31/12/2010
New EPO patent application arrangements will save businesses money
Subject: Intellectual property/patents
Source: Intellectual Property office
http://www.ipo.gov.uk/press-release-20101231

Intellectual Property Minister Baroness Wilcox has welcomed new arrangements for filing patents in Europe which will cut costs for UK businesses.

From tomorrow applicants will have to supply the European Patent Office (EPO) with fewer documents, which will save companies money on the fees they pay agents for making the application.

Baroness Wilcox said:
"Reducing the burden of bureaucracy saves businesses time and money. It is essential in creating the conditions for businesses to grow and prosper.

"These new arrangements will make it cheaper and easier for UK firms to obtain patent protection as they look to expand into other European countries.

"The UK has been campaigning for greater work sharing like this and I am pleased to see this latest development.

"Cutting duplication is key to dealing with the worldwide backlog of patent applications.

"The quicker we deal with patent applications, the quicker firms can bring the latest innovations to the consumer."

The EPO enables companies to make one application for patent protection in up to 40 European countries rather than making separate applications in each country.

The new arrangements mean applicants will no longer have to supply the EPO with the results of searches already done by the Intellectual Property Office (IPO). Instead the IPO will automatically supply the information from its records and around 5,000 applications a year will benefit from this change.

This will mean less bureaucracy and costs for business while also improving efficiency at the EPO. It will also help tackle the major international backlog of patent applications.

It is estimated the patent backlog costs businesses as much as £7.65 billion each year.

20/12/2010
OFT and LBRO consultation on new Civil Sanctions powers
Subject: Sales and marketing law
Source: Office of Fair Trading
http://www.oft.gov.uk/shared_oft/consultations/OFT1296.pdf

The Office of Fair Trading (OFT) and the Local Better Regulation Office have announced a joint consultation for a “Civil Sanctions Pilot”. The Pilot will provide enforcement authorities such as the

OFT and local Trading Standard Offices those enforcers with civil sanctions as an alternative to criminal prosecution. Penalties will include amounts up to £3,000 and in more serious cases, fines up to £500,000 or 1% of UK turnover. The powers will cover breaches of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), the General Product Safety Regulations 2005 (GPSRs) and the Weights and Measures Act 1985 (W&M Act).

In addition to the OFT, the following authorities will take part in the Pilot:

- Birmingham City Council
- Cardiff City Council
- Devon County Council
- Durham County Council
- Glasgow City Council
- Hertfordshire County Council
- Highland Council
- Knowsley Council
- Milton Keynes Council
- North Lanarkshire Council
- Slough Borough Council
- Suffolk County Council
- Swindon Borough Council and
- West Sussex County Council

Consultation will run until 14 February 2011.

17/12/2010
HMRC publishes consultation on record keeping check
Subject: Accounting and tax records
Source: HM Revenue & Customs
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_030901

HMRC is planning a programme of Business Records Checks that will review both the adequacy and accuracy of business records within the 'small and medium enterprise' (SME) sector. No new legislation is proposed in this regard; the programme will use existing law regarding both record keeping requirements and penalties for failure to comply with those requirements, with penalties being imposed for significant record keeping failures.

Scope of this consultation: This consultation is concerned with how best to implement a programme of Business Records Checks to achieve a major improvement in the standard of record keeping across the SME population, and to consider related issues. It is not looking at the appropriateness of existing legislation. Record keeping requirements were updated in Finance Act 2008 and guidance is continuing to be updated. Record keeping penalties will be considered as part of a separate review into HMRC's regulatory & specialist penalties.

Who should read this: Anyone involved in running a small or medium business; that is, businesses with a turnover of less than €50m and less than 250 employees.
Accountants and others providing services of accountancy, book-keeping or tax advice to such businesses will have a particular interest.

Duration: The consultation period begins 17 December 2010 and ends 28 February 2011.

15/12/2010
End of “gold-plating” European measures into UK law.
Subject: Law and legislation
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=417079&NewsAreaID=2

Secretary of State for Business, and Chair of the Reducing Regulation Committee, Vince Cable today set out a series of new principles that the Government will use when introducing European measures into UK law. These will end so-called “gold-plating” so that British businesses are not put at a disadvantage relative to their European competitors.
The key to the new measures will be the principle of copying out the text of European directives directly into UK law. The direct ‘copy out’ principle will mean that British interpretations of European law are not unfairly restricting British companies.

The new measures are part of a wider Government policy to tackle EU regulations at the source. Government will be talking with business organisations about the European Commission’s plan for future legislation, working closely with other European countries to make sure that regulations work well on the ground and improving how evidence is used by the European Parliament and Council.

