

## *Coronavirus and property: keep taking the medicine.*

### *Extended relief in relation to forfeiture, CRAR, insolvency and planning.*

In the midst of the coronavirus pandemic Parliament has been, and continues to be, very active. This note provides a quick update in relation to the latest developments on four fronts: (1) forfeiture; (2) CRAR; (3) insolvency; (4) planning.

#### **(1) Forfeiture for non-payment of rent**

March is now a long time ago. Back then the pandemic was in its infancy in the UK. It was hoped that its impact would be short-lived. As I explained in [my article at the time](#), by section 82 of the Coronavirus Act 2020 the legislature provided that in the case of a relevant business tenancy no right of re-entry for non-payment of rent could be exercised before 30 June 2020, thereby giving commercial tenants some breathing space in respect of the March quarter's rent.

Time has moved on but the virus has not gone away. The lockdown is only now starting to be eased. The June quarter day has come and gone. The statutory respite was about to expire. Parliament had to act. It has done so, intervening to extend the period of comfort.

The [Business Tenancies \(Protection from Forfeiture: Relevant Period\) \(Coronavirus\) \(England\) Regulations 2020 \(SI 2020/602\)](#) – in force today (29 June) – **extend the operation of section 82 of the Coronavirus Act 2020 to 30 September 2020**. There are similar regulations in respect of [Wales](#) and [Northern Ireland](#). As a result, the moratorium on forfeiture now covers an extra 3 months' rent.

Will we see another extension? Perhaps. Only time will tell if this is the ultimate limit of the temporary relief.

#### **(2) CRAR**

These are not times for 'distress', decreed the lawmakers in March. The restrictions on CRAR took the form of the *The Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020*, the subject of [an article by Anthony Tanney](#). In brief, the regulations prevent enforcement agents (bailiffs in old language) taking action in respect of non-residential premises during the coronavirus crisis.

Again, the regulations were of limited temporal scope. Targeted at cases involving non-payment of the March quarter's rent, they precluded the use of CRAR unless 90 days' rent was unpaid.

As with forfeiture, with the June rent now due, without more this restriction would provide no ongoing assistance for hard-pressed business tenants who are in arrears for both quarters.

Step forward the [\*Taking Control of Goods and Certification of Enforcement Agents \(Amendment\) \(No. 2\) \(Coronavirus\) Regulations 2020 \(SI 2020/614\)\*](#). These expand the protection given by the earlier regulations by stipulating that **the minimum amount of net unpaid rent now required before CRAR may be exercisable is 189 days**.

By this means CRAR is effectively ruled out in respect of (for the time being at least) both the March *and* June quarters' rent.

### (3) **Insolvency**

The [\*Corporate Insolvency and Governance Act 2020\*](#) has been rather longer in the making – but it is here at last.

The provisions of the (then) Bill were discussed in [\*an article by Camilla Chorfi\*](#). The key takeaways are that the legislation restricts the ability of creditors (e.g. landlords) to serve statutory demands and issue winding up petitions. In summary:

- No winding up petition can be presented on or after 27 April 2020 on the ground that a company has failed to satisfy a statutory demand, if the relevant statutory demand was served during the period beginning 1 March 2020 and ending on 30 September 2020.
- No winding up petition on the basis that a company cannot pay its debts as they fall due can be presented by a creditor from 27 April 2020 until 30 September 2020 unless the creditor has reasonable grounds for believing that: (i) coronavirus has not had a financial effect on the company; or (ii) the company would have been unable to pay its debts even if coronavirus had not had a financial effect on it.

The waiting is over. The Act is now on the statute book and in force. Landlords' hands are further tied – conveniently until 30 September, bringing the timeframes of the restrictions in relation to (1) forfeiture (2) CRAR and (3) insolvency all into line.

As always, the best is kept to the end: the provisions are to be found in [Schedule 10](#) to CIGA.

#### **(4) Planning**

This one – currently in the form of the [Business and Planning Bill 2019-2021](#) – is not yet on the statute book but is another response to the coronavirus crisis. Again, many of the measures are intended to be temporary only, a recognition of the disruption caused by Covid-19.

The legislation, when enacted, will:

- **Extend until 1 April 2021 the life of unimplemented planning permissions** (in England) which would otherwise expire between the date when the legislation comes into force and 31 December 2020. (See clause 17 of the Bill and the proposed introduction of section 93A into the Town and Country Planning Act 1990.)
- **Similarly extend the deadlines for (a) approval of reserved matters in the case of outline planning permissions (in England) and (b) commencement conditions.** (See clause 18 of the Bill and the proposed introduction of sections 93D & 93E into the Town and Country Planning Act 1990.)

It is also intended that the statute will address **planning permissions which have expired between 23 March 2020 (the start of lockdown) and the coming into force of the legislation.** These will *not* be automatically extended but **can be preserved by an application to the local planning authority for an ‘additional environmental approval’**, giving (if granted) an effective use-by date of 1 April 2021. (See clauses 17 & 18 of the Bill and the proposed introduction of sections 93B & 93F into the Town and Country Planning Act 1990.)

By this means property owners will be able to commence planned developments up to 1 year after the introduction of the original coronavirus restrictions. This demonstrates recognition of the long-lasting impact of the pandemic.

**Martin Dray**

29 June 2020