

Standardisation of Lease Terms: Preferred Terms

Standardisation of Lease Terms: Preferred Terms has been developed to support greater consistency and leverage in Government's interaction with the property market.

Whilst recognising the diversity of requirements across portfolios, this standardisation should influence the industry to seek to provide property on terms that have regard to what is important to the government, enabling greater flexibility as well as time and cost savings.

There may be good reasons why this guidance is not followed but organisations will be asked to justify non-compliance as part of NPC approval requests.

Item	Checklist
Landlord and Tenant Act 1954	Leases and lease renewals should be protected by the security of tenure provisions of the Landlord and Tenant Act 1954. It may be that temporary requirements may be better satisfied by a lower cost lease outside the Act but this will need to be justified.
Breaks	<p>For 10 year leases, include tenant breaks within 5 years and preferably a rolling break, to provide required levels of flexibility or mitigate uncertain demand. Breaks should not be subject to penalty.</p> <p>Lessee options to break should be unconditional, save only for the payment of principal rent reasonably demanded in advance.</p>
Rent reviews	<p>Choice of basis to be justified based on local market and professional advice</p> <p>Open market reviews -</p> <ul style="list-style-type: none"> ● Should not be more frequent than every five years. ● Open market rent should reflect the lease terms agreed. ● Tenant improvements should be disregarded for the purpose of the rent review. ● Should be undertaken by experienced professionals, with a specified arbitration process. <p>Index linked</p> <ul style="list-style-type: none"> ● Indexation should be rebased to market value at least every 10 years ● Index linked rent reviews should not be more frequent than every three years and should be indexed against the Consumer Prices Index ("CPI") ● Any increase in rent as a result of an increase in CPI should be collared and capped at 0 - 4%.
Alienation	<p>Government organisations should have the ability to share occupation with a "Permitted Government Body"*; non-departmental public bodies, or contractors under licence working for the government without obtaining landlord's consent.</p> <p>Landlords should not require fees for giving approvals to alienation applications.</p>
Assignment	Government Organisations should have the ability freely to assign the whole of their leases to a "Permitted Government Body" without landlord's consent.

	<p>The ability to assign, with consent, to external bodies should not be restricted. Assignment provisions should specify that the landlord should not unreasonably withhold or delay its consent to an assignment of the whole of property demised by a lease to any other assignee.</p>
Under-letting	<p>Government organisations should have the ability to underlet the whole of the property demised by the relevant lease with the landlord's consent (not to be unreasonably withheld or delayed). Organisations should also have the ability to underlet part, where appropriate, having regard to the nature and total area of the demise.</p> <p>While the tenant is the government, it should have the ability to underlet at any rent. Any such letting would have to be outside the protection of the Landlord and Tenant Act 1954.</p> <p>When the tenant is not the government, it should have the ability to underlet at not less than the market rent. Restrictions on under letting at less than the passing rent are not acceptable</p>
Repair and dilapidations	<p>Repair obligations should be proportionate to the length of the lease term and the condition of the accommodation at the grant of the lease. Government organisations should, unless a level of lessee investment is commercially agreed, limit their obligations to handing back the premises at the end of the term in the same condition as they were in at its grant.</p> <p>A schedule of condition recording the state and condition of a property should be prepared and agreed at commencement of the lease term.</p> <p>The extent of the demise and that of the wider curtilage to be covered by the tenant's repairing obligations should be clearly defined.</p> <p>Procedures relating to the preparation and service of the schedule of final dilapidations by the landlord due at the end of the term of the lease should be clearly set out in the lease. Where possible, organisations should provide for the service of interim schedules of dilapidations 6 to 12 months prior to lease expiry.</p>
Reinstatement and alterations	<p>While the tenant is a Permitted Government Body, internal, non-structural alterations should be permitted without landlord's consent, unless they could affect the services or systems in the building.</p> <p>When the tenant is not the Government, a requirement to obtain landlord's consent to internal, non-structural alterations is acceptable (provided that consent cannot be unreasonably withheld or delayed).</p> <p>Leases should not require tenants to remove permitted alterations and make good at the end of the lease unless reasonable to do so. This includes works by the tenant to improve energy efficiency. Where a landlord wishes to require a tenant to remove alterations, the lease should require notification to the tenant at least six months before the termination date.</p>
Insurance	<p>Government organisations should have the right to self insure where they lease a building in its entirety although it may be acknowledged that this right is personal to the Government.</p> <p>Where the landlord insures, the lease should contain:</p> <ul style="list-style-type: none"> ● provision for a rent cesser in the event of insured and uninsured damage; ● if the lease is for more than five years, a right for the tenant to terminate the

	<p>lease if the landlord has not reinstated within a period of time proportionate to the extent of any damage and in any event if the landlord cannot reasonably reinstate by two years of the end of the term (save where the damage or destruction has been caused by the tenant's default); and</p> <ul style="list-style-type: none"> • if the lease is for less than five years, following insured or uninsured damage rendering the property unfit for the tenant's use and occupation and inaccessible (save where the damage or destruction has been caused by the tenant's default), a right for the tenant to terminate with immediate effect.
User	User provisions should allow for the intended use for the term of the lease and not be unduly restrictive. Organisations should have the ability to use the accommodation for alternative uses subject to planning restrictions and (having regard to the nature of the building) the landlord's reasonable controls to preserve its investment value.
Tenant rights	Government organisations should fully reserve all necessary rights needed to enable the occupation of the building in a way that meets their business needs and requirements including rights of access for the public.
Landlord disposal	Where a lease is for 20 years or longer, the government organisation should include an overage clause relating to landlord disposal / re-gearing for a period longer than than 5 years.
Guarantees	Guarantees, in any form, may amount to contingent liabilities that require reporting to Parliament. They should not be provided where a Government covenant is available (save for authorised guarantee agreements). Payment of rent deposits should similarly not be agreed.
Late payment interest	Should be no higher than 3 per cent over base rate, where payments are more than 28 days overdue and at base rate for rent increases agreed after the rent review date.

Definitions

* A "Permitted Government Body" is a Minister of the Crown, Government Department, an agency, commission, corporation, body corporate established by a Minister of the Crown (or a Government Department which a Minister of the Crown or a Government Department controls), the Welsh Government, Welsh Ministers and Local Authorities.