

BA Legal Report

October 2013

Banking & Payment Systems

[Polymer Banknotes Consultation](#)

The Bank of England has launched a public consultation on moving to polymer reduced size bank notes for the £5 and £10. The Bank has yet to take a final decision on making this change and is consulting with the public and industry before taking that decision. There is a website with more information: www.bankofengland.co.uk/banknotes and a questionnaire: <http://www.bankofengland.co.uk/banknotes/polymer/Pages/industry.aspx>

UK Interchange Fee Reform

The European Commission has proposed regulation of interchange fees, including price caps. The proposals to cap debit and credit card interchange fees would provide significant cost savings. However, for one-third of UK retailers – those with an average transaction value of £40 or more – the cap on debit cards would actually result in a cost increase. BRC retail members have reached consensus that an eight pence limit should be proposed to be added to the EC's recommended debit cap, and that these caps should be introduced as soon as possible, through the UK payments regulator.

Censorship & Defamation

[Novelists call for change in Northern Ireland libel laws](#)

Novelists including Sebastian Barry, Roddy Doyle and the Man Booker Prize-shortlisted Colm Tóibín have urged Northern Ireland to change its libel laws. More than 30 writers have signed an open letter to the Northern Ireland First Minister Peter Robinson, claiming that unreformed libel laws threaten their freedom to write.

Consumer Protection

Consumer Rights Legislation

The Government continues to work on its proposed consumer rights legislation including the Consumer Bill of Rights; the transposition Regulation for the Consumer Rights Directive; and legislation on consumer redress for misleading and aggressive practices. By the end of the year it will also be consulting on the implementation of the Alternative Dispute Resolution (ADR) Directive. Taken together these measures will establish a new consumer rights regime in the UK by re-shaping the sale of goods and services

requirements; establishing new consumer rights in the area of digital content; providing for collective redress for breaches of competition law and consumer protection law; providing redress for consumers for aggressive and misleading practices; and providing revised rights for consumers and for retailers in the distance selling arena. On ADR, businesses will by EU law be required to indicate to any consumer who is not satisfied with the outcome of a complaint directed to the business whether or not that business is a member of an ADR scheme. If a distance sale is involved, a link to the EU ODR Platform will be required on the website. The BRC has been broadly supportive of the proposals and is continuing to engage with the Government going forward.

Primary Authority Guidance

The Better Regulation Development Office (BRDO) has issued new statutory Guidance for Primary Authority partnership arrangements pending the commencement of the Enterprise and Regulatory Reform Act and the extension of coverage of Primary Authorities to franchise and other businesses that have an interest in common. The Guidance also covers the traditional Primary Authority businesses. You can find the Primary Authority Statutory Guidance and the new List of Primary Authority Categories (referred to in the guidance) here: <http://www.bis.gov.uk/brdo/publications>.

Financial Conduct Authority Guides

On 1 April 2014, the Financial Conduct Authority (FCA) becomes responsible for regulation of the consumer credit industry, taking over responsibility from the Office of Fair Trading and Financial Services Authority. The Authority has produced a range of guides for business to support transition to the new regime. More at: www.fca.org.uk.

Copyright & Piracy

[Research on online copyright infringement](#)

Ofcom has published the final findings of a year-long study into how and why internet users access music, films, TV programmes, software, books and video games online - both legally and illegally. The fourth wave of the Online Copyright Infringement Tracker shows results for the period March - May 2013. Highlights:

- Fifty-six per cent of UK internet users aged 12+ consumed at least one item of online content (legally or illegally) over the three month period of the survey.
- Thirty-nine per cent had downloaded content, and 48% had streamed or accessed content.
- Over the year, 17% of internet users infringed copyright online;

- 2% of internet users were responsible for 74% all online copyright infringement;
- Consumption varied across content types; music (35%) and TV programmes (34%) had the highest levels either downloaded or streamed online in the past three months, followed by films (18%), books (13%), computer software (12%) and video games (11%).
- However, infringers also accounted for 32% by volume, and 40% by spend, of legally consumed digital content, spending more on average than non-infringers on both digital and physical content.
- More e-book consumers paid for any content (69%) and for all of their content (49%) than consumers of any other content type.
- A higher proportion of people claimed to have spent money in the past three months on films (43%) and books (37%) than on other content types.
- Spend on physical content was highest for books (£398m).

