



# COVID-19– Geldards Public Sector Update

Business Emergency Advisory Team

2<sup>nd</sup> April 2020



# Coronavirus Job Retention Scheme – Public Sector

Helen Snow, Senior Associate, Employment

2<sup>nd</sup> April 2020

@geldards

# Coronavirus Job Retention Scheme

- Any UK organisation with employees can apply
- From 1 March 2020 last for 3 months
- It is available in relation to all employees on the payroll as at 28 February 2020
- Grant to reimburse the employer per employee will be equal to the lower of
  - 80% of an employee's regular salary;
  - or £2,500 per month;
  - Plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on paying those wages
- Salary as at 28 February 2020 should be used

# Coronavirus Job Retention Scheme

- Furloughed workers must not work for their employer
- Grant paid through new online portal
- Administered by HMRC
- Employer will continue to pay employees in the usual way through payroll
- Employer needs to decide whether it will 'top up'
- Employer can chose to do so but does not have to

# CJES & The Public Sector

- In principle Scheme is available to Public Sector
- Government guidance – not expected that employees in the public sector will be furloughed
  - Essential public services (NHS, Local Authorities etc.)
  - Public Services to respond to Coronavirus
  - Organisations who receive public funds for staff costs
    - Employers expected to use that money to pay staff in the usual way

# Non Public Sector Organisations

- Receive public funds
  - No defined purpose
  - Not primary source of funding
- Proportion of operating costs
- Guidance states

“Where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff”

# Non Public Sector Organisations

- More detailed audit trail of effect of Coronavirus
  - Be sure of the level of public funding and where those funds are going
  - Be able to demonstrate
    - Why are staff at risk of redundancy
    - Why can't they be redeployed

# Sources of Information

- <https://www.gov.uk/coronavirus>
- <https://www.acas.org.uk/coronavirus>
- <https://www.geldards.com/>





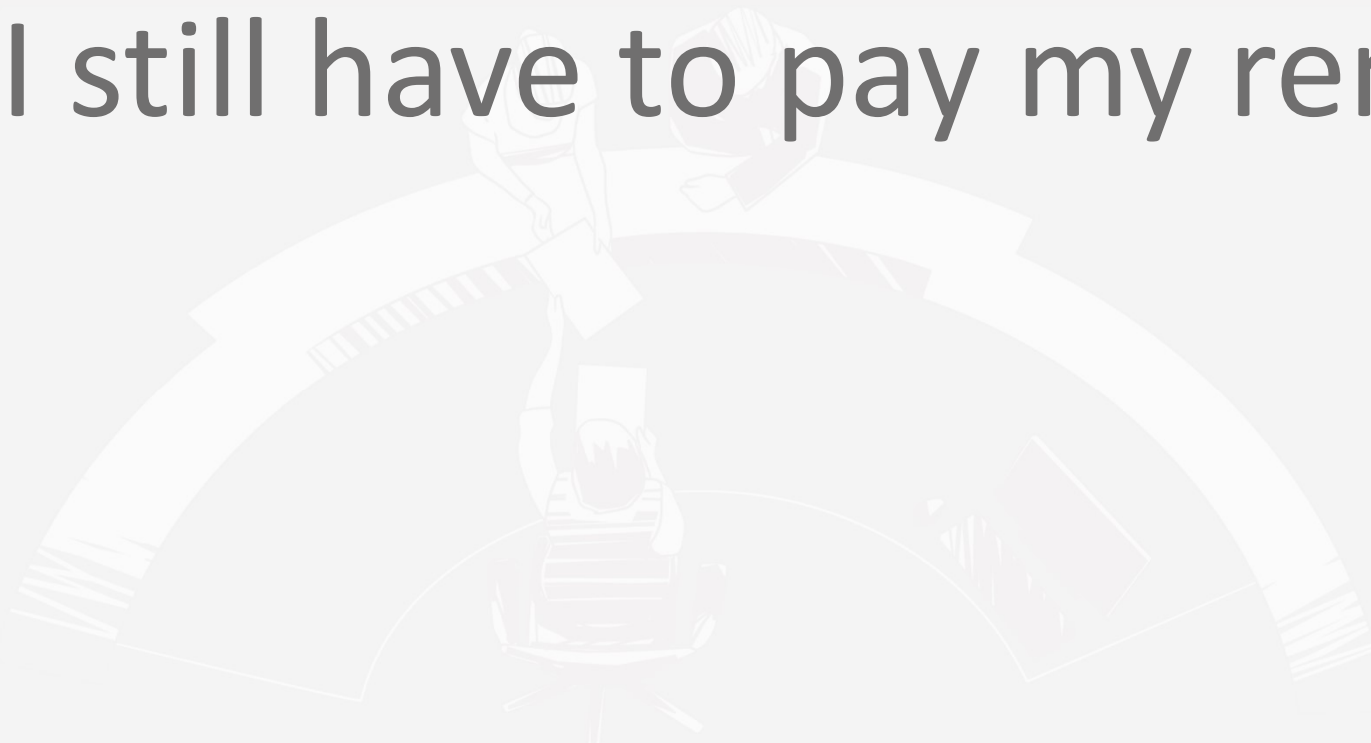
# Coronavirus Act 2020 – impact on rent obligations

