Taking a Commercial Lease:
The Clauses That Make or Break Your Business

A guide for owner-managed businesses taking new premises or renewing a lease. The five terms worth negotiating hardest before you sign, what the ban on upwards-only rent reviews does and does not change, and a red-flags checklist to take into the negotiation.

September 2026
www.fcg.co.uk/our-services/law

FUSION LAW

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FIVE THINGS TO AGREE BEFORE YOU SIGN

The point	What to ask for	Where
Your right to leave early	A break conditional only on paying the main rent due and giving up occupation, with no subtenants or other occupiers left behind, and a refund of anything paid for the period after the break	Section 2
What happens to the rent at review	A review that can go down as well as up, or a cap on any increase. The ban on upwards-only reviews has not started, and will generally not reach a new lease signed before it does	Section 3
What you must hand back	A schedule of condition that expressly limits the repair and handback clauses, and agreement now on which alterations you will have to remove at the end	Section 4
Whether you can pass the lease on	Rights for the landlord on a transfer that you could live with if you sold the business next year, and a guarantee of the buyer only where it is reasonable	Section 6
What you have promised personally	A guarantee that is capped and has an end date, with no automatic obligation to back a guarantee of any buyer, or a properly documented, company-funded rent deposit instead	Section 7

INTRODUCTION

Taking premises is a large commitment for any small business, and the lease is the document that decides what it really costs. The headline rent and any rent-free period are the terms everybody

negotiates. The terms that decide whether the premises become a burden sit further in: the conditions on the right to leave early, how the rent changes over time, what the business must spend on the building before it hands it back, whether the lease can be passed on when the business is sold, and what the directors have promised personally.

This guide is written for the business taking the premises, not for the landlord. It explains each of those terms in plain language, says what a tenant can reasonably ask for, and ends with a list of the dates to put in the diary on the day the lease is signed and a checklist to take into the negotiation. Where the law uses a technical term, we explain it the first time it appears, and there is a short list of the words you will meet in a lease at the back.

One change in the law runs through it. Parliament has passed a ban on upwards-only rent reviews in many new business leases, but it has not started yet, and a new lease of new premises signed before it starts will generally keep whatever review it contains. Section 3 explains what that means for a lease you are negotiating now.

> **Where the line runs.** We negotiate and draft the lease and review it before you sign. Tax on taking a lease sits with our tax colleagues, and once a dispute has started we refer it out. Section 13 sets out who does what.

1. START AT HEADS OF TERMS

Heads of terms are the short summary of the deal that the letting agents agree before any lawyer drafts the lease. They set the shape of everything that follows, and it can be harder to reopen points once they are agreed. The best moment to raise the points in this guide is before the heads of terms are signed off.

Where the landlord's agent is a member of the Royal Institution of Chartered Surveyors, the RICS code for leasing business premises applies to it. It has applied since 1 September 2020, and it contains both mandatory requirements for RICS members and regulated firms and recommendations of good practice. Its mandatory requirements include heads of terms that are in writing, marked "subject to contract", and cover a list of points that includes the length of the lease and any break, the rent and any rent-free period, rent review, service charge and insurance, repair, transferring and subletting, use, alterations, and any guarantee or rent deposit. A member must also advise an unrepresented party of the code's existence and recommend that it takes professional advice. That list makes a good agenda.

"Subject to contract" signals that the heads of terms themselves are not binding. It does not mean nothing can bind you until the lease is signed: if you sign an agreement for lease, which is a contract to take the lease later, you are committed from that point.

Our guide to heads of terms covers how they work more generally, including when they become binding. The rest of this guide assumes you are at the stage where the terms can still be moved.

2. THE BREAK CLAUSE

2.1 What it is

A break clause gives you the right to end the lease early on a set date, or on any of several dates, by giving notice. For a growing business, or one that is not yet sure of its space, it can be the most valuable clause in the lease, because it limits how long you are committed for. A ten-year lease with a break at year five is, in practice, a five-year commitment, provided the break works when you need it.

2.2 The conditions, and why they are dangerous

A landlord's draft may attach conditions to the break, such as that all rent and every other sum due under the lease has been paid, that the tenant has complied with all its obligations, and that the tenant gives vacant possession on the break date, which means handing the premises back empty.

The courts treat conditions like these strictly. Each condition must be met at the time the lease requires, which may be when notice is served as well as on the break date. If any one of them is not met, the break does not work. The lease then continues as if the notice had never been served, and the tenant remains liable for the rent and everything else until the next break date or the end of the term. It makes no difference that the failure was small, that the landlord suffered no loss, or that everyone knew the tenant wanted to leave.

