

# BA Legal Report

April 2014

## Banking & Payment Systems

### [Labour's 'regional bank system' to help small businesses](#)

The Labour leader Ed Miliband spoke at the Federation of Small Businesses Conference and set out a range of measures which would help small and independent companies thrive, including overhauling the banking system to allow regional banks to lend to local firms. Miliband also pledged to cut business rates should his party come to power.

### [UK Retailers Welcome European Parliament Vote on Payments Market](#)

The BRC has welcomed a significant vote by MEPs in the European Parliament for a comprehensive overhaul of the European payments market. The European Parliament has sent a clear message that the time for reform has come, including a cap on the excessive fees retailers' pay banks to process card payments (0.2% and 0.3% for debit and credit cards respectively) and removing restrictive rules which force retailers' to accept all cards irrespective of cost. This is an important first step. It is now crucial that this decision acts as a mandate for the European Council to act swiftly to support reform. This also provides further substance to support rapid progress of the implementation of a UK domestic payment regulator.

## Companies & Competition

### [New competition authority to make markets work well for consumers, business and the economy](#)

The Competition and Markets Authority (CMA) started work on 1 April as the UK's primary competition and consumer agency, with a vital role to play in helping stimulate economic growth and innovation and ensuring consumers get a good deal. Bringing together the Competition Commission (CC) with the competition and certain consumer functions of the Office of Fair Trading (OFT), the CMA has a range of new responsibilities and powers to ensure it meets its mission of making markets work well for consumers, businesses and the economy. In its first Annual Plan, the CMA sets out its priorities and work programme. These focus on merger control, market studies and investigations, and enforcement of competition and consumer law. The CMA's mission is set out under five strategic goals:

- Deliver effective enforcement
- Extend competition frontiers
- Refocus consumer protection
- Achieve professional excellence
- Develop integrated performance

## **Consumer Protection**

### **The Consumer Rights Directive**

Coming into force in June this year is the Consumer Rights Directive. The Directive is affecting all retailers, who will have to deal with changes to returns and refunds policies, changes to terms and conditions on their website and order pages, and changes to customer helpline numbers.

#### **New order cancellation period**

Distance contracts can be cancelled within 14 calendar days, increased from seven working days.

#### **Changes to returns procedures**

Consumers will be required to return items within 14 days of cancellation.

Retailers will have the right to withhold refunds until goods are returned or evidence of return is provided. They will also have the right to reduce the amount refunded for goods which show evidence of use beyond the handling necessary to establish the nature, characteristics and functioning of the goods.

#### **Active consent will be required for additional charges**

Pre-ticked boxes applying extra charges will no longer be permitted.

#### **Post-purchase helplines must be capped at basic rate**

It will be unlawful to charge more than the basic rate (mobile or geographic) for post-contract phone queries.

#### **There must be explicit acknowledgement of obligation to pay**

This will include the requirement for a button labelled 'pay now' or similar language.

#### **Understanding local law**

Retailers are bound by local laws if there are 'directing' their products at a particular country or state – 'direction' is determined by an overall assessment. For example, allowing delivery to a certain territory can constitute 'direction'.

## **Copyright & Piracy**

### **Changes to copyright law and guidance**

The government is making a series of small but important changes to copyright law to make it better suited for the digital age. These changes will affect how you can use content like books, music, films and photographs. They will also introduce greater freedoms in copyright law to allow third parties to use copyright works for a variety of economically and/or socially valuable purposes without the need to seek permission from copyright owners. Protections for the interests of copyright owners and creators are built in to the proposed changes. They will come into force on 1 June 2014. The changes to the copyright exceptions are brought in by secondary legislation in the form of five statutory

instruments that amend relevant sections of the Copyright, Designs and Patents Act 1988. The [Explanatory Memorandum](#) accompanying the statutory instruments provides legislative context and policy background to help a general reader to understand how and why the instrument is intended to operate.

