

COVID-19

New UK Government Assistance Available to Businesses



30 March 2020

The UK Government has announced an unprecedented stimulus package to help support businesses in the wake of the COVID-19 outbreak. These measures, originally announced by the Chancellor of the Exchequer in his budget on 11 March 2020, have rapidly expanded in the past days and weeks. The scenario is subject to constant (and rapid) change and the measures appear to have unlimited scope with both the UK Government and Bank of England encouraging businesses to open up a dialogue with them before making any long-term negative decisions. We will update this note once further details are known.

This note provides a summary of the key measures to help businesses which were announced by the UK Government as part of its response to the COVID-19 outbreak. In addition, although not covered by this note, there will be pre-existing measures (and potentially commercial insurance) that businesses may continue to rely upon in order to get through the current crisis. While focusing on measures in England, a number of them are pan-UK and the devolved parliaments have pledged to mirror the measures to the extent necessary. If you would like further details about any of these measures or wish to have an update on them, please do not hesitate in contacting a member of our team.

The UK Government's "COVID-19: support for businesses" hub is currently being kept up-to-date and is available by clicking [here](#) and is also sharing information through its Coronavirus Business Support page available by clicking [here](#).

Travers Smith has a number of other COVID-19 related resources on our website that you might find useful, available by clicking [here](#).

KEY CONTACTS:

Corporate:	Spencer Summerfield 020 7295 3229 spencer.summerfield@traverssmith.com
	Paul Dolman 020 7295 3274 paul.dolman@traverssmith.com
Finance:	Matthew Ayre 020 7295 3304 matthew.ayre@traverssmith.com
	Barry Newman 020 7295 3451 barry.newman@traverssmith.com
Tax:	Russell Warren 020 7295 3227 russell.warren@traverssmith.com
Employment:	Ed Mills 020 7295 3424 ed.mills@traverssmith.com
Property:	Simon Rutman 020 7295 3379 simon.rutman@traverssmith.com

1 CORONAVIRUS JOB RETENTION SCHEME

Where employers are considering making employees redundant as a result of the COVID-19 crisis, they are now able to instead make them "furloughed workers".

If an employer chooses to do this and therefore keep them on the payroll, then the Government will contribute 80% of that employee's monthly wage costs (subject to a cap of £2,500 per month) provided the employee is retained as employee but does no work during the furlough period. The employer then has the choice of topping-up their salary, or alternatively the employee may simply receive the lower salary (therefore at no cost to the employer). The employer will also be entitled to claim reimbursement for

employers NICs and the minimum automatic enrolment employer pension contributions on top of the 80% salary and the monthly £2,500 cap.

For salaried employees, the employee's actual salary before tax, as of 28 February 2020 is used to calculate the 80% of monthly wage costs. In terms of calculating monthly wage costs for employees whose pay varies, (e.g. zero hours workers and casuals), the employer can claim for the higher of either the amount the employee earned in the same month last year or the employee's average monthly earnings from the 2019/20 tax year. Bonuses and commission are not included in monthly wage costs for these purposes.

To qualify under the scheme, the furlough must be for at least three weeks and currently the maximum furlough that will be reimbursed is three months (although the Government has said it may extend this period if necessary). Employers can furlough an employee more than once, provided each furlough is at least three weeks' long.

The employer may go on to make employees redundant during the furlough period or afterwards if there is a genuine redundancy situation. The employer would have to follow the normal rules on redundancy and employees with at least two years' service would be entitled to redundancy pay. However, this will not affect any previous period of furlough for which the employer can claim funding.

While a furloughed worker, the employee will not be able to undertake any work. They can volunteer or undertake training but they will not be able to volunteer for their employer nor can they make any money for, or provide services to, their employer. This may incentivise businesses to give fewer employees *some* work and instead have a few who do all the work and others do none. This could therefore result in issues where in a team some people are furloughed (thereby not doing any work and receiving a, potentially significant, amount of their wages) and their work distributed to others who then have to work full time, when ideally you might have shared the work around.

