October, November, December 2011

21/12/2011
ASA Adjudication on Trinity Mirror plc
Subject: Selling and marketing/Advertising Codes
Source: Advertising Standards AuthorityA
http://www.asa.org.uk/ASA-action/Adjudications/2011/12/Trinity-Mirror-plc/SHP_ADJ_169525.aspx

An internet sales promotion, seen on 31 July2012, stated "6 VIP weekend camping tickets to be won ... includes £1,000 spending money". The weekend mentioned was the V Festival.

The complainant, who was one of six winners, challenged whether the promotion was misleading and conducted fairly because they did not receive the £1,000 spending money.

Trinity Mirror Group plc (Trinity Mirror) stated that the ad for the promotion also appeared in newspaper form. However, the online version of the promotion carried a sentence "includes £1,000 spending money" which was incorrect. The line about the £1,000 spending money was a mistake and accidentally left on the template from a previous promotion, and due to a technical processing error, that line was not deleted from the copy for the new promotion.

Tthe terms and conditions, which accompanied the promotion, correctly described the prize and also stated "Travel to/from winner's home to the Festival, camping equipment, sustenance, and any other costs/expenses not included (winner's responsibility)".

The ASA noted that there were two mediums for this promotion and that the newspaper version did not have any errors. It also noted that an unintentional mistake was made in the online version because the text about £1,000 spending money was a technical processing error on the template from a previous competition. However the ASA considered that this unintentional error was likely to mislead and that it gave the complainant justifiable grounds for complaint due to the breach of the CAP Code (Edition 12) rules 3.1 and 3.3 (Misleading advertising), 8.14 (Administration of sales promotions) and 8.17.6 (Significant conditions for promotions).

The ASA ruled that the ad must not appear again in its current form and that Trinity Mirror must ensure that future promotions are conducted under proper supervision.

Legaleze comment: the ASA does not have jurisdiction to rule any compensation be paid to the complainant who might possibly have a legal remedy in theory. Note that the Law Commissions are considering whether the law on misleading advertising should be amended in order to allow compensation claims to be made by consumers for breach of advertising regulations (see [Selling and marketing/advertising to consumers regulations] and: http://www.justice.gov.uk/lawcommission/docs/cp199_consumer_redress.pdfwas not able

14/12/2011
Proposals to modernise the copyright system
Subject: Intellectual property/Copyright
Source: Department for Business, Innovation and Skills
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422484&NewsAreaID=2

The government has published a consultation document containing proposals to modernise the copyright system.
The consultation, which follows the recommendations in the Hargreaves Review of Intellectual Property and Growth, is part of a wider programme of work from government that includes action to tackle online infringement of copyright and to make sure the copyright system best encourages the creation and use of music, books, video and other copyright material.
The proposals include:
* Creating an exception to allow limited acts of private copying - for example making it legal to copy a CD to an MP3 player. This move will bring copyright law into line with modern technology and the reasonable expectations of consumers.
* Widening the exception for non-commercial research to allow data mining, enabling researchers to achieve new medical and scientific advances from existing research. Currently researchers cannot use some new computer techniques to read data from journal articles which they have already paid to access without specific permission from the copyright owners of each article.
* Introducing an exception for parody and pastiche, to give comedians and other people the creative freedom to parody someone else's work without seeking permission from the copyright holder.
* Establishing licensing and clearance procedures for 'orphan works' (material with unknown copyright owners). This would open up a range of works that are currently locked away in libraries and museums and unavailable for consumer or research purposes.
* Introducing provision for voluntary extended collective licensing schemes, which would make it simpler to get permission to use copyrighted works and help ensure rights owners are paid. These schemes would allow authorised collecting societies to license on behalf of all rights holders in a sector (except for those who choose to opt out).
* Modernising other exceptions to copyright including those for education, quotation, and people with disabilities.
The consultation will run for 14 weeks, and will conclude on 21 March 2012. Full details are available at:
http://www.ipo.gov.uk/pro-policy/consult/consult-live.htm

14/12/2011
Employment tribunal fees to benefit business and taxpayers
Subject: Employment/Employment Tribunals
Source: Ministry of Justice
http://www.justice.gov.uk/news/press-releases/moj/newsrelease141211a.htm

The government has issued proposals to reduce the £84 million cost to the taxpayer for employment tribunals were announced today by Justice Minister Jonathan Djanogly.
The consultation will put forward two options for consideration:
* Option 1: an initial fee of between £150-£250 for a claimant to begin a claim, with an additional fee of between £250-£1250 if the claim goes to a hearing, with no limit to the maximum award; or

* Option 2: a single fee of between £200-£600 – but this would limit the maximum award to £30,000 – with the option of an additional fee of £1,750 for those who seek awards above this amount.
In both options the tribunal would be given the power to order the unsuccessful party to reimburse fees paid by the successful party.
The government states that many applications do not result in a full hearing or are settled out of court.
The Government will continue to fund the cost of ACAS, which helps people in employment disputes reach agreement without the need for legal proceedings, and is free to users.
The consultation will close in March 2012, with a view to introduce the fees not before 2013-14.
Read the consultation Introducing fees in employment tribunals:
http://www.justice.gov.uk/consultations/et-fee-charging-regime-cp22-2011.htm

13/12/2011
Must try harder' on cookies compliance, says ICO
Subject: Selling and marketing/e-commerce/cookies
Website owners 'must try harder' on complying with the new cookies law the Information Commissioner's Office (ICO) said today, as it published its half term report on enforcing the new rules.
The ICO has also today published updated guidance for UK website owners
setting out specific examples of what compliance looks like.

13/12/2011
Portas Review published
Subject: Government SME policy
Source: Department for Business, Innovation and Skills
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422464&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

Mary Portas has today published her review of the future of British streets, setting out her vision to breathe economic and community life back into our high streets.

The Review sets out Portas' recommendations and may be seen at:
http://www.bis.gov.uk/assets/biscore/business-sectors/docs/p/11-1434-portas-review-future-of-high-streets.pdf

Portas comments that the problems of high streets and town centres are well known and well recognised. However she says that much of what we do know about high streets is stored within professional silos and relates specifically to particular stakeholders, and the information lies "stagnating and festering". Whilst there has been a lot of thinking about the high street, most of it has been done in isolation rarely backed by any kind of creative vision.
Legaleze comment: it is to be hoped that this report will not simply go to the top of the dusty pile. But the downward trend for high streets will be hard to reverse.

Portas makes 29 recommendations:

1. Put in place a “Town Team”: a visionary, strategic and strong operational management team for high streets
2. Empower successful Business Improvement Districts to take on more responsibilities and powers and become “Super-BIDs”
3. Legislate to allow landlords to become high street investors by contributing to their Business Improvement District
4. Establish a new “National Market Day” where budding shopkeepers can try their hand at operating a low-cost retail business
5. Make it easier for people to become market traders by removing unnecessary regulations so that anyone can trade on the high street unless there is a valid reason why not
6. Government should consider whether business rates can better support small businesses and independent retailers
7. Local authorities should use their new discretionary powers to give business rate concessions to new local businesses
8. Make business rates work for business by reviewing the use of the RPI with a view to changing the calculation to CPI
9. Local areas should implement free controlled parking schemes that work for their town centres and we should have a new parking league table
10. Town Teams should focus on making high streets accessible, attractive and safe
11. Government should include high street deregulation as part of their ongoing work on freeing up red tape
12. Address the restrictive aspects of the ‘Use Class’ system to make it easier to change the uses of key properties on the high street
13. Put betting shops into a separate ‘Use Class’ of their own
14. Make explicit a presumption in favour of town centre development in the wording of the National Planning Policy Framework
15. Introduce Secretary of State “exceptional sign off” for all new out-of-town developments and require all large new developments to have an “affordable shops” quota
16. Large retailers should support and mentor local businesses and independent retailers
17. Retailers should report on their support of local high streets in their annual report 18. Encourage a contract of care between landlords and their commercial tenants by promoting the leasing code and supporting the use of lease structures other than upward only rent reviews, especially for small businesses
19. Explore further disincentives to prevent landlords from leaving units vacant
20. Banks who own empty property on the high street should either administer these assets well or be required to sell them
21. Local authorities should make more proactive use of Compulsory Purchase Order powers to encourage the redevelopment of key high street retail space
22. Empower local authorities to step in when landlords are negligent with new “Empty Shop Management Orders”
23. Introduce a public register of high street landlords
24. Run a high profile campaign to get people involved in Neighbourhood Plans
25. Promote the inclusion of the High Street in Neighbourhood Plans
26. Developers should make a financial contribution to ensure that the local community has a strong voice in the planning system

27. Support imaginative community use of empty properties through Community Right to Buy, Meanwhile Use and a new “Community Right to Try”
28. Run a number of High Street Pilots to test proof of concept.

09/12/2011
The Wine Regulations 2011 (2011 No. 2936)
Subject: Agriculture/Wine
These Regulations come into force on 30 December 2011.
These Regulations enforce in the UK certain EU regulations relating to the marketing and designation of wine, and registration of vineyards.

08/12/2011
Government consults on the use of gender as a risk factor for insurance
Subject: Insurance
Source: HM Treasury
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422408&NewsAreaID=2
Following a ruling by the European Court of Justice in March, the Government has today issued its promised consultation document on how insurers can use gender as a risk factor in the light of the judgment. The ECJ ruled that the use of gender as a risk factor by insurers should not result in individual differences in premiums and benefits for men and women, with effect from 21 December 2012.
Although the Government continues to believe this judgment is detrimental for consumers, there is an obligation to implement it into law. Today’s consultation reiterates the Government’s legal interpretation that the judgment applies only to new contracts entered into after 21 December 2012, so existing contracts are not affected. It also seeks views on this legal interpretation and the accompanying draft regulations. The consultation document is at:
http://www.hm-treasury.gov.uk/condoc_insurance_benefits_and_premiums_gender_neutral.htm
The consultation closes on 29 February 2012.

