

BA Legal Report

May 2014

Banking & Payment Systems

Response to consultation on UK payment regulator

The Financial Conduct Authority (FCA) has consulted on what should be the priority issues for the newly created UK Payment Systems Regulator. The European Parliament has voted to cap interchange fees and now the Council is discussing its position in response. A number of European countries – France, Spain, Netherlands, Poland, Romania and Hungary – have, in turn, already decided to introduce their own domestic caps on interchange fees. In response, the UK Government proposed the creation of a UK Payment Regulator with strong market intervention powers, including price setting. The Regulator, which sits under the FCA, has consulted on how it can improve competition, innovation and representation of service users. The BRC has responded with a call for immediate domestic caps on interchange fees, as has been promoted in European and established in some countries. The impact of the cap would be £500 million savings per annum to UK retail.

Consumer Protection

Retailers pressed on Consumer Rights information at Point of Sale

Following pressure from Citizens Advice and other consumer bodies, the Government is investigating whether to amend the Consumer Rights Bill currently going through Parliament to require retailers to provide consumers with a statement of their consumer rights either orally or on paper at the point of sale. They argued that this would educate both consumers and businesses on their rights – and that currently these rights were too frequently denied. Officials will come up with their own draft while reporting the division of view to the Minister. The BRC said its maximum offer would be to signpost the telephone number of the Government-funded Consumer helpline at Point of Sale alongside a number for the business itself. The BRC also opposed a form of words in statute and indicated if the Government insisted on going forward it should be by way of a Code.

BRC looking at Primary Authority option

The Primary Authority system has been extended to allow a trade association to obtain a Primary Authority on behalf of those members who would like to join in. Primary authorities can issue assured advice on areas such as health and safety, consumer protection law and age sales. Anyone following that advice and signed up to the scheme cannot be prosecuted or told to do something different by any other local enforcer.

Copyright & Piracy

International publishers warn of 'severe' risk on copyright

The International Publishers' Association (IPA) and the Federation of European Publishers (FEP) have warned that Europe's creative industries risk being "severely" prejudiced by measures taken by the World Intellectual Property Organisation's (WIPO) committee on copyright. WIPO's Standing Committee on Copyright and Related Rights (SCCR) is currently looking at limitations and exceptions to copyright internationally, with a particular focus on educational activities, libraries and archives, and on people with disabilities, particularly those with visually impairments. An [open letter](#) signed by the organisations stated that a "broad range of divergent views" exists among WIPO member states.

Government response to the ECL consultation

Organisation: [Intellectual Property Office](#)

Published: 9 May 2014

Government response to the technical consultation on draft secondary legislation for ECL schemes - PDF, 1.59MB, 48 pages

The government received [37 responses to the consultation](#). As a result of the consultation process, the government intends to amend the secondary legislation to take account of certain issues raised by stakeholders. These include:

- changing the membership consent threshold, so that the collecting society must provide evidence in its application that it has the informed consent of a substantial proportion of its voting members
- the addition of provisions about the renewal of an authorisation and the evidence needed for it
- additional details about the process for reviewing authorisations after renewal
- some amendments to the opt out provisions
- how undistributed monies will be used

The government intends to publish the final Regulations and Explanatory Memorandum, and draft legal guidance, when they are laid before Parliament in summer 2014.

Government delays copyright exceptions

The government has delayed the implementation of copyright exceptions regarding parody and private copying, following concerns raised about the wording of the exceptions.

The SI on copying work for text and data analysis for non-commercial research say copyright is not infringed if a "copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for

the sole purpose of research for a non-commercial purpose". The copy also needs to be "accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)". Copyright is infringed if the copy is transferred to another person or the copy is used for a purpose other than non-commercial research without the permission of the copyright owner. The parody SI gives people the right to use a work for parody, pastiche and caricature.

Employment

Acas Employment Law Update

[**Flexible working regulations change on 30 June**](#), meaning the right to request flexible working will be extended to cover all employees after 26 weeks' service.

[**Government to "consider" lowering employment tribunal fees**](#), Jenny Willott MP, minister for employment relations and consumer affairs, said a number of aspects of the system will be under review.

[**Statutory pay: maternity, paternity, adoption and sick pay**](#). All the rates and thresholds you need for 2014/2015.

[**Women who use a surrogate aren't entitled to maternity leave under EU law**](#). The decision comes after European Court Advocates-General gave conflicting advice last year on two cases, from the UK and Ireland, involving women who had legally had children using the services of surrogate mothers.

From 6 May anyone who wants to lodge an employment tribunal claim will have to contact Acas to try Early Conciliation [Find out more here](#).

