



# Our landlord has asked our organisation to leave the premises due to the COVID-19 outbreak. What are our rights and can we challenge this?

*In light of the rapidly developing situation and government response, this memorandum is current as at 15 April 2020.*

## Landlord obligation to close certain premises

The Coronavirus Act (the “**Act**”) which became law on 25 March 2020 grants the government new powers to order the closure of, or restrict access to, any premises. The Secretary of State may, for the purposes of:

- (i) preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in England, or
- (ii) facilitating the most appropriate deployment of medical or emergency personnel and resources in England,

issue a direction to a specified premises or premises of a specified description ordering their closure<sup>1</sup>.

Pursuant to the Act, a government direction was issued on 23 March 2020, which ordered the closure of certain premises, including all non-essential shops and community spaces, such as community centres, youth centres and places of worship. Landlords of premises that have been ordered to close have no choice but to close those premises.

Furthermore, most leases contain a clause that provides that tenants must comply with all statutory requirements. This will include directions issued pursuant to the Act, by Public Health England and by the Health and Safety Executive. If premises are directed to close by the government, tenants will be required to cease operating from the premises for the duration that the direction lasts.

## Potential actions that a tenant may take if its premises are closed

Organisations should review whether their premises are within the government direction issued on 23 March 2020 to determine whether they must close. The closure of premises is set to be reviewed by the government shortly. There are currently no means of challenging the closure order and a criminal offence may be committed if the direction is not followed.

There are exceptions to the premises that must be closed, which include premises used for the purpose of hosting essential voluntary or public services, such as food banks, homeless services and blood donation services.

If an organisation provides an essential voluntary or public service, it can remain open, but must still abide by social distancing rules. If a tenant believes that its

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<sup>1</sup> Coronavirus Act 2020, Schedule 22, Part 2, Paragraph 6.

premises falls within one of the exceptions described above, the tenant should communicate this to its landlord.

Although a landlord may be ordered to close premises for a period of time, a landlord cannot order a tenant to leave its premises permanently.

## Tenant protection against forfeiture

Section 82 of the Act has suspended a landlord's ability to exercise a contractual right of forfeiture for non-payment of rent if the tenant is unable to pay its rent due to the COVID-19 pandemic. The Act covers charitable and not-for-profit organisations, whether they are incorporated or unincorporated.

The suspension lasts for the period from 26 March 2020 to 30 June 2020 or to such other date as determined by the Secretary of State (the "**relevant period**"). This means that a landlord cannot end a tenant's lease and evict the tenant if the tenant is unable to pay its rent due to the COVID-19 pandemic during the relevant period.

## What happens after the relevant period ends?

Once the relevant period has ended, the tenant will be required to pay all of the rent due from the preceding quarters/months where the rent was not paid (including any interest) in order to avoid forfeiture. As such, tenants should consider how they will manage their cash flow in order to meet those rent liabilities after the relevant period ends.

## Other grounds of forfeiture

Landlords retain any other contractual forfeiture rights that they may have, which may include the right to forfeit the lease in the event of tenant insolvency or other breach of covenant. Organisations should review their lease to check what forfeiture rights a landlord has.

A court is, however, unlikely to grant forfeiture during the period that the Act is in force as practically it would be difficult for a tenant to vacate premises during a lockdown period. Furthermore, it is likely to take a considerable period of time for a forfeiture application to be heard by the Court as a result of the COVID-19 pandemic and the strain that this has placed on the Court system due to courts being understaffed and court closures.