

RESTRICTIONS ON CRAR AND FORFEITURE

(summary notes)

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All court enforcement was dramatically changed in 2007 by the Tribunal Courts and Enforcement Act and on April 6th, 2014 the ancient remedy of distress for rent was abolished and replaced by Commercial Rent Arrears Recovery (CRAR). This was brought about by a long-standing criticism of the law of distress as it could be used without judicial process and included the ability to seize goods belonging to a 3rd party which were on the demised premises. One of the great advantages as we saw it was the potential to ambush a tenant without any advance warning when it was obvious that the tenant was attempting to avoid paying the rent and disposing or removing their goods. This has now been removed by CRAR so as to comply with the European Convention On Human Rights. However CRAR retains the essential ingredients of distress in that generally the process can be used without obtaining a court order.

Requirements to use CRAR:

1. There must be a lease, a licence will not do and the lease must be evidenced in writing not necessarily made in writing.
2. Only pure rent can be pursued by CRAR losing the ability to pursue service charges etc., which may have been reserved as further rent under the terms of the lease. These claims must now be made through the court system.
3. The rent must be a liquidated sum and equal to not less than 7 days rent.

Under the new procedure a notice must first be served on the tenant or debtor giving them 14 days in which to pay or come to an arrangement. Thereafter goods on the premises belonging to the tenant can be seized and if necessary removed for sale if no payment has been made.

CRAR is still a useful tool for a landlord of a commercial premises avoiding the need to obtain a court order for outstanding rent this keeping costs down and giving the landlord protection in certain insolvency situations.

Effect of COVID-19 on CRAR and Enforcement:

On April 25th 2020 the Taking Control of Goods and Certification of Enforcement Agents (amendment) (Coronavirus) regulations 2020 came into force and paragraph 2(6) (b) (2) of these regulations extended the minimum amount of net unpaid rent that must be outstanding before CRAR may take place, to amount equivalent to 90 days rent in place of the previous 7 days.

On the 25th June 2020, the Taking Control of Goods and Certification of Enforcement Agents (amendment) (2) (Coronavirus) regulations 2020 came into force. Paragraph 2 (4) in the second amendment of these regulations further extended the minimum amount of net unpaid rent that must be outstanding before CRAR may take place to an amount equivalent to 189 days rent (approx. 6 months).

Effects of Covid-19 on Forfeiture:

Regarding forfeiture on the 25th March 2020 the Coronavirus Act 2020 came into force. Chapter 7, part 1, paragraph 82 (1) states that “A right of re-entry or forfeiture under a relevant business tenancy for non-payments of rent may not be enforced by action or otherwise during the relevant period. Chapter 7, part 1, paragraph 82 (12) (b) set the relevant period to end on June 30th, 2020. On June 29th, 2020 The Business Tenancies (Protection from Forfeiture Relevant Period) (Coronavirus) (England) regulations 2020 came into force. Paragraph 2 amends the end of the relevant period as set out in chapter 7 The Coronavirus Act 2020 to the 30th September. Here you should note that restrictions relate to forfeiture as a remedy for non-payment of rent only. The right to forfeit for a breach of any covenant or condition in the lease (save as to non-payment of rent) remains an available option subject to a section 126 Notice being served.

Restart of Enforcement:

The positive news from this is that as of Monday 24th August 2020 the enforcement world can finally start to move again in relation to Writs of Execution covering judgement debts.

As of the 22nd August 2020 the Civil Procedure (amendment no. 5) (Coronavirus) Rules 2020 came into force which extended the stay on writs of possession (non-trespass) until 20th September 2020. It remains that writs of possession are now subject to new CPR rule 83.8A, which now provides for a 14 day notice of eviction to be served on the tenant.