

4.5. A business tenancy for the purposes of the Act (i.e. the Commercial Rent (Coronavirus) Act 2022) includes a tenancy that has been contracted out of the security of tenure provisions in sections 24 to 28 of Part 2 of the 1954 Act.

4.6. Where the business tenancy is one of a chain of tenancies for the same premises (i.e. the business in occupation leases the premises from a landlord, who is themselves leasing from another landlord and so on), only the business tenancy under which the tenant occupies the premises is in scope of the Act.

4.7. The arbitrator's principles (see paragraphs 7.14 and 7.15) require that an award preserves the landlord's solvency. To assess the landlord's solvency, its liabilities under other tenancies must be taken into account as part of its financial position. Landlords can therefore raise their own obligations to pay rent, when demonstrating their ability to afford concessions.

4.8. If a superior landlord (such as the landlord of the tenant's landlord) enforces their right to forfeiture in relation to their superior tenancy during the moratorium period (see paragraph 4.31 for further details on the moratorium) and a tenant in scope of the Act applies for relief from forfeiture, any protected rent debt cannot count against them when the court decides whether to grant that relief.

What is Protected Rent Debt?[6]

4.9. Arbitration is available under the Act to determine whether relief should be given from payment of 'protected rent debt'. If there is no protected rent debt, the arbitrator must make an award dismissing the reference (see Section 5 of this guidance below for further details). There are various criteria underpinning 'protected rent debt'. A 'protected rent debt' is a debt for unpaid 'rent' (as defined for the Act), under a business tenancy (see 4.3 to 4.8 above) which was 'adversely affected by coronavirus', and where that rent is attributable to occupation during a 'protected period'.

What is Rent?[7]

4.10. 'Rent' for the purposes of the Act means an amount consisting of one or more of the following amounts payable by the tenant to the landlord (or a person acting for the landlord, such as a managing agent) under the subject business tenancy:

4.10.1. An amount payable in consideration for possession and use of the premises to which the tenancy relates, whether or not that payment is described as 'rent' in the tenancy);

[6] Sections 3 to 5
[7] Section 2(1)

4.10.2. An amount payable as a service charge (see paragraphs 4.12 and 4.13 as to what 'service charge' means); or

4.10.3. Interest due on any unpaid amount of sub-paragraphs 4.10.1 and 4.10.2 above.

4.11. VAT chargeable on any of the amounts in sub-paragraphs 4.10.1 to 4.10.3 above is included in the meaning of 'rent'.

What is Service Charge?[8]

4.12. As above, 'Rent' includes an amount payable as a service charge. Service charge under the tenancy means an amount payable (directly or indirectly) for the following chargeable services:

Chargeable services which the service charge can cover are:	
(a)	Services
(b)	Repairs
(c)	Maintenance
(d)	Improvements
(e)	Insurance costs (including costs incurred by the landlord in connection with insuring against loss of rent or in complying with its obligations under the tenancy to insure the premises or common parts of the property in which the premises is situated)
(f)	Insurance costs of a superior landlord which the landlord is required to pay
(g)	The landlord's management costs
(h)	Management costs of a superior landlord which the landlord is required to pay

4.13. The 'service charge' can be:

4.13.1. A fixed amount;

4.13.2. An amount which does (or can) vary according to actual or estimated costs (including overheads) incurred, or to be incurred, by or on behalf of the landlord in connection with providing the chargeable services, regardless of when those costs were (or will be) incurred; or

4.13.3. A combination of the above two.

When is 'rent' a 'protected rent debt'[9]?

4.14. Unpaid rent due under a business tenancy will only be a 'protected rent debt' for the purposes of the Act if the business tenancy under which it became payable

[8] Section 2(2)(c)
[9] Section 3

was 'adversely affected by coronavirus' and the subject rent is attributable to occupation of the premises during a 'protected period'.

4.15. If there is no protected rent debt, the arbitrator must make an award dismissing the reference (see Section 5 of this guidance below for further details).

Was the tenancy 'adversely affected by coronavirus'?[10]

4.16. A business tenancy was 'adversely affected by coronavirus' for the Act's purposes, if the whole or part of the business carried on by the tenant at or from 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[11] during a 'relevant period'. See Annex A for a list of 'coronavirus regulations' for the purpose of this criterion, which required business or premises to close (in full or in part) or amended such requirements, or the businesses subject to them; and where the requirements applied within the 'relevant period'.

4.17. The term 'closure requirement' means a requirement specified in coronavirus regulations to close either premises (or parts of premises), or businesses (or parts of businesses), of a specified description. For these purposes, it does not matter if certain limited activities were allowed at the premises as an exception to the closure requirement. If businesses that were required to close their business or premises were still allowed by the regulations to do certain activities, these activities should be disregarded when determining whether a tenancy was adversely affected by coronavirus and therefore within the scope of arbitration. For example, certain retail businesses were required to close during some periods, but could make deliveries or respond to online, telephone or postal orders (without admitting customers). This is a closure requirement, despite the exception.

4.18. Where regulations required specified business or premises, or parts of these, to be closed at particular times each day, this counts as a closure requirement. The concept of closure for these purposes is therefore relatively broad.

4.19. A 'relevant period' is a period within the time from 2pm on 21 March 2020 and 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 and dates, the tenancy was adversely affected by coronavirus. Many types of business were required to close their business or premises for some periods within these times and dates; in which case they were adversely affected by coronavirus for the purposes of the Act.

4.20. For example, non-essential retail businesses were not required to close constantly throughout the period above. In England, these businesses were initially required

[10] Section 4

[11] 'Coronavirus regulations' means those made under section 45C of the Public Health (Control of Disease) Act 1984, whether or not they were also made under any other power, and expressed to be made in response to the threat to public health posed by the incidence or spread of coronavirus. Section 4(6).

to close on 26 March 2020 and allowed to re-open on 15 June 2020, but they were subsequently required to close again, including from 5 November 2020 to 2 December 2020. These periods of mandated closure occurred between 21 March 2020 and 18 July 2021, so they are 'relevant periods'.

Was the rent attributable to all or part of the 'protected period'?[12]

4.21. In order for it to be a protected rent debt, the unpaid rent which is due under a business tenancy adversely affected by coronavirus must be attributable to a period of occupation by the tenant for all or part of the 'protected period' beginning on 21 March 2020 and ending with the last day on which all or part of the tenant's business carried on at or from the premises, or the premises itself (or part of the premises), was subject either to a 'closure requirement'[13] or to a 'specific coronavirus restriction'. For premises in England, the last day of the protected period cannot be later than 18 July 2021. For premises in Wales, the last day of the protected period cannot be later than 7 August 2021.

4.22. A 'specific coronavirus restriction' is a restriction or requirement, other than a closure requirement (see above) which[14]:

4.22.1. was imposed by coronavirus regulations[15]; and

4.22.2. regulated the way in which a business of a specified description (or part thereof) was to operate, or the way in which premises of a specified description (or part thereof) were to be used.

4.23. General restrictions are not 'specific coronavirus restrictions' a restriction must apply to specified types of business or premises and not all businesses or workplaces. For example, in Wales, specific coronavirus restrictions included certain requirements applied to retail premises and licensed premises.[16] A requirement to display or provide information on certain premises would also not amount to a specific coronavirus restriction.

4.24. For the purposes of calculating the period of occupation referred to in paragraph 4.21, it does not matter what time of day a tenant's occupation started or ended: for the purposes of calculating a tenant's period of occupation, the whole of both the start and end dates are treated as included in full.

4.25. Only that rent which can be reasonably attributed to a 'protected period' will be protected rent for the purposes of the Act[17]. For example, if a full quarter's rent is outstanding but only part of that quarter is within the 'protected period', then only

[12] Section 5
[13] The meaning of "closure requirement" has been explained at paragraph 4.17 above.
[14] Section 5(3)
[15] The meaning of "coronavirus regulations" is explained at footnote 1 above.
[16] See regulations 17 and 17A of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (2020/1609).
[17] Section 3(5)

the proportion of unpaid rent which is reasonably attributable to the protected period will be protected rent. For a business for which the protected period ends on 18 July 2021, if rent due in June 2021 is unpaid and this rent relates to 3 months starting with the payment date, the amount attributable to the June quarter date to 18 July is protected and the amount attributable to 19 July onwards is not. If the lease makes provision for how to apportion rent, then that contractual method should be used to calculate the amount of protected rent in scope of the Act. Tenants can apply for arbitration for rent instalments which partially comprise protected rent, even if a lease requires instalments to be paid in full.

4.26. Any interest which has accrued in respect of unpaid rent (for possession and use of the premises, under section 2(1)(a)) or service charge (under section 2(1)(b) – see paragraphs 4.12 and 4.13 above), is treated as being attributable to the same period as the underlying debt. This means that where the underlying debt is attributable to occupation within the protected period and is a 'protected rent debt', any unpaid interest which has accrued in respect of that debt is also attributable to the protected period and is also 'protected rent debt'.

4.27. A summary of the protected periods for businesses affected can be found in Annex A to the Code of Practice[18]. For example, for a clothing shop in England the protected period ran from 21 March 2020 to 12 April 2021 (when non-essential retail was allowed to re-open); and for a café in England the protected period ran from 21 March 2020 to 18 July 2021 (whilst cafés and restaurants were able to open before, this was when restrictions ended on table booking size as did the requirement for customers to eat while seated). The protected period for similar businesses in Wales ran from 21 March 2020 to 7 August 2021 (if the restaurant is licensed) when restrictions on retail and licensed premises ended.

Coverage of certain types of 'rent' and particular situations

4.28. Arbitrators will need to be aware of particular provisions for certain types of rent and certain situations.

Rent deposits

4.29. An amount drawn down by the landlord from a tenancy deposit to meet all or part of a protected rent debt is treated by the Act as unpaid rent, if the tenant has not made good any shortfall in the deposit. In other words, rent is to be treated as remaining due from the tenant, despite the landlord having drawn down against a rent deposit in respect of that rent; and the rent is only treated as paid when the tenant makes good the related shortfall in the deposit. Where a tenancy deposit is used in this way to satisfy a rent debt which would otherwise have been a 'protected rent debt', then the amount drawn down in respect of that debt is treated as a protected rent debt.

[18] https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic

4.30. This means that an arbitrator can consider and make an award about any part of a protected rent debt which the landlord has drawn down on the tenancy deposit to cover. Depending on the award, the tenant may be relieved from having to make good any shortfall in the deposit, because the Act treats making good the shortfall as paying, in respect of such rent.