The right to request flexible working

From June this year, the right to request flexible working will extend to all employees after 26 weeks' service. Read the draft Acas Code of Practice on handling requests to work flexibly in a reasonable manner and accompanying guidance on our [here](#).

TUPE update from 1 May

As scheduled, from 1 May there has been a further change in the law around TUPE. Now, any transfers taking place must provide "Employee Liability Information" not less than 28 days prior to the transfer, rather than 14 days as previous see [guidance booklet](#).

[**Acas study reveals that people on zero hours contracts feel excluded, which can damage employment relations**](#). Approximately 1.4 million people are now on zero-hours contracts, according to The Office for National Statistics. [More on zero hours contracts](#) | [View ONS report](#).

[View a listing of all upcoming Acas network forums and conferences here](#)

Environment & CSR

Carrier Bag Charge Scotland

The Scottish Government has now laid the 'Single Use Carrier Bags Charge (Scotland) Regulations' in Parliament. The regulations are likely to be passed by May with commencement of the charge beginning on 20 October 2014. Resource Efficient Scotland (ZWS) has a new retail support site for the Carrier Bag Charge (Scotland) Regulations. The website can be accessed [here](#). Through this website the RES will start to share downloadable collateral for retailers to use. David Barnes at RES has asked for retailer feedback on the formats that would be most beneficial e.g. Shelf wobblers, floor stickers etc. Comments should be fed back to the BA for forwarding to RES.

Carrier bag proposals for Europe

In November 2013, the European Commission published a proposal to amend the Packaging and Packaging Waste Directive, to reduce the consumption of lightweight plastic carrier bags (below 50 microns). The original proposal introduced an obligation for Member States to reduce the consumption of lightweight plastic carrier bags, while allowing them to set their own national reduction targets and to choose the measures to reach those targets. On 10 March 2014, the Environment Committee of the European Parliament voted through a series of compromises and amendments to the original EU proposal, including a target that Member States shall achieve a reduction of at least 80% (i.e. To 40 bags p.a.) in the consumption of lightweight plastic carrier bags as compared to the average consumption in the Union in 2010. This would mean that all Member States would need to reduce lightweight plastic carrier bag usage to 40 bags per person per year within two years of entry into force of the Directive.

EFRA Waste Management – BRC Submission

Executive Summary

- Defra's decision to 'step back' in certain areas of waste management could result in a fragmented waste management landscape with no strategic direction from central government. We would welcome clear direction from Defra on waste management to enable more consistent and appropriate waste management across England and the UK.
- From a retail perspective, the most significant barrier to improved municipal recycling rates is the inconsistency of materials collected by local authorities and the resulting complexity of recycling for consumers.
- One measure to promote re-use and recovery of waste is the promotion of clear and concise consumer facing labelling on packaging. To help increase recycling

rates in the UK, the BRC launched the On Pack Recycling Label in 2009. Active Government support and recognition of this labelling scheme would help to promote it to consumers, local authorities and those retailers and manufacturers who are unaware of it.

- Another appropriate measure to promote recycling is to incentivise the use of recyclate as a replacement for virgin material in consumer goods and packaging. We would welcome further consultation in this area.
- Retailers take their unique position and responsibility seriously and the last few years have seen a huge shift in how waste is viewed and managed by retailers and their suppliers and customers.
- Retailers are involved in several voluntary joint initiatives focusing on waste, as well as their own initiatives. In addition, retailers make significant contributions towards the recovery of their products through producer responsibility legislation.

Retail Energy Efficiency Taskforce

The BRC will be producing a number of practical events and toolkits that will support retailers to introduce energy management and energy efficiency approaches that will help to reduce energy waste and associated costs.

Loss Prevention

Theft sentencing consultation

The Sentencing Council has launched a consultation on proposed new sentencing guidelines for theft offences. The guidelines set out a step-by-step decision making process for courts to use when sentencing theft cases, firstly assessing the culpability of the offender and then the harm caused by the offence. The guideline incorporates sentencing for shop theft. The consultation therefore offers an opportunity to provide views about the impact of shop theft on businesses and the factors which should be taken into consideration in terms of how offenders are dealt with.

Property & Rates

BRC joins forces with manufacturers to strengthen business rates fight

The BRC has been speaking to representatives from the leisure sector, other high street businesses and manufacturers to strengthen its calls for the Government to reform the system, which retailers believe is outdated and unfair. The BRC has found that retailers and manufacturers are disincentivised from improving buildings because they fear they may incur higher business rates charges by increasing property values.