[CMS Committee criticises copyright 'erosion'](#)

The House of Commons Culture, Media and Sport Committee has criticised the Hargreaves Review's proposed changes to copyright in its [newly issued report](#) on the creative industries, "Supporting the Creative Economy". The Committee also "strongly condemned" Google's response to copyright-infringing sites. Richard Mollet, chief executive of the Publishers Association said the CMS report – alongside the [Copyright Licensing Steering Group's report](#) into progress on the Copyright Hub, also released this week – pointed up "everything which is wrong with the government's policy on copyright."

[UK Publishers Association backs police IP crackdown – but does it make sense?](#)

The UK Publishers Association has come out strongly in support of the City of London Police's creation of the Police Intellectual Property Crime Unit (PIPCU), launched in the UK to tackle criminal IP abuse. "The launch of Police Intellectual Property Crime Unit is a hugely significant development in the fight against online intellectual property crime which undermines the creative industries on a daily basis," said Richard Mollet, CEO of The Publishers Association.

Environment & CSR

[Plastic bag profits should be donated, says Clegg](#)

Deputy Prime Minister Nick Clegg has unveiled plans for a 5p charge on plastic bags in England and says he hopes retailers will give any profits to environmental charities. The plan aimed at discouraging the use of carrier bags could begin in 2015. The charge will only apply to supermarkets and larger stores. Charges applying to single-use carrier bags

made from both plastic and paper came into effect in Wales in 2011 and Northern Ireland last year. Changes are due to come into force in Scotland next year.

Carrier bag charges in England

Details at present are very sketchy. Retailers operating in England with more than 250 employees will be required to charge shoppers. It is envisaged that retailers will donate the proceeds of the charge to charity. No statements have been made by Government regarding exemptions beyond a commitment to exempt small businesses and certain biodegradable plastic bags which meet a high standard. If these exemptions remain, retailers will be faced with complex messages to communicate to shoppers as to why some shops and some non-reusable bags are exempt and why these exemptions do not exist elsewhere in the UK. The BRC would like the regulations to be as consistent as possible across the four UK nations and are organising a roundtable with Defra and retail members in late November, once Defra has some more concrete proposals. The BA has informed the BRC that we favour a carrier bag charge for all retailers. The BA will attend the BRC/Defra roundtable.

Single Use Carrier Bags Charge (Scotland) Regulations 2014

The Scottish Government has today published the draft regulations which will introduce a mandatory charge for single use carrier bags. The regulations can be found [here](#). The accompanying statement can be accessed [here](#).

[Plastic bag levy increase in Northern Ireland dropped](#)

The Department of the Environment (DoE) has announced that the plastic bag tax will not increase as planned. Minister Mark H Durkan's department had previously proposed increasing the levy from 5p to 10p from April 2014. The DoE said data from a number of major supermarkets showed a reduction in plastic bag use of over 80%.

Retail Energy Efficiency Taskforce

The first meeting of the Retail Energy Efficiency Taskforce was held in September. The taskforce is a collaborative forum between retailers and the Government to consider acceleration of energy efficiency within the sector. The forum will be focusing on two main areas. The first will be on how best to accelerate deployment of energy efficiency technologies and products within the retail sector to support energy and carbon reduction targets. The second will be on what will need to be done to support the sector and to bring forward the energy efficiency market to enable enhanced action.

Finance

[SME Finance Monitor](#)

The ninth SME Finance Monitor report was published at the end of August 2013. The largest independent survey of its kind, it provides detailed information on the issue of access to finance for SMEs, both currently and over time. The full report can be found at www.sme-finance-monitor.co.uk.