Business Secretary Vince Cable said:
“I want British business to be a powerhouse for economic growth and among the most competitive in the world. This move will bring an end to the charge of “gold-plating”. The way we implement our EU obligations must foster, not hinder, UK growth by helping British businesses compete with their European neighbours.

“The new principles are a first step towards working with British business and Europe to make sure that we introduce EU rules in a way that will not harm the UK economy. By cutting the red-tape that can reduce competitiveness and making sure that businesses are involved in the process both before, and after through five-yearly reviews, we can get the best deal possible for British companies.“

The new measures will place an express duty on ministers to conduct a review of European legislation every five years. The review process would involve a consultation with businesses and provide a unique opportunity to improve how European legislation is implemented, to ensure that it poses as small a burden as possible on business.

Government will also start work early on how to implement EU directives to ensure that there is certainty and early warning about how legislation will be introduced, but will not implement the regulations early unless there is a compelling case to do so. Businesses will be invited to take part in this process and work with Government to make sure that European laws place the least possible burden on companies.

The key elements of the principles are:

Further reading: Unfair commercial practices

01/12/2010
OFT today urged businesses to review their use of common pricing practices
Subject: Sales and marketing/advertising law
Source: http://www.oft.gov.uk/news-and-updates

The OFT today urged businesses to review their use of common pricing practices to ensure they comply with fair trading laws, or risk enforcement action.

The message follows the publication of an OFT market study into the advertising of prices, which established that certain pricing techniques used online, in-store and in adverts can mislead consumers, potentially breaching the law.

Advertising of prices is a key part of active price competition which benefits both consumers and the economy. But evidence obtained by the OFT from consumer surveys, focus groups, psychology literature and groundbreaking behavioural economics research suggests that certain pricing techniques can lead consumers into purchasing decisions they would not have made were prices more clearly advertised, or to spend more than they need to.

The practices the OFT identified as having the greatest potential to cause harm are drip pricing (where optional or compulsory price increments are added during the buying process such as taxes, card charges and delivery charges), time-limited offers (such as 'offer ends today') and baiting sales (having only a small proportion of stock available at the advertised offer price). However, this does not mean that the use of these practices is automatically unlawful - this will depend on the specifics of the advert and a number of other factors.

This research has helped the OFT determine how it proposes to apply the Consumer Protection from Unfair Trading Regulations 2008, which prohibit, amongst other things, misleading advertising. Breaches of the regulations can result in court action and fines.

The OFT recognises that most businesses want to play fair with their customers and to comply with the law. In order to help them, it has published a new framework which sets out the criteria it will use in prioritising enforcement action against traders engaged in pricing practices causing the most harm to consumers.

On drip pricing, for example, businesses that ensure all compulsory charges are included in the headline price, and make details of all genuinely optional charges available at the early stages of the buying process are less likely to be subject to OFT enforcement action.

Fair dealing businesses should not be concerned that they risk enforcement action on trivial matters, and will benefit from clarity about the OFT's position. However, the OFT is actively monitoring price promotions and, where necessary, will take targeted national enforcement action against firms using practices that constitute serious breaches of the law.

01/12/2010
Argos delivery claim banned
Subject: Sale of goods and services/Advertising and Marketing
http://www.asa.org.uk/ASA-action/Adjudications/2010/12/Argos-Ltd/TF_ADJ_49462.aspx

A TV ad for Argos showed two penguins making a delivery to a walrus. The voice-over said "The walrus spends most of its day dragging its huge mass around, hunting for food. But imagine if it could ‘Argos it’". The penguins made the delivery and the voice-over continued "With over 1500 lorries, we can deliver what you want at a time slot that’s right for you". Superimposed text stated "Terms, delivery charges and exclusions apply. Excludes Jewellery".

Issue: Three viewers challenged whether the claim "We can deliver what you want at a time slot that’s right for you" was misleading and could be substantiated.

Response
Argos explained that they offered a variety of different delivery options to their customers. They said that they offered customers, on weekdays, a morning (7am to 1pm) or afternoon slot (12pm to

8pm) and depending on the type of goods they ordered, customers could choose delivery within 48 hours. Provided a customer placed an order before 1 pm on a weekday, Argos could deliver on a next day basis. They stated that their delivery information, which was available in the catalogues, website and in store, made clear that they had morning or afternoon delivery slots. Argos explained that, in the cases of bulky items, they offered three delivery slots: morning (7am to 12 pm), midday (10am to 2pm) and afternoon (12pm to 6pm). The day before the delivery, Argos would call or text the customer to advise them of the two-hour time slot in which an order would be delivered. Additionally, the delivery driver would ring one hour before the delivery arrived.

