



Meanwhile Use Legal Documents: Guidance Note

Lease

A lease is essentially a contract between a landlord and tenant that gives the tenant the right to occupy and use the landlord's property for a period of time. As with any other contract, the terms of the lease will need to reflect the circumstances and the parties' needs when the lease is granted.

The intention is that the government's precedent 'Meanwhile Use' lease is used as this strikes a fair balance between the parties for the circumstances of meanwhile use. A copy of the precedent lease (and the government guidance notes) is available from the following link: <https://www.gov.uk/government/publications/meanwhile-use-lease-and-guidance>

This guidance note seeks to provide some clarity and explanation of the key terms of the lease and guidance as to what might be reasonable to agree. It also provides guidance as to how some of the blank sections of the lease will need to be completed. However, we would of course always recommend that all parties seek their own legal advice.

Parties

The details of the parties to the lease will need to be inserted on the front page and at page 1 of the lease. If a party is a registered company and/or charity their company and/or charity number will need to be included together with their registered address. If a party is an individual their full name and home address will need to be included.

If the tenant is a charity, then clause 8.11 of the lease will need to be included and completed with the name of the tenant.

Property Description & Plan (Particulars & Clause 1)

The address (or else a suitable description) of the property, which it has been agreed that the tenant will occupy under the lease (**'the Property'**) will need to be inserted on the front page and at page 1 of the lease. In addition, a plan will need to be drawn up showing the extent of the Property edged in red.

The address of the building within which the Property is located (if it is part of a larger building or estate) will also need to be inserted at page 1 of the lease. A plan of the building should be drawn up and the extent of the building shown edged in blue.

The plan of the Property should be marked 'Plan 1' and the plan of the building marked 'Plan 2'.

If the Property or the building consist of the whole of a title registered with HM Land Registry, then the address/description of such should match that given in the register of title. Reference to the title number should also be included.

Term, Termination & Break Rights (Particulars & Clause 7)

The 'Term' is the period of time for which the lease will be granted, i.e. 12 months. This is a commercial point to be agreed between the parties.

If the lease is to be granted for a term of over 7 years, the lease will need to include a clause requiring that it is registered with HM Land Registry upon completion. This is a legal requirement for such leases but not for shorter ones. The following wording may be used:

'Promptly following the grant of this lease, the Tenant shall apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. Within one month after completion of the registration, the Tenant shall send the Landlord official copies of its title.'

Clause 7 of the lease contains the break options, which set out whether the lease can be terminated at any time by the tenant giving notice to the landlord or the landlord giving notice to the tenant. The definitions of 'Tenant's Termination Notice' and 'Landlord's Termination Notice' at page 1 of the lease will need to be completed. Each party will likely want to negotiate as short a notice period as possible for themselves, and as long a notice period as possible for the other party.

This would allow the party in question to terminate the lease quickly if their circumstances were to change, whilst ensuring that they receive adequate notice to make future arrangements if the other party serves them with a termination notice. A notice period of 6 months is reasonable in longer leases whereas notice of between 1 and 3 months may be reasonable in shorter leases. It is however a matter for the parties to agree the notice periods which they would like to apply in the given circumstances. If there is to be no break option, this clause should be deleted.

Alternatively, the parties may agree that the tenant cannot exercise a break option before a given date (e.g. after 1 year). In this case, the lease will need to include a provision to this effect.

If the lease is contracted out of the Landlord and Tenant Act 1954 ('LTA 1954'), it finishes at the end of the Term (unless forfeited by the landlord, i.e. repossessed in the event of a breach of the lease by the tenant or terminated earlier in accordance with the break clause) and the Property must be vacated. If the lease is not contracted out of the LTA 1954, it will continue until terminated under the notice provisions of the LTA 1954. The precedent Meanwhile lease is drafted on the assumption that the parties have contracted out of the LTA 1954. More detail on the LTA 1954 procedure is set out at page 7 below and in the separate 'LTA Sheet for Unrepresented Tenants'.

Rent (Particulars & Clause 2)

The agreed sum of rent will need to be inserted at page 1 of the lease, together with details of the payment period (i.e. how frequently the rent will be paid) and any rent-free period which may have been agreed.

A landlord may agree a rent-free period if the tenant needs to spend non-trading time fitting out the Property and depending on the local market, a rent-free period can often be given as a 'sweetener' to encourage a tenant to sign up to a lease.