Condition	How it has gone wrong in reported cases	What to ask for instead
All sums due have been paid	A tenant lost its break because a small amount of interest on rent it had paid late in the months before was still outstanding on the break date. The judge called the result harsh and applied the condition anyway	Limit the condition to the main rent that has fallen due. Resist any wider reference to other sums, interest or costs
Rent paid in advance	A tenant paid the full quarter's rent that fell due before the break date, as the condition required. The Supreme Court held it could not recover the part covering the period after the lease ended, because the lease did not provide for a refund	Pay what the lease requires in full, and ask for an express obligation on the landlord to refund any rent, service charge and insurance paid for the period after the break date
Vacant possession	A tenant still finishing repairs sent its workmen back after the break date. It had not handed the building back empty and the break failed. In another case, partitions left behind were enough to defeat a break	Replace it with giving up occupation and leaving no subtenants or other occupiers. If vacant possession is insisted on, keep its meaning to people, belongings and rights, with nothing about the condition of the building
Compliance with all obligations	Read literally, any breach of any obligation in the lease, however trivial, can defeat the break	Delete it. Arguments about repair and the state of the premises belong at the end of the lease, not in the break
The notice itself	A notice failed because it did not say, as the break clause required, that it was given under a particular section of an Act. The court would not treat a mandatory requirement as optional	A simple notice clause, with a form of notice attached to the lease if the landlord will agree

2.3 Handing the premises back empty

Vacant possession means you have left, removed your belongings, and made sure no subtenant or other occupier has a right to stay. Items left behind will defeat the break only if they substantially get in the way of the landlord's use of the premises, but that is a question of degree on which tenants have lost.

It is about people, belongings and rights, not about the physical condition of the building. In one case the Court of Appeal held that a tenant which had stripped out parts of the building before leaving had still given vacant possession, because the break clause asked for nothing more; the landlord was left with a claim for damages over the condition. That turned on the wording of that particular lease, and it is not a strategy. The safer course is to make sure the clause in your lease says only what vacant possession means, and then to be out, completely, before the date.

The practical rule. Everything happens before the break date: moving out, clearing the premises, finishing any works and handing back the keys. Do not assume that the landlord's permission to finish works after the break date preserves the break; have your solicitor agree that expressly with the landlord, in writing, before the date. If the break does not depend on the repairs being done, it may be cheaper to leave the work unfinished and settle a claim for repairs afterwards than to lose the break. If it does depend on them, they have to be finished before the date.

Pay what the lease requires. When exercising a break, pay everything the lease requires by the time it requires it. Do not assume you can pay only the rent covering the period up to the break date.

2.4 What to ask for

- Conditions limited to paying the main rent due and giving up occupation, with no subtenants or other occupiers left behind. This is what the RICS code for leasing business premises recommends.
- An obligation on the landlord to refund any rent, service charge and insurance paid for the period after the break date.
- Arguments about repair and the state of the premises kept out of the break altogether, to be dealt with as they would be at the end of the lease.
- A simple notice clause that states exactly how and where notice is to be served.
- A break date, and a notice period, that fit your business plan. Put the last day for serving notice in the diary the day you sign, with reminders well ahead of it.

3. RENT REVIEW, AND THE BAN ON UPWARDS-ONLY REVIEWS

3.1 How rent reviews work

A rent review is the mechanism for changing the rent during the lease, usually at fixed intervals. The main types are these.

Type	How it works	What to watch
Open market review	The rent is reset to what a willing tenant would pay for the premises on the open market at the review date, on assumptions set out in the lease	The assumptions do the work. Improvements you paid for should be ignored, so that you do not pay rent on your own investment
Index-linked review	The rent moves in line with an inflation index	Which index, whether there is a cap on any increase, and what happens if the index is changed or discontinued
Fixed or stepped increases	The increases are set in the lease at the start	Whether the steps are realistic against what you expect the market to do. You carry that risk
Turnover rent	Part or all of the rent depends on your turnover	How turnover is defined and reported, and the landlord's rights to inspect your records

An open market, index-linked or turnover review can be written so that the rent can only go up or stay the same at review, never down. That is an upwards-only rent review. If rents in your area fall, yours stays where it was.