Argos said they believed that viewers would see the ad and then refer to the delivery information available on the website, in their catalogue or in store. They believed that the claim "a slot thats right for you" was not misleading because customers were allocated a time period in which they could expect a delivery. Argos believed offering a morning or an afternoon slot was in keeping with the claim "... at a time slot thats right for you". They did not consider the ad was misleading.

Clearcast did not believe that the claim was an absolute promise that customers could choose a certain delivery slot but that it simply highlighted that Argos had delivery slots available. Clearcast believed that the superimposed text "Terms, delivery charges and exclusions apply. Excludes Jewellery" meant that viewers would not expect to be able to demand a specific delivery time. They believed that the ad made clear that further conditions applied to the ad.

Assessment: the complaints were upheld. The ASA noted that Argos provided a number of delivery options to customers, dependent on the items being delivered. We understood that Argos would tell customers whether the delivery would be in the morning or afternoon and in the case of larger items, Argos chose a specific two-hour time period within their three delivery slots. However, we considered the claim "we can deliver when you want at a time slot thats right for you" implied that customers could specify a delivery time of their choosing, which was at their convenience, and therefore that they had a wide degree of choice about when their goods would be delivered. Because we understood that was not the case, we concluded that the ad was misleading.

The ad breached BCAP Code rules 3.1 (Misleading advertising), 3.9 (Substantiation) and 3.10 (Qualifications).

Action
The ad must not be broadcast again in its current form. Adjudication of the ASA Council (Broadcast).

Further reading: Sale of goods and services/Advertising and Marketing

30 November 2010
National food hygiene-rating scheme covering 500,000 food outlets launched
Subject: Food business regulation
National Food Hygiene Rating Scheme launched
Source: http://www.food.gov.uk/news/?year=2010

The Food Standards Agency (FSA) is today launching a national food hygiene rating scheme that will help you choose where to eat out or shop for food by giving you information about the hygiene standards in restaurants, pubs, cafes, takeaways, hotels, supermarkets, and other places you eat out and buy food. to improve standards Guardian, 30 November 2010: National food hygiene-rating scheme covering 500,000 food outlets launched to improve standards.

30/09/2010
EU Commission takes UK to court
Subject: Data Protection
Source: http://www.out-law.com/page-11409

The European Commission is taking the UK to court, claiming that UK law does not protect citizens' privacy as strongly as EU laws demand. The case centres on the UK Government's response to the Phorm web monitoring scandal.

Phorm invented a technology for ISPs to use to track users' web use in order to serve them ads that were related to the recorded internet activity. ISP BT used this technology without telling users, which led to complaints to UK regulators and the Commission that this broke privacy laws. BT later said that it would not use Phorm's technology, and no other UK ISP has used it.

In examining the complaints, the European Commission assessed the legal protections available in the UK for the privacy of internet users and their communications. It has twice written to the UK Government demanding that UK laws be changed to better implement EU directives. The Commission said in April and October of 2009 that the Regulation of Investigatory Powers Act (RIPA), the Data Protection Act do not fully implement the Privacy and Electronic Communications Directive and the Data Protection Directive. It asked the UK to change the law but has now said that it will take the UK to the European Court of Justice (ECJ) to force it to do so.

"The Commission considers that UK law does not comply with EU rules on consent to interception and on enforcement by supervisory authorities," said a Commission statement. "The Commission considers that existing UK law governing the confidentiality of electronic communications is in breach of the UK's obligations under the ePrivacy Directive and the Data Protection Directive."

The Commission said that UK law failed to meet the requirements of EU directives in three respects.

"There is no independent national authority to supervise the interception of some communications, although the establishment of such authority is required under the ePrivacy and Data Protection Directives, in particular to hear complaints regarding interception of communications," said the Commission.

"Current UK law authorises interception of communications not only where the persons concerned have consented to interception but also when the person intercepting the communications has ‘reasonable grounds for believing’ that consent to do so has been given. These UK provisions do not comply with EU rules defining consent as 'freely given, specific and informed indication of a person’s wishes'," it said.

"Current UK law prohibiting and providing sanctions in case of unlawful interception are limited to ‘intentional’ interception only, whereas EU law requires Members States to prohibit and to ensure sanctions against any unlawful interception regardless of whether committed intentionally or not," said the Commission.

The Information Commissioner's Office enforces the Data Protection Act and said in a Home Office consultation last year that it believed there to be gaps in the way that UK citizens' privacy is protected.

"Where the private sector, either through their own provision of services, or through being placed under a legal obligation, are intercepting communications of services users, there are gaps in the regulatory regime," it said. "The only recourse for a private sector breach is prosecution for a criminal offence. This is different from the position that applies to the public sector. Arguably there

is a need for an appropriately empowered regulator, who can provide advice and guidance and ultimately impose civil sanctions against private sector players."