4.31. This would apply where a landlord has lawfully drawn down an amount from a tenancy deposit to meet any protected rent before the Act was passed, and the tenant has not made good any shortfall. A tenant is not required to make good any shortfall in the deposit before the end of the Act's moratorium period. The Act prevents landlords from recovering any protected rent debt from a tenancy deposit during the moratorium period. The moratorium period runs from the day the Act is passed (24 March 2022) for six months if neither party makes a reference to arbitration (i.e. to 23 September 2022), unless extended by regulations; or if a reference is made, until the day on which arbitration concludes.

4.32. For example, assume the tenant would have owed £10,000 of protected rent debt but the landlord drew down £5,000 in respect of that protected rent debt before the Act was in force. If the tenant has not topped up the deposit, they are not required to do so during the moratorium period. Either party may make a reference to arbitration in respect of the £10,000. Should the arbitrator require the tenant to pay in full, that would mean making good the shortfall in the deposit and paying the remaining £5,000. Should the arbitrator write off some of the debt, that could relieve the tenant from making good the shortfall in the deposit (depending on the extent of the relief).

4.33. An arbitration concludes at whichever of the following times is applicable:

4.33.1. When the proceedings are abandoned or withdrawn by the parties, which must be done by both parties together;

4.33.2. If an award is made, when the time period for appeal expires without an appeal being brought – this includes an award dismissing the reference or stating that no relief is to be given; or

4.33.3. If an appeal is made, when an appeal is finally determined, abandoned or withdrawn.

Judgment Debts

4.34. Where the landlord has issued a debt claim[19] against the tenant (or its guarantor or a former tenant who remains liable) on or after 10 November 2021 but before 24 March 2022 (when the Act was passed), to recover in civil proceedings a debt which is or includes protected rent debt, an arbitrator may determine the matter of

[19] It does not matter how that claim has been made (and so includes, for example, a counterclaim).

relief from payment of the protected rent debt covered by the claim. This may be an ongoing claim or a decided claim.

4.35. Where such a debt claim has not been determined, either party may apply to court to stay the proceedings and the court must stay them. A party may then make a reference to arbitration in respect of the protected rent debt covered.

4.36. Where judgment on such a claim has been given in favour of the landlord in that same period (i.e. on or after 10 November 2021, but before 24 March 2022), any judgment debt which remains unpaid and relates to protected rent debt (or any interest on it) is to be treated as a protected rent debt and so the matter of relief from payment of that part of the judgment (and any interest on it) may be determined by an arbitrator .[20] The landlord may not enforce or rely on the judgment debt in so far as it relates to protected rent debt, nor any interest on it, whilst the arbitrator considers the matter during the Act's moratorium period.[21] Should an arbitrator award relief from payment, then the judgment debt would be altered in accordance with that award (likewise if the parties should agree to relief) – that is, the tenant would only owe the amount, and would only be required to pay within the time, specified in the award.

Appropriated Rent

4.37. Tenants who owe more than one instalment of rent have a right to 'appropriate' a rent payment to a particular instalment (or instalments), so that it has to be treated as satisfying that instalment (or instalments) and not others. If a tenant has paid rent between the end of the protected period and 23 March 2022, or they pay during the moratorium period, at a time when they owed both protected and unprotected rent debt, the Act provides that the payment should be appropriated to unprotected rent before protected rent during the moratorium period. This is so that the protected rent debt benefits from the Act. This applies unless the tenant has appropriated it otherwise. If the landlord has exercised its right to appropriate that rent to a protected rent debt, then their appropriation is effectively undone to the extent of the unprotected rent debt and that rent is to be treated as having been appropriated to the unprotected rent debt first. Arbitrators need to ensure that this provision is taken into account, to correctly establish the amount of a protected rent debt.

4.38. For example, assume a payment of £2000 was made on 1 March 2022, when there was a £1500 protected rent debt owed and also a £1500 unprotected rent debt. Under the Act, £1500 should pay off the unprotected rent debt first, leaving £500 to be removed from the protected rent debt, which reduces to £1000. But if the landlord has done the opposite (i.e. has instead sought to pay off the protected debt first), the protected rent debt was purportedly paid first, so the unprotected debt would become £1000. The Act addresses this by providing that the allocation

[20] Schedule 2, paragraph 3
[21] See paragraph 4.31 above in respect of the moratorium period.

of £1500 to the protected debt is undone, and then treats this amount as having been applied to the unprotected debt, leaving £500 to reduce the protected debt.

What is 'the matter of relief from payment'?

4.39. References in the Act and in this guidance to the 'matter of relief from payment' of a protected rent debt are to all issues relating to the following questions:

4.39.1. Whether there is a protected rent debt (of any amount); and, if so

4.39.2. Whether the tenant should be given 'relief from payment' of that debt; and, if so

4.39.3. What that relief should be?

4.40. In relation to a protected rent debt, relief from payment can be any one or more of:

4.40.1. Writing off the debt (in whole or in part);

4.40.2. Giving the tenant time to pay the debt (in whole or in part), including by way of instalments; and

4.40.3. Reducing or writing off any interest payable by the tenant under the terms of the tenancy in relation to all or part of the debt.

Have the parties already reached an agreement?

4.41. The Act does not affect the capacity of the parties to reach agreement as to the matter of relief from payment of a protected rent debt nor does it prevent agreements from having effect or being enforced.

4.42. If the parties have already reached an agreement on the matter of relief from payment of the protected rent debt before the reference to an arbitrator is made, the arbitrator must make an award dismissing the reference (see Section 5 of this guidance below for further details). To avoid unnecessary references to arbitration, the Code of Practice[22] recommends the parties confirm any agreement reached, formally and in writing. The Act does not detail formalities for an agreement, as usual principles apply. If there is disagreement as to whether an agreement has been reached and one party makes a reference to arbitration, the arbitrator will assess whether there is an agreement, applying the usual tests for binding agreements.

[22] https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic

5. Stage 2 (contd.): the Eligibility Stage – arbitration awards available

5.1. Awards can be issued by the arbitrator at two stages. First, at the eligibility stage following a reference to arbitration if the arbitrator is dismissing the reference for any of the reasons set out in paragraph 5.2 below. If the matter is eligible for arbitration under the Act, the arbitrator must make an award on the matter of relief from payment of protected rent debt.

5.2. An arbitrator must make an award dismissing the reference if:

5.2.1. The parties have reached an agreement to resolve the matter of relief before the reference to arbitration was made (see paragraph 4.41 and 4.42);

5.2.2. The tenancy in question is not a 'business tenancy' (see paragraphs 4.3 to 4.8 as to what is a business tenancy);

5.2.3. There is no 'protected rent debt' (see paragraph 4.9 onwards as to what is a protected rent debt); or

5.2.4. Following an assessment of the viability of the tenant's business, the arbitrator determinates that (at the time of assessment) the tenant's business is not viable and also would not be viable even if the tenant were given relief from payment, of any kind. Section 6 of this guidance provides further detail on how to make the assessment of the tenant's viability at stage 2.

5.3. If following an assessment of the viability of the tenant's business, the arbitrator determines that (at the time of assessment):

5.3.1. the tenant's business is viable (see Section 6 of this guidance as to the assessment of the tenant's viability); or

5.3.2. the tenant's business is not viable but it would become viable if the tenant were to be given relief from payment (see Section 7 of this guidance as to the matter of relief from payment of protected debt);

then the arbitrator must go on to Stage 3 and resolve the matter of relief from payment of a protected rent debt,

5.4. It should be noted that the viability of the tenant's business is a feature of both Stage 2 and Stage 3:

5.4.1. At Stage 2, the arbitrator assesses whether the tenant's business is viable or would become viable if given relief from payment;

5.4.2. At Stage 3 (see Section 7 of this guidance below) the arbitrator considers both the tenant's viability and the landlord's solvency in order to determine how much the tenant can afford to pay and how quickly. The goal is to preserve the tenant's viability whilst preserving the landlord's solvency.

5.5. Section 6 below concerns the assessment of the tenant's viability at Stage 2 (the eligibility stage).

6. Stage 2 (contd.): the Eligibility Stage – assessment of the tenant's viability

6.1. Unless an award is made dismissing a reference (for any of the reasons set out in paragraph 5.2), the arbitrator will need to make an assessment of the viability of the tenant's business. It is only if (at the time of that assessment) the business is viable or would become viable (if the tenant were given relief from payment of any kind), that the arbitrator must then go on to determine whether the tenant should receive relief and, if so, what relief should be awarded (see Section 7 of this guidance).

6.2. The Act aims to support landlords and tenants who cannot otherwise agree, in resolving disputes relating to the protected rent owed, and to facilitate a return to normal market operation. To do this, the Act aims to preserve the viability of the tenant's business. But this should only be to the extent that it allows the landlord to meet their ongoing obligations.

6.3. Viability is deliberately not defined in the Act or this guidance, in order to take into account of the vast array of different business models both within and between sectors. In making the assessment of viability a key question is whether protected rent debt aside, the tenant's business has, or will in the foreseeable future have, the means and ability to meet its obligations and to continue trading.

6.4. The assessment of viability (and indeed each arbitration) is to be made on a case-by-case basis, concerning the immediate landlord and occupying tenant relationship. The arbitrator can consider the impact of the tenant's other debts and their wider financial situation.

6.5. Viable business models will differ from party to party and across sectors. For example, the arbitrator may wish to be mindful that profit margins can vary significantly between industries and sectors. This guidance provides a range of tools and processes that maybe useful for arbitrators to consider in assessing viability at the appropriate time.

6.6. The determination of viability is specifically for the purposes of this Act and is not intended to have broader application. This test of viability is distinct from an assessment as to whether the business is solvent. Nonetheless, arbitrators should be mindful that a determination of non-viability may have other implications for a tenant business. Arbitrators should ensure that any determination of non-viability is justifiable and the reasonings for such must be set out in the award dismissing the reference to arbitration.

6.7. It is the tenant's responsibility to provide evidence to support their proposal and to enable the arbitrator to determine the viability of the tenant's business. However,

the arbitrator may request information from the tenant in order to assess viability using the power to decide on procedural and evidential matters in section 34(1) of the AA96[23].

Requirements in the Act for assessing viability

6.8. In assessing the viability of the business of the tenant, the arbitrator must, so far as known, have regard to the following[24]:-

6.8.1. the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party;

6.8.2. the previous rental payments made under the business tenancy from the tenant to the landlord;

6.8.3. the impact of coronavirus on the business of the tenant; and

6.8.4. any other information relating to the financial position of the tenant that the arbitrator considers appropriate.