3.2 The ban

The English Devolution and Community Empowerment Act 2026, which received Royal Assent on 29 April 2026, bans many upwards-only rent reviews in business leases covered, or potentially covered, by the Landlord and Tenant Act 1954. It does so by adding new provisions to that Act. The ban has not started yet. Once it does, in outline:

- It covers leases of business premises in England and Wales that fall within the 1954 Act, or would do once the tenant moves in. That includes a lease where the tenant has given up the right to renew (section 8).
- Where a review would set the new rent above the figure produced by the market or the index, the review has no effect to that extent, and the new rent is that figure instead. In other words, the review can take the rent down as well as up. A cap that keeps the rent below the market or index figure is not affected.
- Increases that are fixed and known when the lease is granted are not affected, because the ban only bites where the new rent cannot be known at the start.
- Where only the landlord can start a review, the tenant will be able to start it too.
- Side arrangements requiring the tenant to make up to the landlord a reduction in rent caused by the ban are void.
- The Government can make exceptions by regulations, which Parliament must approve.

3.3 When it applies, and why it will not help a lease you sign now

It has not started. The Government has to bring the ban into force by regulations. At the date of this guide it has not done so and has not announced a date.

It will generally apply only to leases granted after it starts. A new lease of new premises granted before then will generally keep its rent review for its whole term, upwards-only or not. A lease granted after the ban starts is also generally outside it if it is granted under an arrangement made before then, such as an agreement for lease signed now for a lease to be completed later. A lease that is later changed to add a new rent review can be caught when it is changed.

Renewals need separate advice. If an option or agreement to renew an existing lease was made on or after 17 March 2026, the new rules may still affect the rent in the renewal lease once the ban starts. Do not assume that a renewal is safe just because the old lease was signed before the ban. Agreements for lease, renewal options and later changes to rent review clauses all need advice on their own facts.

> **What it means for a lease you are negotiating now.** You cannot rely on the ban. The protection has to come from the negotiation. Ask for a review that works both ways, or a cap on any increase. If the landlord proposes fixed increases instead, test them against what you expect the market to do, because the ban will not touch them later either. And check whether the review can only be started by the landlord; if so, ask for the right to start it yourself.

3.4 Reviews that are not operated on time

Review dates can pass without anyone acting. Whether a missed deadline in the review clause costs the party that missed it depends on the wording of the clause, so read it for any statement that time is to be “of the essence”, which means that a deadline is strict. The lease may also provide for interest on any back rent once a late review is settled. Diary the review dates and the deadlines in the clause on the day you sign.

4. REPAIR, AND THE BILL WHEN YOU LEAVE

4.1 What you are taking on

On a lease of a whole building on full repairing and insuring terms, the tenant is responsible for the roof, the walls and the structure as well as the inside, and pays the landlord's cost of insuring it. On a unit within a larger building, the lease will say who repairs the structure and the common parts. Where it is the landlord, the cost comes back to the tenants through the service charge (section 5).

The risk is in taking older or tired premises on a full repairing obligation. Unless the lease limits it, a tenant can find itself responsible for putting right defects that were there before it arrived, and handing the premises back in better condition than it took them.

4.2 The schedule of condition

The answer is a schedule of condition: a written and photographic record of the state of the premises on the day you take them, attached to the lease. It protects you only as far as the lease uses it, so the repair and handback clauses must be expressly limited by it, saying you are never obliged to put the premises into better condition than the schedule shows. Check separately what you must redecorate, remove or reinstate at the end, because those obligations may not be limited by it. Four practical points:

1. Commission it from a surveyor before you sign, not after you move in.
2. Make sure it is detailed enough to settle an argument years later. A few general photographs will not do.
3. Have the landlord agree it, attach it to the lease, and make sure the repair and handback clauses refer to it expressly.
4. Keep your own copy somewhere you will find it at the end of the lease.

4.3 The landlord doing the repairs and charging you

Watch for a clause allowing the landlord to serve notice of disrepair, come in if you do not put it right, carry out the work and recover the cost from you as a debt. This kind of repair clause is lawful, but it changes the risk for the tenant. Because the cost is recovered as a debt rather than claimed as damages, it takes away some of the protection the law otherwise gives tenants against claims for repairs during a lease. Ask for it to be limited to work that is actually needed, with a reasonable period for you to do the work first and a reasonable standard for what the landlord can charge.

4.4 The claim at the end of the lease

When the lease ends, the landlord may serve a claim for end-of-lease repair costs, which surveyors call a schedule of dilapidations: a list of the repairs, redecoration and removal of alterations it says you were obliged to do and have not done, with its estimate of the cost. The landlord's opening demand is not necessarily the amount it can legally recover. Two things limit it.

- **The legal cap.** Damages for failing to repair cannot exceed the loss in value of the landlord's interest in the building caused by the disrepair, and nothing is recoverable for repairs that would be wasted because the landlord plans to demolish the building or alter its structure in a way that would make them worthless. The cap applies to disrepair. It does not automatically limit every item in an end-of-lease claim, such as the removal of alterations, which needs to be looked at separately.
- **The protocol.** A formal protocol sets out how these claims should be made and answered, and treats court proceedings as a last resort.