Further reading: Data Protection

28/09/2010
Equality Act 2010 coming into force on 1 October 2010
Source: Equality and Human Rights Commission
http://www.equalityhumanrights.com/legal-and-policy/equality-act/what-is-the-equality-act/
Subject: Employment; Supply of goods and Services

A new Equality Act will come into force on 1 October 2010. The Equality Act brings together over 116 separate pieces of legislation into one single Act. Combined, they make up a new Act that will provide a legal framework to protect the rights of individuals and advance equality of opportunity for all.

The Act will simplify, strengthen and harmonise the current legislation to provide Britain with a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

The nine main pieces of legislation that have merged are:

the Equal Pay Act 1970
the Sex Discrimination Act 1975
the Race Relations Act 1976
the Disability Discrimination Act 1995
the Employment Equality (Religion or Belief) Regulations 2003
the Employment Equality (Sexual Orientation) Regulations 2003
the Employment Equality (Age) Regulations 2006
the Equality Act 2006, Part 2
the Equality Act (Sexual Orientation) Regulations 2007

17/09/2010
OFT warns estate agents and credit lenders on penalties for AML non-compliance
Subject: Estate Agents, credit lenders; anti-money laundering regulation
Source: Office of Fair Trading
http://www.oft.gov.uk/news-and-updates/press/2010/98-10

The OFT has today published its interim policy on imposing financial penalties on estate agents and certain credit lenders who have failed to register under its money laundering registration scheme but continue to carry on a supervised activity.

The Anti-Money Laundering Interim Penalties Policy makes clear that if such estate agents and certain credit lenders fail to register with the OFT, they will be subject to fines that start at £2,000 and increase by £1,000 for each additional unregistered premise. Where the OFT believes estate agents and certain credit lenders are not registered but are carrying on a supervised activity, it will give them 21 days to apply for registration or to explain why they are exempt from registration, before notifying them of the intention to apply a financial penalty.

Mario Tsavellas, OFT Director of Anti-Money Laundering, said:

'Estate agents and certain credit lenders have an obligation to comply with statutory obligations under the Money Laundering Regulations 2007, which includes registration with the OFT. Where

businesses choose to ignore OFT warnings and do not register, we will impose civil financial penalties. It is vital that the OFT continues to identify those who should register, so that the OFT can supervise them effectively and reduce the risk of money laundering and terrorist financing in these sectors.'

NOTES
The Money Laundering Regulations 2007 came into force on 15 December 2007. The Regulations implement the Third Anti Money Laundering Directive. The aim of the Regulations is to reduce the risk of supervised businesses being used for money laundering or terrorist financing. Businesses have to apply measures such as verifying customer identity, training staff and reporting suspicious activity to the Serious Organised Crime Agency.
Prior to 15 December 2007, the businesses supervised by the OFT had to comply with the Money Laundering Regulations 2003 but did not have a supervisory body. Since 15 December 2007 the OFT has been responsible for supervising those businesses who carry on a supervised activity, namely estate agents and Consumer Credit Financial Institutions (CCFIs). CCFIs are consumer lenders who are not authorised by FSA or supervised by HMRC as a money service business.
The anti money laundering supervisory regime is expected to be self-funding. The Regulations give the OFT the power to charge those it supervises fees to recover its reasonable costs of supervision.

13/09/201
De Bortoli Wines UK Ltd pleads guilty to nine offences under the packaging regulations
Subject: Packaging Regulations (the Producer Responsibility Obligation (Packaging Waste) Regulations (SI 2007/871))
Source: Environment Agency press release
http://www.environment-agency.gov.uk/news/123299.aspx?month=9&year=2010

De Bortoli Wines UK Ltd has been ordered to pay more than £8,300 in fines and costs for failing to comply with waste packaging regulations. In a case brought by the Environment Agency, the company pled guilty to nine offences under the Producer Responsibility Obligation (Packaging Waste) Regulations (SI 2007/871), including failing to register, failing to recover and recycle packaging waste and failing to furnish a certificate of compliance. Any business handling more than 50 tonnes of packaging a year with an annual turnover of more than £2 million is required, under the Regulations, to recover and recycle a percentage of its packaging waste. De Bortoli Wines UK Ltd’s fines totalled £4,500, and the company was ordered to pay £2,128 costs and compensation of £1,686.

10/09/2010
Lettings and estate agents are failing to notify the ICO when handling personal information
Subject: Data Protection Act 1998,
Source: Information Commissioner
http://www.ico.gov.uk/upload/documents/pressreleases/2010/estate_agents_notify_08092010.pdf

On 8 September 2010 the ICO issued a press release warning that some lettings and estate agents are failing to meet requirements under the Data Protection Act 1998 to notify the ICO when they process personal data, such as financial information.
Currently only 3,734 estate agents and 1,416 lettings agents appear on the public register, which makes up a small proportion of the industry.

