

# Legal Alert

## Changes to the Law of Distress

The Government is proposing to abolish the common law right to distrain for arrears of rent and to replace it with a new statutory right of commercial rent arrears recovery (called "CRAR"). It has recently published a draft of the Tribunals, Courts and Enforcement Bill for comment, which includes some significant changes intended to provide a tenant with additional protection. In particular:

- It will no longer be possible to distrain for rent in respect of residential tenancies. CRAR only applies to leases of 'commercial premises', so it will not be possible to distrain if the premises includes any element of residential accommodation;
- A new system of certification for bailiffs will be introduced. Unless the landlord is certified, it will need to authorise a certified enforcement agent (in writing) to undertake CRAR on its behalf;
- CRAR can only be used to recover rent (together with interest and VAT). This does not include amounts payable for rates, taxes, services, repairs, maintenance, or insurance, even if they are defined as 'rent' in the lease;
- Advance notice (potentially a minimum of 72 hours) must be given to the tenant before a right to distress arises and 14 days notice must be given before seized goods are sold;
- A tenant will be able to apply to court to challenge the existence of the debt and to obtain an injunction against distress;
- CRAR will only be available if the rent outstanding exceeds a minimum specified amount (currently one quarter's rent). It will have to exceed that amount both at the time when the notice of enforcement is served and when control of the goods is taken;
- Although the draft Bill will repeal the Law of Distress Amendment Act 1908, which entitles a landlord to serve a notice on a subtenant requiring it to pay its rent direct to the landlord when the tenant is in arrears, the Bill contains provisions preserving the effect of that Act.

The draft Bill is currently under comment and will soon be considered by Parliament. We will have to wait and see how the Bill changes (if at all) during this process in order to gauge what practical effects the new Act and CRAR will eventually have. However, assuming that the proposed requirements of prior notice (which could give an insolvent tenant an opportunity to remove its stock before the landlord has a chance to seize the goods) and a minimum amount of outstanding rent (which could enable the tenant simply to pay sufficient rent to prevent distraint) remain, the efficacy of distraint is likely to be somewhat diluted.

**For further information please contact our property litigation partner David Stevens on 020 7421 6453**