From a practical perspective, the employer will need to inform the employee of their changed status (to a "furloughed worker") and notify HMRC of all the relevant details through a new online portal being created. The UK Government has confirmed that changing the status of an employee in this way is still subject to existing employment law (and the existing employment contract). Therefore, it appears that an employer will need the employee's consent to do so (with the associated risk of the collective consultation regime applying / involving recognised trade unions etc.), unless there is a provision in the contract of employment permitting the employer to temporarily lay off the employee.

The scheme will cover eligible salary costs from 1 March 2020 and initially be for 3 months (although it can be extended if necessary). Employees who have already been made redundant since 1 March 2020 as a result of COVID-19 can be brought back onto the payroll and become eligible for the scheme. There has been no limit applied to the funding available, with the UK Government saying they will "support as many jobs as necessary".

The logistics about how this grant refund will be paid to employers is still being worked on (the Government is expecting first payments to be made by the end of April 2020), but the upfront costs of payroll will continue to be paid by businesses while they await reimbursement at a time when cash-flow is expected to already be stretched.

While separate to the Coronavirus Job Retention Scheme, businesses may also be interested to know (especially if they are considering terminating both contractors and employees as a result of the current crisis) that the UK Government has announced the Coronavirus Self-Employed Income Support Scheme. This scheme will provide grants for the self-employed of 80% of their average monthly profits (averaged over the previous three years), capped at £2,500 per month. To be eligible individuals must (i) already be classified as self-employed for tax purposes; (ii) have trading profits of no more than £50,000 per year; and (iii) and have a tax return from 2019 (or file one in the next four weeks). Those who pay themselves a salary and dividends through their own company are also not covered by the scheme but will be covered for their salary by the Coronavirus Job Retention Scheme if they are operating PAYE. The Coronavirus Self-Employed Income Support Scheme is expected to be up and running by the end of June 2020, with grants initially covering three months' average profits backdated to cover the period March – May 2020 (although it is possible this period could be extended).

ELIGIBILITY

All organisations (of all sizes and in all sectors) in the UK will be eligible for the Coronavirus Job Retention Scheme. The scheme will extend to all employees who are employed and on the employer's payroll as at 28 February 2020.

The UK Government has said it will retain the right to retrospectively audit all aspects of the scheme with scope to claw back fraudulent or erroneous claims. Accordingly, employers will need to keep records of communications with employees about furlough, the wages paid and associated wage costs.

Please see our Q&A on the Coronavirus Job Retention Scheme for further details by clicking [here](#), and further details from the UK Government [here](#).

2 CORONAVIRUS BUSINESS INTERRUPTION LOAN SCHEME ("CBILS")

From 23 March 2020, SMEs that are not able to obtain finance on normal commercial terms are able to apply for loans (be they overdrafts, term loans or other forms of facilities) for up to £5 million under the CBILS.

The two main benefits of loans provided under the CBILS are that the UK Government (through the pre-existing British Business Bank) will:

- (a) provide the lender with a guarantee for 80% of the outstanding loan (subject to a per-lender overall cap), meaning it is more likely to be approved by the lender; and
- (b) pay the interest for the first 12 months.

The tenor of such loans will be (i) up to six years for term loans and asset finance and (ii) up to three years for overdrafts and invoice finance.

It is important to note that the guarantee is only to the lender, so the borrower remains fully liable to repay 100% of the loan (as well as any interest after the first 12 months). However, these loans are likely to be particularly attractive to businesses facing a short-term cash-flow issue because they will be seen as interest-free if they are repaid within those first 12 months.

It is expected that businesses will be able to borrow more than once under the CBILS provided they still satisfy the eligibility criteria (presumably subject to an overall £5 million limit). The CBILS effectively replaces the Enterprise Finance Guarantee Scheme ("EFG") which will be temporarily suspended for new applications. Businesses are asked to speak to their preferred lender if they already benefit from an existing EFG and wish to apply for additional finance under the CBILS.

Applications: The CBILS will be operated through the partner banks (including most high-street banks) of the British Business Bank. The application is not expected to take longer than a standard application, but when immediate liquidity is required in a distressed situation even a standard application process might entail delays. The partner banks are expected to have significant bandwidth issues in the first days of the CBILS and therefore any potential borrowers who are not in immediate need of cash are being asked to remember that there is no limit to the amount available under the scheme and wait before applying.