08/09/2010
Paper boy found not to be an employee and not entitled to claim unfair dismissal
Bebbington v Palmer
Subject: Employment law: whether paper bot was an employee
Source: [2010] All ER (D) 47 (Sep); UKEAT/0371/09/DM

On 23 February 2010 the Employment Appeal Tribunal dismissed the claimant's appeal against the employment tribunal's finding that he had not been unfairly dismissed by the defendant. It had been open to the tribunal to find that the claimant paper boy was not employed by the defendant. It held that a wide interpretation should be given to the term 'employment' in s 18 of the Children and Young Person Act 1933 so that it encompassed children who were not employees in the strict sense of the word but were employed under contracts for services.

08/09/2010
Posters for Stansted Express banned by ASA for wrongly implying that the train would take passengers to central London in 35 minutes
Subject: Marketing law: misleading advertising
Source: Advertising Standards Authority
http://asa.org.uk/Media-Centre/ASA-in-the-media.aspx

A National Express advert at Stansted airport which claimed trains to London take 35 minutes has been banned by the advertising watchdog for misleading passengers.
The poster featured an image of a train, various iconic central London landmarks such as Big Ben, the London Eye and Nelson's column and the text '35 minutes'.
However, trains from Stansted airport to Liverpool Street in central London take 45 minutes, according to the Advertising Standards Authority (ASA). And while trains which stop at Tottenham Hale in North London take 35 minutes, the ASA said Tottenham Hale is "unlikely to be considered central".

08/09/2010
OFT Says Second Hand Car Dealers Must Comply with Law or Face Action
Subject: Supply of goods and services; second hand cars; OFT develops online resource to tackle problems with sales of unsatisfactory goods
Source: Office of Fair Trading
http://www.oft.gov.uk/news-and-updates/press/2010/94-10

On 8 September 2010, the Office of Fair Trading (OFT) launched a new online resource to help sales staff comply with the law when customers buy or return goods. The Sale of Goods Act (SOGA) is the main law that relates to the purchase of consumer goods. SOGA covers elements such as quality of goods, how they are described when being sold, whether they are fit for purpose and when a customer is entitled to a refund. The OFT estimates that problems with unsatisfactory goods cost consumers around £6.6 billion a year. Following discussions with businesses and trade associations, the OFT has developed the SOGA Hub to help sales staff understand their legal obligations and improve customer service.

The hub is a free online resource for retailers and includes a simple at-a-glance guide to the law, detailed explanations, practical example and training materials and a quiz. The materials can either be used as they are or incorporated into existing staff training programmes, making them suitable for both small and large firms. The material is also tailored to be suitable for people dealing with various levels of consumer contact.

Link to the hub: www.oft.gov.uk/saleofgoodsact

06/09/2010
NICs holiday scheme for new businesses launched
Subject: SME policy. Tax/National insurance Contributions
HM Revenue & Customs
http://nds.coi.gov.uk/content/detail.aspx?ReleaseID=415317&NewsAreaID=2&HUse

A new National Insurance contributions (NICs) holiday scheme to encourage new business start-ups in key UK regions was launched today.

The 'Regional Employer NICs Holiday for New Businesses' offers substantial reductions in employer NICs for new businesses in those parts of the UK most reliant on public sector employment.

Under the three-year scheme, eligible businesses will be able to take a 'holiday' for each of the first 10 employees they hire in their first year of business. Each holiday will last for the first 52 weeks the employee is in post (providing these weeks fall within the three-year holiday period).

New businesses who take advantage of the scheme will be able to save up to £50,000 in employer NICs – £5,000 per employee, up to a maximum of 10 new employees.

Within the UK, the regions and countries that will benefit are the North East, Yorkshire and the Humber, the North West, the East Midlands, the West Midlands, the South West, Scotland, Wales and Northern Ireland.

The scheme is open to new businesses set up on or after 22 June 2010, and will run until 5 September 2013.

Launching the scheme, Exchequer Secretary to the Treasury, David Gauke,
said:

"We need to rebalance our economy, which has become over reliant on public spending and jobs provided by the public sector.

"The NICs holiday for new businesses, in addition to cuts in corporation tax, will help provide a valuable boost to start up businesses, and help foster the private sector led recovery that will drive growth in the UK over the coming years."

To find out if they are eligible for the holiday, and for further information on the scheme, new businesses should visit
www.businesslink.gov.uk/nicsholiday:
http://www.businesslink.gov.uk/nicsholiday and read the guidance. Eligible businesses should then make their application as outlined in the guidance.

