COVID-19: GOVERNMENT EXTENDS THE EVICTION BAN FOR COMMERCIAL LEASES TO 30 JUNE 2021

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UK COVID-19 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 continue 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. The measures were due to end on 31 March 2021.

EXTENSION OF MEASURES

On 10 March, Rt Hon Robert Jenrick MP (Secretary of State for Housing, Communities and Local Government) and Rt Hon Kwasi Kwarteng (Business Secretary), announced that:

- The protection from forfeiture of business tenancies for non-payment of rent under s82 of Coronavirus Act 2020 due to expire on 31 March will be extended to 30 June 2021 and the Ministry of Justice will also lay a Statutory Instrument to extend the restrictions on the exercise of Commercial Rent Arrears Recovery (CRAR) similarly to 30 June 2021.
- The full statement outlined that the government's current position is to support commercial landlords and tenants to agree their own arrangements for paying or writing off rent debts by 30 June. However, the government have 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 of 2020 and which the government have previously referred too. Click here to view our alert regarding this topic.
- Significantly in the announcement on 10 March, the government also stated that if discussions between landlords and tenants don't happen they are prepared to take further steps. They will be “launching a call for evidence on commercial rents” aimed at monitoring progress of negotiations, and are anticipating the steps that could be taken after 30 June. There was mention of a potential “phased withdrawal” of protections being considered.

There had been much commentary and a degree of expectation that this protection for tenants would be extended, but for landlords there is still little consolation. Working collaboratively as a sector is of course the

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preferred option, but some tenants have been refusing to pay rent even though they should pay and are able to do so. There has also been an increase in tenants using the measures as an opportunity to restructure their existing obligations.

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 a problem simply postponed to a future date.
- CRAR action will be extended, so will now require 457 days' outstanding rent between 25 March and 23 June, and 554 days' between 24 and 30 June. This continues to protect tenants with rent arrears accumulated during the coronavirus period, while protections from forfeiture are in place under the Coronavirus Act 2020.
- 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 still restricted. The announcement made no mention of the moratorium on statutory demands and winding up petitions. Currently, landlords will only be able to rely on rent deposits/bank guarantees, claims against former tenants/guarantors, or issuing a debt claim through the lower courts.

COMMENT AND LINKS

Our team here at K&L Gates is keeping clients and contacts informed with some of the latest developments in the real estate sector through our COVID-19 task force.

The press release on 10 March referred to the fact that there would be a review of commercial landlord and tenant act legislation later this year which will further consider models of rent payment and impact of coronavirus on the UK market.

Additional Links:

- GOV.UK
- K&L Gates alert: COVID-19: Government Issues New Code of Practice for Landlords and Tenants
- GOV.UK press release: Further support for commercial and residential tenants

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