



# Thinking of taking on business premises?

## Renting business premises – a short guide



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Thinking of taking on business premises?

# Thinking of taking on business premises?

## Read on before committing yourself!

This booklet tells you about some of the things you will need to think about before renting business premises. It also tells you where to get further advice.

Think carefully before signing any agreement. **Do not sign anything** unless you completely understand it and agree with it. Seek advice first from a property expert.

The booklet will tell you a little about some of the main steps. But it is only a very brief summary of property arrangements, which can be very complicated. **It does not take the place of fuller advice from property experts.**

## I need business premises – what should I do?

First, decide what sort of premises you want, and where they should be. For example, do you need to be near your customers, suppliers or employees? Or near transport facilities? What sort of premises can you afford?

To begin with, you could look at other businesses like yours and see what premises they are using. Do you want similar premises or something different?

You can find business premises in several ways. You could ask a commercial agent – Yellow Pages have details of local agents. You may see advertising signs outside empty premises. Local newspapers may carry adverts. Some companies advertise properties on the internet. Your local council may have details – ask for the Economic Development Unit. Your local Business Link may know about suitable local property.

## I have found business premises – what do I do now?

Before doing anything else, you should consult the property experts:

- a **chartered surveyor** will be able to advise you on the best sort of deal to suit your business needs; and
- a **solicitor** will be able to advise you on legal points arising from the lease, the legal agreement between you and the landlord. (For more information about leases, see the box on page 5.)

The Royal Institution of Chartered Surveyors (RICS) will tell you about surveyors in your area, and the Law Society will give you details of local solicitors. See 'Professional Bodies' on page 11 of this booklet.

If there is anything you don't understand, ask the experts. There are some special words used in property arrangements – property jargon. If you hear or read any of these words but don't understand them, ask your adviser to explain them to you.

There is also a 'jargon buster' on the ODPM website:  
([www.odpm.gov.uk/businessstenancies](http://www.odpm.gov.uk/businessstenancies)).

If you want to know more about the responsibilities of chartered surveyors and solicitors, get in touch with their organisations. Their details are on page 11 at the back of this booklet.

You may also want to talk to your bank manager or accountant about taking on business premises and how it will affect your pocket.

Remember this golden rule: while you will have to pay for expert advice, it could save you a lot more in the end. Mistakes with property can be costly, and they can even lead to business failure or bankruptcy.

## What will my commitments be?

This will be up to you. Your commitments will be only what you agree to. This is why it is so important to check the details of your lease carefully before signing it, and to get advice from property experts.

Here are some of the things you will need to think about:

- **the rent** – not only what it will be when the lease begins, but how much it could go up;
- **the length of the lease** – how long you want to commit yourself to renting the premises. Remember that unless your landlord agrees that you can give up your lease or transfer it to someone else, you will have to pay rent for the whole period of the lease, even if your income dries up. Many new businesses looking for their first premises take short leases of three years or less;
- **quitting** – how easily could you give up renting if you no longer need your premises or run into financial difficulties? Will you be able to transfer the premises to someone else? Will the landlord allow you to give up? Do you have the opportunity to 'break' (end the lease) at certain intervals – this would allow you to choose whether or not to continue renting the property;
- **insurance** – the landlord may expect you to insure the premises yourself, or to pay for the insurance if the landlord takes it out;

- **repairs** – the landlord may expect you to carry out repairs, or pay for them. The landlord may expect you to leave the premises in good repair even if they are not in a good condition now. Check this point very carefully, otherwise you could face some heavy and unexpected bills;
- **service charges** – on top of the rent, the landlord may charge more for services such as cleaning, heating and lighting. These may be more expensive than providing them yourself;
- **guarantees** – the landlord may ask you for a financial guarantee, or may ask you to provide a guarantee for anyone who takes over your lease. If things go wrong, a personal guarantee could bankrupt you and make you homeless; and finally
- **protection when the lease ends** – will you have the right to renew the lease when it comes to an end? This may be particularly important for your business if you want to stay in the same premises, for example if you have a shop or restaurant. See below for more information about legal protection under the Landlord and Tenant Act 1954.

