

Restrictions on landlords' remedies extended again and extra protection to be given to certain businesses

The delay in the full easing of lockdown restrictions and the knock on effect for certain tenants (particularly those in the hospitality and entertainment industry) has clearly caused a change of heart and the government has now announced a further extension of the restrictions.

17 June 2021

Please note: the information contained in this legal update is correct as of the original date of publication.

We mentioned in our articles of 11 March (click [here](#)) and 8 April (click [here](#)) that the government was extending again until 30 June the various restrictions on landlords' remedies that it has brought in since the pandemic began and had published a call for evidence setting out possible options for when those restrictions expire. At the time, it was anticipated that the restrictions would finally all end on 30 June 2021. However, the delay in the full easing of lockdown restrictions and the knock on effect for certain tenants (particularly those in the hospitality and entertainment industry) has clearly caused a change of heart and the government has now announced a further extension of the restrictions.

So, in summary:

1. Until 25 March 2022, a landlord will not be able to forfeit (i.e. terminate) a business lease for non-payment of rent (and other sums due under a lease).
2. Until 25 March 2022, a landlord will not be able to exercise the statutory procedure known as Commercial Rent Arrears Recovery (or CRAR) (which allows a landlord to instruct an enforcement agent to take control of a tenant's goods and sell them to recover an equivalent value to the rent arrears outstanding) unless a minimum of 554 days' net unpaid rent is outstanding. In effect, up until the September 2021 quarter day, this will prevent a landlord exercising CRAR even if a tenant has paid no rent since the March 2020 quarter day.
3. Until 30 September 2021, a landlord will not be able to present a winding-up petition against its tenant on the basis of a statutory demand and will not be able to present a winding-up petition on any ground unless it has reasonable grounds for believing that coronavirus has not had a financial effect on the company (or that the debt issues would have arisen even if coronavirus had not had a financial effect on the company).

So what about the call for evidence? The government has announced that legislation will be brought in to give extra protection to those businesses that had to close during the pandemic once the current restrictions (which apply to all tenants) expire. Rent arrears built up during that time will be ring-fenced and the government expects landlords to make allowances for these ring-fenced arrears and to share the financial impact with their tenants (e.g. waiving some of the rent due or agreeing a longer-term repayment plan). Where the parties cannot reach agreement on this, they will have to submit to a legally binding arbitration process to resolve the conflict. This will be settled by a private arbitrator in accordance with guidelines to be set out in the legislation.

In its announcement, the government re-emphasises a constant message since the start of the pandemic that businesses who are able to pay rent must do so. In addition, it stresses that tenants affected by the pandemic should start paying rent as soon as they are permitted

to open (rent which accrued due prior to March 2020 or after the date when a business was permitted to open will not be ring-fenced).

Whilst the government's plans have already been welcomed by the hospitality sector, it is not clear at the moment exactly how the ring-fencing process will work. In particular, two recent cases have confirmed that, despite everything, tenants remain liable to pay rent that fell due during the pandemic (even if a landlord's ability to enforce payment of that rent has been severely curtailed). Is the new process intended to undermine the effect of these two decisions (so, in effect, varying the parties' primary lease obligations for the affected period) or will the ring-fencing process only apply to the exercise by landlords of their remedies for non-payment of rent during the affected period? No doubt the devil will be in the detail once the legislation is published.

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