

Commercial Rent (Coronavirus) Act 2022 – effect on commercial rent arrears and remedies

Remedies	"Protected rent debt" ¹	Rent due from 19 July 2021 to 24 March 2022	Rent due from 25 March 2022
Forfeiture Peaceably re-entering the property or commencing court proceedings for possession of the property for non-payment of rent.	No	Yes ²	Yes ³
CRAR (Commercial Rent Arrears Recovery) Landlord's right to instruct an enforcement agent to take control of, and sell, a tenant's goods to recover arrears of rent.	No	Yes	Yes
Serving Section 81 Tribunal Courts and Enforcement Act Landlords who are entitled to use CRAR against the immediate tenant can require unpaid rent to be paid by the sub-tenant direct.	No	Yes	Yes
Statutory Demand (restriction to be lifted 31 March 2022) A written demand for payment of debt within 21 days (as a precursor to either winding up or bankruptcy).	No	Yes	Yes
Winding Up Petitions (restriction to be lifted 31 March 2022) An application to Court to place tenant company into compulsory liquidation (i.e. to wind-up company)	No	Yes	Yes
Administration Order Landlord creditor appointing administrator to be appointed in respect of tenant company.	No	Yes	Yes
Bankruptcy Petitions An application to Court for the bankruptcy of an individual business tenant.	No	Yes	Yes
Debt Claim / Court proceedings Issuing of Court proceedings to recover unpaid rent.	No	Yes	Yes
Rent Deposit The ability of landlords to withdraw from the rent deposit held to recover arrears of rent.	No	Yes	Yes
Pursuing a Guarantor The ability of landlords to pursue a person who has guaranteed the obligations of the tenant, for rent arrears.	No ⁴	Yes	Yes
Arbitration Award based on the viability of the tenant's business if relief granted (applying the principles in the Act ⁵) the arbitrator can write off all or part of the debt, give the tenant further time for payment (up to 24 months) and/or reduce or write off interest payable.	Yes	No	No

¹ "Protected rent debt" refers to rent arrears falling due during the "protected period" under the 2022 Act, i.e. between 21 March 2020 to 18 July 2021. The "protected rent debt" period will differ depending upon the last date on which the tenants' business was subject to Covid restrictions, for example the "protected rent debt" for non-essential retailer is likely to be 21 March 2020 to 12 April 2021 (when non-essential retail was allowed to re-open), whereas the hospitality sector remained subject to Covid restrictions until 18 July 2021 and, for which, the "protected rent debt" is more likely to be the whole of the "protected period".

² Unless action taken by landlord after 25 March 2022 which affirms the continuation of the lease, thereby waiving the right to forfeit.

³ Unless action taken by the landlord which affirms the continuation of the lease after date on which the right to forfeit arises for non-payment of such rent.

⁴ In addition, the guarantor may also seek a stay of any existing debt claim pending the result of the arbitration process.

⁵ The award should be aimed at preserving or restoring the viability of the tenant's business (so far as that is consistent with preserving the landlord's solvency), and the tenant should, so far as consistent with this principle, be required to meet its obligations to pay the protected rent debt in full and without delay.