Security: The guidance in this area is unclear (and clarity is awaited) but, due to the presence of the UK Government guarantee, it is expected that facilities made available under CBILS will be provided on an unsecured basis. Any CBILS facilities over £250,000 can

only be made if the lender can "establish a lack or absence of security prior to businesses using CBILS" which is expected to include any assets which have already been secured elsewhere. This is designed to prevent companies with securable assets avoiding using those assets to secure the loan (and merely enabling the lender to rely on the UK Government guarantee). Lenders will not be able to use anyone's primary residential property as security under the loan.

Fees: While participating, CBILS lenders will be required to pay a fee to the UK Government to access the CBILS guarantee, it has been confirmed that businesses will not be required to pay any such fee and that the UK Government will cover any lender-levied fees (although some participating lenders have confirmed that they will not charge arrangement fees or early repayment penalties for CBILS facilities) except that fishery, aquaculture and agriculture businesses may not qualify for the full fee payment.

Whilst the CBILS will offer welcome liquidity to companies suffering financial stress, the incurrence of additional debt may be restricted under existing debt facilities. Careful attention should be given to debt incurrence capacity under any such arrangements. Waivers may be required (potentially on a tight timetable) to avoid triggering a default entitling existing lenders to accelerate their debt and enforce security. Clearly, the greater the number of existing lenders, the more logistically challenging this will be. It may not be an issue where the CBILS partner bank is already the business' main lender. Ultimately, existing lenders may be comfortable with their borrower incurring unsecured loans in reliance on the government guarantee (although see section above about security for loans over £250,000); the alternative (enforcement leading to an insolvency process) is typically destructive of value as compared to a consensual solution.

As well as satisfying the usual corporate benefit rules which apply to every company when taking on debt or granting guarantees/security, when considering whether to borrow in circumstances of financial distress, directors should be mindful of their duties to creditors and, in particular but subject to the proposed changes detailed at section 9 below, the need to avoid wrongful trading. Company directors should have an objectively justifiable reason for taking on new debt. This involves having a clear understanding of the financial position of the company and a plan for avoiding an insolvency, often with the benefit of professional advice. It is important to consider whether there is a reasonable prospect that taking on new debt, together with any planned capital raising and/or cost-saving measures, will enable the company to survive. Whilst the plan need not be 100% certain, it is important that it is not fanciful or remote. This same

analysis also applies to the CCF scheme outlined at section 3 below.

ELIGIBILITY

Decision-making on whether a business is eligible for CBILS is fully delegated to the accredited CBILS lenders, but the basic eligibility criteria are:

- the borrower being UK based (further details as to what this means in practice are awaited) with 50% of its turnover coming from trading activity;
- the funds being applied for are for business purposes and will be used to support primarily trading in the UK;
- the borrower (which can include sole traders / freelancers so long as the business is operated through a business account) not having an annual turnover of more than £45 million. This is likely to be the key eligibility criteria for most borrowers, and further details are awaited to understand amongst other things:
 - (a) for which time period the turnover test will be applied (especially if there has been a dramatic reduction of turnover as a result of COVID-19) – this is expected to be pre-crisis turnover, potentially for the 12 months to 31 December 2019;
 - (b) to what extent corporate groups will be treated as having a single turnover – this is highly expected to be the case; and
 - (c) whether the portfolio companies of investment funds will all be treated as belonging to the same corporate group – as it appears to be calculated on a business by business basis we expect portfolio companies should not be disqualified by virtue of needing to combine the turnover of all portfolio companies majority-held by a single sponsor, but different lenders appear to be taking different approaches on this point and therefore if relevant should be raised early in the process with the preferred lender;
- the borrower not being able to otherwise obtain finance on normal commercial terms without the need to make use of the CBILS;
- the borrower not being any of the following (which are not eligible): (i) a bank, building society, insurer or reinsurer (excluding insurance brokers); (ii) part of the public sector including state funded primary and secondary schools or (iii) membership organisation (employer, professional, religious or political) or trade union; and

- the borrower having a borrowing proposal which, were it not for the current pandemic, would be considered viable by the lender, and for which the lender believes the provision of finance will enable the business to trade out of any short-to-medium term difficulty.

