

HIRE AGREEMENTS

This document provides general guidance on hiring agreements and a list of provisions that one would expect to see within such documents. It also gives some examples of various clauses.

1 The Hire Agreement

A written agreement between the owner and the hirer ensures that both parties are aware of their rights and responsibilities.

The agreement should be between the owner and the person/organisation who is hiring the premises. It should be signed by an authorised representative of the owner and of the hiring organisation/individual.

In order to legally enforce the agreement and its conditions, a fee should be paid by the hirer for the use of the premises.

Special care must be taken to ensure that hiring agreements are not signed by people under 18 years of age. This is because a minor cannot be held responsible in law for breaches of an agreement of this kind, e.g. damage to the premises during the hire period.

It should also be made clear which licences are held by the owner and that it is the hirer's responsibility to obtain any others which are necessary for the event.

2 Insurance

Before hiring out a hall etc. it is important to ensure that the basic insurance is in order and to consider whether it would be sensible to include additional cover for items such as the hirer's public liability or loss of revenue.

The building and contents must be insured against loss or damage. The possibility of damage, whether accidental or not, should be considered.

Additionally public liability insurance will be important. It is important for the owner to establish whether the hirers have their own public liability cover. While hirers for large bodies such as the Scouts, will certainly be insured for their activities, many hirers will have no relevant insurance cover. Although, you can make it a requirement that the hirer has insurance for its event.

3 Deposits

The owner could request a deposit which can be retained as compensation for loss of revenue in the event of the hirer cancelling at short notice. Perhaps also a special deposit should be made to cover the cost of repairs for any damages caused by the hirer, (especially if the venue is often used by "casual hirers" for one off events rather

than regular bookings). Such a deposit could be requested on the occurrence of certain events, such as dances. The following wording could be used:-

“A special deposit of £... has been paid by the [Hirer] to the [Owner] who within 28 days of the termination of the period of hire will repay such deposit to the [Hirer] less the sum of rectifying any damage caused to the premises and/or contents thereof during the period of the hiring as a result of the hiring.”

4 Food Health and Hygiene

If food is to be prepared, served or sold on the premises, the owner will be responsible for ensuring that the hall, and in particular the kitchen, is adequately supplied, for the possible level of catering to be undertaken by the hirer, and that it is clean and well maintained.

The hirer is responsible for ensuring that all stages of the preparation and serving meet legally required health and hygiene standards and there should be a provision to cover this, (e.g. *“The Hirer shall, if preparing, serving or selling food observe all relevant food health and hygiene legislation and regulations.”*).

Additionally, premises which will be used for the preparation and servicing of food on 5 or more occasions in 5 consecutive weeks should be registered with the local authority by the owner as “food premises” at least 28 days before such use.

5 Electrical Appliances

The owner will be responsible for the regular testing of electrical appliances that belong to the premises. However, of course, the hirer is responsible for ensuring that any electrical appliances that the hirer brings onto the premises are safe and used in a safe manner and comply with the Electricity at Work Regulations 1989, (e.g. *“The Hirer shall ensure that any electrical appliances brought by the Hirer to the premises and used there shall be safe and in good working order, and used in a safe manner.”*)

6 Cancellation at Short Notice

Some premises are required as polling stations and if this is the case, this should be taken into account in the document. (e.g. *“The Committee reserves the right to cancel this hiring in the event of the hall being required for use as a Polling Station for a Parliamentary or Local Government election or bye-election, in which case the Hirer shall be entitled to a refund of any deposit already paid.”*)

7 Lack of Availability

It is possible, through no fault of the owner, that the premises or part of it may be damaged or there may be a failure of services which may cause the premises to become unfit for use. (e.g. *“In the event of the premises or any part thereof being rendered unfit for the use for which it has been hired, the Owner shall not be liable to the Hirer for any resulting loss or damage whatsoever.”*.)

8 Cancellation

Once the agreement is completed, (i.e. signed and dated), the parties are then contractually bound to carry out the hiring and comply with the terms of the agreement. Failure to do so will be a breach of contract. However, there may be situations where either party may wish to cancel a booking. The following provisions can be used to cover such eventualities:-

“If the Hirer wishes to cancel the booking before the date of the event and the Owner is unable to conclude a replacement booking, the question of the payment or the repayment of the fee shall be at the discretion of the Owner”.