08/12/2011
Intellectual property support for SMEs
Subject: Intellectual property
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422404&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

The Government has announced measures to help small and medium sized firms to protect their intellectual property and grow their business. The package forms part of the Government’s Innovation and Research Strategy for Growth, which has been published today. It sets out plans to boost growth through substantial investment in research and innovation across the UK.

Key actions announced today by the Intellectual Property Office (IPO) include:
* A new online business advisor training tool that will give advisors the skills and information they need to help businesses protect the value of their intellectual property.

* An online register of advisors to help businesses find the right advisor for them quickly and easily.
* Consulting businesses, business advisors and IP specialists about how lower cost IP legal and commercial advice can be provided.
* Offering free intellectual property audits to businesses through routes such as the Technology Strategy Board.
* Enhancing existing schemes such as mediation to provide a more efficient dispute resolution service that can prevent potentially costly legal cases.

08/12/2011
Government's new Innovation and Research Strategy for Growth
Subject: Finance and funding
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422403&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

A £75 million boost for high tech small and medium sized businesses is part of a package of measures announced today in the Government's new Innovation and Research Strategy for Growth. Key actions announced today include:

* £75 million of new government investment for the Technology Strategy Board to give high tech innovative businesses better access to the facilities and finance they need to develop and commercialise products.

* £25 million to help companies develop large scale prototypes that will showcase their ideas to potential investors.

* Piloting a new innovation vouchers scheme delivered by the Technology Strategy Board that will give SMEs the opportunity to get free academic support from colleges and universities.

* Supporting SMEs by doubling the size of the Designing Demand Programme by £650,000 to £1.3 million a year. This is a mentoring programme run by the Design Council to help SMEs deliver improved products, services and brands to enhance their growth potential.

* Working with the National Endowment for Science, Technology and the Arts (NESTA), to establish a Centre of Expertise for running innovation inducement prizes, and a new Innovation Prize Fund, in which we will invest £250,000 a year.

The Innovation and Research Strategy for Growth can be found on the BIS website, www.bis.gov.uk

£75 million of new funding will be invested in existing programmes run by the Technology Strategy Board including; Smart (previously Grant for Research and Development (R&D)), the Small Business Research Initiative (SBRI) and the Launchpad initiative.

Smart awards are a programme for supporting R&D in SMEs that began in 1988. The name was changed in 2005 to Grant for R&D when the programme was run by the Regional Development

Agency (RDAs). A new similar Grant for R&D programme now run by the Technology Strategy Board will revert to the original name of Smart, which remains an established brand and popular with businesses.

The Small Business Research Initiative (SBRI) overseen by the Technology Strategy Board provides technology-based SMEs with the opportunity to compete for contracts to develop new products and services that may in the future be procured by government.
access to advice on protecting intellectual property rights.

07/12/2011
Russell (Appellant) and others v Transocean International Resources Limited and others (Respondents) Michaelmas Term [2011] UKSC 57
Subject: Employment/Working Time Regulations
Source: United Kingdom Supreme Court
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www.nationalarchives.gov.uk/doc/open-government-licence

This case originated in claims brought by the Appellants before a Scottish Employment Tribunal. The appellants, who were offshore oil workers, claimed that that "annual leave" in the Working Time Regulations 1998 (SI 1998/1833 (“WTR”) means release from what would otherwise have been an obligation to work, and that their employers cannot discharge their obligation to provide them with annual leave as required by the WTR by insisting that they take this during periods of field break. The Appellants argued that their periods of field break was their time and not their employers' time, and that it should be only the employers' time out of which the annual leave should be taken.

The Respondents argued that the time spent onshore was in itself a rest period, as it was not working time. The onshore time was substantially more than the minimum of four weeks' annual leave to which the appellants are entitled under the WTR. Therefore according to the Respondents, the requirements of the WTR were more than satisfied already, and there was no need for the appellants to take annual leave out of the periods spent offshore.

The appellants in this case worked offshore, so their working pattern was divided into time spent working offshore and time spent onshore when, by and large, they were not working.

The Employment Tribunal upheld the claim. The employers appealed to the Scottish Employment Appeals Tribunal who allowed the appeal. The Appellants appealed to the Scottish Court of Session which rejected the appeal. Finally the Appellants appealed to the UK Supreme Court. The court rejected the appeal and held that the Respondents were entitled to insist that the Appellants must take their paid annual leave during periods when they were onshore on field break and that this practice was permitted by regulation 13 of the WTR, read in conformity with article 7 of the EC Council Directive 2003/88/EC concerning certain aspects of the organisation of working time. ("the WTD.

07/12/2011
Government to transform frontline business inspections
Subject: Law Lawmakers and Lawyers
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422381&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

The Government has responded to the Transforming Regulatory Enforcement consultation. The Government states that it will have a more mature and open relationship with businesses when it comes to regulatory enforcement, along with plans for a more transparent and light-touch system and the creation of a Better Regulation Delivery Office.

The Government proposes to change the way that businesses experience 'frontline enforcement', such as business inspections. There will be a full scale review of UK regulatory bodies and moves to cut the number of inspections for 'compliant' firms.

During the summer the Government consulted with businesses to gather their views on where reform of enforcement was needed and where current approaches to enforcing regulation could be lightened or made to work in more constructive ways.

The response sets out the Government's plans to transform business' experience of regulation at the front line, including:

* Making greater use of 'earned recognition', so that compliant businesses are subject to fewer inspections and unnecessary regulatory action.

* Doing away with the assumption that compliance is something for the State to enforce alone, moving to a presumption that regulators should work with business through 'co-regulation' wherever possible.

* Working with businesses, through local enterprise partnerships and local authorities, to promote better local regulation.

* A presumption that regulators should help businesses comply with the law.

* Establishing the principle that no business should face a sanction for simply having asked a regulatory authority for advice.

The Government will also introduce sunset review clauses on most new statutory regulators created in the future. It will also retain the Regulator's Compliance Code, giving it a higher profile, making sure it is understood by customers and placing it at the heart of reviews of regulators. [Note: Economic regulators (Ofgem, Ofwat, Ofcom, the Civil Aviation Authority and the Office for Rail Regulation) and new regulators in the financial services and nuclear sector will be excluded from the policy on sunset clauses.]

The LBRO will be reconstituted as the Better Regulation Delivery Office (BRDO) within the Department for Business, Innovation and Skills, operating alongside the Better Regulation

Executive to deliver a coherent programme of regulatory reform, and providing comprehensive advice and support to UK and Welsh Ministers.

06/12/2011
Alert to VAT-registered businesses
Subject: VAT
Source: HM Revenue & Custom
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422370&NewsAreaID=2
HM Revenue & Customs (HMRC) has issued an alert to VAT-registered businesses:
from 1 April 2012, all VAT-registered businesses must send their VAT returns online and pay their VAT electronically. Currently, only newly-registered businesses, and those with turnovers of more than £100,000, have to file and pay their VAT online.
To file your VAT return online, businesses must register for [HMRC's VAT Online Service]:
www.online.hmrc.gov.uk
Newly-registered businesses, and those with turnovers of more than £100,000, have had to file and pay their VAT online since 1 April 2010.

02/12/2011
The London Olympic Games and Paralympic Games
(Advertising and Trading) (England) Regulations 2011 (SI 2011 No. 2898)
Subject: Selling and marketing/marketing and advertising regulation/London Olympics
These Regulations came into force on 2 December 2011 and continue in force until 11 September 2012. The Regulations control advertising and trading activity in areas around London 2012 Olympic and Paralympic Games events in England ("event zones") during the period or periods when those events take place.
There are 25 event zones. They are defined in Schedule 1 by reference to maps that are available for inspection at the offices of the Department for Culture, Media and Sport, the Olympic Delivery Authority ("ODA"), and the relevant local authority or authorities set out in the table.
Part 2 of the Regulations control advertising activity.
Regulation 6 prohibits a person from engaging in advertising activity in an event zone during the relevant event period (the "advertising prohibition").
Regulation 5 defines "advertising activity" to mean displaying an advertisement or distributing or providing promotional material.
A person is to be treated as contravening the advertising prohibition if the person arranges for advertising activity to take place in an event zone during the relevant event period or periods (see regulation 6(2)).
Under regulation 6(3), a person is also to be treated as engaging in advertising activity where such activity:
* relates to a good, service, business or other concern in which the person has an interest or for which the person is responsible, or
* takes place on land, premises or other property that the person owns or occupies or of which the person has responsibility for the management.
It is it an offence to contravene advertising regulations made under section 19 of that Act. A person charged with such an offence has a defence if they prove that the contravention occurred without their knowledge or despite their taking all reasonable steps to prevent it from occurring or (where they became aware of it after its commencement) from continuing.

