

# Regulatory requirements

This document is offered as a useful resource for business start-ups. It introduces the following topics:

- Business structure
- Data protection
- Disabled customers
- Employing staff
- Environment
- Fair Trading
- Health and safety
- Intellectual property
- Licences
- Premises
- Tax, National Insurance and VAT.

# Business structure

The main business structures are

- sole trader
- partnership
- limited liability partnership
- limited company.

## **Sole trader**

In this case one person owns and runs the business. That person can employ people to help but the whole venture is treated as being theirs personally.

Where the business does not trade in the name of the owner (for instance a flower shop trading as 'The Daisy Chain'), the name and address of the owner must be shown at the business premises and on business stationery.

## **Partnership**

A partnership involves more than one person being jointly responsible for the business. If you are in a partnership, a formal deed of partnership is appropriate setting out the rights and responsibilities of each partner. This is an important legal document and a solicitor is normally used to draft it.

As with a sole trader, if the partnership is trading under a name other than that of the owner(s) then it must display the name and address of the owner(s) and an address, for each at which documents can be served. The names of the partners should also be shown on its stationery, or if there are too many partners to fit on, an address must be shown where the full list can be viewed.

## **Limited Liability Partnerships (LLP)**

Although it has been possible to set these up for a number of years, recent changes in legislation have made them more popular. They are especially suited for firms such as solicitors and accountants. The reason for this is that in a partnership all the partners will normally be liable for problems caused by just one. Therefore the limited liability affords some protection for partners who have not been involved in the problem area. An LLP is very much a 'half-way house' between a normal partnership and a limited company and it shares a proportion of the rules and regulations of both. An LLP has to file accounts and other statutory documents which become a public record and can be viewed by any member of the public.

## **Limited Company**

To set up a limited company, you must either incorporate a company yourself with the Registrar of Companies or purchase an 'off-the-shelf' company. These are so called as they have already been set up by company formation agencies and can simply be bought as a package. Once again the company name must be displayed outside all your places of business and on business stationery. The company registration details also need to be included on business stationery. As with an LLP, a limited company needs to file accounts and other statutory returns.

The decision on how to structure a business is not a clear-cut one. There are advantages and disadvantages relating to each option but changes to the tax system announced in the 2002



Budget are widely seen as having pushed the balance of advantage firmly in favour of incorporation.

For further information, read ACCA's booklet on incorporation.

# Data protection

If your business keeps information about people then you must process that information in accordance with data protection rules. If you keep such information on computer or have a CCTV system, you may need to register on the data protection register as a data controller.

## **Notification**

The Data Protection Act 1998 requires every data controller who is processing personal data to notify the Information Commissioner unless they are exempt. Failure to notify is a criminal offence. The Information Commissioner maintains a public register of data controllers. Each register entry includes the name and address of the data controller and a general description of the processing of personal data by a data controller. Individuals can consult the register to find out what processing of personal data is being carried out by a particular data controller.

There is no requirement to notify manual records which come within the scope of the Data Protection Act 1998. However, you can choose to notify them voluntarily.

To determine whether notification is required, you can complete an online self assessment form on the website of the Register of Data Controllers. <http://www.dpr.gov.uk/notify/self/index.html>

If you have determined that notification is required, there are two ways to notify:

- by internet - you can complete the notification form on-line, print it and send the form by post with the notification fee or direct debit instruction
- by telephone - you can telephone the notification help line (01625 545 740) and a draft notification form will be sent to you based on the information you will be asked to provide on the telephone.

Further guidance and other publications can be accessed from the website of the Information Commissioner <http://www.dataprotection.gov.uk/dpr/dpdoc.nsf>

# Disabled customers

You must not discriminate against disabled people in the supply of goods, services, facilities and premises to the public.

The Disability Rights Commission has a helpline 08457 622 633 in addition to its website at [www.drc-gb.org](http://www.drc-gb.org). The Business and Services section of its website provides information to employers and service providers on the Disability Discrimination Act (DDA) and their duties not to discriminate against disabled people. There is also practical guidance about the best ways to ensure that disabled people are treated fairly. This often involves making quite simple adjustments which can benefit not only disabled people but also the public generally.

