

Model Commercial Lease

Inclusion of Green Lease Toolkit provisions in the MCL

Introduction

The Committee responsible for the Model Commercial Lease has been considering which changes should be made to the Model Commercial Lease (**MCL**) to reflect the Better Buildings Partnership's Green Lease Toolkit (**Toolkit**).

The current version of the Toolkit was launched in January 2024 and its green Lease clauses form part of a variety of important practical tools to support greater owner/occupier alignment in using leases to promote sustainability strategies for their properties.

The MCL for many years has had a sustainability schedule (Schedule 7) reflecting some aspects of the original version of the Toolkit.

The new Toolkit has a wide variety of green lease drafting with so-called “light”, “medium” and “dark” versions for many of the clauses. These options cater to the specific nature of the property and the goals of the owner/occupier. The MCL Committee has carefully considered which version of the green lease drafting provisions should be included in the MCL, acknowledging that the Toolkit serves as a valuable resource for owners/occupiers with tailored needs.

The MCL drafting generally seeks to reflect the market position. Some of the Toolkit's clauses are not commonly encountered in commercial leases at this time and so have not been included in the MCL. Every property, owner and occupier is different and the Toolkit's green lease clauses should be considered in full, since the MCL's approach may not be appropriate for a particular situation or transaction. The MCL Committee will continue to review market practice and, if a provision from the Toolkit that we have not included becomes normal in commercial lettings, we will include it in future versions of the MCL.

The MCL Committee has made the following material changes to the MCL to reflect the Toolkit. The changes are included as part of the new version 1.8 of the MCL.

Changes to MCL to reflect the Toolkit

We refer to the changes made to the lease of part of an office building, but equivalent changes have been made to the entire MCL suite. We emphasise again that where we have departed from the Toolkit, it is because we consider that this better reflects the current market position.

Definitions

- **“Environmental Performance”** – this better reflects the equivalent Toolkit definition but does not refer to biodiversity or climate change resilience.
- There is a new **“Improving the Environmental Performance”** definition based on the Toolkit, but without references to biodiversity, climate change resilience or greenhouse gas emissions from travel.
- There are new definitions of **“EPC Rating”**, and **“Waste”** reflecting the Toolkit and a simplified version of the Toolkit's definition of **“Greenhouse Gas Emissions”**.

Schedule 1, Part 2 Landlord's Rights (and associated costs provision (clause 4.6.3))

Paragraph 3.3 (Entry on to the Premises)

The previous version of the MCL included an optional right for the landlord to enter the Premises to improve their environmental performance, which could only be exercised if the tenant consented, and it had an absolute discretion over whether to provide consent. One of the reasons for this drafting was to enable the landlord to use the so-called “consent exemption” from the Minimum Energy Efficiency Standards (**MEES**) if the tenant refused consent. If the tenant provided consent, then there was an

optional provision in the tenant's covenant to reimburse costs incurred by the landlord (clause 4.6.3) for the carrying out of works to improve the environmental performance of the Premises.

It was considered that this drafting may be helpful where the Premises had a sub-standard energy performance certificate (**EPC**) rating and the landlord could not lawfully let the Premises without carrying out requisite works or relying on an exemption from MEES.

For the new version of the MCL, the approach is more consistent with the Toolkit's approach. The tenant no longer has an absolute right to refuse consent (instead, consent is not to be unreasonably withheld or delayed), but if consent is given, the works are carried out at the landlord's expense (if the tenant lawfully refuses consent, the landlord may still be able to rely on the consent or another exemption from MEES). The revised right remains optional since there is no established market practice and reference should be made to version 1.7 of MCL for the previous form of wording.

The revised right also relates to improving the EPC rating or any other environmental rating of the Premises or the Building, reflecting the Toolkit provision.

Schedule 3, Services and Service Charge

Part 2, paragraph 2.1.2

Works intended to improve the environmental performance or the EPC rating or any other environmental rating of the Building have been added to the list of factors for which the landlord will not be responsible for an interruption in the supply of the services.

This change does not specifically follow the Toolkit, but it is consistent with other changes referred to in this note.

Schedule 6, Works

Paragraph 2.6

The tenant is now obliged, as soon as reasonably practicable following completion of the permitted works, to give the landlord information in sufficient detail for an accurate assessment to be made of the effect of the permitted works on the environmental performance or any EPC rating or any other environmental rating of the Premises or any other parts of the Building.

Schedule 7, Sustainability

The structure of this schedule remains largely the same as the previous version 1.7 of MCL retaining the co-operation, environmental forum, data sharing and alterations provisions (although the content has changed), but there is a new metering provision.

Co-operation to improve environmental performance (paragraph 1)

This largely reflects the light green version of the Co-operation provision in the Toolkit, but it does not refer to social impact. The MCL also includes a slightly stronger obligation for the landlord and the tenant (not just an agreement in good faith) to cooperate in identifying strategies to improve the environmental performance of the Premises and the Building.

Environmental forum (paragraph 2)

This reflects the medium green version of the Building Management Group provision in the Toolkit, but it does not refer to social impact. There is a new final paragraph for what happens if no forum is established.

Data sharing (paragraph 3)

This largely reflects the data sharing provision in the Toolkit, but it does not refer to social impact. The Toolkit only includes one version (a light green version) of the data sharing provision, because it is such an important issue and the Toolkit authors regard it as proportionate given the importance of sharing the data and being something the parties should be able to agree. The revised MCL provision broadens

the provisions in version 1.7 of the MCL, since it extends the ability to disclose the shared data to cover possible reporting and finance requirements of the parties, and it provides for the landlord to have access directly to utility suppliers supplying the Premises, in order to obtain consumption data for the Premises.

Alterations (paragraph 4)

Paragraph 4.1 is unchanged and paragraph 4.2 (relating to metering) from version 1.7 of MCL is deleted, because of the new paragraph 5 mentioned below.

Metering (paragraph 5)

This provision is new and is largely based on the Toolkit's metering provision, although the MCL provision gives the landlord a right (rather than an obligation) at its own cost to install metering equipment to measure energy and water consumed at the Premises. Since the landlord does not have an obligation, the MCL wording does not include the Toolkit drafting relating to the landlord's failure to install the equipment.