When you decide to rent premises for your social enterprise you need to really understand what you are signing up to.

This guide provides you with an explanation of terms commonly used in commercial property leases and includes some standard clauses and hints and tips on what to look out for as a tenant.

For information on England and Wales leases please see our Negotiating a commercial property lease in England and Wales
In this document you’ll find an A-Z of terms typically used in commercial property leases in Scotland. As well as some of the key clauses you’ll find in leases, we’ve added some comments on what to look out for (and try to negotiate) as a Tenant.

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PART A

Commercial Leases in Scotland

General Comments:

(i) A Scottish lease will usually contain all the terms agreed between the parties. However, the common law will apply if the lease is silent on the matter.

(ii) It is normal practice for Scottish leases to be registered in the Books of Council and Session for execution to allow landlords to use summary diligence.

(iii) In Scotland the maximum duration for a commercial lease is 175 years and for a residential lease it is 20 years.

(iv) At common law, a landlord is obliged to ensure that at the entry date the property is in a tenantable condition and is wind and watertight. The landlord is obliged to repair any defect below that standard. Landlords will usually contract out of this obligation by specifically excluding this in the lease and putting the responsibility for repairs and maintenance on the tenant.

(v) At common law, in the event of serious damage or destruction of the property being let, the lease automatically comes to an end. Landlords will usually contract out of this and put in place a provision to allow the landlord a set period of time to reinstate the property, failing which both parties can terminate the lease. During this reinstatement period, the tenant is usually entitled to an abatement or suspension of rent.

(vi) If there is a standard security registered over the property being let, the heritable creditor should be notified of the new lease.

(vii) A landlord does not automatically have the right to terminate a Scottish lease if the tenant fails to make monetary payments due under the lease. The landlord must give the tenant notice and a period of time (by statute a minimum of 14 days although the lease may allow for a longer period) to pay the outstanding monies before the landlord can proceed to irritate the lease after the expiry of that period. For non-monetary breaches, the tenant must be given a reasonable period to remedy it’s breach and on the expiry of that period the landlord will be entitled to terminate the lease if a fair and reasonable landlord would do so in the circumstances.

(viii) If a Scottish lease is not terminated on the expiry date by an appropriate termination notice issued from one party to another in accordance with the lease provisions (or statutory rules if it is silent on the matter) the lease will continue by tacit relocation.

(ix) A landlord has no right to recover possession of the property being let before the expiry of the lease unless the tenant has defaulted or a renunciation of the lease is agreed.

(x) In Scotland, a tenant can sublet the property for the entire unexpired duration of the existing lease (subject to any necessary consent of the landlord). However, if the head lease is renounced or is terminated before its natural expiry, the sublease will be automatically terminated in most cases.
PART B

**Glossary of Scottish Lease Terms**

**A**
- Abatement of Rent – a reduction in the rent payable under the lease (e.g., if the property is undergoing repairs and is therefore rendered unusable by the tenant).
- Alienation – the Lease provisions that govern the Tenant’s ability to assign or sublet the property let.
- Assignation – the transfer of a tenant’s interest in the Lease to another party.

**B**
- Back Letter – (or sometimes referred to as a “side letter”) a formal letter by the Landlord qualifying the terms of the Lease by granting special rights or incentives to the Tenant as part of the Lease (i.e., rent free periods or break options). Any rights or benefits granted by the back letter are usually for the exclusive benefit of the Tenant and are not capable of being assigned. The contents of the back letter are usually confidential.
- Break Option – a right to terminate the lease earlier than the expiry date. This right will either be exercisable by the Landlord or the Tenant or both, depending on the lease provisions.
- Break Option Date – the date on which the entitled party can exercise the Break Option.
- Business Days – (or sometimes referred to as “Working Days”) any day which is not a Saturday or a Sunday or a public holiday in specific place(s) on which clearing banks are open for commercial business in those specific place(s).

**C**
- Common Law – legal principles created by case law.
- Common Parts – where the leased premises form part of a larger property/building, these are the parts of the larger property that are not leased to the Tenant but which the Tenant is entitled to use for the enjoyment of the leased property and they are usually shared with other tenants. This term is usually defined under the lease and will differ depending on the property being let.

