

Magistrates Building, Town Hall Complex, 1 Farnan Avenue, London E17 4NX

# Guide to Leasing a Commercial Property



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# 1. Entering a commercial lease

While some businesses can start in a back bedroom, at a very early stage as a start-up, you are probably going to need to find premises where you can work and develop your business with like-minded people.

## 1.1 Initial considerations

If you are setting up a business or looking to expand to larger premises, you will need to find the best property available to **suit to your needs**. Before starting your search for property via a commercial agent you will need to decide:

- how much **space** you need
- what the **use** of the property will be
- your **financial** position

Once you have answered these questions, you will be able to decide whether or not you want to **purchase or lease** a property.

## 1.2 Lease of a property

Once you have decided to rent a property, you will need to sign the appropriate agreement. A **lease of part**, a **lease of whole**, an agreement to **share space** and a **sublease** are all ways in which the property can be rented.

Some lettings will be needed on a short-term basis whilst others will be required for a longer, more permanent time.

There are various advantages of renting such as flexibility. The term of a lease can vary between 2-25 years but usually runs between 3-5 years. A short lease with options to renew may be more suitable than a longer lease with **break clauses**. Upfront costs for a lease can be relatively low compared to purchasing a property.

Under a short term lease, you will usually only be responsible for the interior with the landlord remaining responsible for the exterior of the property. Furthermore, you will be able to negotiate with the landlord over any aspect of the lease; the **Code for Leasing Business Premises** aims to provide fairness between a landlord and tenant in negotiating the terms of a lease.

## 1.3 Heads of Terms

Once basic terms of the letting have been negotiated, the landlord or the landlord's agent will draw up the **heads of terms**. The heads of terms are the main details of the proposed letting arrangement. They form the framework of the documentation

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## 1.4 Proposed use of the property

Don't always assume that because a landlord is granting a **lease for office use** that this use is authorised. Ask for a copy of the planning permission to check that the proposed use is permitted.

You will be liable to ensure that what you want to use the property for complies with local and national planning regulations. You may need to speak to the local planning authority and apply for a change of use to enable you to carry out your business activity in the building.

It is recommended that you contact the local planning authority at an early stage to make sure you can use the property for your business activity.

Check whether there are any restrictions on the use of the property for loading and unloading etc which may be vital for operating your business.

## 1.5 Condition of the property

You may need to carry out a **survey** if you are taking a **lease of the whole property** and are responsible for the interior and exterior of the building, in order to highlight any defects or areas of disrepair. When the lease comes to an end, it will be your responsibility to make good any defects and leave the property in good repair and condition.

If the property is in a poor state of repair, you may want to consider agreeing a schedule of condition with the landlord. This limits your obligations to repair the property to the standard contained in the schedule.

## 1.6 Costs involved

You will pay rent under the **lease** but **VAT may be payable** on top and the lease may contain a **rent review**. Rent reviews are usual in leases of three years or more and an upwards only rent review means that you will not benefit from any decrease in market rent levels.

In addition to the commercial rent, you will be liable for payment of Business Rates. Further you will have to pay for your utilities and arrange for any connections for main services that you require including IT connections.

When taking out a new lease you will be responsible for paying the Council's legal and surveyor's fees.

## 1.7 Service charge & insurance

If you are taking a **lease** of part of a building, you may be required to pay a service charge. Make sure you ask for an **estimate** of what this will be and if it is a significant amount, ask whether the landlord will agree to cap your contribution.

It is usual for a landlord to **insure** the property but you will be responsible for paying the whole (or a proportion) of the premium and for loss of rent if the property is destroyed or damaged and unfit for occupation and use.

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You will also need to take additional insurance for your contents which are not covered by the buildings insurance.

## 1.8 Deposit or guarantee

A tenant may be asked to enter into a **rent deposit deed**. The landlord has the right to withdraw sums from the rent deposit to cover any costs, should the tenant default any of the lease covenants for example any damages or late payments of rent.

