

The Coronavirus Act 2020 – More Bad News for UK Commercial Landlords as Temporary Measures Extended Again

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The UK Government is implementing further measures to protect commercial tenants from rent collection until the end of the calendar year. This is the latest in a number of extensions to the provisions of the Coronavirus Act 2020 that have been enacted to help businesses navigate the effects of the COVID-19 pandemic.

The new measures will have the following effect:

- extend to 31 December 2020, the moratorium on forfeiture which currently ends on 30 September,
- prevent landlords from using Commercial Rent Arrears Recovery (“CRAR”) unless they are owed at least 276 days of rent.

When and where?

As part of the Government’s continued response to the global pandemic, the Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No 2) Regulations 2020 come into force in England on 29 September 2020.

These Regulations extend the ‘relevant period’ under the Coronavirus Act 2020 during which no commercial landlord can enforce their right of re-entry or forfeiture where a business tenant defaults on rent payments.

Background

The three-month restriction on landlords’ powers was originally introduced on 26 March 2020. These measures were first extended in June 2020 and are now being extended again in September 2020. The purpose of the moratorium extension is to support business tenants whose turnover may have shrunk and who are struggling with rent payments during the pandemic.

Effect on Landlords

1. For the rest of this calendar year, commercial landlords will be prevented from using non-payment of rent as a reason to treat a lease as forfeited and evict tenants. This extension is not a rent holiday and tenants remain liable for unpaid rent. Dialogue between landlord and tenant will be necessary in order to attempt agreement of new terms for rent payments.
2. The temporary ban on the use of statutory demands and winding-up petitions as a means of rent recovery is also being extended until 31 December 2020. Landlords who planned on serving a statutory demand or issuing a winding up petition at the end of September 2020, will now need to wait until 2021 at the earliest. That is unless the reason for non-payment is not COVID-19 related, in that circumstance winding up petitions are not prohibited – but proving that the reason for non-payment is not COVID-19 related may prove difficult.
3. Landlords are unable to treat a tenant's failure to pay rent during the period ending 31st December, as persistent failure to pay under the Landlord and Tenant Act 1954 and accordingly, to refuse the granting of a new lease.
4. An increase in the number of days of rent that must be due from the tenant to enable the landlord to utilise CRAR means landlords will have to wait longer before being able to seize and sell tenant property.

The measures also affect landlords' rights to re-enter their property and take possession of the land.

This post features contributions from Rory Thomas.

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