The Buildings and Services subsection ([www.drc-gb.org/businesses/buildings.asp](http://www.drc-gb.org/businesses/buildings.asp)) specifically address the issue of whether disabled people use your business or services. Service providers already have a duty to make changes to the way they provide their services to disabled people. From October 2004 service providers will also have to alter the physical features of their premises if it would otherwise be unreasonably difficult for disabled people to use their services. This section gives you information about the law and advice about good practice. It also explains the business case for treating disabled people fairly.

# Employing staff

Employing staff involves compliance with extensive regulatory requirements in a number of areas.

## **Equality and discrimination**

There are a number of acts covering different types of discrimination which any employer must be aware of:

- · the Sex Discrimination Act
- · the Race Relations Act 1976
- · the Disability Discrimination Act 1995
- · the Trade Union and Labour Relations (Consolidation) Act 1992
- · the Human Rights Act 1998.

## **Employee rights**

As an employer, you need to be aware of employment legislation covering areas including:

- · terms and conditions of employment
- · transfer of undertaking
- · fair and unfair dismissal
- · period of notice
- · working hours
- · minimum wages
- · unions
- · redundancy
- · illegal working
- · maternity, paternity leave and time off for dependents
- · stakeholder pensions
- · statutory sick pay
- · statutory maternity pay

## **Pay, tax, tax credits, and National Insurance**

As an employer, you will have to calculate and pay your employees' tax and National Insurance contributions out of the wages and salary you pay them. It is also your responsibility to pay the employer's National Insurance contributions on the earnings of your employees, and to arrange any tax credits due to your employees. This is covered in more detail in other sections on this website.

## **Insurance, and health and safety**

It is a legal requirement for employers to hold Employers Liability Insurance and display the certificate. Employers also have responsibilities for the health and safety of employees and must register with either the Health and Safety Executive (for factories, workshops, etc) or the local authority (for offices, shops, catering businesses, etc)

## **Useful websites**

With all the recent changes in legislation and with EU legislation coming into effect, employment law is an area where start-ups will need advice. There are many useful sources of information including:

**The DTI Employment Relations website ([www.dti.gov.uk/er](http://www.dti.gov.uk/er))**

This comprehensive website has sections on hours of work, pay entitlement, public holidays, employment agency standards, redundancy, individual employment rights, redundancy arrangements, employee consultation, trade unions and collective rights, and European employment directives.

The hot topics page features legislation under consideration and the latest employment issues and developments. Under the publications section, factsheets and leaflets providing practical guidance on employment relations regulations and procedures can be accessed.

**ACAS ([www.acas.org.uk](http://www.acas.org.uk))**

Advisory, Conciliation and Arbitration Service (ACAS) seeks to improve the performance and effectiveness of organisations by providing an independent and impartial service to prevent and resolve disputes. They give free advice and guidance on work issues to 750,000 callers a year via their national network of telephone helplines. The website includes a comprehensive "Questions and Answers" section.

**Tailored Interactive Guidance on Employment Rights ([www.tiger.gov.uk](http://www.tiger.gov.uk))**

The TIGER is designed to provide a user-friendly guide through UK employment law. Sponsored by the DTI, it currently provides information on national minimum wage and maternity rights from both the employer's point of view and the worker's point of view.

**British Employment Law ([www.emplaw.co.uk](http://www.emplaw.co.uk))**

This website is a comprehensive employment law portal try which has a free section and a professional area for which a password is required costing from £5 + VAT for 24 hours to £190 + VAT for a single user annual subscription. The password is obtained online and the website also has a search facility for employment solicitors.