**D**
- Duration – the period of time for which the Lease is granted to the Tenant.

**E**
- Energy Performance Certificate – an energy performance certificate certifies a property’s energy efficiency based on its carbon emissions and grades it from band A (good) to band G (poor). The certificate looks similar to the certificate you see when buying a new fridge or freezer. The idea is that it provides information to prospective tenants on the energy efficiency of the building so that they can make a more informed decision about their investment.
- Entry Date – (or Date of Entry) the date on which the Tenant is given vacant possession of the property.
- Extract – an official certified copy of a document registered in the Scottish public register called the Books of Council and Session which has the same legal effect as the original. It is usual practice in Scotland for Leases to be registered for execution in the Books of Council and Session to ensure that the terms thereof can be enforced in the same way as a court decree without having to go to court.
- Expiry Date – (also called an “Ish”) the date on which the grant of Lease ends.
Fixtures and fittings – any moveable property that becomes part of a heritable property by its physical attachment to that heritable property.

General Register of Sasines – (or “Sasines Register”) a public land register maintained since 1617 in which all legal documents transferring, creating or extinguishing rights to heritable property had to be recorded to be of effect. The Land Register of Scotland is its modern equivalent.

Head Lease – the lease under which a sublease is granted by the tenant of the head lease.

Heritable Creditor – a party who has the right to a standard security secured over the property and is entitled to enforce that security (eg, by calling up the standard security and selling the property).

Heritable Property – the land or buildings constructed on the land being let under the lease. This must be clearly defined whether by way of postal address or a plan showing the extent of the property being let.

Irritancy – Irritancy is a remedy available to a landlord allowing it to terminate the lease following a breach by the tenant. An irritancy may be “legal” (imposed by law) or “conventional” (agreed between the parties to the lease).

Ish – the date on which the grant of Lease ends. By law the parties require to serve notice to quit to terminate the lease and such notice must be issued in accordance with the lease provisions. If no notice is served then the lease will continue to run by tacit relocation.

Keeper – the head of the Registers of Scotland and the officer responsible for the running of the public registers.

Land Register of Scotland – a public land register introduced in 1981 in which all legal documents transferring, creating or extinguishing rights to heritable property had to be registered to be of effect. This is the modern equivalent to the General Register of Sasines.

Landlord – the owner of the property who grants the lease in return for payment of rent.

Lease – an agreement between a Landlord and a Tenant where the Landlord grants the Tenant the right to use his heritable property for a specific period in exchange for payment of rent.

Licence for Works – An agreement documenting the Landlord’s consent to specified works or alterations to be done to the property by the Tenant. The agreement will regulate how the Tenant is expected to carry out the specified works and the treatment of these works when the Lease ends.

Managing Agents – a person or company who manages the property on behalf of the Landlord.

Missives – a contract between two parties which is made up of formal letters exchanged between those two parties. The formal letters are usually exchanged between the respective lawyers acting on behalf of those two parties.

Moveable Property – any property that is not heritable property.

Parties – the Landlord and the Tenant

Permitted Use – the specific use(s) the Landlord will permit the Tenant to use the property for (eg, retail or office use).

Pre-Emption – a right contained in a contract where a party has first priority to buy the property in question before any other third parties.

Prescribed Rate – the rate of interest which is usually at a rate above base rate of a bank (usually The Royal Bank of Scotland plc or Bank of Scotland plc).

Quarter Days – (Scottish Quarter Days) the days on which a quarter of the annual rent is due to be paid to the Landlord under the Lease (ie, 28 February, 28 May, 28 August and 28 November).
Registers of Scotland – a collective term for the public registers in Scotland which includes the General Register of Sasines and the Land Register of Scotland.

Rei Interitus – the legal principle where performance under a contract cannot be enforced then the lease would come to an end (eg, if leased property is materially damaged or destroyed).

Rent – the annual sum agreed under the Lease to be paid by the Tenant to the Landlord in exchange for using the property. The Lease should specify how the payment should be made, the frequency of the payments (eg, equally and proportionally on quarter days in each year) and whether the sum is subject to review during the lease.

Rent Free Period – a Tenant incentive where the Landlord grants a set period of time where rent is not payable.

Rent Review – the review of the rent payable under the Lease for the remaining period of the Lease. The rent review provisions of the Lease will set out how the new rent will be calculated.

Renunciation – where a Tenant renounces its interest in the Lease to the Landlord prior to the expiry of the lease with the Landlord’s agreement. This is normally documented by a deed known as a Renunciation.

Rescind – to lawfully terminate a contract by a party entitled to do so.

