

# BA Legal Report

July 2014

## Companies & Competition

### [The Transatlantic Trade and Investment Partnership \(TTIP\)](#)

The Transatlantic Trade and Investment Partnership (TTIP) is a trade agreement that is being negotiated between the European Union and the United States. The negotiations aim at removing trade barriers (tariffs, unnecessary regulations, restrictions on investment etc.) in a wide range of economic sectors so as to make it easier to buy and sell goods and services between the EU and the US. The EU and US also want to make it easier for their companies to invest in each other's economy. The EuroCommerce [position paper on the ongoing TTIP trade negotiations](#) between the EU and the US has now been updated. The paper will be an effective tool to advocate specific concerns of the retail, wholesale, direct selling and the e-commerce sector. The EU and the USA will hold their next TTIP negotiating round in the week of 14 July in Brussels.

[Towards an EU-US trade deal - Making trade work for you](#)

## Consumer Protection

### Consumer Rights Directive

The Consumer Rights Directive came into force in mid-June across the EU. It establishes new rules for business-to-consumer sales both within the UK and across borders. Essentially these relate to online sales but there are also some new information requirements for face to face sales in store.

When selling online, all retailers have to provide for a 14 day withdrawal period during which a consumer can change their mind without giving a reason. However, a consumer who wishes to exercise this right must not treat the goods any differently from how they could examine it in a store e.g. they can try on a pair of shoes but not wear them. Should a consumer do more than this, the retailer may reduce the refund to reflect the diminished value of the goods. The new rules also state that if a retailer provides a telephone helpline to assist a consumer who has purchased a product online, they must provide this at a basic rate to the caller. There is no obligation to provide such a helpline. Other provisions include a ban on pre-ticked boxes, and obligation to advise the consumer of his right to withdraw, and provision of all necessary information prior to the consumer being bound by the contract. See also: [New consumer laws and their impact on retailers](#).

### [The new PASS 18+ Standard Design](#)

From June 2014, a new common 18+ design standard will apply across all proof of age cards bearing the PASS hologram. The PASS Scheme is the UK's national Proof of Age standards scheme.

### **Primary Authority in Scotland**

The Scottish Government will be launching a consultation over the summer parliamentary recess that will look at the operation and scope of the new Primary Authority regulation in Scotland. The introduction of Primary Authority in Scotland will mean that businesses will be able to have PA partnerships that reflect those in England and Wales but for devolved regulatory matters in Scotland.

## **Copyright & Piracy**

### **Draft Orphan Works Regulations**

Two sets of draft secondary legislation have been laid before Parliament. The regulations refer firstly to the EU Directive on certain permitted uses of orphan works, and secondly to the UK orphan works licensing scheme. The draft regulations are accompanied by an explanatory memorandum and an impact assessment each. Both sets of draft regulations will be subject to the 'affirmative' resolution procedure. This means that they will only become law after they have been debated and approved by both Houses of Parliament. The exact timing of this process will depend on Parliamentary workload, but it is anticipated that the regulations will come into force in October 2014.

The regulations transposing the EU Directive are available [here](#).

The regulations creating an orphan works licensing scheme for the UK are available [here](#).

### **Draft Extended Collective Licensing Regulations**

Draft secondary legislation to be known as The Copyright and Rights in Performance (Extended Collective Licensing) Regulations 2014 have been laid before Parliament. The Regulations are available [here](#).

### [Contested copyright exceptions 'will become law this autumn'](#)

Copyright exceptions relating to private copying and parody are expected to come into force later this year, after being delayed because of concerns about their wording. The two exceptions to the Copyright, Designs and Patents Act 1988, were originally due to become law on 1st June, alongside amendments on research, accessibility and public administration. But the British Copyright Council (BCC) raised concerns that some of the wording failed to meet specific requirements of EU law.

The SI on copying work for personal use says copyright is not infringed if the individual's own copy is a copy which "has been lawfully acquired by the individual on a permanent basis", but that copyright is infringed if the individual "transfers a personal copy of the work to another person" unless that is approved by the copyright owner. The parody SI gives people the right to use a work for parody, pastiche and caricature. Exceptions on research, accessibility and public administration came into force earlier this month. Richard Mollett, chief executive of the Publishers Association, said the PA would be looking to make sure the guidance for consumers was clear.

### **[Three arrested in Spain for illegal publishing](#)**

Spanish police have arrested three people on suspicion of illegally scanning and then publishing books on a massive scale, a police statement revealed. According to the Associated Press, investigators uncovered eight large-capacity photocopying facilities in Madrid and Seville, where works by prestigious authors were being copied. The police seized more than 1,000 published works and 10 computer hard discs containing texts for publishing.

## **Data Protection & Privacy**

### **Consumer Access to Personal Data Held by Companies**

The Department for Business (BIS) has published two documents in relation to its review of consumer access to personal data held by companies.

