

# As shops re-open, COVID clauses reach their Use By Date

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Non-essential shops in England are now open for business as part of the Government's easing of the coronavirus lockdown measures introduced in March.

Over the last 3 months, many landlords and tenants have entered into express agreements, either contained in new leases or agreements for lease or in variations and side letters to existing leases, to relax or modify the tenant's usual obligations while the lockdown was continuing.

Typically these will include the suspension or deferral of annual rent and service charge payments, extensions of rent-free or concessionary rent periods and the suspension of other tenant covenants such as keep open clauses and works obligations.

With yesterday's lifting of lockdown, many of those temporary concessions will have come to an end and landlords may once again be able to invoice for rent and otherwise enforce the tenant covenants in the lease (subject to the various statutory restrictions introduced in response to the pandemic).

However it is essential in each case to look carefully at the specific drafting of these coronavirus clauses, many of which will have been agreed at speed and in the absence of any market consensus on drafting, to ascertain what the actual impact of yesterday's easing of lockdown was on the tenant's obligations.

Of course many tenants have stopped paying rent even without an agreement with their landlord to do so and in reality many will continue to struggle to comply with their lease obligations as social distancing restrictions increase their operating costs and suppress turnover.

However the easing of lockdown is obviously a highly positive development for both retailers and their landlords and landlords should now be reviewing those coronavirus clauses without delay in their continuing dialogue with their tenants.

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