Reserved Rights – the rights over the leased premises reserved by the Landlord which overrides the provisions of the lease. These rights will be specified under the lease and differ from lease to lease.

Schedule of Condition – a schedule (whether by text description or photographic) that documents the condition or state of repair of the property being let. If the landlord and the tenant agree for a schedule of condition to form part of the lease, this is usually prepared by the Tenant.

Service Charge – a sum that the Tenant periodically pays the Landlord for the maintenance and repair of the Common Parts for the duration of the lease.

Sublease – an agreement between the Tenant and a third party where, in exchange for rent, the Tenant grants the third party the right to use the property they lease from the Landlord. The existing Lease between the Landlord and Tenant will remain in place and depending on the terms of the alienation provisions, the Landlord’s consent is usually required before the sublease can be granted.

Summary Diligence – legal proceeding to enforce the payment of a debt without raising a court action. This is an option available to landlords to recover sums due by a tenant under a lease if that lease has been registered in the Books of Council and Session for execution and an Extract has been obtained.

Tacit Relocation – in the event that neither the Landlord nor the Tenant has issued a notice on the other party to terminate the lease on expiry date then the parties are implied to have consented for the lease to continue of the same terms for one year if the lease duration is for one year or more or for a period equivalent to the term of the lease if it was originally for less than one year.

Tenant – the party that is granted the right to use the property under a lease in exchange for payment of rent to the Landlord.

Title Deeds – legal documentation that evidences a persons’ right to a property to which the title deeds in question relate and how that person come to accrue those rights.

Vacant Possession – the actual possession of the property being let without any encumbrances. The Landlord is usually obligated to grant the Tenant vacant possession of the property on the Entry Date.

Warrantice – a personal obligation contained or implied in a legal document relating to land by which the party granting the warrantice is bound to compensate the party benefiting from the warrantice in the event that the party benefitting is evicted from the property or prevented from their right to enjoy and use the property.
1. **Grant of Lease**

1.1 **Grant**

A Scottish Lease will usually contain all terms of the letting and it should expressly state the landlord’s grant of lease over the property to the tenant for a set period of time and for payment of rent.

A full description of the property being leased should be narrated to include any fixtures and fittings and also any rights of access, rights to utility services and to exclude specific rights reserved to the Landlord (eg, right to develop the property).

1.2 **Acceptance of Property**

The lease should expressly state that the tenant accept the property (as it is described in full) being let to the tenant in its existing condition and that they are satisfied with all aspect of the property for their intended use of it under the lease. The tenant should make sure that this is indeed the position before entering into the lease as it will impact the tenant’s repair and maintenance obligations under the lease for its duration and prior to the expiry of the lease (please see tenant’s obligation section below).

Sometimes the landlord will allow for the tenant to prepare a Schedule of Condition documenting the condition of the property prior to being let. This will usually limit the tenant’s obligation to repair and maintain the property to the standard as documented in the Schedule of Condition and is a negotiation point.

1.3 **Period of Lease**

The lease should state the duration of the lease from the Entry Date until the Expiry Date.

Any break options is tenant incentive and a negotiation point between the parties. If there are to be any, the option should also be narrated here. The specific dates, method of exercising the break and whether the option is exercisable by only the tenant, the landlord or both should be worded clearly (eg, the landlord and tenant shall each be entitled to terminate this lease on x date provided that x month’s prior written notice is given to the other party).

2. **Rent**

The lease should state that the tenant binds itself to pay the landlord “the rent” which should include the rent itself (including or excluding VAT), any interest on overdue sums, any insurance premiums and other outgoings and whether these will be payable with or without written demand from the landlord.

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**Annual Rent** – The figures stated should usually be the figure for the annual rent (inclusive or exclusive of VAT). The frequency of the rent payments should also be clearly stated (eg, whether payable by equal monthly payments or by equal quarterly payments on quarter days).

The date of first payment should be clearly stated and if it has been agreed between the parties, any rent free periods should also be specified.

**Insurance Premiums and other Outgoings** – in addition to insurance premiums for insuring the property, other outgoings may include electricity, gas, water, telecommunications and other services consumed by or supplied for the property.

3. **Tenant’s Obligations**

The lease should detail the tenant’s full obligations under the lease. The majority of these provisions reserve to the landlord some degree of control over the property being occupied by the tenant.

3.1 **To Pay Rent**

The lease should expressly state the rent will need to be paid at the times and in the way specified in the lease.