The tenant may wish to instruct a surveyor to ensure that the agreed rent is fair and reasonable in relation to the value of the Property and local market conditions.

VAT may be payable on the rent if the landlord is VAT registered and has 'opted to tax' the Property. The tenant will need to check the position with the landlord.

Service Charge (Particulars & Clause 3.1)

It is likely that the tenant will be required to pay a service charge to cover any costs incurred by the landlord in maintaining and repairing the structure of the Property and any common areas within the building/estate in which the Property is located.

If the Property is the whole of a building, the tenant will likely be responsible for all the costs incurred by the landlord in maintaining the building. By contrast if the property is part of a building, the landlord will generally pay the outgoings in respect of the common parts and will bill the tenant for a fair proportion of the costs.

The service charge may be a variable amount from year to year depending on the costs the landlord incurs. As a result, the Tenant should request the Service Charge Accounts for the past three years and the Service Charge Budget for the year ahead (if available)

before signing the lease to ensure that they are able to cover the likely cost of the same. The tenant may also wish to negotiate a capped Service Charge to limit its financial liability and to ensure that the cost of the Service Charge payable does not drastically increase throughout the term of the lease. This is very possible, particularly in older properties. Conversely, the landlord will want to ensure that the lease allows them to recover the full sum of any costs incurred by them in maintaining the Property throughout the term and will likely resist a capped service charge.

More information on Commercial Service Charge 'Best Practice' can be found at the following link: <https://www.rics.org/uk/>. Please note that this is guidance only and landlords are not required to follow it. The Tenant should ask the landlord at the outset if they do follow this best practice.

Any outgoings relating to the Property itself, e.g. utilities, rates, taxes and any other expenses will be payable by the tenant, including any corrections to services which need to be made. More information on business rates can be found at the following link: www.voa.gov.uk.

Damage Deposit (Clause 3.6)

A damage deposit is a sum of money paid by the tenant to the landlord in relation to the Property to ensure it is returned in a good condition and generally that the tenant pays the rent and performs their obligations under the lease. If they fail to do so, then the landlord can claim their costs and arrears against the deposit they hold.

It is quite usual for a landlord to provide within the lease that the tenant pays a damage deposit. This would protect them against any loss they suffer if the tenant defaults on any of its obligations under the lease. This is because they will be able to retain all or part of this sum at the end of the lease by way of compensation for their losses. Ultimately, this is not unreasonable as it is fair for the landlord to expect the tenant to perform their obligations under the lease. However, it is an extra outlay the tenant would need to make at the outset and they may want to try and resist this.

If there is to be no damage deposit this clause should be deleted.

The landlord may also ask for a separate Rent Deposit. A rent deposit is a sum of money paid by the tenant to the landlord as security for payment of the rent. If the tenant does not comply with their obligation to pay rent under the lease, the landlord will be able to withdraw money from the rent deposit to cover the cost of the rent arrears. The landlord may request that the requirement for a rent deposit is documented separately in a document called a 'Rent Deposit Deed'. We would recommend that the tenant takes legal advice before entering into a Rent Deposit Deed.

Repair and Decoration (Clause 3.5)

The tenant will be required to keep the Property in no worse state, condition and decoration than that evidenced in the photographic schedule of condition which will be annexed to the lease.

As a result, both parties will need to ensure that the photographic schedule of condition is comprehensive and accurately depicts all of the rooms and areas being let to the tenant (i.e. including walls, ceilings, floors, fixtures and fittings and any furniture) as of the start of the term. This will ensure that the tenant is not incorrectly charged for any damage to the property which existed before the start of the term and will provide the landlord with protection should the tenant damage the Property.

The landlord will likely want to ensure that the tenant is liable for dilapidations under the lease. Dilapidations are the works the landlord will need to carry out to put the Property in the condition the lease requires at the end of the term. If the tenant fails to return the property in the required condition, then the landlord can submit a dilapidation notice to the tenant requiring them to pay a sum in lieu of the cost of the works.

Whilst dilapidations and the repair obligation may seem similar, there is an important distinction between them. The tenant must return the property in good repair in accordance with the lease terms at its own expense at the lease end (however so terminated). 'Dilapidations' refers to a breach of this obligation when the lease ends. The landlord can claim damages from the tenant to cover the cost of any works they need to carry out to remedy the dilapidations (i.e. breach of the repair obligation) highlighted.