6.9. In making this assessment, the arbitrator must disregard the possibility of the tenant borrowing money or restructuring their business[25]. If a business took on more debt to become viable for the purposes of arbitration under the Act, they would likely be delaying the problem and risking their long-term viability.

Indicators and evidence to assist with the determination of viability

6.10. The arbitrator is to assess the viability of the tenant's business in a holistic and common-sense way, considering the circumstances of that business. There is no one indicator which can be used to determine whether a tenant business is viable but the table below contains a description of possible indicators an arbitrator may wish to consider using. The indicators that are relevant will vary depending on the circumstances of each case and no one indicator necessarily has any greater importance than another.

6.11. Sections 13(3) and 13(4) of the Act make it clear that the arbitrator is to assess whether the tenant's business is viable (or would be viable if relief where given) at the time of the assessment. Accordingly, any indicators of viability and any evidence reviewed should be used to assess viability at the time of the assessment. On that basis, evidence relating to the business prior to or during the

[23] Note that section 34(1) of the AA96 is modified by paragraph 2(c) of Schedule 1 to the Act.
[24] Section 16(1)
[25] Section 16(3)

coronavirus pandemic would only be relevant insofar as it speaks to current viability, although the arbitrator will of course take into account seasonal variations in business.

6.12. Examples of evidence to help apply the indicators are also included in the table. That said, it should be noted that the volume of evidence a tenant is expected to produce should be proportionate to the scale and complexity of the business. A small business should not be expected to supply a large volume of documentation or complex financial analysis.

6.13. The evidence listed in the table below are simply examples of what might be helpful to the arbitrator. Arbitrators should be aware that smaller businesses may find it challenging to provide predictions on their future profitability, detailed financial records, or liquidity or other ratios as compared to a larger business. It is not expected that tenants incur additional significant expense in obtaining evidence that is not readily available to them. However, both parties should be aware that the better the quality of the information provided, the more that it will assist the arbitrator in determining the dispute and enable the responding party to consider the formal proposal and respond accordingly.

6.14. At the very minimum the tenant should provide at least the last 12 months' full bank account information, including savings accounts, current accounts and loan accounts. Where the tenant's business is not incorporated, it may be necessary to provide personal bank account information. Where these (and/or other records) show the tenant has a good track record of paying rent, and has no substantial new debts, that is likely to be strong evidence that the tenant's business is viable.

6.15. Other information where available will also be generally useful to the arbitrator, such as financial accounts for each financial year after March 2019 or management accounts for each financial month/year after March 2019.

6.16. When reviewing the evidence provided, the arbitrator may take into account whether any financial information or accounts have been audited by an independent third party or are verifiable by other means. However, audited accounts are not required under the Act and some businesses are not required to have audited or comprehensive financial accounts. Where that is the case, the arbitrator may want to look at bank account information including any saving accounts, loan accounts and current accounts for each financial year after March 2019.

6.17. Where enough information is available, it would also be generally useful for the arbitrator to look at the net profit margin or gross profit margin prior to the protected period, compared to after closure requirements or specific restrictions ended for the business in question. That may provide a clearer picture of viability and, in particular, could be helpful to assess how coronavirus has impacted the tenant's business as required by section 16(1)(c) (see paragraph 6.8.3 above).

However, the arbitrator may need to be aware that some businesses may not return to the same level of pre-pandemic profitability quickly.

Table of possible indicators and evidence

Indicator	Evidence
Of general usefulness (see paragraphs 6.14 to 6.17 above).	The last 12 months' full bank account information, including but not limited to savings accounts, current accounts and loan accounts (to be provided by the tenant at the very minimum) Financial accounts for each financial year after March 2019 (where business required to have audited/comprehensive financial accounts) Management accounts for each financial month/year after March 2019 (where business required to have audited/comprehensive financial accounts) Full bank account information, including but not limited to savings accounts, current accounts and loan accounts for each financial year after March 2019 (helpful where business is not required to have audited/comprehensive financial accounts) Net profit margin or gross profit margin prior to the protected period, compared to after closure requirements or specific restrictions ended for the business in question
Cashflow and profits/profitability: a strong history of pre-pandemic profitability, alongside revenue during the restrictions and since the mandated restrictions were lifted, may be an indicator of the business' current viability.	Profit forecasting (the arbitrator should consider the reliability of the forecast taking in to account the context in which the business operates and whether current or expected market factors might make it difficult to predict future profitability. As an example, the inflation rate may be a factor to consider) Evidence of long-term contracts (including the value of those contracts) Gross profit margin and net profit margin prior to the protected period, compared to after closure requirements or specific restrictions ended for the business in question Details of dividends paid to shareholders for each financial year after March 2019

Indicator	Evidence
	Cash flow forecast for length of any repayment plans Order book looking forward to the period over which repayment is proposed Director's remuneration level prior to the protected period, compared to after closure requirements or specific restrictions ended for the business in question
Balance sheet strength: a strong balance sheet may be an indicator of current viability. It should be noted that the balance sheet may appear to show that a business is able to meet their obligations, but it may not necessarily show that the business is profitable. Therefore, the gross profit margin and net profit margin are likely to be more informative as a measure of profitability in determining viability.	Evidence as to working capital and whether it is sufficient to meet day-to-day demands The following ratios may be most relevant for assessing the current strength of the balance sheet but may also be provided as forecasts: • Liquidity Ratio • Gearing Ratio • Current Ratio
Assessment of whether debt commitments have been met: if debt commitments (other than the protected rent debt) have generally been met prior to the pandemic, during the pandemic and since the lifting of restrictions, that may be an indicator of the current viability of the business. Note that where tenants have incurred debts in the past which are still outstanding, but they have managed to continue paying rent, such debts are unlikely to have a bearing on whether the business is viable.	Evidence of any financial grants and/or loans obtained for each financial year from March 2019 onwards Evidence of refusal of further credit, funding, or lending Evidence of overdue invoices of tax demands, unpaid or returned cheques or electronic payments, exceeding overdraft limits, creditor demands, money judgements, guarantees given Rates liability position, including changes since March 2019 Director's loan accounts and movements in previous periods HMRC liabilities, including changes since March 2019

7. Stage 3: resolving the matter of relief from payment

7.1. If the arbitrator:

7.1.1. Has not made an award dismissing a reference for the reasons stated in paragraph 5.2 of this guidance; and

7.1.2. Following an assessment of the viability of the tenant's business, determines that (at the time of the assessment) the business is viable or would become viable if the tenant were to be given relief from payment of any kind;

the arbitrator must resolve the matter of relief from payment of a protected rent debt[26].

7.2. The arbitrator will do so by:

7.2.1. Deciding whether the tenant should be given any relief from payment of that debt and, if so, what relief[27]; and

7.2.2. If applicable, making an award on the matter of relief from payment.

Considering whether to give relief from payment

7.3. Rather than the usual form of arbitration proceedings in which statements of claim and defence etc. are submitted, the parties may each submit one formal proposal for resolving the matter of relief from payment of protected rent debt accompanied by supporting evidence. A party may also submit one revised formal proposal. The final formal proposals form the basis on which the arbitrator resolves the matter of relief from payment, applying the principles in section 15 of the Act.

7.4. Under the Act, a formal proposal is a proposal which is:

7.4.1. Made on the assumption that the arbitrator is required to resolve the matter of relief from payment of a protected rent debt;

7.4.2. Expressed to be made for the purposes of section 11 of the Act;

7.4.3. Given to the other party and to the arbitrator;

[26] Section 13(4)
[27] Section 13(5)(a)

7.4.4. Accompanied by supporting evidence; (see table at Annex B of the Code of Practice[28] and, in relation to the viability of the tenant's business, see evidence column in table after paragraph 6.17);

7.4.5. Verified by a statement of truth (a formal proposal is a 'written statement' – see paragraph 12.24).

7.5. As stated in paragraph 3.17 above, the party making a reference to arbitration ("the applicant") must include its formal proposal with the reference. The formal proposal must be accompanied by supporting evidence whether it is the landlord or the tenant who is making the reference to arbitration. It is the responsibility of the parties to ensure that the supporting evidence accompanying a formal proposal is sufficient. However, landlords do not necessarily have to provide evidence of their solvency if that is not required to make their case – see paragraph 7.20 for further details.

7.6. The other party ("the respondent") has the option to (but is not required to) within 14 days (beginning with the day on which the applicant's proposal is received), put forward its formal proposal (complying with the requirements in paragraph 7.4 above). The period for the respondent to put forward its formal proposal may be extended by agreement of the parties, or if the arbitrator considers an extension would be reasonable in all the circumstances.

7.7. The applicant and respondent may each submit one revised formal proposal complying with the requirements in paragraph 7.4 above and accompanied by further supporting evidence within 28 days beginning with the day on which each party gave its initial formal proposal. The period of time for making a revised proposal may be extended by agreement of the parties, or if the arbitrator considers an extension would be reasonable in all the circumstances.

7.8. As stated in paragraphs 3.4 to 3.5 above:

7.8.1. If the tenant is a debtor under a CVA, IVA, or 'compromise or arrangement' relating to any protected rent which has been proposed or applied for and is awaiting a decision, then the parties are not prevented from making a reference to arbitration. However, an arbitrator may not be appointed, and no formal proposal may be made by the respondent or no revised formal proposal made by either party, whilst the decision is pending.

7.8.2. If the CVA, IVA, or 'compromise or arrangement' is approved or sanctioned, then the arbitration cannot progress, as an arbitrator may not be appointed and formal proposals set out above may not be made. If the CVA, IVA, or 'compromise or arrangement' is not approved or sanctioned then, once this

[28] https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic

decision has been made, an arbitrator can be appointed and the parties may make formal proposals as above, so that the arbitration can proceed.

7.9. In considering whether the tenant should receive any relief from payment and, if so, what relief, and before determining what award to make, the arbitrator must first consider any 'final proposal' put forward by either party[29]. The 'final proposal' will, depending on the circumstances, be either the revised formal proposal put forward by a party, or if no revised formal proposal has been put forward by a party, the original formal proposal put forward by that party[30].

7.10. The arbitrator must consider the final proposal or proposals, as appropriate, by reference to the arbitrator's principles in section 15 of the Act (see paragraph 7.15 below).