3.2 **To Pay Interest of Sums Overdue**

If any rent or the VAT is overdue and remains unpaid (usually for 10 Business Days), the landlord is entitled to demand interest on all of the sums due at the Prescribed Rate and the tenant is obliged to pay the interest on the landlord’s demand.

3.3 **To Pay Outgoings**

These usually include electricity, gas, water, telecommunications and other services consumed by or supplied for the property and the landlord’s administration costs and standing charges for dealing with these. The tenant will also often be obliged to reimburse the landlord of any costs incurred in connection with any of the services mentioned.

3.4 **Not to Duplicate Insurance**

The Tenant is generally forbidden from insuring the property against Insured Risks and cannot duplicate the insurance maintained by the landlord under the lease.

3.5 **Plant and Equipment and Service Systems**

Keeping the property in good repair and condition is often the tenant’s responsibility under the lease. Separate to specific repair and maintenance provisions, there are may be conditions expressly put in place requiring the tenant to
maintain and repair and if necessary renew and replace the plant and equipment and service systems that are built into the property. Plant and equipment usually include central heating systems, boilers, air conditioning systems, lifts, smoke/fire alarm and sprinkler systems. Service systems usually include all service media like all channels, ventilation, drains, sewers, telecommunication lines, pipes, wires, cables, aerials etc.

The landlord may sometimes require the tenant to enter into contracts with a third party to keep up with regular maintenance, inspections, care and servicing of the plant and equipment. It is up to the tenant to accept this obligation or negotiate otherwise.

3.6 To Pay Share Cost of Common Facilities

If there are any charges or payments due under the conditions imposed by the Title Deeds to the property the Tenant will often be obliged to meet this cost. For example, if the property shares a roof with a neighbouring property and the Title Deeds state that the occupiers of the property and the neighbouring property are each responsible for 50% of the maintenance cost of the roof.

3.7 To Repair, Maintain and Renew

As previously mentioned, the tenant is often the party responsible for the repair, maintenance, general upkeep of the property throughout the duration of the lease. The extent of the tenant’s obligation should usually be the extent of the property being let. This obligation is often general and will include everything that comprises the property.

The landlord may qualify the tenant’s obligation to repair and maintain and specify that the tenant will not be required to repair, maintain or renew any damage which the landlord has insured against or where the damage is caused by the landlord. However, the landlord may specify that this qualification will not apply if the damage is caused by the tenant. It is up to the tenant to ensure that their repair obligation includes this qualification.

If the landlord and tenant have negotiated and agreed to include a schedule of condition in the lease, as previously mentioned, the tenant’s repairing obligation should be limited to the standard contained in that schedule and any defects or existing damage to the property documented in the schedule will usually be excluded from the tenant’s repair and maintenance liabilities.

If the property forms part of a larger building, the obligation to repair structural and common parts of the building will often be the landlord’s responsibility as part of the service the landlord is obliged to provide the tenant under the lease. However, where this is the case, the tenant will usually remain responsible for these maintenance costs (or part of it) payable as service charge to the landlord. Please see the Service Charge paragraph below for more details.

3.8 To Keep Secure

The tenant will usually be required to keep the property secured outside the tenant’s normal business hours.

3.9 To Decorate Exterior

The tenant will often be obliged to maintain the external décor of all outside parts of the property once every 3 or 5 years and also during the last year of the lease. This should usually include where necessary painting walls, polish woodworks, restore and make good brick work etc. all to the satisfaction of the landlord.

The landlord may reserve the right to require the tenant to pay the cost for the landlord to carry out these works instead of the tenant carrying out the works. However, it is up to the tenant to appropriately negotiate how such cost will be quantified and what it will include and exclude.

If the property is part of a larger building, the landlord will often be responsible for the decoration of the exterior of the building.

3.10 To Decorate Interior

The tenant will often be obliged to maintain the internal décor of all interior parts of the property once every 5 or 7 years and also during the last year of the lease. This should usually include where necessary painting walls, grain, varnish, paper, plaster and generally redecorate the interior parts of the property all to the satisfaction of the landlord.

The landlord may reserve the right to require the tenant to pay the cost for the landlord to carry out these works instead of the tenant carrying out the works. However, it is up to the tenant to appropriately negotiate how such cost will be quantified and what it will include and exclude.

3.11 To Keep the Property Clean and Tidy

This is a general requirement. The landlord will often require the tenant to clean, wash and treat all materials, surfaces and finishes of the interior and exterior of the property.

