

OCCUPYING

COMMERCIAL PREMISES

- A Brief Guide for Small Businesses -



by
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Introduction

This brief guide is designed to help small businesses by giving an overview of some of the issues to consider when acquiring and occupying commercial premises.

Many of the subjects covered are quite complex but the object of this guide is to outline of some of the key points and legislation and to point the reader to further information but is not intended to go into any great detail.

The subjects are deliberately quite generic and specialised topics covering health and safety in specific industries, for instance, are not considered.

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1. Buy or Lease

The main questions for a business when choosing a property revolves around whether they are suitable in terms of type, size and location.

Having identified premises which meet these criteria, the next consideration is whether to buy or rent and whether the suitable premises are available for either option.

There are advantages and disadvantage of buying and renting as outlined here.

▪ **Flexibility**

A lease can be more flexible particularly if it is for a short length allowing the business to move on to new premises if the existing premises become unsuitable.

▪ **Restrictions**

All property can be subject to restrictive covenants, planning and other restrictions but a lease will have additional covenants and restrictions on use set out in the lease terms.

▪ **Alterations**

Expensive plant and machinery, particularly where it is integral to the property, might be better invested in owned premises. Alterations to leased premises will normally require landlord's permission.

▪ **Security of Tenure**

A lease will only provide security of tenure for its term whereas owning a property gives long term security of tenure which is better for investing in the building.

▪ **Costs**

Consider whether renting or repaying a loan is a more cost effective option. Rents can increase at review but so can loan repayments if interest rates rise.

▪ **Taxation**

There are different taxation implications to renting or buying.

▪ **Capital**

For many businesses capital is better employed in the business rather than buying a property. Buying may also depend on the ability to borrow funds.

▪ **Property Values**

An owner can benefit from a rise in property values but commercial property values can also flat line for many years or even fall in value.

There is no overall advantage to buying over renting or vice versa and the better option will depend on the individual circumstances.

For further information contact a Chartered Surveyor or a solicitor.

2. Lease Terms

A lease is the agreement between a landlord and tenant for renting a commercial property and sets out all the terms.

The terms will be agreed between the landlord and tenant but some landlords will have certain fixed terms for good estate management.

Heads of Terms are normally agreed between the parties and the landlord's solicitor draws up a lease based on these terms. The main terms are:

- ***Name of the Tenant***

Leases can be granted in the name of an individual, several individuals as a partnership or a company. If a lease is in the name of a small limited company the landlord will probably require guarantors.

- ***Length of lease***

A shorter lease gives greater flexibility but also less security and may restrict the value of a business when it is sold.

- ***Rent***

The level of rent will normally be in line with the market for the particular property type and location. Frequency of payment and what is included are also considerations.

- ***Rent Reviews***

In a longer lease, rent reviews will be included normally every 3 or 5 years. The rent may be reviewed to open market rent, indexed linked or a percentage of turnover.

- ***Rent Free Period***

Landlords will sometimes agree to a rent free period at the start as an incentive or to allow the tenant time to fit out the premises.

- ***Repairs***

Responsibilities can vary from a full repairing lease where the tenant is responsible for all repairs to an internal repairing lease in which the tenant is responsible for maintaining the inside of the property only. A schedule of condition can ensure the tenant is not liable to repair pre-existing disrepairs.

▪ **Decoration**

A clause will usually be included requiring the tenant to decorate the property from time to time and at the end of the lease.

▪ **Insurance**

The landlord will usually insure the building and recover the cost of the premium from the tenant as an additional payment.

▪ **Use**

The lease will state the permitted use of the premises and any restrictions on use.

▪ **Improvements and Alterations**

Certain improvements will normally be permitted with landlord's consent although there is usually a proviso that the premises are to be re-instated to their original condition at the end of the lease.

▪ **Service Charge**

In multi-occupied property such as an office block or shopping mall a separate service charge may be included for maintaining common areas etc.

▪ **Security of Tenure**

At lease renewal, business tenants are protected by the *Landlord and Tenant Act 1954*. Under the Act, if the landlord and tenant cannot agree new lease terms they can be set by a Court and if the landlord wants possession of the premises specific reasons have to be given. By agreement, leases are sometimes granted outside the provisions of this Act and the tenant waives their automatic rights to renew.