Regulations 7 to 11 specify exceptions to the advertising prohibition:
* Regulation 7 excepts activity intended to demonstrate support for or opposition to the views or actions of a person or body of persons, publicise a belief, cause or campaign, or mark or commemorate an event. The exception does not apply to advertising activity that promotes or advertises a good, service, or person or body (excluding a not-for-profit body as defined in regulation 5) that provides a good or service.
* Regulation 8 excepts an individual who engages in advertising activity only by wearing advertising attire, displaying an advertisement on his or her body, or carrying or holding personal property on which an advertisement is displayed. For the exception to apply, the individual must not know or have reasonable cause to believe that he or she is participating in an “ambush marketing campaign” (defined in regulation 5).
* Regulation 9 exception is modelled on provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the “Town and Country Planning Regulations”).
* Regulation 10 specifies other exceptions to the advertising prohibition.
Legaleze comment: the restrictions are very wide and not limited.
* Regulation 11 provides for advertising to be authorised by the London Olympic Committee (OLOCOG) subject to certain conditions.
Part 3 of the Regulations control trading activity.
Regulation 13 prohibits a person from engaging in trading activity in an event zone during the relevant event period or periods (the “trading prohibition”). It is an offence to contravene trading regulations.
Regulation 12 defines trading activity as carrying out one or more of the activities specified in that regulation in an open public place. A person is to be treated as contravening the trading prohibition if the person arranges for trading activity to take place in an event zone during the relevant event period or periods (see regulation 13(2)).
Under regulation 13(3), a person (a “business or land owner”) is also to be treated as engaging in trading activity where trading activity:
* is undertaken by a business or other concern in which the person has an interest or for which the person is responsible, or
* takes place on land that the person owns or occupies or of which the person has responsibility for the management.
Regulation 13(4) provides that a business or land owner is not to be treated as engaging in street trading if he or she proves that the street trading took place without his or her knowledge or that he or she took all reasonable steps to prevent the street trading taking place or, where it has taken place, to prevent it continuing or recurring.
Regulation 14 specifies exceptions to the trading prohibition.
Regulation 15 provides that the trading prohibition does not apply to trading activity undertaken in accordance with an authorisation granted by the Olympic Delivery Authority (ODA).
Part 4 of the Regulations provide for a person who is dissatisfied with a decision of LOCOG regarding authority to advertise or of the ODA regarding authority to trade to ask for a review of the decision by the ODA.
Legaleze comment: the restrictions in the Regulations are very wide. They are not limited to advertising or trading in products or services similar to those of the Olympic sponsors. LOCOG had to demonstrate to the International Olympic Committee that there would be sufficient measures in place to prevent “ambush marketing” and street trading in defined event zones for the duration of the Games.
Notes:
(i) Maps of the zones may be viewed online at:

http://www.london2012.com/making-it-happen/advertising-and-trading-regulations/further-information/event-zone-maps-indicating-where-the-regulations-apply.php
(ii) These specific regulations are quite separate from the set of intellectual property rights which protect the brands, logos and sponsorship rights of the London Olympics 2012.

2/12/2011
ASA refers complaints about Groupon to OFT
Subject: Selling and marketing/Advertising Codes
Source: Advertising Standards Authority
http://www.asa.org.uk/Media-Centre/2011/ASA-to-refer-complaints-about-Groupon-to-OFT.aspx

Following repeated breaches of the Advertising Code by MyCityDeal Ltd t/a Groupon, the Advertising Standards Authority is now referring complaints that it receives about Groupon's ads to the Office of Fair Trading (OFT). The ASA is referring complaints that specifically concern Groupon's:

* Failure to conduct promotions fairly, such as not making clear significant terms and conditions
* Failure to provide evidence that offers are available
* Exaggeration of savings claims

The ASA is taking this approach because, given Groupon's track record, it has serious concerns about its ability to adhere to the Advertising Code. It is in the public interest that the ASA should refer the matter to the OFT, the OFT being better placed to address any underlying issues concerning Groupon's trading practices generally.

In 2011, the ASA formally investigated and upheld complaints against Groupon's advertising on 11 occasions. It also informally resolved 37 cases.

Legaleze comment: it is unusual for the ASA to take the step of referring complaints to the OFT. The ASA has clearly taken a serious view of the failures by Groupon to comply with the Advertising Code.

1/12/2011
Santander £200m investment fund
Subject: Finance and funding
Source: Multiple

Santander will launch a new "mezzanine" loan product with £200m of funds available. This is intended for companies with turnover of up to £10m and sales growth of more than 20 per cent per annum.
The loan product is reportedly aimed to fill a gap in funding for companies in the up to £10m turnover category. The regional growth fund has contributed £50m to Santander's product on condition that London and the South East based companies are excluded.

The loan will compete against the Business Growth Fund in making investments to high-growth regional UK companies.

30/11/2011
EU Commission proposes new ADR rules for consumers
Subject: Selling and marketing/international
Source: EU Commission

The EU Commission has proposed a Directive on Alternative Dispute Resolution (ADR) which aims toi ensure that quality out-of-court entities exist to deal with any contractual dispute between a consumer and a business.
In addition, the Commission proposes a Regulation on Online Dispute Resolution in order to create a EU-wide online platform providing consumers and businesses with a single point of entry for resolving disputes concerning purchases made on-line in another EU country.
Member states will be allowed to make the ADR rules compulsory if they wish.
Next steps: the European Parliament and the EU Council have committed to adopting the package by the end of 2012 as a priority action in the Single Market Act.

28/11/2011
Government announces changes for small business to the automatic enrolment timetable
Subject: Pensions

The Government today confirmed that automatic enrolment will begin on time in autumn 2012 and all employers will remain in scope.

Small businesses (i.e. firms with not more than 50 employees) will be given additional time to prepare for the implementation of automatic enrolment. The timetable will be adjusted so that no small employers are affected by the reforms before the end of this Parliament.

The rate of pensions contributions will remain unchanged until all businesses have started automatic enrolment. This measure will benefit all employers.

Under the revised timeline, small business would begin automatically enrolling their staff in May 2015, instead of the current timing of April 2014. Half of all workers will still be automatically enrolled before the end of this Parliament.

28/11/2011
Grayling: report calls for one million self employed to be exempt from health and safety law
Subject: Health and safety
Source: Department for Work and Pensions
http://www.dwp.gov.uk/newsroom/press-releases/2011/nov-2011/dwp133-11.shtml

The Government has announced plans to begin a major cut back of health and safety red tape as early as January. It will begin an immediate consultation on the abolition of large numbers of health and safety regulations and intents to have removed the first rules from the statute book within a few months.

It will also establish from 1 January a new challenge panel which will allow businesses to get the decisions of health and safety inspectors overturned immediately if they have got it wrong.

The move follows today's publication of the Löfstedt Review into health and safety legislation, commissioned by the Employment Minister in March.

It recommends that health and safety law should not apply to self-employed people whose work activity poses no potential risk of harm to others. The changes if implemented would benefit around a million self-employed people.

Professor Ragnar E Löfstedt set out his recommendations in the report "Reclaiming health and safety for all: An independent review of health and safety legislation". Today the Government has accepted his recommendations.

Health and safety regulations will be reduced by a third rising to over a half over the next 3 years, through combining, simplifying and reducing the approximately 200 existing regulations. The role of the Health and Safety Executive in relation to local authorities will be significantly strengthened. And the report makes recommendations to ensure that employers are not held responsible for damages when they have done all they can to manage risks.

The report is published at:
http://www.dwp.gov.uk/policy/health-and-safety/#review

24/11/2011
Public House Industry Framework Code to be strengthened
Subject: Public houses
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422211&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

The Department for Business, Innovation and Skills (BIS) has today published its response to the Select Committee's Report on Pub Companies and set out further details of a strengthened Industry Code to improve the relationship between pub companies and their licensees.

The key elements of this self-regulatory package are:

* The Industry Framework Code to be strengthened and made legally binding

* The strengthened Code will focus on full repairing and insuring (FRI) leases. This will bring about immediate improvements in areas of concern, such as rent, insurance, training and dilapidations, combined with a commitment to discuss further improvements with industry

* A Pub Independent Conciliation Advisory Service (PICAS) to be set up to provide mediation and arbitration

* A three-yearly reaccreditation process for company Codes, achieved through examination of annual compliance reports and spot-checks

* A new Pubs Advisory Service (PAS) established to provide free advice to all prospective and current tenants and lessees

Making the Code legally binding will mean it is enforceable through the civil courts but avoids the need to introduce slow, burdensome legislation that imposes further red tape on pub companies.

The strengthened Code will, amongst other things, abolish the enforcement of upward-only rent reviews and force pub companies to be transparent with their lessees on issues such as charges for dilapidation repairs and income from gaming machines.

The full response is at:
http://www.bis.gsi.gov.uk/publications

The existing Industry Framework Code can be found at:
http://www.beerandpub.com/documents/publications/industry/Pub%20Industry%20Framework%20Code%20Jan%202010%20PDF.pdf

23/11/2011
Reforms to employment law
Subject: Employment
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422195&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

Business Secretary Vince Cable made a speech announcing radical reforms to the employment law system as part of the Government's plan for growth. During a speech to EEF, the manufacturers organisation, Dr Cable announced the results of a consultation on resolving workplace disputes and the Red Tape Challenge review of employment law.

Among other proposals, the Government will seek views on a proposal to introduce compensated no fault dismissal for micro firms, with fewer than 10 employees. It will also look at ways to slim down existing dismissal processes, how they might be simplified, including potentially working with the Advisory, Conciliation and Arbitration Service (Acas) to make changes to their Code, or supplementary guidance for small businesses.

Legaleze comment: we will monitor these developments as they become more concrete.

23/11/2011
Growth and Innovation Fund 2nd phase launched
Subject: Finance and funding
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422167&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29
The second phase of the Growth and Innovation Fund (GIF) was launched today.
The fund will support businesses to develop their skills solutions tailored to their own needs, transforming growth in their sector, region or supply chain.

The Department for Business, Innovation and Skills (BIS) will be providing £34 million for 2012-13 and there is still £29 million available to bid for. With matched funding from businesses there will be around £60 million available under GIF this year. Comparable levels of investment are planned for the following two years.