3.12 To Keep the Property Clean and Tidy

This is another general requirement. The tenant will often be obliged to keep the property in a clean and tidy condition throughout the lease. This means that the property must be kept clear of all rubbish. In addition to this obligation, the landlord may sometimes also require that all glass, windows and window frames of the property will need to be regularly cleaned.
If required, the landlord may extend this obligation to any external grounds including garden areas which form part of the property. However, it will be up to the parties to agree the extent of this.

Again, if the property forms part of a larger building, maintenance of external grounds will generally be the landlord’s responsibility. However, it is often the case that the tenant will remain responsible for part of the cost payable as service charge.

3.13 To Permit Entry By the Landlord and Others

The landlord will usually reserve the right to enter the property to inspect and examine the state of repair and condition of it and to check the tenant’s compliance with their lease obligations. If this is the case, the tenant will be obliged to allow the landlord to enter the Property. However, it is up to the tenant to negotiate and agree with the landlord exactly what the landlord is allowed to do and how the landlord must do it and this should be specified in the lease.

For example, the parties may agree that the landlord must give the tenant 2 working days’ prior written notice before exercising this right and will ensure minimal inconvenience is cause to the tenant and will make good any physical damage caused to the property and the tenant’s property.

3.14 To Comply with Notices of Repair

If following an inspection of the property, the tenant is found to be in breach of its repair and maintenance obligations, if the lease allows the landlord to do so, the landlord will be entitled to issue a notice in writing to the tenant requiring the repair and maintenance works to be done for the tenant to comply with its obligations under the lease. The lease should usually specify the period of time the works should be completed.

If the tenant fails to comply with the notice and again, if the lease specifies the landlord’s entitlement to do so, the landlord will generally be entitled to enter the property to do the works at the cost of the tenant together with interest charged from the date the cost is demanded until the date the sum is paid.

3.15 Not to Introduce Dangerous Things

This provision is standard. The tenant will often be prohibited from allowing anything to be brought into the property which is dangerous, inflammable, radioactive or explosive or to carry on any hazardous trade or do anything which may affect the insurance the landlord maintains under the lease.

3.16 To Pay Irrecoverable Insurance Monies etc.

If this clause appears in the lease, it means that if the property or any part of it is destroyed or damaged by any of the insured risks and the insurance money is irrecoverable due to the Tenant’s actions or negligence, the tenant will often be obliged to pay the landlord a sum equal to the irrecoverable portion of the cost or the whole of the cost in rebuilding and reinstate the property and any excess whichever is applicable.

3.17 Not to Overload

This is standard condition. The tenant will often be required to request the landlord’s written consent in the event that the tenant wishes to place or keep any heavy articles within the property which may overload the property and therefore cause damage to it. This prohibition on overloading the property usually also includes prohibition from overload the electrical circuits or any other services built within the property.

3.18 Not to Harm Drains

This is another standard obligation. The tenant will often be prohibited from allowing any substance to pass into the sewers or drains serving the property which might cause any obstruction or damage to the sewers or drains.

If the tenant breaches this obligation, the lease terms should usually specify that the tenant must repair the damage to the satisfaction of the landlord.

3.19 Not to Use otherwise than for specified purposes

This is a standard tenant obligation. The tenant will often not be allowed to use the premises for any purpose other than those specified in this clause. It is therefore important that the tenant ensure that the permitted use of the property covers with what they intend to use the premises for prior to entering into the lease.

This clause will usually refer to a specific use class under Town and Country Planning (Use Classes) (Scotland) Order 1997.

This clause will usually also state a general condition that the property must not be used for any illegal or immoral purpose or for any noisy, offensive or dangerous trade, business, manufacture etc. and no use will be allowed if it will cause harm to the environment or cause disturbance, annoyance and inconvenience to the neighbours.
3.20  **Not to permit auctions etc.**

The tenant will often be prohibited from using the property (whether within the property or outside it) to hold any sale by auction, public exhibition, entertainment, public show, spectacle, political meetings and gambling.

3.21  **Not to make alterations**

This is another standard tenant obligation. The landlord will usually not permit the tenant to alter the property without the landlord’s consent and the landlord will often specify that any drawings/plans and specification of alteration proposals will need to be submitted to the landlord for approval before they grant any consent.

It is a normal condition to require that the landlord’s consent and approval of tenant’s alterations proposals not be unreasonably withheld or delayed. However, it is up to the tenant to ensure that this is specifically included in the lease provision.