While they still may be eligible, fishery, aquaculture and agriculture businesses may not qualify for the full interest and fee payment exemption referred to above.

Further details from British Business Bank are available [here](#).

3 COVID CORPORATE FINANCING FACILITY ("CCFF")

From 23 March 2020, the Bank of England (the "BoE") is able to lend to large corporates by buying commercial paper (effectively an unsecured short form unsecured debt instrument). Corporates are expected to be able to borrow up to £1 billion each, depending on credit ratings and subject to constant review, and will need to borrow a minimum of £1 million and in multiples of £100,000.

Some of the key terms of the commercial paper include that:

- the maturity of the commercial paper will be one week to twelve months;
- in terms of pricing, the BoE will purchase the commercial paper on terms comparable to those prevailing in the markets before the economic shock from COVID-10, being more precisely:
 - for primary market purchases, it will purchase commercial paper at a minimum spread above a reference rate, based on the current sterling overnight index swap (OIS) rate. The respective reference OIS rate will be determined at 09:45 on the day of the operation;
 - for secondary market purchases, it will purchase commercial paper at the lower of amortised cost from the issue price and the price as given by the method used for primary market purchases as set out above. The BoE will also apply an additional small fee (currently set at 5bps and subject to review) for use of the secondary facility, payable separately; and
 - the respective spreads are subject to review by the BoE, but by way of illustrative example as at 23 March 2020 these were 40 bps for a relevant A2/P2 short-term credit rating (see 'Eligibility' section below regarding minimum credit ratings);

- the facility is available for an initial 12 months, and at least 6 months' notice will be given before closing it;
 - the commercial paper can be in a simplified version based on the ICMA standard, but while other simplified versions may be considered the cannot have any non-standard features (such as extendibility or subordination);
 - if the issuing entity is does not have an investment grade rating and is not the primary entity within the group, that primary entity may be required to give a guarantee (with a foreign 'capacity and authority' legal opinion if it is a foreign company);
 - if successful, the borrower will be required to enter into a confidentiality agreement and agree to the CCFF terms and conditions, including certain standard warranties and undertakings, available [here](#); and
 - the commercial paper will be issued directly into Euroclear and/or Clearstream.
- The BoE will, in addition, take into consideration the borrower's UK revenues, UK customer base and number of operating sites in the UK.
- The borrower should be able to "demonstrate they were in sound financial health prior to the shock".
 - The BoE will accept borrowers with the following credit ratings (from at least one of S&P, Moody's, Fitch or DBRS Morningstar) as at 1 March 2020:
 - short-term credit rating of at least A-3 / P-3 / F-3 / R-3; or
 - long-term credit rating of at least BBB- / Baa3 / BBB- / BBB low.
 - If the borrower does not have a short-term or long-term credit rating as at 1 March 2020 then the BoE will need to "assess that the issuer is of equivalent financial strength" in order to give it access to the facility. In this situation they are encouraging businesses to speak to their bank counterparties to see if that business is universally internally regarded as having equivalent investment grade rating and if not the BoE will expect businesses to get a form of retrospective "point-in-time" credit rating from one of the major rating agencies.

This facility therefore is designed to provide companies access to pre-crisis terms of debt (rather than anything more favourable – for example there is no interest holiday akin to the CBILS discussed above). Whilst there is a degree of uncertainty in terms of likely funding costs, clearly the objective here is to help systemically important businesses (rather than for the BoE to profit from this scheme).

If a business considers itself eligible and wishes to borrow funds under this scheme then they should consider approaching their current bank (or, if their current bank does not offer commercial paper then select a bank that does from the link available [here](#)).

While the BoE will announce (on a daily basis) the aggregated uptake of the CCFF, it will not publicly disclose which individual companies are participating.

