

Model Commercial Lease

September 2022 Updates

Introduction

We have published version 1.6 of the Model Commercial Lease (MCL). This note highlights the changes that we have made.

The principal reason for issuing version 1.6 is that Rights: Community Action lost its Court of Appeal action challenging the lawfulness of the changes made to the Town and Country Planning (Use Classes) Order 1987 that took effect on 1 September 2020 and has not sought leave to appeal to the Supreme Court. The “Permitted Use” definitions therefore presume that the new Use Classes within Class E will be used where relevant. However, references to the old Use Classes have been retained, particularly for properties in Wales where the 1 September 2020 changes do not apply as well as for lease renewals where the parties want to replicate the terms of the existing lease.

We have also carefully considered all comments received on the leases up to July 2022 and, where we have thought it appropriate to do so, made relevant changes in version 1.6. We are always encouraged by the level of engagement we receive from third parties and welcome suggestions for changes to the terms of the lease. Not every suggested amendment will be agreed, but all of them are considered and discussed by the MCL committee in the light of feedback from users, new law, court decisions and developments in market practice. We thank everyone who has taken the time to send us feedback.

In the course of preparing version 1.6, the Government rushed the Economic Crime (Transparency and Enforcement) Act 2022 through Parliament. We have discussed whether the terms of the lease need to be updated to reflect the new obligations that overseas entities” have under the 2022 Act to be registered on the register of overseas entities if they own a qualifying interest in land. We have concluded that changes are not required (other than to the Land Registry Prescribed Lease Clauses). If the tenant is an overseas entity and the lease is registrable at HM Land Registry, the terms of the lease already require the tenant to register the lease and the tenant will need to be a registered overseas entity, or exempt from registration at Companies House, in order to do so. If market practice develops to include 2022 Act obligations in leases, we will review the position.

Changes to the terms of the lease

- We have added an option to include basic details of the lease such as the length of the term, initial rent, etc on the front sheet of the lease.
- References to the landlord including any other person who becomes the immediate landlord of the tenant, and references to the tenant including its successors in title, have been moved from the definition of the parties at the beginning of the Lease to the interpretation provisions in clause 2.4 to ensure that the provisions are not overlooked. They were too easy to miss when included in the definition of the parties.
- Where either or both of the landlord and the tenant are overseas entities, the Land Registry Prescribed Lease Clauses will require the overseas entity ID to be given for the relevant party or a statement included that the ID is not required once the relevant provisions in the Economic Crime (Transparency and Enforcement) Act 2022 are in force. We have added the wording to use where this is required.
- The option “[the Term Start Date or, if later, the earlier of the date on which the Tenant took occupation of the Premises and the date of this Lease;]” has been removed from the definition of “Ancillary Rent Commencement Date” in clause 1.1 as this should be addressed in any agreement for lease.
- To avoid readers having to turn from Land Registry Prescribed Lease Clause LR6 (Term) to clause 3.1 (letting) and then back to the definition section to find the term start and end dates

referred to in clause 3.1, we have added a single definition of Contractual Term in clause 1 to which LR6 and clause 3.1 refer. The definition of “Term” has been amended accordingly and the definitions of “Term Start Date” and “Term End Date” removed. The remaining reference to the Term Start Date in the definition of “Ancillary Rent Commencement Date” has been changed to the “first day of the Contractual Term”.

- In the definitions of “Centre Contribution” and “Estate Contribution” in the retail and food and drink leases for these property types we have:
 - Removed a double “that that” in the footnotes to the definitions; and
 - At the end of paragraph (b) of the definitions, we have ensured that the wording is consistent across both definitions by referring to “that Car Park”.
- We have extended the definition of “Main Rent” in clause 1.1 to include a reference to any interim rent determined under the Landlord and Tenant Act 1954 to capture cases where a guarantor of the tenant’s obligations should be liable for any interim rent payable during a period of holding over under the 1954 Act.
- A new definition of “Original Tenant” has been added in clause 1.1 to refer to the first tenant of the lease. This is then used in the optional guarantee clause where the guarantor guarantees only the obligations of the original tenant (and not the tenant’s successors in title) and in the optional wording making a tenant’s break clause personal to the first tenant of the lease.
- “Permitted Uses” in clause 1.1 are now defined primarily by reference to the Use Classes in the Town and Country Planning (Use Classes) Order 1987 as amended from and including 1 September 2020. In the interpretation provisions, the option to specify that the 1987 Order is that in force at 30 August 2020 has been removed and references to the Order are to that Order in force as at the date of the lease. Corresponding changes have been made to MCL-LEASECLAUSE-04, the catering clauses.
- For the definition of the “Premises” in clause 1.1 of the office leases only, we have included the option to specify whether floor coverings and window blinds are included in the definition of the premises or excluded from them. Notes have been added to the repairing obligations (clause 4.9 in the office lease of part of a building) and obligations at the end of the term (clause 4.13 in the office lease of part of a building) to remind the draftsman to consider whether these items should be subject to separate repairing and reinstatement obligations.
- The definitions of “Estate Service Costs” and “Service Costs” for the retail and food and drink leases for a building or part of a building on an estate, we have updated paragraph (b) of the definition to refer to “sums” rather than costs to ensure consistency with the wording used in the leases for non-retail/food and drink uses.
- The tenant’s obligation at the end of the term to provide the landlord with its “asbestos survey” at the end of the lease (clause 4.13.3(c) in the office lease of part of a building) now refers to an obligation to provide the landlord with its “asbestos risk assessment and management plan” to reflect the name of the document that should be handed over.
- The tenant’s restrictions on use (clause 4.14.3 in the office lease of part of a building) include a new obligation not to “compromise the fire safety measures within the Premises or elsewhere in the Building”.
- The landlord’s right to request an AGA on an assignment of the lease (clause 4.15.3(b) in the office lease of part of a building now refers to the right of the landlord to request a parallel guarantee from “any Current Guarantor (other than a guarantor under an AGA)” rather than “any guarantor of the assigning tenant” as “any guarantor of the assigning tenant” could be interpreted to include a guarantor under an existing authorised guarantee agreement who

