

# BA Legal Report

February 2014

## Banking & Payment Systems

### British retailers' priorities for payments

Thirteen of Britain's biggest retailers, representing almost a third of retail sales in the UK, united in support of the EC's proposals to cap interchange fees. The CEOs, along with the British Retail Consortium and two other trade associations, wrote a joint letter to MEPs in advance of the important debate on the issue on 17 December 2013. Helen Dickinson, Director General of the BRC, said: "In the summer we saw a landmark proposal from the Commission to cap excessive bank fees to process payments. We welcomed it then because it would allow retailers to bring forward new investment in their customer offer. But we are now extremely concerned that this vital initiative is at risk. The window for change is limited and with European parliamentary elections and a new European Commission in the middle of 2014, change needs to come now."

### [UK bank notes to switch to plastic in 2016](#)

The Bank of England has confirmed that the next £5 and £10 banknotes will be printed on plastic as it makes the switch from the current cotton paper. The first polymer note will be a £5 note featuring Sir Winston Churchill which will be issued in 2016. It will be followed around a year later by a £10 note featuring Jane Austen. The switch to the new material has also been backed by the public with 87% of the 13,000 people who gave feedback as part of the consultation saying they were in favour of polymer.

## Censorship & Defamation

### Defamation laws take effect

The Defamation Act was given Royal Assent and came into force on 1 January 2014. Libel laws in England and Wales are being significantly reformed to provide clearer, better protection for people publicly expressing opinions. The Defamation Act 2013 reverses the chilling effect on freedom of expression current libel law has allowed, and the prevention of legitimate debate we have seen in the past. For example, some journalists, scientists or academics have faced unfair legal threats for fairly criticising a company, person or product. For the first time a new serious harm threshold has been set to help people understand when claims should be brought and discourage trivial claims that harm freedom of speech and unnecessarily take up court time. The Defamation Act contains a series of measures that include:

- Protection for scientists and academics publishing peer reviewed material in scientific and academic journals;
- Protection for those who are publishing material on a matter of public interest where they reasonably believe that publication is in the public interest;
- Introducing a new process which should help a person who feels an online statement is defamatory to resolve the dispute directly with the person who has posted the statement. This offers better protection for the operators of websites hosting user-generated content, provided they follow the new process. New regulations have been introduced to ensure that this process operates effectively;
- A single publication rule to prevent repeated claims against a publisher about the same material;
- Action to address libel tourism by tightening the test for claims involving those with little connection to England and Wales being brought before our courts;
- Greater protection for secondary publishers including booksellers and newsagents by removing the possibility of an action for defamation being brought against them if it is reasonably practicable for an action to be brought against the primary publisher.

#### **Defamation Act 2013 Standard Note**

[This note describes the background to the Defamation Act 2013 and summarises the main provisions. It also describes the procedural and cost reforms which accompanied the Act.](#)

NB: Section 10 limits the circumstances in which an action for defamation can be brought against someone who is not the primary publisher of an allegedly defamatory statement. The courts no longer have jurisdiction to hear a defamation claim against someone who was not the author, editor or publisher unless satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher. This means that secondary publishers, such as booksellers, will have some protection against liability in defamation proceedings.

## **Consumer Protection**

### **Implementing the Consumer Rights Directive 2011/83/EU**

The Consumer Rights Directive was passed by the EU in October 2011. The Directive comes into force in all EU member states in 2014. The Directive aims to simplify consumer rights in certain important areas, mostly relating to buying and selling. The Government has now published the [final regulations](#) and [order](#). Businesses must comply with these regulations from June 2014. [Guidance on the regulations](#) is also available. For further information please contact [Trading Standards](#) (businesses) or [Citizens Advice](#) (consumers).

### **Consumers and businesses one step closer to new bill of rights**

Consumers will be closer to having enhanced easy to understand consumer rights following the introduction of the new Consumer Rights Bill. The Bill had a Second Reading on 28 January; the Committee stage will begin in mid-February and conclude by 13 March, after which it will go to the Lords. Implementation will most likely be in mid-2015. The Bill streamlines overlapping and complicated areas of consumer law from eight pieces of legislation into one easy to understand consumer Bill. It also introduces new rights for consumers and businesses. This deregulatory Bill will mean consumers and businesses will find it easier to resolve problems with faulty goods, substandard services and, for the first time, corrupted digital downloads. In the Bill consumers will have the right to:

- Get some money back after one failed repair of faulty goods (or one faulty replacement);
- Demand that substandard services are redone or failing that get a price reduction;
- A set 30 day time period to return faulty goods and get a full refund;
- Challenge terms and conditions which aren't fair or are hidden in the small-print.

