

BA Legal Report

June 2014

Banking & Payment Systems

[The British Retail Consortium Annual Survey of Payment Methods 2013](#)

New data reveals that a growing proportion of smaller payments previously made in cash are now being made in other ways. The availability of contactless cards, handy express stores and self-service tills as well as online sales have contributed to the increased use of debit cards to 50 per cent of retail sales value in 2013, up by 11 % over the last five years. Over the same time period there has been a decline in the average debit card transaction value, and in the use of cash by 14 per cent. Debit cards now account for 32 per cent of the number of transactions compared to 30 per cent last year. However, cash remains the dominant method of payment, with 53 per cent of transactions. The average cost to a retailer to process a credit or charge card payment is now 40.9 pence. Credit and charge cards account for only 9 per cent of transactions but almost half (48.7 per cent) of costs. The cost to process a cash payment is now 1.3 pence. Debit cards cost 8.8 pence per transaction and account for 32 per cent of transactions but 37 per cent of costs. Full report here: [BRC Annual Survey of Payment Methods 2013](#)

BRC Responds to Payment Regulator

The Payment Regulator is intended to have sufficient powers to intervene in the UK payments system where deemed necessary to support competition in the market. The BRC has argued for the immediate introduction of caps on domestic interchange fees in order to better support competition in retail banking. The implementation of the European Commission's proposed cap to the UK – 0.2% or 7 eurocent whichever is lower for debit cards and 0.3% for credit cards – would mean £500 million savings per year to UK retailers. The BRC response also supports greater access to the payments infrastructure to support more innovation in retail payments. The Regulator intends to consult on its formal powers and priorities at the end of the year.

Euro Retail Payments Board

The [first meeting of the Euro Retail Payments Board](#) (ERPBB) took place in May. This body will replace the EU SEPA Council as the high-level governance body for SEPA. Members agreed to set up two working groups immediately: one on the pan-European electronic mandate for SEPA direct debit; the second on post-migration issues for SEPA credit transfer and direct debit. A third expert group on innovative and mobile payments is also to be established in the near future.

Child Protection

Digital Identity Solutions

Retailers that sell age restricted products online have historically been prone to misinformed negative media coverage, to which most have responded by removing items from their e-commerce offer. The Government is committed to making its online services simpler, clearer, faster and safe to use and has commissioned a number of identity providers to drive this effort. The Government hopes that the private sector can also benefit from identity assurance services that increase the security and convenience of digital transactions - providing more ability and solutions for retailers to sell more products online. The Cabinet Office will shortly hold a conference to explore the economic benefits from adoption of identity assurance in a variety of business contexts. This will include contributions from the retail, mobile, banking sectors and academics.

Consumer Protection

[Queen's Speech 2014: Consumer Rights Bill](#)

The government has introduced the Consumer Rights Bill into Parliament to clarify and simplify consumer rights. The Bill aims to make consumers better informed and better protected when they are buying. It is currently at report stage in the House of Commons.

Online Dispute Resolution in the UK – New Advisory Group

The Civil Justice Council (CJC) has established a new advisory group to explore the role that online dispute resolution (ODR) can play in resolving civil disputes. ODR involves the resolution of disputes across the internet, using techniques such e-negotiation and e-mediation. The EU [ODR Regulation](#) provides for the EU Commission to establish a free, interactive website through which parties can initiate ADR in relation to online disputes. The bulk of its provisions will take effect from 9 January 2016.

Copyright & Piracy

Copyright Works: Seeking the Lost

The Government has published its response to the consultation on implementing a domestic orphan works licensing scheme and the EU Directive on certain permitted uses of orphan works. Full details of the consultation response can be found [here](#). The Government received 57 responses to the consultation from a range of right holders and potential users. The final Regulations and Explanatory Memorandum will be publicly available when they are laid before Parliament in summer 2014.

[Public Lending Right Scheme 1982 \(Commencement of Variations\) Order 2014](#)

The Public Lending Right Scheme 1982 (the Scheme) provides for payments to be made to authors based on the number of times their books are lent out of public libraries. This Order brings into force on 1st July 2014 variations to the Scheme following the extension of the public lending right to narrators and producers and to audio-books and e-books on 30 June 2014.

