



COVID-19 PROTECTIONS FOR COMMERCIAL TENANTS - IS GOVERNMENT INTERVENTION HERE TO STAY?

June 2021

Following our [briefing](#) issued last week, the Government has announced its plans to extend protections for commercial tenants, ring-fence arrears accrued during lockdown and require arbitration for tenants and landlords who cannot agree on how to handle those debts.

Extension of existing commercial tenant protections

The current commercial tenant protections were due to end on 30 June. However, the Government has decided that those protections should be extended further:

- (a) the moratorium on forfeiting leases for rent arrears will be extended until 25 March 2022;
- (b) the restrictions on the use of the commercial rent arrears recovery (“CRAR”) process will be extended until 25 March 2022 with the total number of days’ outstanding rent required for CRAR remaining at 554; and
- (c) the prohibition on issuing winding up petitions or statutory demands for debts resulting from the Covid-19 pandemic will be extended for three months until 30 September 2021.

We have updated our [overview](#) of the available landlord remedies for unpaid rent.

The wholesale extension of the tenant protections for all tenant businesses was not anticipated by the Government’s recent consultation on withdrawal or replacement of these measures. In that consultation, the most tenant-friendly option was a targeting of existing measures to businesses according to the extent that COVID-19 restrictions had affected those businesses. However, Stephen Barclay, Chief Secretary to the Treasury, indicated in his statement to the House of Commons that the threat posed to jobs from potential eviction of commercial tenants has motivated a further extension of protections until alternative measures are on the statute book.

Unsurprisingly, this extension has been welcomed by tenant representative bodies, including the British Retail Consortium (“BRC”) and UKHospitality. However, the British Property Federation (“BPF”) has condemned the move as not taking into account the interests and economic importance of landlords. Melanie Leech, Chief Executive of the BPF stated: *“the Government has failed to recognise that commercial property owners are essential to the health of our town centres - to creating economic growth, jobs and opportunity”*.

The Government has reiterated that tenants who are able to pay their rent must do so and that tenants should begin paying rent as soon as restrictions mean that their businesses are able to open, but the extended measures make no such distinction.

New measures to be introduced

The Government has also announced that it will introduce:

- (a) legislation to ring-fence outstanding rental arrears that have been accrued by businesses during periods of forced closure; and
- (b) binding arbitration for landlords and tenants who have been unable to reach agreement on how to deal with such arrears.

The ring-fencing of rental arrears accrued during the pandemic was suggested by many of the bodies that published responses to the Government's consultation. However, this legislation will only benefit tenants in respect of the period for which their businesses were impacted by closures, which is a more limited protection than was envisaged by many of the proposals.

The BPF has said that it is "*positive*" that the Government is taking forward the idea of ring-fencing, a measure that BPF did not advocate but noted that it would be willing to support. However, Melanie Leech asserted that this legislation should have been brought in from the end of June, instead of a further extension to the moratorium on forfeiting leases.

There was also significant support for the introduction of binding arbitration among the proposals published. It is clear that the Government views arbitration as a last resort, to be used where negotiations between landlords and tenants have failed. Impartial, private arbitrators will make decisions in accordance with guidelines which will be included in the legislation. This appears similar to the process envisaged by British Land, Land Securities, BRC and BPF, all of which proposed that arbitrators should make decisions on a case-by-case basis, supported by Government guidance. The Government has not followed the suggested approach of UKHospitality which would have involved deciding at a national level the proportion of rent that would be written off. The guidance will be crucial, not only to ensure a consistent approach, but also in terms of the incentives it gives (or does not give) the parties to reach agreement without the need for a formal arbitration.

Government intervention - a model for the future?

This wholesale extension of the commercial tenant protections and the announcement of further legislative intervention highlights the Government's focus on protecting tenant businesses. This is a step change in the context of commercial (as opposed to residential) leasehold relationships where, apart from security of tenure and some restrictions in relation to guarantees, there has previously been little interference with freedom of contract. With the promise of further reform to commercial property law in the near future, property investors will be considering the broader implications of policy which drives cooperation between landlords and tenants - and even the sharing of economic pain - with the threat of a legislative override if agreement is not reached.

CONTACT



- JANE EDWARDE
- PARTNER
- T: +44 (0)20 7090 5095
- E: Jane.Edwarde@SlaughterandMay.com



- JOHN NEVIN
- PARTNER
- T: +44 (0)20 7090 5088
- E: John.Nevin@SlaughterandMay.com



- SIMON BARTLE
- SENIOR COUNSEL
- T: +44 (0)20 7090 3563
- E: Simon.Bartle@SlaughterandMay.com



- MARK GULLIFORD
- ASSOCIATE
- T: +44 (0)20 7090 4226
- E: Mark.Gulliford@SlaughterandMay.com

London

T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels

T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong

T +852 2521 0551
F +852 2845 2125

Beijing

T +86 10 5965 0600
F +86 10 5965 0650

Published to provide general information and not as legal advice. © Slaughter and May, 2021.
For further information, please speak to your usual Slaughter and May contact.

www.slaughterandmay.com

572587349