



Professional Series

Licence Agreement

(Form A06)

Drafting & Guidance Notes

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1. Introduction

The Licence Agreement (A06) is designed to provide a secure standard agreement for the occupation of residential property other than under a tenancy agreement. Such a letting agreement is fundamentally different at law to a tenancy, in that the agreement is governed essentially by contract law rather than housing law.

The essence of the licence agreement is to establish the key parameters of the occupation despite its exclusion from the legal framework regulating the standard tenancy.

Scope

The Licence Agreement A06 is designed for use primarily by property owners, and property professionals acting in the capacity as agent for the owner. The agreement is suitable for residential tenancies created in England & Wales. Different rules may apply under Scottish law and amendments may be necessary to this agreement for lettings in Scotland.

Style

This Letting Centre licence is drafted so as to be comprehensible not only by lawyers, but also by the individuals who will be affected by it, i.e. the 'lay' property owner and occupier. Established usage and precedents have led to the inclusion of some standard legal terms and construction in the agreement which are widely accepted and understood. Otherwise, we rely on the use of plain and simple English.

Terminology

In these notes, a reference to the Owner should be taken to also include the agent. 'He' is often used in its general sense for the owner or the occupier (meaning he and she).

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The forms are revised formally on an annual basis and further updates and changes will be available to licence holders as necessary. Housing law is continually affected by new legislation and court case precedents; the Letting Centre aims to keep you fully informed of these changes using the regular updates.

Licences

The granting of a licence to occupy property is a means by which the owner of property can allow another person (the licensee) to use the property without the owner relinquishing control of it. The licensee is given fewer rights than would have been conferred on them had they been granted a tenancy, and it is likely that as a result the owner will be able to continue to use the property in conjunction with the licensee. The owner may also be able to evict the licensee more easily, and thereby recover possession of the property more quickly, than had a tenancy been granted.

A licence is therefore suitable where the owner of the property is not willing to give up his use of the property entirely, or where the owner requires flexibility and the freedom to evict the occupier after only a short period.

A simple example of a licence is a guest in a hotel room; they are granted a licence to occupy their room for the duration of their stay, and hotel staff will have unrestricted access to the room in order to provide cleaning services. The hotel will usually also reserve the right to move the guest to another room at any time. A licence may also be granted for a longer period of holiday, where the owner of property does not wish to give the holiday-maker a tenancy of only a few weeks but wishes there to be a formal arrangement regulating their stay and use of the property.

Licences are also suitable, however, for long-term uses of property, such as where a person is allowed to live as a lodger in a property with its owner. Such an arrangement will not fall within the statutory protection usually afforded to a tenancy, which may make it attractive to the owner as it will enable him to retain more control of his home. The flexibility of a licence makes it an appropriate means of permitting another person to live with the owner in the owner's house without granting the occupier any legal right to do so. A licence is also appropriate where the nature of a person's employment makes it necessary for them to live in particular accommodation (service occupancy).

Forms of licences

A licence may be granted without any monetary payment or other valuable consideration, so long as there is no intention to create binding legal relations, such as where a friend is allowed to stay overnight on the owner's sofa. This is a bare licence, and may be merely oral. Alternatively, a formal arrangement allowing occupation of the property may be agreed and a contract produced. This is called a contractual licence, and is likely to be used, for example, where a homeowner takes in a lodger.

Precaution

Beware of creating sham licence agreements. A court may, if necessary, look behind the wording of any agreement to determine its true nature. For example, if the owner sets up a 'licence agreement' when, in practice, he is granting the occupier exclusive possession (and has no intention to share the accommodation) then a court may infer that he has granted a tenancy (for an example see *Street v Mountford* [1985] AC 809).

2. More on Licences

Differences between a Licence and a Tenancy

Whereas a tenancy provides the occupier with a legally binding right to occupy the demised premises, a licence is merely a personal permission which makes the licensee's use of the premises lawful and prevents it from constituting trespass. This enables the owner to retain control of the premises, and prevents the licensee from assigning his licence or subletting the premises.

Further, a licence is not an estate in land (s. 1 Law of Property Act 1925 (LPA 1925)). Consequently, s. 54 LPA 1925, which provides that an interest in land (including a tenancy for over 3 years) which is created orally and is not in writing does not take effect at law, does not apply to licences. A licence can therefore be created orally.

A tenancy cannot arise unless the owner of property grants another person exclusive possession of the premises for a defined term at a rent (as explained in *Street v Mountford* [1985] AC 809). Exclusive possession is the right to exclude all other persons (including the landlord) from the premises, although it will not prevent the landlord from reserving the right to enter the premises to carry out inspections or repairs. Although exclusive possession is vital to a tenancy it is not the only requirement, so will not necessarily be determinative of a tenancy. A tenancy cannot arise unless the parties also had the intention to create binding legal relations.

A licence, on the other hand, does not confer exclusive possession on the licensee. This key distinction between a tenancy and a licence means that a licensee does not have the right to exclude the property owner or any other authorised person from the premises. This is likely to make a licence attractive to the owner as it will allow him to use the property for his own ends throughout the duration of the licence and to come and go on the property as he wishes.

However, a property owner wanting to grant a licence should be careful to ensure that the agreement does not include substantively the same rights and obligations as a tenancy. If such an agreement was ever examined in court, its form would be determined on the basis of its substance rather than the label given to it; the courts do not want landlords to be able to avoid giving tenants the statutory protection available just by calling the arrangement by a different name.

Advantages of a Licence over a Tenancy

Pursuant to the Housing Act 1988 (ss. 1 and 20) most tenancies granted are assured shorthold tenancies. This form of tenancy provides the tenant with security of tenure, as the landlord is prohibited from evicting the tenant within the first 6 months of the tenancy and is required to give the tenant two months notice before commencing court proceedings for possession.

If, however, the owner of property allows another person to occupy it under a licence rather than a tenancy, this agreement will not fall within the scope of the 1988 Act. The licensee will therefore not benefit from the statutory protection. This will often result in a slightly shorter delay when the owner wishes to recover possession of the property.

A licence may often be suitable where the occupation is to be merely a temporary measure for a short term (usually where it is granted as an act of kindness of the owner), or in circumstances in which the requirements for a tenancy are not satisfied. Such a situation may occur where the owner wishes to have an unrestricted right to use the property during the occupier's period of use, such as for storage, workspace or accommodation, or if services such as washing or cleaning are provided in the property to the occupier. Either of these would prevent the occupier having exclusive possession of the property, so a tenancy could not be created. Further, a tenancy would not be appropriate, as the owner's continued use of the property would mean that he would be unlikely to be happy for the occupier to be granted legal rights in the property.

Section 11 Landlord and Tenant Act 1985 imposes implied repairing obligations on the landlord of property held under a lease for less than 7 years. These require keeping in repair the structure and exterior of the dwelling; the installations for water, gas, electricity, sanitation, space heating and heating water, as provided by ss. 13 and 14. As a licence does not fall within this definition, s. 11 will not apply. The owner will not, therefore, be subject to this statutory duty, breach of which may result in a landlord being ordered by a court to pay damages to the occupier.

