

An Introduction to:

Forms of Agreement for Trader Occupation of Market Stalls and Shops

This is a short guide for new entrants to markets management as to what forms of agreement are normally applicable for regular traders to use market premises (stalls and lock-up shops).

Every regular market trader should have a formal written agreement issued by the market operator in order that trading in a competitive and communal market is regulated for the good of the trader, for the market customers and for the market authority as landlord.

The agreement contains clauses specifying the responsibilities and obligations of both parties to each other.

Casual traders using open market stalls need to have their attention drawn to the rules and regulations of the market – and to sign that they agree to abide by them - before they are allocated a stall.

Casual traders should complete a registration form so that management has basic records of third-party insurances, proof of identity - ID, right to stay in the country, contact details, etc. A basic format is available on NABMA's website (Key information sheet 13).

This guide is written in basic and general terms, though local circumstances - often inherited from previous administrations - can have an effect upon agreements and it is essential that the market manager takes legal advice from the local authority's legal department before implementing significant changes to agreements.

It is also good management practice that there is trader (and trader representative) consultation before implementing change.

The benefit of having a written agreement in place is that disputes between trader and management are reduced. The clearer the agreement, the less disputes arise.

LEASES and TENANCY AGREEMENTS – Key Factors

- Mainly used for shops and lock-up stalls with fixed period tenancies – usually for several years - ending on a specific date.
- The words “lease” and “tenancy agreements” mean the same thing, though it is the practice in many market circumstances that lock-up stalls in market halls are called, locally, tenancy agreements whereas agreements for lock-up shops around, say, a market hall outside perimeter - are often called leases.
- Tenant (lessee) obligations can be onerous for those with very long leases as they can incur repairing costs for the premises.
- Unless specified in the agreement to the contrary, most leases/tenancy agreements can be assigned (transferred to a different trader) in particular circumstances and subject to landlord checks on suitability.
- The goods authorised to be sold from the shop/lock-up stall are to be stated clearly in the agreement in order to avoid disputes. Specified opening times and closing times are similarly to be stated.
- Covered by the Landlord and Tenant Act 1954 (Part 2) therefore formal notice has to be given to the tenant by the landlord and vice versa in order to end the lease – and there is automatic right for the tenant to be granted a new lease unless there are significant specific reasons why the landlord would object.
- Notice provisions (a “Section 25” form for landlords, a “Section 26” form for tenants) have to be correct and in accordance with the Act in order to be implemented correctly and in accordance with the law.
- Notice is normally given by the landlord in order to raise the rent, to cancel the lease where the premises are needed for development or to stop the tenant from carrying on practices which are banned by the lease or failure to pay the rent (“breaches of the tenancy”).
- A landlord cannot simply gain access into the premise without permission from the tenant. The tenant has what is called “quiet enjoyment”.
- A lease can be “contracted out” of the L&T Act notice requirements, but that has to be agreed by both parties at the outset as the tenant would have no “security of tenure”.
- A document entitled “Tenancy at Will” can be used in the short term if both parties agree that the agreement is outside the terms of the L&T Act – i.e. that either the tenant or the landlord can give immediate notice of termination where appropriate.
- A template Tenancy at Will document can be found on the NABMA website (Research papers Key Info Sheet no. 10) – but each individual

market authority will have its own version to ensure that local factors are included – and it would be pertinent to always state that “it is agreed that the tenancy is outside the terms of the L&T Act 1954”.

- The County Court has jurisdiction to decide the outcome in cases of dispute.
- Leases and tenancy agreements tend to have many pages and are most often couched in solicitor-written “legalise” that sometimes cannot easily be interpreted – so ask your solicitor to explain where necessary so that you as a manager understand enough to be able to adequately manage your tenants.
- A template of a lease agreement can be found on the NABMA website (Research papers Key Info Sheet No.9) – but each individual market authority will have its own version to ensure that local factors are included.
- Should you wish to revise your tenancy agreements you may obtain current examples from helpful NABMA colleagues. Remember that any proposed changes need to be accepted by the tenants, which may more easily be done when tenancies are being started or renewed.

*NB Case law states that if a person has “**exclusive possession**” of a lock-up premise such as a market shop or a lock-up market hall stall – i.e. a unit to which nobody else can gain entry - then the occupation of the premise must be under a form of tenancy/lease agreement and that the occupation cannot be under the form of a licence which excludes the L&T Act requirements. The case law follows *Street v Mountford 1985*. Irrespective of whether a licence document is used for a lock-up premise, the law states that it is not a licence and that it is a tenancy/lease agreement.*

STALL LICENCES – Key Factors

- *Mostly used for open market stalls where the trader has no exclusive possession.*
- *Most open market stall licences are only for one day of trading so that there is great flexibility for both trader and market operator.*
- *For regular traders having the same stall to return to on a particular day of the week is, of course, highly beneficial to the traders and their customers – and to ease of control for markets management, as the County Court does not have jurisdiction under the L&T Act 1954.*
- *Termination of the licence often requires one week's notice by either side (which can be flouted on occasion by the trader and without repercussions as the operator costs in taking action would exceed the income theoretically available).*
- *The obligations and responsibilities of both sides should be covered by clauses in the licence – but the format is usually simpler and shorter (say, one or two pages long) than a tenancy/lease agreement.*
- *Examples of clauses include trader attendance times, start date and notice period, goods authorised to be sold, prevention of encroachment, management instructions to be followed, stall charging arrangements, etc.*
- *Some licences include how compliance (disciplinary) action is taken when a trader does not fulfil his/her obligations. If not specified in detail it is helpful for the licence to state where the compliance document is readily available. Such a document is available to members on the NABMA website.*
- *Should you wish to revise your present licences, current examples of open market stall licences are usually obtainable from helpful NABMA colleagues.*