Loss Prevention

BRC Annual Crime Survey

The Annual BRC Retail Crime Survey has been sent out to retail members for completion. The survey collects valuable evidence about the crime experienced by UK retailers and completion date is Friday 25 October. The questionnaire has been revised so that it is more clear and easier for retailers to complete. Please find the survey at the following link: http://www.brc.org.uk/survey_crime/default.asp?survey_id=5

Shop theft clause in the Anti-Social Behaviour, Crime and Policing Bill

The Bill contains a proposal to increase police powers to tackle shoplifting which will introduce police-led prosecutions for uncontested cases of theft from a shop of goods with a value of £200 or less. A defendant will still be able to elect for a Crown Court trial. This change is intended to enable the police to deal more efficiently and effectively with the large number of shoplifting cases which appear before the courts each year, a high proportion of which involve guilty pleas. The Home Office has stated that it will not affect the sentencing or the seriousness with which shop theft is dealt. The Home Office have agreed to prepare a briefing for retailers ahead of the next legislative stage of the Bill.

[Collaboration and intelligence sharing can boost loss prevention](#)

Retailers need to work more collaboratively, through the sharing of intelligence, in order to maximise their loss prevention activities. Speaking at the 4th Retail Bulletin 'Retail Loss Prevention Summit 2013' Mark Stevenson, national loss prevention manager at Blakemore Retail (Spar), stated: "Loss prevention is the only department in retail that should not be brand competitive. We should all be sat around a table and sharing best practice. Unfortunately loss prevention has taken a step back, due to the economy, but the criminals have not."

Pricing

[OFT goes on the offensive on pricing practices](#)

The Office of Fair Trading's originally relatively low-key review of the current Pricing Practice's Guide, published in 2010 by the Department for Innovation & Skills, has now seemingly become an all-out offensive. The open and very public declaration that six major furniture and carpet retailers are being investigated by the OFT in relation to alleged false reference pricing practices comes hard on the heels of the recent prosecution of Tesco's over its "half-price" strawberries, an incident which resulted in a £300,000 fine being handed out by Birmingham Crown Court. Earlier this year the OFT began seeking informal views from retailers with the intention of strengthening and clarifying existing guidelines, with the stated intention of going out to consultation later this year.

Property & Rates

[Business rates 'inconsistent' with Coalition pledge to build competitive tax system](#)

The Government is damaging the high street by charging businesses the highest commercial property tax in Europe, a levy that is "inconsistent" with its pledge to create the most competitive tax system in the G20, retailers have warned. In a briefing paper put together by the BRC to press the case for a reform of business rates, it said the tax on property is "no longer fit for purpose" and has become split from the health of the economy and individual businesses.

[Labour vows to freeze business rates for small firms](#)

In his speech to the Labour Party Conference, Ed Miliband announced a £800m tax break that would see an immediate reverse of the planned rise in business rates, due to come into force in April 2015, if Labour wins the election in May 2015. This would mean that rates for small firms would drop back to 2014 levels and be frozen for 2016. It will be paid for by scrapping a planned cut in corporation tax for large companies, due to come into force in 2015.

[BRC Responds To Miliband Proposals On Business Rates](#)

British Retail Consortium Director General Helen Dickinson said: "The UK business rates are the highest property taxes of any EU country and lead directly to vacant shops. A consensus is emerging that the system is no longer fit for purpose and requires total reform. We therefore welcome this focus on supporting small businesses and high streets and the recognition that the cost of business rates has become unsustainable for retailers.

With more than one in ten shops currently empty across the country, a complete reform of the system is required. We are keen to discuss these proposals in detail with Labour to understand how they might form part of this more fundamental root and branch review.

The BRC are currently selecting the consultants to take forward major research to examine and establish changes to the system of business rates. The research will be complete in early spring 2014 and will be central to a campaign to reform business rates.

[New business rates schemes to revitalise high streets and stimulate commercial development](#)

Two new business rates schemes have been announced by Economy Minister Edwina Hart to help revitalise Welsh High Streets. The two new schemes are Open for Business and New Developments. Open for Business is expected to cost around £2.5m and will run until 31 March 2015 to encourage re-occupation of long term vacant retail properties, particularly in town centres and shopping areas, by providing 50% relief on business rates for eligible properties for up to 12 months from the first date of occupation. The retail properties will have had to have been unoccupied for a continuous period of 12 months or more and have a rateable value of no more than £45K. Similar schemes run in Northern Ireland and Scotland. The New Developments Scheme will exempt all newly built commercial property from business rates for the first 18 months and will run until September 30 2016.