Should this occur the landlord may insist that the tenant then tops up the deposit. The tenant will usually get the deposit back when the lease ends provided the tenant has fulfilled all its obligations under the lease. A landlord should use this **rent deposit deed** to protect their commercial property and to ensure payment if the tenant defaults.

The tenant may also have to provide a guarantor for the **lease**, if the lease is taken in the name of a new or young company. It is most common if a landlord is unsure that the tenant can pay rent (usually due to the fact the tenant is young and may have insufficient credit history in the case of a student or if the prospective tenant has a poor tenant credit history). The guarantor's application form is similar to the tenancy application. Credit searches and references will be checked.

## 1.9 Stamp Duty Land Tax (SDLT)

Depending on the amount of rent, premium and VAT payable, you may have to pay SDLT. It may also be appropriate to register or note the **lease** at **Land Registry**, in which case additional fees will be incurred.

## 1.10 Security of tenure

If the **lease** is 'excluded' from Part II provisions of the Landlord and Tenant Act 1954, you will have **no automatic right to stay** at the end of the lease. A **lease with protection** means that you have a right to request a new lease and the landlord can only refuse on certain ground.

## 1.11 What is security of tenure and why is it important to landlords?

The statutory right to renew applies to any lease of premises occupied by a tenant for a business use. One way to exclude the statutory right to a new lease is for the parties to agree to 'contract out' of the procedure. If not 'contracted out' the tenant will have a statutory right to a new lease and the landlord can only refuse to grant a new lease on certain strict grounds. The decision to 'contract out' should be made at the start of negotiations between the landlord and the tenant and recorded in the property heads of terms.

## 1.12 Under what strict grounds can the landlord refuse to grant a new lease

The grounds for refusing to grant a new business lease are set out in the Landlord and Tenant Act 1954. The landlord can refuse to grant a new lease where:

- the tenant has failed to keep the property in good condition or has substantially breached the lease in some other way, eg using the premises for a purpose not permitted in the lease
- the tenant has been persistently late in paying the rent

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- the landlord has arranged or can provide suitable alternative accommodation for the tenant
- the landlord wants to sell the premises as a whole and the tenant occupies part of the premises
- the landlord wishes to demolish or rebuild the premises (the tenant could remain in occupation if they allowed the landlord access to carry out the work)
- the landlord wishes to use the property for their own business or to live there

### 1.13 What happens if the lease is 'contracted out'?

A contracted-out lease will come to an end on the expiry date – no notice from the landlord is required.

### 1.14 What happens if the lease is not 'contracted out'?

A lease that is not contracted out will allow the tenant the right to a new lease when the current lease ends. The landlord can only refuse if one of the very strict grounds exists and he may be required to pay compensation to the tenant.

### 1.15 Getting the procedure right

**The procedure to be followed is strict:**

- the landlord must serve a **landlord's notice to exclude security of tenure** (warning notice)
- in response the tenant must sign a simple declaration or a statutory declaration

The procedure varies depending on the length of time between agreeing the lease and allowing the tenant into the property:

- less than 14 days before the lease is completed the landlord must serve a warning notice on the tenant and the tenant must complete a statutory declaration
- 14 days or more before the lease is completed the landlord can serve the warning notice and the tenant responds by a simple declaration
- if there is more than one tenant the landlord's warning notice must name them all and it must be served on all of the tenants individually
- once the landlord's warning notice is served the landlord cannot make any changes to the lease without having to serve a new warning notice

The most favourable procedure is for the tenant to swear a statutory declaration, as this must be done in the presence of a solicitor who will explain the procedure to them and advise them on the implications of entering into a lease that is excluded from the security of tenure provisions.

### 1.16 What happens if the notice procedure is not followed?

The Landlord's warning notice must be served and the Tenant's simple declaration or statutory declaration must be completed before the tenant is given access to the property. If not, the tenant could argue that their occupation has given them additional rights and if successful at court, the tenant may have gained security of tenure.

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## 1.17 What are heads of terms?