The tenant will want to ensure, as far as they are able to agree with the landlord, that they are not liable for any dilapidation of the Property at the end of the term. However, most landlords will likely resist this and refer to the fact that the tenant's repair liability is already limited by virtue of the schedule of condition, i.e. it is reasonable that the tenant should pay to put the Property back to the condition in which they took it.

Ultimately, it is important that the tenant communicates with the landlord towards the end of the lease to ensure that the landlord is satisfied with the condition of the property. This would prevent any need for dilapidations payments. If the landlord does issue a dilapidations notice after the term of the lease, we would advise that the tenant seeks legal advice as to its reasonableness in terms of validity and quantum.

Use (Particulars & Clause 3.9)

Page 2 of the lease will need to be completed so as to stipulate how the Property may be used by the tenant, e.g. as a shop, offices, community centre etc.

The lease does not permit the tenant to apply for planning permission in relation to the Property. As such, the parties will need to check, before entering into the lease, that the appropriate planning permission for the proposed use is in place, particularly in the event that the tenant wishes to use the Property for different purposes to the previous use of the Property, e.g. as a shop when previously it was used as offices.

Permitted Hours (Particulars & Clause 3.9)

The parties will need to decide the hours for which the tenant will be permitted to access the Property and complete the definition of 'Permitted Hours' on page 2 of the lease accordingly. This can be 24/7, the usual trading hours in the locality, or any other hours as appropriate in the circumstances. Trading hours can, on occasion, be limited in planning permission so you should check for this.

The tenant will likely want to have access to the Property for as many hours as possible to provide them with greater flexibility when granting a sub-lease or licence to organisations, groups or other end-users.

The landlord should consider the needs and hours of any other tenants in the building/estate as well as themselves. Will they need to access the Property at any stage? Are there any times where the common parts will need to be used exclusively by the landlord or another tenant? This is relevant because the tenant will be able to exercise their rights over the common parts as well as the Property during the Permitted Hours.

Alterations (Clause 3.7)

The parties will need to decide what alterations (if any) are permitted and complete the definition of 'Permitted Alterations' at page of the lease accordingly.

The landlord may want to restrict the alterations permitted under the lease to protect them from any alterations which may damage their investment interest in the Property. Alternatively, they may allow certain alterations (usually non-structural) provided that the tenant obtains their written consent before carrying out the works. Indeed, this can have the effect of increasing the value of their interest.

If the tenant feels certain works or alterations should be carried out to the Property to ensure it is fit for purpose for the beginning of their lease, they may wish to negotiate a series of initial works to be carried out by the landlord. These should be completed before the start of the lease term and may help to ensure that the Property is fit for use by the tenant without the need for the landlord to permit the tenant to alter the Property. However, the ability to negotiate this will depend on the position of the parties and the market. The landlord may well have the view that it is for the tenant to undertake any required works. This is a point of commercial negotiation for the parties.

Insurance (Clause 3.13)

The landlord will be responsible for insuring the Property and any common areas against the usual risks. The landlord will likely ask the tenant to contribute towards the cost of insuring the Property through the payment of an 'Insurance Rent'. This will either be a fixed sum or else a fair proportion of the costs incurred by the landlord in insuring the Property and the common areas.

As with the Service Charge, the tenant may wish to negotiate a capped Insurance Rent to protect against increases in insurance premiums throughout the Term.

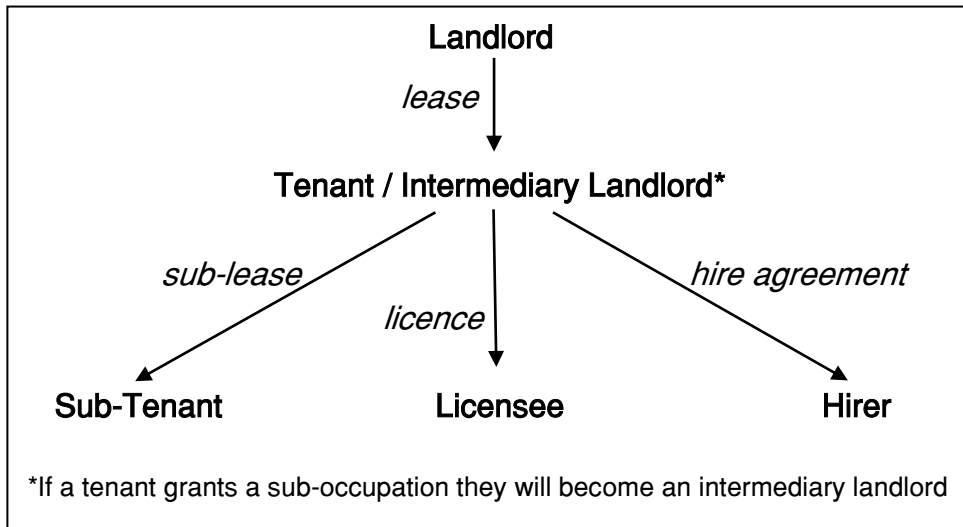
All other insurances in respect of the tenant's use of the property, e.g. contents, public liability, employers' liability, will need to be put in place and paid for by the tenant.

