

Ministerial Update to Government Policy as Landlord for its Business Tenants during COVID-19 Period

The Minister of Infrastructure has updated Government of Jersey's policy as Landlord for the period of the COVID-19 pandemic. This policy is in accordance with the [Guidance for landlords and tenants of commercial property](#) issued by the Minister for Economic Development relating to rent and other payment.

This policy shall be effective from 7 September 2020 and apply for the duration of the COVID-19 Period (as defined in the Guidance) and forms part of Government's continued support measures for local businesses.

Under the Guidance landlords and tenants are required, subject to evidence of their respective financial needs, to agree temporary voluntary arrangements for the COVID-19 Period. Immediately prior to the Guidance being issued, Jersey Property Holdings offered all its Business Tenants a three-month deferral of rental. This was in recognition that all business premises would be closed during lockdown and that many Business Tenants would be unable or severely limited in their ability to trade during this period. A minimum rental deferral period of 3-months was considered sensible in the circumstances. Payment plans were put in place for all rental deferrals agreed with Business Tenants. In certain limited cases, and where Business Tenants have been worst affected by the COVID-19 trading restrictions, Government has offered partial or complete rent waiver for that initial 3-month period.

These steps were taken before the Guidance was issued, which sets out clear guidelines and a process for all landlords and tenants of commercial property to follow. Jersey Business on behalf of Government has been assisting parties who wish to make use of the Guidance.

Government will not review the rental deferrals it has entered into with its Business Tenants for this initial 3-month period other than in exceptional circumstances, and these rent deferrals will remain repayable in accordance with the terms of the Payment plans agreed.

New Policy as Landlord

Government now requires all Business Tenants, who continue to suffer financial hardship in consequence of COVID-19 and its impact and wish to apply for some of rent concession to follow the steps set out in Guidance. In order to assist Business Tenants in making a formal application for a Payment Concession (defined under the Guidance) it is required that all applications are taken to [Jersey Business](#). Business Tenants who contact Government will be re-directed to Jersey Business.

Jersey Business will work with each Business Tenant to:

- (a) collate the necessary evidence of financial hardship having regard to the below criteria; and
- (b) will identify which Payment Concession or Payment Concessions should be offered by Government as Landlord to the Business Tenant having regard to its individual circumstances.

Jersey Business can assist local businesses with the preparation of their future cash flow forecasts. It provides this service freely and also offers its assistance for applications under the Guidance free of charge.

It is important Business Tenants provide Jersey Business with as much clear and basic financial documentation as they can in order to expedite any application for a rental concession and to enable the most appropriate concession to be determined.

Financial Hardship Criteria

To assist Business Tenants in determining whether or not to apply for a rental or other payment concession, set out below are guidelines as to what constitutes financial hardship. This is not exhaustive but would be a starting point for Business Tenants to work from.

Where at the point of application a Business Tenant can show the following, a presumption of financial hardship will apply:

- (a) It is a beneficiary of a Government financial support schemes, including inter alia:
 - (i) Government Co-funded Payroll Scheme
 - (ii) Business Disruption Loan Guarantee Scheme
 - (iii) Any other COVID-19 Subsidy Scheme introduced

This does not include beneficiaries of the Social Security payment Deferral Scheme or the Deferral of GST Scheme or any other Government support or subsidy scheme where there is no assessment of financial detriment or hardship; or

- (b) It is unable to trade from its business premises due to continued COVID-19 trading restrictions; or
- (c) Its gross turnover is more than 20% down from the same period in the previous year's accounts calculated by reference to its last month's trading experience or from the time at which COVID-19 trading restrictions were moved to Level 1.

Payment Concessions

Where financial hardship has been evidenced by a Business Tenant, Government as Landlord will consider the full range of Payment Concessions under the Guidance. The appropriateness of any particular Payment Concession will depend on the individual circumstances of the Business Tenant.

Set out below are factors which Government will take into account when determining the nature of the Payment concession to offer a Business Tenant:

- (i) Its sustainability
- (ii) Its future cash flow obligations
- (iii) The financial position of its business owner/guarantor
- (iv) Its compliance with payment of all relevant taxes, parish rates, social security contributions, GST payments, or its disclosure where relevant of any agreement to defer all or any such payments
- (v) Save in the case self-employed persons, no dividend or payment out from the business to its beneficial owner/s or any connected person has been made or is due to be made during the COVID-19 Period
- (vi) No increase in excess of Jersey Retail Index has been or will be applied to any self-employed person's withdrawals from the business or any key person's salaries, such as a director or manager, during the COVID-19 Period
- (vii) The transparency of the information supporting its financial hardship

The amount of any rental waiver offered or accepted by Government will be determined by reference to a Business Tenant's current trading position and its ability to afford the rent in the next rental

period. Due account will be taken as to whether a business is a seasonal business and the likely impact this will have on their cash flow outside of the core season months.

A continued period of deferral is likely to be appropriate where a Business Tenant shows in its cash flow forecast entitlement to future capital or income equal or in excess of its rental deferral amount.

Early termination and surrender of a lease may be appropriate where a Business Tenant is at risk of insolvency or closure.

Business Tenants will be entitled to offer one or more Payment Concessions for Government to consider.