January, February, March 2011

24/03/2011
OFT publishes final Land Agreements Guideline
Subject: Sale of goods and services/Competition law
Source: Office of FairTrading
http://www.oft.gov.uk/news-and-updates/press/2011/42-11

The OFT has today published a guideline for businesses about the types of land agreements that may infringe competition law.

Until now, agreements between businesses concerning land have benefited from special treatment and have been excluded from the UK competition law prohibition on anti-competitive agreements.

However, from 6 April this exclusion will be removed and restrictions that prevent, restrict or distort competition will be void and unenforceable. Companies involved in anti-competitive agreements can also face fines of up to 10 per cent of their annual worldwide turnover.

The OFT has carefully considered responses from a number of interested parties on draft text published in October 2010 and, in response, the final guideline seeks to provide greater clarity about the types of agreement that are likely to infringe competition law and those that are not.

The guideline sets out that:

There is no presumption that a land agreement will infringe competition law and the OFT expects that only a small minority will do so.
Restrictions on the use of land may potentially infringe competition law where this protects a business from competition, or prevents its competitors from entering a market.
Generally, the OFT is unlikely to take further action in cases where none of the parties to an agreement has more than a 30 per cent share of the market in which the land is being used.

18/03/2011
Government bins business red tape
Subject: SME policy
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=418688&NewsAreaID=2

Business will be freed from the burden of red tape under a package of sweeping reforms to regulation, it was announced today.
In a speech to the Federation of Small Businesses in Liverpool, Mark Prisk revealed Business Secretary Vince Cable's plans for a range of measures to be included in the Growth Review that will allow businesses to grow, including: a public audit of almost 22,000 statutory instruments that are currently on the statute book; and
a moratorium to exempt businesses with fewer than ten employees and genuine start ups from new domestic regulation for three years.

For the public audit, the legislation will be grouped into themes on a dedicated website and businesses will be asked to tell the Government what they think of those regulations and how to improve the system.

The intention will be that any overly burdensome or unnecessary regulations are removed unless Departments can prove there is a good reason for them.

The moratorium will be preceded by extensive engagement with businesses and other groups over the coming weeks to ensure that this is introduced in a way that does not have any unintended consequences for business.

Other measures, identified as part of the growth review into regulation include:

* Repealing the regulations extending the right to request flexible working to parents of 17 year olds for all businesses, which was due to be introduced on 6 April 2011;
* Not extending the right to request time off to train for firms with less than 250 people;
* Introducing more transparency into the Government's One-in, One-out rule by publishing the opinions of the Regulatory Policy Committee where they do not believe the evidence supports a new regulation; and
* Lightening the audit requirements of smaller firms by matching the minimum required by EU directives, freeing small companies from unnecessary audit fees.

Chairman of the Better Regulation Executive Sir Don Curry said;

The Government also announced that next week the Government will be publishing details of how it is introducing sunset clauses into new regulations. New regulations will be reviewed after five years to see if they are effective, if they are still necessary, and whether the costs to business can be reduced. If they are found to be working as expected, the regulation will be extended for a further five year period.

14/03/2011
TV helping promote entrepreneurship as a career
Subject: SME policy
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=418572&NewsAreaID=2

Rising coverage of entrepreneurs in the media is helping to persuade more people to consider a career as their own boss, new research published today by the Department for Business, Innovation and Skills (BIS) shows.

The 'Impact of Media on Entrepreneurial Intentions and Actions' report supports the view that media portrayals of enterprise are promoting more positive social values towards entrepreneurship, with one in five non-entrepreneurs being motivated to start their own business having watched programmes such as Dragon's Den, The Apprentice and The Secret Millionaire.

Nearly nine out of ten established entrepreneurs surveyed also believe programmes are making people think more positively about entrepreneurs and the same proportion feel they make people want to start their own business.

The full report can be found at:
http://www.berr.gov.uk/policies/enterprise-and-business-support/analytical-unit/research-and-evaluation/globally-competitive-business-environment

09/03/2011
New plans to stub out smoking
Subject: Sale of goods and services/Tobacco
Source: Department of Health
http://www.dh.gov.uk/en/MediaCentre/Pressreleases/DH_124966

New ambitions to tackle the substantial public health harms from tobacco were announced today on No Smoking Day by Health Secretary Andrew Lansley.