Assignment, Transfer and Sub-letting (Clause 3.11)

The lease provides that the tenant is not permitted to assign, sub-let, charge or part with or share the possession or occupation of the whole or any part of the Property. However, the tenant is permitted to share the Property with other organisations, community groups and group companies of the tenant on a short term or informal basis. The diagram below shows the different options available to the tenant, i.e. they could share occupation of the property by way of licence or hire agreement (please see the precedents provided together with the Process Note which considers the suitability of each document type). The tenant will want to ensure that this provision remains in the lease to ensure that they can share the Property with other community groups/end users.

The landlord will want to ensure that no relationship of landlord and tenant is created between the tenant and any groups/organisations with which the tenant shares the Property. This will ensure that the group/organisation does not obtain any additional rights over the Property which would detriment the landlord. This is achieved by 'contracting out' of the Landlord and Tenant Act (see notes related to this) or by utilising a form of agreement that does not infer these rights for example the Hirer's Agreement or License to occupy. Please refer to the precedent licence and hire agreement provided and our guidance notes and instructions in respect of the same.

If, having considered the options available, the tenant needs to grant a more substantive interest to an end user, a formal sub-lease will be required. As set out above, the precedent Meanwhile Use lease does not permit the tenant to sub-let the property and so the lease will need to be amended so that this is allowed. The landlord will probably want the ability to sub-let to be conditional on their prior consent being obtained in order that they can ensure the sub-lease is granted in accordance with their requirements.



Security of Tenure (Clause 8.7)

Clause 8.7 needs to be completed with the date on which the Landlord served the LTA 1954 notice on the Tenant, and the date on which the Tenant swore the statutory declaration in respect of the exclusion of the provisions of the LTA 1954. Effectively, by following this procedure the lease will end at the end of the term and the tenant will not be able to remain in occupation unless a new lease can be negotiated. Most landlords will insist that this statutory procedure is followed to ensure that they are able to obtain possession of the Property from the tenant at the end of the term of the lease.

The separate Process Guidance Note contains further details as to the procedure to follow in relation to the LTA 1954 documentation. If the LTA 1954 procedure is not followed, potential contentious issues may arise at the end of the lease Term. This is because the tenant will have the right to remain in occupation at the Property if the LTA 1954 has not been contracted out of correctly, whereas the landlord would expect the tenant to vacate the property at the end of the Term. As such, both parties should consider taking legal advice on this at the time of entering leases.

Rights (Clause 8.5)

The lease grants several standard rights to the tenant relating to their use of the Property, e.g. rights to use the common areas as necessary, rights to use the services and the right of support from the building. These should be sufficient to cover most circumstances as they are drafted quite broadly. However, if any other specific rights are required or agreed then they should be included here.

Restrictions/Covenants

The parties will need to consider whether there are any specific restrictions which need to be added to the document based on the proposed use by the tenant e.g. prohibiting the consumption of alcohol on the Property.

The lease includes general restrictions (i.e. in relation to how the Property is used) which will, for the most part, be sufficient but if any further restrictions have been agreed then details will need to be added to clause 3.9.

Costs/Forfeiture (Clause 3.17, Clause 3.2 & Clause 6)

The tenant will be responsible for paying all costs incurred by the landlord in preparing and serving any notices under the lease as a result of any breach of the terms by the tenant. This is reasonable as the landlord should not be out of pocket in the event that they need to take action for any breach of the lease by the tenant.

If the tenant does not pay the landlord's costs within 14 days of the due date for payment, they will have to pay interest on the sum payable. Likewise, interest is payable on a rent arrears owed by the tenant.

Further to the above, the landlord has the right to forfeit the lease (i.e. end the lease) if the tenant is in arrears of rent or is otherwise in breach of its obligations under the lease and have not remedied the same within a reasonable period.

