

BA Legal Report

September 2014

Banking & Payment Systems

UK Interchange Update

The introduction of the European Commission's proposed caps on interchange fees would create significant overall cost savings to UK retailers. However, this has yet to be adopted and in the meantime other European member states are taking pre-emptive domestic regulatory action that provides more immediate benefits to their national markets. BRC members have called on the UK Government to introduce similar action in the UK to ensure businesses remain competitive. The BRC will be meeting the Economic Secretary to the Treasury and Managing Director of the Payment Regulator to discuss how more immediate action can be achieved.

Consumer Protection

Financial Conduct Authority and Regulation of Consumer Credit

The issue

The Financial Conduct Authority (FCA) came into force on 1 April, with a new set of rules and regulations for retailers that offer consumer credit. The timetable for the full licence authorisation process has also been published. Retailers have received details of their window for the full authorisation licence application. This requires significant and detailed input, however if retailers do not apply within their deadline their current interim licence will no longer be valid and their business would no longer be able to offer consumer credit. development.

Primary Authority

The Scottish Government is expected to launch a consultation in October on the scope and operation of the new Primary Authority scheme that is to cover devolved regulatory matters. The scheme in Scotland will allow retailers to have the same type of arrangements, as has been the case in England and Wales but for devolved regulatory matters. Existing PA arrangements will continue to operate through the UK on issues reserved to Westminster but a separate Scottish PA arrangement will be required for devolved (Scottish) regulatory issues.

Copyright & Piracy

Draft Regulations for Extended Collective Licensing

The draft regulations for extended collective licensing have been debated in the House of Commons. The motion was passed and the regulations will come into force on the next common commencement date, 1st October 2014. The accompanying guidance will be published at the same time.

[Battle continues over EU copyright law](#)

A continuing battle over EU copyright law will mark the advent of the European Commission under Jean-Claude Juncker. Some in the trade fear that intensive lobbying from parties such as Google could shift the EC's position on copyright—or see responsibility for copyright policy moved within the Commission, into Digital Agenda, a step that has been called a “potential danger” to publishers. There are more than 9,000 companies and organisations lobbying the political institutions in Brussels, including FEP and EIBF, who are signed up to the voluntary European Union Transparency Register. Google registered three years ago, but Amazon is not on the Register.

IPA Fighting online book piracy

Online piracy is a massive problem, hurting publisher revenues, author incomes, employees' jobs and government tax intake. In the UK, the Police Intellectual Property Crime Unit (PIPCU) is targeting websites engaging in copyright violation, disrupting their businesses and revenue streams. The IPA spoke to Andy Fyfe, Head of PIPCU, about developments in online IP crime and how to coordinate an effective international response. The interview with Andy Fyfe can be found [here](#).

Employment

[PA and IPG Launch Equality in Publishing](#)

A revised charter, website and network for the Equality in Publishing (Equip) scheme has been launched, with the aim of attracting “the best people possible into our industry”. Members, who can be publishers, agents or booksellers, will “engage and attract new talent by adopting inclusive recruitment policies, practices and traineeships, and where appropriate, engage in outreach work to increase the profile of publishing to traditionally underrepresented groups”.

As well as the renewed charter, which aims to “create a network of businesses with a commitment to equality and diversity in publishing”, and website, Equip is also staging a series of events over the coming months to discuss diversity in publishing.

Update on Calculation of Holiday Pay

Employers face the risk of significant additional costs (and potentially large liabilities for backdated claims) as a result of tribunal cases challenging the normal calculation of holiday pay under the Working Time Regulations. The UK Government's interpretation of the Regulations has been challenged by cases arguing that additional payments must be taken into account when calculating holiday pay where they are "intrinsically linked" to the duties to be carried out by the employee, such as overtime and commission. At the end of July a test case was heard at the Employment Appeal Tribunal (EAT) with a ruling most likely due sometime in October. It is likely to be followed by an appeal or a referral to the ECJ for guidance.

Environment & CSR

[Ofwat Proposals to Keep Bills Down](#)

[Draft proposals](#) by Ofwat mean average bills for water and wastewater customers would fall by around 5% in real terms between 2015 and 2020. At the same time customers would see better levels of service. This would be supported by a substantial investment programme – worth more than £43 billion - or almost £2000 for every household in England and Wales. The benefits this investment would bring include a reduction in the time lost to supply interruptions by tackling leakage and promoting water efficiency.

Government Launches Consultation on Non-Domestic Private Rented Sector Energy Efficiency Regulations

The Department of Energy and Climate Change has launched a consultation on Minimum Energy Performance Standards for the Non Domestic Private Rented Sector. Proposals in the consultation are that from 2018 a commercial property will be required to hold an Energy Performance Certificate with a rating of E or above before it is able to be leased or sold. There are exceptions where buildings adopting a commercial green deal or buildings built for demolition may be exempt from this regulation.

Mandatory Carrier Bag Charge in Scotland

The Scottish Government has confirmed that the public campaign communicating the carrier bag charge will commence on 25 September and will run until a week after the implementation date of 20 October. The programme of communications will include radio and poster activity and the SG also plans to generate some activity in the printed press. The regulations introduce a mandatory minimum charge of 5p for all single use bags and a requirement to record the number of bags dispensed and the net proceeds raised by the charge for businesses with more than 10 full time employees.