### **Guidance on changes to copyright law**

The document [Guidance Overview](#) gives a brief explanation of all of the changes and indicates which leaflet to read for more information on a particular change. The [Guidance for Consumers](#) is also a useful layman's overview. [Richard Mollett](#), chief executive of the Publishers Association, said there were no surprises in the SIs, and that the PA would now be looking to make sure the guidance for consumers was clear. He said: "I think the main thing we are looking to do is tighten up the language in the explanatory notes which accompany the SIs. There is recipe for consumer confusion."

### **[Secondary legislation for the regulation of collecting societies](#)**

The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 came into force on 6 April 2014. These regulations support the self-regulatory framework developed by most collecting societies (the 'relevant licensing bodies' in the Regulations). They include powers which enable the government to remedy any gaps in the system of self-regulation should they emerge. This should improve the efficiency of collective licensing and strengthen confidence in the operation of collecting societies, delivering benefits for their members and licensees.

[Guidance on the Copyright \(Regulation of Relevant Licensing Bodies\) Regulations 2014](#)

### **[CILIP urges Cable to implement copyright reforms](#)**

CILIP (The Chartered Institute of Library Professionals), the Wellcome Trust and the British Library, are among 50 organisations to sign an open letter urging business secretary Vince Cable to implement key reforms to copyright legislation, which they say they fear "could now be subject to delay". The [letter](#) said copyright exceptions were essential to allowing "today's technology start-ups to compete with their European and US rivals" but that it seemed "highly likely that the government's own deadline for the introduction" of legislation on copyright exceptions would be missed.

### **[Ministerial speech to CILIP copyright conference](#)**

Lord Younger, Minister for Intellectual Property, speaks about the latest developments in copyright legislation and licensing:

The Regulations for copyright exceptions were laid before Parliament and will come into force on 1 June. Let me now turn to the regulations concerning unpublished works

- we know that there are many documents that are hundreds of years old but are

still in copyright just because they are unpublished

- the Government has taken powers in the Enterprise and Regulatory Reform Act to bring the copyright term for unpublished documents in line with published ones
- the Regulations specifying how this will happen will be published this summer for implementation as soon as possible thereafter

Thirdly, I'd like to focus on orphan works. We have taken measures to enable use of works where the rights holder cannot be found, so-called 'orphan works'. We are implementing the EU Directive on certain permitted uses of orphan works at the end of October. This will mean that publicly accessible archives can digitise many of their orphan works and make them viewable on their websites. As a complement to the orphan works Directive, we are introducing an orphan works licensing scheme. Finally, extended collective licensing, or ECL will allow collecting societies that are significantly representative of rights holders in a particular sector, to license on behalf of all rights holders in that sector, provided certain safeguards are met.

## **Data Protection & Privacy**

### **Data Protection Update**

The European Parliament has voted to approve a draft of the data protection regulation. However a position is yet to be agreed by the Council. There is a wide range of contentious policy issues, including profiling, right to be forgotten, data breach notification, pseudonymous data, subject access requests, level of fines and a possible pan-European one-stop shop.

## **Employment**

### **National Minimum Wage to rise by 3% on 1 October**

The Government has accepted the Low Pay Commission's (LPC) recommendation to increase the National Minimum Wage (NMW) for adults by 3% (19p) to £6.50 an hour from October 2014. The Youth and Apprenticeship rates will increase by 2% to £2.73 (Apprentices), £3.79 (16-17 year-olds) and £5.13 (18-20 year-olds).

### **Government publishes draft regulations for Shared Parental Leave**

The Government has published the results of its consultation on Shared Parental Leave (SPL) setting out how it will work when introduced in April 2015 as well as the draft regulations required to implement the policy. The BRC is providing feedback to the Government on the draft regulations and will work with ACAS to ensure it produces business-friendly guidance and pro formas to cover all the necessary business processes. Details can be found [here](#).

### **Additional Government support for new childcare scheme**

Following the announcement last March that employer supported childcare will be phased out and replaced by a new tax-free childcare voucher scheme, the Treasury has announced that the new scheme will now offer a larger tax saving than previously announced. From autumn 2015 parents will be able to buy vouchers online to pay for childcare. For every 80p they spend, the Government will add 20p. The scheme is available for up to £10,000 of childcare costs per child each year. The age limit will be phased in over the first year: at launch only under-5s will qualify but by the end of the year it will apply to all under-12s (and for disabled children until they are 16). Employees who are members of an existing employer-supported scheme or who join one before autumn 2015 can choose to continue to use the scheme until their child reaches 15, but only if they stay with their current employer. More details can be found [here](#).