The owner will not be able to avoid all obligations to keep the property and its installations in good repair, however, as the Housing, Health and Safety Rating System (HHSRS) enforced by local authorities requires all residential property to be kept in good condition and all possible hazards to be removed or minimised. Although the owner cannot be liable for damages, as is possible as a result of a breach of s. 11, local authorities have power to make a reasonable charge as a means of recovering certain expenses incurred in taking enforcement action. (For more information see 'The Housing, Health and Safety System' in Chapter 3.)

Resident landlords

A licence will usually be an appropriate means by which to regulate the occupation of a lodger who lives in a house alongside its owner or a member of the owner's family, as the owner will want to retain control of his home. The close proximity of a lodger who is living in the owner's own home will make it very important to the owner that he is able to evict the lodger as easily as possible if the arrangement proves problematic. For this reason, s. 1(2) Housing Act 1988 provides that an assured shorthold tenancy cannot be created where the landlord lets out part of his home.

Such a landlord will be a 'resident landlord', which is defined by the Housing Act 1988 Schedule 1 para 10(1) as an individual (rather than a corporate) owner of property (or a member of the owner's family) who lives continuously in the same building, or in another dwelling which forms part of the same building, as his tenant.

This definition includes a landlord (or member of the landlord's family) who lives with his lodger, but it is wider than this and provides that the landlord does not actually need to share any accommodation with the occupier to qualify for resident landlord status. If the landlord and tenant live in separate flats in a house converted into flats, the landlord will still be considered a resident landlord. If, however, the two dwellings are contained in a purpose built

block of flats, pursuant to Sch 1 para 22 the landlord is not a resident landlord and therefore the arrangement for the occupation of any other flat will be an assured shorthold tenancy.

An arrangement which cannot be an assured shorthold tenancy will not fall within the scope of the Housing Act 1988. This will provide the owner with greater flexibility. Consequently, such an arrangement can be governed only by a common law tenancy (a tenancy falling outside the statutory protection), or by a licence. A licence may be more attractive to the owner as it will not give the lodger any legal rights, just a mere permission to occupy the property.

Holiday lettings

An arrangement allowing a property to be used for the purposes of the occupier's holiday is also excluded from the protection of the Housing Act 1988 (by Schedule 1 para 9), and therefore cannot be an assured shorthold tenancy. The occupier will want to regulate the use of the property in order to maintain its condition, so again may grant either a common law tenancy or a licence.

As the holiday occupation is likely to be only a few weeks, any form of tenancy will be unsuitable as the owner will not want to grant the occupier any legal rights in respect of the property. Further, if any services are to be provided to the holiday-maker during his stay, such as cleaning or laundry, the access to the property required by the owner or his agents or staff will prevent the holiday-maker being granted exclusive possession. A licence will thereby be a more appropriate way to regulate the occupation.

Service occupancy

A tenancy will not be created where an employee is expressly required to occupy accommodation that is required by him in order to better perform his duties. The employee's occupation must be of material assistance to his employment (*Norris v Checksfield* [1991] 1 WLR 1241), such as where a caretaker is obliged to live on the site of his employment in order to carry out security duties.

A tenancy would be inappropriate in such circumstances, as the employer would want the ability to evict the employee immediately his employment was to cease. The employer would also want the freedom to move the employee to alternative accommodation if necessary, so would not want the employee to have any legal rights in respect of his particular accommodation. A licence would be suitable in this situation as it would regulate the employee's occupation but would enable the employer to retain control of the property. The terms of a service occupancy licence can be included in an employment contract.

Family members of a tenant

A licence may also be appropriate where a family member of a tenant of the property is to be allowed to occupy the property alongside the tenant but the landlord does not want to grant a tenancy to that family member, perhaps because they do not have good references. The landlord may permit the family member to reside at the property as a permitted occupier, which is normally done by giving the family member a licence agreement as a special condition of the tenancy agreement. Such a provision would usually be time-limited by reference to the tenancy, so that it expires at the same time as the tenancy.

Termination of a Licence

The usual statutory requirements for service of notices and termination of tenancies will not apply, as a licence will operate under contract law rules and not under the Housing Act 1988 statutory procedures which are applicable to most tenancies. But, it should be noted that, due to the Protection from Eviction Act 1977, most property owners will require a possession order from the court before licensees can be evicted, except for resident landlords and in respect of holiday lets.

Bare licence

A bare licence may be revoked at any time, and once a reasonable period has elapsed after the owner has asked the licensee to vacate the property the licensee will become a trespasser. The owner will then be entitled to take possession of the property. A person with a bare licence is afforded no protection from eviction, as the Protection from Eviction Act 1977 does not apply.

Contractual licence

If the licensee has been given a licence agreement, this may specify the contractual duration of the licence. Once this period has expired, the licensee becomes a trespasser and should leave the property.

If a contractual period is not specified, the terms of the agreement may dictate a period of notice which must be given to the licensee before he can be expected to leave the property. If a notice period is not specified, the law will imply into the agreement a term that the licensee must be given reasonable notice. If the licence is periodic, so continues from each payment until the next, s. 5(1A)(b) Protection from Eviction Act 1977 requires that the period of notice given to the occupier must be at least four weeks. This notice must be a 'notice to quit' containing the information prescribed by the Schedule to the Notices to Quit etc. (Prescribed Information) Regulations 1988 (SI 1988/2201). (See Chapter 3 for more information.)

Once any required period of notice has expired, the owner will be entitled to possession of the property. However, due to the Protection of Eviction Act 1977 (PEA 1977) the owner may not be able to take possession without a court order.

Protection from Eviction Act 1977

Although a licence is not subject to the security of tenure provisions provided to assured shorthold tenancies by the Housing Act 1988, a contractual licensee will benefit from the protection against eviction provided by the PEA 1977. Pursuant to section 1(2) PEA 1977 it is an offence to attempt to evict a 'residential occupier', the definition of which in s. 1(1) includes licensees as well as tenants.

In consequence, following expiry of the notice of termination of the licence given by the owner to the licensee the licensee will not be compelled to leave the property until the owner has obtained a court order. This means that the owner will therefore be required to commence court proceedings to recover the property from a contractual licensee in the same way as from a tenant. However, the period of notice to be given to the licensee before the owner is entitled to commence proceedings may be shorter.

Exclusions – resident landlords and holiday occupation

Certain types of contractual licence are, however, excluded from the scope of the PEA 1977 (pursuant to s. 3A). As a result, a notice to quit in respect of a periodic excluded licence does not need to comply with the Notices to Quit etc. (Prescribed Information) Regulations 1988 and thus does not need to include the prescribed information. The notice required to be given to the occupier in respect of the termination of a periodic excluded licence is not subject to the s. 5(1A)(b) PEA 1977 requirement of four weeks. This notice need only be what is reasonable in the circumstances.