7.11. How the arbitrator does so will vary according to the circumstances, as follows:

Scenario	**Consistency of proposal(s) with the principles**	**Award made on matter of relief from payment**
Both parties submit final proposals	Both proposals are consistent	Award made in terms of the most consistent proposal[31]
Both parties submit final proposals	Only one proposal is consistent	Award made in terms of that consistent proposal[32]
Both parties submit final proposals	Neither final proposal is consistent	Whatever award the arbitrator considers appropriate applying the principles[33]
One party submits a final proposal	That proposal is consistent	Award made in terms of that consistent proposal[34]
One party submits a final proposal	That proposal is not consistent	Whatever award the arbitrator considers appropriate applying the principles[35]

7.12. The awards which the arbitrator may make are either[36]:

7.12.1. To give the tenant relief from payment of the protected rent debt; or

[29] Section 14(2)
[30] Section 14(11)
[31] Section 14(3)(a)
[32] Section 14(3)(b)
[33] Section 14(5)
[34] Section 14(4)
[35] Section 14(5)
[36] Section 14(6)

7.12.2. To state that the tenant is to be given no relief from payment.[37]

7.13. Where the arbitrator's award gives the tenant time to pay an amount (including an instalment), the payment date (i.e. the date specified in the award as the day on which the amount, or amounts, concerned falls due for payment) must be within period of 24 months beginning with the day after the date of the award[38].

The arbitrator's principles

7.14. The principles to be applied when considering the award on the matter of relief from payment are as follows[39]:-

7.14.1. Any award should be aimed at preserving or, as the case may be, restoring and preserving the viability of the business of the tenant, so far as that it consistent with preserving the landlord's solvency; and

7.14.2. The tenant should, so far as it is consistent with the first principle to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay.

7.15. At Stage 2, the arbitrator will have already assessed whether the tenant's business is viable or would be viable if given relief. At Stage 3, the question is, given the tenant is viable or would be viable, to what extent can they afford to pay a protected rent debt balancing, on the one hand, the viability of the tenant's business, and on the other hand, the solvency of the landlord. This aims to strike a balance between the parties.

The assessment of viability and solvency when resolving the matter of relief from payment

7.16. The Act sets certain requirements regarding the arbitrator's assessment of the viability of the business of the tenant and the landlord's solvency.

7.17. As also set out in paragraph 6.8 above, in assessing the viability of the business of the tenant the arbitrator must, so far as known, have regard to the following:[40]

7.17.1. the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party;

[37] Relief from payment in relation to a protected rent debt means any one or more of (i) writing off all or any part of the debt; (ii) giving time to pay the whole or part of the debt (including by instalments); (iii) reducing (including to zero) any interest otherwise payable by the tenant under the terms of the tenancy in relation to the whole or part of the debt (see section 6(2)).
[38] Sections 14(7) and (8)
[39] Section 15(1)
[40] Section 16(1)

7.17.2. the previous rental payments made under the business tenancy from the tenant to the landlord;

7.17.3. the impact of coronavirus on the business of the tenant; and

7.17.4. any other information relating to the financial position of the tenant that the arbitrator considers appropriate.

7.18. For the purpose of assessing the landlord's solvency, a landlord is 'solvent' unless the landlord is, or is likely to become, unable to pay their debts as they fall due[41]. In assessing this, the arbitrator must, so far as known, have regard to: [42]

7.18.1. the assets and liabilities of the landlord, including any other tenancies to which the landlord is a party; and

7.18.2. any other information relating to the financial position of the landlord that the arbitrator considers appropriate.

7.19. The items set out in paragraphs 7.17 and 7.18 will only be known to the arbitrator if a party provides evidence of them, including in response to a request from the arbitrator. The arbitrator is not required to seek out information. The tenant and landlord are responsible for providing the evidence to enable viability and solvency, respectively, to be assessed.

7.20. However, landlords do not have to provide evidence of their solvency. For example, if the landlord considers that relief from payment would not pose a risk to its solvency then evidence of solvency may not be relevant. If, however, the landlord asserts that the tenant's proposal affects its solvency, the landlord must provide accompanying evidence to substantiate this. The parties can request further information from each other and/or can ask the arbitrator to make an order (under section 34 of the AA96) directing the parties to disclose information to the other party and to the arbitrator. The arbitrator has the power to make procedural orders to request further information with sanctions for non-compliance.

7.21. When considering the viability of the business of the tenant and the landlord's solvency, the arbitrator must disregard anything that the landlord or tenant has done with a view to manipulating their financial affairs so as to improve their position regarding an award for relief from payment of protected rent.[43] "Manipulating" has its usual meaning for this purpose.

7.22. As stated at paragraph 6.9 the arbitrator must disregard the possibility of either of the parties borrowing money or restructuring their business. [44]

[41] Section 15(3)
[42] Section 16(2)
[43] Section 15(2)
[44] Section 16(3)

8. Making the award

Timing of the award

8.1. The timing of the award will differ based on whether the matter of relief from payment is considered with or without an oral hearing (see paragraphs 12.26 to 12.30 for further information on oral hearings).

8.2. Without an oral hearing the arbitrator must make an award on the matter of relief from payment as soon as reasonably practicable after[45]:

8.2.1. The day on which the latest final proposal is received, where both parties have put forward a final proposal (being the formal proposal or, where revised, the revised formal proposal) (see paragraph 7.9); or

8.2.2. Otherwise, the last day on which a party may put forward a revised formal proposal (being 28 days beginning with the day on which the party gives a formal proposal to the other) (see paragraph 7.7).

8.3. With an oral hearing (see paragraphs 12.26 to 12.30 for further information on oral hearings) the arbitrator must make an award within 14 days from the date on which the hearing concludes (including that day)[46]. That period may be extended by agreement between the parties, or by the arbitrator where they consider it reasonable in all the circumstances[47].

Publication of the award

8.4. The Act requires the award, which must be in writing and signed by the arbitrator(s), to be published together with the reasons for making it. The parties are not free to agree on the form of an award or to waive the statutory requirement to publish an award[48]. The published award must, however, exclude confidential information, unless the person to whom that information relates consents to its publication[49].

8.5. The arbitrator and the approved arbitration body will make arrangements for the award to be published on the approved arbitration body's website in good time.

8.6. Confidential information means[50]:

[45] Section 17(1)
[46] Section 17(2)
[47] Section 17(3)
[48] See modifications made by paragraph 1(q) of the Act to section 52 of the AA96
[49] Section 18(3)
[50] Section 18(4)

8.6.1. Commercial information relating to a party or any other person which, if disclosed, would or might significantly harm the legitimate business interests of that person; or

8.6.2. Information concerning an individual's private affairs whose disclosure would or might significantly harm that individual's interests.

8.7. In practice, the arbitrator will likely be reliant on the parties to state which parts of the award they think should be redacted or excluded on the basis that the information is confidential information and the reasons why that information is confidential. It is recommended that the parties provide a sufficient explanation accompanied by evidence if necessary or appropriate.

8.8. The reason for publishing awards is not to establish a system of binding legal precedents for awards under the Act (and awards under the Act do not set a precedent to be followed). Rather, the publication of awards is intended to enable stakeholders to see outcomes from the arbitration process on rent arrears for different business circumstances, establishing market expectations as to what is a fair outcome. Publication of awards is also intended to help arbitrators and to help develop industry expectations and standards in dealing with eligible disputes.

Award is final and binding

8.9. An award made under the Act is final and binding on both of the parties and on any parties claiming through or under them[51]. The doctrine of precedent does not apply to arbitration awards made under the Act.

8.10. If an award gives relief from payment, it alters the terms of the tenancy in relation to the protected rent debt, so that the tenant no longer has an obligation to pay the original debt as under the tenancy but must pay in accordance with the award. A tenant that complies with an award under the Act will not be in breach of the tenancy on the grounds that they did not pay an amount written off by the award, nor that they paid later than the tenancy originally required.

8.11. If rent is ultimately paid by a guarantor or former tenant after an award is made giving relief from payment, the award affects their liability too, so they are not liable to pay any amount written off by the award, nor to pay an amount payable under the award until it becomes due under the award. This includes a guarantor who has indemnified the tenant.

8.12. The final and binding nature of an award does not affect the right to challenge the award (see Section 10 of this guidance).

[51] Section 58(1) Arbitration Act 1996; there are modifications to the provision meaning the parties are not able to agree that an award is not final and binding.

9. Enforcement of the award

9.1. The award may be enforced in accordance with section 66(1) of the AA96. That provides that an award may, by leave of the court, (i.e. permission) be enforced in the same manner as a judgment or order of the court to the same effect. Where leave is given, judgment may be entered in terms of the award.

9.2. Leave to enforce an award will not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award (provided the right to raise such an objection has not been lost).

10. Appeals, Corrections and Additional Awards

Challenges and Appeals

10.1. Awards made under the Act may be challenged or appealed via sections 67 to 71 of the AA96 (subject to the modifications made by the Act to section 68). As such, within 28 days of the date of the award and upon notice to the other party and to the arbitrator, a party can:

10.1.1. Apply to the Court challenging an award as to its substantive jurisdiction or for an order declaring an award made on the merits to be of no effect, in whole or part, because the arbitrator did not have substantive jurisdiction;

10.1.2. Apply to the Court challenging an award on the grounds of serious irregularity affecting the tribunal, the proceedings or the award (for example failure by the tribunal to conduct the proceedings in accordance with the procedure in the Act or failure by the tribunal to deal with all the issues that were put to it); and

10.1.3. Appeal to the Court on a question of law arising out of any award made in the proceedings.

10.2. The supplementary provisions of section 70 of the AA96 apply to an application or appeal, including the following:

10.2.1. An application or appeal may not be brought if the applicant/appellant has not first exhausted any available arbitral process of appeal or review and any available recourse under section 57 of the AA96 (correction of award or additional award – see paragraphs 10.5 to 10.11 below);

10.2.2. Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process;

10.2.3. If on an application or appeal it appears to the court that the award: (a) does not contain the tribunal's reasons, or (b) does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal, the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.

10.3. Where an order of the Court varies an award, that variation has effect as part of the arbitrator's award (section 71(2) of the AA96).

10.4. If following an appeal to the court, the award is remitted to the arbitrator, in whole or in part, for reconsideration, the arbitrator must make a fresh of award in respect of the remitted matters within three months from the date of the order of remission or by the end of the period directed by the court (if different) (section 71(3) AA96).

Corrections

10.5. Provided the parties have first been given a reasonable opportunity to make further representations to the arbitrator, the arbitrator can, either on their own initiative or on the application of a party, correct an award to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award[52]. Any correction of an award shall form part of the of the award.