#### **[Midata voluntary programme: review.](#)**

"Following a review of the midata voluntary programme, the government has concluded that for now there is not a strong objective case for using powers under the Enterprise and Regulatory Reform Act 2013 to require companies to release data. We have committed to reviewing the situation again for energy in September 2014 and for other sectors in scope by the end of the year."

#### **[A summary of existing regulations, guidance and redress covering personal data.](#)**

This work forms part of the conclusions of the consumer and trust work stream set up as part of the midata voluntary programme.

## **Employment**

### **Flexible Working**

The right to request flexible working has been extended to all employees from 30 June 2014. Employers will be under a duty to consider requests in a 'reasonable manner'. The Government hopes to create a cultural change that means flexible working is considered standard working practice. The employee will have the right to request flexible working, not a right to have it. Employers can refuse the request for any of a number of 'business reasons', but must handle the request in a 'reasonable manner'.

All employees who have worked for an organisation for more than 26 weeks now have the right to request flexible working arrangements. This right previously only applied to parents with children under the age of 17 (or 18 if the child is disabled) and certain carers. There are many forms of flexible working such as part-time working, flexitime, job sharing, shift working or working elsewhere such as homeworking. Acas has produced a Code of Practice and guidance for employers to help them understand the changes and how to handle requests in a reasonable manner.

[View new Flexible Working Code of Practice and Acas Guidance](#)

Also view new [Acas Homeworking Guidance](#) which has been released to coincide with the launch of the new Flexible Working regulations.

### **Shared Parental Leave**

A new statutory right to Shared Parental Leave (SPL) and Statutory Shared Parental Pay will be available for eligible working couples who will be the parents of babies due on or after 5 April 2015. The laws will be in place in time to accommodate early births from 1 January 2015. All employed women will continue to be eligible to take up to 52 weeks of maternity leave and up to 39 weeks of Statutory Maternity Pay or Maternity Allowance as at present. SPL will be available to eligible parents where the mother or adopter elects to bring their maternity or adoption leave to an end. SPL can be shared between parents and does not have to be taken in a single block. This is an extremely complicated policy change and employers will need to adjust their systems and processes carefully in preparation for the first eligible births.

### **Retail Apprenticeship Trailblazer**

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. The trailblazer group has agreed standards for the new 'Retailer' Apprenticeship and will consider the details of the assessment process.

### [Vince Cable to ban exclusivity clauses in zero hours contracts](#)

Employers will no longer be able to prevent workers on zero hours contracts from finding work with more than one employer after Business Secretary Vince Cable announced plans to ban exclusivity clauses. Exclusivity clauses prevent an individual from working for another employer, even when no work is guaranteed. Mr Cable said that some “unscrupulous” employers had abused the flexibility that the contracts offered. contacts. The Business Secretary also announced that the government will consult further on how to prevent rogue employers evading the exclusivity ban, for example through offering one hour fixed contracts. In addition, it will work with businesses and unions to develop a code of practice on the fair use of zero hours contracts by the end of the year. The ban will be part of the Small Business, Enterprise and Employment Bill.

### **Health and safety at work: EU objectives for 2014-20**

The Commission has published a new [Strategic Framework on Health and Safety at Work 2014-2020](#), which identifies key challenges and strategic objectives for health and safety at work, with related actions and instruments to address them. The three major challenges identified include - improving the implementation of existing health and safety rules (in particular enhancing the capacity of micro + small enterprises), improving the prevention of work-related diseases by tackling new and emerging risks, and taking into account the ageing of the EU's workforce. Health, safety and well-being at the workplace are core issues in the programme of sectoral social dialogue for commerce. EuroCommerce and UNI Europa commerce will continue their cooperation in this issue and prepare a new project to be implemented with the financial support from the Commission with special focus on ergonomics, psychosocial risks and stress at work

## **Environment & CSR**

### **Carrier Bag Charges in England**

The Government has confirmed that it intends to press ahead with its original plans for a carrier bag charge in England. The following exemptions will apply to the 5 pence charge in England: SMEs (retailers with 250 employees or fewer); single use carrier bags made from materials other than plastic (eg paper); and biodegradable bags that meet defined criteria (this exemption will be introduced after the charge is in place). Of particular concern is the exemption for SMEs as this will give rise to inequity and customer confusion. The charge could also have the unintended consequence of causing some retailers to use alternatives to plastic bags, such as paper bags, which have a higher carbon footprint. The BRC has issued a press statement expressing disappointment at the Government's decision.