The landlord will often require the tenant to enter into a licence for works agreement with the landlord to document the landlord’s consent and the terms and conditions of carrying out the works as well as the reinstatement of the property on the expiry of the lease. If the proposed works are not carried out in accordance with the terms and conditions of the landlord’s consent, the landlord will often specify in the lease that the landlord reserve the right to enter the property and remove these works and restore the property and demand the cost of such works from the tenant. It is up to the tenant to ensure that this is specifically included in the lease provision.

Sometimes the landlord will allow limited internal non-structural works to be done to the property without requiring any consent from the landlord but this will need to be expressly specified in the lease. The extent of the permission and works which the tenant can do to the premises without requiring the landlord’s consent will vary on a case by case basis and in each case will need to be specified in the lease.

3.22  **Not to make claims**

The landlord will often include provision in the lease specifying that the tenant is prohibited from bringing any action or raising any claims against the landlord if the property is damaged in consequence of any buildings being constructed on neighbouring or adjacent land by a third party with the landlord’s consent or if the landlord has granted a third party any rights over the property. This is a standard obligation for the landlord to impose on a tenant.

3.23  **To obtain permission for signs**

The landlord will usually state in the lease that unless the landlord’s written consent is obtained, the tenant cannot affix or exhibit any signage within or on any part of the property that would be visible from the outside of the property. This is also another standard obligation for the landlord to impose on a tenant.

3.24  **Alienation**

It is standard for a landlord to prohibit the tenant from assigning, subletting, charging, subletting or mortgage or otherwise “transfering” or “dealing” with the tenant’s interest in the lease. This usually includes any dealings to share possession or occupation of part of the property.

In most leases, this will be the “basic” prohibition and the landlord will often provide the specific circumstance under which the landlord will permit the tenant to “deal” with its interest in the lease. Each lease will have differently worded alienation provisions with different conditions the landlord may impose on the tenant before they will give their consent.

Please also see the explanation in the English lease provision explanations.

3.25  **Intimation of Dealing with Tenant’s Interest**

If the landlord’s consent is granted to permit the tenant to assign this lease or sublet the property, the landlord will often require any such “dealing” to be recorded in a legal document and then registered in the Books of Council and Session or in the Land Register if the lease is also registered in the Land Register. As evidence of this, the landlord will often require the signed document to be sent to the landlord to be submitted for registration or require the tenant to supply a certified copy of the deed to the landlord once registered.

3.26  **To Pay Landlord’s Costs**

It is not unusual for the Landlord to require the Tenant to meet all landlord’s costs and expenses properly and reasonably incurred in connection with matters under the lease. The provision in the lease will often specify the type of costs and expenses the tenant will be expected to meet.

3.27  **Applications for Consent**

As a precaution, the landlord will usually have this provision in the lease under which the landlord will be entitled to request for information to reasonably allow the landlord to consider the tenant’s application for their consent where applicable under the lease.
3.28 To Observe Statutory Requirements
This is a standard provision. The tenant will often be required to comply with all statutory requirements that apply to the property. This will often include carrying out any works to the property at the tenant’s own cost to bring it in line with relevant statutory provisions or paying any expenses incurred under these requirements etc.

3.29 To Comply with Fire Safety Regulations and Requirements
This is a standard provision. The tenant will often be obliged to keep the property in compliance with statutory requirements and the Fire Safety (Scotland) Regulations 2006. This means to sufficiently equip the property with fire fighting equipment and appliances and not to obstruct access to such equipment.

Sometimes the landlord will require the tenant to comply with further requirements in addition to those statutory obligations.

3.30 To Comply with Asbestos Regulations
This is a standard provision. The tenant should request for an asbestos survey from the landlord prior to entering into the lease to ascertain the position.

3.31 Planning
This is another standard provision. The tenant will often be obliged to comply with all aspects of the Planning Acts during the period of the lease and to reimburse the landlord against any such liabilities.

The landlord will often wish to retain control over the property in respect of any planning applications the tenant propose to submit to the local planning authority and will usually impose a condition in the lease on the tenant to obtain their consent before doing so. The landlord’s consent will usually be required for the tenant at each step of the planning process.

3.32 To Inform Landlord of Notices
This is a standard provision. The tenant will often be obliged to forward to the landlord a copy of any documentation, notices, orders or directions etc which affects or is capable of affecting the property and the landlord’s interest in it.