Further, if a licence can benefit from any s. 3A PEA 1977 exclusion the owner will not require a court order to be able to evict the licensee. The PEA 1977 excludes the following:

- licences granted by 'resident landlords' (s. 3A(2) and (3))
- a licensee who occupies a separate part of the building in which the resident landlord lives, such as where a building is converted into flats (but not a purpose-built block of flats). This exclusion from the PEA 1977 protection is particularly useful to the owner due to the close proximity in which he and the licensee are living
- A licence granted for the purposes of the licensee's holiday is also excluded from the PEA 1977 (pursuant to s. 3A(7)), so a court order is again not needed in order to evict the licensee
- a tenancy within the meaning of Chapter 1 Part 3 of the Immigration Act 2014 where notice has been received from the Secretary of State that the occupier or (if there is more than one occupier) all of them are disqualified from renting the property as a result of their immigration status.

These exclusions from the provisions of the PEA 1977 mean that a court order is not required to evict a licensee who occupies the property in one of the above situations. Once a licence has been revoked or the specified duration has expired the owner is able to enter the property and retake possession, such as by changing the locks on the doors. Property owners must, however, be careful not to commit a criminal offence under s. 6 Criminal Law Act 1977 by using or threatening to use violence in order to secure entry to the property.

3. Pre and Post Licence Procedures

Deposit

As the property owner is permitting the licensee to occupy his property, he will not want it to be damaged by the licensee's use. If any damage does occur, the owner will want any costs incurred to be borne by the licensee. This is particularly relevant where a licence arrangement does not require the licensee to pay any monetary consideration, as if the owner was to bear any costs he would be left out of pocket. It would be onerous for a property owner if his generosity in allowing the licensee to occupy the property resulted in him having to meet the costs of any disrepair and damage himself. For these reasons, the payment of a deposit by the licensee before the licence is entered into is as significant in respect of a licence as it is to the granting of a tenancy. If no consideration is to be paid by the licensee, a deposit payment will be even more important.

Since 6 April 2007 it has been obligatory for deposits paid in respect of an assured shorthold tenancy to be protected in a government-authorised scheme (s. 213(1) and 212(8) Housing Act 2004). However, this statutory requirement does not apply to deposits paid in respect of a licence. This means that, although it would be sensible for the property owner to pay the licensee's deposit into a separate bank account, he will not be obliged to do this and will not be prevented from using the deposit for whatever he chooses.

As a consequence, the licensee may encounter problems when he claims his deposit after the termination of the licence, particularly if the licensee disputes allegations by the owner that he has caused damage as there are no licence deposit arbitration schemes to resolve the matter. Further, if the property owner were to become insolvent or suffer financial difficulties it would be even more difficult for the licensee to recover his deposit.

Inventory and Schedule of Dilapidations

It is also advisable that the property owner draws up a schedule of dilapidations recording the condition of the property at the date the licence is granted. An inventory of any fixtures, fittings or furnishings provided with the property will also similarly be required before the licensee moves in. These records will allow any damage, disrepair or missing items caused during the licensee's occupation to be noted, and will enable the property owner to calculate any losses and costs he may incur in allowing the licensee to occupy the property. These costs can then be deducted from the deposit or charged to the licensee, to prevent them being borne by the property owner. However, unless the owner has taken a deposit from the licensee he may encounter difficulty in recouping these costs from the licensee.

Guarantors and Sureties

If the occupier is to pay consideration in respect of their occupation, the owner may require a surety to guarantee the payments and other charges or the occupier's other obligations under the licence. This will be particularly important where the owner considers that the licensee's ability to pay this is questionable, such as where the licensee is unemployed or is solely dependent on maintenance payments (e.g. from a former spouse). When asking for a guarantor, similar credit checks and references should be taken on the guarantor as would normally be taken for a licensee in order to establish the guarantor's ability to meet any defaulted charges.

The Housing, Health and Safety Rating System

Local authorities are under a duty to keep the housing conditions in their area under review. The Housing Health and Safety Rating System (HHSRS) was introduced by the Housing Act 2004 and came into force on 6th April 2006 in order to systematically identify hazards to health and safety. Its purpose is to ensure that all residential properties are safe and healthy for occupation and it deals with 29 types of hazards, including dampness, lack of space, poor hygiene and chance of accidents. Local authorities use this evidence-based risk assessment process to assess the health and safety risks of residential properties within their area.

A local authority has a statutory duty to inspect a property if it considers it necessary to do so, which would usually follow a complaint from an occupier or neighbour. If any hazards are identified, the local authority has a duty to minimise or remove hazards categorised as 'Category 1' hazards. It also has discretionary powers to deal with 'Category 2' hazards, which are those carrying lower risks.

The idea behind enforcement is to make the property safer for the range of potential occupants as well as for the current occupant. Whatever method of enforcement is chosen will be a means to this end. The local authority will need to take a view on whether hazards can or should be reduced or removed entirely, or how they might be removed or reduced, and if this not possible then what other action is necessary.

Local authorities are encouraged to comply with the Enforcement Concordat and give clear advice to the owner or manager on what is required of them and to provide an opportunity to discuss the circumstances of a case before formal action is taken.

Local authorities have the power to make a reasonable charge as a means of recovering certain expenses incurred in taking enforcement action. There is no statutory limit but the charge needs to be reasonable.

The HHSRS applies to all residential properties, which includes those occupied under a tenancy or licence. Therefore, the owner of such property must ensure that the property does not present any health and safety risks, and that it provides a safe and healthy environment. Although the granting a licence rather than a tenancy will mean that there are fewer statutory repairing and maintenance obligations on the owner, the HHSRS will not enable the owner of property to avoid the requirement to comply with health and safety requirements.

Premises occupied by a person other than their owner are more likely to be referred to the local authority than those owned by an owner-occupier, as a licensee may use the HHSRS as an effective way to compel the owner of the property to improve the condition of the premises.

Further, the owners of such property are less likely to check its condition regularly, especially if the tenancy or licence is long term, and therefore the property may be ill maintained.

For further information on the Housing, Health and Safety Rating System, you are referred to Factsheet 28 on the Letting Centre Website (www.letlink.co.uk).

Gas, Electrical and General Product Safety

Owners of property who allow licensees or tenants to occupy their property must ensure that they comply with all relevant health and safety legislation.

The Gas Safety (Installation and Use) Regulations 1998

These Regulations provide requirements for the safe installation and maintenance of gas appliances, flues, meters and pipework etc. There are also detailed provisions which apply to property occupied under a licence as well as to property rented under a tenancy for less than 7 years.

These additional provisions require property owners to ensure that all gas appliances, flues and associated pipework are maintained in a safe condition at all times. They also provide that gas appliances and flues must be checked for safety by a competent engineer within 12 months of being installed and thereafter at least every twelve months. A copy of this safety check record or certificate must be given to any new licensee before the licensee occupies any premises to which the record relates, and following an annual check during the licence term a copy of any new record created must be given to each licensee within 28 days.

Building Regulations Part P: Electrical Safety

Since 1 January 2005, all work done to fixed electrical installations dwellings must comply with Part P requirements and be carried out by persons who are competent to do the work. Persons doing any such work, even minor tasks, are required to follow the fundamental principles of BS 7671, the British Standard for electrical installations.