### **[Retail Apprenticeship Trailblazer](#)**

The first eight Apprenticeship trailblazers have concluded, resulting in 11 new Apprenticeship standards for those sectors. The second phase of trailblazers includes retail, which will develop the standard for Shop Floor Staff/Sales Assistants. Following the 2012 Richard Review, the Government's Apprenticeship reforms aim to improve the quality of apprenticeships and make the skills system more responsive to employers' needs. To support this planned transformation, groups of employers known as 'Trailblazers' work together to design new Apprenticeship standards for occupations in their sectors and agree how those standards will be assessed. The standards developed by Trailblazers will become the Apprenticeship standard for that occupation. The 'Shop floor Staff/Sales Assistant' is just the first of a number of retail occupations for which new standards will be developed.

### **Acas Early Conciliation Service Launched**

The new Acas Early Conciliation Service, offering a free and less stressful alternative to going to an employment tribunal is now available.

- Early Conciliation is a free service which can help avoid the stress, cost and anxiety of an employment tribunal.
- Both parties will have up to a calendar month initially in which to explore resolving their dispute using the services of an Acas conciliator.
- Expert conciliators will not take sides or make judgements, they'll simply try to help both sides come to an agreement.

Early Conciliation will help resolve the majority of workplace disputes including unfair dismissal claims, workplace discrimination, redundancy payments or disputes around selection procedures, deductions from wages or unpaid notice/holiday pay, rights to time off or flexible working and equal pay. Further information can be found [here](#).

## **Acas Employment Update**

From 6 April 2014, here are the changes:

- [Employment Rights \(Increase of Limits\) Order 2014 increased the limits on employment tribunal awards and other amounts payable under employment law.](#)
- [Statutory questionnaires were abolished in discrimination cases - Acas has produced new guidance on asking and responding to questions of discrimination in the workplace.](#)

Almost half of UK businesses plan to take on apprentices in the next five years:

- [Acas guide for employers to help young people succeed at work.](#)

The Acas helpline has changed its number. Free and confidential advice from an Acas helpline adviser is available by calling **0300 123 1100**.

## **Environment & CSR**

### **Scottish Carrier Bag Regulations**

The Scottish Government has now laid the The Single Use Carrier Bags Charge (Scotland) Regulations and they can be accessed [here](#). The RACCE (Rural Affairs) Committee has also invited the Scottish Retail Consortium and other retailers to provide oral evidence.

### **BRC Update on Proposed Carrier Bag Charge in Europe**

Defra officials have updated the BRC on the most recent meeting of the European Council Working Group. In summary:

- Very lightweight carrier bags: There was fairly widespread support for excluding these from the EU proposals.
- There was agreement that it is too early to start legislating on biodegradability.
- Harmful substances: It was agreed that this is not the right legislation to use to ban certain substances from packaging and that the appropriate place to do this would be the framework Directive.
- Targets: 7 member states wanted targets but felt that an 80% reduction target was too high. 18 member states wanted to go back to the Commission's original proposal (no targets) but some of these could change their position.
- Mandatory charging: This was not really discussed. Those member states that expressed a view said that charging should be a decision for individual member states and that it should apply to all retailers (not food retailers only).
- Scope: 2 member states suggested that the proposals should apply to bags of 35 microns or under, but there was no real discussion on this. A few member states liked Defra's definition which would exclude multi use bags but asked for more information.
- The presidency will draft some compromise text for the next Working Group meeting on 28 April.

## **Minimum Energy Performance Standards**

As outlined in the Energy Bill, the UK Government will set out Minimum Energy Performance Standards for commercial buildings. The final advisory report has been submitted to DECC and the consultation on the proposals are expected in the summer. Proposals will mean that buildings with an Energy Performance Certificate (EPC) rating of E or below will not be able to be put to the market for sale or lease by 2018. A set of exemptions have been proposed with a view to avoiding a number of unintended consequences such as a tenant refusing work to be undertaken and provisions associated with the uptake of a commercial green deal.

