

# BA Legal Report

March 2015

## Banking & Payment Systems

### Regulation of Interchange Fees and UK Payments Regulation

European regulation to cap interchange fees has been formally agreed. The UK Payment Systems Regulator (PSR) is consulting on its priorities and work plan, including UK implementation of European regulation. European regulation should introduce caps by Q3 2015. Credit cards will be capped at 0.3% and the Regulation allows Member States to determine how best to implement debit caps, albeit no higher than 0.2% or 5 eurocent fixed fee. In turn, the PSR is consulting on the shape and nature of UK payment regulation, including domestic interchange fee caps.

### [Government Announces Radical Changes to End Poor Payment Policies](#)

Government backed changes to the Prompt Payment Code (PPC) were declared by business minister Matthew Hancock in order to bring an end to the poor payment practices that largely affect small and mid-sized businesses. PPC will make 30 day payment terms the agreed standard, with businesses who sign the code committing to a 60 day limit.

## Censorship & Defamation

### [Ban on sending books to prisoners set to end](#)

The Ministry of Justice is allowing prisoners to receive books following December's high court ruling that the policy which prevented inmates from being sent books should be changed. A court order asks the Ministry of Justice to amend the 'incentives and earned privileges' instructions, introduced in November 2013.

### [Booksellers given role in prison book delivery](#)

The government has relaxed the prison book ban, but said inmates could only receive parcels from four named booksellers – Waterstones, Blackwell's, Foyles or WH Smith. The BA wrote to the Secretary of State about the list of approved book suppliers. The correspondence was passed to the National Offender Management Service for reply, which can be seen [here](#). An advertisement was placed on the Government Contracts Finder website on 10 February 2015 so that retailers can submit their applications for consideration. The advertisement is open ended so retailers can submit applications at any time. The advertisement can be found [here](#).

## **Companies & Competition**

### **Treating small businesses as consumers**

The Opposition has put down amendments to the Small Businesses Bill to the effect that small and possibly medium size businesses should be treated as if they are consumers for the purposes of consumer rights contained in the Consumer Rights Bill. To date the Government has resisted this, but BIS are actively asking whether or not this would be appropriate. If the amendments were accepted a retailer would need to include the consumer rights from the Consumer Rights Bill in their B2B terms and conditions – or indeed to provide these rights to a business that had purchased a product without declaring itself to be making the purchase for business purposes. The BRC is opposing this on the basis that B2B purchases are subject to B2B contracts. If there is a need to examine the rights of small businesses, this should be undertaken as a separate exercise with a full impact assessment on the basis of independent evidence of need.

## **Consumer Protection**

### **European Commission and Digital Single Market**

The Commission will present its proposals in May on a digital single market. This is likely to include outline proposals to expand online cross border e-commerce as its centrepiece - including an EU regulation for consumer rights on digital content; withdrawal of the CESL proposal; a new proposal covering elements of the legal guarantee, the right to buy for a consumer, and new rules for traders dealing with consumers.

### **The Retail Ombudsman, ADR and ODR**

There is interest in the media around a new business called 'The Retail Ombudsman' which is proposing to offer complaint resolution services to retailers and consumers via a website. This is one of a number of organisations that are building on the requirements of the ADR Directive and ODR Regulation which will be transposed into UK law by the due date in July. The Government has indicated that in its transposition of the Directive that ADR will continue to be voluntary for a business outside the regulated sectors. The sole requirement will be for a business that has been unable to reach agreement with a consumer on a dispute to advise that consumer at that point whether there is a scheme covering that dispute and whether or not the retailer is willing to use that scheme. In the case of the website, it will be required to contain a link to the ODR Platform and to advise whether or not it uses ADR. There will be a fall back scheme for any sector that does not have its own scheme.