Part P provides that in the design, installation, inspection and testing of electrical installations, reasonable provision must be made in order to protect persons from fire or injury. It also requires provision of sufficient information to enable persons wishing to operate, maintain or alter an electrical installation to do so with reasonable safety. Further, all work that involves adding a new electrical circuit to a dwelling must be either carried out by a competent person who is registered with a Part P Self-Certification Scheme, or notified to building control (who will then inspect the work).

General Product Safety Regulations 1994

These Regulations apply only to a licence which was granted by the property owner in the course of his business. They require such an owner to ensure that any product he supplies to the occupier is safe, and to take steps to be aware of the risks associated with the use of supplied products. The owner must also provide the occupier with relevant information regarding the risks inherent in any product, where these risks are not immediately obvious without adequate warnings.

For more information see Letting Factsheets 4, 6, 7, 9, 17, 27 and 37, which are available on the Letting Centre Website (www.letlink.co.uk).

Right to Rent Checks

Landlords who rent property in England under a residential tenancy agreement must carry out checks on adult occupiers under the Immigration Act from 1st February 2016 to ensure the occupier has a right to rent in the UK even if they are not named on the tenancy agreement. A residential tenancy agreement is a tenancy which grants a right of occupation of premises for residential use, provides for payment of rent and is not an excluded agreement under the Immigration Act. Tenancy also includes any lease, licence, sub-lease or sub-tenancy and an agreement for any of those. Landlords must establish the occupiers who will be living at the property; whether the property is their only or main home and conduct right to rent document checks. Occupiers should provide original documents and landlords will need to check the documents are genuine with the tenant present and keep copies on file.

If the occupier is only allowed to stay in the UK for a limited time, landlords will need to do the check in the 28 days before the start of the tenancy and must diarise a follow up check one year after the initial check or upon expiry of the time limit whichever is later. Where an occupier does not have a right to rent in the UK landlords will need to make a report to the home office. The checks do not apply to existing occupiers or under 18s but, according to government guidance, when an occupier turns 18 during the course of a tenancy agreement *'landlords do not need to conduct additional follow up checks but, where other adult occupiers require follow up checks, the now adult should be checked at the point these further checks fall due.'*

Responsibility for completing the checking process will primarily lie with the landlord unless this responsibility has been transferred to a superior landlord or a letting agent, which must be agreed in writing. Further guidance is available in [Letting Factsheet 34](#) and on the [government website](#).

The Immigration Act 2016 also states that it is an implied term of a residential tenancy agreement which is not an assured tenancy within the meaning of the Housing Act 1988 that the landlord may terminate the tenancy if the property is occupied by **an adult** who is disqualified as a result of their immigration status from occupying the premises (s40 which inserts a new section 33E into the Immigration Act 2014)).

Procedures for termination

Although a licence is not governed by the housing law applicable to tenancies, as a contract (whether oral or contained in an agreement) certain notice requirements have to be complied with before a licence can be terminated.

Bare licence

There is no requirement that a person with a bare licence is given notice that his permitted occupation is to be terminated. Therefore at any time the property owner may inform the licensee that he has revoked the licence. As soon as a reasonable period has elapsed following this, if the licensee remains on the property he will become an unlawful trespasser. A property owner may use reasonable force to expel a trespasser from his premises.

Contractual licence

If the property owner and the licensee have entered a licence agreement, the licence will expire at the end of the specified term. If the duration of the licence term was not specified, the licence will expire a reasonable period after the owner has informed the licensee that he is revoking the licence. See 'Reasonable period' below.

Alternatively, if the licence is periodic, so continues from each consideration payment until the next, s. 5(1A)(b) Protection from Eviction Act 1977 (PEA 1977) requires that the owner must serve the licensee with four weeks notice. This notice must be a 'notice to quit' containing the information prescribed by the Schedule to the Notices to Quit etc. (Prescribed Information) Regulations 1988 (SI 1988/2201):

- 1. If the tenant or licensee does not leave the dwelling, the landlord or licensor must get an order for possession from the court before the tenant or licensee can lawfully be evicted. The landlord or licensor cannot apply for such an order before the notice to quit or notice to determine has run out.*
- 2. A tenant or licensee who does not know if he has any right to remain in possession after a notice to quit or a notice to determine runs out can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid Scheme. He should also be able to obtain information from a Citizens' Advice Bureau, a Housing Aid Centre or a Rent Officer.*

However, this prescribed information for a notice to quit and also the minimum of four weeks notice do not apply to periodic licences which benefit from any of the exclusions from the PEA 1977 provided in s. 3A, such as where the owner is a resident landlord (s. 3A(2) and (3)) or if the licence was granted for the purposes of a holiday (s. 3A(7)).

Further, if any of the s. 3A exceptions are applicable to either a fixed term or periodic licence, the owner of the property will not require a court order so as to be able to obtain possession. Therefore, such property owners may enter the property and compel the occupier to leave immediately the required notice period or reasonable period following this has expired.

If the licence does not benefit from any of the s. 3A exclusions, the owner will need to apply to court for a court order so as to be able to remove the occupier. This requirement applies to fixed term licences as well as periodic licences, and adds a further, more complicated and time-consuming, dimension to the granting of a licence. Consequently, a licence will not avoid much of the security of tenure also afforded to tenants.

Reasonable period

Both a bare licence and a contractual periodic licence may not be revoked until a 'reasonable period' has elapsed once the owner has informed the licensee that he is revoking the licence. If the licence agreement specifies a notice period then this will be applied. Where, however, a licence is a periodic licence, so continues from one payment of consideration until the next, the notice period can be no shorter than four weeks (s. 5(1A)(b) PEA 1977).

If the licence is outside the scope of the PEA 1977, however, as where there is a resident landlord or the occupation is for the purposes of a holiday, then this reasonable notice period may, and usually will, be less than four weeks. In the case of a weekly periodic licence, for example, reasonable notice may be as little as one or two weeks (although there is little case law to support this assertion). The courts are unlikely to specify a period of notice equivalent to or more than that in s. 5 PEA 1977, as the purpose of excluding certain circumstances from the scope of the PEA 1977 is to enable property owners to more easily evict licensees living in close proximity to them.

What is considered reasonable will depend on particular circumstances, such as whether the licensee is a lodger in the owner's own home or whether the premises subject to the licence are entirely separate. Factors such as the availability of alternative accommodation will also be relevant. Although, on occasion, individual circumstances have led to the courts being generous to licensees, as in *Hannaford v Selby* (1976) 239 EG 811 where the arrangement was between family members and, consequently, a reasonable notice period was held to be 6 months, such circumstances are exceptional. This is therefore unlikely to be the approach taken to most cases.

4. Agreement Guidance Notes

This chapter provides explanatory notes on the structure and key clauses of the Letting Centre Professional Series Licence Agreement (A06).

