

## COVID-19 rent arrears enforcement

Option	Summary	Current restrictions
CRAR	Under the Commercial Rent Arrears Recovery (CRAR) process, landlords can instruct an enforcement agent to go to a tenanted property to take control of goods and sell them to recover rent owed them by the tenant, up to the equivalent value of rent owed.	Pre COVID-19 CRAR was available to landlords after seven days of arrears. Since the moratorium on CRAR imposed via Government secondary legislation, CRAR can only now be used by landlords if more than 276 days' rent is unpaid, where the notice of enforcement is given on or before 24 December 2020, rising to 366 days of principal rent for notices from 25 December 2020 (being the equivalent of just over three and four quarters' rent, respectively).
Forfeiture	Most commercial leases include a clause giving the landlord the right to forfeit tenanted premises where the tenant is in rent arrears for a period. This involves allowing the landlord to peaceably re-enter the premises without notice, to end the lease and regain possession by changing the locks. The tenant can't apply to the Court for relief from forfeiture, and relief may only be granted if they pay the arrears in full plus the landlords' costs.	On 26 March 2020 the Government legislated to prohibit forfeiture by landlords over rent arrears until 30 June 2020. This suspension was extended to 30 September 2020 and then to 31 December 2020. The current suspension only applies to rent arrears recovery, and doesn't stop landlords taking forfeiture action over other breaches of covenants within the tenants' lease. In the current circumstances, what the Court considers a reasonable period for compliance with an s146 notice (a pre-requisite to forfeiture of a lease for breaches of covenant other than non-payment of rent) may be extended.
Rent deposit	Most commercial leases contain provisions relating to the drawing of a rent deposit when the tenant has not paid rent.	There are no restrictions currently in relation to drawdown on a rent deposit if one is available. Rent is still due from tenants and the provisions in the lease regarding deposits still apply and are unaffected by the legal measures implemented during the crisis. However, if the landlord draws on the deposit, and the tenant must return the amount withdrawn by the landlord, the landlord's ability to enforce this return by the tenant will be subject to the restrictions on rent recovery currently in place.
Guarantee	If the lease contains a guarantee provision, the landlord can seek to recover the rent from any third parties acting as guarantor of the tenant's liabilities under the lease.	No restrictions exist preventing seeking payment of the rent or other monies owed to the landlord under the lease from a guarantor. There is a prescribed process for this, which remains unaffected by COVID-19. However, if the guarantor is pursued for payment under the lease but this guarantor disputes payment under the terms of the guarantee, any enforcement action against the guarantor will be subject to the restrictions on rent recovery currently in place.

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Statutory demand	A statutory demand – a formal written demand for payment of a debt owed – is often used as a quick and relatively low-cost method for landlords seeking to enforce non-payment of rent. Although not required as a prerequisite to a winding-up petition, statutory demands are typically used to put pressure on debtors to pay up prior to the commencement of legal proceedings – in the form of a winding-up petition – if they fail to pay.	The Corporate Insolvency and Governance Act 2020 introduces a temporary ban on statutory demands to form the basis of a winding-up petition presented at any point after 27 April 2020. This effectively voids all statutory demands served on debtors between 1 March and 30 September 2020, where they relate to debts arising as a consequence of the coronavirus pandemic, such as rent arrears.
Winding-up petition	A winding-up petition is essentially an application to the court for the winding-up of a company in debt, requiring the debtor company to be put into compulsory liquidation on the grounds that it's unable to pay the debt owed. A landlord owed rent by their tenant could present a winding-up petition; alternatively (and more commonly) a company debtor can be deemed insolvent following the service of a statutory demand not paid within 21 days.	The Corporate Insolvency and Governance Act 2020 also restricts winding-up petitions being presented in circumstances where COVID 19 has had a financial effect on the debtor company. Importantly, the restriction doesn't apply if the petitioner for the winding-up can establish that the company couldn't pay its debts even if COVID-19 had not affected it financially.
Debt proceedings	Debt proceedings involve issuing a debt-recovery claim in court to recover unpaid rent. For rent, such proceedings would typically be issued where the tenant has assets over which a charging order could be obtained, or it has goods that could be controlled using writs and warrants of control. This was an option seldom used by landlords prior to the restrictions on statutory demands and winding-up petitions, unless there was some dispute over whether the debt was due and owing (which would render the winding-up petition route unavailable).	There are currently no restrictions on issuing debt proceedings in court to recover unpaid rent. This may therefore become a more attractive option to landlords as it remains open, although it is a more protracted and costly process. As before the coronavirus crisis, ascertaining the debtor's financial status and ability to pay will be key to determining whether it's worth pursuing a claim.
Administration order	Creditors (including landlords) can make an application to court for administrators to be appointed to the debtor company.	No restrictions currently exist to prevent landlords applying for an administration order; however, this is a more costly and complex method than presenting a winding-up petition and has not been commonly used in practice by landlords.