Loss Prevention

BRC Retail Crime Survey 2014

The annual survey collects vital evidence about crime experienced by UK retailers and asks for data on issues such as the overall cost of crime and the impact of theft, damage and e-crime offences. The survey underpins the BRC's lobbying and policy activity to call for a better response to retail crime. The data collected is considered valuable by key stakeholders and strengthens the BRC's voice and influence amongst policy makers and law enforcement. The 2013 survey report, which was published in January, received widespread press coverage. It is therefore vital that the BRC receives as many full survey responses as possible. The final closing date is **Friday 17 October** and the questionnaire can be found here:

http://www.brc.org.uk/survey_crime/

Commercial Victimization Survey (CVS)

The Home Office are conducting the CVS again this year, which provides information on how businesses in England and Wales are affected by crime. The information is used to identify where government support, advice and information could have the greatest impact. While participation is voluntary, in order to obtain a true picture of crime against businesses the Home Office would like as many selected businesses as possible to take part in this research, regardless of whether or not they have been a victim of crime. Interviews are conducted by phone and the research findings will not identify you or your business, with no personal or commercial information passed to the Home Office or other organisations. For further information, and to see the reports resulting from the last two surveys, please visit: <https://www.gov.uk/government/collections/crime-against-businesses>

Property & Rates

[Business rates chaos costs £4.2bn](#)

The chaotic state of Britain's business rates system has been revealed by newly-published figures which show that the Government is expecting to pay £4.2bn back to businesses that appeal against their tax bill. Businesses have appealed the rates bill on one in three commercial properties in the UK. The British Property Federation (BPF) said the number of appeals is "indicative of how business rates are crippling small businesses". The Government is under growing pressure to reform the system and George Osborne has committed to a review of the tax by 2017.

[British Chamber of Commerce Calls for Business Rates Freeze](#)

The British Chamber of Commerce has set out a "Business plan for Britain", calling for wide-ranging action from the next UK government to achieve a "more confident and more enterprising Britain." As part of this, the chamber has said business rates for all companies should be frozen until 2017, when the full revaluation of premises takes place, and it has also called on a thorough review and reform of the "broken" business rates system by 2022.

[Backing for Home-Based Business Boom](#)

Budding entrepreneurs will be given greater freedom to start and grow a business from their home under new measures announced by the Government. The new measures include:

- New legislation will make it easier for people to run a business from a rented home. The law will be changed so that landlords can be assured that agreeing to this will not undermine their residential tenancy agreement. A new model tenancy agreement will also be made available shortly.
- Updated planning guidance makes it clear that planning permission should not normally be needed to run a business from your home.
- New business rates guidance clarifies that in the majority of circumstances home-based businesses will not attract business rates.

Building Standards and Planning in Scotland

Scottish Retail Consortium members from several different retail sub-sectors have said that the current approaches to building standards and planning are time-consuming, onerous and inconsistent, and that it is stifling retailers' investment in Scotland as there are often easier and quicker investment options elsewhere in the UK. In August the SRC held a roundtable with the Scottish Government's Local Government & Planning Minister, Derek Mackay MSP. The SRC is following this up with a written submission to the Minister, providing brief and anonymised case studies highlighting where the building standards and planning systems in Scotland have delayed or held back retail investments.

Taxation & VAT

[VAT Concerns for Scotland 'Yes' Vote](#)

Open letter to *The Bookseller*:

While bookshops may be enjoying strong sales of 'referendum' titles, as noted in [Lisa Campbell's recent article](#), we felt it was important to highlight one issue raised at a Creative Industries Question-time event organised by Publishing Scotland in May this year. It is an issue that will affect all bookshops and publishers north of the border if the Scottish electorate votes for independence.

We are not going to attempt to address the wider subject within this letter, but simply that of VAT on books. The UK and Ireland enjoy a 0% rate on print books unlike the rest of the EU where VAT is applied at varying rates, but no less than 5% (except of course Luxembourg where Amazon enjoy their 3% rate, at least until 1st Jan 2015). Any newly independent state of Scotland reapplying for membership of the EU would be required to apply VAT on books, in fact according to European Commissioner for Enlargement Stefan Fule, new EU members must apply a 15 per cent minimum. The Commissioner said Scotland, if it joins through the normal accession route, would have to apply the standard minimum 15 per cent VAT rate with just "one or two reduced VAT rates set no lower than 5 per cent for a certain limited list of supplies".

Let's imagine what would happen to Scottish bookshops with an (optimistic) 5% VAT on books. Bookshops would be faced with either applying the VAT required, ie. many hours spent pricing books, only to reinforce the view that Amazon is the cheaper option and, in all likelihood, tip those loyal customers over to the dark side. Or absorb the VAT and, in many cases, render themselves unprofitable at a stroke with the double hit of losing 5% per sale, and paying the publishers 5% VAT on purchase (many independent booksellers are not VAT registered, therefore unable to claim this back).

This is not intended as a political comment (in and of itself, this is certainly not an issue to determine which way to vote), more ensuring that all parties are aware of the specific risk to our sector. Reading and education have always been a matter of passion and pride in Scotland, (hence the lack tuition fees for further education courses), and it would be tragic if the nation's love of literacy were undermined by such a charge.

Rosamund de la Hey – The Mainstreet Trading Company

Jill Pattle – Far From the Madding Crowd, Linlithgow

Hugh Andrew, Sally Pattle, Joanne Macleod & Tom Johnstone – Birlinn

Jude Innes – J & G Innes Ltd - Chris McCosh – Atkinson Pryce

Anna Murphy – Anna Murphy Sales & Marketing

Mick Fawcett – HarperCollins - Marie Moser – The Edinburgh Bookshop

Vicky Dawson – Yeadons of Elgin & Banchory