



THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022: NEW MORATORIUM ON LANDLORD ENFORCEMENT ACTION NOW IN FORCE

Legal Update by Kavan Gunaratna
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Overview

1. The Commercial Rent (Coronavirus) Act 2022 (“CRCA”) was enacted today, Thursday 24.3.22. The Act creates: (i) a new power, enabling business tenants to be granted relief from the payment of certain debts which had accrued due to their landlords during part of the course of the coronavirus pandemic; and (ii) a new arbitration process through which that power may be exercised (according to certain principles laid out in the Act), if the landlord and tenant have not been able to agree between themselves what relief (if any) should be afforded to the tenant. A tenant (or landlord) wishing to invoke the new mechanism will need to refer the matter to arbitration within 6 months of the Act’s passing, i.e. by 24.9.22, unless that 6 month period is extended by statutory instrument.
2. The ideas behind the new arbitration scheme have been well-publicised, but practitioners must also be aware of [the immediate and wide-ranging new moratorium](#) which the Act has introduced. The moratorium prohibits enforcement action by landlords [in no fewer than 8 areas](#), in some instances with retrospective effect, and some of those areas of restriction being entirely new.
3. A key point to note for each of those areas is that [landlords are only restricted from taking action to enforce certain of the pandemic-related debts of their business tenants, being those sums of rent, service charge or interest which qualify as “protected rent debts” \(“PRDs”\) as defined in sections 2 to 5 of the Act.](#) Readers should refer to the definitions contained within those sections (which could form the subject of an entirely separate Note), but it is worth remembering that [unpaid rent, service charge or interest attributable to any period since 18.7.21 \(for business tenancies in England; or 7.8.21 in Wales\) will in no circumstances count as a PRD.](#) In any individual case, the period of protection may stop at a date even earlier than that longstop date. Tenants will therefore be at risk of enforcement action in the usual way if they have failed to settle any such “unprotected” debts in respect of those subsequent periods.
4. This note summarises the 8 forms of restriction on landlord action forming part of the new moratorium which all property and insolvency practitioners should be aware of. The following abbreviations are used:
 - “**LL**”: a landlord of a business tenant
 - “**T**”: a tenant under a business tenancy (i.e. one to which Part II of the LTA 1954 applies)
 - “**PRD**”: a protected rent debt (of unpaid rent, service charge or interest) as defined in ss.2-5 CRCA;
 - “**UPRD**”: an unprotected debt i.e. one which is not a PRD, e.g. rent post 18.7.21 in England;
 - “**the Moratorium Period**”: the 6 month period from 24.3.22 until 23.9.22 inclusive (unless extended by regulations), or until the conclusion of any arbitration if the LL / T invoke the arbitration process;
 - “**the Shorter Retrospective Period**”: the period from 10.11.21 until 23.3.22 inclusive;
 - “**the Longer Retrospective Period**”: the period from 19.7.21 (or the date in s.5(2)) to 23.3.22 inclusive;
 - “**CRCA**” or “**the Act**”: the Commercial Rent (Coronavirus) Act 2022.
5. [The busy reader can simply read the coloured sub-headings below, whilst those interested in the detail of any section may read the full text below it.](#)

(1) LLs may not forfeit for non-payment of a PRD during the Moratorium Period

6. During the Moratorium Period, LLs are prohibited from forfeiting business tenancies (whether by peaceable re-entry or by the issue and service of proceedings) for non-payment of a PRD: Sched. 2 para 5.
7. However, if a T has failed to pay an unprotected debt, its LL will still be able to exercise its rights to forfeit (in respect of that UPRD) in accordance with the lease. This stands in contrast to the outgoing restriction under s.82 Coronavirus Act 2020 which provided general protection from forfeiture for non-payment of rent without discriminating between certain types or periods of rent. The restriction in section 82 CA '20 ceases to apply at midnight on 25.3.22. CRCA mirrors s.82 CA '20 in that it does not prohibit forfeiture for other (non-rent) breaches of covenants.