In order to forfeit the lease, the landlord will need to serve notice on the tenant informing them of their intention to do so. However, the tenant does have the ability to seek relief from the forfeiture from the court. If the tenant finds itself in this position then they would need to seek legal advice.

Statutory Compliance (Clause 3.12)

Upon completion of the lease, the tenant will become responsible for complying with the requirements of any law or statute affecting the Property or its use, i.e. asbestos regulations, fire risk assessments, the requirement to hold a valid energy performance certificate for the Property and to carry out electric/gas checks etc. As a result of the above, the tenant will need to ensure that all statutory compliance documents are in place at the start of the lease and should ask the landlord to provide copies or alternatively expect to cover the costs of providing these themselves.

Execution clause

Both parties will need to sign the lease where indicated on pages 13-14.

If either party to the lease is a registered company, they will need to arrange for two directors or a director and the secretary to sign the lease on behalf of the company.

If either party to the lease is an individual, they will need to sign in the presence of a witness. The witness must be over the age of 18 and must not be connected to the signatory in any way, i.e. a spouse or sibling, and will need to add their signature, name and residential address below the signature of the tenant.

Sub-lease

The provisions set out above also apply to any proposed sub-lease of the property to an end user, and the same considerations will need to be considered by the intermediate landlord and the sub-tenant when agreeing commercial terms and entering into the same. However, terms cannot be agreed in excess of those in the head-lease, i.e. the intermediate landlord cannot agree for the sub-tenant to do anything which isn't allowed by the head-lease. The intermediate landlord should, therefore, consider this when they are negotiating the head-lease so that they are then permitted to grant sub-leases on the terms they envisage doing so.

There is a precedent form of sub-lease which has been prepared by the government and which should be used as a starting point for any negotiations. This document and some further guidance can be found at: <https://www.gov.uk/government/publications/meanwhile-use-sublease-and-guidance-notes>

As above, the intermediate landlord will need to ensure that they are permitted to sub-let the property under the head-lease. In most instances, even if sub-letting is permitted, the intermediate landlord will need to obtain the superior landlord's consent to the sub-letting of the property and will need to provide them with details of the incoming tenant for approval. The superior landlord may well require the consent to be documented by way of a formal 'licence to underlet' and they will expect their legal costs to be met. The superior landlord will often want to review the proposed sub-lease to ensure that it is compliant with the provisions of the head-lease.

The intermediate landlord should be aware that sub-leasing the property will not release them from their obligations under the lease and if, for example, the sub-tenant does not pay the rent, the intermediate landlord will still be responsible for paying the rent to the superior landlord, as well as ultimately being responsible for keeping the property in the state of repair required by the head-lease.

Licence to Occupy

This document is only suitable for use where the property (or part of it) will be occupied for less than 6 months or else for longer but the use is not constant (i.e. 2 days a week rather than 24/7). This is because a licence to occupy is by definition not a lease; it is a mere personal right or permission to occupy a property. If you wish to grant exclusive possession to an occupier for a period in excess of 6 months then, assuming this is permitted under your lease, you will need to grant a formal sub-lease.

Parties

The details of the parties will need to be inserted on the front page and at page 1 of the licence. If a party is a registered company and/or charity their company and/or charity number will need to be included together with their registered address. If a party is an individual their full name and address will need to be included, along with their trading name if they are a sole trader, i.e. Joe Bloggs trading as 'Joe Bloggs Inc'.

Building and Property Description

The address, or else a suitable description, of the property the licensee will be able to occupy under the licence will need to be inserted on the front page and at page 1 of the licence. In addition, a plan will need to be drawn up showing the extent of the property edged in red. The address/description of the building within which the property is located will also need to be inserted at page 1 of the licence.

Alternatively, if the space to be used is not fixed then use the second option within this definition which gives the licensor the ability to stipulate the parts of the building which can be used by the licensee on 14 days' notice.

Head-lease

The details of the head-lease (meaning the lease under which the licensor has been granted occupation of the property) will need to be inserted at page 1.

Licence Period

The parties will need to agree upon the duration of the period of occupation under the licence. The licensor should consider the advice set out in the subheading 'Advice for licensors' below when considering the length of the licence period.

Licence Fee

The agreed Licence Fee will need to be inserted at page 1. The Licence fee should be inclusive of any contribution to utilities and other costs incurred by the Licensor (including any payments made under their head-lease). It is intended to be an all-inclusive fee.