Contacts:

NDS Enquiries
Phone: For enquiries please contact the above department
Email: ndsenquiries@coi.gsi.gov.uk

06/09/2010
Food Standards Agency explains legal requirements of Materials and Articles in Contact with Food (England) Regulations 2010
Subject: Food regulations; Guidance: Guidance on the Materials And Articles In Contact With Food (England) Regulations 2010
Source: Food Standards Agency
http://www.food.gov.uk/foodindustry/guidancenotes/foodguid/foodmaterialarticleguidance2010

02/09/2010
The Equality and Human Rights Commission and the British Chambers of Commerce (BCC) today urged small and medium size businesses to examine their pay systems to ensure they comply with equal pay laws
Subject: Employment; equal pay
http://www.equalityhumanrights.com/advice-and-guidance/information-for-employers/equal-pay-resources-and-audit-toolkit/quick-start-guide-to-providing-equal-pay/

As part of the Commission's drive to increase transparency around pay in the workplace, the Commission and the BCC have jointly published a quick and easy guide to help employers do this.The process is relatively simple for a small organisation and should take no longer than four hours, according to the guidance published today. This guidance has been produced in conjunction with the British Chambers of Commerce to make it easier for small and medium sized businesses to examine their pay systems to ensure they comply with equal pay laws.

Why do I need to check if I'm providing equal pay? Women are entitled to equal pay with men doing equal work and this means you need to be confident that your pay system delivers equal pay and protects you against an equal pay claim. Men also have an entitlement to equal pay with women, but for ease of reading we look here at women compared to men.

01/09/2010
The digital remit of the Advertising Standards Authority (ASA) is to be extended significantly to deliver more comprehensive consumer protection online.
Subject: Sale of goods and services; advertising and marketing
Source: Advertising Standards Authority

Advertisers' own marketing communications on their own websites and;
Marketing communications in other non-paid-for space under their control, such as social networking sites like Facebook and Twitter. Journalistic and editorial content and material related to causes and ideas - except those that are direct solicitations of donations for fund-raising - are excluded from the remit.

The ASA's present remit online includes ads in paid-for space and sales promotions wherever they appear. But from next year, the rules in the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) will apply in full to marketing communications online, including the rules relating to misleading advertising, social responsibility and the protection of children. The remit will apply to all sectors and all businesses and organisations regardless of size.

The Committee of Advertising Practice (CAP), the body responsible for writing the CAP Code, has decided to extend the digital remit of the ASA in response to a formal recommendation from a wide cross-section of UK industry. CAP has today published a document detailing the new remit and sanctions. In the two years covering 2008-2009, the Advertising Standards Authority (ASA) 3rejected approximately 3,500 complaints relating to the content of organisations' own websites because they fell outside the remit of the CAP Code. The complaints were registered by

consumers, businesses and other organisations and typically concerned potentially misleading claims.

Sanctions: In addition to the ASA‟s present sanctions, which already achieve a high level of compliance, CAP member bodies have agreed new sanctions to apply to the extended remit such as:

Removal of paid-for search advertising – ads that link to the page hosting the non-compliant marketing communication may be removed with the agreement of the search engines.
ASA paid-for search advertisements - the ASA could place advertisements online highlighting an advertiser‟s continued non-compliance.
Funding
The industry has agreed to apply the standard 0.1% levy on paid-for advertisements appearing on internet search engines through media and search agencies. This is an extension of the existing funding mechanism in other media that pays for the ASA and it will be supplemented initially with seed capital from Google.

Implementation
The remit will come into force on 1 March 2011 after a six month period of grace to allow the ASA and CAP to conduct training work to raise awareness and educate business on the requirements of the CAP Code, particularly amongst those who may not previously have been subject to ASA regulation. Website owners and agencies are urged to sign up to CAP Services to receive guidance and training to help ensure their sites comply with the new rules before 1 March 2011.

15/07/2010
A change in regulations regulating Employment Agencies and Employment Businesses[1] will restrict the taking of up front fees.
Subject: Employment Agencies and Employment Businesses; Employment Agencies Act 1973, ss 5(1), 6(1), 12(3)
Subject: Employment Agencies and Employment Businesses; Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 (SI 2010/1782)
Source: Department for Bbusiness, Innovation and Skills, Employment Agency Standards inspectorate
http://www.bis.gov.uk/policies/employment-matters/eas

With effect from 1 October 2010, a change in regulations regulating Employment Agencies and Employment Businesses[2] will restrict the taking of up front fees. Main points are:

- bans the taking of up front fees for work finding services from photographic and fashion models.
- require employment agencies, when charging an upfront fee, to notify all new clients they have a right to cancel within the appropriate cooling off period. Also clarify the cooling off period will start only when the agency and work-seeker have agreed to a written contract or oral agreement to terms.
- introduce a provision for work-seekers who are charged an upfront fee to see and approve a draft of the information for which they are being charged, prior to payment of a fee for those seeking work as actor, background artist, dancer, extra, musician, singer or other performer. Also introduce a provision for a refund if no publication, for which a worker has paid an upfront fee to have their details included in, is produced and made available to potential hirers within 60 days.

