
The End is Nigh for Commercial Property Moratoriums...or is it?

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The Government has announced both a revision to the Covid Code of Practice (to include an Annex setting out an information exchange on offers to settle rent and other arrears under commercial leases and reasons for refusal) and a Call for Evidence as to the best way to withdraw or replace the statutory moratoriums barring standard enforcement options in respect of Commercial Rent Arrears.

The pandemic has undoubtedly resulted in unprecedented challenges in the commercial property sector. Three rounds of government imposed closures for non-essential retail since March 2020 combined with unprecedented levels of home-working has meant that significant volumes of commercial property assets have sat dormant or sparsely occupied for large parts of the last 12 months.

To help manage cash flow many commercial tenants have, since March 2020, withheld payment of rents, relying on the Covid restrictions as their justification for refusing to pay. Landlords' usual routes for arrears recovery have meanwhile been stymied following Government intervention through statutory moratoriums on the usual enforcement options (Commercial Rent Arrears Recovery (CRAR) / forfeiture / statutory demands etc) meaning they have had no meaningful leverage to enforce the terms of their leases. All of these moratoriums have been extended several times over and it was widely understood that when they are set to expire on 30 June 2021, that there would be no further extension.

The Government's recent Call for Evidence (see the link to the Consultation here) to support its decision making on the best way to withdraw or replace the moratoriums will be of concern to commercial landlords who have been waiting patiently to wrestle back control.

The Government has specifically sought views on six different options set out in the Consultation document, one of which is simply allowing the moratoriums to expire on 30 June 2021. In all reality, we think that is highly unlikely and we are more likely than not to see a phased withdrawal and possible further statutory intervention.

The deadline for responses to the consultation is 4 May 2021. Landlords and Tenants would be well advised to review the consultation carefully, and if they feel able to do so, provide their views as to how we best navigate the road ahead.

Authors



Clare Hartley

+44 (0)113 251 4913
chartley@dacbeachcroft.com



Chloe Postlethwaite

Glasgow
+44(0)141 223 7832
cpostlethwaite@dacbeachcroft.com