## **[The BIEC Issues a Mostly Good Environmental Report](#)**

The use by book manufacturers of certified paper, either by the Forest Stewardship Council or the Sustainable Forestry Initiative, was 47% in 2012, up from about 10% in 2007 but the use of recycled fiber has declined, according to a new study just released by the Book Industry Environmental Council in the US. The new report, [2012 Book Industry Environmental Trends](#), also found that that the amount of book papers certified by the FSC or SFI used by paper manufacturers was at 73% in 2012, up from 48% in 2009. The positive growth in the use of certified paper was mitigated a bit by a fall back on the use of recycled paper which was at about 22% in 2012, down from almost 25% in 2010.

## **Loss Prevention**

### **Anti-Social Behaviour, Crime and Policing Bill**

This will introduce new powers to allow the police to prosecute uncontested cases of shop theft of goods under £200. The powers are likely to come into effect by the end of May 2014. Enabling the police to prosecute offenders directly without the involvement of the CPS is intended to ensure low value shop theft cases are processed more swiftly and efficiently. The Home Office has stated that it will not affect the sentencing or severity of how shop theft is dealt with.

### **Consultation on Theft Sentencing Guidelines Launched**

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 shop theft cases, firstly assessing the culpability of the offender and then the harm caused by the offence. The BRC will be responding and will concentrate on the following areas:

- **Culpability.** Should an offender already subject to a store banning order automatically be elevated to the highest category of culpability? (p.18)
- **Harm.** Are the financial amounts and additional harms listed right? (p.19-20)

- **Previous offending.** Views on the proposed treatment of previous convictions? (p.22)
- **Aggravating factors.** Are there any other factors that aggravate the seriousness of offences which should be included? (p.23)

The full consultation document can be found [here](#). Closing date is 26 June 2014.

### [Cyber essentials scheme: overview](#)

Following a [call for evidence](#) on organisational standards in cyber security which concluded in October 2013, government has worked with the [Information Assurance for Small and Medium Enterprises \(IASME\)](#) consortium, the [Information Security Forum \(ISF\)](#) and the [British Standards Institution \(BSI\)](#) to develop a scheme that provides clarity on good cyber security practice. The scheme summary sets out the background, next steps and answers questions that companies may have about the scheme. The requirements document sets out the 5 technical controls that should be followed to achieve basic cyber protection. The draft assurance framework for the scheme sets out how organisations can apply to be independently assessed against the 5 controls, and how they can demonstrate that they have successfully done this. Before the full scheme is launched, we are publishing the assurance framework in draft in order to gain feedback from businesses on its appropriateness for use. Feedback on the draft assurance framework should be submitted by completing the response form and returning it to [cybersecurity@bis.gsi.gov.uk](mailto:cybersecurity@bis.gsi.gov.uk) by 7 May 2014.

### **Documents**

[Cyber Essentials Scheme summary](#)

[Cyber Essentials Scheme requirements for basic technical protection from cyber attacks](#)

[Cyber Essentials Scheme proposed assurance framework](#)

[Cyber Essentials Scheme proposed assurance framework response form](#)

### **Development of a new Action Fraud reporting tool**

From April 2014, responsibility for Action Fraud will be transferred to the City of London Police, which is also home to the National Fraud Intelligence Bureau (NFIB). As part of this, City Police are commissioning the development of a new fraud reporting and case management IT system to be in place by 1 January 2015. Having both Action Fraud and the NFIB under one roof is intended to create an improved end-to-end fraud reporting and analysis process. City Police have indicated that the new online fraud reporting tool will offer greatly enhanced functionality compared to the present system, including the ability to upload a large volume of fraud reports at once and track case progress.



## Home Office Crime Prevention Panel

The Minister for Crime Prevention Norman Baker has invited the BRC to participate in a new Home Office panel which has been set up to look at opportunities for preventing and 'designing out' crime. The Panel, which includes representatives from industry, law enforcement and the charity sector, will develop policy proposals by the autumn. The work plan for the panel has yet to be agreed.