The Consumer Rights Bill will be available at [Consumer Rights Bill 2013-14](#). Consumers will be able to find out more information on the proposals in the Bill, including examples of how it would affect them at [The Consumer Rights Bill](#).

### **Consumer Programme 2014-2020**

The European Parliament has adopted the [Consumer Programme 2014-2020](#), which finances actions in the area of EU consumer policy. The general objective is to ensure a high level of consumer protection, to empower consumers and to place the consumer at the heart of the Internal Market. The programme focuses on four categories:

- **Monitoring and enforcing safety** through EU-wide systems such as RAPEX, the EU rapid alert system for dangerous consumer products;
- **Information and education**: actions to ensure the quality and trustworthiness of price comparison websites;
- **Consumer rights**: electronic translation tool of the online dispute resolution platform;
- **Enforcement action**: this includes sweep actions which are coordinated by the European Commission in order to see if consumer rights are being compromised or denied.

In the coming seven years, €189m will be dedicated to improving the overall protection of consumers in the EU Member States.

## Copyright & Piracy

### Copyright under threat in Ireland

Ireland's Copyright Reform Commission has proposed sweeping changes to national copyright law. Their report, presented at a forum attended by International Publishers Association Secretary General Jens Bammel, intends to give Ireland a "competitive advantage" by taking a softer line on copyright. The report sets out a new approach to "Fair Use" and an "education" exception drafted to give sweeping exceptions for the free use of "work that is available through the internet". IPA will be supporting Irish publishers in their fight to avoid a new fair use doctrine - the Commission's report can be found [here](#).

## Employment

### [Chancellor Wants £7 Minimum Wage](#)

With the inflation rate currently hitting its target of 2% after years of the Consumer Price Index (CPI) being stubbornly high, George Osborne has stated that the National Minimum Wage should next rise at a rate above inflation. The figure that the Chancellor is looking for is a rise from the current £6.31 an hour to £7 an hour - a rise of over 10% the current rate. NMW rates are decided by the independent Low Pay Commission.

### Acas Employment Law Update

The Government has announced several proposed changes to employment law. It has also launched a number of consultations on further proposed changes. A round up of these changes is listed below.

Proposed changes to employment law	Launch date
<b>Transfer of undertaking protection of employment (TUPE)</b> The consultation to the proposed changes cover the service provision and should they be retained or repealed, whether or not the employee liability information should be provided earlier to the transferee and whether an amendment to TUPE would be possible to ensure that a change to the location of the place of work would not necessarily lead to automatic unfair dismissal.	Expected 31 January 2014
<b>Early conciliation to come into force</b> From April 2014 before lodging a claim to the Tribunal all claimants will need to notify Acas first, where conciliation will be offered. If conciliation is unsuccessful within the set period the claimant can proceed to lodge a tribunal claim.	April 2014

<p><b>Power of Employment Tribunal to impose Financial Penalties on employers</b></p> <p>The Employment Tribunal will have the power to order an employer who has lost a case to pay a financial penalty to the Secretary of State of between £100 and £5,000. The penalty will be imposed where the employer has breached any of the workers rights and the breach has one or more aggravating features.</p>	<p>April 2014</p>
<p><b>Statutory maternity, paternity and adoption pay increase</b></p> <p>The rate of statutory maternity, paternity and adoption rate will increase to £138.18.</p>	<p>April 2014</p>
<p><b>Flexible working</b></p> <p>The Government proposes to extend <a href="#">The right to request flexible working</a> to all employees and remove the current statutory procedure for considering requests. Instead employers will have a duty to consider all requests in a reasonable manner; employers will have the right to refuse requests on business grounds.</p>	<p>Spring 2014</p>
<p><b>Managing sickness absence</b></p> <p>A health and work assessment and advisory service is to be introduced, offering free occupational health assistance for employees, employers and GPs. The service can provide an occupational health assessment after four weeks of sickness absence. Further information is available from <a href="#">GOV.UK - Government response to the review of the sickness absence system in Great Britain</a>.</p>	<p>Spring 2014 (to be confirmed)</p>
<p><b>Flexible parental leave</b></p> <p>Under this new system parents will be able to choose how they share the care of their child during the first year after birth. Mothers will still take at least the initial two week following the birth, following that they can choose to end the maternity leave and the parents can opt to share the remaining leave as flexible parental leave. Also under this new shared parental leave it is proposed to allow the husband, civil partner or partner of the pregnant women the right to unpaid time off to attend up to 2 ante-natal appointments.</p>	<p>2015</p>
<p><b>Parental leave extended to 18</b></p> <p>The right to unpaid <a href="#">Parental Leave</a> will be extended to parents of any child under the age of 18 years.</p>	<p>2015</p>
<p><b>Surrogate parents eligible for adoption leave</b></p> <p>Provided they meet the eligibility criteria parents who have a child through</p>	<p>2015</p>