Copyright and Rights in Performances Regulations 2014

[Copyright and Rights in Performances \(Personal Copies for Private Use\) Regulations 2014](#)

These Regulations amend the Copyright, Designs and Patents Act 1988 and permits Member States to provide for an exception to the copyright and related rights provided under the Directive in respect of reproductions on any medium made by a natural person for private use for non-commercial ends.

[Copyright and Rights in Performances \(Quotation and Parody\) Regulations 2014](#)

These Regulations permits Member States to provide for exceptions to the copyright and permits an exception in the case of quotations for purposes such as criticism or review.

Employment

Queen's Speech 2014: Small Business, Enterprise & Employment Bill

The employment elements of the Bill follow recent debate between the government and opposition on the best way to tackle employers' responsibilities, especially regarding zero hours contracts.

[Department for Business, Innovation and Skills consultation on zero hours contracts](#)

Queen's Speech 2014: Childcare Payments Bill

The government is seeking to phase in a new scheme for tax-free childcare from autumn 2015. Recipients would have to have all parents in work, earning less than £150,000 a year, and not be in receipt of childcare support through Universal Credit.

Main elements of the Bill

- Providing government support to those responsible for a child in the form effective tax relief; the government would contribute £2 for every £8 a parent pays for childcare
- Although there would be no restriction on the number of children eligible per family, government support would be capped at a maximum of £2,000 per child per annum
- The current Employer-Supported Childcare (ESC) scheme would be repealed as it

is limited in its coverage; employers operate ESC on a voluntary basis and therefore it has not be available to the self-employed or minimum wage earners

- Setting eligibility criteria for parents to qualify for government top-up payments including conditions relating to age, residency, other sources of government support and that the applicant is in paid work earning more than the equivalent of eight hours a week at national minimum wage level
- The Tax-Free Childcare scheme would be rolled out to eligible families with children under 12 within the first year of its operation, instead of just to under 5 in the first year
- The Bill would apply to England, Scotland and Wales; financial support for childcare is a devolved matter in Northern Ireland

Key documents

[The consultation document from HM Treasury and HM Revenue and Customs](#)

[The government's response to the consultation](#)

[Tax-Free Childcare: 10 Things Parents Should Know](#)

Queen's Speech 2014: National Insurance Contributions Bill

The Office of Tax Simplification has recommended that the government review the class two NICs processes for the self-employed, and considered the impact of collecting class two NICs as part of the self-assessment process.

[HMRC Research Report - Simplifying Class 2 National Insurance Processes for the self employed](#)

Queen's Speech 2014: Apprenticeships

The government has committed to increasing the total number of apprenticeship places to two million by the end of the new session. It was also announced that the third phase of the Trailblazers apprenticeship standards redesign would be announced in September. The first of these Trailblazers for the retail sector is running a brief interim consultation on the proposed standards and assessment approach, with a final consultation to verify the agreed standards due in mid-June.

New TUPE guidance available

In January Acas published guidance which explored key changes to the law surrounding business transfers. There is now fuller step by step guidance on TUPE, including advice on getting the process right, when TUPE applies, and the essentials around information and consultation in a transfer. [View new Acas TUPE guidance here.](#)

Flexible working law change this month

The right to request flexible working will extend to all employees who have been working at an organisation for 26 weeks or more from June 2014.

[View flexible working guidance and Acas Code of Practice.](#)

World Cup guidance for employers

Acas, has launched new guidance to help employers prepare for potential workplace issues that could arise over the World Cup period. Acas advises employers and small businesses to have policies in place that cover time-off requests, sickness absence, website use during working hours or watching TV during popular sporting events.

[View our guidance for employers online](#)

Holiday Pay

The European Court of Justice upheld the earlier ruling by the Advocate General that where commission is intrinsically linked to the performance of the tasks a worker is required to carry out under his contract of employment, it must be taken into account in calculating holiday pay. This is not technically a change in the law, but merely a clarification, meaning in effect that the new position has always applied. It would be prudent for retailers that have not already done so to review their holiday pay arrangements if they have workers who are entitled to variable payments such as commission to determine whether or not changes may need to be made to them.

Environment & CSR

Queen's Speech 2014: Plastic Bag Carrier Charge

From October 2015, the government intends to introduce a 5p charge on all single-use plastic carrier bags in England. A similar charge exists in Wales and Northern Ireland and will also be introduced in Scotland shortly. The charge will apply to plastic carrier bags only and SMEs will be exempt from the charge "to avoid imposing burdens on start-up and growing businesses in England at a time when the Government is supporting new growth in our economy". Retailers are expected to donate the proceeds of the charge to "good causes" through a voluntary agreement and will be required to publish data to show customers what they are being used for.