The guidance is intended to:

- Assist practitioners to understand the general structure of the agreement
- Explain the purpose of each of the main sections and clauses, and any related issues or statutory requirements
- Assist practitioners to complete and use the standard agreement when drafting agreements for individual licences
- Provide advice on signing and dating the agreement including guidance that may apply when using the documents with electronic signing systems

General Comments on Format and Layout

1. At least two duplicates of the agreement should generally be prepared for each letting - these are called the Original and Counterpart. You may mark them accordingly although there is no requirement to do so. If you are using an electronic signing process or technology, then these procedures will differ. See 'Signing' and 'Electronic Communications' discussed later in this chapter.
2. The two duplicate agreements may be generated or reproduced in a number of ways such as photocopying the original masters supplied or reproduction on a word-processor or equivalent computer-based system. Copies should be made onto a quality paper and any further additions or signatures should be made in permanent ink. Copies taken using thermal paper (used in many fax machines) should be avoided since they may fade irretrievably in time.
3. The agreement may be reproduced on separate sheets of paper and securely stapled. Where the agreement is contained within four type-written sides, it is possible to reproduce the pages on to one folded page (e.g. A3) which provides a single secure document.
4. It is a good idea to annotate pages in order to indicate both the page number and the full extent of the document e.g. 'page 2 of 4'.

Preliminary Clauses and Definitions

Declaration

The preliminary section is a declaration and it identifies the agreement as a general licence agreement between the parties specified.

Title page & ‘General Notes’

The title page and general notes identify the licence agreement and explains clearly the purpose of the agreement and the operation of key clauses and definitions used in the document. This information is important, and should not be deleted.

Main Agreement (page 2 onwards)

The preliminary section is a declaration and it identifies the agreement as a licence agreement between the parties specified.

This initial section identifies the key parameters of the licence agreement (e.g. the date and term of the agreement, the address and extent of the property, the amount and frequency of the payments etc.) and defines these terms so that they may be used later in the agreement with a standard meaning.

With the exception of the Date field, this section must always be completed fully, clearly, and unambiguously. If any part of the agreement is not completed, and a court is called upon to interpret the agreement, it might apply the ‘*contra proferentem*’ rule. Under this rule, ambiguity is resolved against the party preparing the agreement. Otherwise, it could be concluded that the parties had still to reach agreement concerning those uncompleted portions.

Date: Enter here the date when the agreement was made. This is normally called the execution date and need not be the same as the commencement date.

Some situations may require that the date field is best removed, or left blank. For example, where electronic signing software is being used, where the signing software adds a signature and a date below the signature, the presence of multiple dates on the agreement could cause confusion.

Owner: Enter full name of the owner of the property.

Owner’s Agent: Enter full name and address of the agent. This will normally also be the main address where the owner wants all correspondence and other contact from the occupier directed.

Occupier: Enter here the name and address of the occupier.

Property: The property in respect of which the licence is being granted should be accurately defined within the licence agreement. On a longer licence (more than one year) a plan may be included. Where no plan is included, the person drawing the licence must ensure that the address or description fully identifies the property and is free from ambiguity.

Limitations on Occupation: Enter here any restrictions to be imposed on the occupier’s use of the property, for example prohibiting overnight visitors.

Contents: An inventory should be referred to, to make it clear what items are provided with the property.

Term: There are no restrictions on the length of licence that can be granted, although in practice they are usually used only for a short term. If the licence is to exceed a year, the owner should consider including an extra provision to allow for increases to the payments in subsequent years.

Commencing on: Insert here the commencement date of the licence. Unless otherwise defined (e.g. by insertion of a specific time) a licence agreement or lease expressed to commence 'on' a particular day commences at the first moment of that day.

Payment: The agreement must clearly state the amount to be paid by the occupier as consideration for the licence. Normally this would be quoted as 'per calendar month'. Should you wish to include provision for an increase in the amount of the payments during the term, this should be drafted as an extension clause. If this provision is not made within the licence, the owner is not entitled to increase the required payments during the fixed term. It is also important to make clear at this point in the agreement who is responsible for payment of water rates. E.g. Payment: £650 per calendar month including water rates.

Payable: It is important to specify the timing and frequency of the payments. Many owners prefer to collect all payments on a specified day each month (e.g. first day of every month). In this case the appropriate wording should be added (e.g. 'on the first day of every month').

You can also use this clause if necessary to specify the method of payment that you require. Many letting agents prefer to receive their rents by standing order and the appropriate wording for this has been added to the standard agreement. Other payment methods can be mutually agreed in writing and inserted as a special condition at the end of the agreement.

Deposit: There is no restriction on the size of deposit that can be demanded. To provide adequate security for the owner, it would be unusual to take less than the equivalent of four weeks payment as a deposit.

Where an agent has been engaged, the dilapidations deposit or bond is generally held by the agent either as 'stakeholder' or 'agent for owner'. It is recommended that this information is made clear within the agreement. If the manner in which the deposit is held is not specified it will be assumed that the deposit is held as agent for the owner. If the deposit is to be held as stakeholder, the following wording should be included:

'A Deposit of £ is payable on signing this Agreement and held by the Agent as stakeholder'

Briefly, holding as stakeholder means that the agent acts fairly and balances the interests of both the owner and the occupier and so can release the deposit accordingly. Ideally, the agent should obtain the permission of both the owner and the occupier before releasing the deposit. If the deposit is held as agent for the owner the agent must pay the deposit to the owner. Many agents prefer to hold as stakeholder because it avoids problems with aggrieved occupiers whose property owner has not agreed to return the deposit at the end of the letting.

The Main Clauses

This section explains the purpose and operation of the various standard clauses in the agreement; no comment is made where the meaning and purpose of the clause is self-explanatory.

Clause 1: This clause confirms the intention of the licence agreement.

Clause 2: Often omitted in many standard contracts, this clause is a valuable safeguard against the 'last month syndrome' often encountered in licences and lettings (the occupier fails to make last month's payment, using the deposit to offset liability). Omitting this clause opens the possibility that a court may allow the deposit money to be offset against any payment arrears with the result that no deposit is left to cover any cleaning or dilapidations.

The Occupier agrees with the Owner

Generally called 'User Covenants' these clauses have two main functions. Firstly, they allow the owner to control the use that the occupier makes of the premises. Secondly, they protect the interests of the owner by preventing the occupier acquiring specific legal rights which might be gained without these clauses.

Payment and Charges:

As a result of the Tenant Fees Act 2019 which is due to come into force on 1st June 2019 certain payments such as costs for preparing a licence, arranging references, administration fees etc are prohibited payments. The Act allows some permitted payments to be made, for example, the reasonable costs of lost keys or default of the terms of the licence agreement and late payment of rent etc. See [Letting Factsheet 51](#) for further information on tenant fees.

3.1. Payment Method: Your payment collection system may be set up to collect payments in a specific and cost effective way and this should be written into the agreement.

3.2. Charges: The occupier would normally become liable for any costs incurred for services used or consumed in connection with his occupation of the property. This clause makes clear the charges other than the consideration payments that the occupier is required to pay in addition.