Recording the main terms of the lease before the document is prepared can save both parties time and money and help prevent any misunderstanding about what the lease will contain

Heads of terms reflect the deal reached between the landlord and the tenant, so that the lease can be prepared. Getting it right at the beginning means that the landlord can plan the rental income he will receive, know when he will get the property back and inform the tenant(s) of what he expects from them. Heads of terms are usually prepared by the landlord and are specific to each lease and property.

## 1.18 Key terms to think about

There are a number of key points that should be considered and negotiated with the tenant:

**Tenant details** - the landlord will want to obtain references and financial information about the tenant to make sure he is satisfied that the tenant can pay the rent during the term.

**Property** - the full details of the property should be included along with any additional rights the landlord will grant the tenant – eg the right to park a car, or access to a cycle store.

**Repairs** – the heads of term will set out which party is responsible for keeping the property in a good state of repair and what the obligations are at the end of the lease (what condition you need to hand the property back to the Landlord). You need to consider and understand the potential costs at the end of the lease as you may be liable for dilapidations (putting the property back in a certain condition at the end of the lease).

**Rent** - commercial leases are usually granted at a market rent for an annual sum paid monthly or quarterly in advance. Rent can be paid on completion of the lease, or the landlord may decide that the tenant can have a rent-free period so rent payments will start on a future date.

**Term** - how long the lease will run for needs to be agreed. Depending on the length of the term, other clauses, such as a break clauses, may be relevant. A short-term lease usually runs from between 1-3 years.

**Assignment and underletting** - depending on the length of the term, the landlord may allow the tenant to assign or underlet the whole of the property. An assignment allows the tenant to pass on the lease to another, an underlease allows another to use the property, but the tenant is still responsible for the property under their headlease.

**Permitted Use** - the use of the property must be recorded so that the tenant knows what the permitted use of the property is.

**Break clause** - the landlord needs to decide whether he, the tenant or both of them will be able to end the lease early on notice to the other. If there will be a break clause the date and any pre-conditions should be included.

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**Security of tenure** - short-term leases are usually 'excluded' from the statutory right to a new lease when the current lease ends.

**Rent deposit** - if the landlord is concerned about whether the tenant will be able to pay the rent the landlord could request that they provide a rent deposit as security. If so, the amount to be paid should be recorded in the heads of terms.

**Compliance:** In addition to the above you, as the tenant, will be responsible for health & safety compliance – please refer to the Leasehold Premises Compliance Checklist at Appendix 1

### **1.19 Does it matter what is agreed?**

Although not legally binding, heads of terms show the intent of the parties but do not legally enforce them to go on and complete the lease. Either party can still change their mind and not enter into the lease.

### **1.20 Seek Legal advice and instruct a suitably experienced solicitor**

London Borough of Waltham Forest strongly recommends that if you are considering leasing part or all of a property that we seek legal advice from the outset. Entering into a lease commits you to a legally binding contract with the landlord. You will be legally and financially obligated under the terms of the lease and it is vital that you fully understand those obligations prior to signing a lease.

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## 2. How to terminate commercial leases

There are different procedures for ending a commercial lease depending on who is terminating (the landlord or the tenant), on what basis either party seeks to terminate and when. In many instances, the parties can successfully negotiate to terminate the lease; however, they need to be aware of their legal obligations.

### 2.1 During the term of the lease

#### 2.1.1 Surrender

A tenant who wishes to give up possession of a property during the fixed term of a lease can negotiate surrender with their landlord and effect it by:

deed; or

conduct, ie delivery of the keys by the tenant and acceptance of them by the landlord.

#### 2.1.2 Forfeiture

Forfeiture (the act of forfeiting a lease) allows a landlord to end a fixed-term lease on account of a breach of the lease by the tenant. The landlord may only terminate in this way if:

- the lease contains a forfeiture clause; and
- the forfeiture clause allows the landlord to forfeit the lease in respect of the breach.