Although the CCFF will offer welcome liquidity to eligible companies, important considerations apply for a company taking on new debt as discussed in section 2 above.

ELIGIBILITY

To be eligible for the CCFF:

- The borrower will need to make a "material contribution to economic activity in the United Kingdom".
 - This should be satisfied if (i) it is a UK-incorporated company (regardless of whether it has a foreign parent) with genuine business in the UK, (ii) it has significant employment in the UK, or (iii) its headquarters are in the UK.
- Banks, building societies, insurance companies and other financial sector entities regulated by the BoE or the FCA (including any companies within groups which are predominantly in such business) will not be eligible. "Leveraged investment vehicles" (although no details are available yet as to what that includes) and public bodies or public undertakings (where the UK or other EU state can exercise dominant influence) will also not be eligible.

Based on this eligibility criteria, the CCFF would be more suitable for larger companies with more sophisticated corporate treasury operations and investment grade standing. The CBILS (discussed in section 2 above) is likely to be a more suitable option for smaller, unrated, companies unfamiliar with commercial paper issuance. The Chancellor of the Exchequer has confirmed that he will be making a further announcements to "ensure that larger and medium sized companies can also access the credit they need" and filling the gap between the CBILS and the CCFF (estimated by the UK Government to cover around 20% of businesses in the UK when looking at turnover and employment) has been described as a "top priority" of the Confederation of British Industry (CBI).

- There will be no requirement for the borrower to have previously issued commercial paper.

Further details are available [here](#).

4 TAX DEFERRAL

VAT

The UK Government has announced that all businesses in the UK are able to defer their VAT payments for the rest of this quarter (applicable from 20 March 2020 to 30 June 2020) until the end of the 20/21 tax year. No application will be required, and any businesses wishing to defer do not need to tell HMRC prior to doing so. Businesses wishing to defer should temporarily cancel any direct debits they have set up for the payment of VAT payments to HMRC.

The Government estimates that this will be equivalent to a direct injection of £30bn of cash into the economy.

GENERAL

The UK Government has confirmed that all businesses in financial distress, and with outstanding tax liabilities, will be able to receive tailored support from the HMRC through the "Time To Pay" service.

While these arrangements are agreed on a case-by-case basis and it is difficult to apply general principles to what is and is not possible, we understand that HMRC has already been very receptive to requests for deferrals of tax payments.

Specific circumstances can be discussed with HMRC using their new COVID-19 dedicated helpline (*0800 0159 559 between 8am-8pm on Monday to Friday and 8am-4pm on Saturday*). Examples of arrangements that HMRC may discuss with a business are:

- (a) agreeing an instalment arrangement; or
- (b) cancelling penalties and interest where there are administrative difficulties in contacting or paying HMRC immediately.

In relation to instalment arrangements, HMRC will assess the income, expenditure and assets of the taxpayer and what is being done by the business to get their tax payments back in order. HMRC will then determine whether the business should be able to pay immediately or not, and if not, the timeframe that the business needs to get its payments back on track. More in depth questions may be asked by HMRC where a business has previously been granted time to pay, and in complex situations HMRC may ask for evidence before making a decision.

5 BUSINESS RATE RELIEF

All retail, hospitality and leisure businesses as well as nurseries in England will benefit from a 12-month business rates relief for 2020/2021. While it has a limited sectoral scope, the relief is likely to be popular for eligible businesses which have long cited business rates as being an issue even when the economy is strong. There is no rateable value limit on this relief and will therefore apply to all premises in those sectors.

It will apply to the next council bill in April 2020 and requires no action on the part of the businesses concerned. The UK Government has said that local authorities will reissue bills where relevant "as soon as possible" (and be funded in doing so by central Government).

ELIGIBILITY

To be eligible, the business must:

- be based in England; and
- be an occupied property wholly or mainly used as a shop, restaurant, café, drinking establishment, cinema, live music venue, for assembly and leisure, hospitality, hotels, guest and boarding premises, self-catering accommodation or a nursery (being those on Ofsted's Early Years Register and who wholly or mainly provide the Early Years Foundation Stage).