**CompactLaw ([www.compactlaw.co.uk/doccentre/acatalog/](http://www.compactlaw.co.uk/doccentre/acatalog/))**

The CompactLaw Document Centre is the first online service in the UK for generating personalised legal documents. Employment law is constantly changing but you can purchase employment contracts that reflect the current law for both full and part-time / flexi-hours workers. The website also has factsheets and frequently asked questions at [www.compactlaw.co.uk/emp.html](http://www.compactlaw.co.uk/emp.html)

**Employment Solicitors ([www.employment-solicitors.co.uk](http://www.employment-solicitors.co.uk))**

An online guide to UK employment law, Employment Solicitors provides visitors with the necessary facts about their legal requirements and responsibility as employers and entitlements as employees. You are given access to a network of UK solicitors who specialise in employment law and a wide range of issues affecting both employers and employees.

**Lawyers For Your Business ([www.lfyb.lawsociety.org.uk](http://www.lfyb.lawsociety.org.uk))**

The Law Society's "Lawyers For Your Business" initiative can provide you with a free information pack and a free consultation, lasting at least half an hour, to diagnose the problem and any need for action, with full information, in advance on the likely costs of proceeding with a participating firm of solicitors.

**Contracts of Employment ([www.contractsofemployment.com](http://www.contractsofemployment.com))**

By law employers must provide each employee with written terms of their employment. Compliance can be expensive and time consuming - non-compliance can have very serious



consequences for a business. ContractsofEmployment, a Solicitor supervised service, uniquely provides a simple and cost-effective way for employers to meet their legal obligations and protect their business. Upon completion of the online intelligent interactive questionnaire the Contract of Employment will be dispatched. This service is applicable to England and Wales only.

<b>Equal Opportunities Commission</b>	<a href="http://www.eoc.org.uk">www.eoc.org.uk</a>
<b>Employers Forum on Age</b>	<a href="http://www.efa.org.uk">www.efa.org.uk</a>
<b>Commission for Racial Equality</b>	<a href="http://www.cre.gov.uk">www.cre.gov.uk</a>
<b>Disability Rights Commission</b>	<a href="http://www.drc-gb.org">www.drc-gb.org</a>
<b>Equality Direct</b>	<a href="http://www.equalitydirect.org.uk">www.equalitydirect.org.uk</a>

# Environment

There are environmental regulations that could apply to your business:

- if your business uses refrigeration or air-conditioning equipment, fire equipment or solvents for cleaning, you must check to see if they contain ozone depleting substances such as CFCs. If they do, you will be affected by legislation controlling or banning the use of these substances. The DTI has a leaflet "Guidance on the new EC regulation no 2037/2000 on substances that deplete the ozone layer" (URN 00/1153) that can be downloaded from its website at [www.dti.gov.uk](http://www.dti.gov.uk)
- if your business produces, imports, exports, stores, transports, treats, disposes of or recovers waste, then waste regulations apply. The Environment Agency website has useful information on this area
- if your business produces, imports or exports packaging, or your business produces packaging waste, then packaging waste regulations apply. The Environment Agency website has useful information on this area
- The Environment Agency ([www.environment-agency.gov.uk/business/](http://www.environment-agency.gov.uk/business/))

The stated aim of the Business pages on the Agency Website is to provide Business and Industry with information to:

- help comply with regulations
- avoid pollution
- identify Best Available Techniques
- apply for permits or licences
- keep up to date with forthcoming legislation and regulations
- advise on Agency Policy and procedures

Regulation on the following areas is available on this website:

- Radioactive Substance Regulation
- Integrated Pollution Prevention and Control (IPPC)
- Landfill Directive
- Waste management licensing
- Integrated pollution control (IPC)
- Control of Major Accident Hazard Regulations 1999 (COMAH)
- Oil Storage Regulations

# Fair Trading

The Office of Fair Trading (OFT) is responsible for protecting consumers and explaining their rights, and ensuring that businesses compete and operate fairly. It also issues consumer credit licences.

The OFT website ([www.offt.gov.uk](http://www.offt.gov.uk)) contains essential information for businesses on how to comply with legislation enforced by the OFT, provides advice on consumer issues, follows the progress of investigations and action taken, and has downloadable leaflets and reports.

The OFT enforces competition and consumer protection laws. These laws exist to make sure that traders compete properly with their rivals for business and deal fairly with their customers.