▪ **Assignment or Subletting**

Most leases will include a provision for transferring the lease or subletting to another party part way through the term with the landlord's consent. It is the tenant's responsibility to find a suitable assignee or subtenant.

The lease document can run to many pages and before signing a lease it is advisable to take professional advice from a Chartered Surveyor and/or a solicitor.

For further information see the Code for Leasing Business Premises at www.leasingbusinesspremises.co.uk or contact a Chartered Surveyor or solicitor.

3. Valuation and Survey

Business owners are advised to obtain a professional valuation and/or a building survey prior to buying or leasing a property.

Paying a price or rent above market value or finding substantial repairs are required later on can be costly in the long run.

▪ **Valuation**

Valuations may be carried out for a wide range of purposes and are required to support many financial decisions including acquisition of property.

Valuations should be carried out by a professional RICS registered valuer and in accordance with the *RICS Valuation – Professional Standards*.

A valuation should be undertaken by a valuer who has experience and knowledge of particular markets in particular locations and is, by nature, the opinion of the valuer.

Valuers will take into account transactions on similar property in the locality when determining a value having regard to the type, size, location and other matters affecting the property.

A valuation will not normally include a building survey although the valuer would take into account the general state and condition of the property. The valuer will require and investigate a range of other information about the property.

A valuation is produced for a specific client and purpose and based on specific assumptions and, therefore, cannot be used in a different context and will exclude liability to other parties.

Banks and building societies will commission a valuation from their own panel valuers as a matter of course when lending on a property. If taking a mortgage, speak to the lender before commissioning your own valuation.

▪ **Building Survey / Structural Survey**

Prior to buying or leasing property it is prudent to arrange for a full building/ structural survey. The survey will detail the condition of the property and identify any defects. It should be undertaken by a qualified building surveyor.

Certain matters may be excluded from the survey such as the condition of installations which require examination by appropriate experts or sampling for deleterious materials.

As with a valuation a survey report is confidential to a specific client and will exclude any liability to other parties.

A lease will include repairing obligations and particularly with older buildings, it is important to be aware of any potential liabilities from the outset. As referred to in the previous section, clear evidence of condition of the building at the start of the lease can be provided by a schedule of condition.

For advice on fees and types of valuations and surveys speak to a Chartered Surveyor.

4. Planning

Before taking a property check whether planning permission is required.

Planning permission can be required for a particular use or construction of new buildings or extensions.

▪ **Use**

Before buying or leasing premises a purchaser or tenant should check whether planning permission is required for the intended 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'. The main use classes are:

- A1 - Shops
- A2 - Financial and professional services
- A3 - Restaurants and cafés
- A4 - Drinking establishments
- A5 - Hot food takeaways
- B1 - Business including offices and light industry.
- B2 - General industrial
- B8 - Storage or distribution
- C1 - Hotels
- C2 - Residential institutions
- C2A - Secure Residential Institution
- C3 - Dwelling houses
- D1 - Non-residential institutions
- D2 - Assembly and leisure
- Sui Generis - uses which do not fall within any use class

Planning permission is not needed when both the present and proposed use fall within the same 'class', or if the *Town and Country Planning (Use Classes) Order* says that a change of class is permitted from one class to another specified class (eg from A2 to A1 or B2 to B1).

▪ **New Construction**

The building of a property or extension will generally need planning permission and building regulation approval.

Internal works that do not affect the outside of a building usually do not, (although building regulations may be required).

If the property is a listed building, listed building consent, and/or planning permission could be required even for minor work.

Certain types of minor changes can be made without needing to apply for planning permission. These are called Permitted Development Rights made under the *Town and Country Planning (General Permitted Development) Order*.

In some areas Permitted Development Rights are more restricted. For example in Conservation Areas, planning permission is required for certain types of work which do not need an application in other areas. An Article 4 direction may also remove Permitted Development Rights.

If inquiries reveal that planning permission is required, consent should be obtained prior to signing a lease or contract or ensure that any lease or contract is conditional upon planning.

For further information visit www.planningportal.gov.uk or contact your local planning authority, a planning consultant or Chartered Surveyor.

5. Licenses

In addition to planning consent, Licenses are required for a wide range of specialist uses.

These include, for example, animal boarding and breeding, caravan and camping sites, scrap yards, food preparation and sale, tattooists, cosmetic piercing and so on.