The Retail Ombudsman is not recognised under the Directive as an ADR scheme – and cannot be so recognised because the authorisation process has not yet been established. Only membership of authorised schemes will be counted as subscribing to an ADR scheme. On Behalf of the Government, Baroness Neville-Rolfe has said:

*The Retail Ombudsman has been set up independently of Government and is a non-statutory organisation aiming to provide alternative dispute resolution (ADR) in the retail sector. While anyone is free to set up a business providing ADR, 'ombudsman' is a sensitive word whose use in a company or business name requires prior approval by the Secretary of State. No approval has yet been given to the Retail Ombudsman to use this word. Companies House and BIS are updating their procedures to ensure that the approval process deals with private sector applications to use this word.*

## **Copyright & Piracy**

### **Consultation on proposals to reduce the duration of copyright in certain unpublished works**

The Government has released its response to the consultation on proposals to reduce the duration of copyright in certain unpublished works. This document is a summary of what respondents to the consultation said on the proposals. It also sets out the government's next steps in light of the consultation – it can be found [here](#).

### **Implementation of the Collective Rights Management Directive**

Views are sought on the UK government's proposals for implementation of the Collective Rights Management (CRM) Directive. The CRM Directive aims to modernise and improve the functioning of collective management organisations, and encourage the multi-territorial licensing of rights in musical works for online use. The consultation has a focus on the options for implementation, the discretionary provisions, and the overall costs of implementation. See: [Collective rights management in the digital single market](#)

## **Data Protection & Privacy**

### **CMA seeks information on commercial use of consumer data**

The Competition and Markets Authority issued a call for information as part of a wider project to understand fully how businesses collect and use consumer data – including how it affects consumers, businesses, competition and the wider economy. It will be looking at both the benefits and potential drawbacks that accompany this growing ability to understand consumer preferences, interests and behaviours. It will also consider the market impact of consumer protection legislation and other relevant regulations.

## Employment

### [Low Pay Commission recommends 3% increase in the National Minimum Wage](#)

The Low Pay Commission (LPC) has recommended to the Government that the adult rate of the National Minimum Wage, which applies to workers aged 21 and over, should rise by 3 per cent to £6.70 from October 2015. As well as its recommendation for the adult rate, the Low Pay Commission has also recommended:

- an increase of 3.3 per cent to £5.30 in the Youth Development Rate, which applies to 18-20 year olds;
- an increase of 2.2 per cent to £3.87 in the 16-17 Year Old Rate;
- an increase of 2.6 per cent to £2.80 in the Apprentice Rate, which applies to all apprentices in year one of an apprenticeship, and 16-18 year old apprentices in any year of an apprenticeship;
- an increase of 27 pence in the accommodation offset to £5.35. The offset is the one benefit-in-kind that can count towards the minimum wage. This is the maximum daily sum employers who provide accommodation can deduct towards those costs.

### **New Draft Sentencing Guidelines for Health & Safety Offences**

The Sentencing Council has proposed new guidelines dealing with health and safety offences, including non-fatal offences. The review of the guidelines is taking place in part due to concerns that some sentences imposed for these offences have been too low, particularly in relation to large organisations convicted of the most serious health and safety and food safety offences. The Council is proposing to increase sentence levels for some offences and will take account of the financial circumstances of offenders or offending organisation, which will be based on turnover. The Council's stated aim is that fines should be big enough to have a real economic impact on an offending organisation and act as a meaningful deterrent.

## Environment & CSR

### **Charging for Single Use Plastic Carrier Bags (England)**

The [Single Use Carrier Bags Charges \(England\) Order 2015](#) has been laid in Parliament. The order is currently being debated in both Houses of Parliament and is subject to Parliamentary approval before the 5p charge comes in on 5 October 2015. SMEs will be exempt from the plastic bag charge. Subject to approval by parliament, also expected to be exempt will be bags for life, bags without handles, woven plastic bags and those distributed in places of transit (eg boats, trains and airports).

The Government is working with industry and academic experts to review existing standards for biodegradability and will report to Parliament in October 2015 on whether there are suitable standards that could be applied to biodegradable bags for them to be exempted from the 5p charge. Any exemption for biodegradable bags would be introduced by amending the law.