Further information about some of the laws that might affect your business  
<https://www.offt.gov.uk/Business/default.htm>

# Health and safety

An employer is required to comply with health and safety requirements as specified in legislation. All work premises will have to undergo inspections.

As a part of this, an employer must register with the appropriate authority at least one month prior to the commencement of trade. If the employer has employees in an office or shop, it should register with the local council - usually with the Environmental Health Department. If the employer has a factory, it must register with the Health & Safety Executive (HSE) ([www.hse.gov.uk](http://www.hse.gov.uk)).

The HSE and local councils can provide advice. Their aim is to ensure that risks to people's health and safety from work activities are properly controlled and will generally work constructively with you to try to improve health and safety. Your local Business Link can also provide help and advice.

In some situations, the HSE is also concerned with the way work affects the environment and with other people who may be harmed by the way work is done - for example, because they live near a factory.

Some businesses, such as guest houses, hotels and residential nursing care may require a Fire Certificate. The local Fire Authority can advise if a certificate is required.

The HSE has a confidential information line for advice that can be used by both employers and employees - 08701 545500.

The HSE has also developed a page on its website specifically for new small businesses. This page brings together information that is particularly relevant and of interest to new small businesses. Access this page on the HSE website. <http://www.hse.gov.uk/startup>

# Intellectual property

You should protect your company name and logo, any inventions, product designs or copyright. You should also avoid infringing intellectual property rights of others.

The Government-backed UK Intellectual Property website ([www.intellectual-property.gov.uk](http://www.intellectual-property.gov.uk)) provides information and resources to enable any start-up to understand intellectual property issues. According to this website:

Intellectual property, often known as IP, allows people to own their creativity and innovation in the same way that they can own physical property. The owner of IP can control and be rewarded for its use, and this encourages further innovation and creativity to the benefit of us all. In some cases IP gives rise to protection for ideas but in other areas there will have to be more elaboration of an idea before protection can arise. It will often not be possible to protect IP and gain IP rights (or IPRs) unless they have been applied for and granted, but some IP protection such as copyright arises automatically, without any registration, as soon as there is a record in some form of what has been created.

The four main types of IP are:

- patents for inventions
- trade marks for brand
- designs for product appearance
- copyright for material

However, IP is much broader than this extending to trade secrets, plant varieties, geographical indications, performers rights and so on.

The website also has information on how to get protection for your idea/material, how to enforce your rights, whether you need permission to use IP, and how you get permission to use someone's material.

# Licences

A licence is required for many businesses, not just the obvious ones like casinos or public houses. You should therefore always check whether your business requires a licence to trade.

## Type of business:

## Apply for a licence from:

- Cinemas and theatres
- child minding
- taxi and private hire vehicles
- indoor sports venues
- public entertainment
- nightclubs
- pet shops and pet boarding kennels
- scrap metal dealing
- street trading

### Local Authority Licensing Department

Links to the websites of local authorities can be [found here](#)  
<http://www.tagish.co.uk/tagish/links/localgov.htm>

- Care Homes
- Children's Homes
- Domiciliary Care Agencies
- Residential Family Centres
- Voluntary Adoption Agencies
- Independent Fostering Agencies
- Private and Voluntary Hospitals and Clinics
- Exclusively private Doctors
- Nurses Agencies

### The National Care Standards Commission

[\(www.carestandards.org.uk/\)](http://www.carestandards.org.uk/)

regulates social care and private and voluntary health care services throughout England. From 1st April 2002 the NCSC took responsibility for the registration and inspection of services - replacing the existing system of inspection by local authority and health authority inspection units.