The forfeiture procedure will depend on the nature of the tenant's breach. If the landlord seeks to forfeit the lease for the tenant's non-payment of rent, there is generally no need to serve notice on the tenant. For breaches other than non-payment of rent, the landlord will have to serve a **section 146 notice**.

In order to effect the forfeiture, the landlord may physically re-enter the property and bring the lease to an end, however, this can only be done if the tenant has clearly vacated the premises. If the property is still occupied by the tenant, the landlord may bring possession proceedings against the tenant based on a valid forfeiture.

#### 2.1.3 Break clauses

A break clause allows a tenant (and sometimes the landlord) to end a lease before it ends. There are certain requirements that must be followed to ensure the break is valid, eg the tenant must serve upon the landlord a **break notice**.

### 2.2 After the lease has expired

Whether you can end a commercial lease on or after the expiration of its term depends on whether or not it is within the scope of certain legislation governing what is called "**security of tenure**". Security of tenure is the right of a tenant of property to occupy it after the lease expires.

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If the lease comes within the scope of the legislation (the Landlord and Tenant Act 1954), it will automatically continue after the expiry of the term if the tenant remains in occupation of the property for business purposes. Here, either the landlord or the tenant can terminate the lease by serving one of the statutory notices:

- Section 25 notice - if the landlord wants to terminate the lease. If the landlord can satisfy one of the grounds in Section 30 of the Act, the tenant will not be able to take a new lease. These include breach of repairing obligations and a persistent delay in paying rent.
- Section 26 notice - if the tenant wants to terminate the tenancy and request a new one.

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### 3. Planning – Change of Use

The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. This Order is periodically amended, view details of the amendments.

It is generally the case that you will need planning permission to change from one use class to another, although there are exceptions where the legislation does allow some changes between uses.

For example, A3 uses can change to A1 uses without the need for planning permission. However, if you are proposing to change the use of a premises or land, you should always seek advice from the local planning authority to confirm whether planning permission is required or not.

The following list gives an indication of the types of use which may fall within each use class. Please note that this is a guide only and it is for local planning authorities to determine, in the first instance, depending on the individual circumstances of each case, which use class a particular use falls into.

#### Part A

- **A1 Shops** - Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafes.
- **A2 Financial and professional services** - Financial services such as banks and building societies, professional services (other than health and medical services) and including estate and employment agencies. It does not include betting offices or pay day loan shops - these are now classed as “sui generis” uses (see below).
- **A3 Restaurants and cafés** - For the sale of food and drink for consumption on the premises - restaurants, snack bars and cafes.
- **A4 Drinking establishments** - Public houses, wine bars or other drinking establishments (but not night clubs).
- **A5 Hot food takeaways** - For the sale of hot food for consumption off the premises.

#### Part B

- **B1 Business** - Offices (other than those that fall within A2), research and development of products and processes, light industry appropriate in a residential area.
- **B2 General industrial** - Use for industrial process other than one falling within class B1 (excluding incineration purposes, chemical treatment or landfill or hazardous waste).
- **B8 Storage or distribution** - This class includes open air storage.

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### Part C

- **C1 Hotels** - Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels).
- **C2 Residential institutions** - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.
- **C2A Secure Residential Institution** - Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks.
- **C3 Dwelling houses** - this class is formed of 3 parts:
  - C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
  - C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
  - C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.
- **C4 Houses in multiple occupation** - small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

### Part D

- **D1 Non-residential institutions** - Clinics, health centres, crèches, day nurseries, day centres, schools, art galleries (other than for sale or hire), museums, libraries, halls, places of worship, church halls, law court. Non residential education and training centres.
- **D2 Assembly and leisure** - Cinemas, music and concert halls, bingo and dance halls (but not night clubs), swimming baths, skating rinks, gymnasiums or area for indoor or outdoor sports and recreations (except for motor sports, or where firearms are used).