ACS Calls for Meaningful Town Centre First Policy

In its submission to the Communities and Local Government Select Committee inquiry, 'Operation of the National Planning Policy Framework', ACS (the Association of Convenience Stores) has called for stronger guidance and enforcement of town centre first planning rules to support high streets and curb the development of unsustainable out of town retail parks. Research conducted for ACS at the end of last year showed that since the new national planning policy framework had come into effect, 76% of all approved floor space was located out of town.

ACS is calling for the Government to take the following specific steps to support high streets and local centres through the planning system:

- Support local authorities to deliver the town centre first objective of the national planning framework
- Ensure that call in powers are used appropriately to maintain consistency in policy at a local and national level
- Introduce a central monitoring framework for town centre first planning policy that shows where new developments are located
- Publish a letter to Chief Planning Officers on the correct interpretation of town centre first policy
- Provide further training and advice to local authorities on how to use available resources to attract investment from retailers in town centres

The committee is due to meet in the coming months to evaluate the effectiveness of the national planning policy framework.

Scottish Referendum

BCC publishes leading business survey on Scottish independence debate

This independent survey of 2,400 Chamber members in England, Wales and Northern Ireland examines the impacts, opportunities and risks perceived by businesses in the rest of the UK. The survey also explores how non-Scottish businesses would react to a 'yes' or 'no' vote on September 18th. The BCC survey is linked to a [survey published by the Scottish Chambers of Commerce](#) last week on the views of businesses based in Scotland.

Key findings from the BCC survey

- The majority of businesses outside of Scotland want Scotland to remain part of the UK.
- More than half of firms outside of Scotland do not see any opportunities with independence.
- Businesses outside of Scotland would favour a reform of the Barnett formula if Scotland voted to remain part of the UK.

- A third of firms outside of Scotland would like a formal currency union between the UK and Scotland if Scotland votes for independence.
- The Scotland referendum debate hasn't impacted the majority of firms south of the border, but more firms perceive a negative impact since the BCC's 2013 survey.

Taxation & VAT

VAT: Electronic Publishing

Organisation: Treasury

Source: House of Commons - Commons Writ ten Answers

Mr Tom Harris - To ask the Chancellor of the Exchequer:

- (1) what assessment he has made of the effect of VAT at 20 per cent on eBooks on reading and literacy levels of young and teenage readers;
- (2) what assessment he has made of the effect of standard rate VAT on eBooks on (a) the UK's creative industries, (b) progress towards achieving the Government's aim of making the UK a hub for digital innovation and (c) benefits to the education sector from digital technology;
- (3) what steps he is taking to ensure that VAT on eBooks at a standard rate will not damage UK authors and publishers and the UK book sector;
- (4) on what grounds he decided to introduce VAT at 20 per cent on eBooks while maintaining zero rate VAT on printed books;
- (5) what assessment he has made of the effect on publishers, authors and consumers of the proposed changes to VAT on eBooks in 2015;
- (6) what assessment he has made of the effect on the UK eBook market of the imposition of VAT at 20 per cent.

Electronic Publishing

Organisation: Culture, Media and Sport

Source: House of Commons - Commons Written Answers

Mr Tom Harris - To ask the Secretary of State for Culture, Media and Sport:

- (1) what assessment he has made of the effect of growth in the UK market for eBooks on authors, publishers and readers;
- (2) if he will launch a public consultation on steps to be taken to promote the UK eBook industry.

Mr Vaizey

Mr Vaizey: The creative industries are a great success story for the UK, and the importance of the publishing sector has been illustrated in the recently published creative industries statistics (January 2014), which show its worth of £9.7 billion in 2012,

employment of nearly a quarter of a million people, and worth of £1.25 billion in export of services in 2011.

The Department has made no direct assessment of the effect of growth in the UK market for eBooks on authors, publishers and readers; however, the existence of digital platforms, such as eBooks, increases the multimedia possibilities for authors and publishers, and provides consumers with more choice. The sector is continuing to seize the opportunities presented by digital technologies and the UK eBook industry is continuing to develop even further.

Mr Gauke: The UK applies the standard rate of VAT to digital books and the zero rate of VAT to physical books.

The application of VAT in the EU, including rates and flexibilities afforded to member states in this regard, is governed by EU law. The sale of a digital book is classified as an electronic service and attracts the standard rate of VAT under EU law.

Legal advice obtained by the Government indicates there is no scope to change the VAT treatment of the sale of digital book and similar products under EU law. As such, no assessments have been made of the type referred to by the hon. Member.

From 1 January 2015, VAT legislation across the EU will change to tax the supply of broadcasting, telecoms and electronically supplied services (including e-books) at the place of consumption.

HMRC has published information on the VAT changes which includes a summary of the impacts – [here](#).

Further coverage in The Bookseller:

[**Government: 'no scope to change 20% VAT rate on e-books'**](#)