3.33 Re-Letting Notices
The Landlord will often wish to reserve a right to affix a sale or re-letting board on the property. The provision will usually provide when the landlord is entitled to do so and conditions should be imposed on the landlord prohibiting it from affixing the board where it will restrict or interfere with the tenant’s enjoyment of the property being let.

The provision will usually prohibit the tenant from taking down or obscuring the notice board and will often include a condition for the tenant to permit the landlord to arrange viewing of the property. It is up to the tenant to negotiate and agree with the landlord to specify in the lease how the landlord’s right is to be exercised (eg, at reasonable hours on working days and on prior appointment).

3.34 To Inform Landlord of Defects
The tenant will often be obliged to inform the Landlord any defects in the property which will require the landlord to act and any risk or threat which may cause any damage to or destruction of the property.

3.35 To Indemnify Landlord
This is a standard “landlord” provision. The landlord will often oblige the tenant to reimburse the landlord for all liability which may be incurred by the landlord in connection with the property being let to the tenant.

It would be reasonable for the tenant to provide that they won’t need to reimburse the landlord if the liability is caused by the landlord’s negligence or if the insurance maintained by the landlord in respect of the property covers the liability.

3.36 To Fit Out
It is standard for the landlord to require the tenant to fit out the property in accordance with the plans and specification as approved by the landlord for the duration of the lease.

3.37 To Remedy Breaches of Sub-Tenants etc.
If the landlord has permitted the tenant to sublet the property, the landlord will often require the tenant to take full responsibility for all breaches, non-performance or non-compliance by the subtenant or other occupier of the property in respect of all obligations, conditions and provisions of the lease. The landlord will often specify in the lease that tenant will be responsible for remedying these breaches.

3.38 To Observe Title Conditions
This is a standard condition. The tenant will often be obliged to comply with all conditions imposed on the property contained in the Title Deeds to the property.

The tenant will also often be responsible for reimbursing the landlord against all actions, costs and claims in connection with the tenant’s non-compliance with title conditions.
3.39 To Remove
Before the expiry of the lease or any break option dates, the tenant will often be obliged to:

(i) Renew and replace any of the Landlord’s fixtures and fittings and any plant and equipment built into the property
(ii) Remove any of the tenant’s fixtures and fittings, furniture and effects from the property and make good any damage caused by such removal
(iii) Remove and reinstate any alterations or additions made to the property during the period of the lease.
(iv) Return the property to the landlord with vacant possession and in the condition required in accordance with the tenant’s obligations under the lease.

The landlord will usually include a provision where the landlord will be entitled to carry out the works in tenant’s default under this provision and recover the cost of doing so from the tenant. Additionally, the landlord may also include a provision where the landlord will be entitled to recover rent over the period for which these works take to complete if the works are being done after the lease has expired. It is up to the tenant to negotiate and specify any conditions to these provisions.

3.40 To Comply with CDM Regulations
The landlord will often require the tenant to comply with Construction (Design and Management) (“CDM”) Regulations where they apply to the works the tenant will carry out at the property.

4. Landlord’s Obligations

4.1 Warrandice
This means that the Landlord is providing a personal guarantee to the tenant that the tenant will have full right and enjoyment of the property and will reimburse the tenant if their right and enjoyment of the property is interrupted.

4.2 To Insure
As previously mentioned in the paragraphs above, the landlord will often be obliged to keep the property insured provided that the tenant pays the insurance premiums (eg, by way of service charge if applicable).

The landlord should insure the property against loss or damage by insured risks for the full reinstatement cost and also for the loss of rent. The lease will usually specify this.

4.3 Application of Insurance Monies – Insured Risks
This is provision under which the landlord undertakes to use all monies received from any insurance policy to rebuilding and reinstating the property in the event that the property is destroyed or damaged by any of the insured risks.

The lease should specify how any shortfalls should be treated. A lease will often state that any shortfall will be made up by the landlord unless the damage done to the property is caused by the tenant’s negligence and in the event that the rebuilding and reinstatement of the property is lawfully prevented (e.g., if local authority refuses to grant planning permission) then the insurance monies will be paid to the landlord and the lease will terminate on the date the monies are transferred to the landlord.

However, the wording of this clause in each lease may differ from case to case.

5. Irritancy
If rent or other sums due under the lease is overdue (for 14 days or other agreed period not less than 14 days) or there are any breach by the tenant of its obligations under the lease, the landlord is often obliged to give notice of the breach to the tenant and the notice will need to provide the period of time within which the tenant must remedy the breach. On the expiry of that period the landlord will then be entitled to issue the tenant a written notice to terminate the lease.

