

The Government has moved to bring in measures to ban landlords from what it describes as “aggressive” methods to collect unpaid rents and other sums from high street and other commercial tenants.

The measures include:

- Statutory demands and winding-up petitions issued to commercial tenants are temporarily voided and can no longer be issued to commercial tenants where they are unable to pay their debts due to the coronavirus disease 2019 (COVID-19)
- Changes to Commercial Rent Arrears Recovery (CRAR), a method of seizing tenant property for sale to meet rental debts owed, will only be available to landlords when 90 days or more of unpaid rent is owed

These measures supplement the moratorium on forfeiture of business leases for non-payment of rent introduced under Section 82 of the Coronavirus Act 2020 with effect from 26 March 2020. The restrictions will initially be in place until 30 June 2020 with the option for the government to extend further if necessary, as is the case with the moratorium on forfeiture.

The changes relating to statutory demands and winding-up petitions will be implemented through provisions in the Corporate Insolvency and Governance Bill, while the amendments to CRAR are to be provided by secondary legislation.

The devil will be in the detail of the legislation as to the precise scope of the measures. The notes accompanying the government’s announcement on 23 April 2020 state: “Under these measures, any winding-up petition that claims that the company is unable to pay its debts must first be reviewed by the court to determine why. The law will not permit petitions to be presented, or winding-up orders made, where the company’s inability to pay is the result of COVID-19.”

This suggests that winding-up petitions based on an argument that the tenant is unable to pay its debts will not automatically be prohibited, but will face the scrutiny of the courts to determine if the reason for the tenant’s inability to pay is the result of COVID-19.

Importantly, the government measures do not provide a “rent holiday” to commercial tenants, who will remain liable to pay rent and other lease sums in accordance with lease obligations. Further, the temporary restrictions do not appear to extend to prohibit landlords from other methods of recovery, including drawdown on tenancy deposits under contractual arrangements or commencing court proceedings to recover amounts unpaid.

The government has urged landlords and investors to work collaboratively with high street businesses and other commercial tenants during the COVID-19 pandemic, calling on tenants to “pay rent where they can afford it or what they can in recognition of the strains felt by commercial landlords too.”

Commercial tenants will undoubtedly welcome the government’s announcement, with the measures likely to be viewed as providing breathing space for tenants to either postpone payments of lease sums or seek to negotiate alternative payment terms with their landlords.

For landlords, the measures are likely to be viewed as being a step too far, heightening existing concerns that many tenants will simply withhold payment of rents and making collaboration and negotiations over alternative payment terms with tenants more, not less, difficult in the current economic climate.

It remains to be seen whether the government’s latest intervention will ultimately relieve pressure on the high street and commercial tenants, with a move to greater cooperation between landlords and tenants, or whether the temporary restrictions will simply store up potential disputes for the future.

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