If a claim becomes a dispute, that is litigation, and we refer it out. The work we do is at the start and during the lease, so that there is far less to argue about at the end.

4.5 What to ask for

- A schedule of condition, with the repair and handback clauses expressly limited by it.
- On a unit, the structure and common parts to stay with the landlord.
- Damage by insured risks, such as fire or flood, excluded from your repairing obligation, with the rent suspended while the premises cannot be used.
- A limited version of any clause letting the landlord do repairs and charge you.
- An agreement at the time of each alteration, recorded in the landlord's consent, on whether it has to be removed at the end.

5. SERVICE CHARGES AND THE COSTS OUTSIDE THE RENT

5.1 The service charge

Where the premises are part of a larger building or estate, you will usually pay a share of the landlord's cost of running, repairing and insuring the common parts. The service charge can be a large part of the real cost of occupation and, unlike the rent, it moves every year.

The Royal Institution of Chartered Surveyors publishes a professional standard on service charges in commercial property. Its second edition took effect on 31 December 2025, with an allowance for service charge years that had already begun. It is mandatory for RICS members and firms, and it is intended as the industry's standard for everyone else, but it states in terms that it cannot override the lease. The lease is where the protection has to be.

Ask for	Why
A cap on the total, or on increases	It makes the cost predictable. A landlord may want to exclude some items, such as insurance and utilities, from a cap
Exclusions	The cost of putting right defects in the original construction, improvements rather than repairs, the landlord's own costs of letting or marketing other units, and costs relating to empty units, which should be the landlord's
Reserve or sinking funds on clear terms	If the landlord builds up a fund for future major works, it should be held separately, for the tenants' benefit, with a clear account of what happens to it on a sale
Budgets, accounts and the right to inspect	An annual budget in advance and certified accounts afterwards, with the right to see the invoices behind them
A fair apportionment	A clear basis for how the costs are shared between occupiers, and a right to challenge it

5.2 Insurance

Under a full repairing and insuring lease, the landlord insures the building and recovers the premium from the tenant. Ask for the right to see the policy, for the landlord to use the insurance money to reinstate the building, and for the rent to stop while the premises cannot be used after an insured event. Agree too what happens after damage by a risk that is not insured, and a right to leave if rebuilding is not completed by an agreed deadline.

5.3 Energy efficiency

A landlord may not let commercial premises in England and Wales that fall below the minimum energy efficiency standard, unless a valid exemption applies. For premises covered by the rules, the minimum is generally an energy performance certificate rating of E. Since 2023 that has applied to existing lettings as

well as new ones. The Government has proposed a higher standard for larger buildings, but that still needs detailed regulations and is not yet law. Ask for the energy performance certificate before you commit, and agree in the lease who pays if work is needed to keep the building lettable, whether through the service charge, your repairing obligation or the landlord's own account.

6. GETTING OUT WHEN YOU SELL OR MOVE

6.1 Selling the business

What happens to the lease on a sale depends on how the sale is structured.

How you sell	What happens to the lease	What to check now
A sale of the shares in your company	The company keeps the lease. Nothing is transferred	Whether the lease says anything about a change in who owns or controls the tenant company. Selling the shares does not itself release any personal guarantee a director has given
A sale of the business and its assets	The lease has to be transferred to the buyer, which lawyers call an assignment	Whether the landlord's consent is needed, and on what conditions. That consent becomes a condition of your sale, and the landlord's timetable becomes part of yours
Moving within a group	The lease is transferred to another group company	Who guarantees the lease, because a parent's guarantee cannot simply follow it (section 6.4)

6.2 The landlord's consent

Where the lease allows a transfer only with the landlord's consent, the law says that consent cannot be unreasonably withheld. On a written request, the landlord must give its decision within a reasonable time, set out any conditions, and give written reasons if it refuses. If that is challenged, it is for the landlord to show that it acted within a reasonable time and reasonably.

There is an important qualification for leases granted since 1 January 1996. The lease can set out in advance the circumstances in which the landlord may refuse consent to a transfer, and the conditions it may impose, and a landlord relying on one of those is not being unreasonable. Typical examples are a requirement for the outgoing tenant to guarantee the buyer, or for the buyer to meet a financial test. The landlord may still be able to impose other reasonable conditions at the time. The lease can therefore give the landlord important rights to refuse or impose conditions on a transfer: negotiate those rights before you sign, reading them as if you were selling the business next year.