<p>surrogacy will be permitted to take ordinary paternity leave and pay, adoption leave and pay and shared parental leave and pay. Both parents will also be entitled to take unpaid time off to attend two antenatal appointments with the woman carrying the child.</p>	
<p><b>School leaving age to rise to 18</b></p>	<p>2015</p>

### **Acas employment law update training**

View course listings, dates and locations for [Acas employment law update training](#).

The national **Acas Helpline** on 08457 47 47 47 has free and impartial advice from Monday to Friday, 8am - 8pm and Saturday, 9am - 1pm.

## **Environment & CSR**

### **Single-Use Plastic Bag Charge for England – Defra Call for Evidence**

BA Submission can be found [here](#).

### **NI Carrier Bag Levy**

The Minister for the Environment has now agreed that the NI Carrier Bag Levy, which introduces a 5p levy on reusable bags will come into effect in January 2015 and the money gained from this levy will be used for community environmental projects.

### **Publication of the Waste Prevention Programme for England**

The full plan and supporting documents are now available to download from the Defra website [here](#). Defra states that it wants to:

- Encourage businesses to contribute to a more sustainable economy by building waste reduction into design, offering alternative business models and delivering new and improved products and services.
  - Defra looks to business to make changes to enable waste to be designed out of products and services, supported by government action to help facilitate and incentivise change;
  - WRAP will deliver a Sustainable Electricals Action Plan seeking commitment on design for longer life, and increased technical durability;
  - Defra is supporting innovation in design through the Technology Strategy Board's (TSB) investment of up to £5 million in collaborative research and development and their design challenges for a circular economy competition (£1.5 million);
  - Defra will raise awareness of resource efficient business models and supply chain innovations through a £900,000 programme of Action Based Research pilots and WRAP run trials of take back schemes and leasing/hiring schemes.

- Encourage a culture of valuing resources by making it easier for people and businesses to find out how to reduce their waste, to use products for longer, repair broken items, and enable reuse of items by others.
  - Defra will develop a £800,000, two-year scheme (administered by WRAP) to support communities to take forward innovative waste prevention, reuse and repair actions;
  - WRAP will develop a web-based postcode locator to enable householders to find their local reuse and repair services;
  - Defra will work in partnership with industry and others to increase customer (both business and consumer) confidence in the quality of second-hand goods, including the development by WRAP of a standard for reuse.
- Help businesses recognise and act upon potential savings through better resource efficiency and preventing waste, to realise opportunities for growth.
  - Defra is asking businesses to look at their own practices to identify the opportunities open to them;
  - Defra will improve access to finance for businesses, through improving the information available to banks, enabling them to promote the business benefits of investment in resource efficiency, particularly for SMEs, and by continuing the £1.5 million Waste Prevention Loan Fund.
- Support action by central and local government, businesses and civil society to capitalise on these opportunities.
  - 5p charge on single use plastic carrier bags in England;
  - Defra will provide clarification on the application of the Definition of Waste to reuse and repair activities and explore how Individual Producer Responsibility (IPR) can be implemented;
  - Defra will continue to work towards ensuring that whole life value for money is taken into account in central government procurement decisions. The wider public sector will be encouraged to do the same.
  - Defra will set up a Local Authority Forum to share best practice.
  - Defra has commissioned research to explore the potential for savings by reducing the amount of waste the NHS produces, and making better use of equipment.
  - Defra will develop a suite of metrics by the end of 2014 to help monitor progress on waste prevention.

### **Carbon Reduction Commitment scheme**

The second phase sets up a forecast sale in April where you can buy allowances based on what you expect to emit in the following year; the price for this will be £15.60/tCO<sub>2</sub>e. It also sets up a buy to comply sale later in the compliance year where you buy allowances equivalent to what you had emitted; the price for this is £16.40/tCO<sub>2</sub>e. The forward market will work by enabling companies to speculate on their future emissions through applying for allowances for the coming year in April and then either buying additional from the market or selling surplus allowances during the "buy to comply" period in July the coming year. As there is an overlap between the end of phase 1 and the set-up of the forward and buy to comply markets in phase 2, it is expected that a double payment will be required during the second phase although this is not necessarily required to be in 2014.