Licenses are also required for the sale of alcohol and public entertainment and are covered by the *Licensing Act 2003*.

▪ ***Licensing Act 2003***

The Licensing Act 2003 affects all premises that cater for the sale of alcohol, late night refreshment and the provision of entertainment, music and dancing.

These activities require a Premises Licence. An application for a Premises Licence will be considered by the local authority in conjunction with other bodies including police, fire and public health.

All premises with a Premises Licence will require at least one Personal Licence holder. A Personal Licence can be applied for after completing a course to obtain an accredited Licensing Qualification Certificate.

The local authority maintains a register of Premises and Personal Licences which can be viewed online. Most Licenses can be applied for from the local authority.

For further information contact your local council.

6. Land Contamination

All over the UK, there are thousands of sites that have been contaminated by previous use.

Often this is associated with industrial processes or activities that have now ceased. Waste products or remaining residues present a hazard to the general environment. Land and water that has already been contaminated has to be properly managed.

Under the *Environmental Protection Act 1990*, responsibility for cleaning up contaminated land can fall to those who cause the contamination, owners of affected land or people developing it. The purchaser of a contaminated site may become liable for contamination previously present in the land.

Important guidance on the management of land contamination is contained within the Environment Agency/Defra publication *Model Procedures for the Management of Land Contamination (CLR11)* which can be downloaded from the Environment Agency website.

Risk assessment helps decide whether contamination is or is likely to be a problem. A site investigation is sometimes required to get information to be able to do this. Understanding the risks from contamination is the first stage in the process of effectively managing it.

If a risk assessment demonstrates there are unacceptable risks that have to be managed, undertaking an options appraisal will help decide what should be done and how, resulting in a remediation strategy which then needs to be implemented.

In most cases this is not an issue but it is advisable to carry out a desktop environmental search when acquiring premises but if there remains a suspicion that land could be affected further advice should be obtained which may include a recommendation for a full ground condition survey.

For further information visit the Environment Agency website at www.environment-agency.gov.uk or contact an Environmental Consultant or a Chartered Surveyor.

7. Asbestos

The *Control of Asbestos Regulations 2006 and 2012* confer a duty on anyone who is responsible for the maintenance and repairs of a non-domestic building or the common areas of a domestic property to manage asbestos.

The responsible person is called the 'dutyholder', who can be the owner of a building, a tenant responsible for repairs or the owner of a multi-occupied building responsible for repairs.

Asbestos is a risk to health if asbestos fibres are released into the air. Exposure can lead to diseases including asbestosis and lung cancer although there is usually a delay of 15-60 years between first exposure and any disease being diagnosed.

Asbestos is present in many buildings constructed or refurbished in the 1950's, 60's and 70's. It can be found as sprayed asbestos on steelwork, lagging, insulating boards, corrugated or flat asbestos sheets, textured plasters and paints and bitumen or vinyl materials.

As long as the Asbestos Containing Material is in good condition and is not being or going to be disturbed or damaged there is low risk. If it is disturbed or damaged it can become a danger to health as asbestos fibres may be released into the air. Any contractors working on a building as well as occupiers may be at risk.

The duty to manage asbestos includes identifying if there is asbestos in the premises, keeping up-to-date records of the location and condition, assessing the risk, preparing a plan to manage the risk, taking steps to put the plan into action, reviewing and monitoring the plan and setting up a system for advising anyone on the location and condition of the material.

To assess if asbestos is present the dutyholder may consider the date of construction (after 2000 it is unlikely to be present), identify possible Asbestos Containing Materials, look at building plans, builders invoices etc and/ or arrange for an asbestos survey.

Any potential ACM's should be tested and their condition assessed and, if necessary, removed by a licensed asbestos contractor.

The duty is to manage asbestos and a survey is an effective way of doing so but is not a legal requirement.

For further information visit the Health and Safety Executive website at www.hse.gov.uk/asbestos, an Asbestos Removal Contractor or a Chartered Surveyor.

8. Energy Performance Certificates

The requirement for non-dwellings to have an EPC on construction, sale or rent was introduced using a phased approach from 6 April 2008 as part of the *Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007* following a European Union Directive in 2002.

The EPC shows the energy efficiency rating (relating to running costs) of a non-dwelling. The rating is shown on an A–G rating scale similar to those used for fridges and other electrical appliances.