“The Owner reserves the right to refuse a booking without notice or cancel this hiring agreement at any time either before or during the term of the agreement upon giving 7 days notice in writing to the Hirer. The Hirer shall be entitled upon such notice to the reimbursement of such money including the deposit or a proportion of the same as have been paid by the Hirer to the Owner but the Owner shall not be liable to make any further payment to the Hirer”.

“The Owner shall, upon giving not less than [] days notice in writing to the Hirer, have the right to cancel the booking if the Owner knows, or has reason to believe, that such booking will lead to a breach of licensing conditions, if applicable, or other legal or statutory requirements. In the event of a cancellation under this clause the Owner shall refund to the Hirer any deposit or booking fee already paid but shall not be liable for any other costs whatsoever incurred by the Hirer”.

9 Licensing

9.1 Village/Church Halls etc.

The new Licensing regime, pursuant to the Licensing Act 2003, (the “2003 Act”), came into effect on 24 November 2005. From that date every village/church hall etc. putting on “*regulated entertainment*” (see below for definition) must hold a Premises License (the “PL”) or, if no PL is held, then permission for the event must be obtained from the local authority through a Temporary Event Notice, (“TEN”). “Public Entertainment Licences” no longer exist.

The 2003 Act requires that if alcohol is to be sold at an event within a hall that has a PL which covers the sale of alcohol then the PL is subject to mandatory conditions which will mean that no alcohol sales may be made unless the PL has named on it a nominated person, known as the designated premises supervisor who in turn must be a personal licence holder. All sales must take place under the authority of a personal licence holder.

At the end of July 2009 there came into force The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc) Order 2009, (S.I. 2009 No. 1724). This Order applies to PLs held by village halls, church halls, chapel halls, community halls and similar community premises. The Order allows the mandatory conditions to be disapplied and a new alternative condition applied instead. Pursuant to the new alternative condition, the responsibility for authorising the sale of alcohol will fall on the PL holder itself, which will be the committee or board of individuals responsible for the management of the premises. The licence holder will undertake the responsibilities previously required of the designated premises supervisor. Provided

the PL holder, (i.e. the committee or body of individuals responsible for the management of the community premises), has properly authorised the sale of alcohol by a hirer, (in writing through a hiring agreement for instance), the hirer using the premises can sell alcohol under the authority of the PL and does not have to obtain a personal licence. That said, this will not be automatic and the management committee (or other body responsible for the management of the premises) would still need to apply to the relevant local licensing authority, either for a PL with the new alternative conditions or for a variation to their current PL.

You should note that the Government has decided that the police should have the opportunity to object to the removal of the mandatory conditions at certain premises on crime and disorder grounds. Therefore, the chief police officer for the area in which the premises are situated may make representations in relation to an application, following which a hearing on the application will take place unless all parties agree it is unnecessary.

In summary, if the PL has been amended to disapply the mandatory conditions:-

- (a) the managing body of the community premises will no longer need to amend the PL each time there is a change of the designated premises supervisor;
- (b) there will be no requirement for a personal licence holder to be present when alcohol sales are made or indeed for alcohol sales to be authorised by a personal licence holder; and
- (c) there will be no requirement for community premises to apply for personal licences.

If alcohol is to be sold at an event within a hall whose PL does not cover the sale of alcohol then a TEN must be taken out to cover the sale.

If “regulated entertainment” and/or sale of alcohol is to take place at an event in a hall that has no PL then a TEN is required. Premises may use no more than 12 TENs in any one calendar year. Anyone can obtain up to 5 TENs a year. This means that people hiring the hall are allowed to obtain TENs, as well as the owner. It may be the case that the owner will prefer to obtain all the TENs themselves, to help them keep control of the number of TENs being issued for their premises. If this is the case then the owner needs to ensure that this is set out clearly in the hiring agreement. Additionally, if any licence is to be required, it should be made clear to the hirer that the hirer must give sufficient notice to the owner, if he/she wishes the owner to apply for a licence.

