COVID-19: GOVERNMENT EXTENDS THE EVICTION BAN FOR COMMERCIAL LEASES TO 31 DECEMBER 2020

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UK Real Estate Alert

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The real estate industry, and particularly the hospitality and retail sector, has been hard hit by the COVID-19 pandemic. Occupiers in those sectors have put a lot of pressure on the government to provide further support.

BACKGROUND

Commercial tenants benefitted from a prohibition on landlords forfeiting commercial leases for non-payment of rent, and also restrictions on landlords using the Commercial Rent Arrears Recovery (CRAR) procedure unless 189 days of rent was owed. The measures were due to end on 30 September 2020.

EXTENSION OF MEASURES

On 16 September, Robert Jenrick MP (Secretary of State for Housing, Communities and Local Government) announced to the House of Commons that:

- The protection from forfeiture of business tenancies for non-payment of rent under s82 of Coronavirus Act 2020 (due to expire on 30 September) will be extended to 31 December in England – matching the extension already announced for Wales.
- The restrictions on the exercise of Commercial Rent Arrears Recovery (CRAR) will be extended similarly to 31 December 2020.
- The government is also considering a similar extension to the restriction on statutory demands/winding-up introduced in the Corporate Insolvency and Governance Act 2020 which are currently in place until the 30 September.

The full statement outlined that the thought process was that the extensions would “stop businesses going under and protect jobs over the coming months.” However, the Government also made it clear that where businesses can pay their rent, they should do so, consistent with the message contained in the Code of Practice for the Property Sector which was published in June this year (see here).

There had been much commentary and a degree of expectation that this protection for tenants would be extended, but for landlords there is little consolation. Working collaboratively as a sector is of course the preferred option, but some tenants have been refusing to pay rent even though they are able to do so. There has also been an increase in tenants using the measures as an opportunity to restructure their existing obligations.

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EFFECTS OF MEASURES

- The rents are effectively being deferred which will mean an increase in tenant debts. Interest on arrears (where payable under lease) will also accrue - so this could be problem simply postponed to a future date.
- CRAR action has been extended so will now require 276 days outstanding rent (and 366 days) for enforcement notices given after 24 December.
- By early 2021 a number of tenants could find themselves having to find the equivalent of around nine months' rent to pay to their landlords.
- There will be an immediate impact on landlords' income and cash flow position in the short term and this in turn could impact negatively on their own businesses.
- Landlords' remedies are now restricted, and currently landlords will only be able to rely on rent deposits and bank guarantees, claims against former tenants and guarantors, or issuing a debt claim through the lower courts.

COMMENT AND LINKS

Our team is keeping clients and contacts informed with some of the latest developments in the real estate sector through ourCOVID-19 resource center.

Additional Resources:

- Extension on forfeiture
- CRAR: (extending the number of days' rent that must be outstanding to 276 days' rent where the notice of enforcement is given on or before 24 December 2020 and 366 days' rent where the notice of enforcement is given on or after 25 December 2020).
- GOV.UK
- Government Issues New Code of Practice for Landlords and Tenants

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