This is a test on use rather than occupation; businesses which are occupied but not wholly or mainly used for the purposes listed above will not qualify for the relief. The UK Government has stated that businesses which have closed temporarily due to the UK Government's advice on COVID-19 should be treated as occupied for the purposes of obtaining the relief.

Further details are available from the UK Government for retail, hospitality and leisure businesses by clicking [here](#) (including a non-exhaustive list of those businesses the Government considers will benefit from the relief) and for nurseries by clicking [here](#) (including details of properties that will benefit from the relief).

6 GRANTS FOR SMALL BUSINESSES

The UK Government will provide two grants to small businesses based on their business rates banding:

- (a) **Small Business Grant:** £10,000 to all businesses regardless of sector currently eligible for small business rate relief (rateable value less than £15,000) or rural rate relief (e.g. being the sole post office in a small village). This is expected to cover 700,000 of the country's smallest businesses.

- (b) **RHL Business Grant:** £25,000 to all retail, hospitality and leisure businesses operating from smaller premises, with a rateable value between £15,000 and £51,000.

The payment will be made to the person who (according to the billing authority's records) was the ratepayer for the property as at 11 March 2020. In a shared office arrangement, a more typical arrangement is that the landlord charges a rent inclusive of rates (to the extent that they are payable, as many small businesses in particular already benefit from reliefs). In this case, it's likely that the landlord will receive the grant but politically is likely to be under pressure to share the benefit of this with the actual occupants in proportion to their rental contributions.

These grants will not be available for properties occupied for personal use (e.g. private stables or beach huts) or for recipients who are in liquidation or dissolved as at 11 March 2020.

Businesses do not need to apply for the Small Business Grant – they will be contacted by their local authority from early April – but they will need to actively contact their local authorities for the RHL Business Grant.

Further details are available [here](#).

7 STATUTORY SICK PAY

As background, businesses are required to pay a minimum amount of Statutory Sick Pay (currently £94.25 per week) for employees who are off sick for up to 28 weeks. Statutory Sick Pay is currently payable from the fourth day of sickness absence. As a response to COVID-19, the UK Government has introduced legislation to change the rules with effect from 13 March 2020 so that employees that self-isolate are covered by Statutory Sick Pay. The UK Government also plans to introduce further legislation requiring Statutory Sick Pay to be paid from the first (rather than fourth) day of absence, to have retrospective effect from 13 March 2020.

Under the new UK measures, certain SME businesses will be able to claim back Statutory Sick Pay paid to employees for sickness absence due to COVID-19, up to

a maximum of two weeks per employee (up to £188.50 per eligible employee).

It will not cover any enhanced sick-pay offered (contractually or otherwise) by employers, and businesses are still required to fund the up-front cost of such sick-pay (potentially causing painful cash-flow issues in the current climate) with the repayment mechanism yet to be developed. However, it could be especially valuable to low-skilled workforce-heavy businesses if 20% of the workforce is off sick at any one time (as the Prime Minister warned might be the case earlier this month).

ELIGIBILITY

To be eligible to claim back the Statutory Sick Pay:

- the employer must be UK based and have had fewer than 250 employees on 28 February 2020 (although the CBI is lobbying the UK Government to extend the relief to all employers). This is likely to be the key eligibility criteria for most businesses, and further details are awaited to understand amongst other things:
 - (a) to what extent corporate groups will be treated as being a single employer – this is highly expected to be the case; and
 - (b) whether portfolio companies of investment funds will all be treated as belonging to the same corporate group – it is hoped that it will not (otherwise almost all PE-backed portfolio companies will be ineligible) but there has been no indication given by UK Government as yet;
- the employer must maintain a record of staff absences (although no doctor note is required) and payments of Statutory Sick Pay;
- the employee is eligible for Statutory Sick Pay and is off work due to COVID-19; and
- the payment must be made on or after 14 March 2020.

8 PROTECTION FROM EVICTION

Mirroring measures previously announced for domestic tenants, the UK Government has confirmed that landlords of commercial premises will be prevented from taking steps to forfeit and recover possession of those premises if a tenant fails to pay rent.