- Waste management
- Abstraction of water or discharge of effluent
- Scrap metal processing

### The Environment Agency

[\(www.environment-agency.gov.uk/business/\)](http://www.environment-agency.gov.uk/business/)

- Hotels (including guesthouses)
  - Restaurants
  - Abattoirs
  - Hairdressers
  - Mobile shops (food sales) and other premises selling food
  - Massage
  - Skin piercing
  - Work with asbestos
- Local Authority Environmental Health Department**  
 Links to the websites of local authorities can be [found here](#)  
<http://www.tagish.co.uk/tagish/links/localgov.htm>
- Goods or public service vehicle operators
- The local DfT Traffic Area Office**  
 To find the address of an office and the area it covers, [click here](#)  
<http://www.tan.gov.uk/tanen/tancs/generalinfo/taoffices.asp>
- Possession or sale of weapons
- Police**  
 The UK Police Service portal ([www.police.uk/](http://www.police.uk/)) provides links to official police forces - both regional and non-regional
- Bureaux de change
  - Third party cheque cashing
  - Money transmission
- HM Customs & Excise**  
 ( [www.hmce.gov.uk](http://www.hmce.gov.uk))
- Sale of alcohol in shops, public houses, clubs, nightclubs, restaurants, hotels
- Local magistrates** who issue Justices' Licences
- Lending money
  - Offering or arranging credit
  - Debt collecting
  - Issuing credit cards
  - Offering debt adjusting or debt counselling services
  - Operating a credit reference agency
  - Hiring, leasing or renting out goods

# Premises

There are regulatory requirements covering two situations with premises:

if it is a new building or a change of use is involved, then you should consult the Local Authority Planning Department and the Local Fire Authority. In many cases, a change of use of a building or land does not require planning permission. However, before negotiating a lease or buy a property, it may be advisable to consider whether planning permission would be required for your intended use and, if so, your chances of getting it. The Office of the Deputy Prime Minister (ODPM) has a leaflet entitled Planning Permission: A Guide for Business which provides further information. View the leaflet

[http://www.odpm.gov.uk/stellent/groups/odpm\\_planning/documents/page/odpm\\_plan\\_606148.hcsp](http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_606148.hcsp)

if it is an existing building, you must determine whether the business involves plant or machinery installed within an industrial site but outside a building, and whether the premises require structural alternations. For both of these scenarios, you will need to consult the Local Authority Planning and/or Building Regulations Department. Factory or warehouse extensions may require planning permission depending on the size/volume of the extension. Again, the ODPM leaflet Planning Permission: A Guide for Business provides further information. View this leaflet <http://www.planning.odpm.gov.uk/guide/02.htm>

# Tax, national insurance and VAT

## Tax

**Sole traders** and **partnerships** are subject to income tax under the self assessment regime. Instalments of tax under this scheme are payable on 31 January and 31 July each year. Once the accounts have been prepared and the overall tax liability calculated, the amount payable is compared to the instalments paid on account and any difference is then dealt with. If the tax payer still owes some tax, this is payable by 31st January following the tax year (year to 5th April). Once a business is established these instalments are worked out on the previous years tax payable. Where the following year has been a poor one in terms of profits it would be unfair to pay these instalments based on a previous, better year. In this case a claim can be made to reduce the amounts of the instalments.

Each individual is required to complete a self assessment tax return which is issued in April and must be submitted to Inland Revenue by 31 January of the following year.

**Partnerships** are also required to complete a tax return but the individual's share of profits arising from the partnership is entered on his/her own return and he/she is responsible for his/her own tax liabilities.

**Companies** are subject to corporation tax which is calculated on the net taxable profits for the financial year. The rate of tax payable broadly depends on the size of the profits and includes special low rates for companies that make low profits. The tax is payable nine months after the accounting year end. Companies are required to complete a CT200 form. This is the equivalent of the self assessment tax return for individuals. It is required to be filed, together with a copy of the accounts, within 12 months of the accounting date.

## National Insurance

If you are self-employed (as a sole trader or a partner), you are responsible for paying your own National Insurance contributions (NICs). The Department of Social Security must be advised of your self-employed status within three months of starting a new business. Failure to do so will make you liable to various penalties so it is very important that this is done correctly.

As soon as you become self-employed you start paying Class 2 NICs. This is currently a flat rate of £2 per week. NICs are not due for any complete weeks of illness but to obtain credit for NICs during such periods it is necessary to claim Incapacity Benefit.

Class 2 contributions count towards Incapacity Benefit, Retirement Pension, Widows Benefit and Maternity Allowance but do not count towards Jobseeker's Allowance.