[Carrier bag charges backed \(Scotland\)](#)

The Scottish Parliament has approved the Single Use Carrier Bags Charge (Scotland) Regulations 2014, meaning the 5 pence minimum charge will commence on 20 October 2014. Scotland currently uses 750 million bags every year – the highest number in the UK.

A Scottish Government marketing campaign highlighting the introduction of the charges and reminding members of the public to re-use bags wherever possible will commence on 25 September and run for five weeks. Zero Waste Scotland is working with retailers to help them understand the new carrier bag charge. For more information about how the charge will work for retailers see: www.carrierbagchargescotland.org.uk .
[Single Use Carrier Bags Charge \(Scotland\) Regulations 2014](#)

Waste & Litter in Scotland

The Scottish Government will publish a litter strategy in the next few weeks. The Minister has also asked Zero Waste Scotland (ZWS) to commission two feasibility studies - on a deposit scheme for Scotland and on a Scottish PRN (packaging recovery note) regime. These studies are now at peer review stage. In addition to this, ZWS has received a final report on the deposit/reverse vending trials which concluded earlier this year. ZWS has also received a paper, outlining an alternative approach, from a cross industry group which opposes the introduction of a deposit scheme and/or a separate PRN regime for Scotland.

BRC Energy Efficiency Project

The BRC is developing a vision for Energy Efficiency in the retail industry to help retailers reduce waste energy consumption and cost. It will provide retailers with the tools and information they need to reduce their energy consumption and its cost to business.

Key outputs of the project include:

- An energy management workshop for retailers where they can learn the fundamentals of energy management and the opportunities presented by energy efficiency from experiences of larger retailers.
- A simple to use toolkit for participants which includes a basic energy measurement toolkit and detail on the key activities to reduce energy.
- A suite of case studies from larger retailers across a broad range of technologies and projects undertaken including employee engagement and behaviour change campaigns.

Finance

Queen's Speech 2014: Small Business, Enterprise & Employment Bill

This Bill is an amalgamation of several different issues that have been the subject of current political debate. In part it appears to be an extension of the '[Small business: GREAT ambition' paper](#)' commitment announced by the government in December 2013, which focused on the creation and growth of small businesses.

Main elements of the Bill

- To make it easier for small businesses to access finance and tender for public procurement contracts.
- To improve payment practices between small businesses and their customers.
- To increase the availability and quantity of sources of finance for businesses looking to invest.
- To encourage and facilitate the expansion of small businesses overseas.
- To ensure the frequent review of red tape and regulations affecting small businesses.
- To strengthen the UK's reputation as a reliable and fair arena in which to do business.
- To create greater flexibility in childcare regulations.
- To tackle the exploitation of redundancy payments within the public sector.

Queen's Speech 2014: Private Pensions Bill

The Budget 2014 saw major reforms to pension arrangements with chancellor George Osborne announcing changes in the way many people fund their retirement. In addition to the measures now contained in the Pensions Tax Bill that that will remove tax rules that have prevented pensioners taking more than a quarter of their savings in a cash lump sum, the government also confirmed they wanted to explore new rules on defined contribution payments.

The government has been looking at alternative pension arrangements for the past couple of years, because the move from defined benefit to defined contribution schemes has seen the balance of risk move from the employer to the employee. Proposals in the Bill will enable employees to put their money into Dutch-style "collective pensions.

In the Budget, the chancellor confirmed he would introduce a legal guarantee providing everyone with advice, terminology that differed from the consultation where the term 'guidance' was used, a less regulated area. The Bill will therefore progress alongside continuing work to establish a 'guidance guarantee', which the government aim to be in place by next April.

Main elements of the Bill

- The Bill will make provisions for a new legislative framework in relation to the different categories of pension schemes. It will establish three mutually exclusive definitions for scheme type based on degrees of certainty in the benefits that schemes offer to members.
- It will define schemes in terms of the type of 'pensions promise' they offer to the individual as they are paying in. A scheme will be categorized as a defined benefit (DB) scheme, a defined ambition (shared risk pension scheme) scheme or a

defined contribution (DC) scheme, corresponding to the different types of promise - full promise about retirement income, a promise on part of the pot or income, or offering no promise at all.

