

Note on MCL insurance provisions in version 1.8

The Committee has received feedback from a couple of firms querying the reasoning behind the changes to the insurance provisions in the new version 1.8 of the MCL (see [Guidance notes.docx](#)).

While market practice is mixed, it seems more common that landlord's insurers do not routinely insure tenant's installations, regardless of the nature of the installation. The Committee considered that the wording in the previous version 1.7 of the MCL could be clarified to better reflect market practice.

In paragraph 2.5 of the Insurance Schedule to version 1.7, the landlord's insurance obligation and other provisions did not apply to "tenant's fixtures forming part of the Premises or the Building".

The reference to "tenant's fixtures" created some uncertainty as to whether all tenant's installations were being excluded.

The meaning of "tenant's fixtures" is a legal, technical matter and it inadvertently draws arbitrary and uncertain distinctions between different types of installations, where none was intended, based, for example, on how integrated the installation is. For example, some types of floor coverings installed by the tenant will constitute tenant's fixtures and some will not.

The Committee considered that the position could be clarified and the changes made for version 1.8 are ones of clarification as to what is not insured by the landlord.

There is a clear statement in version 1.8 that the insurance provisions do not relate to what is now defined as "Excluded Tenant's Works", which means "except to the extent that the Landlord stipulates otherwise, any Permitted Works;".

"Permitted Works" has a clearer, more precise definition as follows which avoids references to tenant's fixtures. *"Permitted Works" any works or installations (including any External Works) to which the Landlord has consented or for which, under clause 4.11, the Landlord's consent is not required[together with any Prior Lease Alterations];"*

The definition of "Excluded Tenant's Works" provides flexibility for the landlord in being able to stipulate that it will insure "Permitted Works", if it so wishes. It is therefore open for the parties to agree (whether formally in a licence, or informally) that certain installations, e.g. major or integrated installations, will be insured by the landlord. The new definition of Excluded Tenant's Works is therefore much easier to apply in practice, with no legal debate about whether or not tenant alterations are a tenant's fixture.