The Growth and Innovation Fund offers targeted help for employer groups to overcome barriers to growth within their sectors and industries. The funding is already supporting 15 projects across the country deliver new training to boost innovation and productivity, enable industries to set new professional standards, or support new or extended National Skills Academies.

Earlier this year in collaboration with nine other founding members of the Hospitality Guild, People 1st successfully put forward a bid for GIF funding.

The Growth and Innovation Fund was first proposed in the Skills for Sustainable Growth strategy in November 2010. The BIS allocation for the GIF investment fund in 2012-13 is £33m, with comparable levels of investment planned for the following two years. £28m remains available in 2012-13 for further projects.

23/11/2011
Consumer Rights Directive adopted
Subject: Sales and marketing/Consumer sales
Source: Publications Office of the European Union
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:01:EN:HTML

The Consumer Rights Directive has been adopted by the Council of the European Union (Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council) (Official Journal L 304 , 22/11/2011 P. 0064 – 0088).

An EU directive requires EU member states to ensure their laws comply with the requirements of the directive. Member states must publish the laws to do this by 13 December 2013 and apply these laws by 13 June 2014.

The directive applies to contracts made between traders and consumers. A consumer is a natural person (i.e. an individual not a legal entity) acting outside his trade, business, craft or profession. Some provisions of the directive apply to any sale to consumers; other provisions apply to distance selling and doorstep selling contracts.

The directive consolidates the current EU legislation which deals separately with distance selling (sale contracts made between parties who make a contract by post, email, telephone or internet) and “off-premises” selling (broadly, sales to consumers made at their home or place of work). The directive will also require member states to impose similar obligations in relation to the sale of goods to consumers as currently apply to the supply of services [Comment: although in the case of the supply of services the rules apply to business customers as well as consumers].

The directive does not harmonise language requirements applicable to consumer contracts. Therefore, Member States may maintain or introduce in their national law language requirements regarding contractual information and contractual terms.

EU member states may decide not to apply this directive to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50.

The directive does not apply to certain types of contract including:

* healthcare as defined in point (a) of Article 3 of Directive 2011/24/EU,

* gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;

* financial services;

* for the creation, acquisition or transfer of immovable property or of rights in immovable property;

* for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;

* which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

* which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts;

* which, in accordance with the laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial [e.g. public notaries];

* for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer’s home, residence or workplace;

* for passenger transport services, with the exception of Article 8(2) and Articles 19 and 22;

* concluded by means of automatic vending machines or automated commercial premises;

* concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

The main provisions of the directive are:

Information requirements for contracts other than distance or off-premises contracts

Before the consumer is bound by a contract other than a distance or an off-premises contract, the trader must provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:

(a) the main characteristics of the goods or services
(b) the identity of the trader, inc. trading name, the geographical address and telephone number;

(c) the total price of the goods or services inclusive of taxes or if not able to be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
(d) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy;
(e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;
(f) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
(g) where applicable, the functionality, including applicable technical protection measures, of digital content;
(h) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

[Comment: these provisions impose similar obligations in relation to the sale of goods as currently apply to the supply of services]

Member states need not apply the above provisions of the directive to contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion.
Legaleze comment: "day-to-day transactions" are not defined but presumably include retail sales made on the spot.

Some of the new requirements for distance and off-premises contracts to be introduced are:

Information requirements for distance and off-premises contracts

* for "digital content", functionality, including applicable technical protection measures, of digital content; interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;

Formal requirements for distance contracts

* The trader must ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function must be labelled in an easily legible manner only with the words "order with obligation to pay" or similar

Cancellation right

* Cancellation period: the current "cooling-off" or cancellation period for distance and off-premises contracts of 7 days will be extended 14 days.

* Refunds: if a consumer his contract within the 14 day period, the trader must provide a refund within 14 days of receiving notice of cancellation (currently 30 days) period.

* Pre-contract information: before a contract is entered into, certain information, such as the characteristics of the goods or services and the total cost (including additional fees), must be

brought to the consumer's attention. This is already the case for contracts concluded online, but under the Directive will be extended to all sales contracts.

* Delivery date: if no delivery date is agreed between the parties, the trader must deliver the goods within a maximum of 30 days.

* Credit card surcharges will be and premium rate customer service hotlines are banned

Legaleze comment: the UK government has previously announced (see news 19/09/2011) a proposed Consumer Bill of Rights which no doubt will implement the EU directive as well making other reforms in the law. as other measures.

17/11/2011
£5 million investment to help Service heroes start up
Subject: Finance and funding
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422099&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

The "Be the Boss scheme" for ex-service personnel is being expanded to include all Service-leavers. The initiative offers business start-up training, grants and loans up to £30,000 as well as mentoring. Funded by the Deprtment for Business, Innovation and Skills and delivered by the Royal British Legion (RBL), the scheme has attracted over 1,000 registrations so far.

The £5m funding for the Be the Boss Scheme has been structured as an endowment with the aim that RBL will also lever in additional private sector co-investment to ensure the sustainability. The scheme acts as a central portal, allowing delivery partners to do what they specialise in before directing applicants back to Be the Boss for the next stage of the process within the scheme. This ensures that RBL do not duplicate capacity available elsewhere but focus instead on applicants and their experience.

RBL were chosen to administer the scheme due to their UK-wide coverage, respect amongst Service personnel, tri-Service coverage and the capability to deliver. The scheme opened for expressions of interest on 1 April 2010 and applications were accepted from 14 June 2010.

In total, the Be the Boss network comprises four governments, six subcontractors, 58 independent partners, and 200+ delivery organisations. As of 6 June 2011, there were 1026 active applicants.

17/11/2011
HM Revenue & Customs issues new Building and Construction notice 708
Subject: VAT
Source: HM Revenue & Customs
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&id=HMCE_CL_000513&propertyType=document#P10_339

This notice cancels and replaces Notice 708 (February 2008) and Revenue & Customs Briefs 36/09, 39/09, 81/09, 88/09, 89/09, 92/09, 26/10, and 05/11.

What is this notice about?

This notice explains:

* when building work can be zero-rated or reduced-rated at 5 per cent;
* when building materials can be zero-rated or reduced-rated at 5 per cent;
* when the sale, or long lease, in a building is zero-rated;
* when developers are ‘blocked’ from deducting input tax on goods that are not building materials;
* when a builder or developer needs to have a certificate from his customer, confirming that the building concerned is intended to be used for a purpose that attracts the zero or reduced rate;
* when a customer can issue that certificate to a builder or developer;
* what happens when a certificated building is no longer used for the purpose that attracted the zero rate, the use for that purpose decreases or the building is disposed of;
* the special time of supply rules for builders; and
* when a business, on using its own labour to carry out building work on a building or civil engineering structure that it occupies or uses, must account for a self-supply charge.

Further information on the above can be found in HM Revenue & Customs (HMRC's) technical manual on VAT and construction (V1-08A: Construction) which can be found on HMRC's website go to VAT and construction (V1-08A: Construction).

1.2 What’s changed?

This notice has been rewritten to reflect our current policy and to clarify those areas where previous advice may have been unclear.

The main changes in content are as follows:

* a change in the treatment of 'serviced' building plots;
* clarification on the treatment of 'extra care' units;
* clarification on the treatment of deposits;
* the removal of a concession affecting charity buildings; and
* a change in the 'change in use' provisions.

1.3 Who should read this notice?

You may find this notice useful if you:

* are a contractor or subcontractor;
* are a developer;
* need to issue a certificate in order to obtain zero-rated or reduced-rated building work;
* need to issue a certificate in order to buy, or long lease, a zero-rated building; or
* have issued the certificate mentioned above and obtained zero-rating but either no longer intend to use the building for a qualifying purpose or dispose of the building.

This notice may also be useful if you, as the customer or client of a contractor, subcontractor or developer, wish to satisfy yourself as to the correct liability of the supplies of goods and services being made by them to you.

This is especially so in the case of DIY House Builders and Convertors ('self-builders'), who contract VAT registered builders or tradesmen to carry out construction or conversion services and are charged VAT on those services. Some, if not most, of the VAT charged can be recovered by the self-builder through the provisions of the DIY House Builders and Convertors VAT Refund Scheme but only where that VAT that has been correctly charged in the first place.

Further information about the Scheme can be found on HMRC's website go to Reclaim VAT on a new home or converting a building into a home.

16/11/2011
Apprenticeships: Cable guarantees quality, slashes red tape
Subject: Employment/Apprentices
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422075&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

Business Secretary Vince Cable today announced measures to further strengthen the UK's world class apprenticeships programme:
* To encourage thousands of small firms that don't currently hire apprentices to take on a young apprentice aged 16 to 24, the Government will offer employers with up to 50 employees an incentive payment of up to £1,500
* An initial payment will be made two months after the individual has started their apprenticeship; the balance will be paid after the apprenticeship has been completed and the trainee has progressed into sustainable employment.
* Processes will be simplified to make it quicker and easier for employers to take on an apprentice. The National Apprenticeships Service and training providers will be required to ensure that every employer is in a position to advertise a vacancy within one month of deciding to take on an apprentice
* Health and safety requirements will be streamlined so that there are no additional demands on employers that already meet national standards.
* Apprenticeship providers will be required to offer training in English and Maths up to the standard of a good GCSE (level 2) for all apprenticeships.

A new review into the standards and quality of apprenticeships will be undertaken by a leading employer., to report in Spring 2012.

A record 442,700 learners started an apprenticeship in academic year 2010/11 – an increase of around 50% on the previous year.
his level.