### **[A Better Retailing Climate: Driving Resource Efficiency](#)**

*A Better Retailing Climate* is a voluntary initiative that sets out the collective environmental ambitions of a group of BRC retail members. The BRC's new report, *A Better Retailing Climate: Driving Resource Efficiency*, launched by the Rt Hon Owen Paterson MP at the House of Commons on 29 January 2014, announced a new set of targets and commitments on environmental sustainability to 2020. The report also outlines the progress and achievements made by BRC's retail members against the original targets, and contains several case studies showcasing what the industry is doing across a wide range of environmental areas including responsible sourcing, sustainable products and reducing water and energy usage.

### **Climate Week**

Climate Week will be from 3-9 March 2014. It is Britain's largest climate change campaign, with half a million people attending over 3,000 events each year. Anyone can run any kind of event or activity they wish. Here are some ideas:

**Enter the Climate Week Challenge**, a competition for small teams in schools and workplaces. It needs no preparation, is free and helps develop innovation and teamwork.

There are one-hour and one-day versions - register [here](#).

**Enter the Climate Week Awards** for professional achievement that is helping to create a more sustainable society - click [here](#) to find out more.

**Run a Climate Week Swap** event at which people can exchange clothes, books or children's toys they don't want any more - find out more [here](#).

Please remember to [register your events and activities with Climate Week](#) - they will then be listed as an official part of Climate Week, encouraging others to take part and so growing the movement for environmental change.

## Finance

### Small business big support confirmed by Prime Minister

Prime Minister David Cameron has set out how the success of small businesses is central to the government's long term economic plan. The country's 4.9 million small businesses could save up to £10,000 each a year by taking advantage of government measures available to them, including;

- Business Rates - £1.1 billion package of business rates measures, with extra relief announced for small businesses through the extended doubling of the Small Business Rate Relief;
- [Growth Vouchers](#) – A £30 million programme which will see 20,000 small businesses receive up to £2,000 to help them access specialist support on hiring, financial management and marketing;
- [Broadband Vouchers](#) – 10 out of 22 cities across the UK have already started to benefit from up to £100 million of broadband vouchers worth up to £3,000 each to help more small firms boost their business by accessing faster and better broadband connectivity;
- Employment Allowance – from April 2014 every business and charity will be entitled to a £2,000 Employment Allowance to reduce their employer National Insurance Contributions (NICs) bill each year. Over 90% of the benefit of this allowance will go to small businesses;
- Fuel duty - government has cancelled the planned September increase in fuel duty;
- Regulation - more than 3,000 regulations, including employment, health and safety law and environmental legislation have been identified for scrapping or improvement through the [Red Tape Challenge](#) since 2011.

These new schemes are among several measures aimed at supporting small businesses and follows [Small Business: GREAT Ambition](#) - the government's commitment to help make it easier for small businesses to grow. This sits alongside the government's [Business is GREAT campaign](#), which points businesses to sources of advice and support that can help them grow.

### [Improving access to finance for small and medium-sized enterprises](#)

The Public Accounts Committee publishes its 38th Report of this Session which, on the basis of evidence from the Department of Business, Innovation and Skills, HM Treasury, the British Chambers of Commerce, the Federation of Small Businesses and Barclays Bank, examined the financing problems faced by small and medium-sized enterprises (SMEs).

[Report: Improving access to finance for small and medium-sized enterprises \(PDF\)](#)

## Loss Prevention

### [Concerns Grow Over Increase in Shop Theft](#)

This year's BRC Retail Crime Survey has revealed that UK retailers are fighting a rising tide of theft in store. Last year saw the highest level of theft for nine years, and the average value of theft increased by 62% to £177 per incident, indicating that stealing is becoming more sophisticated and well planned. Helen Dickinson, Director General of the British Retail Consortium, said: "Theft from stores pushed the direct cost of retail crime up to £511m last year, 166 per cent higher than five years ago. Last year we also saw a dramatic increase in fraud and e-crime with eight in ten retailers reporting a rise in fraud and the majority of retailers telling us that cyber-attacks pose a critical threat to their business." The BRC survey recommends that there should be a single, national, definition for business crime in the UK to help measure and solve these problems. Police forces should routinely publish business crime data, share that with retailers and work in partnership to combat crime. In partnership, retailers, Police and government can build on the introduction of the National Crime Agency and National Cyber Crime Unit to help retailers combat this growing problem.