[1] SI 2010/1782: amends the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319 . Statutory authority: Employment Agencies Act 1973, ss 5(1), 6(1), 12(3).
[2] SI 2010/1782: amends the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319 . Statutory authority: Employment Agencies Act 1973, ss 5(1), 6(1), 12(3).

- introduce a provision for a 30 day cooling off period when a photographic image, audio or videorecording of the work-seeker is produced as an additional service for an actor, background artist, dancer, extra, musician, photographic or fashion model, singer or other performer. During this time an employment agency or employment business cannot charge a fee and the work-seeker has a right to withdraw without detriment or penalty.
- reduces certaine unnecessary administrative burdens on the sector, including the elimination of unnecessary duplication with other legislation by removing the requirement for employment agencies to carry out identity and related checks for work-seekers other than those who will be working with vulnerable people.

01/07/2010
Amendments to the Prospectus Directive passed
Source: Quoted Companies Alliance
http://www.theqca.com/news/briefs/21896/amendments-to-the-prospectus-directive-passed.thtml
Subject: Finance; public companies public offers of shares

The long and complex review process of the Prospectus Directive reached a pivotal point on 17 June, when changes to the Directive were finally passed by the European Parliament. The QCA is pleased to see that a number of our proposals, which will make equity fundraisings cheaper and more efficient for small and mid-cap quoted companies, made it into the final amending Directive.

The main changes to the Prospectus Directive that will help smaller quoted companies are:

1.The fundraising threshold above which a prospectus has to be produced has doubled, from €2.5 million to €5 million;

2.Offers made in the context of an employee share schemes are exempt from the requirements to produce a prospectus;

3.A proportionate disclosure regime is introduced for public offers:
•to existing shareholders by companies on regulated or multilateral trading facilities, such as AIM and PLUS, as long as they are subject to appropriate on-going disclosure requirements and rules on market abuse;

•by SMEs (this is defined as a company that passes a ‘two out of three’ test – an average number of employees of less than 250, a total balance sheet not exceeding €43m, and an annual net turnover not exceeding €50m);

•by companies with reduced market capitalisations (a company listed on a regulated market and having an average market capitalisation of €100m on the basis of year-end quotes during the last three calendar years);
Also, the investor threshold above which a prospectus has to be produced also has increased from 100 to 150 people.

While these changes have been voted on by the European Parliament and the final text has been adopted, it will still be some time until UK companies can take advantage of them. The text becomes law 20 days after it is published in the Official Journal, which will most likely take place in October/November 2010. Member States then have up 18 months to transpose the Directive into their legal and regulatory systems. We are discussing with HM Treasury how this can be implemented in the UK as soon as possible.

In meantime, the Committee of European Securities Regulators (CESR) will be working on clarifying specific aspects of the Prospectus Directive changes, such as what information should be included in a proportionate prospectus

07/06/2010
Local Better Regulation Office urges businesses to contribute to a new risk-based approach to national regulations to help reduce the burden on them and benefit consumer protection
Subject: Legislation: business regulation and consumer protection
Source: Local Better Regulation Office (LBRO)
http://nds.coi.gov.uk/content/detail.aspx?NewsAreaId=2&ReleaseID=413699&

On 7 June 2010, the Local Better Regulation Office (LBRO) called for businesses to make a contribution to their work of refreshing the national enforcement priorities in England. The work is backed by the British Chambers of Commerce (BCC), which supports a reduction of the administrative burden on its members. BCC policy advisor Steve Hughes said: "A risk-based approach, with the focus on outcomes rather than ticking boxes, is key to addressing issues relating to red tape."

LBRO Chairman Clive Grace said: "This is a prime opportunity for business to help shape the regulatory landscape, and focus efforts to protect the public. We would welcome contributions from the business community in addition to our work with local and national regulators in identifying particular areas for concern."

The work is evidence-based and LBRO will gather evidence during this summer, with the priorities to be published in draft form for consultation in the autumn. Following consultation, the final priorities are expected to be put before ministers early in 2011.