N.B. WATER CHARGES AND COUNCIL TAX. If water rates or council tax (or any other charges included in this clause) are already included in the quoted payments and to be paid by the owner, references to the occupier's liability for the water charges and council tax charges in this clause should be deleted accordingly.

3.3. Charges. This clause allows the owner or agent to reclaim reasonable costs for a breach of the licence agreement as permitted in Schedule 1 of the Tenant Fees Act 2016.

Clause 3.4. Charges. An owner or agent can request a payment from the occupier to cover reasonable costs incurred where the occupier requests early termination or fails to give the legally required notice to end a periodic licence as long as there is a clause within the licence stating this.

Clause 3.5. Charges. A payment can be requested from the occupier to cover the reasonable costs incurred where the occupier requests an assignment or variation to the licence if there is a clause within the licence agreement. As the Letting Centre standard agreement does not allow assignment we include a clause for costs in relation to a variation of the licence. Where your agreement allows assignment you can add assignment to this clause.

Usage Clauses:

4.1. Possession: An occupier does not have exclusive possession of the property, as the licence is merely a personal permission to occupy and does not confer on the occupier any rights in the property. As a licence is personal to the occupier, it cannot be assigned or the property used by any other person instead of the occupier. This clause reiterates the personal element of the agreement and prevents the occupier from allowing anyone else to occupy the premises. This protects the owner as, if people other than the occupier move in to the property and were the owner to accept payments from them, there is a risk that he would be found to have thereby granted them a tenancy.

4.2. Use as Private Dwelling: The purpose of this clause is to ensure that the dwelling is to be used as a residential dwelling only, as this will cause less nuisance to the owner and will mean that less damage is likely to be caused to the property.

4.3. Prohibition on Carrying on Business: This clause has a similar purpose to the clause above to acknowledge that the dwelling is not to be used for business purposes. It does not seek to prevent a working person from bringing documents to the property in the evening for example in order to carry on extra work at home. Such use when conducted in an informal way, and where the associated work activity does not represent a significant portion of the occupation of the property, is not generally considered to constitute "business use".

4.4. Nuisance Covenant: Usually the wording used is all that is necessary. As conditions dictate (i.e. sensitive residential neighbourhoods, blocks of flats etc.) you may want to extend the covenant (see Extensions below) in order that occupiers know what is and what is not permitted. An additional clause inserted in this way would restrict the times for the playing of music, radios, instruments and even make provision for carpeting of floors.

4.5. Pets: Owners often agree that occupiers may keep their pets in the property, although many have had negative experiences in this respect. Without wanting to encroach on the occupier's freedom, it is important for the owner to retain control since pets do not always obey instructions and are immune from legal proceedings! Therefore, this clause prohibits the occupier from keeping pets at the property without written permission.

Where permission is granted, it is generally important for owners to make appropriate checks beforehand as to the number and type of pets to be living at the property (occupiers have been known to arrive with a pack of dogs!) and whether the property and pet are suitable (large active dogs can easily ruin a small suburban garden). There are also situations where it may not be suitable to keep a pet (e.g. in a block of flats) and such cases can cause extreme annoyance to other occupiers.

4.6. Illegal or Immoral Purposes: This clause is self explanatory.

4.7. Terms in Headlease. Where the property is leasehold (e.g. a flat within a block of flats) there will be a further agreement (the Headlease) which may provide terms on the usage of the Property by the occupier. Where the headlease makes such provisions, it is important that a copy of the Headlease, (or a schedule detailing the terms under the Headlease) is attached to the licence agreement otherwise these terms may not be enforceable against the occupier.

4.8. No Smoking. Self explanatory clause prohibiting smoking tobacco and other substances in the property. The main purpose of this clause is so that the landlord can recover reasonable costs from the occupier at the end of the licence for any damage caused to the property where they are in breach of this non smoking clause. There is no evidence at the time of writing that e-cigarettes or vaping causes the same damage to a property as traditional cigarettes hence why these are not specifically mentioned in this clause. It may be possible to argue that these would come under 'any other substance' but could be difficult to enforce. If a landlord specifically requests prohibition on vaping/e-cigarettes for a particular property the clause can be amended as follows and moved to the special conditions section of the licence agreement:

The Occupier agrees not to vape or smoke or permit any family member, guest or visitor to vape, or smoke, tobacco, e-cigarettes or any other substance in the Property without the Landlord's prior written consent

Clauses Relating to Repairs:

5.1. Damage, Alterations and Improvements: The occupier should be responsible for paying the reasonable costs for damage to the property and contents caused by the occupier, a member of the occupier's family or his visitors. For obvious reasons, it is not in the owner's interest to permit the occupiers to alter the property without prior consent. For short licences, or where the property is the owner's own home, it would not be appropriate to allow the occupier to carry out internal redecoration under the agreement, so this clause provides the owner with the right to veto any changes in decoration.

5.2. Recovery of Costs: It is important that the owner or agent is compensated for any damage caused by the occupier, and made aware of any damage at the earliest opportunity. The owner has a right to seek contractual damages during the licence and may ask an occupier to make a payment to cover the cost of repairing a fitting or furnishing where this work cannot reasonably wait until the end of the licence.

5.3. Care of Property: The occupier is asked to take care of the interior of the property. This care is extended to a specific obligation to adequately heat and air the property as damp and mildew can cause considerable cosmetic damage and staining which will be costly to put right. This clause is also used to introduce the idea of 'reasonableness' in assessing wear and tear at the end of the licence.

5.4. Care of Gardens: A standard clause to ensure that the garden is kept in good order. The clause provides a general cover which, within reasonable bounds, requires the occupier to upkeep the gardens on a regular basis (rather than by one massive tidy-up at the end of the licence).

Should the garden or objects in the gardens (plants or shrubs, garden furniture, appliances etc.) require any special types of care or upkeep, then it would be prudent to draw attention to this by way of an extra clause agreed within 'Special Conditions'.

5.5. Damage: It is important that the owner is made aware of any damage at the earliest opportunity.

Clauses 5.6 – 5.15: These clauses are self-explanatory. Clauses 5.13 and 5.14 are optional clauses as these may not be required where the occupier is a lodger.

Other Occupier Responsibilities:

6.1. Correspondence. It is important that any statutory notices and other correspondence relating to the property reaches the owner. This clause imposes that requirement on the occupier.

6.2. Surrender. Defining what is considered to be surrender within the licence agreement will strengthen the owner's case for possession should an occupier vanish and become uncontactable. This clause assists owners in situations where an occupier has abandoned the property.

N.B. Situations concerning abandonment are inherently complex; each case needs to be assessed on the individual circumstances and professional advice taken where necessary. This clause does not give an owner an incontrovertible right to take possession (only the court has this right) although it may assist an owner to demonstrate that he considers a property to be surrendered.

6.3. Overpayments of housing support. Where the occupier has received overpayments or payments in error for housing support local authorities may claim this back from the owner and the owner may be able to claim a refund from the occupier for breach of terms if there is a provision in the agreement.

6.4 – 6.5. Security and alarms. It is in the interests of the owner to ensure that adequate security measures are taken so as not to attract break-ins.