The 2003 Act affects those involved in the following:- Pubs and nightclubs; indoor sporting events; off-licences; restaurants that serve alcohol; businesses offering hot food between 11.00pm and 5.00am; hotels, guest houses and other places that sell alcohol; private members clubs and social clubs; theatres and amateur dramatics groups; cinemas and organisers of “*regulated entertainment*”.

Owners of halls and similar establishments are likely to be involved under the categories of organisers of “*regulated entertainment*” and a possible involvement in the sale of alcohol. Although owners can check with their local authority to ascertain whether a PL or a TEN will be required.

“Regulated entertainment” is defined as a performance of a play; an exhibition of a film; an indoor sporting event; a boxing or wrestling entertainment; a performance of live music; any playing of recorded music; a performance of a dance; and entertainment of a similar description to that falling within the performance of live music, the playing of recorded music and the performance of dance where the entertainment takes place in the presence of an audience and is provided for the purposes of entertaining that audience. (live music, or the playing of recorded music which is incidental to the event, is not regarded as the provision of regulated entertainment for the 2003 Act.

Any TEN issued must be given to the licensing authority and chief officer of police no later than ten working days before the day on which the event begins. If the police believe that the event would undermine crime prevention they may give a counter notice to the local authority and premises user. If a counter notice is issued the local authority must convene a hearing and decide whether the event may proceed, unless the police and premises user agree alterations to the TEN. A copy of the TEN must be kept on the premises and the police and local authority have rights of entry to the premises to assess the likely effect of the TEN on crime prevention.

If the hall is to be used for “regulated entertainment” and the owner does not hold a PL, the owner must apply for either a PL or a TEN. The owner should bear in mind that you can only use up to 12 TENs in a year and there may be a charge for each TEN.

9.2 Places of “public religious worship” – Churches

You should note that the provision of entertainment or entertainment facilities for the purposes of, or incidental to, a religious meeting or service or provided at a place of "public religious worship", are exempt from the definition of "regulated entertainment". This would exempt, not only the singing of hymns or other religious material at a religious service, but also the performance of a classical music concert in a church. This means that such "events" would not be licensable under the 2003 Act. Please note, this won't apply to halls or community centres even if owned and managed by a church.

You are advised to contact the local licensing authority at the earliest possible opportunity prior to the event to check whether the proposed event will be covered by the aforementioned exemption.

There is, however, no exemption regarding the sale of alcohol at places of “public religious worship” and the same licensing conditions will apply in relation to the sale of alcohol as apply to village/church halls. Alcohol may be given away but this must be genuinely free:- For instance, charging an entrance fee to an event and then providing alcohol free of charge could be construed as a sale, which would need to be covered by a licence. On the other hand, if people were to bring their own alcohol then no sale would take place and no licence would be required. Your local council will be able to advise further in relation to any specific application.

In addition, pursuant to the Licensing Act 2003 (Fees) Regulations 2005, (S.I. 2005 No. 79), no fees are payable for PLs allowing regulated entertainment **only** (i.e. no alcohol) at church halls, chapel halls, village, parish or community halls or other similar buildings. (Of course, places of public religious worship (i.e. churches) will

not require a PL provided the provision of entertainment or entertainment facilities are for the purposes of, or incidental to, a religious meeting or service). There is, however, no such exemption in relation to the sale of alcohol for either churches or halls.

The licensing section in the relevant local authority can provide an owner with further advice and an application pack for a PL or a TEN.

More information can be found at www.culture.gov.uk, the website of the Department for Culture, Media and Sport.

10 Copyright

The hirer should not infringe any copyright, or performing rights and a suitable indemnification should be contained within the hire agreement against the costs for any such infringement. You should require from the hirer copies of any licence(s) to use sound/film recordings (e.g. records, tapes, CD's, DVDs etc.) where music/film is to be played/shown as part of an event. You should also require copies of any licence(s) for the performance of a dramatic or musical work or other presentation (which could include the public delivery of a lecture). (Hirers should be warned that the use of 'home produced' tapes is illegal).