- It will also enable collective schemes that pool risk between members and potentially allow for greater stability around pension outcomes. It will also contain a number of measures relating to the valuation and re-reporting requirements for collective schemes.
- To help people make decisions that best suit their needs, everyone with DC pensions will be offered free and impartial guidance via a guidance guarantee – this Bill will enable this guidance to be offered.
- Depending on the outcome of the HM Treasury consultation, the Bill will allow the Department for Work and Pensions to either bring forward legislation to implement a ban on all transfers out of private sector DB schemes or not.
- As announced in the Budget, the Bill also allows the government to bring forward legislation to ban transfers out of unfunded public sector DB schemes. It also allows the government to bring forward legislation to ban transfers out of unfunded public sector DB schemes.

Legislative timetable

As with the Pension Tax Bill, it is expected these reforms will be in place by next April with the same deadline set for the application of a 'guidance guarantee'.

Key documents

[HMT consultation on freedom and choices in pensions](#)

[DWP consultation on reshaping workplace pensions for future generations](#)

Loss Prevention

Cyber Essentials Scheme for Businesses

The UK Government has launched the Cyber Essentials Scheme to provide businesses, both small and large, with clarity on good basic cyber security practice so that companies will be better protected from the most common cyber threats. The scheme provides the means for organisations to gain one of two new Cyber Essentials badges, 'Cyber Essentials' and 'Cyber Essentials PLUS'.

- Cyber Essentials requires the organisation to complete a self-assessment questionnaire, with responses independently reviewed by an external certifying body.
- Under Cyber Essentials PLUS, independent tests of the systems are carried out by an external certifying body, using a range of tools and techniques.

For more information see here: www.cyberessentials.org.uk

Fraud

Responsibility for Action Fraud has now been transferred to the City of London Police, which is also home to the National Fraud Intelligence Bureau (NFIB). Alongside this, the NFIB has introduced a new Integrated Operating Model structured around six desks. One of these is a Banking and Corporate desk, which will deal with fraud cases affecting retailers.

The Metropolitan Police is creating a new taskforce to tackle fraud under the name of Falcon - 'Fraud and Linked Crime Online'. Once at full capacity, the team will increase the number of dedicated officers working on fraud from around 30 to almost 500.

The National Crime Agency (NCA) has created six new Threat Groups to sit under its Economic Crime Command. One of these will cover fraud against the private and third sector, to be chaired by Commander Head of the City of London Police.

Taxation & VAT

[Digital services suppliers get one-stop EU VAT service](#)

Businesses supplying digital services across the European Union will be able to use a one-stop VAT service from January 2015. Companies will not have to pay the tax separately in each country where they do business. So that UK businesses supplying digital services do not have to register for VAT in every EU member state where they have customers, an optional VAT Mini One Stop Shop online service – VAT MOSS – has been set up by HM Revenue and Customs (HMRC). Between 27,000 and 42,000 UK businesses are expected to register with the service, most of them small-to-medium-sized enterprises (SMEs). Businesses will be able to register for VAT MOSS from October 2014.

[VAT Place of Supply of Services/Mini-One Stop Shop \(MOSS\) Seminar](#)

[London 2014 – Online Presentations](#)

[Report to EC calls for full VAT on physical books](#)

Reduced or zero rates of VAT should be removed from physical books to create a single rate across digital and physical, a report to the European Commission has argued.

The [Expert Group on Taxation of the Digital Economy report](#) has recommended that both digital products and their physical counterparts - such as e-books and printed books - should be subject to a uniform rate, at each member state's standard rate of VAT. The group's view is only opinion, and does not impose any obligation on the Commission. Any decision on a rate change would anyway have to be agreed by all EU member states.

[IMF: 'UK should reconsider VAT zero-ratings'](#)

The UK should consider raising VAT on non-tax items, according to a recommendation from the International Monetary Fund (IMF). In the report, the IMF said: "Revenue measures could include reducing tax expenditures (such as VAT zero-ratings)", but it did not specify which items should be considered.

Office of Tax Simplification

The OTS is undertaking a study looking at ways of improving the competitiveness of UK tax administration, with reference to the World Bank's 'Paying Taxes' review. As part of the Study the OTS is looking to consult as widely as possible with businesses and BRC retail members have met the OTS to discuss the review.