### **Other key findings**

- It is estimated there were 2.7m offences in 2012-13 against retailers, directly adding £511m to retailers' costs;
- Robberies were up 48%, but burglaries fell by 49% compared to last year. Despite the numbers falling, the cost of each incident rose from £1,730 to £2,067;
- The average cost per incident of criminal damage jumped by 114% in 2012-13, from £962 to £2,062.

Press Reports:

[Shoplifting surge pushes retail crime losses to £511m](#)

[Designer shoplifting helps speed up high street decline](#)

### **Closure of the National Fraud Authority**

In December the Home Secretary announced that the National Fraud Authority would be closed by 31 March 2014. Fraud threat analysis will now be led by the Home Office and responsibility for Action Fraud transferred to the City of London Police. The Government hopes that the restructuring will strengthen the response to economic crime. Bringing Action Fraud into the [National Fraud Intelligence Bureau](#) (NFIB) is intended to create an improved end-to-end fraud reporting and analysis process. The NFIB is now conducting a review of Action Fraud user requirements, designed to help inform the procurement of a new case management and an analytical platform for Action Fraud.

## Property & Rates

### **Business rates: retail relief**

#### [Business rates: retail relief guidance](#)

Ref: ISBN 9781409841197PDF, 89KB, 14 pages

The government announced in the [Autumn Statement](#) on 5 December 2013 that it will provide a business rates discount of up to £1,000 to all occupied retail properties with a rateable value of £50,000 or less in each of the years 2014 to 2015 and 2015 to 2016.

This document provides guidance to local authorities about the operation and delivery of that retail relief.

#### [David Cameron pledges radical business rates reform](#)

Government to cap business rates, gives pubs, restaurants and small shops a £1,000 discount and extend relief for small businesses.

#### [There are signals the tide may be turning on business rates](#)

David Cameron has linked a reform of business rates with the different challenges facing high street retailers and online retailers.

#### [Anything less than full reform of business rates is a sticking plaster](#)

Director of Policy and External Affairs Dr Adam Marshall of the British Chambers of Commerce - comments on the announcement by Communities Secretary Eric Pickles on business rates.

## Taxation & VAT

#### [First Meeting of High Level Group on Digital Taxation](#)

The first meeting of the High Level Expert Group on Digital Taxation took place on 12 December. The question of how best to tax the digital economy has become a pressing one, particularly in the clamp down on corporate tax avoidance. It has become clear that taxation needs to be re-aligned to support the growth of this sector, while at the same time ensuring that digital companies pay their fair share. Chaired by Vitor Gaspar, former Portuguese Finance Minister, the Expert Group will identify the key problems with digital taxation from an EU perspective, and present possible solutions. The Commission will then develop any EU initiatives necessary to improve the tax framework for the digital sector in Europe. Given the pace at which the digital economy is developing, a taxation response needs to be rapidly implemented. Therefore, the expert group should report back to the Commission by summer 2014. In parallel, the EU will continue to contribute actively to the work underway at global level in this sphere, within the context of the OECD's project on Base Erosion and Profit Shifting (BEPS).

### **Legal certainty for cross border SMEs: VAT pilot project extended**

The Commission has today announced that the EU VAT Forum extended for another year a pilot project aimed at improving legal certainty for SMEs in their cross border VAT transactions. The pilot project has also been opened to other Member States than the ones already participating. Names of other Member States will be added on the Europa-website as soon as they confirm their participation. Now 14 Member States (Belgium, Estonia, Spain, France, Cyprus, Latvia, Lithuania, Malta, Hungary, the Netherlands, Portugal, Slovenia, Finland and the United Kingdom) are engaged in the project. Simplifying VAT for businesses – particularly SMEs – is a high priority for the Commission, as reflected in the work underway to reform the VAT system. The pilot project, which was launched in June 2013, entails Member States providing their advance opinion on the VAT treatment of complex cross-border transactions submitted by small businesses. Businesses who want to engage in a complex cross-border transaction involving two or more Member States may submit their project to the tax administration of their country of residence. On this basis tax authorities, after consulting with tax administrations of other Member States involved, will give businesses reassurance on the appropriate VAT treatment and applicable obligations in all Member States concerned. A mid-term review of the experiment will be made in June 2014. If the results are positive, the Commission may recommend to further develop this practice. For more details on the procedure, see [here](#).