## Property & Rates

### [Local shops and pubs could get a third extra off tax bill](#)

Many businesses already get 100% discount as a result of government policy. The tax changes that come into effect at the start of this new tax year mean nearly 300,000 eligible small shops in England will benefit further (see the table below). The full list of business rate support measures, unveiled by the Chancellor in the Autumn Statement, that take effect on 1 April 2014 are:

- a new reoccupation discount of 50% for 18 months for new occupants of retail premises that have previously been empty for a year or more
- allowing businesses to pay their bills over 12 months (rather than 10), which will help every firm with their cash flow
- a 2% cap on business rate inflation increase
- the new £1,000 business rates discount for local shops, cafes, restaurants and pubs (up to a rateable value of £50,000) estimated as more than £272 million of tax relief this year
- the doubling of the extension of the small business rate relief until 31 March 2015, which will mean 360,000 business properties pay no bill at all

**Examples of how different businesses will benefit from the tax changes is illustrated below**

Business property rateable value	Support in 2014 to 2015	% change in 2014 to 2015 bill compared to 2013 to 2014	Total value of support in 2014 to 2015
£5k	100% small business rate relief	0%	£1,190
£10k	small business rate relief; 2% cap; £1,000 discount	-30.5%	£1,827

Business property rateable value	Support in 2014 to 2015	% change in 2014 to 2015 bill compared to 2013 to 2014	Total value of support in 2014 to 2015
£15k	2% cap; £1,000 discount	-12.5%	£1,075
£30k	2% cap; £1,000 discount	-4.7%*	£1,150
£40k shop reoccupied after 1 April 2014	Reoccupation relief 2% cap £1000 discount	-56%	£8,420
£45k	2% cap; £1,000 discount	-2.4%*	£1,225
£100k	2% cap	-2.3%*	£500
Source: HMT and DCLG calculations.			
* This takes account of the 2% cap to the RPI increase plus the small business supplement.			

Retail premises are eligible for a £1,000 discount in the financial years 2014 to 2016.

### **Government seeks views on administration of business rates system**

The government has launched a [discussion paper on the administration of the business rates](#) system and is seeking views from businesses and local authorities. Part of the government's commitment to making the tax system simpler, the review will consider how the business rates system in England is administered by the Valuation Office Agency and local authorities. It invites views on how the administration could be improved in the longer term - following the planned 2017 business rates revaluation - and the government hopes to use the review to strengthen the system's responsiveness to changes in property values and its simplicity and transparency for business ratepayers. The review will focus on five elements of the system: how property is valued; how often property is valued; how business rates bills are set; how business rates are collected and how information about ratepayers and business rates is used. Views are sought from all those who interact with the business rates system by 6 June 2014 and should be sent [here](#).

### **Local Authority Parking Enforcement**

The transport committee's report and the government response on local authority parking enforcement were debated by MPs in Westminster Hall. The issue was first addressed by the committee in January 2013, which sought views on the adequacy of current arrangements for parking enforcement, with the final report published in October 2013. The committee had called for more transparency and local authorities should issue annual reports showing income from both parking charges and penalties, along with how any surpluses were applied. In its response, the government stated that it had issued a revised code of transparency for local government, which stated that local authorities must place a link on their website and data must show revenue collected from on-street and off-street parking and parking enforcement notices.

[Link to the original source document](#)

### **BRC Governance**

New Articles of Association for the BRC were formally adopted at the General Meeting held on 14 March. The resolution was unanimously passed by those members attending the meeting and by proxy – over 60% of the retailer members and over 75% of the trade association members so that was a great endorsement of the changes. As a result of the adoption of the new Articles, a new Board structure came into effect on the same day with a streamlined Board of Directors and the creation of a Policy Board and an Audit & Risk Committee. BRC Chairman, Sir Ian Cheshire, will be standing down at the end of September after a two year term. Sir Charlie Mayfield, Chairman of the John Lewis Partnership will start his term of office as vice chair in May and then take over as chair in September.