10.6. An application for a correction must be made within 28 days of the date of the award (or such longer period as agreed by the parties)[53].

10.7. A correction must be made[54]:

10.7.1. If following an application, within 28 days of the date the application is received by the arbitrator;

10.7.2. If the correction is made on the arbitrator's own initiative, within 28 days of the date of the award; or

10.7.3. Otherwise, following such longer period as the parties may agree.

10.8. Any correction will form part of the award (section 57(7) of the AA96).

Additional awards

10.9. The arbitrator can, either on its own initiative or on the application of a party (and provided the parties have first been afforded a reasonable opportunity to make further representations to the arbitrator) make an additional award in respect of any claim which was presented to the arbitrator but was not dealt with in the award[55].

10.10. An application for an additional award must be made within 28 days of the date of the award (or such longer period as agreed by the parties)[56].

[52] Section 57(3) Arbitration Act 1996
[53] Section 57(4) Arbitration Act 1996
[54] Section 57(5) Arbitration Act 1996
[55] Section 57(3) Arbitration Act 1996
[56] Section 57(4) Arbitration Act 1996

10.11. Any additional award must be made within 56 days of the date of the original award or such longer period as the parties may agree[57].

[57] Section 57(6) Arbitration Act 1996

11. Arbitration Fees and Expenses

11.1. For the purposes of the Act, 'arbitration fees' means the arbitrators' fees and expenses (including oral hearing fees) and the fees and expenses of any approved arbitration body concerned, which are to be paid by the parties[58]. Otherwise, as set out in paragraph 11.7.1, the parties must meet their own legal or other costs in connection with the arbitration.

11.2. Approved arbitration bodies have the function of setting arbitration fees. The Secretary of State has a power to cap arbitration fees, which may differ depending on the amount of protected rent debt in question but that power has not been exercised (as at the date of publication of this guidance).

Payment of arbitration fees upon commencement of arbitration

11.3. The party who makes the reference to arbitration (the 'applicant') must pay the arbitration fees (other than any oral hearing fees) in advance of the arbitration taking place (see paragraph 3.16). The expectation is that the arbitration fees should generally be paid at the time the reference is made.

Payment on making an application for an oral hearing

11.4. Where one of the parties requests an oral hearing, that party must pay the hearing fees in advance. If both parties request an oral hearing, they are jointly and severally liable to pay the hearing fees in advance[59] (see paragraph 12.28).

Dealing with arbitration fees (including hearing fees) on making an award

11.5. When making an award (either dismissing the reference or as to the matter of relief from payment), the general rule is that the arbitrator must also make an award requiring the other party to reimburse the applicant for:

11.5.1. half of the arbitration fees[60]; and

11.5.2. (where there was an oral hearing) half of the hearing fees[61].

[58] Section 19(1)
[59] Sections 20(4) and (5)
[60] Section 19(5)
[61] Section 20(6)

11.6. However, if the arbitrator considers it more appropriate in all the circumstances, they may deviate from the general rule and require the other party to reimburse a different proportion of the arbitration fees (including oral hearing fees) of anything between 0% and 100% of the fees. For example, where the respondent's conduct in the arbitration has been unreasonable, the arbitrator may decide that the respondent should reimburse the applicant for over 50% of the arbitration fees[62].

11.7. Otherwise, the Act provides that:

11.7.1. The parties must meet their own legal or other costs in connection with the arbitration[63]; and

11.7.2. No term of the relevant business tenancy may be enforced for the purpose of recovering the legal or other costs in connection with the arbitration (including arbitration fees)[64].

[62] Sections 19(6) and 20(7)
[63] Section 19(7)
[64] Section 19(8)

12. General Provisions Concerning the Conduct of Proceedings

Arbitrator's jurisdiction

Determining Jurisdiction

12.1. The arbitral tribunal (which may consist of a sole arbitrator appointed by an approved arbitration body under the Act) may rule on its 'substantive jurisdiction', namely:

12.1.1. Whether the Act applies to the dispute or matter in question;

12.1.2. Whether the tribunal is properly constituted; and

12.1.3. What matters have been submitted to arbitration in accordance with the Act.

Objection

12.2. A party may raise an objection that the arbitral tribunal lacks or is exceeding its substantive jurisdiction. Any objection:

12.2.1. That the tribunal lacks substantive jurisdiction at the outset of proceedings must be made on or before that party takes its first step in the proceedings to contest the merits of any matter in relation to which it challenges the tribunal's jurisdiction; or

12.2.2. During the proceedings that the arbitrator is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond the tribunal's jurisdiction is raised.

12.3. If a party takes part, or continues to take part, in the arbitration without making an objection as set out in paragraph 12.2 it will lose the right to raise that objection later in the proceedings unless either:

12.3.1. It can show that the grounds for objection were not known to that party (and could not with reasonable diligence have been discovered) at the time it took part or continued to take part in the proceedings; or

12.3.2. The tribunal chooses to admit the objection (which it may do if it considers that the delay in making the objection is justified).

12.4. A party may also ask the Court (under section 32 of the AA96) to determine any question as to the substantive jurisdiction of the tribunal. Permission of the tribunal

will be required to make this application to Court in the absence of written agreement from all the other parties to the proceedings.

12.5. The arbitration may continue, and the tribunal may make an award, whilst an application to the Court under section 32 of the AA96 is pending, unless:

12.5.1. The parties otherwise agree; or

12.5.2. The tribunal stays the proceedings (which it may do of its own volition but must do if agreed by the parties).

Ruling on jurisdiction

12.6. Where an objection is made to the tribunal's jurisdiction, the tribunal may deal with the matter either in a stand-alone award (as to jurisdiction), or as part of an award under the Act. If the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.

Challenge to ruling on jurisdiction

12.7. Any such ruling may be challenged in accordance with the provisions of the AA96 1996 (see Section 10 of this guidance).

12.8. If a party who could have challenged a ruling of the arbitral tribunal on its substantive jurisdiction does not do so within the allowed time, that party may not later object to the tribunal's substantive jurisdiction on any ground covered by the tribunal's ruling.

Contested jurisdiction and temporary moratorium on remedies and measures

12.9. Arbitrators should be aware of the Act's temporary moratorium on certain remedies and measures, for six months from 24 March 2022 and (if reference is made to arbitration) until arbitration concludes[65] – see Part 3 of the Act and Part 3 of the Code of Practice[66].

12.10. The Act's temporary moratorium on presenting a winding up petition applies in the Scottish courts as well as in England and Wales.

12.11. There are also restrictions on initiating a CVA, IVA or compromise or arrangement which relates to all or part of the protected rent debt. These restrictions are in place from the day on which an arbitrator is appointed until 12 months after an award is made (or until the day an award is made dismissing a reference, the day

[65] See paragraph 4.33 as to when an arbitration is considered concluded.
[66] https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic#part-three-remedies-and-measures

a decision is made to set aside an award on appeal, the day of abandonment or withdrawal of proceedings).

12.12. These restrictions apply in Scotland for CVAs, restructuring plans or schemes of arrangement, and Northern Ireland for restructuring plans or schemes of arrangement.

12.13. If a party takes action precluded by the moratorium, then it would be for the forum in which such action is brought to decide that the measure is unavailable during the applicable period. Should a claim be brought for a remedy covered by the moratorium, on the basis that the claimant landlord considers the Act's arbitration process to be inapplicable, the tenant may choose to make a reference to arbitration if they consider the Act does apply. The arbitrator may pause or extend the arbitration timetable whilst the other claim is considered, under their power to extend time periods where it would be reasonable in all the circumstances.

General Duty

12.14. To the extent not inconsistent with the Act, when conducting the arbitration, the arbitrator shall, when making decisions on matters of procedure and evidence, and when exercising any of its other powers:

12.14.1. Act fairly and impartially as between the parties, giving each a reasonable opportunity to put forward its case and deal with the other party's case; and

12.14.2. Adopt procedures suitable to the circumstances of the particular case, which avoid unnecessary delay or expense and provide a fair means of resolving the matters to be determined.

Procedural and Evidential Matters

12.15. Under the Act, rather than the usual form of arbitral proceedings involving statements of claim and defence etc, formal proposals for resolving the matter of relief from payment of protected rent debt are submitted by the applicant, with the respondent having the option to submit their own proposal. Proposals must be accompanied by supporting evidence. Assessment of those formal proposals and supporting evidence is the main way in which the arbitrator is to resolve the dispute between the parties. Assessments are made at two stages: (i) the eligibility stage following a reference to arbitration, during which the arbitrator considers whether the dispute is eligible for arbitration under the Act (see Sections 4, 5 and 6 of this guidance for further details); and (ii) if the matter is eligible for arbitration under the Act, the arbitrator must go on to consider the matter of relief from payment of protected rent debt (see Section 7 of this guidance for further details).

12.16. In addition, the Act's approach of the parties submitting formal proposals (rather than providing for the usual form of arbitral proceedings) is intended to limit the amount of document disclosure to ensure the process is efficient and cost-effective (especially since the parties must meet their own legal or other costs).

12.17. That said, the arbitrator retains the broad discretion pursuant to section 34 of the AA96 to decide, save where they are inconsistent with the provisions of the Act, all procedural and evidential matters in the arbitration, including as to whether further written statements must be provided, further documents disclosed and/or any further questions should be put to and answered by the respective parties and when and in what form this should be done.

12.18. Modifications made by paragraph 2(c) of Schedule 1 to the Act to section 34(1) of the AA96 make it clear that the fact that there is specific provision for oral hearings in the Act does not in of itself dilute the arbitrator's power in s.34(1) of the AA96. For example, the arbitrator would be able to sit in private when hearing evidence or submissions on confidential and sensitive matters.

Service of notices

12.19. Section 76 of the AA96 makes provision for service of notices. A notice or other document may be served on a person by any effective means[67]. A notice or other document shall be treated as effectively served if it is addressed, pre-paid and delivered by post:

12.19.1. To the addressee's last known principal residence or, if the addressee is or has been carrying on a trade, profession or business, its last known principal business address; or

12.19.2. Where the addressee is a body corporate, to the body's registered or principal office.

12.20. Notices and other documents under the Act may be served by email provided this is an effective means.

Computation of time

12.21. Section 78 of the AA96 makes provision for the computation of time. Where the Act requires something to be done within a specified period after or from a specified date, the period begins immediately after that date, unless the Act specifies otherwise[68].