Liz Ganderton, Partner, Commercial Property

2<sup>nd</sup> April 2020

The big question.....

Do I still have to pay my rent?



# Coronavirus Act 2020 section 82

- *Section 82(1)*
  - *a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise, during the relevant period.*
- *“relevant period” – from 26 March 2020 to 30 June 2020*
- *Can be extended by regulations*

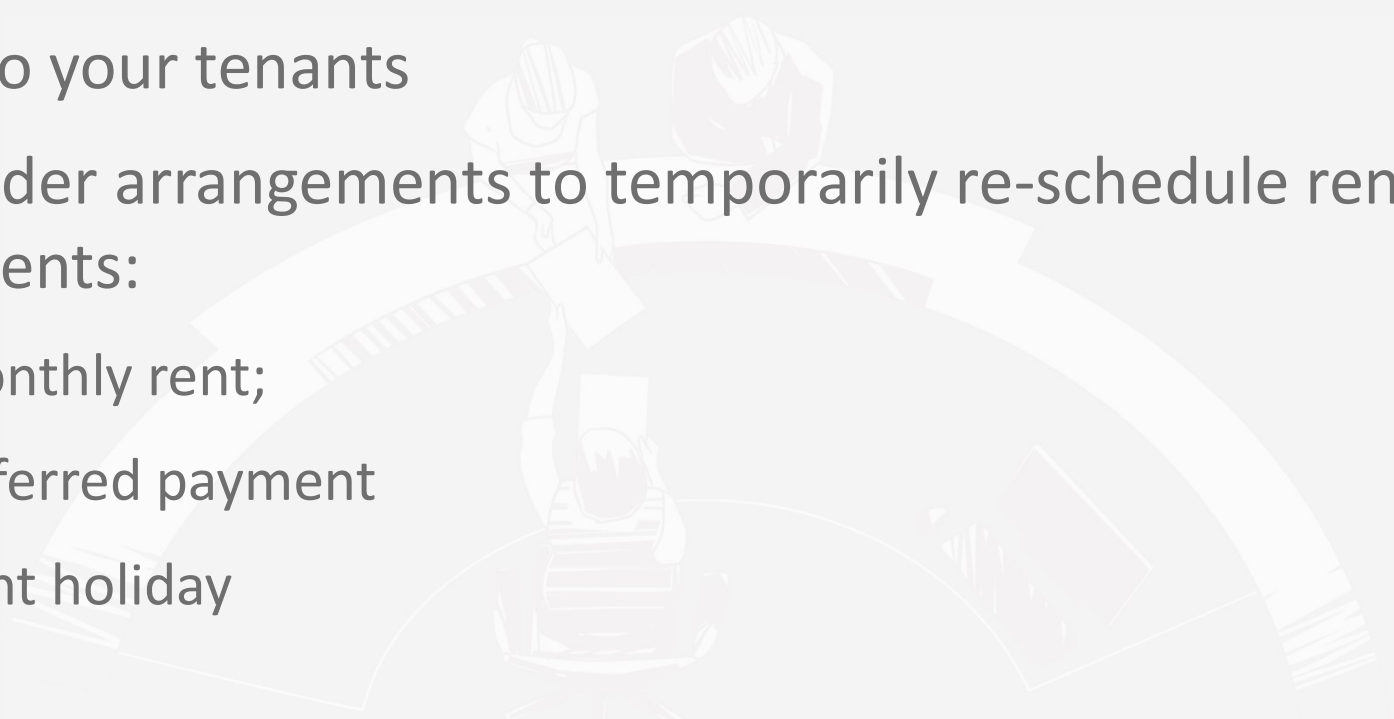
# What section 82 does

- Provides a moratorium in respect of forfeiture for non-payment of rent under business tenancies during the relevant period.
- Is retrospective – catches cases where possession proceedings had already been brought or possession orders already made before 26 March 2020.
- Covers all types of financial payments under a lease not just annual rent
- Covers peaceable re-entry as well as possession proceedings

# What it doesn't do

- It doesn't relieve the tenant of liability to pay rent.
- It doesn't affect any other remedies for non-payment of rent
  - Debt action
  - Statutory demand
- It doesn't affect forfeiture for non-financial breaches.