The EPC includes recommendations on how to improve the energy efficiency although there is no statutory requirement to carry out any of the recommended energy efficiency measures stated.

The EPC may also include information showing which of these measures would be eligible for finance under the Green Deal scheme, if required.

EPCs for non-dwellings must be produced by an accredited non-domestic energy assessor, who is a member of a government approved accreditation scheme

The seller or landlord must provide an EPC free of charge to a prospective buyer or tenant at the earliest opportunity and a copy of the EPC must also be provided to the successful buyer or the person who takes up the tenancy.

Estate agents and other third parties must ensure that an EPC has been commissioned before they can market a property for sale or rent. All advertisements in the commercial media must clearly show the energy rating of the building (where available).

EPCs are valid for 10 years and can be reused as required within that period. A new EPC is not required each time there is a change of tenancy, or

the property is sold, provided it is no more than 10 years old. Where more than one is produced, the most recent EPC is the valid one.

Listed buildings, places of worship, temporary buildings, buildings to be demolished and buildings which do not use energy to condition the indoor climate are generally exempt.

EPCs must be displayed in commercial premises larger than 500m² that are frequently visited by the public.

For further information contact an EPC Assessor or visit the register of non-domestic EPC's at www.ndepcregister.com where you can check if a property has an EPC.

9. Insurance

Businesses need to take out a number of insurances including Employers and Public Liability, Professional Indemnity and Property.

If you own a property, it should be insured for the amount it would cost to re-build not the price or value.

Price, value and cost have different meanings. Price is the amount asked or paid for a property, value is its worth in the open market and cost is the amount it would cost to re-build the property including professional fees.

A surveyor will normally be able to provide an estimate of the re-instatement cost of a building. This figure may be completely different from its value and the property should be insured for the re-instatement cost and not its value.

The figure will be index linked by the insurer but a review of the figure should be carried out from time to time.

A landlord will normally arrange and pay the insurance premium on a leased building and recover the cost of the premium from the tenant.

The landlord's insurance will cover the cost of re-building, loss of rent and public liability. The tenant will need to take out its own insurance for contents, employers and public liability.

For further information on insurance policy and requirements contact an insurance broker and for information on building re-instatement costs contact a Chartered Surveyor.

10. Business Rates

Business rates are a tax on property and do not confer any rights to services. They are billed and collected by local authorities and passed to central government.

Rates are calculated by multiplying the rateable value of the property by a multiplier set by the government.

The rateable value is fixed by the Valuation Office Agency and is an estimate of the annual rental value of the property at a predetermined valuation date. All rateable values are revalued every few years. The last revaluation was in 2010 with a valuation date of 1st April 2008.

For most property the valuation is worked out by reference to a rate per square metre. However, some properties are valued differently, including pubs and hotels which are valued according to their trading income and guest houses and self-catering accommodation which are valued according to the number of bed spaces.

The rateable value can be appealed on the grounds that the assessment is incorrect or there have been changes to the property or to the locality. A suitably experienced surveyor can assess the rateable value and submit an appeal on behalf of the ratepayer.

The multiplier is known as the rate in the pound and generally varies between about 0.45 and 0.48. For example, if the rateable value is £10,000 and the rate in the pound is 0.45, the rates payable for the year is £4,500.

Transitional relief applies where there is a substantial rise or fall in the rateable value at a re-valuation so any increase or decrease in rates payable is staggered over several years.

There are also a number of reliefs available for small businesses, charities, empty buildings, exempted buildings and rural properties.

Unfortunately there are a number of cowboy rating firms who promise large reductions for a substantial upfront fee. For advice on rates payable, rateable values and making an appeal contact a Chartered Surveyor with experience of rating matters.

Rateable values and, for most properties how they are calculated, are listed on the Valuation Office Agency website.

For further information visit the Valuation Office Agency website at www.voa.gov.uk or contact a Chartered Surveyor or your local council.

11. Value Added Tax

Value Added Tax is a tax that's charged on most goods and services that VAT-registered businesses provide in the UK.

VAT is charged when a VAT-registered business sells to either another business or to a non-business customer. When VAT-registered businesses buy goods or services they can generally reclaim the VAT they've paid.

There are three rates of VAT, depending on the goods or services the business provides currently at 20%, 5% and 0%.