(2) LLs may not exercise CRAR for non-payment of a PRD during the Moratorium Period

8. During the Moratorium Period, LLs may not exercise CRAR in relation to any PRD: Sched. 2 para. 4.
9. However, if a T has failed to pay an unprotected debt (equating to at least 7 days' of rent), its LL will still be able to exercise CRAR in respect of that UPRD in the usual way. The outgoing restrictions on CRAR which have prevailed for much of the pandemic (and which required a much higher equivalent amount of rent to be unpaid) will cease to apply at midnight on 25.3.22: see s.77 TCEA '07, reg. 52 TCGR '13 and S.I. 2021/732.

(3) LLs may not draw down against tenancy deposits to settle PRDs during the Moratorium Period (and may not enforce Ts' outstanding obligations to top-up any deposit already used in that way)

10. During the Moratorium Period: (i) LLs are prohibited from having recourse to tenancy deposits to satisfy unpaid PRDs; and (ii) if a LL had already (prior to 24.3.22) had recourse to a tenancy deposit to discharge a debt which would count as a PRD, any outstanding obligation on the part of the T to top-up the rent deposit cannot be enforced: Sched. 2 para 9(2) and 9(3).
11. It would be different, of course, if prior to 24.3.22 (when CRCA came into force) LL had already withdrawn sums from the tenancy deposit and T had already made good any shortfall in the deposit.

(4) LLs may not appropriate payments in a way that prioritises discharge of PRDs (over unprotected debts) during the Moratorium Period

12. During the Moratorium Period, if: (i) T owed LL both an unprotected debt and a PRD; and (ii) T made a payment to LL without directing how that payment should be allocated – LL may not exercise its right to appropriate that payment first and foremost in discharge of the PRD. Instead, LL must apply that payment in discharge of the UPRD first: Sched. 2 para. 7.
13. If, during the Longer Retrospective Period, (i) and (ii) above apply, and LL had yet got around to exercising its right to appropriate that payment first and foremost in discharge of the PRD, LL must apply it in discharge of the UPRD first: Sched. 2 para. 8(3). And if, during the Longer Retrospective Period, (i) and (ii) above apply, and LL had already got around to appropriating the payment in discharge of the PRD first and foremost (even before these restrictions in CRCA were enacted), then its past appropriation is retrospectively treated as invalid and LL will be deemed to have allocated it first in payment of any unprotected debt: para. 8(4).

(5) LLs may not issue new claims for money judgment for PRDs during the Moratorium Period (and some existing debt claims may be unilaterally stayed)

14. During the Moratorium Period, LLs may not issue new debt claims (or counterclaims) seeking money judgment against Ts to enforce PRDs: Sched. 2 para 2. Furthermore, if during the Shorter Retrospective Period (i.e. before CRCA was enacted): (i) a LL had already issued a debt claim against a T (or a guarantor) in respect of a PRD; and (ii) the LL had not yet obtained judgment on its claim – the court must stay those proceedings on the application of either party: Sched. 2 para. 3(1)-(3).

(6) LLS may not enforce money judgments already obtained in respect of PRDs during the Moratorium Period

15. If, during the Shorter Retrospective Period (i.e. before CRCA was enacted): (i) a LL had already issued a debt claim against a T (or a guarantor) in respect of a PRD; and (ii) the LL had already obtained judgment on its claim, but had not already extracted payment in settlement of that judgment debt – then the LL is prohibited from enforcing or relying on its judgment in respect of the PRD element and any interest on it during the Moratorium Period. If T (or LL) then refers the matter to arbitration during the Moratorium Period, the arbitrator may exercise the power to grant T relief from payment despite the fact that a court has already awarded judgment for the sum in question, and any such relief given is treated as automatically altering the judgment debt: Sched. 2 para. 3(1) and (4)-(5).
16. However, if the judgment debt was partly in respect of an unprotected debt, the LL may continue to enforce that part of the judgment. Similarly, under heading (5) above, a new debt claim may be issued (and an existing debt claim should arguably be capable of being continued) if and to the extent it relates to UPRDs.