Permitted Hours

The parties will need to agree how many hours the licensee is allowed to occupy the property and insert this where required at page 1 of the licence. The definition of Maximum Permitted Hours must not exceed the hours permitted by the head-lease.

Permitted Use

The parties will need to agree how the property will be used by the licensee and will need to insert this description at page 2 of the licence. The Permitted Use must be permitted under the head-lease.

Rights and Restrictions

The parties will need to consider whether there are any specific restrictions (clause 3) or rights (Schedule 1) which need to be added to the document based on the proposed use by the licensee. The licence includes general restrictions and rights which will, for the most part, be sufficient but if any further rights or restrictions have been agreed then details will need to be added.

Termination

Clause 4 of the document currently sets out that the licence can be terminated at any time by either of the parties giving to each other at least 2 weeks' notice. Each party will likely want to negotiate as short a notice period as possible for themselves, and as long a notice period as possible for the other party. This would allow the party in question to terminate the licence quickly if their circumstances were to change, whilst ensuring that they receive adequate notice to make future arrangements if the other party serves them with notice. Ultimately this is a matter of negotiation and the final agreed period can be inserted in place of the 2 weeks' notice that is the default position of this Licence.

The licensee should be aware that the licensor has the right to terminate the licence immediately in the event that the licensee has breached their obligations under the licence.

Execution clause

Both parties will need to sign the licence where indicated.

If either party to the licence is a registered company, they will need to arrange for a director to sign the lease on behalf of the company.

Advice for licensors

Upon completion of the licence, the licensor should diarise prior to the end of the licence, to remind the licensee of the date by which they need to vacate the property and should then ensure that they then do so.

The licensor should not enter into back to back licences. If the end of the 6-month occupation is approaching, the landlord should ensure that the occupier either vacates the property or enters into a sub-lease which has been 'contracted out' of the LTA 1954 (see page 6 above (the paragraph relating to clause 8.7 of the lease) for the continued occupation of the property. This is to ensure that they do not obtain any tenancy rights over any part of the property.

Alternatively, the landlord may also consider moving the occupier to new parts of the property at least every 5 months, under a new licence, to ensure that they do not obtain any tenancy rights over any part of the property. This is important as the risk of allowing the licensee to stay in occupation of a part (or all) of the property of which they have exclusive possession is that the licensee could claim that they have acquired rights, akin to those of a protected tenant, under the LTA 1954. This means that they could claim to have rights to remain in occupation even if the licensor wants to end the licence. This will of course cause practical problems (and costs) and will also mean that the licensor will be in breach of the conditions of their head-lease and could find that the head landlord commences enforcement action against them in respect of this breach.

Hire Agreement

This document is suitable for use in situations where the property will be hired for short term or one-off hires or events, i.e. use of the property by a community group for a one-off evening or weekend event.

The details of the property, the term, the permitted use and any hire fee will need to be inserted at page 1 of the hire agreement, together with the parties' names and the address of the hirer. If the hirer is a company, the address should be the company's registered address. If the hirer is an individual, the address should be the individual's residential address.

It is important to ensure that the hirer signs the document at page 2 to indicate that they have accepted the conditions of the agreement and accept personal responsibility for the hire. If a company or other organisation is hiring the Property, the wording can be changed to reflect that an individual will sign on behalf of the company/organisation and will not take personal responsibility for the hire.

The agreement contains a number of general conditions and restrictions. Depending on the nature of the proposed hire, further specific conditions can be added or deleted as required.

Condition 6 of the hire agreement relates to insurance. In most circumstances, the hirer will be required to obtain third party liability insurance in relation to their occupation of the property as a minimum. However, if the owner of the property has hirer's liability insurance that extends to the activities of a hirer they will not need to obtain third party liability insurance.

Condition 12 of the hire agreement relates to temporary event notices (TENs). Usually a maximum number of 10 TENs is permitted per property per year but the number depends on the Licensing body. The owner of the property must retain control over the use of TENs by the hirer. If the hirer holds a personal licence they may not need to apply for a licence specific to the premises.

If any keys are given to the hiree then the owner shall ensure that they are given back promptly at the end of the event and that the property is left in a clean and tidy condition. If suitable, the owner may wish to ask for a damage deposit to cover the risk of the property being left in a dirty condition or any damage being caused although this is not expressly provided for in the precedent agreement.