### [Single-use plastic bag charge for England: call for evidence](#)

The Department for Environment, Food & Rural Affairs received 185 responses to the questions of the call for evidence. In parallel, just over 2000 emails on the broader shape of the charge were received. Defra is now requesting evidence on how a charge for single-use plastic (carrier) bags will work in England. The key issues that Defra would like to receive further evidence on are:

- which bags should be exempt from the charge
- how best to tell people about the charge
- how to make sure that organisations are applying the charge

This call for evidence will be of interest to retailers, consumers, industry, Non-Governmental Organisations and local authorities.

Download the full outcome: [Summary of responses](#)

### **Zero Waste Scotland Carrier Bag Commitment**

The Scottish Parliament has passed legislation that will require ALL retailers (food and non-food) to charge a minimum of 5p for each new single-use carrier bag (including paper, those made from some plant based materials and plastic), from 20th October 2014.

[Zero Waste Scotland](#) is supporting Scottish retailers to help them understand their legal requirements under the regulations. The Carrier Bag Commitment is now available for retailers to become a signatory to. This is the [link](#) to the retailer support website where retailers can sign up to the agreement by simply providing an email address and ticking a box. Aside from the voluntary agreement there is a range of supporting resources available on the retailer support website, including a training video and a range of downloadable communications resources.

### [The Circular Economy Package](#)

The European Commission adopted the [Communication "Towards a circular economy: a zero waste programme for Europe"](#) and [annex](#) to establish a common and coherent EU framework to promote the circular economy. Turning Europe into a more circular economy means:

- boosting recycling and preventing the loss of valuable materials;
- creating jobs and economic growth;
- showing how new business models, eco-design and industrial symbiosis can move us towards zero-waste;
- reducing greenhouse emissions and environmental impacts.

As part of the circular economy package, the Commission also adopted a [legislative proposal to review recycling and other waste-related targets in the EU](#) and [annex](#).

Achieving the new waste targets would create 180 000 new jobs, while making Europe more competitive and reducing demand for costly scarce resources. The proposal aims to:

- Increase recycling/re-use of municipal waste to 70% in 2030;
- Increase packaging waste recycling/re-use to 80% in 2030 with material-specific targets set to gradually increase between 2020 and 2030 (to reach 90 % for paper by 2025 and 60% for plastics, 80% for wood, 90% of ferrous metal, aluminium and glass by the end of 2030);
- Phase out landfilling by 2025 for recyclable (including plastics, paper, metals, glass and bio-waste) waste in non hazardous waste landfills – corresponding to a maximum landfilling rate of 25%;
- Reduce food waste generation by 30% by 2025;
- Introduce an early warning system to anticipate and avoid possible compliance difficulties;
- Ensure full traceability of hazardous waste;
- Increase the cost-effectiveness of Extended Producer Responsibility schemes by defining minimum conditions;
- Simplify the reporting obligations and lighten obligations affecting SMEs;
- Harmonise and streamline the calculation of the targets and improve the reliability of key statistics;
- Improve the overall coherence by aligning definitions and removing obsolete legal requirements.

More information on [waste policy and legislation review](#)

To help the circular economy become reality, the Commission adopted other initiatives, such as proposals for [sustainable buildings](#), [green employment](#) and [green action for SMEs](#).

### **[Publishers Making Progress on the Environment, RAN Says](#)**

The Rainforest Action Network has given 10 leading children's book publishers generally high marks for the actions they have taken to protect the Indonesian rainforest and other endangered forests. According to the report, RAN's analysis of recent data from the 10 publishers' American divisions, "suggests a progressive trend in a sector, that while still in transition, is demonstrating a strong commitment to social and environmental responsibility." The report, titled [A New Chapter for the Publishing Industry](#), also contains profiles of the 10 houses and where they stand in various environmental practices.

### **DECC Launch Energy Savings Opportunity Scheme**

The 'Energy Savings Opportunity Scheme' (ESOS) is the Government's proposed approach to implementing Article 8 of the EU's Energy Efficiency Directive. Under the scheme, approved assessors will carry out Article 8 compliant ESOS assessments to identify energy saving recommendations. Audits must be undertaken by 5 December 2015, and then at least every four years from the date of the previous audit. The Guidance notes sets out what will be required from participants in order to comply with the scheme. It will also set out alternative routes to compliance and the requirements of the scheme administrator in ensuring participants meet scheme objectives. The scheme will place an obligation on participants to undertake an ESOS assessment which will include energy consumption from operations including, head office, warehouse and distribution, store operations and transport and logistics. Participants will be expected to inform the Environment Agency of their compliance to the scheme. Further details can be found [here](#).

### **Green Property Alliance Launch**

The 'Carbon Penalties and Incentives Report', produced by Deloitte in conjunction with the Green Property Alliance, identifies that the inefficient distribution of policies, their perceived complexity and poor enforcement are the main barriers to achieving green growth and reducing emissions in the commercial property industry. The report highlights a set of recommendations for future policy making addressing energy and carbon within commercial buildings. It demonstrates where specific policy is successful and where it fails to deliver for investors, landlords and occupiers alike. It also assesses the impact of policy at different stages during the property life cycle to assess the impact and ease of implementation. The report can be found [here](#).