Clauses 6.6. Access to the property. This clause requires tenants to allow contractors access to the property to carry out maintenance appointments and to honour any appointments made.

6.7. Immigration document checks. This clause may assist with cost recovery where the occupier does not cooperate with information requests from the owner to carry out right to rent checks.

End of the Licence:

7.1. Condition and Reinstatement: This is a useful and important clause. It confirms to the parties that the property, at the commencement of the licence, is in a clean condition, and requires the occupier to return the property in a similarly clean condition at the end of the licence. This clause does, however, impose the obligation on the owner that at the time that the licence is granted the property is in a good and clean condition as warranted and the clause will be rendered ineffective if this is not the case.

7.2. Reinstatement: This is a common standard clause; it imposes an obligation on the occupier to restore the position or location of the furniture and other effects supplied with the property to approximately their original locations.

7.3. Keys. The owner is often faced with the frustrating situation of occupiers leaving without returning keys to the property. This clause encourages the occupier to return the keys, and also allows the owner to recover reasonable costs where the owner fails to do so.

Other Clauses:

8. Owner's Covenants and Obligations.

8.1. Frustration Clause. This clause governs the situation where the property becomes uninhabitable and the licence is frustrated. The clause makes provision for the licence to terminate if the property becomes uninhabitable. Without this clause, the occupier could, in law, remain liable for the payments until the end of the agreed licence.

8.2. Written notice of entry. This clause requires the owner to give the occupier 24 hours written notice before entering the property. Although the occupier, as the holder merely of a licence, does not have exclusive possession of the property and, therefore, cannot exclude the owner from it, where the owner does not use the property regularly it is courteous for him to inform the occupier on any occasions on which he does wish to enter it. This will be conducive to the relationship between the owner and occupier.

9. Forfeiture: The forfeiture clause is an express provision in the agreement that allows the owner to repossess the property in respect of which the licence was granted on the breach of any of the obligations.

Contrary to common interpretation by many lay owners, this clause does not allow the owner to get back his property (even on default) without carrying out the correct possession procedures through the courts. Any person who attempts to evict or harass an occupier in this way may be liable to conviction and extensive fines under the Protection from Eviction Act 1977. However, s3 of this act excludes tenancies where the owner is a resident landlord or has rights to repossess the property under immigration legislation and no court order is required to gain possession of the property in these situations.

10. Obligation to Repair: This clause clarifies the repairing obligations agreed to be undertaken by the owner. Section 11 Landlord and Tenant Act 1985 implies into tenancy agreements certain repairing obligations on landlords, and although these do not apply to licences they remain suitable for owners to undertake so as to keep the property in good condition. These section 11 commitments are:

- to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),
- to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and
- to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

11. Inclusive Definitions: This clause defines specific terms used in the agreement and where necessary, expands the scope of such definitions.

12. Service of Notices: Recent case law relating to the service of notices in respect of tenancy agreements (*Wandsworth London Borough Council v. Atwell* [1995]) suggests that the agreement should ideally contain express terms prescribing a method of service of legal notices.

Section 196 of the Law of Property Act 1925 provides that a notice shall be sufficiently served if sent by registered or recorded delivery post (if the letter is not returned undelivered) to the occupier at the property or the last known address of the occupier or left addressed to the occupier at the property. In the case of a company this would include the registered office address of the company [see also general note 4].

Special Conditions and Optional Extensions

Generally, use this section to add any extra clauses or conditions that are specific to your licence. Where there are several clauses, you may want to label them A, B, and C etc. in order not to confuse them with the main clauses in the agreement. A number of example clauses are provided below (other additional clauses are available from the Letting Centre):

1) Notice: An owner who wishes to allow either party to give notice may insert the following clause in the 'Special Conditions' section:

' This agreement may be terminated by either party by way of two months written notice '

2) Pets: Since the standard agreement prohibits the keeping of pets at the property, it will be necessary to insert a special clause should you wish to relax the restriction. Given the extra risk of damage and dilapidation to the property, it is recommended that this permission is only given after due consideration and consultation with owners, and that such permission is revocable in the event of damage arising. E.g.:

'It is agreed that the Owner consents for the Occupier to keep a cat in the Property and that the Owner may withdraw this consent on reasonable grounds at any time in the future.'

3) Special Conditions: Where a dwelling is situated in close proximity to other residents (e.g. blocks of flats) a local resident's association may stipulate particular rules which can be incorporated within the licence agreement. E.g.:

' The Occupier agrees not to allow or permit in the flat any singing of music or playing of any musical instrument, record player, radio, hi-fi, television or loudspeaker or any disturbing noise whatsoever before 7am or after 11pm.'

For a fuller schedule of optional clauses that can be added to the standard licence agreement, please refer to the Additional Clauses section in the A02/A03 Drafting and Guidance notes – available from the Letting Centre.

Signing

The signatures on the bottom of the agreement are evidence of the fact that the written agreement has been concluded by the parties. The part of an agreement that the parties sign is known as the attestation clause.

Two copies of the agreement are normally prepared, and these are generally referred to as the Original and Counterpart. Where the owner has instructed an agent to arrange the granting of the licence and draw up the licence agreement, the agent may wish to sign the licence agreement on behalf of the owner. In this situation, the agent is advised to check that such instructions or management agreement give the agent express authority to sign the agreement on behalf of the owner.

The main copy (or Original) agreement is signed by both parties and should be given to the occupier. The counterpart is signed only by the occupier and is held by the agent or owner. Any additions, deletions or amendments to the agreement should also be initialled by both the occupier and the owner (or his representative). Modern practice allows for one main agreement to be drafted and signed by all parties, and then copies given to the parties; and under electronic signing, only electronic copies are generated and distributed. All methods are equally valid if done correctly.

Witness

A witness is a person who observes the signing of a legal document in case it is subsequently necessary to verify the authenticity of the signature. Under English law, it is not compulsory to use a witness when signing a licence agreement, unless the agreement is executed as a deed.

However, licence agreements often make provision for a witness to sign the agreement since this is a reasonable safeguard against the situation where a person denies ever signing or being shown the agreement in the first place. A witness could be a colleague or some other third party who is present during the signing of the licence agreement.

Electronic Communications

For many years, the law has allowed legal agreements to be signed in person, and then exchanged electronically by fax or by email. In these cases, the document is still signed with a proper (physical) signature even if an electronic communication method is adopted to send a copy of the signed document. However, in recent years, the capabilities of the internet and information technology have been moving fast and the law was struggling to catch up.

As companies increasingly rely on email and websites to conclude contractual agreements, the law has gradually evolved to make this possible. The Electronic Communications Act 2000 came into force in 2002 to give legal certainty to electronic signatures, and web-based services such as Adobe Sign, DocuSign and RightSignature now provide the technology to support this process.

If you decide to use electronic signatures for your agreements, then you should still ensure that you store a copy of the signed agreement in a safe place either on your computer server or in your paper files. Any system will need to be able to satisfy the court that there is a valid signature, in order to create a binding agreement. Your referencing procedures should be capable of proving a person's identity, and linking this to any signature supplied.