#### **Draft Guidelines**

The BRC has recently received draft guidelines: *Carrier bag charges: retailers' responsibilities* and *Carrier bag charging: local authority enforcement guidance*.

#### **The Single Use Carrier Bags Charge (Fixed Penalty Notices and Amendment) (Scotland) Regulations 2015**

These Regulations make provision for fixed penalties in relation to offences under the Single Use Carrier Bags Charge (Scotland) Regulations 2014 ("the 2014 Regulations") and makes an amendment to those Regulations.

[Single Use Carrier Bags Charge \(Fixed Penalty Notices and Amendment\) \(Scotland\) Regulations 2015](#).

#### **Defra Sustainable Resource Management Forum**

A Defra Sustainable Resource Management Forum was held in February 2015. The meeting discussed Defra's recent document - [Resource Management - A Catalyst for Growth and Productivity](#). The EU Commission Communication on Circular Economy Package has now been formally withdrawn. Defra has also published a [digest of waste & resource management statistics](#) and is aware that this is not a complete data set and would like to work with local authorities and industry on a 10 year data 'vision'.

#### **Minimum Energy Efficiency Standards**

Regulations state that from 2018 a commercial property will be required to hold an Energy Performance Certificate with a rating of E or above before it is able to be leased or sold. New leases in eligible rented domestic and non-domestic buildings in England and Wales that fail to meet a minimum rating of E on the EPC will be unlawful from 2018 until improvement works are undertaken or a valid exemption is registered. From 2023, existing leases will trigger the requirement in buildings that fail to meet the minimum standard, also subject to exemptions; the 2023 date will only apply to eligible properties that have a valid EPC already.

#### **Implementation of Electricity Market Reform**

The House of Commons Energy and Climate Change Committee has published a [report on the implementation of electricity market reform](#).

## Finance

### [Business Plan for Britain](#)

British Chambers of Commerce has called on the next UK government, the devolved administrations, and local authorities to work together and with BCC to achieve growth that delivers prosperity. Seven actions have been proposed:

- [Develop the talents of the next generation](#) – because preparing young people for the world of work, investing in the skills of those already at work, and nurturing the business leaders of tomorrow are essential to the UK's competitiveness;
- [Support long-term business investment](#) – because promoting access to finance, and backing investors in dynamic businesses will support the rebalancing the UK economy so badly needs and help drive up productivity;
- [Grow Britain's global trade potential](#) – because building international networks, investing in our export skills base and removing barriers to trade will support UK businesses to take on the world;
- [Place business at the heart of local growth](#) – because ensuring business growth takes centre stage in local decision-making and procurement will boost the economies of our cities, towns, and counties;
- [Rebuild Britain's business infrastructure](#) – because a world-class economy needs world class infrastructure, and businesses need certainty that crucial improvements are actually delivered;
- [Drive down business costs and taxes](#) – because simplifying the UK tax system, and reducing the taxes firms pay even before they generate a profit, will boost businesses competitiveness, investment and jobs;
- [Deliver a new settlement for Britain in Europe](#) – because making the economic opportunities of the European trading bloc work for business, and ensuring clear safeguards for Britain against unwanted further integration, will be critical for our future success.

## Loss Prevention

### [Law enforcement nationwide helping people and businesses to guard against cyber crime](#)

The National Crime Agency has developed customised intelligence reports for internet hosting companies and service providers, acting on data provided by CERT-UK (The UK's Computer Emergency Response Team) and the Shadowserver Foundation. Following a number of high-profile malware threats to the UK, the NCA is conducting this activity to assist network administrators who manage key parts of the UK internet infrastructure.

## Property & Rates

### Administration of Business Rates in England

Both BRC and the BA submitted a response to the *Interim Findings' Report* (December 2014) from HMT and DCLG, which reviewed the Administration of Business Rates in England. Below is the BA Executive Summary - the full submission can be found [here](#).