(7) LLS may not present winding-up petitions solely in respect of PRDs during the Moratorium Period

17. During the Moratorium Period, a LL may not present a winding-up petition against a T (or a guarantor) (on the grounds that it is unable to pay its debts), solely in relation to a PRD. However, if the LL is owed both a PRD and an unprotected debt, it may present a winding up petition in the usual way against a T in reliance on the UPRD or in reliance on both the PRD and UPRD: Sched. 3 para. 1.
18. This is a much more limited form of restriction than the regimes that were put in place under Sched. 10 of CIGA 2020, which are now due to expire on 31.3.22. After 31.3.22, there will be no requirement remaining on the statute book: (i) that the petition debt(s) must equal or exceed £10,000; (ii) that the petitioning creditor must have delivered a special form of written notice to the debtor seeking its proposals for payment of the debt with 21 days having elapsed without a proposal made to the petitioner's satisfaction. And whereas Sched. 10 of CIGA 2020 provided protection (latterly) in relation to any debt under a relevant business tenancy which was "unpaid by reason of a financial effect of coronavirus", the much more limited restriction under CRCA will only protect Ts if they owe a debt attributable to a protected period and nothing else.

(8) Restrictions on LLS presenting new bankruptcy petitions and retrospective invalidation of certain bankruptcy petitions and orders

19. A LL may not present a bankruptcy petition against a T (or guarantor) based on an unsatisfied statutory demand where: (i) the demand related to any PRD; and (ii) the demand was/is served during the Shorter Retrospective Period or the Moratorium Period: Sched. 3 para. 2(2). Similarly, a LL may not present a bankruptcy petition against a T (or guarantor) based on unsatisfied execution of a judgment debt where: (i) the judgment related to any PRD; and (ii) the LL issued its debt claim during the Shorter Retrospective Period or the Moratorium Period: Sched. 3 para. 2(3). Any such petition is liable to be dismissed: para 2(4). If, during the Shorter Retrospective Period (i.e. before CRCA was enacted): (i) a bankruptcy order had already been made against a T (or a guarantor) on a LL's petition; and (ii) such a petition would have been prohibited had the Act actually been in force at that time, then the bankruptcy order against T will automatically and retrospectively be deemed void and the petition will be liable to be dismissed (with costs): Sched. 3 para. 3.
20. This is the first time that a restriction on bankruptcy petitions has been introduced in this context, although it will provide limited protection to any T who owes both a PRD and an unprotected debt to his/her LL.
21. It remains to be seen what use is made of the new arbitration process over the next 6 months, but these wide-ranging changes to the enforcement landscape must be carefully noted by all practitioners in this area.

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Kavan is a barrister practising from Enterprise Chambers. He is ranked by the Legal500 and the Chambers & Partners as a leading junior in the fields of Insolvency/Restructuring, Real Estate/Property litigation and Chancery-Commercial litigation, where quotes about him have included the following:

“unfailingly brilliant”; “one of the best barristers in the area”;
“exceptionally user-friendly”; “a delight to work with”; “clients love him”
“highly intelligent, quick to get to the bottom of an issue, articulate and charming”
“has a masterful grasp of the law” and is “as strong with strategic advice”
“a wonderful opponent - very able and slightly deadly”
“knows exactly how to present a case to a judge” and “gets amazing results”.

He was nominated as Company/Insolvency law junior barrister of the year by Chambers & Partners last year. Kavan is an author of Butterworth’s Property Insolvency and The Landlord and Tenant Factbook amongst other texts, and has published articles across his fields of practice, including in Butterworth’s Journal of International Banking and Financial Law. He has provided training for bodies including the PLA, ILA, R3 and the ICAEW, as well as in-house for leading law firms. His list of reported cases and full CV is available on the Enterprise Chambers website.