Remember to check all these points carefully. **If there is anything you don't like or consider unfair, ask the landlord or your professional adviser whether other arrangements are possible. If you don't like what is on offer, you may want to look for other premises.**

**Remember – you are the customer!**

#### **SO WHAT IS A LEASE?**

A lease (also called a tenancy) is the legal agreement between you and the landlord permitting you to use the premises. It is usually in writing, and it must be if it runs for more than three years. The lease usually tells you about:

- the space you are occupying – by describing it (see a plan if possible);
- the rent;
- other conditions (terms), for example, the length of the lease, and arrangements to review the rent from time to time;
- your rights;
- your obligations and liabilities;
- your landlord's rights; and
- your landlord's obligations and liabilities.



## What do I need to know about rent and other charges?

To begin with, the rent will be whatever you agree to pay the landlord. The lease will say how much it is, when and how often it is payable. Very often, rent is due every three months (quarterly).

The lease will often include rent reviews. These are arrangements to change the rent from time to time, often every three or five years. There are different ways of reviewing rent, so check this point carefully before signing the lease.

You should think very carefully before signing a lease with an **upward only rent review clause**. The rent will never fall, even if rents in the area do, but it will go up if rents for similar properties go up.

There are several other ways of reviewing rents. Here are some of them:

- **up/down market rents** – at the time of the review, the rent will go up or down, in line with rents for similar properties. Sometimes, depending on the wording of the lease, the rent may never fall below the starting rent;
- **indexed rents** – the rent changes, usually increasing every year, in line with some form of measurement such as the Retail Price Index;
- **turnover rents** – where the rent at least partly depends on the value of the tenant's trade (turnover); and
- **fixed increases** – the lease will say exactly how much the rent will go up by.

If you don't like the rent review arrangement suggested, ask if the landlord would be prepared to consider another arrangement. The Code of Practice for Commercial Leases in England and Wales urges landlords wherever possible to offer alternative arrangements. Sometimes, other arrangements may mean that to begin with you have to pay a little more, but remember to think about what you will be paying in the future as well as the rent you will be paying at the beginning of the lease.

## **RENTS AND OTHER CHARGES – SOME FREQUENTLY ASKED QUESTIONS**

### **Are there any regulations on rent or rent reviews?**

No. It is entirely up to the landlord and the tenant to agree, before signing the lease, what the starting rent will be, how to review it, and how often reviews should take place.

### **Can the tenant or landlord apply for the rent to be registered?**

No. The 'fair rent' system applies to some housing leases but not business leases.

### **Is VAT payable on rent?**

Check with the landlord – it may be. Even if it isn't, the landlord has the right to decide that it should be paid, even after you have signed the lease. And the landlord cannot change back after deciding that VAT should be payable.

### **Who pays business rates?**

Usually the occupier of business premises.

### **What if I don't pay the rent?**

The landlord could:

- sue you for the unpaid rent;
- send in bailiffs to seize goods to the value of the unpaid rent. If you still don't pay your rent, the landlord could sell the goods. This is called 'distress for rent' and the Government is planning to make the system fairer.
- try to take the premises back. There are safeguards for tenants and you should consult a solicitor if this happens.

If you are in financial difficulty, it is best to tell the landlord, as he or she may be able to agree special arrangements to help you over a difficult period.

## **How does the law protect business tenants?**

Usually, business tenants may renew the lease at the end of the tenancy. This important right is set out in law: the Landlord and Tenant Act 1954 (Part 2). If all else fails, the tenant can go to court to pursue this right. The landlord can oppose renewal for certain reasons set out in the Act – for example, if the tenant has continually failed to pay the rent, or the landlord needs the property for redevelopment or wishes to move in.

You can find out more about renewing your lease and how to do it in ODPM's booklet on the Landlord and Tenant Act 1954, 'Renewing and ending business leases: a guide for landlords and tenants'.

Before you sign the lease, the landlord may ask you to agree to ‘contract out’, to exclude security of tenure. *If you do, you will be giving up your rights under the Landlord and Tenant Act 1954:*

- you will have no right to stay in the premises when the tenancy ends;
- you will have no right to renew the lease; and
- you will have no right to compensation, which is sometimes payable if the landlord takes the premises back.

**So it is very important to seek expert advice, from a chartered surveyor, solicitor or accountant, before agreeing to ‘contract out’.**

A ‘contracting out’ agreement will only be valid where:

- **either** the landlord gives you a special notice warning you about the risks of ‘contracting out’, **at least 14 days** before you commit yourself to the lease and you sign a simple declaration that you have received the warning notice, have read it and have accepted the consequences;
- **or** (if the landlord does not give you 14 days’ notice) you make a ‘statutory declaration’ before a solicitor who is not acting for either you or your landlord confirming that you have received the warning notice, have read it and have accepted the consequences.