02/06/2010
Action plan announced to end excessive regulation
Subject: Legislation; business regulation
Source: Department for Business, Innovation and Skills
http://nds.coi.gov.uk/content/detail.aspx?ReleaseID=413620&NewsAreaID=2&HUserID=895,777,891,854,783,867,710,705,765,674,677,767,684,762,718,674,708,683,706,718,674

Business Secretary Vince Cable today announced an action plan to bring an end to the excessive regulation that is stifling business growth. He detailed the first phase of the Coalition Government's action plan to reduce regulation following the Prime Minister's commitment last week to "re-open Britain for business".

The action plan:
- Creates a new Cabinet "Star Chamber" that will lead the Government's drive to reduce regulation which is stifling growth, especially of small businesses. This Reducing Regulation Committee will be chaired by the Business Secretary and will enforce a new approach to new laws and regulations, ensuring that their costs are being properly addressed across the entire British economy.
- Announces an immediate review of all regulation in the pipeline for implementation which has been inherited from the last Government. The cost of implementing this amounts to £5bn annually before April 2011 and £19.1bn per annum thereafter. This will be the first action for the new Cabinet committee.
- Establishes a new "challenge group" to come up with innovative approaches to achieving social and environmental goals in a non-regulatory way. This team would work with experts including Richard Thaler, the US behavioural economist.

• Introduces a new approach that will control and reduce the burden of regulation. A "one-in, one-out" approach, designed to change the culture of government, would make sure that new regulatory burdens on business are only brought in when reductions can be made to existing regulation.

Business Secretary Vince Cable said:
"The deluge of new regulations has been choking off enterprise for too long. We must move away from the view that the only way to solve problems is to regulate.

"The Government has wide-ranging social and ecological goals including protecting consumers and protecting the environment. This requires increased social responsibility on the part of businesses and individuals.

"This is a real challenge and it will not be easy. We need to reduce regulation and at the same time meet our social and environmental ambitions. This demands a radical change in culture away from the tick box approach to regulation only as a last resort. It's a big task but one worth striving for."

Notes to editors:

1. The Reducing Regulation Committee will stress-test regulatory proposals making sure that only those of suitably high quality (for example meeting good regulation principles) and suitably high priority proceed.

2. 'One-In – One-Out' is a regulatory management system, whereby any new regulatory cost is compensated by cuts to the cost of old laws, and that the cut in regulatory cost must be greater than the cost of the new regulation.

3. The Better Regulation Executive is responsible for implementing the regulation agenda at the Department for Business Innovation and Skills, and works across government to improve the way new laws and regulations are created, cutting away unnecessary red tape and being fair to business.

4. The "Forward Regulatory Programme" published in March by the Better Regulation Executive identified 200 new regulations that departments were planning to bring in between May 2010 and April 2011 with a cost of over £5 billion, and over 20 new regulations beyond April 2011 with individual costs of over £50 million and total costs of about £19 billion.

5. The intended small "challenge group" will encourage an imaginative approach to non-regulatory alternatives to regulatory proposals presented by Departments to the Reducing Regulation Committee. The longer term aim would be to change the culture and for Departments to propose non regulatory solutions.

04/04/2010
Manchester Tax Tribunal finds against HMRC and in favour of individual as self-
Novasoft Ltd v Revenue and Customs
Subject: Income tax; Self-employed status; IR35
Source: http://www.financeandtaxtribunals.gov.uk/Aspx/default.aspx

Mr Brajkovic was the director and 75% shareholder of Novasoft Limited stemmed. He submitted a contract to HMRC to check its compliance with IR35. After four years, Mr Brajkovic has successfully established that he was self employed.

The period under review was 2000-2002 during which time Novasoft Limited had a contract with Lorien Holdings Limited (operating as an employment business) which in turn had a contract to provide IT services to Avecia Limited.

When hypothesising the notional contract between Novasoft and the end client, Avecia, to determine whether it was one of employment or self employment, the Tribunal found that there was no right for Novasoft to substitute the services of Mr Brajkovic. Unusually a finding of this nature would be a killer blow for the contractor, however here the Tribunal went on to find that whilst the existence of a right to substitute is generally inconsistent with there being a contract of employment its complete absence does not automatically make a contract one of employment.

The Tribunal also made reference to the approach laid down in the 1992 case of Hall v Lorimer which emphasised that the determination of employment status is about painting a picture from the 'accumulation of detail' of a case rather than working rigidly through a checklist of indicators. We shall have to see whether the Tribunals continue to adopt this pragmatic approach rather than a case standing or falling on one or two status indicators and indeed what happens to IR35 under the new Coalition Government in the forthcoming months.

The Coalition Government's full programme for Government, published on 20th May stated it will: "'Review IR35 as part of a wholesale review of all small business taxation, and seek to replace it with simpler measures that prevent tax avoidance but do not place undue administrative burdens or uncertainty on the self employed, or restrict labour market flexibility".