[67] Section 76(3) Arbitration Act 1996
[68] Section 78(3) Arbitration Act 1996

12.22. If the Act requires something to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date[69].

12.23. Where the period is a period of seven days or less which would include a Saturday, Sunday or a public holiday in the place where anything which has to be done within the period falls to be done, that day or days shall be excluded.[70]This may be relevant to requests for further information for example.

Written Statements[71]

12.24. Any written statement provided to the arbitrator by a party which relates to a matter relevant to the arbitration must be verified by a statement of truth. If a written statement is not verified by a statement of truth, it may be disregarded by the arbitrator.

12.25. The arbitrator's general powers[72] include the power to direct that a witness shall be examined on oath or affirmation (and made for that purpose administer any oath or take any necessary affirmation).

Oral hearings

12.26. It is expected that the majority of cases can be dealt with by a documents only process. However, under the Act the parties have the right to request an oral hearing[73]. The arbitrator does not have discretion to deny that request. Our expectation is that oral hearings should however only be requested if needed e.g. due to the complexity of the case.

12.27. If either or both of the parties submit a request for an oral hearing to the arbitrator, an oral hearing must be held within 14 days beginning on the date the arbitrator receives the request[74]. That 14-day period may be extended either:

12.27.1. By the agreement of the parties; or

12.27.2. By the arbitrator if they consider it would be reasonable in all the circumstances[75].

[69] Section 78(4) Arbitration Act 1996
[70] Section 78(5) Arbitration Act 1996. This subsection also provides that in relation to England and Wales or Northern Ireland, a "public holiday" means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.
[71] Section 12
[72] Section 38 Arbitration Act 1996
[73] Section 20(1)
[74] Section 20(2)
[75] Section 20(3) (see also section 34 of the Arbitration Act 1996)

12.28. The party requesting the oral hearing must pay the hearing fees in advance. Where both parties make the request, they are jointly and severally liable[76].

12.29. The oral hearing must take place in public unless the parties agree otherwise[77]. In any event, as stated in paragraph 12.18, the arbitrator is able to sit in private when hearing evidence or submissions on confidential and sensitive matters.

12.30. The arbitrator shall decide all procedural and evidential matters in relation to oral hearings held in public [78], including whether any appointed expert, legal advisor or assessor shall be in attendance.

Settlement

12.31. If during the course of the arbitration the parties settle the matter of relief, the tribunal must record the settlement in an agreed award and then terminate the arbitration, whether or not that is requested by the parties[79].

12.32. The agreed award should state that it is an award of the tribunal. An agreed award has the same status and effect as any other award under the Act and is binding upon the parties.

12.33. Sections 52 to 58 of the AA96 (as modified by the Act) apply to an agreed award.

Power to appoint experts, legal advisors or assessors

12.34. The tribunal may, provided the parties agree[80]:

12.34.1. Appoint experts or legal advisors to report to it and the parties; or

12.34.2. Appoint assessors to assist it on technical matters.

12.35. The parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

Consolidation of Proceedings and concurrent hearings

12.36. The tribunal has the power to order that separate arbitral proceedings under the Act be consolidated or be heard concurrently.

[76] Sections 20(4) and (5)
[77] Section 20(8)
[78] Section 34 of the AA96, as amended by paragraph 2(c) of Schedule 1 to the Act
[79] Section 51 of the AA96, as amended by paragraph 1(p) of Schedule 1 to the Act
[80] See modifications to section 37(1) of the AA96 made by paragraph 1(k) of Schedule 1 to the Act.

12.37. There may be situations in which the tenant and landlord are in dispute in relation to protected rent debts for multiple business tenancies. The parties can agree to consolidate arbitration proceedings on such terms as they see fit. Our recommendation is for the applicant (or respondent) to indicate to the approved arbitration body that there are multiple eligible disputes which could be consolidated into a single set of arbitration proceedings. This is because there may be significant advantages to consolidating proceedings, including a reduction in the cost of arbitration, an increase in the speed of resolution and a reduction in inconsistent arbitration awards.

Peremptory orders

12.38. If a party fails to comply with an order or direction of the tribunal, and is unable to show sufficient cause for this, the tribunal may make a peremptory order. The peremptory order must be to the same effect as the order or direction which has been disobeyed and state the time for compliance with it (being such time as the tribunal considers is appropriate).

12.39. If a party fails to comply with a peremptory order, the tribunal may[81]:

12.39.1. Direct that the defaulting party shall not be entitled to rely on any allegation or material that was the subject of the order;

12.39.2. Draw such adverse inferences from that party's non-compliance as is justified in the circumstances;

12.39.3. Proceed to an award on the basis of the materials that have been properly provided to it; or

12.39.4. Make such order as it thinks fit as to the payment of any costs of the arbitration that have been incurred as a result of that party's non-compliance;

12.39.5. Make an application, upon notice to the parties, to the Court for an order requiring compliance with its peremptory order or give permission to a party to make an application to Court for such an order, unless the parties have agreed that the Court may make no such order.[82]

[81] Note that section 42 of the AA96 96 makes different provision where the peremptory order concerns security for costs and other peremptory orders. That provision is not relevant in relation to arbitration under the Act since the party making a reference to arbitration is required by the Act to pay the arbitration fees in advance, to be reimbursed by the other party in accordance with an award on arbitration fees, and the parties are otherwise required to meet their own legal or other costs.
[82] Note: the Court will not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order (section 42(3) AA96).

13. Modifications to the Arbitration Act 1996

13.1. Section 22 and Schedule 1 to the Act modify the AA96 as it applies to arbitration under Part 2 of the Act. Those modifications are without prejudice to the operation of sections 94 to 98 of the AA96 which make provision in relation to statutory arbitration. More generally, to the extent there is any inconsistency between the Act and the AA96, the Act will prevail (see section 94(2) of the AA96).

13.2. Please see the table in Annex B for a summary of the modifications.

PART TWO: non-statutory guidance to approved arbitration bodies

IMPORTANT: the content of this Part 2 is produced on a non-statutory basis primarily for the benefit of approved arbitration bodies.

14. Non-statutory guidance to approved arbitration bodies

14.1. Section 7 of the Act provides for the Secretary of State to approve suitable arbitration bodies to carry out the functions of an "approved arbitration body". Only those bodies which have been approved by the Secretary of State can carry out the specific functions of approved arbitration bodies under the Act.

14.2. The Secretary of State has the power to withdraw approval given under the Act if an arbitration ceases to be suitable.[83]

14.3. The Secretary of State is required under section 7(7) of the Act to maintain and publish a list of approved arbitration bodies. The list of approved arbitration bodies can be accessed here: https://www.gov.uk/government/publications/apply-for-role-of-arbitration-body-to-manage-rent-related-disputes-process-and-form

Functions of approved arbitration bodies

14.4. The functions of an approved arbitration body are set out in section 8 of the Act. The functions are:

14.4.1. To maintain a list of arbitrators who are available to carry out arbitration under the Act and who in the opinion of the arbitration body appear to be suitable on the basis of their qualifications and experience to carry out arbitration under the Act;

14.4.2. To appoint an independent arbitrator (or panel of arbitrators) from the maintained list to deal with matters referred to them under the Act;

14.4.3. To appoint another (independent) arbitrator from their list where the original appointed arbitrator dies, resigns or ceases to act;

14.4.4. To set, collect and pay its fees and the fees of an arbitrator appointed by it. Where the approved arbitration body is required to appoint another arbitrator, the arbitration body must make arrangements in relation to the repayment of any fees and expenses paid to the arbitrator which the arbitrator should not be entitled to;

14.4.5. To publish the fees in relation to making a reference to arbitration on its website;

14.4.6. To oversee an arbitration where it has appointed an arbitrator (or panel);

[83] See sections7(4) to (6) of the Act.

14.4.7. To remove an arbitrator from a case it has appointed on any of the grounds listed in section 8(2);

14.4.8. When requested by, or as agreed with the Secretary of State, to provide reports on the on the exercise of the body's functions, the arbitrations overseen by it and the awards made.

Check of the eligibility of a reference to arbitration

14.5. When they have received a reference to arbitration, approved arbitration bodies are expected to run a quick sense-check as to whether the dispute is eligible for arbitration. It is recommended that this be done via a pro forma arbitration referral form which the applicant should complete on making a reference. That should ask the applicant to confirm, among other things: (i) that they have completed the pre-arbitration steps (see Section 3 of this guidance above); (ii) that the dispute relates to a protected rent debt; (iii) that the tenant is not subject to a company voluntary arrangement, individual voluntary arrangement, or other compromise or arrangement (see paragraphs 3.2 to 3.5 above); (iv) that no agreement has been reached between the parties on the matter of relief from payment of protected rent debt. The referral form should be verified by a statement of truth. An example referral form can be found at Annex D of the Code of Practice[84].

Oversight of arbitrations

14.6. The function of "overseeing an arbitration" is primarily an administrative function to ensure that the arbitration runs smoothly. Approved arbitration bodies are not expected to continually monitor each arbitration reference made to it but to have sufficient oversight so as to be able to report to the Secretary of State on matters if requested and to step in where a party has a legitimate complaint or where new information comes to light which raises a concern.

Removal of arbitrators

14.7. Under section 74 of the AA96, approved arbitration bodies have certain immunity from liability in relation to the function of appointing an arbitrator. This immunity is provided on the same basis in relation to the function of removing an arbitrator. (See paragraph 2(g) of Schedule 1 to the Act).

14.8. In removing an arbitrator, the approved arbitration body should apply the same principles and the same case law as the Court would, including that there is a high

[84] https://www.gov.uk/government/publications/commercial-rent-code-of-practice/commercial-rent-code-of-practice-following-the-covid-19-pandemic

bar to the removal of an arbitrator and that a party that has any concerns with an arbitrator should raise those concerns promptly with the approved arbitration body.

14.9. Given the pre-appointment checks carried out by approved arbitration bodies, it is expected that any concerns about an arbitrator's independence, impartiality, qualifications or physical or mental capacity, would arise and would be resolved before the approved arbitration body makes the appointment of the arbitrator. Consequently, the expectation is that complaints of substance post-appointment are likely to be rare and that frivolous, vexatious or unsubstantiated complaints should be quickly dismissed by the approved arbitration body in question.

14.10. It is open to the approved arbitration bodies to charge a fee for dealing with a removal application and the applicable fees should be included on the approved arbitration body's website. As stated in paragraph 11.6, the arbitrator can also require a party whose conduct has been unreasonable in the arbitration to pay a greater share of arbitration fees.