## Are there any cases where legal protection does not apply?

Certain business occupiers do not have the legal right to renew their leases:

- farm business tenants;
- mining tenants;
- ‘service tenants’ employed by the landlord;
- those with fixed-term tenancies of six months or less. However, these tenants do have security of tenure once they (or with their predecessor) have occupied the premises for more than 12 months. A ‘periodic’ tenant (with for example a monthly or weekly tenancy but without a fixed term) **does** have the right to renew the lease;
- ‘contracted out’ tenancies (see above);
- tenants who hold the premises on a **licence** rather than a lease. This may be so if the property owner provides services. But beware – some documents saying they are licences are really leases. Check this point with your solicitor if you are in doubt.

## Could the landlord change the terms of my tenancy? Could I change them?

Once you have agreed to take on a lease, both you and the landlord would need to agree any changes to it. At the end of the lease, if the landlord and tenant cannot agree on the terms for the new tenancy, the court may decide them.

## How could I settle a dispute with my landlord?

Obviously, the first step is to discuss the problem with the landlord. If you cannot agree, the lease will often set out arrangements for settling disputes. These may involve the appointment of an **arbitrator**, who would consider each side's views and then make a decision. Alternatively, the lease may allow for appointment of an **independent expert**. Independent experts use their own knowledge to reach a decision, as well as listening to the views of landlord and tenant.

Dispute resolution can be expensive, but the Royal Institution of Chartered Surveyors (RICS) runs a special scheme for settling rent reviews for small businesses for a fixed fee. Businesses in England and Wales with no more than two properties and with a rateable value of less than £10,000 per year (£15,000 in London) qualify. For more information about this scheme, phone the RICS Dispute Resolution Service on 020 7222 7000 or e-mail them on [drs@rics.org.uk](mailto:drs@rics.org.uk)

## Can the landlord get me out?

If you pay your rent regularly and do everything you have agreed to in the lease, the landlord normally cannot get you out until the end of the lease. If you have agreed to an earlier right to 'break', the landlord could try to get the premises back when the 'break' interval occurs. But even when the lease ends or the landlord applies a right to 'break', you normally have the right to renew your lease (see the information about legal protection above).

If you don't do some of the things you agreed to in the lease, the landlord may take you to court to get the premises back. This is called 'forfeiture'. In some cases, the landlord can even enter your premises and take them back without going to court. If this happened, you would need to consult a solicitor quickly. The solicitor would tell you whether you could get the premises back, and how.

#### **POINTS TO REMEMBER**

- Get expert advice.
- Understand what you are agreeing to and what it will mean for you. Ask your adviser to explain anything you don't understand.
- Think very carefully, and seek expert advice, before agreeing to:
  - a lease lasting more than five years;
  - a 'contracted out' lease;
  - a lease with an 'upward only' rent review; or
  - a personal guarantee.

## Where can I get further information?

You may like to try some of the organisations listed below. In some cases, they have publications available, and most have web sites.

One very important document all business tenants should know about is the *Code of Practice for Commercial Leases in England and Wales*. This contains guidance and good practice on leasing business premises. The organisations supporting the Code represent landlords, tenants and the professional bodies. The Code is available on the internet, at [http://www.commercialleasecodeew.co.uk/Code\\_of\\_Practice.pdf](http://www.commercialleasecodeew.co.uk/Code_of_Practice.pdf)

#### **GOVERNMENT DEPARTMENTS**

The Office of the Deputy Prime Minister (Eland House, London, SW1E 5DU) is responsible for policy and legislation on business leases. The Office publishes some useful information about business tenancies on its web site at: [www.odpm.gov.uk/businessstenancies](http://www.odpm.gov.uk/businessstenancies)

Besides this booklet, the Office has published a booklet on the Landlord and Tenant Act 1954, *Renewing and ending business leases: a guide for tenants and landlords*. Copies are available from Free Literature Unit, PO BOX 236, Wetherby, West Yorkshire, LS23 7NB. Tel. 0870 1226 236. You can contact the Department on 020 7944 4400, or e-mail [lpd@odpm.gsi.gov.uk](mailto:lpd@odpm.gsi.gov.uk)

The Small Business Service of the Department for Trade and Industry has a web site with a wide range of information for small businesses hosted by Business Link at [www.businesslink.org](http://www.businesslink.org). This includes pages on property and premises.