One feature of many electronic signing systems is that they record a signing date either on the agreement itself, below the signature, or within the signing certification record held elsewhere. If you are using the agreements in this way, it is no longer necessary to complete the execution date field at the start of the agreement. In these situations, we recommend that you remove the execution date field from the agreement or just leave it blank to avoid confusion.

Sureties and Guarantors

The owner may require a surety to guarantee the making of the payments or the occupier's other obligations under the lease.

A surety or payments guarantee is generally used whenever the occupier's ability to make any payments is in question. Typical cases will be where the occupier is:

A company. In this case, a director or, if the company is a subsidiary of a large and financially sound company, the parent company should be required to act as surety. Note that where the occupier is a private company, it is always advisable to seek a surety.

A student or unemployed person. Such persons have no current earnings and often little in the way of previous earnings history to rely upon. They generally have a low credit rating and this is a classic situation where a surety would be appropriate.

A divorced or separated spouse. Where the separated person is solely dependent on maintenance payments for income, the 'paying' spouse or ex-spouse should be required as surety.

Guarantor

It will first be necessary to find an appropriate guarantor. Similar credit checks and references should be taken on the guarantor as would normally be taken for an occupier in order to establish the guarantor's ability to meet any defaulted payments or other costs.

Guarantor agreement

It is recommended that the surety be set up using a separate guarantor agreement. This will be a written legal agreement between the guarantor and the owner. Standard agreements can be obtained from suppliers of legal forms, or individually drafted by a solicitor. It is important that the agreement is correctly drafted; there are several important recent legal precedents in this area and the agreement should include these changes.

A surety will prima facie be construed as applying only to the (contractual) fixed term and not to any period where the occupier simply holds over and makes payments. Any agreement should therefore be drafted to provide for the continuance of liability under any extension or renewal.

Setting up the Guarantor agreement

It is good practice to send the guarantor copies of the relevant licence and guarantor agreement prior to signing along with a letter confirming that he/she has been asked to stand as guarantor for a specified occupier and an explanation of the financial implications of providing such a guarantee. The reasons for this are firstly that the guarantor should be given time to peruse the document, understand the commitment and take advice. Secondly, it provides a means of verifying both the validity of the guarantor agreement and the guarantor's address.

Equally, owners should try and ensure that the guarantor is present when the agreement is signed (preferably at the same time as signing the licence agreement) rather than by exchange of signed forms. It has been known for such agreements to be signed fraudulently (i.e. not by a bona fide guarantor) and thus declared worthless.

Appendix A

General Rules for the Drafting and Interpretation of Licences

General Drafting Rules

In drafting any legal agreement, there are two main principles that apply. Clearly, the first objective is to include absolutely everything in the agreement that should legally be there, and by doing so make provision for all possible disputes that may arise between the parties. This is particularly important should any matter need to be resolved by way of legal proceedings, as the courts will look to the substance of the agreement to determine the intention of the parties. It is worth remembering that some terms will be implied either by law or by statute, and that some duties on owners are absolute and so cannot be passed on to the occupier. The length of a document should also be considered and a person drafting their own agreement should strive to be concise whilst being thorough. The second principle follows logically from the first, that is to use straightforward and clear language so that no possible doubt can arise as to its meaning.

There are also rules of interpretation which will be utilised by the court in order to interpret the intentions of the parties. It is for this reason that established phrases are so common to many residential leases. Often the interpretation of a standard phrase has already been decided by the court and so it is adopted generally. It is, therefore, prudent to have a general understanding of the three main rules of interpretation and of some of the lesser ones. The three main rules are:

a) The Literal Rule

This is self explanatory - the word or phrase is interpreted literally. If this rule cannot be successfully applied the second rule will be utilised.

b) The Golden Rule

The grammatical and ordinary sense of the words is to be adopted, unless that would lead to some absurdity, or some inconsistency with the rest of the document in which case the court will, in essence, read between the lines, to give the effect they decide was intended, or should have been intended, by the parties. The court will also always take into account any common law or statutory provisions which place obligations on either party when interpreting any document.

Surrounding Circumstances

It is an overriding principle that, in applying 'The Golden Rule' above, the court interprets the words taking into account all of the surrounding circumstances unless the words are so unambiguous that no surrounding circumstances could affect their construction. Where there is an issue which the draftsman feels to be of importance in relation to the construction of the agreement, it is prudent to include it as a recital or a declaration, in the body of the agreement.

Consistency of use

When interpreting any document if the court determines that a word used in one part has some clear and definite meaning, then the presumption is that it is intended to mean the same thing in the remainder of the document. Similarly, there is a presumption that the draftsman uses his terms consistently, and that therefore a change in use is intended to have significance. This is known as the 'expressio unius est exclusio alterius' rule.

The court will, as far as possible, give effect to every word and every clause and will always lean towards treating words as adding something or having some effect rather than being 'mere surplusage'. This is known as the 'ut magis' rule (the thing that may avail (or be valid) rather than perish).

Appendix A: General Rules for the Drafting and Interpretation of Licences

In the case of ambiguity in a document, ambiguity is to be resolved against the party preparing it. However, this rule is applied low in the order of seniority and only when construction by reference to the surrounding circumstances has failed to produce an answer. This is known as the 'contra proferentem' rule

If even the Golden rule of interpretation, together with the minor rules cannot successfully be applied the court will move on to utilise the final rule.

c) The Mischief rule

When considering the construction of an agreement the court will consider the "mischief" that a statute, for example the Housing Act 1996, was designed to prevent.

Other common drafting techniques in licences

Recitals and factual matters

Recitals are those parts of the licence that merely declare facts and do not affect any of the substance of the agreement. They are usually inserted to explain the reason for the transaction or other related background circumstances. Likewise, the amount of any deposit should be stated.

Definitions and Labels

It is now accepted practice in letting agreements to define certain words as 'labels' at the beginning of an agreement. Once defined, the labels can be used throughout the agreement in place of the longer expressions which would otherwise be necessary; the most common example being the definition of 'Owner' and 'Occupier'. Once these expressions have been defined it is unnecessary to refer to the parties by name again.

The labels to be adopted should be clear and accurately reflect the concept to which they relate. They should not be capable of accidental transposition. Thus 'Licensor' and 'Licensee' should be avoided since it is possible that they could become reversed with disastrous consequences.

It is usual to use an initial capital letter throughout the agreement for any word that has been specifically defined. The use of the initial capital indicates that the word is being used in its defined sense, and this also allows the same word to be used elsewhere in the agreement in its general sense, e.g. '...the Occupier and the other occupiers of the Building'.

Decisions on the meanings of previous words and phrases

There are many common words and phrases that are used in modern licences and leases whose meanings have a well established and settled meaning in law. In case of a dispute, the courts will uphold these established meanings provided that they have been correctly used. Care must therefore be taken when using a word which has acquired a technical meaning or become a term of art, to use it accurately.

Appendix A: General Rules for the Drafting and Interpretation of Licences