Further points on fees

14.11. The approved arbitration bodies must also set fees for cases where the parties agree that more than one arbitrator is required to deal with the dispute.

Refund of fees

14.12. Where the applicant makes a reference to arbitration and pays the arbitration fees, and the arbitrator makes an award dismissing the reference, the approved arbitration body should consider whether any of the application fee should be returned to the applicant.

14.13. We recommend that the arbitration bodies expressly set out on their websites the circumstances in which a refund or partial refund may be made. The arbitration body can take into account both their own administrative costs and the time spent by the arbitrator dealing with the matter.

Arrangements with respect to the publication of awards

14.14. It is expected that the arbitrator and the approved arbitration body make arrangements for the award to be published on the arbitration bodies website in good time.

Annex A – coronavirus regulations for the purposes of section 4 of the Act

The following list is of "coronavirus regulations" for the purposes of section 4 of the Act which imposed closure requirements on businesses or premises, or amended such requirements or the businesses subject to them; and where the requirements applied within the relevant period specified in section 4.

Country	Type	Title and hyperlink
England	Statutory Instrument 2020 No. 327	Health Protection (Coronavirus, Business Closure) (England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/327/contents/made
England	Statutory Instrument 2020 No. 350	Health Protection (Coronavirus, Restrictions) (England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/350/introduction/made
England	Statutory Instrument 2020 No. 447	Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/447/contents/made
England	Statutory Instrument 2020 No. 500	The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/500/contents/made
England	Statutory Instrument 2020 No. 558	The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/558/contents/made
England	Statutory Instrument 2020 No. 588	The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/588/contents/made
England	Statutory Instrument 2020 No. 684	The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/684/contents/made
England	Statutory Instrument 2020 No. 685	The Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/685/contents/made
England	Statutory Instrument 2020 No. 719	The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/719/contents/made
England	Statutory Instrument 2020 No. 754	The Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/754/contents
England	Statutory Instrument 2020 No. 787	The Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/787/contents/made

Country	Type	Title and hyperlink
England	Statutory Instrument 2020 No. 788	The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/788/contents/made
England	Statutory Instrument 2020 No. 800	The Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Luton) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/800/contents
England	Statutory Instrument 2020 No. 822	The Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/822/contents
England	Statutory Instrument 2020 No. 823	Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/823/contents
England	Statutory Instrument 2020 No. 824	The Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/824/contents
England	Statutory Instrument 2020 No. 828	The Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/828/contents
England	Statutory Instrument 2020 No.846	The Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/846/contents
England	Statutory Instrument 2020 No. 863	The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/863/contents
England	Statutory Instrument 2020 No. 865	The Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/865/contents
England	Statutory Instrument 2020 No. 875	The Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/875/contents

Country	Type	Title and hyperlink
England	Statutory Instrument 2020 No. 897	The Health Protection (Coronavirus, Restrictions) (North of England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/897/contents/made
England	Statutory Instrument 2020 No. 898	The Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/898/contents
England	Statutory Instrument 2020 No. 930	The Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/930/contents
England	Statutory Instrument 2020 No. 931	The Health Protection (Coronavirus, Restrictions) (North of England) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/931/contents
England	Statutory Instrument 2020 No. 935	The Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/935/contents
England	Statutory Instrument 2020 No. 954	The Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford, Leicester, and North of England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/954/contents
England	Statutory Instrument 2020 No. 974	The Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/974/contents
England	Statutory Instrument 2020 No. 987	The Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/987/contents
England	Statutory Instrument 2020 No. 1010	The Health Protection (Coronavirus, Restrictions) (North East of England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1010/contents

Country	Type	Title and hyperlink
England	Statutory Instrument 2020 No. 1019	The Health Protection (Coronavirus, Restrictions) (Protected Areas and Linked Childcare Households) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1019/contents
England	Statutory Instrument 2020 No. 1029	The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 5) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1029/contents
England	Statutory Instrument 2020 No. 1041	The Health Protection (Coronavirus, Restrictions) (Protected Areas and Restriction on Businesses) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1041/contents/made
England	Statutory Instrument 2020 No. 1057	The Health Protection (Coronavirus, Restrictions) (North of England, North East and North West of England and Obligations of Undertakings (England) etc.) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1057/contents
England	Statutory Instrument 2020 No. 1074	The Health Protection (Coronavirus, Restrictions) (North of England and North East and North West of England etc.) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1074/contents
England	Statutory Instrument 2020 No. 1103	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1103/contents
England	Statutory Instrument 2020 No. 1104	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1104/contents
England	Statutory Instrument 2020 No. 1105	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1105/contents
England	Statutory Instrument 2020 No. 1128	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1128/contents/made

Country	Type	Title and hyperlink
England	Statutory Instrument 2020 No. 1131	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1131/contents/made
England	Statutory Instrument 2020 No. 1154	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium, High and Very High) (England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1154/contents
England	Statutory Instrument 2020 No. 1176	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium, High and Very High) (England) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1176/contents/made
England	Statutory Instrument 2020 No. 1183	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium, High and Very High) (England) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1183/contents/made
England	Statutory Instrument 2020 No. 1189	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1189/contents/made
England	Statutory Instrument 2020 No. 1192	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1192/contents/made
England	Statutory Instrument 2020 No. 1200	The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1200/contents
England	Statutory Instrument 2020 No. 1326	The Health Protection (Coronavirus, Restrictions) (England) (No. 4) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1326/contents/made
England	Statutory Instrument 2020 No. 1374	The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1374/contents
England	Statutory Instrument	The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1533/contents/made

Country	Type	Title and hyperlink
	2020 No. 1533	
England	Statutory Instrument 2020 No. 1572	The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1572/contents/made
England	Statutory Instrument 2020 No. 1611	The Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1611/contents
England	Statutory Instrument 2020 No. 1646	The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1646/contents/made
England	Statutory Instrument 2021 No. 8	The Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021: https://www.legislation.gov.uk/uksi/2021/8/contents/made
England	Statutory Instrument 2021 No. 364	The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021: https://www.legislation.gov.uk/uksi/2021/364/contents
England	Statutory Instrument 2021 No. 455	The Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021: https://www.legislation.gov.uk/uksi/2021/455/contents
England	Statutory Instrument 2021 No. 585	The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021: https://www.legislation.gov.uk/uksi/2021/585/contents
England	Statutory Instrument 2021 No. 848	The Health Protection (Coronavirus, Restrictions) (Steps etc.) (England) (Revocation and Amendment) Regulations 2021: https://www.legislation.gov.uk/uksi/2021/848/contents/made
Wales	Statutory Instrument 2020 No. 326 (W. 74)	English version: The Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020: http://www.legislation.gov.uk/wsi/2020/326/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Coronafeirws, Cau Busnes) (Cymru) 2020:

Country	Type	Title and hyperlink
		http://www.legislation.gov.uk/wsi/2020/326/contents/made/welsh
Wales	Statutory Instrument 2020 No. 334 (W. 76)	English version: The Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020: http://www.legislation.gov.uk/wsi/2020/334/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Coronafeirws: Cau Busnesau Hamdden, Llwybrau Troed a Thir Mynediad) (Cymru) 2020: http://www.legislation.gov.uk/wsi/2020/334/contents/made/welsh
Wales	Statutory Instrument 2020 No. 353 (W. 80)	English version: The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020: http://www.legislation.gov.uk/id/wsi/2020/353 Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) 2020: http://www.legislation.gov.uk/id/wsi/2020/353/welsh
Wales	Statutory Instrument 2020 No. 399 (W.88)	English version: The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/399/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Diwygio) 2020: https://www.legislation.gov.uk/wsi/2020/399/contents/made/welsh
Wales	Statutory Instrument 2020 No. 452 (W. 102)	English version: The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/452/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Diwygio) (Rhif 2) 2020: https://www.legislation.gov.uk/wsi/2020/452/contents/made/welsh
Wales	Statutory Instrument 2020 No 497 (W. 118)	English version: The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/497/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Diwygio) (Rhif 3) 2020: https://www.legislation.gov.uk/wsi/2020/497/contents/made/welsh
Wales	Statutory Instrument 2020 No 557 (W. 129)	English version: The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/557/contents/made

Country	Type	Title and hyperlink
		Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Diwygio) (Rhif 5) 2020: https://www.legislation.gov.uk/wsi/2020/557/contents/made/welsh
Wales	Statutory Instrument 2020 No 619 (W. 141)	English version: The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 6) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/619/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Diwygio) (Rhif 6) 2020: https://www.legislation.gov.uk/wsi/2020/619/contents/made/Welsh
Wales	Statutory Instrument 2020 No 686 (W. 153)	English version: The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/686/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Diwygio) (Rhif 7) 2020: https://www.legislation.gov.uk/wsi/2020/686/contents/made/welsh
Wales	Statutory Instrument 2020 No. 725 (W. 162)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/725/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020: https://www.legislation.gov.uk/wsi/2020/725/contents/made/welsh
Wales	Statutory Instrument 2020 No. 752 (W. 169)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/752/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) 2020: https://www.legislation.gov.uk/wsi/2020/752/contents/made/welsh
Wales	Statutory Instrument 2020 No. 803 (W. 176)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/803/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 2) 2020: https://www.legislation.gov.uk/wsi/2020/803/contents/made/welsh

Country	Type	Title and hyperlink
Wales	Statutory Instrument 2020 No. 820 (W. 180)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/820/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 3) 2020: https://www.legislation.gov.uk/wsi/2020/820/contents/made/welsh
Wales	Statutory Instrument 2020 No. 843 (W. 186)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/843/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 4) 2020: https://www.legislation.gov.uk/wsi/2020/843/contents/made/welsh
Wales	Statutory Instrument 2020 No. 912 (W. 204)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/912/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 7) 2020: https://www.legislation.gov.uk/wsi/2020/912/contents/made/welsh
Wales	Statutory Instrument 2020 No. 1007 (W. 224)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1007/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 10) (Rhondda Cynon Taf) 2020: https://www.legislation.gov.uk/wsi/2020/1007/contents/made/welsh
Wales	Statutory Instrument 2020 No. 1022 (W. 227)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1022/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 11) (Blaenau Gwent, Casnewydd, Merthyr Tudful a Phen-y-bont ar Ogwr etc.) 2020: https://www.legislation.gov.uk/wsi/2020/1022/contents/made/welsh