6.3 Guaranteeing the buyer

A permitted transfer of a lease granted since 1996 will usually release the outgoing tenant from its future obligations under the lease, and anyone who guaranteed the outgoing tenant is released to the same extent. Anything already owed at the date of the transfer remains, and a transfer made in breach of the lease does not bring about a release. The landlord can, however, require the outgoing tenant to give an authorised guarantee agreement, which is a guarantee that the buyer will perform the lease. The law limits it: it can cover the immediate buyer only, and it normally ends when the buyer lawfully transfers the lease on in turn. A director who guaranteed the outgoing tenant can be asked to join in and back it.

Ask for the lease to require an authorised guarantee agreement only where it is reasonable in the circumstances, not automatically on every transfer.

6.4 Moving a lease within a group

Where a parent company guarantees the lease and the lease is transferred to a sister company, the parent is released along with the outgoing tenant, and the law then prevents it from giving a fresh direct guarantee of the incoming tenant. There is a route through: the outgoing tenant gives the landlord an authorised guarantee agreement and the parent guarantees that. The Law Commission consulted until 16 September 2026 on a proposal to allow direct guarantees between group companies, but that is a proposal, not the law. Plan the guarantee before any reorganisation that touches the lease.

6.5 Subletting

Subletting space you no longer need is the other way out. Subletting can help cover the rent, but you remain responsible to your landlord for the whole lease. Check that the lease allows it, whether of the whole or part, and read any conditions on the rent and terms of a sublease. A requirement that a sublease be at no less than the rent you pay can make subletting impossible if the market falls.

7. PERSONAL GUARANTEES AND RENT DEPOSITS

With a young company, or one without much of a trading record, a landlord may ask for a personal guarantee from a director, a rent deposit, or both. Each has a price.

7.1 Personal guarantees

A personal guarantee puts your own assets behind the company's promises in the lease. Unless it is limited, it covers everything the company owes while it holds the lease: rent, service charge, insurance, interest, costs and the repair claim at the end. Selling the company's shares does not release it. It can also contain a promise to take a new lease yourself if the company becomes insolvent and its liquidator gives the lease up.

Ask for	Why
A cap	A fixed maximum, or a limit by reference to a period of rent, so that you know the worst case
An end date	Release after a set period, or once the company's accounts meet an agreed test, so the guarantee does not outlive the risk it was given for
No automatic backing of a buyer	The law releases you when the company transfers the lease with the landlord's consent, but the lease may require you to back the company's guarantee of the buyer. Ask for that to need your agreement at the time
No obligation to take a lease	Removal of any promise to take on a new lease yourself if the company fails
A deposit instead	A properly documented, company-funded rent deposit may avoid the need for a personal guarantee

We will cover personal guarantees more broadly, including how to be released from them when a business is sold, in a later guide.

7.2 Rent deposits

A rent deposit is money paid to the landlord as security, held under a rent deposit deed. It is security for what the company owes, not a limit on it: the company remains liable for everything under the lease, and the deed may require the deposit to be topped up if the landlord draws on it. There is no official protection scheme for business deposits of the kind that exists for homes, so the deed does all the work. It should say:

- that the money is held in a separate, designated account and not mixed with the landlord's own money, and on what terms, including whether it is held for your benefit;
- that interest belongs to you;
- when the landlord can draw on it, with notice to you, and when you must top it up;
- when it comes back, for example after an agreed period of paying on time, when the company's accounts meet an agreed test, or on a permitted transfer of the lease; and
- how the money is protected if the landlord sells the building or becomes insolvent, including an obligation on any buyer to hold it on the same terms.

A separate account on its own may not protect the money if the landlord gets into financial difficulty. Check how the deed protects it.

8. THE RIGHT TO STAY ON AT THE END OF THE LEASE

8.1 What the right is

Under the Landlord and Tenant Act 1954, a business tenant occupying its premises for its business has, by default, the right to stay on when the lease ends and to ask for a new lease. The lease does not end simply because its term has run out; it continues until it is ended in one of the ways the Act allows. The landlord can oppose a new lease only on grounds set out in the Act. They include the tenant's serious or persistent breaches, an offer of suitable alternative premises, and the landlord's intention to redevelop the building or to occupy it itself. Very short fixed-term leases are generally outside the Act, and the Law Commission is looking at where that line should be drawn. This right to ask for a new lease when the current one ends is known as security of tenure.