Some goods and services are exempt from VAT altogether. A business will need to register for VAT when its turnover reaches a certain level (currently £79,000).

▪ **VAT on land and buildings**

Supplies of land and buildings, such as freehold sales, leasing or renting, are normally exempt from VAT. This means that no VAT is payable, but the person making the supply cannot normally recover VAT incurred on their own expenses.

However, an option to tax land can be made. For the purposes of VAT, the term 'land' includes any buildings or structures permanently affixed to it.

Once an option to tax has been made all supplies in the land or buildings will normally be standard-rated. VAT will be recoverable in making those supplies ie repairs to the property etc.

This is useful for businesses that provide services which are exempt from VAT such as insurance and finance, education and training, and some charitable organisations.

When an option to tax has been made on a property VAT will become payable on any sale price or rent in the future.

For further information contact HMRC or an accountant.

12. Fire Safety

Under the *Regulatory Reform (Fire Safety) Order 2005*, a fire risk assessment must be undertaken on all business premises. This replaces the requirement for a Fire Certificate.

The assessment should identify the hazards within the premises, identify the people at risk and evaluate, reduce, remove and protect from risk.

Fire precautions may include a fire detection and warning system and a way of fighting a small fire with multi-purpose fire extinguishers.

There should be safe routes for people to leave the premises quickly and fire exit doors with panic bars. Larger premises may require emergency lighting, fire safety signs, sprinkler systems and staff training.

Fire authorities are responsible for enforcing the order and can prevent people from using the premises for non-compliance.

The fire risk assessment should be carried out by the responsible person ie the employer, the occupier or the owner where there are communal areas, or a competent person on behalf of the responsible person.

The occupier can carry out their own assessment or employ a fire protection company to carry out the assessment.

For further information contact The Fire Safety Officer at your local Fire Station or visit www.hse.gov.uk/toolbox/fire

13. Electricity

The *Electricity at Work Regulations 1989* requires that all electrical systems including portable equipment and installations, should be maintained so far as reasonably practicable to prevent danger.

These Regulations do not specify what needs to be done by whom and how frequently but an appropriate system of maintenance is strongly recommended including:

- user checks by employees;
- visual inspection by someone with more knowledge;
- annual portable appliance tests (PAT) by someone suitably qualified;

Guidance on PAT testing is available from the Health and Safety Executive.

Electrical installations (circuits) should be tested often enough that there is little chance of deterioration leading to danger.

Electric meters should be read when occupation of a property begins and ends and the supplier advised of the readings.

For more information contact a qualified electrician or visit www.hse.gov.uk/electricity

14. Gas

The *Gas Safety (Installation and Use) Regulations 1998* require that any place of work that has a gas installation and/or gas appliances installed must be maintained in such a way so as to prevent risk of injury to any person.

The definition of what is an appropriate maintenance programme will be determined by the installation's age, condition and usage.

The recommended frequency for most equipment is annual and must be undertaken by a competent person who is on the Gas Safe Register.

If an inspector is of the opinion that the installation is not being properly maintained and may give rise to danger, enforcement action may be taken.

In any room where there is gas appliance (boiler/heater, etc), and the room is or can be used for sleeping, then that appliance **MUST** be checked for safety at intervals not exceeding more than 12 months by a registered engineer.

A record book must be kept in respect of the appliances including:

- date of the inspection
- any defect identified
- any remedial action taken

Gas meters should be read when occupation of a property begins and ends and the supplier advised of the readings.

Further information contact a Gas Safety Registered engineer or visit www.hse.gov.uk/gas.

15. Water

▪ **Water Fittings**

Under the *Water Supply (Water Fittings) Regulations 1999* water fittings must not be installed, connected, arranged or used in such a manner that causes waste, misuse, undue consumption or contamination of water.

▪ **Drinking Water**

The *Workplace Health, Safety and Welfare Regulations 1992* place a requirement on the employer with respect to the provision of drinking water. It states:

- An adequate supply of wholesome drinking water shall be provided for all persons at work in the workplace.
- Every supply of drinking water required shall be readily accessible at suitable places; and be conspicuously marked by an appropriate sign where necessary for reasons of health or safety.
- There shall also be provided a sufficient number of suitable cups or other drinking vessels unless the supply of drinking water is in a jet from which persons can drink easily.