For the latest apprenticeship opportunities visit www.apprenticeships.org.uk

16/11/2011
EU cigarette safety standards will reduce risk of house fires and save lives
Subject: Product safety
Source: EU Commission
http://ec.europa.eu/unitedkingdom/press/press_releases/2011/pr1183_en.htm

All cigarettes sold and manufactured in Europe will have to comply with new safety standards from 17 November 2011, the Commission announced today.

The changes in the manufacturing processes make cigarettes self-extinguish when left unattended and will reduce the risk of house fires and fatalities.

EU Health and Consumer Commissioner, John Dalli said: "There is no such thing as a safe cigarette. Obviously, the safest thing is not to smoke at all! But if people choose to smoke, then

the new standards which are about to fully enter into force will require tobacco companies to make only reduced ignition propensity cigarettes This will protect potentially hundreds of citizens from this fire hazard."

The changes are about reducing ignition propensity (RIP), ie the ability of an unattended cigarette to ignite things like furniture and bedding materials and start house fires.

Cigarette paper manufacturers have achieved this by changing their paper production to insert two rings of thicker paper at two points along the cigarette. If the cigarette is left unattended, the burning tobacco will hit one of these rings and should then self-extinguish because the ring restricts the oxygen supply.

This safety measure is already in place in some countries (US, Canada and Australia), as well as Finland since April 2010.

The experience from Finland where the number of victims of cigarette-ignited fires has fallen by 43%, suggests that nearly 500 lives could be saved in the EU every year.

Cigarettes left unattended are one of the leading causes of fatal fires in Europe and accounted for more than 30,000 fires annually in the EU between 2003-2008, with more than 1,000 deaths and over 4,000 injuries. In the United Kingdom, smokers' materials were the most frequent source of accidental fire deaths in 2007, accounting for over a third. For every 1,000 related fires, 33 people were killed, according to UK government statistics .

EU national authorities will be responsible for enforcement.

15/11/2011
New intellectual property court process will boost UK
Subject: Intellectual property
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=422067&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

The Government today confirmed that a new small claims service will be introduced at the Patents County Court (PCC), helping small and medium sized businesses protect their copyright, trade marks and designs.

Currently small firms are often put off enforcing their Intellectual Property (IP) rights by high costs. The new process will limit fixed costs and allow damages of up to £5,000 per case. New figures produced today by the Intellectual Property Office (IPO) estimate that around 150 firms will benefit from the service every year, providing an annual boost to UK business of £350,000.

The recommendation for a small claims service was made in the Hargreaves Review of Intellectual Property and Growth. Since the review was published in May 2011 the Government has been looking at building a business case for the service, which has now been completed meaning it will become a reality.

Evidence presented to the recent Hargreaves Review, Digital Opportunity: A Review of Intellectual Property and Growth, indicated that around one in six (17 per cent) of small and medium sized businesses had given up attempting to enforce their rights due to high court costs.

10/11/2011
Regional Growth Fund to help small businesses
Subject: Government SME policy/Finance and funding
Source: Department for Business, Innovation and Skills
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=421994&NewsAreaID=2&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bis-news+%28BIS+News%29

The Prime Minister announced today government investment of £95 million to help boost growth and rebalance the economy. Hundreds of small businesses are expected to benefit by the creation of at least 4,000 jobs and unlocking of around £500 million of new investment by small and medium businesses (SMEs).

RBS, NatWest and HSBC have agreed to facilitate the distribution of the £95 million - which is part of the government's Regional Growth Fund. RBS and NatWest will facilitate £70 million and HSBC will facilitate £25 million. The banks will not profit financially from the administration of these schemes.

Through these schemes small businesses, which are unable to secure commercial funding for their project, have the potential to benefit from government support through the banks' regional networks in order to make their project commercially viable. The schemes announced today will provide grants to support SMEs considering investing in new capital assets and creating new employment.

The key features of the RBS, NatWest and HSBC schemes are:
* The RBS and NatWest scheme is called the regional growth fund and will distribute £70 million; the HSBC scheme is called the Assisted Asset Purchase Scheme and will distribute £25 million.
* The funding will support new job-creating investment by SMEs across England, in particular parts that have become over-dependent on the public sector.
* 100 per cent of the RGF funding will be provided as grants to SMEs with the banks employing their regional networks to administer the schemes on a pro-bono basis.
* SMEs can qualify for a grant if they are going to invest in new capital assets, such as plant and machinery, and create new jobs – and cannot get normal bank finance.
* Grants of up to £500,000 will be awarded alongside the award of a new bank loan on commercial terms.
* To qualify for the NatWest and RBS scheme, SMEs need a turnover of less than £25 million.
* To qualify for the HSBC scheme the SME will need a turnover of less than 50 million Euros.
* The banks will not earn any fees to administer the scheme. Interest earned on any funds held on the bank's balance sheet must be used for beneficiary grants or returned to the government.
The government's Regional Growth Fund is a £1.4 billion fund supporting projects that can create jobs, are based in areas dependent on the public sector and are supported by private sector investment.

09/11/2012
Reforms to Industrial and Provident Societies and Credit Unions
Subject: Business organisations/co-operatives.
Finance and funding
Source: HM Treasury
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=421978&NewsAreaID=2
The Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 (S.I. 2011 No. 2687) has been made.
This is a deregulatory measure affecting credit unions and co-operatives coming into force on 8 January 2012. The most notable points are:
* Co-operatives: the monetary limit for a single holding of non-withdrawable shares is removed; and allowing societies to choose their own year ends and removing the requirement to have interim accounts audited.
* Credit Unions: unions will be allowed to accept corporate members as well as individuals (subject to a limit of 10% of the membership). Businesses which are incorporated as limited companies or limited liability partnerships will therefore be able to become members and borrow money.

09/11/2011
The Public Service Vehicles (Community Licences) Regulations 2011 (2011 No. 2634)
Subject: Road transport/carriage of passenger
http://legislation.data.gov.uk/uksi/2011/2634/made/data.pdf

These Regulations revoke and replace the Regulations specified in regulation 2. They give effect to aspects of Regulation (EC) No 1073/2009 of 21 October 2009 ("Regulation 1073/2009"), which provides for a Community licence allowing buses and coaches access to the market in the carriage of passengers by road between Member States, a requirement for an authorisation for the purpose of carrying out regular services, and a requirement for control documents when carrying out occasional services.

Regulation 1073/2009, which is directly applicable in Member States, recasts existing European Regulations and governs the conditions for the issue and use of Community licences and authorisations. It prescribes the form of the Community licence (Article 4(2) and Annexes I and II), that the Commission shall establish the format of authorisations (Article 6(4)), and the period of validity for both Community licences and authorisations (Articles 4(4) and 6(2) respectively). Regulation 6 confers entitlement to a Community licence on the basis of the relevant Great Britain licence. It also provides that existing Community licences and authorisations which meet certain conditions are to be treated as Community licences and authorisations respectively for the purposes of Regulation 1073/2009 and of these Regulations. The competent authorities for the purposes of
these Regulations and Regulation 1073/2009 are the Secretary of State and traffic commissioners, as provided for in regulation 5.

These Regulations establish various offences, punishable on summary conviction by a fine up to the level prescribed (regulations 4, 9 and 10). They provide stopping officers with a power to stop vehicles for the purpose of checks in relation to regulations 4 and 10 (regulation 13); and

authorised inspecting officers are designated for the purpose of carrying out any necessary inspections
(regulation 11). Provision is also made for administrative penalties in certain circumstances – in particular the refusal to issue and the withdrawal of documents (regulation 7). The Regulations confer rights of appeal against administrative penalties (regulation 8).

09/11/2011
The Road Transport Operator Regulations 2011 (2011 No. 2632)
Subject: Road transport
Source: http://legislation.data.gov.uk/uksi/2011/2632/made/data.pdf

These Regulations give effect in Great Britain to Regulation (EC) No. 1071/2009 of 21 October 2009 ("Regulation 1071/2009") which establishes common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repeals Council Directive 96/26/EC. The Regulation comes into force with direct effect on 4th December 2011.

Regulation 1071/2009 governs admission to, and pursuit of, the occupation of road transport operator. It requires road transport undertakings to have an effective and stable establishment in member states, be of good repute and have appropriate financial standing and the requisite professional competence; and it specifies conditions to be met to satisfy these requirements.

The Regulation provides for the enforcement of its provisions by requiring member states to designate one or more competent authorities to ensure its correct application, requiring undertakings to hold authorisations to engage in the occupation of road transport operator, and establishing the procedure for withdrawing authorisations and declaring transport managers unfit to manage transport
activities. It also provides for appeals against adverse decisions, the establishment of national electronic registers of authorised undertakings, the protection of personal data, administrative cooperation between member states, the mutual recognition of certificates and member states to establish penalties for infringements.

Regulation 1071/2009 repeals Council Directive 96/26/EC which previously regulated this area and was implemented in Great Britain by the Public Passenger Vehicles Act 1981 ("the 1981 Act") and the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act"). These Regulations make amendments to those Acts (which regulate a wider range of operations than the Regulation) to accommodate the coming into force of Regulation 1071/2009 with direct effect, including making
provision in exercise of discretionary powers conferred by the Regulation.

09/11/2011
The Goods Vehicles (Community Licences) Regulations 2011
Subject: Road transport/carriage of goods
Source: http://legislation.data.gov.uk/uksi/2011/2633/made/data.pdf

These Regulations revoke and replace the Regulations specified in regulation 2. They give effect to aspects of Regulation (EC) No 1072/2009 of 21 October 2009 ("Regulation 1072/2009"), which

makes provision for a Community licence allowing goods vehicles access to the market in the carriage of goods by road between Member States and for a driver attestation where the driver is a third country national. The regulations come into force on 4 December 2011.