# Professional bodies

## **CHARTERED SURVEYORS**

The Royal Institution of Chartered Surveyors (RICS) (RICS Contact Centre Surveyor Court, Westwood Way, Coventry, CV4 8JE) is the professional body for chartered surveyors. Their general web site is [www.rics.org.uk](http://www.rics.org.uk) and you can contact them by telephone on 0870 333 1600 or by e-mail at [contactrics@rics.org](mailto:contactrics@rics.org)

## **SOLICITORS**

The Law Society (The Law Society's Hall, 113 Chancery Lane, London WC2A 1PL) is the professional body for solicitors. Their general web site is [www.lawsociety.org.uk](http://www.lawsociety.org.uk), while there is a directory of solicitors at [www.solicitors-online.com](http://www.solicitors-online.com)

You can phone them on 020 7242 1222 or e-mail them at [info.services@lawsociety.org.uk](mailto:info.services@lawsociety.org.uk)

# Property organisations

The main organisation representing property owners and landlords of business premises is the British Property Federation. 1 Warwick Row, London, SW1E 5ER  
Tel. 020 7828 0111, e-mail: [Info@bpf.org.uk](mailto:Info@bpf.org.uk)

Other property bodies include:

The British Council  
for Offices  
38 Lombard Street  
London EC3V 9BS

The BCO's mission is to  
research, develop and  
communicate best  
practice in all aspects of  
the office sector

Web site: [www.bco.org.uk](http://www.bco.org.uk)  
Tel: 020 7283 4588  
E-mail: [mail@bco.org.uk](mailto:mail@bco.org.uk)

BCSC (formally, the  
British Council of  
Shopping Centres)  
1 Queen Anne's Gate  
Westminster  
London SW1H 9BT

Provide an organisation  
for those engaged in  
shopping and shopping  
centre management and  
development

Web site: [www.bcsc.org.uk](http://www.bcsc.org.uk)  
Tel: 020 7222 1122  
E-mail: [info@bcsc.org.uk](mailto:info@bcsc.org.uk)

## Organisations representing business tenants and occupiers

The British Retail Consortium  
Second Floor  
21 Dartmouth Street  
London  
SW1H 9BP

BRC represents the retail industry

Web site: [www.brc.org.uk](http://www.brc.org.uk)  
Tel: 020 7854 8900  
E-mail: [info@brc.org.uk](mailto:info@brc.org.uk)

Confederation of British Industry  
Centre Point  
103 New Oxford Street  
London  
WC1A 1DU

Represents companies from all sectors of UK business

Web site: [www.cbi.org.uk](http://www.cbi.org.uk)  
Tel: 020 7379 7400

CoreNet Global UK  
6 Rectory Lane  
Woodford  
Kettering  
NN14 4HS

Represents occupiers in the corporate sector

Web site: [www.corenetglobal.org.uk](http://www.corenetglobal.org.uk)  
Tel: 01832 737 909

## Small business organisations

Alliance of Independent Retailers and Businesses  
Bank Chambers  
5-9 St Nicholas Street  
Worcester  
WR1 UE

Web site: [www.indretailer.co.uk](http://www.indretailer.co.uk)  
Tel: 01905 612 733

Federation of Small Businesses  
Sir Frank Whittle Way  
Blackpool Business Park  
Blackpool  
Lancashire FY4 2FE

Web site: [www.fsb.org.uk](http://www.fsb.org.uk)  
Tel: 01253 336 000  
E-mail: [info@fsb.org.uk](mailto:info@fsb.org.uk)

Forum for Private  
Business  
Ruskin Chambers  
Drury Lane  
Knutsford  
Cheshire WA16 6HA

Web site: [www.fpb.co.uk](http://www.fpb.co.uk)  
Tel: 01565 634 467  
E-mail: [info@fpb.co.uk](mailto:info@fpb.co.uk)

Small Business Bureau  
Curzon House  
Church Road  
Windlesham  
Surrey GU20 6BH

Web site:  
[www.smallbusinessbureau.org.uk](http://www.smallbusinessbureau.org.uk)  
Tel: 01267 452 010  
E-mail: [info@sbb.org.uk](mailto:info@sbb.org.uk)