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### Sui Generis

- Certain uses do not fall within any use class and are considered 'sui generis'. Such uses include: betting offices/shops, pay day loan shops, theatres, larger houses in multiple occupation, hostels providing no significant element of care, scrap yards. Petrol filling stations and shops selling and/or displaying motor vehicles. Retail warehouse clubs, nightclubs, laundrettes, taxi businesses, amusement centres and casinos.

Before you negotiate a lease or buy a property for your business, check whether you need to obtain planning permission for your intended use, and, if so, your chances of getting it by contacting the Local Planning Authority.

### **3.1 Changes of use not requiring planning permission**

Planning permission is not needed when the existing and the proposed uses fall within the same 'use class', or if The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) says that a change of use is permitted to another specified 'use class'.

For example, a greengrocer's shop could be changed to a shoe shop without the need for planning permission as these uses fall within the same 'use class', and a restaurant could be changed to a shop or an estate agency as the GPDO allows this type of change to occur without requiring planning permission.

Whilst a change of use might not need permission, any external building work associated with a change of use may still require planning permission.

The table below summarises the permitted changes of use following the latest updates to legislation which came into force on 6 April 2016 (see links below). The table simplifies the complex legislation and should be read as a guide only, and in conjunction with the additional comments and restrictions below.

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From	To
<b>A1</b> (shops)	<b>A2</b> , or up to 150m <sup>2</sup> <b>A3</b> subject to Prior Approval, or up to 200m <sup>2</sup> <b>D2</b> subject to Prior Approval and only if the premises was in A1 use on 5th December 2013. A <b>mixed use</b> comprising an A1 or A2 use and up to 2 flats may also be permitted subject to meeting certain conditions. <b>C3</b> if the cumulative floorspace of the building is under 150m <sup>2</sup> and subject to Prior Approval.
<b>A2</b> (professional and financial services) when premises have a display window at ground level, but excluding betting offices or pay day loan shops	<b>A1</b> , or up to 150m <sup>2</sup> <b>A3</b> subject to Prior Approval, or up to 200m <sup>2</sup> <b>D2</b> subject to Prior Approval and only if the premises was in A2 use on 5th December 2013. A <b>mixed use</b> comprising an A1 or A2 use and up to 2 flats may also be permitted subject to meeting certain conditions. <b>C3</b> if the cumulative floorspace of the building is under 150m <sup>2</sup> and subject to Prior Approval.
<b>A3</b> (restaurants and cafes)	<b>A1</b> or <b>A2</b>
<b>A4</b> (drinking establishments)	<b>A1</b> or <b>A2</b> or <b>A3</b> except buildings that may be defined as "community assets".
<b>A5</b> (hot food takeaways)	<b>A1</b> or <b>A2</b> or <b>A3</b>
<b>B1</b> (business)	Up to 500m <sup>2</sup> <b>B8</b> .
<b>B2</b> (general industrial)	<b>B1</b>
<b>B2</b> (general industrial)	Up to 500m <sup>2</sup> <b>B8</b>
<b>B8</b> (storage and distribution)	Up to 500m <sup>2</sup> <b>B1</b>
<b>C3</b> (dwellinghouses)	<b>C4</b> (small houses in multiple occupation)
<b>C4</b> (small houses in multiple occupation)	<b>C3</b> (dwellinghouses)
<b>Sui Generis</b> (casinos and amusement arcades/centres)	<b>D2</b> , or only if existing building is under 150m <sup>2</sup> <b>A3</b> or subject to Prior Approval. <b>C3</b> if the cumulative floorspace of the building is under 150m <sup>2</sup> and subject to Prior Approval.
<b>Sui Generis</b> (betting offices and pay day loan shops)	<b>A1</b> or <b>A2</b> . <b>C3</b> if the cumulative floorspace of the building is under 150m <sup>2</sup> and subject to Prior Approval. A <b>mixed use</b> comprising a betting office or a pay day loan shop, or an A1 or A2 use and up to 2 flats may also be permitted subject to meeting certain conditions.
<b>Sui Generis</b> (agricultural buildings)	<b>A1, A2, A3, B1, B8, C1, C3, D2</b> , all subject to meeting relevant criteria and Prior Approval. See notes below.