[Welsh Government lacks power to cut business rate relief to charities](#)

The Welsh Economy Minister would face an uphill battle over possible changes to business rate relief for charity shops according to Welsh Liberal Democrat Shadow Business Minister, Eluned Parrott AM, following legal advice that Welsh Ministers do not have the power to impose such changes without new primary legislation. The Minister is consulting over proposals following an independent review of business rates for charities, chaired by Prof Brian Morgan of Cardiff Metropolitan University, which published recommendations in April. These included:

- Cutting rate relief for all charity shops from 80% to 50%
- Cutting rate relief for larger charity shops even further; 0% in some cases
- Zoning or limiting the number of charity shops in a given area

The formula for the mandatory funding of charity business rate relief is fixed in Section 43(5) of the Local Government Finance Act 1988. According to independent legal advice given to the Welsh Liberal Democrats, as neither the Welsh Ministers nor the Secretary of State has the power to change that formula, implementing the rate relief recommendations would require primary legislation.

[New parking reform proposals to support local shops and high streets](#)

The Government has announced a series of proposals for consultation to reform parking rules to help with the cost of living and support local shops. The Department for Communities and Local Government and the Department for Transport will in due course publish details of further reforms, including:

- stopping CCTV being used for on-street parking enforcement
- new open data on parking to allow the public to 'go compare'

There will also be proposals for consultation on:

- updating parking enforcement guidance to support local shops
- tackling wrongly-issued fines
- stopping unacceptable parking fine collection practices
- reviewing unnecessary yellow lines and the scope for residents' reviews
- reviewing the grace period for parking offences
- clamping down on anti-social driving and encouraging social responsibility
- spreading best practice on supporting town centres and tackling illegal parking
- analysis of the impact of different transport policies on town centre vitality

RICS launch guide to support SMEs

RICS has published a guide to help small businesses take better control of their finances through managing their property assets differently: the [Small Business Property Guide](#). Property costs - such as business rates and rent - are one of the most significant expenses incurred by SMEs and failure to take professional advice as to how to manage them could cost businesses thousands of pounds. The guide, which is free of charge for business owners covers all aspects of the property process. It has been endorsed by the Federation of Small Businesses, the British Retail Consortium and the Association of Town and City Management. The guide includes advice on:

- Finding the right premises
- Business rates
- Tax allowances on property
- Rent reviews
- Valuations

Future of Retail Property

The BRC is undertaking a project to consider the future of retail property. This project will underpin future work with the Government on policy affecting retail property. The main output for the project team will be a report that both outlines the vision developed for post-2020 retail property and offers key policy recommendations to Government to

support these objectives. The BRC has also held meetings with BIS officials regarding a research project they are planning to undertake in the next few months. The planned research will be a quantitative analysis of trends and similarities in the best performing Local Enterprise Partnerships (LEPs) with a view to supporting a vision for high performing retail locations in 2020.

Taxation & VAT

[Publishers 'must prepare' for 2015 VAT changes](#)

Publishers have been urged to prepare for the sweeping changes to tax which will be introduced in 2015. From 1st January 2015, the way VAT is dealt with across Europe for e-services, including e-books, will change, with the tax applied in the country where the consumer lives rather than where the supplier is based.

[BIC Breakfasts The VAT Session: do not assume anything](#)

Charlotte Whitbread, Business Manager, BIC, reports on the BIC Breakfast session on VAT 2015. Those in attendance at the Breakfast will know that though these changes cannot be put into practice until 2015, preparation for the change could not be a more *current* issue in the trade, and if you haven't started planning now then action is potentially well overdue. BIC is preparing a guidance paper on this issue – so watch the BIC website www.bic.org.uk for news of its publication.