09/11/2011
Government ends Low Value Consignment Relief
Subject: VAT/Import
Source: HM Treasury
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=421962&NewsAreaID=2

The Government has today announced that from 1 April 2012, Low Value Consignment Relief (LVCR) will no longer apply to goods sent to the UK from the Channel Islands. At Budget 2011, the Chancellor stated the Government's intention to take action to end the exploitation of LVCR, which in recent years has been used on an increasingly large scale to sell low value goods to UK customers VAT-free. Most of this trade is from, or via, the Channel Islands.

The Government took the initial step of reducing the LVCR threshold, below which items are imported free of VAT, from £18 to £15. The new threshold came into effect on 1 November 2011 and will apply to goods from the Channel Islands until 1 April next year.

Legislation to enact the change will be published in draft on 6 December 2011, for inclusion in Finance Bill 2012.

LVCR will continue to apply with the new £15 threshold to commercial supplies from other non-EU jurisdictions. The Government has no current plans for further changes to the threshold. The change to LVCR will not affect the existing import reliefs for gifts from outside the EU, including from the Channel Islands. This relief applies to non-commercial consignments, such as gifts sent to family members or friends.

Legaleze comment: the Government claims this change will bring increased fairness for UK businesses, benefit the UK economy and protect millions of pounds in tax revenue; these reforms will ensure that UK companies, especially small and medium sized enterprises, can compete on a level playing field with those larger companies with the resources to set up operations in the Channel Islands. This change has been lobbied for by SME groups including the Federation of Small Businesses.

07/11/2011
HMRC issues new Health professionals Notice 701/57 (November 2011)
Subject: VAT
Source: HM Revenue & Customs
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&id=HMCE_CL_000121&propertyType=document

What is this notice about?

This notice cancels and replaces Notice 701/57 (January 2007). It also cancels Revenue and Customs Briefs 43/09, 12/10 and 40/10. Details of any changes to the previous version can be found in paragraph 1.2 of this notice. This notice explains:
* the VAT liability of goods and services provided by registered health, medical and paramedical professionals, including the VAT liability of drugs, medicines and other goods available on prescription, as well as contraceptives and smoking cessation products;
* the circumstances in which VAT registered health professionals may recover the VAT they have incurred on purchases and overheads;
* specific rules that apply to supplies made by dentists, overseas medical practitioners and deputising doctors;
* the circumstances in which care services provided by non-health registered suppliers are VAT exempt and;
* the VAT liability of supplies of health professional staff.

For details of supplies made by hospitals or similar institutions see Notice 701/31 Health institutions.

For details of the VAT relief for goods and services provided to disabled persons see Notice 701/7 VAT reliefs for people with disabilities.

What has changed?
This notice updates and replaces the January 2007 edition. It has been updated to reflect changes in the law on:
* supplies of services by psychologists;
* supplies of drugs and other goods on prescription; and
* the introduction of the Community Contractual framework for community pharmacy services in Scotland.

It also clarifies the VAT position on medical evidence services and health professional staff, as well as giving guidance on contraceptive and smoking cessation products.

Information on supplies of health professional staff and psychologist's services contained in Revenue and Customs briefs 43/09, 12/10 and 40/10 have been incorporated in paragraph 4.3 and section 6 below.

Who should read this notice?
You should read this notice if you are:
* a registered health professional;
* a care provider who is not enrolled on any register of medical or health professionals or ;
* an employment business that is providing care staff to hospitals or similar healthcare institutions.

07/11/2011
HMRC issues Notice 701/38 (November 2011)
Subject: VAT/Food/Plants and seeds
Source: HM Revenue & Customs
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&id=HMCE_CL_000133&propertyType=document#P10_139

What is this notice about?:
This notice replaces that issued in November 2003. The supply of most basic foodstuffs for human or animal consumption is zero-rated. Plants and seeds used for the production of foodstuffs are also zero-rated depending on how they are held out for sale. This notice explains when the following items can be zero-rated:
* plants
* seeds or other means of propagation (spores, rhizomes etc) used to produce those plants
* seeds used directly as foods.

What has changed?
The technical content of this notice has not changed from the November 2003 edition but a minor amendment has been made to paragraph 4.3.
Who should read this notice?
You should read this notice if you supply plants or seeds.

02/11/2011
HMRC issues new Climate Change Levy Notice
Subject: Taxes/Climate Change Levy
Source: HM Revenue & Customs
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&id=HMCE_CL_000292&propertyType=document#P11_152

What is this notice about?
This notice provides information about registering for climate change levy (CCL). It is designed to help those who may need to register for the levy decide whether they need to do so, and provides guidance on how to register and how to cancel a registration.

What has changed?
This notice, dated November 2011, replaces the edition of July 2010. Some changes to the content and structure have been made throughout to make it clearer and bring it up-to-date.

Who should read this notice?
This notice is for generators and suppliers of electricity, natural gas, liquid petroleum gas (LPG) and solid fuel, and recipients of those commodities who have over-claimed CCL relief.

What is climate change levy (CCL)?
CCL is a tax on the supply of specific energy products ("taxable commodities") used as fuel (that is for lighting, heating and power) by business consumers, including consumers in:
* industry
* commerce
* agriculture
* public administration, and
* other services.

CCL does not apply to taxable commodities supplied for use by domestic consumers, or by charities for non-business use.

What are taxable commodities?

There are four categories of taxable commodity, as follows:
* electricity
* natural gas as supplied by a gas utility
* LPG and other gaseous hydrocarbons in a liquid state
* coal and lignite; coke, and semi-coke of coal or lignite; and petroleum coke.

02/11/2011
HMRC issues new guide for international post users
Subject: Customs and VAT/Import and export by post
Source: HM Revenue & Customs
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns=1&id=HMCE_CL_000014#P9_242

Who should read this notice?
Importers and exporters of goods by Royal Mail/Parcelforce.

What is this notice about?
This notice cancels and replaces Notice 143 (July 2011. This notice explains what happens when you import or export goods by post through Royal Mail or Parcelforce Worldwide. It also applies to gifts received through the post.

What has changed?

This latest version has been updated with amendments in section 2.3, 3.6 and 3.8.

Section 2.3 now features a table to list the customs charges applicable to goods according to their value.

Section 3.6 includes a link to Form BOR 286, which is used to request a refund of customs charges when goods are imported by post.

Section 3.8 has been changed to show the new address of the Reviews and Appeals Team.

Reference to the reduction of the VAT threshold from £18 to £15 on 1 November 2011 is now only made in Section 7.

02/11/2011
HMRC issues new Food Notice 701/14 (October 2011)
Subject: VAT/Food
Source: HM Revenue & Customs
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&id=HMCE_CL_000118&propertyType=document

What is this notice about?
This notice cancels and replaces Notice 701/14 (May 2002). This notice explains when food can be zero-rated. It has been updated from the 2002 version to improve readability.

Who should read this notice?
You should read this notice if you are a food:
* producer;
* manufacturer;
* wholesaler; or
* retailer.

General VAT liability rules

Food supplied in the course of catering
You must always standard-rate food supplied in the course of catering, including hot take-away food. Further information can be found in Notice 709/1 Catering and take-away food.

Food not supplied in the course of catering
Most food of a kind used for human consumption (see paragraph 2.3) is zero-rated. There are, however, some exceptions.

Legaleze comment
This Notice describes some of the fine, indeed notorious, distinctions which have been made in administrative rulings or the law itself in order to determine whether a food product is zero-rated or standard-rated for VAT. Some examples are:

Zero-rated	Standard-rated
Frozen yoghurt (to be thawed)	Ice cream
Flapjacks	Cereal, muesli and similar sweet tasting bars
Caramel shortcake (generally)	Shortbread biscuits partly or wholly chocolate-covered Cakes Biscuits*

*The borderline between being a biscuit or cake can be a fine line to draw. In the infamous Jaffa cake case, a VAT Tribunal found in favour of United Biscuits which challenged the Revenue's ruling that Jaffa cakes were in fact a form of biscuit (standard-rated) rather than a cake (zero-rated).

A separate Notice deals with Catering and take-away food (Notice 709/1).

02/11/2011
Firm fined for not insuring employees
Subject: Health and safety
Source: Health and Safety Executive
http://www.hse.gov.uk/press/2011/coi-em-25411.htm#?eban=rss-

A kitchen and bedroom furniture manufacturer from Corby has been fined for failing to insure its employees against liability for injury or disease.

When the Health and Safety Executive (HSE) visited Alina Trade Limited's Maylan Road premises on 2 March 2011, the company was unable to produce on request a certificate of Employers' Liability Compulsory Insurance (ELCI) to HSE inspectors, which employers are required to hold by law.

Corby magistrates heard that despite letters, and issuing a formal Notice to Produce the ELCI document, Alina Trade did not. HSE visited the company for a second time on 8 June, and again it was unable to produce a certificate.

The company, whose registered address is Dukes Hill, Bagshot, Surrey, pleaded guilty to contravening Section 1(1) of the Employers' Liability (Compulsory Insurance) Act 1969 and was fined £2,000 with £1,567 in costs.