### **Finance**

#### **[Small Businesses Using the Enterprise Investment Scheme Jumps 16%](#)**

Small and mid-sized businesses receiving funding through the Enterprise Investment Scheme (EIS) rose a record 16%, with 372 more businesses using the scheme this year than 2011/12. A report by Chancery Investment Partners (CIP) shows that applications for funding through EIS by small and mid-sized businesses has increased consistently since 2008 but this year's increase, which witnessed the number jump to 2,718, has been the biggest increase to-date.



## **Loss Prevention**

### **Police Led Prosecutions for Shops**

New powers to allow police-led prosecutions for shop theft are now in force. The Home Office has also published the accompanying police guidance on the powers. The police will now be able to prosecute uncontested cases of shop theft of goods under £200 without the involvement of the CPS. Enabling the police to prosecute offenders directly is intended to ensure that low value shop theft cases are processed more swiftly and efficiently. The Home Office has stated that the intention is not to affect the severity of treatment of shop theft. The guidance is primarily for the police, but will also be of interest to retailers. It sets out how the legislation should be implemented, and what factors should be taken into account when making decisions on how to proceed with individual cases.

[Guidance on implementing section 176 of the Anti-social Behaviour, Crime and Policing Act 2014: Low-value shoplifting](#)

### **National Retail Crime Steering Group**

Attendees discussed the NRCSG work plan, which contains a range of actions to help tackle retail crime. ACPO Business Crime lead, DCC Sue Fish, reported that she is currently assessing implementation of the new business crime definition by police forces, which will allow data on crimes against businesses to be properly collected and analysed. Single points of contact for business crime have been appointed within each police force and work will now begin on 'Guidance for Engagement', to explain their role and remit to businesses.

### **[Fraud is Costing Small Businesses £22bn a Year](#)**

Over 40% of small businesses have experienced fraud in the last year, according to research conducted by Sage. Furthermore, of those that have purchased some type of protection, 21% don't know what the prevention tools do and 42% don't know if they comply with [Payment Card Industry Data Security Standards](#) (PCI DSS). The report listed several ways of reducing the chances of fraud, advising businesses to watch out for high value or large quantity orders, purchases made late at night or in the early hours of the morning and suspicious looking addresses.

### **Home Office Consultation on Reform to Riot Damages Compensation**

The new Bill will focus on ensuring that individuals and small businesses are protected from uninsured losses in the event of a riot. The Government intends to introduce a cap to the amount that insurance companies can reclaim under the Act for payments to policy holders, with reimbursements for payments made to businesses limited to those with a turnover of £2m or less.

## Property & Rates

### [Manifestos Present a Milestone Opportunity for Fundamental Reform](#)

New research published by the British Retail Consortium found that 80% of MPs believe the current system of business rates is 'not fit for purpose and in need of fundamental reform'. The poll which also finds that 93% agree that 'reform of business rates is an important area for the future success of the high street and town centres,' demonstrates the emergence of a cross-party consensus on the need for reform. The BRC is calling on party leaders to sign up to reform in the run up the 2015 General Election. The BRC has published *Manifesto Milestones*, the next step in its campaign to see the complete reform of the UK business rates system by 2017. Download *Manifesto Milestones* [here](#).

### [Government Confirms It Is Considering Changes to Business Rates Revaluation](#)

ACS has welcomed the Government's confirmation that they are looking at how often businesses are valued, as part of a review of the way business rates work. The Government set out this commitment in their response to the Business Innovation and Skills (BIS) Select Committee Retail Sector Inquiry Report. The BIS Committee report includes a series of recommendations to reform to the way business rates work. The BRC has also welcomed the Government's recognition that Business Rates are in need of reform.

### [Government rejects idea to replace business rates with a sales tax](#)

Responding to the findings of the retail inquiry led by the Business, Innovation and Skills select committee, the Government said: "The UK has a sales tax in the form of VAT. Introducing a new sales tax alongside VAT would be double taxation which the Government wishes to avoid." Other key concerns covered by the paper include the survival of the high street and Portas Pilots, the BIS retail strategy, local enterprise partnerships and retail skills.

## Taxation & VAT

### [Lord Saatchi: Cut Corporation Tax for Small Businesses](#)

Lord Saatchi calls on the Government to abolish corporation tax for all small businesses and remove capital gains tax for all investors in small firms. A Centre for Policy Studies report calls on the Government to stop imposing corporation tax on firms with fewer than 50 employees. Capital gains tax should also be abolished for all investors in small companies, the report states. See *The Road from Serfdom* report [here](#).