

New measures announced to protect the High Street from aggressive rent collection and closure

In a move that will be greatly welcomed by retailers, the Government announced on 23 April that it will introduce new measures to safeguard the High Street against aggressive debt recovery actions during the coronavirus pandemic.

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Please note: the information contained in our legal updates are correct as of the original date of publication

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The Coronavirus Act brought in last month gave business tenants a measure of protection in that it prevented landlords from forfeiting (i.e. terminating) leases for non-payment of rent (and all other sums payable under a lease) until at least 30 June. However, many commentators felt that it did not go far enough. In particular, a tenant is still liable to pay rent to its landlord (unless the landlord and the tenant come to an amicable arrangement to write off or defer all or part of it) and the Act did not stop landlords from using other methods to recover that rent from their tenants.

Two of the commonest ways that landlords can seek to recover rent from their tenants are to threaten winding up proceedings against the tenant company or to exercise the statutory procedure known as Commercial Rent Arrears Recovery (or CRAR).

Before presenting a petition to wind up a company, a landlord will usually serve a statutory demand on its tenant for the sums outstanding. If payment is then not made within 21 days, that will be treated as evidence of insolvency on which to base a winding up petition. The presentation of the petition itself has serious repercussions for a tenant since, amongst other things, bank accounts will be frozen and any payments made after presentation of a petition will be void unless sanctioned by the court. For these reasons, the threat of presenting a petition will invariably mean that, in the absence of a defence or cross-claim, a tenant has no choice but to pay up.

CRAR on the other hand allows a landlord to instruct an enforcement agent to take control of a tenant's goods and sell them to recover an equivalent value to the rent arrears. An enforcement agent can only exercise CRAR if the tenant has been given at least seven clear days' notice before CRAR is exercised.

Although the detail has not yet been published, the plans announced by the Government will restrict a landlord's ability to use statutory demands and winding up petitions where a company cannot pay its bills due to coronavirus until at least 30 June 2020. In particular, any winding-up petition presented before 30 June 2020 that claims that the tenant company is unable to pay its debts will first have to be reviewed by the court to determine why. Accordingly, only petitioners that can satisfy the courts that the company's inability to pay is not the result of coronavirus will proceed.

New Regulations in relation to CRAR are already in force. Until at least 30 June 2020, landlords will not be able to use CRAR unless 90 days or more of unpaid rent is owed (the law prior to these new Regulations only required seven days unpaid rent to be owed).

The Government's announcement has been welcomed by the Chief Executives of both the British Retail Consortium and UK Hospitality and should go some way towards safeguarding the High Street (and the millions of jobs that depend on it) during this unprecedented time.

Co-authored by [Sarah Parkinson](#), [David Harris](#) and [Emma Taylor](#).

Contact



Sarah Parkinson

Partner

sarah.parkinson@brownejacobson.com

+44 (0)115 976 6575

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