Legaleze comment: although this press release is not news, it is a reminder of the importance for any employer to maintain liability insurance in respect of employees. The cover required is not less than £5 million in respect of a claim relating to any one or more of those employees arising out of any one occurrence, together with any costs and expenses incurred in relation to any such claim. The law applies to Great Britain; in Northern Ireland there are equivalent regulations (The Employers' Liability (Compulsory Insurance) Regulations 1998; Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972).
Further reading:
HSE: Employers’ Liability (Compulsory Insurance) Act 1969 - A guide for employers
http://www.hse.gov.uk/pubns/hse40.pdf

28/10/2011
Safe management of industrial steam and hot water boilers
Subject: Health and safety at work
Source: Health and Safety Executive (HSE)
http://www.hse.gov.uk/pubns/indg436.htm#?eban=rss-

The HSE has published a guide for owners, managers and supervisors of boilers, boiler houses and boiler. According to the HSE, there has been a significant increase in unmanned boilers, mainly due to improvements in the reliability of electronic control systems.

The leaflet provides basic advice on the risks and regulatory requirements for the operation of steam boilers. It sets out the general principles of boiler safety for people with limited technical knowledge of boilers, such as owners, managers and supervisors, who do not have access to industry guidance.

14/10/2011
EU Commission proposes Standard European sales law to ease cross-border shopping
Subject: Selling and marketing law/International
Source: European Commission
http://ec.europa.eu/news/environment/111014_en.htm

The <EU Commission> has issued a formal proposal for a Regulation on a Common European Sales Law. The new Law would be a second contract law regime within the national law of each Member State. Where the parties have agreed to use the Common European Sales Law, its rules will be the only national rules applicable for matters falling within its scope. Where a matter falls within the scope of the Common European Sales Law, there is thus no scope for the application of any other national rules.

This agreement to use the Common European Sales Law would be a choice between two different sets of sales law within the same national law. This choice is different from and must not be confused with the choice of the applicable law to a contract which parties in different EU member states may make under the “Rome I” regulation.

In a business to consumer sale, the problem for the business is that making the sale contract subject to the law of the business’s jurisdiction may not have the effect of depriving the consumer of the protection of the mandatory provisions of the law of his habitual residence (Article 6 (2) of the Rome I Regulation).

In a business to business sale, there are no such protections for the purchaser. If the seller is a large company and the buyer is a Small or Medium-sized Enterprise <SME>, it will often be the case that the seller will insist on the law of its home country to apply to the contract.

The proposed Sales Law will be available for application to business to consumer sales if the parties agree and are based in different <EU member States>. In this case, the seller will be able to review the text of the law in English and know that it will be applied by the court in the event of any dispute.

In the case of business to business sales, the proposed Sales Law will be available for application to the contract as long as both parties are based in different EU member states and at least one of them is an SME.

The EU Commission’s rationale for the proposed Sales Law is based on the argument that despite harmonisation, barriers to cross-border trade still remain – such as the differences between national sales laws across the EU. Currently, companies wishing to sell across borders in the EU may have to adapt to up to 26 different national contract laws, translate them and hire lawyers, costing an average €10 000 for each market. Adapting their websites can cost another €3 000 on average. According to the Commission, traders dissuaded by the complicated and costly process of dealing with these differences miss out on at least €26bn in sales every year.

The Commission claims that the proposed Law would remove this obstacle, easing cross-border trade and giving consumers greater choice, lower prices and the same high level of protection for their rights across all EU countries.

Legaleze comment: the proposed Sales Law is to be welcomed cautiously. It does provide a reasonable solution to the legal costs and uncertainties faced by sellers wishing to sell to consumers in other EU member states. As the proposed Law will be based on a Regulation which applies directly in the law of all EU member States, rather than a Directive addressed to member state governments, the law will be the same throughout the EU.

However, some legal advice will still be required in order to appreciate its limitations. In particular:
(i) Since the Common European Sales Law will not cover every aspect of a contract (e.g. illegality of contracts, representation) the existing rules of the Member State's civil law that is applicable to the contract will still regulate such residual questions.
(ii) The new Law will be a completely new code which will have to be interpreted by new European case law as decided cases on existing UK law or the law of any other member state will have no application.
(iii) Consumers will have to consent to the application of the Sales Law by completing a “Standard Information Notice.
(iv) With regard to jurisdiction for resolving any disputes, the consumer will retain the right to sue and be sued in the courts of his home country regardless of any jurisdiction clause in the contract.

Next steps: the proposal now needs approval from EU countries and the European Parliament, which has already signalled its support in a vote earlier this year.

The full text of the proposal with Explanatory Memorandum may be found at:
http://ec.europa.eu/justice/contract/files/common_sales_law/regulation_sales_law_en.pdf

06/10/2011
Government proposes less strict audit rules for SME audit
Subject: Accounting and tax records
Source: Business, Innovation and Skills
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=421482&NewsAreaID=2

More than 100 thousand UK businesses could save in excess of £600 million in accountancy and administration costs every year under proposals to reduce financial reporting requirements, published by the Department for Business, Innovation and Skills today.

The consultation on Audit Exemptions and Change of Accounting Framework sets out plans to allow more small companies and subsidiaries to decide whether or not to have an audit.

At present, EU rules mean a company must comply with two out of three criteria in order to be classified as ‘small’ for accounting purposes:
no more than 50 employees;
balance sheet total no more than £3.26 million;
no more than £6.5 million in turnover
However, to obtain an audit exemption in the UK, small companies must fulfil both the balance sheet and turnover criteria. Under the new proposals, UK SMEs would be eligible for audit exemption by meeting any two of the three criteria. The Government estimates this will save small companies £206m per year.

The Government is also proposing to introduce legislation in 2012 to exempt most subsidiary companies from mandatory audit, provided their parent is prepared to guarantee their debts. Savings are estimated at £406m per year.

In total, removing this EU gold plating could save UK businesses £612m per year. These moves are part of the Government's wider focus on cutting red tape and reducing unnecessary burdens on business, in particular addressing the impact of European legislation.

Additionally, following the consultation by the UK Accounting Standards Board on changes to UK Generally Accepted Accounting Principles (UK GAAP), the Government is also seeking views on whether to allow companies which currently prepare accounts under International Financial Reporting Standards (IFRS) more flexibility to change their accounting framework to UK GAAP. he consultation launched today covers the whole of the UK and will close on 29 December 2011. The consultation document, response form and contact details are available at: http://www.bis.gov.uk/Consultations/audit-exemptions-and-accounting-framework

04/10/2011
Football Association Premier League Ltd and Others v QC Leisure and Others (C-403/08) Karen Murphy v Media Protection Services Ltd (C-429/08).
References for a preliminary ruling: High Court of Justice (England & Wales), Chancery Division (C-403/08), High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) (C-429/08) - United Kingdom.
Subject: Intellectual property/Copyright/Live TV football. Public houses
Source: European Court of Justice
The judgment of the European Court of Justice ("ECJ") in the above joined cases concern cases referred by the courts in England to the ECJ for rulings on the interpretation of certain issues of EU law which arose in the cases.

Background

Football Association Premier League Ltd ("FAPL") runs the Premier League, the leading professional football league competition for football clubs in England. FAPL's activities include organising the filming of Premier League matches and exercising, rights to make the audiovisual content of sporting events available to the public by means of television broadcasting ('broadcasting rights').
Licensing of the broadcasting rights for Premier League matches
FAPL grants licences in respect of those broadcasting rights for live transmission, on a territorial basis and for three-year terms. FAPL's strategy is to bring the competition to viewers throughout the world while maximising the value of the rights to its members, the clubs.
Those rights are thus awarded to broadcasters under an open competitive tender procedure which begins with the invitation to tenderers to submit bids on a global, regional or territorial basis. Demand then determines the territorial basis on which FAPL sells its international rights. However, as a rule, that basis is national since there is only a limited demand from bidders for global or pan-European rights, given that broadcasters usually operate on a territorial basis and serve the domestic market either in their own country or in a small cluster of neighbouring countries with a common language.
Where a bidder wins, for an area, a package of broadcasting rights for the live transmission of

Premier League matches, it is granted the exclusive right to broadcast them in that area. This is necessary, according to FAPL, in order to realise the optimum commercial value of all of the rights, broadcasters being prepared to pay a premium to acquire that exclusivity as it allows them to differentiate their services from those of their rivals and therefore enhances their ability to generate revenue.

In order to protect the territorial exclusivity of all broadcasters, they each undertake, in their licence agreement with FAPL, to prevent the public from receiving their broadcasts outside the area for which they hold the licence. This requires, first, each broadcaster to ensure that all of its broadcasts capable of being received outside that territory – in particular those transmitted by satellite – are encrypted securely and cannot be received in unencrypted form. Second, broadcasters must ensure that no device is knowingly authorised so as to permit anyone to view their transmissions outside the territory concerned. Therefore, broadcasters are in particular prohibited from supplying decoding devices that allow their broadcasts to be decrypted for the purpose of being used outside the territory for which they hold the licence.

Broadcasting of Premier League matches

As part of its activities, FAPL is also responsible for organising the filming of Premier League matches and transmission of the signal to the broadcasters that have the rights for those matches. For this purpose, the images and ambient sound captured at the match are transmitted to a production facility which adds logos, video sequences, on-screen graphics, music and English commentary.

The signal is sent, by satellite, to a broadcaster which adds its own logo and possibly some commentary. The signal is then compressed and encrypted, and then transmitted by satellite to subscribers, who receive the signal using a satellite dish. The signal is, finally, decrypted and decompressed in a satellite decoder which requires a decoding device such as a decoder card for its operation.

In Greece, the holder of the sub-licence to broadcast Premier League matches is NetMed Hellas. The matches are broadcast via satellite on SuperSport channels on the NOVA platform, the owner and operator of which is Multichoice Hellas.

Viewers who have subscribed to the NOVA satellite package have access to those channels. Every subscriber must have been able to provide a name, a Greek address and a Greek telephone number. Subscriptions can be taken out for private or commercial purposes.