Further advice in relation to copyright can be obtained from the Christian Copyright Licensing International organisation (the "CCLI"). The CCLI is able to offer practical advice and support through the maze of copyright, (www.ccli.co.uk).

11 Fire and Safety Regulations

The agreement should require the hirer to comply with fire and other safety regulations. Attention should be drawn to any conditions attached to any licences applicable for the premises. In particular, reference should be made to:-

- (a) The action to be taken in the event of a fire. Including calling the fire brigade and evacuating the hall;
- (b) The location and use of fire equipment;
- (c) Escape routes and the need to keep them clear;
- (d) Method of operation of escape door fastenings;
- (e) Appreciation of the importance of any fire door and of closing all fire doors at the time of a fire; and
- (f) Location of a the first aid box.

12 Safety of Young Children

Provision should always be made to ensure the protection of young children. No activities or groups involving young children should be permitted on the premises except with the written agreement of the owner, and there should be a provision

within the hire agreement to require compliance with the relevant provisions of the Protection of Children Act 1999 and the Children Act 1989. It should be made clear to the hirer that it is the responsibility of the organisers of the event/activity to ensure that only fit and proper persons have access to young children, and that such persons shall at all times be in attendance when young children are on the premises.

The hiring of church premises to children's groups occurs quite frequently. You should refer to the Diocesan Child Protection Guidelines and/or the Diocesan Child Protection Adviser, for specific advice and guidance on the matter.

That said, you should ensure that any hirer must provide written confirmation that they have a child protection policy in place and that it complies with the Parish's own policy and it has carried out the requisite Criminal Record Bureau checks. If the hirer does not have its own policy, it should comply with the Parish's policy.

13 Betting, Gaming and Lotteries

It should be made clear to any hirer that those responsible for the event must ensure that any relevant legislation, in relation to the above, is complied with.

14 Possible Nuisance Issues

The hire agreement should also ensure that the hirer:-

- (a) Does not allow litter to be left on or around the premises;
- (b) Does not allow smoking in the premises;
- (c) Does not allow animals (except guide dogs) on the premises, except for a specific animal related event and then only with the owner's prior agreement;
- (d) Does not allow noise to reach unacceptable levels and causes no nuisance or inconvenience to adjoining owners.

15 Storage and End of Hire

Permission should always be sought from the owner prior to allowing the hirer to store any items on the premises. Of course, any such items should be removed at the end of the period of hire.

In fact, provision should be made to state that the hirer shall be responsible for leaving the premises and surrounding area in a clean and tidy condition, properly locked and secured unless directed otherwise by the owner and any contents temporarily moved from their usual locations should be replaced, otherwise perhaps an additional charge should be levied.

16 Occupation

To try to ensure that the hire agreement isn't regarded as a tenancy, it is worth inserting a provision along the following lines:-

“The occupation permitted by this agreement shall not be exclusive and the Hirer shall not have any right to exclude the Owner and persons authorised by the Owner from entering and remaining in the [church/hall] or any part thereof at any time without interruption”

17 Regular Hires

If the booking of the premises is to be a regular occurrence over a period of time, there are other issues that should be considered. Such as the regular payment of a fee, (e.g. when will it be paid? What happens in the event of non-payment?); the termination of the agreement, (e.g. when and how will it be terminated? Will notice be required?); key-holders, (e.g. will the hirer have a key? If so, who and on what basis will the keys be issued? (i.e. will a deposit be payable)); inspections and access, (e.g. will you wish to be able to carry out inspections on a regular/ad hoc basis to ensure compliance with the terms of the agreement? Will access vary in/outside “term” time?).

It is possible that in certain situations the Charity Commission's consent will be required for a regular non-church use of a church hall. Guidance can be found on the Charity Commission's website:

<http://www.charitycommission.gov.uk/publications/cc18.asp>

However, you should contact the Charity Commission and seek your own advice at the earliest opportunity.

18 Legal Advice

These guidance notes provide general advice only and will not be relevant to all situations nor can they hope to cover all situations. You are strongly advised to seek your own legal advice to ensure that issues concerning your particular property are covered by the proposed hiring agreement.