▪ **Charges**

Water and sewage can be charged by a meter or by the size of the property. Non domestic properties are also charged for surface water and highway drainage by many water companies. This charge is also based on the size of the property.

Water meters should be read when occupation of a property begins and ends and the supplier advised of the readings.

16. Health and Safety

An employer must appoint someone competent to help meet health and safety duties and display a Health and Safety law poster in each premises.

A competent person is someone with the necessary skills, knowledge and experience to manage health and safety. They could be:

- the employer
- one or more of the employees;
- someone from outside the business.

Most employers probably manage most aspects of their business themselves, or with the help of their staff. If they are not confident of their ability to manage all health and safety in-house, it may be necessary to engage external help or advice.

If there are five or more employees, there must be a written policy. The policy does not need to be complicated or time-consuming. To help, the Health and Safety Executive have created a template that can be downloaded from www.hse.gov.uk/risk/assessment

This template brings together your risk assessment, health and safety policy and record of health and safety arrangements into one document to help get you started and save you time.

There is also an example health and safety policy to give an idea of what to include when writing a policy. The policy will only be effective if employers and their staff follow it and review it regularly.

The HSE website also has HSE law posters which can be downloaded.

For further information visit the Health and Safety Executive website
www.hse.gov.uk

17. First Aid

The *Health and Safety (First-Aid) Regulations 1981* set out the essential aspects of first aid that employers have to address.

Employers must have first-aid arrangements in the workplace. They are responsible for making sure their employees receive immediate attention if they are taken ill or are injured at work.

Accidents and illness can happen at any time and first aid can save lives and prevent minor injuries from becoming major ones. Arrangements will depend on the particular circumstances in the workplace and what the first-aid needs are need to be assessed.

As a minimum, there must be a suitably stocked first-aid box, an appointed person to take charge of first-aid arrangements, information for all employees giving details of first-aid arrangements.

Employers might decide that a first-aider is needed. This is someone who has been trained by an approved organisation and holds a qualification in first aid at work or emergency first aid at work.

Under health and safety law, employers must report and keep a record of certain injuries, incidents and cases of work-related disease. Each workplace should keep an Accident Book to record details of any incidents.

Keeping records will help identify patterns of accidents and injuries, and will help when completing a risk assessment. Insurance companies may also want to see records if there is a work-related claim.

For more information visit www.hse.gov.uk/firstaid

18. Equal Opportunities and Accessibility

The *Equality Act 2010* brings together the various Acts and Regulations, which formed the basis of anti-discrimination law including the *Equal Pay Act 1970*, the *Sex Discrimination Act 1975*, the *Race Relations Act 1976*, the *Disability Discrimination Act 1995* and three major statutory instruments protecting discrimination in employment on grounds of religion or belief, sexual orientation and age.

The legislation has the same aims as EU Equal Treatment Directives, whose provisions it mirrors and implements. It requires equal treatment in access to employment as well as private and public services, regardless of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. In the case of gender, there are special protections for pregnant women.

In the case of disability, employers and service providers are under a duty to make *reasonable* adjustments to their services and premises to overcome barriers experienced by disabled people. The purpose is to prevent discrimination against disabled people.

A business should not wait until a disabled person wants to use a service before giving due consideration to reasonable adjustments.

Adopting a reasonable strategic approach to access for disabled people would ensure compliance with the regulations. Failure to make reasonable adjustments could result in future legal action.

If necessary the service provider should arrange for an Access Audit to be carried out which will highlight impediments to disabled people and recommend any adjustments which should be made to the premises.

For further information and a list of access consultants visit the Centre for Accessible Environments website at www.cae.org.uk

19. Data Protection

A brief word about Data Protection. If you handle personal information about individuals, you have a number of legal obligations to protect that information under the *Data Protection Act 1998*.

The Act states that “appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data”.

Almost every organisation processing personal data is required to register with the Information Commissioners Office.

For further information contact the Information Commissioners Office at www.ico.org.uk.

20. Transfer of Undertakings (Protection of Employment)

In 2006, the revised *Transfer of Undertakings (Protection of Employment) Regulations* (called ‘the TUPE Regulations’) came into force.

These Regulations provide employment rights to employees when their employer changes as a result of a transfer of an undertaking. They implement the European Community Acquired Rights Directive.