The legislation provides protection to business tenants for non-payment of yearly rent, service charges, insurance contributions and other sums due under a business tenancy. This will apply from the day after the Coronavirus Bill is passed into law (expected to be by 2 April 2020) and ending on 30 June 2020, but will not relate to enforcement action already underway. The arrears subject to this protection do not have to relate to the March 2020 quarter alone.

At the moment, a landlord can still forfeit and recover possession of premises as a result of other breaches of lease, for example, failure to comply with 'keep open' clauses, insolvency defaults or breaches of repair covenants. The landlord's rights to do so depend on the drafting of the particular lease, and remain subject to the statutory right of tenants to apply to the courts for relief.

The proposals by the UK Government is currently limited to protection from eviction by forfeiture as described above. It does not go so far as to protect business tenants from the corresponding debt claim that a landlord will have where rents aren't paid under a lease (together with any interest or penalties due thereon which will be dictated by the terms of the lease), or the other remedies of a landlord such as recourse to rent deposits, guarantees and their rights under the Commercial Rent Arrears Recovery statutory regime. This means that, while businesses that go into arrears on their rent will be relieved that they cannot be evicted in the short-term, they will need to repay the arrears in full plus accrued interest once the protection is lifted (be that 30 June 2020 or later if the UK Government extend the protection) to avoid facing eviction at that point. For this reason, we continue to recommend that landlords and tenants enter into discussions regarding rent suspensions and repayment terms (and document what is agreed to avoid later disputes).

While private homeowner landlords on buy-to-let mortgages will benefit from recently-announced payment holidays on their mortgages, there are not currently any similar proposals in respect of mortgage payments on commercial property. While this may concern commercial landlords who expect certain tenants will soon fall into arrears, the UK Government has confirmed that it is actively monitoring the impact on commercial landlords' cash flow and this position

might change. For loans falling under FCA regulation, it has issued guidance that no responsible lender should be considering repossession as an appropriate measure at this time and should grant payment holidays where needed as a result of COVID-19. Where appropriate, landlords should enter into discussions with their lenders in conjunction with any concessions granted to their tenants.

Further details as to the considerations that either landlords or tenants will have during this time are available on our website [here](#) and further details from the UK Government on the protection from eviction are available [here](#).

9 CHANGES TO THE INSOLVENCY REGIME

The UK Government announced on 28 March 2020 that it plans to introduce measures to improve the UK's insolvency system in response to the COVID-19 situation. It noted that its overriding objective is to help UK companies that need to undergo a financial rescue or restructuring process to keep trading. The intention is to give these companies extra time and space to "weather the storm" and to be ready when the crisis ends, whilst ensuring that creditors get the best return possible in the circumstances.

Further details are awaited on what the full measures will include, but the UK Government has announced that they will include:

- A temporary suspension of the wrongful trading provisions for company directors to remove the threat of personal liability, applying retrospectively from 1 March 2020. It is not clear yet whether there will be any criteria for the use of this suspension. The UK Government specifically noted that all other "checks and balances that help to ensure directors fulfil their duties properly will remain in force". In particular, we expect that this means that there will be no change to directors' duties more broadly (including the obligation to act in the best interests of the creditors when a company is insolvent) or to the fraudulent trading regime. The risk of disqualification or other actions against directors for breach of duty or misfeasance will therefore remain.
- New rules to ensure that companies undergoing a restructuring can continue to get hold of essential supplies (such as energy, broadband and raw materials). It is unclear what the intention is here but it might involve some sort of moratorium or a prohibition on ipso facto clauses (i.e. those where an insolvency related event allows one party to terminate or modify the operation of the contract, or provides for this to occur automatically) for companies facing issues as a result of COVID-19.

The UK Government has also indicated that it intends to bring in new legislation to implement changes to corporate insolvency that it had previously consulted on in 2018 (including looking at (i) a new standalone moratorium preventing creditor enforcement action being taken against a company while it considers options for rescue and (ii) a new court-approved restructuring plan put to and approved by creditors which would be binding on all classes of creditors, regardless of how they voted).

No further details are yet available, but we will continue to monitor the situation as it develops.