Country	Type	Title and hyperlink
Wales	Statutory Instrument 2020 No. 1035 (W. 229)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1035/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 12) 2020: https://www.legislation.gov.uk/wsi/2020/1035/contents/made/welsh
Wales	Statutory Instrument 2020 No. 1040 (W. 230)	English version: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 13) (Llanelli etc.) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1040/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 13) (Llanelli etc.) 2020: https://www.legislation.gov.uk/wsi/2020/1040/contents/made/welsh
Wales	Statutory Instrument 2020 No. 1079 (W. 240)	English version: Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1079/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 17): https://www.legislation.gov.uk/wsi/2020/1079/contents/made/welsh
Wales	Statutory instrument 2020 No. 1149 (W. 261)	English version: The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1149/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3) (Cymru) 2020: https://www.legislation.gov.uk/wsi/2020/1149/contents/made/welsh
Wales	Statutory Instrument 2020 No. 1219 (W. 276)	English version: The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1219/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 4) (Cymru) 2020: https://www.legislation.gov.uk/wsi/2020/1219/contents/made/welsh
Wales	Statutory Instrument 2020 No. 1409 (W. 311)	English version: The Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1409/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws a Swyddogaethau Awdurdodau Lleol) (Diwygio) (Cymru) 2020:

Country	Type	Title and hyperlink
		https://www.legislation.gov.uk/wsi/2020/1409/contents/made/welsh
Wales	Statutory instrument 2020 No. 1522 (W. 326)	English version: The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1522/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 4) (Cymru) (Diwygio) 2020: https://www.legislation.gov.uk/wsi/2020/1522/contents/made/welsh
Wales	Statutory instrument 2020 No. 1609 (W. 335)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1609/contents/made/ Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020: https://www.legislation.gov.uk/wsi/2020/1609/contents/made/welsh
Wales	Statutory instrument 2020 No. 1610 (W. 336)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1610/contents/made/ Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2020: https://www.legislation.gov.uk/wsi/2020/1610/contents/made/welsh
Wales	Statutory instrument 2020 No. 1623 (W. 340)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020: https://www.legislation.gov.uk/wsi/2020/1623/contents/made/ Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 2) 2020: https://www.legislation.gov.uk/wsi/2020/1623/contents/made/welsh
Wales	Statutory instrument 2021 No. 103 (W. 28)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/103/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 2) 2021: https://www.legislation.gov.uk/wsi/2021/103/made/welsh
Wales	Statutory instrument 2021 No. 210 (W. 52)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 4) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/210/made

Country	Type	Title and hyperlink
		Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 4) 2021: https://www.legislation.gov.uk/wsi/2021/210/made/welsh
Wales	Statutory instrument 2021 No. 307 (W. 79)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/307/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 5) 2021: https://www.legislation.gov.uk/wsi/2021/307/contents/made/welsh
Wales	Statutory instrument 2021 No. 413 (W. 133)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 6) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/413/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 6) 2021: https://www.legislation.gov.uk/wsi/2021/413/contents/made/welsh
Wales	Statutory instrument 2021 No. 457 (W. 145)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 7) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/457/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 7) 2021: https://www.legislation.gov.uk/wsi/2021/457/contents/made/welsh
Wales	Statutory instrument 2021 No. 502 (W. 150)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/502/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 8) 2021: https://www.legislation.gov.uk/wsi/2021/502/contents/made/welsh
Wales	Statutory Instrument 2021 No. 542 (W. 154)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 9) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/542/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 9) 2021: https://www.legislation.gov.uk/wsi/2021/542/contents/made/welsh

Country	Type	Title and hyperlink
Wales	Statutory Instrument 2021 No. 583 (W. 160)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 10) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/583/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 10) 2021: https://www.legislation.gov.uk/cy/wsi/2021/583/contents/made/welsh
Wales	Statutory Instrument 2021 No. 668 (W. 169)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 11) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/668/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 11) 2021: https://www.legislation.gov.uk/wsi/2021/668/contents/made/welsh
Wales	Statutory Instrument 2021 No. 862 (W. 201)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 14) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/862/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 14) 2021: https://www.legislation.gov.uk/wsi/2021/862/contents/made/welsh
Wales	Statutory Instrument 2021 No. 925 (W. 209)	English version: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 15) Regulations 2021: https://www.legislation.gov.uk/wsi/2021/925/contents/made Welsh version: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 15) 2021: https://www.legislation.gov.uk/wsi/2021/925/contents/made/welsh

Annex B – modifications made by the Act to the Arbitration Act 1996

Note: this table summarises the modifications made by section 22 and schedule 1 to the Act to the AA96. Those modifications are without prejudice to the operation of sections 94 to 98 of the AA96 which make provision in relation to statutory arbitration. More generally, to the extent there is any inconsistency between the Act and the AA96, the Act will prevail (see section 94(2) of the AA96).

Provision of Sch.1	Description of modification	Summary
Para 1(a)	Omits s.14(1) and (2)	It is not open to the Parties to agree when proceedings are to be regarded as commenced.
Para 1(b)	Omit "or umpire" from s.15(1)	Umpires are not to be appointed for the purposes of arbitration under the Act.
Para 1(c)	Omit ss.16 to 19	The Act provides for the appointment of arbitrators by approved arbitration bodies so ss.16 to 19 have been disapplied.
Para 1(d) and para 2(a)	Omit s.20(1) and (2) and modify s.20(3) to insert at the beginning "where there is a chairman"	The parties are not able to agree as to the functions of the chairman. S.20(3) and (4) apply in the event that there is a chairman.
Para 1(e)	Omit s.21	Umpires are not to be appointed for the purposes of arbitration under the Act so this section is not applicable.
Para 1(f) and para 2(b)	Omit s.22(1) In s.22(2) for "If there is no such agreement" substitute "Where there are two or more arbitrators with no chairman"	The Parties are not able to agree how the tribunal is to make decisions etc, rather decisions etc should be made by all or a majority of arbitrators.
Para 1(g)	In s.23 omit subsections (1), (2), (3)(a), (4) and (5)(a)	Only the approved arbitration body that appointed the arbitrator or the Court (under section 24) is able to revoke the authority of that arbitrator.
Para 1(h)	Omit s.25(1) and (2)	In accordance with the Act, the approved arbitration body that appointed the arbitrator will be responsible for making arrangements relating to the repayment of any fees or expenses already paid to the arbitrator (if any), and the arbitrator's entitlement (if any) to fees or expenses.
Para 1(i)	In s.27 omit subsections (1) to (3)	The approved arbitration body that appointed the arbitrator will be responsible for filling a vacancy in accordance with the Act. It will be for the reconstituted tribunal to determine the extent to which the previous proceedings should stand. The parties are not able to agree what effect the arbitrator's ceasing to hold office has on any appointment made by that arbitrator because the

Provision of Sch.1	Description of modification	Summary
		approved arbitration body will be responsible for filling the vacancy.
Para 1(j)	In s.30(1) omit "unless otherwise agreed by the Parties"	The parties are not able to agree that the tribunal may not rule on its own jurisdiction.
Para 1(k) and para 2(e)	In s.37(1) omit "unless otherwise agreed by the parties" and in s.37(1)(a) after "tribunal may" insert ", where agreed by the parties"	The tribunal may only appoint experts/legal advisers/assessors where the parties agree.
Para 1(l)	Omit s.38(1) to (4)	The parties are not able to agree the powers exercisable by the tribunal. The tribunal does not have the power to order the applicant/claimant to provide security for the costs of the arbitration. This is not relevant because party making a reference to arbitration is required by the Act to pay the arbitration fees in advance, to be reimbursed by the other party in accordance with an award on arbitration fees, and the parties are otherwise required to meet their own legal or other costs. The tribunal does not have the power to give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings. For the purposes of the Act, the main question is whether the tenant should pay an unpaid protected rent debt and so powers are not otherwise required in relation to the property concerned.
Para 1(m)	In s.39(2)(a) omit "or the disposition of property"	The power to make a provisional award (with the agreement of the parties) does not allow a provisional order to be made for the disposition of property as between the parties.
Para 1(n)	Omit s.48(1), (2) and (5)(b) and (c)	The parties are not free to agree on the powers exercisable by the tribunal as regards remedies since the Act makes provision as to arbitration awards that the arbitrator can make. The ordering of specific performance of a contract or the rectification, setting aside or cancellation of a deed or other document, is not relevant to the arbitration scheme provided in the Act.
Para 1(o)	Omit s.49(1) to (3), (5) and (6)	The parties are not able to agree on the powers of the tribunal as regards the award of interest. The tribunal does not have the power to award interest save that it may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it

Provision of Sch.1	Description of modification	Summary
		considers meets the justice of the case, on the outstanding amount of any award.
Para 1(p)	In s.51(1) omit "unless otherwise agreed by the parties"; and In s.51(2) omit the words "if so requested by the parties and not objected to by the tribunal";	The parties are not able to agree that the provisions of s.51 do not apply. The tribunal must terminate the substantive proceedings and record a settlement in the form of an agreed award, whether or not the parties request that. Note that although s.51(5) applies, section 19 of the Act in relation to the payment of arbitration fees prevails over the provisions in ss.59 to 65 of the AA96.
Para 1(q)	Omit s.52(1) and (2)	The parties are not able to agree on the form of an award.
Para 1(r)	In s.58(1) omit "unless otherwise agreed by the parties"	The parties are not able to agree that an arbitration award is not final and binding.
Para 1(s) and para 2(f)	In s.68(2)(c) for the words "procedure agreed by the parties" substitute by "statutory procedure" In s.68(2)(e) omit "vested by the parties"	The proceedings are in accordance with a statutory procedure rather than a procedure agreed by the parties. The powers of the approved arbitration body derive from the Act rather than being vested in that body by the parties.
Para 2(c)	In s.34(1) after "matters" insert "(including in relation to oral hearings held in public)"	There is specific provision in the Act for oral hearings which must be followed. However, the modification to s.34(1) is intended to clarify that the fact of there being such specific provision does not in of itself dilute the arbitrator's power in s.34(1). For example, the arbitrator would be able to sit in private when hearing evidence or submissions on confidential and sensitive matters.
Para 2(d)	In s.35(2) for the words from "Unless" to "has no" substitute "The tribunal also has"	The tribunal has the power to consolidate proceedings without the parties having to confer that power on them.
Para 2(g)	In s.74(1) for "appoint or nominate" there were substituted "appoint, nominate or remove" In s.74(2) for "appointed or nominated", in both places, substitute "appointed, nominated or removed"	In relation to the function of removing an arbitrator, approved arbitration bodies have immunity from liability on the same basis as they have immunity from liability in relation to the function of appointing or nominating an arbitrator.

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