### Executive Summary

1. We welcome the Government's decision to conduct a review of the future structure of business rates and to report by the Budget in 2016; and to consider, in parallel, what improvements could be made now to the Business Rates' Administration.
2. Fundamental reform is required, that is fairer to businesses across the UK and flexible enough to respond to the economic cycle.
3. Exempt SMEs completely from the Business Rates scheme.
4. The Government would need to define the criteria for an exempted small business.
5. The key factor in reducing the number of appeals would be to introduce more frequent valuations.
6. The procedure for reimbursing ratepayers after they successfully appeal against an assessment needs to be reviewed.
7. We welcome, therefore, the Government's decision to set up a forum of ratepayers, their representatives, landlords and local authorities, to bring forward practical improvements to develop the detail.
8. The Booksellers Association strongly supports more frequent valuations beyond the current five years.
9. We would like the Government to carry out a cost benefit evaluation on either a revaluation every three years, or annually.
10. More frequent valuations are preferred by our members, because at the moment there can be no guarantee of an accurate assessment before being locked in to the current five year cycle.
11. Greater frequency revaluation should mean each property pays a bill that is as close to actual value as is possible .
12. In return for more frequent valuations, we believe it not unreasonable for booksellers and other businesses to accept that the time between the valuation date and the date on which the rating list starts would have to be appropriately reduced.
13. We support the Government's proposal that there should be an escalation system for appeals.
14. In future the VOA should be obliged to provide the ratepayer with details of how the valuation was assessed before the rating list is published.

15. We believe the new steps we are recommending should produce sufficient savings to enable the new system and infrastructure to be built without the ratepayers being asked to pay a separate charge.
16. The results in the Netherlands of moving from a five year revaluation to an annual one are truly compelling.
17. We also think it would be sensible if ratepayers had a better understanding as to the roles of the VOA and the Valuation Tribunal for England.
18. There is a strong consensus among our membership for the need to continue sending individual valuations for their bookselling premises.
19. The three steps of Checking, Challenging and Appealing to the Valuation Tribunal seem sensible.
20. The VOA has to provide more information on how their rateable values are calculated.
21. At present no gateway exists that enables the VOA to share information with Local Authorities. A gateway needs to be developed.
22. We support the Government's intent to change the law to allow greater sharing of information between the Valuation Office Agency and local government.
23. We think it not unreasonable for the ratepayer to be responsible for disclosing any physical changes to the property or a change in use or occupation of the property.
24. Ratepayers should be required only once in a single submission to provide the relevant information about their properties and that this information, in turn, should be shared by the local authority and, if appropriate, national government.
25. When the property needs to be inspected, either the local authority should do it and share the information with the VOA, or vice versa.
26. We believe it would be helpful if the VOA approached tenants first before approaching property owners.
27. We support the drive to on-line billing.
28. We are relaxed about booksellers being given the choice to support portals for billing and collection, or common systems, provided the information contained is clear, specific and understandable.
29. Our chains don't want to have to operate lots of different systems, so for them some sort of collection point or single e-mail address of the senior person responsible for paying rates should be considered.
30. Standard formatting for the invoices would be beneficial.

### **Extension of Transitional Relief**

Business rates transitional relief was set for five years to coincide with the 2010 revaluation which was originally intended to last until 31 March 2015, but has been adjusted given the postponement to 2017. Following the decision to postpone the 2015 rating revaluation thousands of properties faced substantial increase in rates bills in April 2015. To prevent this hike Government announced a scheme to protect ratepayers with assessments based on no greater than £50,000 rateable value who are benefiting from transitional relief in 2014/15 and would therefore have faced an above inflation increase next year. Local authorities should identify properties which qualify and apply the relief automatically though businesses may want to proactively apply for relief to avoid any chance of missing out.

### **Business Rates Information Letter**

The Department for Communities and Local Government has published Business Rates Information Letter (BRIL) 3/2015 covering the 2015-16 Non-Domestic Rate Multipliers and amended SBRR Regulations. The non-domestic rating multiplier and the Small Business non-domestic rating multiplier for England for 2015/2016 are:

- non-domestic rating multiplier 49.3p (0.493)
- small business non-domestic rating multiplier 48.0p (0.480)

The BRIL can be found [here](#).