8.2 Contracting out

The landlord and tenant can agree that the right will not apply. This is called contracting out, and a landlord may ask for it, particularly on a shorter lease. It has to be done by a set procedure, in the right order, before you become legally committed, including under an agreement for lease if you sign one before the lease itself:

1. The landlord serves a warning notice in a prescribed form, explaining that the tenant is being asked to give up the right.
2. If the notice is served at least 14 days before the tenant signs the lease or commits to sign it, the tenant signs a simple declaration that it has received the notice and accepts the consequences.
3. If the notice is served with less time than that, the tenant must instead make a statutory declaration, which is made before a solicitor or other person authorised to take declarations.
4. The lease must refer to the notice, the declaration and the agreement to contract out.

Whether to agree is a commercial decision. Giving up the right can be a fair trade on a short lease, or in return for a better rent. It is a real loss for a business whose customers know where to find it, or that has invested heavily in fitting out. If you agree, consider asking for an option to renew instead, and bear in mind that a renewal arrangement made on or after 17 March 2026 may be affected by the ban on upwards-only rent reviews (section 3.3).

8.3 Reform

The Law Commission is reviewing the whole of this part of the 1954 Act. Its second consultation paper closed on 16 September 2026 and a final report will follow. Its conclusions so far are provisional, and nothing has changed in the law. We will update this guide if and when it does.

9. WHAT YOU CAN USE THE PREMISES FOR, ALTERATIONS AND SIGNS

9.1 Use

Two separate things decide what you can use the premises for: planning law, and the lease itself. In England, since 1 September 2020, a single planning class, Class E, covers a wide range of commercial uses, including shops, cafés and restaurants, offices, professional services, gyms, clinics, nurseries and light industry. A change of use within Class E will not usually need planning permission, but existing planning conditions and any building works must still be checked. Wales has different rules.

The lease is a separate restriction and can be much narrower. A lease limited to “offices” does not become a lease for any Class E use because planning law allows it. Ask for a use clause wide enough for what you do now and what you might reasonably do in future, because a narrow one also makes the lease harder to transfer or sublet.

9.2 Alterations

Most fit-outs involve alterations. A lease may allow internal, non-structural alterations with the landlord’s consent and prohibit structural ones altogether. Where the lease requires consent to alterations that are improvements, the law says consent cannot be unreasonably withheld, although the landlord can require reasonable costs, compensation and, where the work does not add to the letting value, a reasonable obligation to reinstate at the end.

Agree now what you can do without consent, such as moving demountable partitions, and record in each consent whether the work must be removed at the end. That single point decides a large part of any claim when you leave. If you are commissioning building work, you will also have duties under the building regulations for the project; your contractor and architect should take you through them.

9.3 Signs

External signs usually need the landlord’s consent under the lease and may need separate consent from the local planning authority. Agree the landlord’s consent to your signs, and their removal at the end, at the start.

10. TAX ON TAKING A LEASE

Two taxes can arise on taking a lease, and both sit with our tax colleagues rather than with us.

- **Stamp duty land tax.** In England and Northern Ireland, stamp duty land tax can be payable on the grant of a lease. It is calculated on any lump sum paid for the lease and on the value of the rent over the whole term, discounted to what it is worth today. You may still have to file a stamp duty land tax return even if the tax bill is nil, and the calculation may have to be revisited later, for example where the rent was uncertain at the start or is changed by agreement early in the lease. Wales has its own tax, land transaction tax, and Scotland has another.
- **VAT.** VAT may be charged on the rent and the service charge, for example where the landlord has chosen to charge VAT on the building, which is called opting to tax. Check whether it applies, and whether your business can recover it, before agreeing the price.

We describe the mechanism here and do not calculate the figure. Our tax colleagues at Fusion Tax work out any liability, deal with the return and advise on the VAT position.

11. WHAT TO PUT IN THE DIARY ON THE DAY YOU SIGN

A missed date in a lease can be very expensive. Put these in the diary on the day the lease is signed, with reminders well ahead of each one, and give someone the job of watching them.

Date	What to diary	When to start acting
Each break date	The last day for serving notice, and the break date itself	Well before the notice deadline, to decide and to plan the move out
Each rent review date	The review date and any deadlines in the review clause	Before the review date, so that you are not reacting to the landlord
Lease expiry	The date the lease ends, and whether you have the right to stay on	Well ahead, because the notices under the 1954 Act run to their own timetable
Rent deposit	Any date on which the deposit is to be returned or reviewed	At the date, with the evidence the deed requires
Guarantee	Any date on which a personal guarantee ends or can be reviewed	At the date, in writing
Service charge	The service charge year end and any deadline to challenge the accounts	When the accounts arrive
Energy	The expiry of the energy performance certificate	In time to discuss any upgrade with the landlord

12. THE LEASE RED-FLAGS CHECKLIST

Take this into the negotiation. Each row is a term that, left as drafted, can cost a tenant money or flexibility later. Tick it off when you have read the clause, and raise every red flag before heads of terms are agreed if you can.