could not, as a matter of law, be required to enter into a further guarantee of the assignee's obligations. The new wording simply provides greater clarity.

- In the clause dealing with no acquisition of rights to light and air (clause 6.2.3 in the office lease of part of a building), we have amended the closing wording to state that the tenant must not interfere with or object to the exercise of the rights to light and air reserved to the landlord rather than saying the "Tenant must permit the exercise of these reserved rights without interference or objection" as permission from the tenant is not required to the exercise of these rights.
- In the optional guarantee clause (clause 7 in the office lease of part of a building), we have changed references to the "Tenant" to the "Original Tenant" as the guarantee in this clause will only ever be used where there is a guarantor of the original tenant's obligations under the lease. We have also expressly stated that the guarantee applies throughout the term of the lease or, if earlier, until the tenant is released from its obligations to comply with the terms of the lease under the Landlord and Tenant (Covenants) Act 1995 as this reflects the position in law.
- The optional tenant's break clause (clause 8 in the office lease of part of a building) includes a right for the landlord to waive the pre-conditions to the operation of the break clause so that the tenant cannot frustrate the operation of the break clause by deliberately ensuring that the conditions are not met should the tenant change its mind about wanting the lease to end. We have added additional wording in clause 8.2 so that the waiver of the "pre-conditions" does not prevent the landlord requiring the tenant to comply with the obligations contained within the pre-conditions after the lease has come to an end. This has enabled us to delete clause 8.3 (which included a separate obligation to pay a break fee that would not be reimbursable if the break clause failed to operate). These changes simply provide greater clarity rather than change the legal effect of the break clause provisions.
- In addition, in the break clause, we have amended the wording of clause 8.1.2 to refer to the tenant "giving up occupation of the Premises to the Landlord" rather than "returning the Premises to the Landlord" to avoid arguments about what comprises the "Premises" to be returned to the Landlord.
- In the definition of "Assumptions" in Schedule 2 of the food and drink leases, we have removed an extraneous "that" at the beginning of paragraph (d) of the definition.
- In the definition of "Hypothetical Rent" in the rent review schedule (Schedule 2 in the office lease of part), the wording in part (b)(i) of that definition has been changed to "the amount of Main Rent" rather than "the amount of Main Rent reserved immediately before the Rent Review Date".
- We have removed the words "but not the legal and other professional costs of any party in relation to a dispute" from paragraph 3.4 of the expert determination / arbitration clause in the rent review schedule as, under the Arbitration Act, the arbitrator has to have jurisdiction over the allocation of all costs, not just his own.
- In the leases of premises for logistics uses we have updated the out-of-date statutory reference to section 2 Radioactive Substances Act 1993 to refer to the Environmental Permitting (England and Wales) Regulations 2016.
- In the leases containing the "Offer back" schedule, we have:
 - deleted the unused definition "Deed"; and
 - added a new paragraph 6.4 that reads "The surrender will be in the form required by the Landlord with the Price, any Tenancy Documents and other relevant details inserted where required."

These changes ensure consistency with the standalone offer back clause in MCL-LEASECLAUSE-02.

Changes to all licences

- In all the licences to assign, change use, alter and underlet, we have updated the jurisdiction clause to replace the word “determine” with the word “decide” so that the clauses are consistent with the jurisdiction clause in the leases.

Changes to LIC-ALTER-08

- On the cover sheet, we have added “to” before the word “premises” in the final line of the wording between the tramlines.
- In paragraph 7.1.3 (CDM Regulations), we have added “[First][Second]” before the word “Lease” at the end of the clause and removed the double full stop at the end.
- In clause 13.2 (remedying breaches), “Fist” has been updated to “First”.
- In clause 15 (exclusion of warranties), the “and” at the end of clause 15.1.3 has been changed to “or”.
- In clause 17.1.2 (guarantor’s obligations), the references to “Landlord” have been changed to “First Landlord”.
- In clause 17.1.3 (guarantor’s obligations), the references to “Landlord” have been changed to “Second Landlord”.

Changes to LIC-ALTER-09

- In clause 10.1.2 (exclusion of warranties), the word “be” has been deleted.

Changes to MCL-LEASECLAUSE-01 (turnover rent clause)

- In paragraph 3.6, there is an updated cross-reference to “paragraph 3.2” instead of “paragraph 3.13.2”.
- The heading to paragraph 10 has been renamed “Resolution of disputes” to ensure consistency with the heading used in the leases with a turnover rent schedule.

Changes to MCL-LEASECLAUSE-02 (offer back provisions)

- In section 3 (incorporation into the lease), we have added “with” between “complied” and “its obligations” in paragraph 4.15.2.