If your net annual earnings are below £4,095 you may be able to apply for the Small Earnings Exception which would mean that you do not have to pay Class 2 NICs.

The self employed are also subject to Class 4 NICs. These are calculated as a percentage of the profits of the business within certain bands. Currently Class 4 NICs are charged at 8% on profits between £4,615 and £30,940. Above this there is flat rate of 1%. This is paid at the same time as income tax. Class 4 contributions do not give entitlements to any benefits.

### ***Employing staff***

If you expect to employ staff you will need to set up a Pay As You Earn (PAYE) scheme. This is a reasonably straight forward process. Inland Revenue operates a new employer's helpline (0845 60 70 143) which will take your details and pass them on for registration. This will normally only take a few days to complete. Upon completion of the process, your business will be registered as an employer and will have its own reference number.

For each employee you will need to record their earnings and deduct tax and national insurance if they are above the various thresholds. The amounts deducted are then paid over to the Inland Revenue. There are various payments schemes but the most common is to pay over the deductions in the month following the wages payments.

An added complication for employers is the other non-tax deductions or additions that have to be made to the wages. For example, if the employee has a court order against him/her then the employer will have to deduct the notified amount from their wages and pay this over to the authorities. On the other hand, if the employee receives tax credits, for instance family tax credits, then the specified amounts are added to the wages payable and then recovered from the Inland Revenue.

If you are employing part time staff, take care that they do not have any other earnings that would put them over the tax limit. It is the employer's responsibility to deduct tax and national insurance contributions and failure to do so could leave the employer liable for the amounts due to Inland Revenue.

If the structure of the business is a company, then remember that the directors are also employees and therefore a PAYE scheme is necessary. Valuable help on all aspects of PAYE/NIC is available on the Inland Revenue's website ([www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)). This also contains various telephone helplines for direct contact.

### **VAT registration**

Value Added Tax (VAT) is a tax which VAT registered businesses charge when they supply certain goods and services in the UK. Certain goods and services are exempt from VAT such as children's clothes or certain types of food.

You will normally have to register for and charge VAT if:

- your taxable turnover reaches the VAT registration threshold. This is currently at a level of £56,000. If the predicted yearly turnover is likely to exceed £56,000 then the business may also have to register
- you have taken over a business as a going concern.

Any business or individual that does not register when he/she/it should is liable to penalties and recovery of any VAT owing. A complicating factor of VAT is that where an individual registers for VAT then the registration will normally cover all businesses that the person runs. Therefore all businesses will have to charge VAT - not just the one concern that actually needs to be registered.

An important effect of registering is that the services or products that are supplied immediately become 17.5% more expensive. This is the standard rate for VAT. This is not a problem where the business being charged is also registered as it can claim back the VAT. However non-business customers, such as people buying toys from a shop, cannot reclaim the VAT and so they will bear the full cost of the increase.

Small businesses can take advantage of certain simplified arrangements which make accounting easier:

**Cash accounting** - traders may apply to account for VAT under the cash accounting scheme. This allows VAT charged on their services/products to be paid over to HM Customs & Excise only when that business has actually received the money from their customers. This is particularly useful where businesses allow long periods of credit. It also gives immediate bad debt relief when the customer does not pay.

**Annual accounting** - after the first year, traders may apply for annual accounting which allows traders to submit one tax return per year but requires monthly direct debit payments on account.

**Flat rate scheme** - This is a recent addition to small business schemes. Although rather complicated it basically means that a business charges VAT as normal but only pays over a set percentage of the VAT dependent on their turnover.

Eligibility for the above schemes is subject to various criteria being met but they may well save your business money. Your Chartered Certified accountant will be able to advise you further on the merits of each scheme and their applicability to your business.

It is possible to apply for a VAT registration number ahead of starting to trade and your accountant can help with the process.

Further information is available from the HM Customs & Excise website at [www.hmce.gov.uk/business/vat/vat.htm](http://www.hmce.gov.uk/business/vat/vat.htm)