

## Restrictions on landlord remedies in relation to commercial premises during COVID-19 restrictions

Under the Coronavirus Act 2020, the proposed Corporate Insolvency and Governance Act, and secondary legislation made under them, the remedies normally available to landlords have been severely curtailed until at least 30 June 2020 but this can be extended by the government.

In light of these restrictions and the economic situation generally, many landlords and tenants are agreeing to a mixture of rent suspensions and deferrals in order to share the pain of the current coronavirus-related downturn. For our discussion of this and the practical effect of these restrictions, please see [here](#).

The details of how the principal remedies generally available to landlords in relation to solvent tenants (those not under any kind of insolvency procedure) have been (or are proposed to be) curtailed are set out below.

Remedy	Description	Availability during COVID-19
<b>Commercial Rent Arrears Recovery (CRAR)</b>	<p>This is the statutory replacement for the old remedy of ‘distress.’</p> <p>A landlord of commercial premises can seize the goods of a non-paying tenant and sell them to satisfy rent arrears.</p> <p><b>NB</b> - this process applies to ‘core’ rent only. it does not apply to other items reserved as rent such as service charge or insurance contributions.</p>	<p>This will be banned for arrears of less than 90 days’ rent in total.</p> <p>It remains available for arrears of more than 90 days’ rent.</p>
<b>Forfeiture - by peaceable re-entry</b>	The termination of a lease due to breaches by the tenant by the landlord physically re-entering and securing the let property (generally by changing the locks).	This is banned between 26 March 2020 and 30 June 2020.
<b>Forfeiture - by application to court</b>	An application to court for permission to terminate a lease due to breaches by the tenant.	<p>No applications can be made to court between 26 March 2020 and 30 June 2020.</p> <p>In any proceedings already commenced, the court will only order possession to be granted after 30 June 2020.</p>
<b>Statutory demands</b>	<p>A formal demand made in a set form under the Insolvency Act 1986 that payment of an outstanding debt is made.</p> <p>If the debt is not paid within 21 days after service of the demand, the demand can be used as evidence in petition to court to place the debtor into liquidation/make the debtor bankrupt.</p>	<p>Statutory demands made between 26 March 2020 and 30 June 2020 are to be ‘temporarily voided.’</p> <p>This would mean that they could not be used as evidence in support of a petition for a winding up/bankruptcy order.</p>
<b>Petition for a Winding Up/Bankruptcy Order</b>	<p>An application to court to place a company into liquidation or to make a bankruptcy order in respect of an individual.</p> <p>If the order is made the court will appoint a person to act as liquidator of a company or as trustee in bankruptcy of an individual. The insolvency practitioner will then seek to gather the assets of the debtor and realise them in order to satisfy their debts.</p> <p>Unless the landlord is a secured creditor or the debtor has sufficient assets, the landlord will likely receive only a proportion of what they are owed.</p>	<p>Petitions can still be presented to the court.</p> <p>However, for any petitions presented between 27 April 2020 and 30 June 2020, if the basis for the petition is the non-payment of a debt and the reason for the non-payment is due to coronavirus, the court will refuse to make a winding up/bankruptcy order.</p>
<b>Drawdown on a rent deposit</b>	A landlord can make deductions from a rent deposit to satisfy the debts of their tenant if the deposit deed allow it.	This remedy remains available without restriction.
<b>Debt claim against a tenant</b>	A court claim against the tenant requiring the payment of a debt.	This remedy remains available without restriction.

	If the court finds in favour of the landlord and the tenant does not pay, the landlord must make further applications to court to enforce the payment of the debt, e.g. a charging order to secure the debt and an order for sale to sell the secured property and satisfy the debt.	
<b>Debt claim against a guarantor or previous tenant (under an AGA)</b>	A court claim against a guarantor requiring the payment of the debt of the tenant under the terms of the guarantee.  The procedure is the same as for a claim against a tenant as set out above.	This remedy remains available without restriction.

*\* The separate restrictions that normally apply in respect of insolvent tenants (those under an insolvency procedure) still apply as normal.*

*\*\*Please note that some proposals are yet to be finalised and the details published. Therefore, the above reflects the position as known as at 27 April 2020.*