



FURTHER IMPACT ON COMMERCIAL LEASES: CRAR

29 April 2020

Having placed a moratorium on forfeiture, the Government has announced further steps to restrict enforcement action by landlords against tenants of commercial premises. The first of these to be brought into force relate to Commercial Rent Arrears Recovery (CRAR).¹

What is CRAR?

A method of enforcement to recover rent arrears in respect of tenancies of commercial premises (which replaced the previous remedy of distress in 2014).

If rent remains unpaid after service of a notice by the landlord, the landlord can instruct an enforcement agent to recover the arrears by seizing control of the tenant's goods and selling them at auction. CRAR can only be used to recover principal rent plus interest and VAT. It does not cover other sums such as service charges and insurance rents.

What has changed?

Increase in minimum amount of rent overdue

Under the previous rules, CRAR was available if a tenant was in arrears of a minimum of seven days' rent. That minimum has been increased to ninety days' rent.

One consequential effect of this change is that a landlord will not be entitled to require that an undertenant pays rent directly to the landlord rather than the intermediate tenant unless ninety days' rent is overdue.

Prohibition on enforcement at dwellings and on highways

A further amendment prevents enforcement agents taking control of goods at residential premises or on highways while the current restrictions preventing people from leaving their homes without a reasonable excuse remain in place (“lockdown restrictions”).

¹ The Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020, SI 2020/451 which came into force on 25 April 2020.

Automatic extension of time limits

Enforcement agents are not permitted to take control of goods more than 12 months after the notice of enforcement is given, unless the court extends the period. An automatic 12 month extension is given where less than one month was remaining when the lockdown restrictions were imposed, or that point is reached while they are in force.

Looking forward

The changes to date are significant and demonstrate the Government's willingness to legislate to assist tenants. So far legislation has restricted remedies for non-payment of rent, but those amounts remain contractually due. In most cases, neither forfeiture nor CRAR are attractive options for landlords in the current circumstances in any event.

The Government has already announced its intention to ban the use of statutory demands and winding up petitions where a company cannot pay its bills (including rent) due to COVID-19. Landlords will continue to face pressure from tenants, lobby groups, lenders and other interested parties to reduce or waive rents in this period.

If you would like further information about the impact of COVID-19 on your business, please speak to your usual Slaughter and May contact.



Jane Edwarde

T +44 (0)20 7090 5095

E jane.edwarde@slaughterandmay.com



John Nevin

T +44 (0)20 7090 5088

E john.nevin@slaughterandmay.com



Simon Bartle

T +44 (0)20 7090 3563

E simon.bartle@slaughterandmay.com



Mark Gulliford

T +44 (0)20 7090 4226

E mark.gulliford@slaughterandmay.com

© Slaughter and May 2020

This material is for general information only and is not intended to provide legal advice. For further information, please speak to your usual Slaughter and May contact.