The Regulations apply when a business or undertaking, or part of one, is transferred to a new employer or when a ‘service provision change’ takes place (for example, where a contractor takes on a contract to provide a service for a client from another contractor).

The effect of the Regulations is to preserve the continuity of employment and terms and conditions of those employees who are transferred to a new employer when a relevant transfer takes place.

This means employees employed by the previous employer when the transfer takes effect automatically becomes employees of the new employer on the same terms and conditions (except for certain occupational pensions rights).

There is some limited opportunity to vary the terms and conditions of employment contracts for certain reasons connected with the transfer.

The current employer has to provide information about the transferring workforce to the new employer before the transfer occurs.

TUPE is important to bear in mind when buying or selling a business.

For further information visit the Department for Business Innovation and Skills website at www.berr.gov.uk or contact an accountant or solicitor.

21. Equipment

The *Provision and Use of Work Equipment Regulations 1998* (PUWER) apply to work equipment used by employees at work, and ensure that employers are responsible for the equipment used by employees at work.

Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair.

The Regulations only apply to work equipment used by workers at work. This includes all work equipment (fixed, transportable or portable) connected to a source of electrical energy.

PUWER does not apply to fixed installations in a building. The electrical safety of these installations is dealt with by the Electricity at Work Regulations.

For further information contact the Health and Safety Executive at www.hse.gov.uk/work-equipment-machinery/puwer.

22. Food Hygiene

The basic hygiene requirements for any business serving food are set out by the *Food Hygiene (England) Regulations 2006*.

All business premises selling or serving food must be registered with the local authority.

Food safety management procedures must be put in place based on the principles of HACCP (hazard analysis critical control point). These should be kept in place permanently with up to date records relating to procedures and reviewed if there are any changes to what you produce.

There are special requirements for the design and layout of rooms where food is prepared, treated or processed and in respect of equipment, cleaning, food waste, water supply and personal hygiene.

There are also requirements in respect of food maintenance, cross contamination, temperature control, cooking, storage and packing. Staff must be adequately trained and supervised.

Local authorities are responsible for enforcing food hygiene laws and enforcement officers visit premises from time to time.

Each business is given a 'hygiene rating' (0-5) when it is inspected by a food safety officer from the business's local authority. The hygiene rating shows how closely the business is meeting the requirements of food hygiene law.

The food hygiene rating is not a guide to food quality.

For further information visit the Food Standards Agency website at www.food.gov.uk or contact your local authority.

23. Hospitality Ratings

Since 2006, England Scotland, Wales, Northern Ireland and the AA have shared a 'Common Standard' for guest accommodation and hotels.

In England, Quality in Tourism operates nine schemes on Visit England's behalf assessing more than 20,000 accommodation businesses a year.

Star-ratings (1-5) are determined by the services and facilities provided for guests, but also by the quality of the welcome, service and hospitality of the staff, the food and the cleanliness.

Having an official star-rating system helps potential guests know what to expect before they arrive.

Visit England's Gold, Silver and Breakfast awards are given in recognition of exceptional quality within a property's star rating, or for outperforming a star rating.

There are a number of large self-catering agencies that award Visit England star rating (1-5) for self-catering property under a franchise arrangement. The assessors are trained and moderated by Visit England.

For further information visit the Visit England website at www.visitengland.org

24. Checklist

Prior to buying or leasing

Arrange for a valuation and/or building survey	
Check whether planning consent is required for your use	
Check whether a special licence is required for your business	
Investigate whether the site might be contaminated	
Investigate whether Asbestos Containing Materials could be present	
If buying a business, check employee liabilities	
Check the Energy Performance rating	

During Occupation

Arrange insurances	
Check whether the Rateable Value should be appealed	
Inquire whether you are eligible for business rates relief	
If necessary register for Value Added Tax	
Carry out a fire risk assessment	
Arrange for annual portable appliance tests and circuit testing	
Arrange for Gas appliances to be inspected	
Check water fittings are installed and connected correctly	
Ensure water is available for staff	
Carry out a health and safety risk assessment and write a policy	
Appoint someone to be in charge of first aid	
Carry out an access audit and prepare an access policy	
Prepare an equal opportunities policy	
Prepare a data protection and privacy policy	
Prepare a staff handbook	
Check all work equipment is in good working order	
If selling food register with the local authority	
If providing accommodation register for a Visit England star rating	

