

Industry role model

Warren Gordon, Michael Callaghan and Dion Panambalana discuss recent changes to the Model Commercial Lease

The Model Commercial Lease is a suite of freely available template commercial leases and associated documents, available for download and subject to the MCL conditions of use.

The MCL is a client-led project with a working group representing a large number of well-known law firms and clients. It is intended to represent a fair starting (and, in many cases, end) point for landlords, tenants and guarantors, avoiding much of the unnecessary negotiation on routine letting transactions. This has encouraged many law firms to adopt the MCL as the starting point for their own precedent leases, with the advantage of greater efficiencies in reporting aided by technology such as machine reading. Clarilis, a document automation provider, has recently incorporated the MCL into the suite of documents available to its customers.

The MCL aims to reflect commercial practice in relation to lease terms, not to provide innovative clauses that lawyers and clients will be unfamiliar with. A measure of the success of the MCL is that the summary of lease terms in the next edition of the City of London Law Society's certificate of title will be more closely aligned with terms of the MCL.

There are various versions of MCL leases available to suit different types of commercial buildings such as offices, shops, shopping centre and industrial/logistics units, together with a wide selection of asset management documents and clauses for such matters as turnover rent, index-linked rent review and offer-back provisions. A parallel set of templates is maintained by the Property Standards Group in Scotland for use in that jurisdiction. While versions have not been published for Northern Ireland, lawyers there are free to adapt the MCL for their use.

The working group meets regularly to review the MCL and at the start of September 2022 the latest version 1.6 of the leases was published. Some key changes for the new version are mentioned below.

The working group is grateful to everyone who has provided comments on the MCL which has greatly assisted with the development of the documents. We carefully consider all comments received and, where we consider it appropriate to do so, make relevant changes. We welcome any suggestions

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Updated MCL: key points

- Changes to the permitted use for new use classes
- Minor changes to accommodate the Economic Crime (Transparency and Enforcement) Act 2022
- Other changes to term, main rent and guarantee.

The Model Commercial Lease is available at www.modelcommerciallease.co.uk

for further changes.

Key changes for new version

- Use classes – One of the main reasons for the new version relates to the changes made to the Town and Country Planning (Use Classes) Order 1987 that took effect on 1 September 2020. Rights: Community: Action had brought proceedings at the Court of Appeal (R (Rights: Community: Action v Secretary of State for Housing, Communities and Local Government [2020] EWCA Civ 1954; [2020] EGLR 5) challenging the lawfulness of those changes, which led to the MCL referring to the old use classes in case the appeal was successful. However, the appeal failed and now the “permitted use” definitions in the MCL presume that the new use classes within class E will be used where relevant. However, references to the old use classes have been retained 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.
- Economic Crime (Transparency and Enforcement) Act 2022 – While the latest version of the MCL leases was

being prepared, the Economic Crime (Transparency and Enforcement) Act 2022 was passing through Parliament at great speed. The working group discussed whether the terms of the lease required updating to reflect overseas entities' new obligations to be registered on the register of overseas entities if they own or are entitled to own a qualifying interest in registered land. The group concluded that changes are not required (other than the requisite minor changes to the Land Registry Prescribed Lease Clauses). If the tenant is an overseas entity and the lease is registrable at HM Land Registry, the lease already requires 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.

- Term – To reduce the number of definitions that readers have to cross-refer to, 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.

- Main rent – We have extended the definition of “main rent” in clause 1 to include a reference to any interim rent decided 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.

- Original tenant – There is a new definition of “original tenant” which refers to the first tenant of the lease. This can be used where a guarantor guarantees only the obligations of the original tenant and in the optional wording making a tenant's break clause personal to the first tenant of the lease. It can also be used where any other provision is personal to the original named tenant.

- Guarantee – In the optional guarantee clause, there is now wording 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.

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