In the United Kingdom, at the relevant time the licensee for live Premier League broadcasting was BSkyB Ltd. Where a natural or legal person wishes to screen Premier League matches in the United Kingdom, he may take out a commercial subscription from that company.

UK public houses and restaurants

However, in the United Kingdom certain restaurants and bars have begun to use foreign decoding devices to access Premier League matches. They buy from a dealer a card and a decoder box which allow them to receive a satellite channel broadcast in another Member State, such as the NOVA channels, the subscription to which is less expensive than BSkyB Ltd’s subscription. Those decoder cards have been manufactured and marketed with the authorisation of the service provider, but they are subsequently used in an unauthorised manner, since the broadcasters have made their issue subject to the condition that customers do not use them outside the national territory concerned.

FAPL has taken the view that such activities are harmful to its interests because they undermine the exclusivity of the rights granted by licence in a given territory and hence the value of those rights. Indeed, according to FAPL, the broadcaster selling the cheapest decoder cards has the

potential to become, in practice, the broadcaster at European level, which would result in broadcast rights in the European Union having to be granted at European level. This would lead to a significant loss in revenue for both FAPL and the broadcasters, and would thus undermine the viability of the services that they provide

Civil cases in England

Consequently, FAPL and others have brought, in Case C-403/08, what they consider to be three test cases before the High Court of Justice of England and Wales, Chancery Division. Two of the actions are against QC Leisure, Mr Richardson, AV Station and Mr Chamberlain, suppliers to public houses of equipment and satellite decoder cards that enable the reception of programmes of foreign broadcasters, including NOVA, which transmit live Premier League matches.

The third action is brought against Mr Madden, SR Leisure Ltd, Mr Houghton and Mr Owen, licensees or operators of four public houses that have screened live Premier League matches by using a foreign decoding device.

FAPL and others allege that those persons are infringing their rights protected by section 298 of the Copyright, Designs and Patents Act by trading in or, in the case of the defendants in the third action, being in possession for commercial purposes of foreign decoding devices designed or adapted to give access to the services of FAPL and others without authorisation.

In addition, the defendants in the third action have allegedly infringed their copyrights by creating copies of the works in the internal operation of the satellite decoder and by displaying the works on screen, as well as by performing, playing or showing the works in public and communicating them to the public.

Furthermore, QC Leisure and AV Station have allegedly infringed the copyrights by authorising the acts perpetrated by the defendants in the third action, as well as by other persons to whom they have supplied decoder cards.

In the view of QC Leisure and others, the actions are unfounded because they are not using pirate decoder cards, all of the cards in question having been issued and placed upon the market, in another Member State, by the relevant satellite broadcaster.

Criminal case in England

In Case C‑429/08, Ms Karen Murphy, manager of a public house, procured a NOVA decoder card to screen Premier League matches. Agents from MPS, a body mandated by FAPL to conduct a campaign of prosecutions against public house managers using foreign decoding devices, found that Ms Murphy was receiving, in her public house, broadcasts of Premier League matches transmitted by NOVA.

Consequently, MPS brought Ms Murphy before Portsmouth Magistrates' Court, which convicted her of two offences under section 297(1) of the Copyright, Designs and Patents Act on the ground that she had dishonestly received a programme included in a broadcasting service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme.

After Portsmouth Crown Court had essentially dismissed her appeal, Ms Murphy brought an appeal by way of case stated before the High Court of Justice, taking a position similar to that adopted by QC Leisure and others.

The High Court in both the civil cases and the criminal case referred certain issues of interpretation to the ECJ.

Ruling of the ECJ

The ECJ ruled:

1. EU law on “Illicit devices” does not catch foreign decoding devices which are manufactured and marketed with the broadcaster’s authorisation, but are used, in disregard of its will, outside the geographical area for which they have been issued. This applies even if the, foreign decoding device was procured or enabled by the provision of a false name and address or foreign decoding devices which have been used in breach of a contractual limitation permitting their use only for private purposes.
2. EU law does allow national legislation which prevents the use of foreign decoding devices, including those procured or enabled by the provision of a false name and address or those used in breach of a contractual limitation permitting their use only for private purposes, since such legislation does not fall within the field coordinated by that directive.
3. However EU law does precludes legislation of a Member State which makes it unlawful to import into and sell and use in that State foreign decoding devices which give access to an encrypted satellite broadcasting service from another Member State that includes subject-matter protected by the legislation of that first State. This conclusion is affected neither by the fact that the foreign decoding device has been procured or enabled by the giving of a false identity and a false address, with the intention of circumventing the territorial restriction in question, nor by the fact that it is used for commercial purposes although it was restricted to private use.
4. The clauses of an exclusive licence agreement concluded between a holder of intellectual property rights and a broadcaster constitute a restriction on competition prohibited by EU law where they oblige the broadcaster not to supply decoding devices enabling access to that right holder’s protected subject-matter with a view to their use outside the territory covered by that licence agreement.
5. EU copyright legislation extends to transient fragments of the works within the memory of a satellite decoder and on a television screen, provided that those fragments contain elements which are the expression of the authors’ own intellectual creation, and the unit composed of the fragments reproduced simultaneously must be examined in order to determine whether it contains such elements.
6. Reproduction of copyright, such as those at issue in Case C-403/08, which are performed within the memory of a satellite decoder and on a television screen, may be carried out without the authorisation of the copyright holders concerned.
7. ‘Communication to the public’ within the meaning of Article 3(1) of Directive 2001/29 must be interpreted as covering transmission of the broadcast works, via a television screen and speakers, to the customers present in a public house.
8. Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission must be interpreted as not having a bearing on the lawfulness of the acts of reproduction performed within the memory of a satellite decoder and on a television screen.
The rulings in both the civil cases and the criminal case will now be applied by the High Court after a further hearing before the judge.

Legaleze comment: press coverage of the ECJ ruling in relation to the Karen Murphy case (which was a criminal case) assumes that she has won her case. While this is correct in the sense of the legal issue, the legal process is not over until the High Court considers the ECJ ruling and applies it in order to determine whether her appeal against her conviction and fine for breaching copyright should succeed.

03/10/2011
Unfair dismissal rule changes announced
Subject: Employment/Dismissal
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=421449&NewsAreaID=2

Business Secretary Vince Cable and Chancellor George Osborne have announced that with effect from 6 April 2012, the qualification period for the right to claim unfair dismissal will be extended from one to two years. This follows the 'Resolving Workplace Disputes' consultation published in January 2011. The Government estimates savings for British business could amount to nearly £6 million a year.

Legaleze comment: this change will restore the position to that applying in 1999 so is hardly a novel measure.

3/10/2011
Allan Sweeney International Reiki Healing & Training Centre website named
Subject: Selling and marketing/ASA regulation
Source: Advertising Standards Authority
http://www.asa.org.uk/ASA-action/Misleading-online-advertisers.aspx

The ASA has published the first "named and shamed" website.The "Misleading online advertisers" page of the ASA website lists information on traders who have continued to make claims on their digital sites that do not comply with the Advertising Codes, despite repeated requests for changes from the ASA compliance teams.

Details of each non-conforming advertiser remain in place until advertisers have appropriately amended their content to ensure compliance with the Codes.

03/10/2011
Last gasp for cigarette vending machines
Subject: Selling and marketing law/Tobacco
Source: Department of Health

From today, the sale of tobacco from vending machines is prohibited across England.

01/10/2011
Agency Worker Regulations 2010 come into force
Subject: Employment/Agency and temporary workers
Source: ACAS
http://www.acas.org.uk/index.aspx?articleid=1873

The Agency Worker Regulations 2010 come into force on 1 October. The regulations will give agency workers the entitlement to the same or no less favourable treatment as comparable

employees with respect to basic employment and working conditions, if and when they complete a qualifying period of 12 weeks in a particular job.

Full guidance on the Agency Workers Regulations can be found on the Department for Business, Innovation and Skills website:
http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-egulations-guidance
(Guidance may be subject to change prior to regulations coming into force, please check back regularly for updates.)

Who is covered by the regulations?

The regulations cover agency workers supplied by a temporary work agency to a hirer. This includes most agency workers that people refer to as 'temps'. The regulations also cover agency workers supplied via intermediaries.

To establish the rights in these regulations, the agency worker needs to be able to identify a comparator.

Who is not covered by the regulations?

The regulations don't cover the genuinely self-employed, individuals working through their own limited liability company, or individuals working on managed service contracts.

What rights will agency workers have?

From Day 1 of their employment, an agency worker will be entitled to:
•the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the hirer
•be informed about job vacancies.

After a 12-week qualifying period, an agency worker will be entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment, specifically:
•pay - including any fee, bonus, commission, or holiday pay relating to the assignment. It does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay
•working time rights - for example, including any annual leave above what is required by law.

Agency Workers (regardless of their employment status) will also be entitled to paid time off to attend ante-natal appointments during their working hours.

Does the 12-week qualifying period have to be continuous?

No, most breaks between or during an assignment to the same job that are less than six weeks in length will simply pause the accrual of the 12-week qualifying period. Most breaks between or during an assignment to the same job that are six weeks or more will reset the 12-week qualifying period.

The accrual of 12 weeks qualifying period can be paused by:
•absences for sickness and jury service (for up to 28 weeks)
•annual leave, shut downs (e.g. factory closures and school holidays) and industrial action (for the duration of the absence).

Pregnancy and maternity-related absences, maternity leave, paternity leave and adoption leave will not pause the 12-week accrual at all - instead the12-week accrual period will continue throughout the duration of the absence and include these weeks as those counting towards the 12-week total