

Guidance Note: Leases

Tenancy at Will?

1. Businesses and other people often occupy premises under a lease. A lease is a formal agreement between the Landlord and the Tenant for the Tenant to occupy the premises for a specified period of time, subject to the provisions of the lease. The lease will set out what a Tenant must and must not do, and the reversionary interest in the premises will remain with the Landlord.
2. Sometimes it is not appropriate to grant a lease if the person going to occupy the premises is only negotiating a lease but the parties may wish to use a Licence.
3. A Licence may also be appropriate if the person is not going to have exclusive use of the land or a Landlord's office accommodation.
4. A Tenancy at Will has no fixed term and can be terminated with immediate effect. It is suitable for very short term arrangements.
5. A Licence is similar to a lease in that it is not an estate in land, but a lease has a fixed term. However, a Licence is unlike a lease in that the licensee cannot acquire security of tenure.
6. An arrangement is a lease if it is for a fixed term. Such an arrangement cannot be a licence just because it is called a licence.
7. Beware of granting a "licence" if the person is really a tenant. If there is any doubt as to whether a proposed arrangement is a lease or a licence, the safest approach is to grant a lease which excludes the possibility of a licence.

usually occupy their premises under a lease. A lease is a formal agreement between the Landlord and the Tenant for the Tenant to have exclusive use of the premises for a specified period of time, subject to the provisions of the lease. The lease will set out what a Tenant must and must not do, and the reversionary interest in the premises will remain with the Landlord.

Sometimes it is not appropriate to grant a lease if the person or organisation is only negotiating a lease but the parties are in the process of negotiating a lease, the parties may wish to use a Licence.

A Licence may also be appropriate if the person is not going to have exclusive use of the land or a Landlord's office accommodation.

A Tenancy at Will has no fixed term and can be terminated by either party at any time. It is suitable for very short term arrangements.

A Licence is similar to a lease in that it is not an estate in land, but a lease has a fixed term. However, a Licence is unlike a lease in that the licensee cannot acquire security of tenure.

An arrangement is a lease if it is for a fixed term. Such an arrangement cannot be a licence just because it is called a licence. It is a lease if the person has exclusive possession of premises for a fixed term, whether or not the parties call it a lease. It is not a licence.

Beware of granting a "licence" if the person is really a tenant. A court might decide that the person is really a tenant. If there is any doubt as to whether a proposed arrangement is a lease or a licence, the safest approach is to grant a lease which excludes the possibility of a licence.