If the tenant goes into liquidation, receivership or administration, the landlord must allow the liquidator, receiver or administrator 6 months to dispose of the tenant’s interest under the lease. Failing which, the landlord will then be entitled to terminate the lease.

6. No Implied Servitudes
The grant of the lease will usually not impliedly grant any rights to the tenant over any adjoining or neighbouring property owned by the landlord. The landlord will often reserve the right to develop the adjoining or neighbouring property it owns without needing to obtain consent from the tenant or pay any compensation to the landlord.

7. No Restriction on Adjoining Property
The grant of the lease to the tenant will usually not impose any restriction on the use of adjoining property (e.g., the landlord can develop adjoining property they own) as long as the tenant’s enjoyment and use of the property is not substantially interfered.

8. Rei Interitus not to apply
This clause is standard and means that the lease will not automatically terminate if the property is damaged or destroyed (in whole or in part) and will remain in full force for the full duration of the lease unless rebuilding and reinstatement of the property is lawfully prevented (e.g., if local authority refuses to grant planning permission) or the property being damaged by insured risks have not been repaired or reinstated within a set period of time.
The standard period of time is usually 3 years but may differ in each lease depending on the actual building and estimated reinstatement period required.

The landlord will often qualify this provision so that it will not be applicable in cases where the damage is caused by the tenant.

It is usually the case that, on the expiry of the set period of time, either party may terminate the lease by giving notice to the other party. The provision will usually set out the procedure for the tenant to issue such notices and the conditions that apply as consequence.

9. **Loss of Rent Insurance Monies**

This is a standard tenant provision.

If the property being damaged by insured risks is rendered unfit for occupation and use in accordance with the lease, the landlord will usually allow the rent payable under the lease (or a portion of it depending on the extent of the damage) to be suspended until a set period of time or until the loss of rent insurance put in place by the landlord is exhausted.

10. **Notices**

Please see the explanation in the English lease provision explanations.

11. **Demand for Rent**

The landlord will usually put in this provision to clearly state that in the event of a breach by the tenant of its obligations under the lease, the acceptance of or demand for rent will not be taken as the landlord accepting the breach. This will usually only relate to the period of time within which the parties negotiate to remedy the breach.

The landlord will usually also make it clear that any acceptance of or demand for rent after the date of review under the lease will not be taken as the landlord waiving its right to later review the rent in accordance with the lease (i.e., the landlord may review the rent late and backdate it to the date of review stated in the lease).

12. **Disclaimer of Liability**

The landlord will usually include this provision to ensure that it will not be responsible to the tenant for any loss or damage sustained by the tenant that is not directly caused by the landlord.

13. **Approvals**

This provision usually sets out what is required from the tenant and the landlord when they wish to seek landlord’s consent under the lease and what the landlord will consider in order to act reasonably.

14. **Arbitration**

This clause usually means that unless the relevant parts of the lease applies, any dispute rising between the parties under the lease can be determined by an arbitrator agreed by the parties. The decision of the arbitrator will usually be binding on the parties and the costs of the process will usually be determined by the arbitrator.

The provision will usually also provide the process to appoint the arbitrator if the parties fail to agree who will be appointed.

The seat of arbitration will be in Scotland for Scottish leases.

Please also see the explanation in the English lease provision explanations.

15. **Rent Review**

Please also see the explanation in the English lease provision explanations.

16. **Consent to Registration**

This clause is standard and essential as the lease can only be registered in the Books of Council and Session if both parties consent to its registration and execution.

**Schedule to the Lease**

**Part 1: The Property**

The property being leased will usually be described in full here. The knock on effect of this is that everything included within this description of the ”property” will be the tenant’s responsibility to repair, maintain and renew if damaged during the lease and to leave in the condition they were in at entry date when the lease terminates.

**Part 2: Pertinents**

These are the rights the tenant can enjoy in connection with their use of the property being let to the tenant. These are usually the rights as available to the property as conferred by the title deeds of the property.

**Part 3: Exceptions and Reservations**

These are the list of rights the landlord will reserve to retain control over the property (eg, the landlord’s right to develop adjoining property they own). These are usually non-negotiable.

**Other Annexures**

If there are any Schedule of Condition or plans referred to, these will also need to be annexed to the lease.