# What should I be doing now?

- Talk to your tenants
  - Consider arrangements to temporarily re-schedule rent payments:
    - Monthly rent;
    - Deferred payment
    - Rent holiday
- 

# What should I be doing now?

- Document any arrangements you agree by side letter
- If possible:
  - Make sure arrangements are personal to the tenant
  - Make them time limited



# State Aid and Public Procurement

Navigating the rules during the Covid-19 Crisis

Bethan Lloyd, Partner, Public Sector

2 April 2020



# Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

- Generous, but measures need approval from the Commission
- Approvals being processed in as little as 24 hours
- More suited to Government level schemes
- Does not cover ad hoc (i.e. one off) aid
- UK Government permission needed to notify a scheme
- UK Government used it to obtain approval for Coronavirus Business Interruption Loan Scheme

# Aid for rescue and restructuring

- Can be used to provide emergency liquidity support
- Lots of conditions
- Also requires a notification and Commission approval

# More practical options

- Identify a 'no aid' approach
- Rely on a block exemption
- Rely on the exemption for *de minimis* aid

# 'No aid' options

- No State aid if aid given to individuals rather than businesses (e.g. free food parcels for the vulnerable)
  - Exception to this if aid relates to their economic life (e.g. aid for a person's sole trader business could be State aid)
- No State aid if aid has no effect on cross-border trade (local aid rules)
  - Business has a predominantly local customer base
  - Aid will have no more than a marginal effect on the competitiveness of equivalent businesses in other EU states

# 'No aid' options

- Market terms transaction (Market Economy Operator Principle)
  - What terms would a private operator be willing to offer in the present circumstances, including all the COVID-19 uncertainty?
  - Public authority may be an investor or a creditor – and the MEOP assessment must be tailored to the circumstances
  - MEOP assessment to be done in advance and carefully documented

# Block Exemptions

- Most GBER exemptions are geared towards new investment, so may not be that useful for providing COVID-19 relief
- Some permit operating aid:
  - Aid for innovation clusters, 50% aid intensity, must show incentive effect
  - Aid for culture and heritage, up to 80% aid intensity, incentive effect is presumed
  - Aid for sport and multifunctional recreational infrastructures, up to 80% aid intensity, must show incentive effect
- Aid for consultancy for SMEs (but not routine services like tax or legal advice or advertising), 50% aid intensity

# *De minimis* exemption

- Aid of up to €200,000 (currently £177,000) per undertaking over any 3 year period
- Documentary requirements
- ‘Undertaking’ normally includes the whole group of companies, and complex rules as to when separate businesses are treated as a single undertaking with a single *de minimis* entitlement between them

# Running an urgent procurement

- Direct award due to extreme urgency (regulation 32(2)(c))
- Call off from an existing framework agreement
- Open, restricted and competitive procedure with negotiation - accelerated timescales available if state of urgency renders normal time limits impracticable
- Extend or modify an existing contract (regulation 72)
- Light Touch Regime for specific health and social care related services



# Supplier relief due to COVID-19

- Procurement Policy Note 02/20
- Aimed at ensuring service continuity by maintaining supplier cashflow and protecting jobs between now and end of June
- Actions:
  - Review contract portfolio to identify 'at risk' suppliers
  - Appropriate payment measures to support supplier cashflow, maybe even advance payments, or payments despite no performance
  - Based on open book principles and full transparency
  - Suppliers to continue paying employees and sub-contractors and cannot make redundancies
  - Invoices should be paid on receipt

# Supplier relief due to COVID-19

- Model Interim Payment Terms
- Ensure lawful basis for variation – under regulation 32 (direct award) or 72 (substantial modification of contract during term)
- Consider whether there are already relief mechanisms built into the contract that can be used
- Use supplier relief terms in preference to triggering a *force majeure* clause or applying the doctrine of frustration

# Any questions



# Contact details



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