Clause	Red flag	What to ask for	Why it matters
Break clause	Conditions beyond paying the main rent and giving up occupation	Conditions limited to paying the main rent due and giving up occupation, with no subtenants or other occupiers	Any failed condition loses the break
Break clause	No refund of rent paid for after the break date	An express refund obligation	Without it, the landlord keeps the money
Break clause	Vacant possession, or anything about the condition of the building	Giving up occupation instead; repair disputes dealt with after the lease ends	A repair argument becomes a lost break
Break clause	Complicated or unusual notice requirements	A simple notice clause, ideally with a form attached	A notice that misses a mandatory requirement fails
Rent review	Upwards-only review	Review both ways, or a cap on increases	The ban will generally not reach a new lease signed before it starts
Rent review	Only the landlord can start the review	A right for you to start it too	You may want a review when rents fall
Rent review	Improvements you paid for are not disregarded	Your improvements ignored at review	Otherwise you pay rent on your own investment
Repair	Full repair of tired premises with no schedule of condition	A schedule of condition that expressly limits the repair and handback clauses	You may otherwise have to hand back better than you took
Repair	Landlord may do repairs and charge you as a debt	Limit to work actually needed, with time for you to act first	It sidesteps protections tenants otherwise have
Repair	Insured damage not excluded	Insured risks excluded, and rent suspended	You should not pay twice for a fire or flood
Alterations	Automatic reinstatement of all alterations	Agree reinstatement in each consent	Removal of fit-out drives the end-of-lease bill
Service charge	No cap and no exclusions	A cap, exclusions and inspection rights	The service charge moves every year
Service charge	Building defects recoverable	Original construction defects excluded	They should be the landlord’s cost, not yours
Insurance	No right to end the lease if the building cannot be reinstated	A mutual right to end the lease	You could be paying for premises that will not be rebuilt

Clause	Red flag	What to ask for	Why it matters
Use	A narrow use clause	A wide use clause	It limits what you can do and who can take the lease from you
Transfer	Rights to refuse or impose conditions you could not live with	Rights you could live with on a sale next year	The landlord's consent becomes a condition of your sale
Transfer	An authorised guarantee agreement on every transfer	Only where reasonable	You stay liable for the buyer
Transfer	Change of control of the company treated as a transfer	Delete it	It turns a share sale into a consent process
Subletting	Sublease must be at no less than your rent	Market rent at the time	It can make subletting impossible in a falling market
Guarantee	Unlimited, open-ended guarantee	A cap and an end date, and no automatic backing of a buyer	Your own assets are behind the whole lease
Guarantee	Promise to take a new lease on the company's insolvency	Delete it	You could end up the tenant yourself
Deposit	No protection if the landlord sells or becomes insolvent	A deed that protects the money on a sale or insolvency, with interest to the company	A separate account alone may not protect it
Deposit	No return date	Return after an agreed period or test	Otherwise it is tied up for the whole term
Security of tenure	Contracting out not discussed at heads of terms	Decide before the warning notice arrives	Giving up the right to stay on is a real loss
Energy	No energy performance certificate provided	The certificate, and agreement on who pays for upgrades	The standard applies to lettings now

13. HOW FUSION LAW CAN HELP

We act for businesses taking premises, from heads of terms to completion and through the life of the lease. The work we do on this subject is:

- **Heads of terms.** Reviewing and negotiating the heads before they are agreed, so that the five points in this guide are settled at the stage where they are easiest to move.
- **The lease and the agreement for lease.** Reviewing the landlord's drafts, advising you on what matters and what does not, and negotiating the changes.
- **The documents that go with the lease.** Rent deposit deeds, guarantees, authorised guarantee agreements, licences for alterations and the contracting-out procedure.
- **During the lease.** Break notices, consents to transfer or sublet, variations, and the lease workstream on the sale or purchase of a business.

Workstream	Led by
Heads of terms, the lease and agreement for lease, deposit deeds, guarantees, authorised guarantee agreements, licences for alterations, contracting out, break notices and consents, and the lease on a business sale	Fusion Law
Stamp duty land tax, land transaction tax and VAT on the lease	Fusion Tax, or your own tax adviser
The accounting treatment of the lease and the cash-flow impact of the rent and service charge	Fusion Accountancy, or your own accountant
The schedule of condition, the rent and the service charge budget	Your surveyor

> We do not advise on tax, business rates or valuation. We are a non-contentious practice: where a lease matter has become a dispute, including a contested claim for repairs, a rent review referred to an independent surveyor or arbitrator, a landlord's attempt to end the lease for breach, or any court or tribunal application, we refer it out. Where appropriate, we work alongside our tax, accountancy and financial-planning colleagues across Fusion Consulting Group.