### **The Devolution of Business Rates in Wales**

Minister for Economy, Science and Transport Edwina Hart, gave a statement on business rates. Key points:

- The Small Business Rate Relief Scheme will be extended for next financial year 2015–16
- The Business Rates Panel in October last year has made recommendations on the future of business rates in Wales
- The Panel has made a number of recommendations on the issue of whether business rates is a lever for economic growth
- They have made medium term recommendations such as having more frequent revaluations, changing the index to CPI and recommending local retention
- They have also recommended land tax valuation as an alternative to local taxation

The report of the Business Rates Panel that the Minister referred to in the statement is available [here](#).

### [Majority of businesses agree councils should be able to set business rates locally](#)

The Local Government Association, which represents councils in England and Wales, is calling for councils to be devolved powers to set business rates in their local area. Polling for the LGA, by ComRes, found 68% of businesses across the UK agree that business rates should be set locally in discussion with local businesses. Just 7% of businesses surveyed disagreed. The poll also found almost half (47%) of UK businesses are concerned about the impact on their business of cuts to council services, such as road maintenance, planning and licensing, over the next few years.

### **Landlord and Tenant Act 1954**

The property industry is seeking to reform the 1954 Act and are seeking views from retail tenants of commercial buildings. While the focus is on modernising the Act, the BRC convened a meeting with leading property professionals in retail to initially discuss their approach. The BRC will be working with the BPF to outline areas for collaboration on reformation of the Act and will be seeking views from retail members on key areas of concern. The BPF will be seeking to develop a paper with proposals for reform which will include BRC input.

### **Sales Promotion**

#### [New prioritisation principles to guide ASA work](#)

The Advertising Standards Authority has published a response to their consultation on introducing new prioritisation principles to guide our work. The principles were developed in line with a five-year strategy 2014–2018, which is a public commitment to ‘Having more Impact’ and ‘Being more Proactive’ in how they regulate. Under these prioritisation principles the ASA will:

- consider what **harm** or **detriment** has occurred or might occur;
- balance the **risk** of taking action versus inaction;
- consider the likely **impact** of our intervention; and
- consider what **resource** would be proportionate to the problem to be tackled.

#### **Relevant documents**

[Full regulatory statement](#)

[External responses to the consultation](#)

[Feedback received from advisory panels](#)

## **Taxation & VAT**

### **State Aid - Luxembourg**

The Commission notified Luxembourg of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning State Aid by Luxembourg to Amazon. Interested parties were invited to submit their comments. Both EIBF and the BA made submissions. The BA submission can be found [here](#).

### **[New EU rules over VAT on ebooks create a legal quagmire](#)**

EU wide VAT changes are causing confusion for ebook suppliers. Rob Janering, Senior VAT Consultant with Accordance, looks at the issues that businesses selling ebooks face in navigating the differing rules in place around Europe.

### **[EU 2015 digital VAT changes disappoint](#)**

The European Commission has reported that fewer than 7,000 businesses, which includes 500 non-EU companies, have registered under the new [MOSS 2015 VAT reporting portals](#) around the European Union. This compares to the previously estimated hundreds of thousands of EU businesses that could be affected – 200,000 in the UK alone.

### **International VAT/GST Guidelines**

The OECD in Paris has released a discussion draft in relation to its work on [VAT/GST Guidelines](#). This particular paper relates specifically to guidelines being considered to provide for the collection of GST/VAT on 'services and intangibles' supplied online by offshore retailers – not books. Books fall under another work stream concerning 'low value goods'. There is not a timetable for when a discussion document on this specific will be released. However, the prime solution being considered by the OECD for intangibles – requiring offshore suppliers to register for tax in the countries they are supplying to – would, it appears be a logical solution for low value goods, a very similar solution to that adopted in January by the EU. The OCED works by way of issuing advisories or guidelines to member countries regarding various issues. It is up to the individual countries to implement the guidelines.