## Prior approval

Some changes of use are subject to a prior approval procedure with the Local Planning Authority. This seeks approval of various matters, dependent on the nature of the use, but might typically include matters relating to parking and highways, flooding, and contaminated land. In the case of A3 uses, prior approval is required in respect of matters relating to noise, odour, waste collection, impact of the hours of opening, transport and highways impact, impact on existing shopping provision, the design of any external changes and a statement specifying the net increase in dwelling houses proposed by the development.

All prior approval applications require a fee to be paid to the Local Planning Authority.

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## 4. Seek Legal advice and instruct a suitably experienced solicitor

The Council highly recommend that you seek proper legal advice in all aspects of this process and depending on your proposed use and whether you intend to undertake works to the property it also recommended that you seek advice of the Local Planning Authority; undertake proper due diligence and consider all the legal and finance obligations that you are proposing prior to signing your lease.

## 5. Main contact details:

- Main Council Homepage: [www.walthamforest.gov.uk](http://www.walthamforest.gov.uk)
- Planning Homepage: [www.walthamforest.gov.uk/service-categories/planning-and-building-control](http://www.walthamforest.gov.uk/service-categories/planning-and-building-control)
- Commercial Property Homepage: <https://www.walthamforest.gov.uk/service-categories/commercial-property>
- Main Council phone number: **020 8496 3000**
- Main Council address: Waltham Forest Council Town Hall Complex, Forest Road, Walthamstow, London E17 4JF

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# Appendix 1



## Leasehold Premises Compliance Checklist

<b>Property Name</b>			
<b>Address</b>			
<b>Postcode</b>			
<b>Name of Duty Holder/Lessee</b>		<b>Tel No</b>	
<b>Person Completing the Checklist</b>		<b>Tel No :</b>	

**Notes –**

1. Where Col 3 indicated required/on site – please indicate that these assets/requirement are applicable to your premises.
2. Where an asset/issue is indicated in col 3, please indicate if you have valid certification.
3. Comments – please add any comments if needed.
4. Add any additional assets you may have.

No	Issue/Asset	Required / On site (note 1 ) tick	Provided and in Compliance. ( note 2 ) tick	Comments
01	Health and Safety Policy	✓	<input type="checkbox"/>	
02	General Site Risk Assessment	✓	<input type="checkbox"/>	
03	Asbestos survey and Register	<input type="checkbox"/>	<input type="checkbox"/>	
04	Water Hygiene/Legionella	<input type="checkbox"/>	<input type="checkbox"/>	
05	Fire Risk Assessment	<input type="checkbox"/>	<input type="checkbox"/>	
06	Fire Alarm and Detection	<input type="checkbox"/>	<input type="checkbox"/>	
07	Gas Safety Certificate	<input type="checkbox"/>	<input type="checkbox"/>	
08	Electrical Safety Certificate	<input type="checkbox"/>	<input type="checkbox"/>	
09	Portable Appliance Testing	<input type="checkbox"/>	<input type="checkbox"/>	
10	COSHH	<input type="checkbox"/>	<input type="checkbox"/>	
11	Lifts and Lifting Equipment	<input type="checkbox"/>	<input type="checkbox"/>	
12	Pressure Systems	<input type="checkbox"/>	<input type="checkbox"/>	
13	Access/Fall Arrest systems	<input type="checkbox"/>	<input type="checkbox"/>	
14	Glazing Safety Risk Assessment	<input type="checkbox"/>	<input type="checkbox"/>	
15	Hazardous Waste Regulations	<input type="checkbox"/>	<input type="checkbox"/>	
16	Oil Storage Regulations	<input type="checkbox"/>	<input type="checkbox"/>	
17	Vehicle Washing	<input type="checkbox"/>	<input type="checkbox"/>	
18	Yard Safety Risk Assessment	<input type="checkbox"/>	<input type="checkbox"/>	