Have your lease reviewed before you sign. Send us the heads of terms or the draft lease, and we will tell you which terms we would push back on, why, and what we would ask for instead.

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WORDS YOU WILL MEET IN A LEASE

Word	What it means
Agreement for lease	A contract to grant a lease later, often once works are done
Assignment	Transferring the lease to someone else, who becomes the tenant
Authorised guarantee agreement	A guarantee by an outgoing tenant that the buyer of its lease will perform it
Break clause	A right to end the lease early on a set date
Contracting out	Agreeing that the tenant will not have the right to stay on at the end of the lease
Giving up occupation	Moving out and handing the premises back, with no subtenants or other occupiers left behind
Dilapidations	The landlord's claim for end-of-lease repair costs, including reinstatement not done
Full repairing and insuring	A lease under which the tenant pays for all repair and the cost of insurance
Heads of terms	The short summary of the deal agreed before the lease is drafted
Licence for alterations	The landlord's formal consent to works
Rent deposit deed	The document governing a deposit held as security
Schedule of condition	A record of the state of the premises at the start, attached to the lease
Security of tenure	The right to stay on at the end of the lease and ask for a new one
Subletting	Letting all or part of your premises to someone else, while you remain the tenant
Upwards-only rent review	A review that can only increase the rent or leave it the same
Vacant possession	Handing the premises back empty of people, belongings and anyone else's rights

Legal sources

Legislation. Landlord and Tenant Act 1927, sections 18 and 19. Landlord and Tenant Act 1954, sections 24, 30, 38A, 43 and 54A and Schedules 7A and 7B, the last three inserted by the English Devolution and Community Empowerment Act 2026, section 100 and Schedule 37, and section 108 of that Act. Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, Schedules 1 and 2. Landlord and Tenant Act 1988, section 1. Landlord and Tenant (Covenants) Act 1995, sections 1, 5, 11, 16, 24 and 25. Town and Country Planning Act 1990, section 55. Town and Country Planning (Use Classes) Order 1987, article 3 and Schedule 2, as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, regulation 27. Finance Act 2003, Schedule 17A. Housing Act 2004, section 212. Building Regulations etc. (Amendment) (England) Regulations 2023.

Cases. *Avocet Industrial Estates LLP v Merol Ltd* [2011] EWHC 3422 (Ch). *Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72. *NYK Logistics (UK) Ltd v Ibrend Estates BV* [2011] EWCA Civ 683. *Riverside Park Ltd v NHS Property Services Ltd* [2016] EWHC 1313 (Ch). *Capitol Park Leeds plc v Global Radio Services Ltd* [2021] EWCA Civ 995. *Friends Life Ltd v Siemens Hearing Instruments Ltd* [2014] EWCA Civ 382. *Jervis v Harris* [1996] Ch 195, as applied in *Agricullo Ltd v Yorkshire Housing Ltd* [2010] EWCA Civ 229. *K/S Victoria Street v House of Fraser (Stores Management) Ltd* [2011] EWCA Civ 904. *EMI Group Ltd v O&H Q1 Ltd* [2016] EWHC 529 (Ch).

Other sources. Pre-Action Protocol for Claims for Damages in relation to the Physical State of Commercial Property at Termination of a Tenancy. RICS, Code for leasing business premises, 1st edition, including paragraphs 2.4, 2.5 and 9.3. RICS, Service charges in commercial property, 2nd edition. Law Commission, Business Tenancies: the right to renew, second consultation paper (16 June 2026), and Consultation Paper 276, Commercial Leasehold: overcoming barriers to transactions (16 June 2026). Department for

Energy Security and Net Zero, Minimum energy efficiency standards in the non-domestic private rented sector: interim response (18 June 2026). HM Revenue and Customs, Stamp Duty Land Tax on leasehold sales and transfers.

Disclaimer: This guide provides general information only and is not legal, tax or financial advice. It describes the law of England and Wales, and where a rule applies in England only, or in England and Northern Ireland only, it says so. Nothing in it is tax advice. Law stated as at 27 September 2026. The start of the rent review ban is set by regulations, so check the current position before relying on it. Fusion Law is the trading name of Fusion Law Ltd, authorised and regulated by the Solicitors Regulation Authority (SRA No. 822590). Other services provided by companies in the Fusion Consulting Group are not regulated by the Solicitors Regulation Authority.