The Government has published Healthy Lives, Healthy People: A Tobacco Control Plan for England which sets out how tobacco control will be delivered over the next five years.

Local communities will take a leading role in reducing smoking rates. The plan confirms action to end eye catching tobacco displays in shops which encourage young people to start smoking.

The Tobacco Control Plan has three national ambitions to reduce smoking rates in England by the end of 2015:

From 21.2 per cent to 18.5 per cent or less among adults;
From 15 per cent to 12 per cent or less among 15 year olds; and
From 14 per cent to 11 per cent or less among pregnant mothers.

These ambitions represent reductions in smoking rates that exceed the reductions we have seen in the past five years. The Government has set out key actions in the following six areas:

stopping the promotion of tobacco;
making tobacco less affordable;
effective regulation of tobacco products;
helping tobacco users to quit;
reducing exposure to secondhand smoke; and
effective communications for tobacco control.

Within the plan, the Government sets out actions to maximise the use of information and intelligence to support tobacco control activities. It also explains how tobacco control policies will be protected from vested interests.

Legislation to end the display of tobacco in shops will be implemented. While preserving the expected health benefits, the implementation of the legislation will be delayed and amended to reduce the impact on retailers, especially small businesses.

The amended regulations will mean that:

* The display of tobacco products in shops will end. Tobacco products will need to be out of sight in shops, except for temporary displays in certain limited circumstances;
* Shopkeepers will have greater flexibility so that they can more easily carry out the day to day running of their businesses without breaching the law – for example, being able to undertake stock-taking or maintenance work while there are customers in the shop;
* The size of the display allowed while serving customers or carrying out the other authorised activities will increase from 0.75 to 1.5 square metres; and
* Retailers will have additional time to prepare – particularly small shops. The regulations will commence on 6 April 2012 for large stores and 6 April 2015 for all other shops.

On plain packaging, the Government has an open mind and wants to hear views. The Government will consult on options to reduce the promotional impact of tobacco packaging, including plain packaging, and an assessment of the impact of these options, before the end of 2011.

04/03/2011
Government action to save small firms £40m
Subject: SME policy
Source:Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=418437&NewsAreaID=2

No small firm will have to have independently audited accounts any longer, Business Secretary Vince Cable announced today, saving 42,000 businesses £40 million per year.
One of the barriers to growth is the burden of regulation. It takes up time and stops business growing and that means our economy does not grow.

The Business Secretary outlined changes to regulation in one area which is a massive burden to business – producing accounts. Small businesses in particular often suffer the most under the burden of bureaucracy.

The Government recognises the need for high standards in audit and accounting. But some areas could do with reform so we are taking action in three areas:

* The small company audit and account rules are stricter in the UK than is required by EU law;
* For even smaller businesses (with less than 10 employees) Government will push for exemptions to remove the requirement to produce two sets of accounts;
* For medium sized businesses Government will push for EU restrictions to be lifted so that they no longer need their account independently audited and;
* The Government will look at relaxing the audit and accounts rules for subsidiaries.

The Government will amend the Companies Act to bring small company audit rules in line with the EU minimum in 2012, saving UK companies up to £40m in unnecessary audit fees. This means certain small companies who still have to have independently audited accounts will no longer have to do so, helping 42,000 businesses.

For even smaller businesses, Government will push for exemptions in European rules to remove the requirement to produce specific accounts for Companies House in addition to those for tax purposes. The changes would mean small companies would produce just one simplified set of accounts and save £400m for some of the smallest businesses in the country – roughly 2 million of them will be able to concentrate on growing, expanding and creating jobs.

Currently medium sized businesses have to get their accounts independently audited. The Government will push the EU to release them from this requirement. This change could free over 32,000 businesses from red tape.

Government will also look at relaxing the audit and account rules for subsidiaries. The change will mean that dormant subsidiaries with parent company guarantees could be exempted from the requirement to prepare and publish annual accounts. This would benefit up to 23,000 dormant companies, including those set up to hold assets or intellectual property, or in preparation for transactions at a future date.

Wholly owned non-financial subsidiaries with parent company guarantees could be exempted from audit. This would benefit around 139,000 companies set up within groups, including for transactions, property, brand or asset management, as part of organisational structures and restructuring or for internal financial arrangements.

03/03/2011
Court of Justice of the European Union releases AG's opinion that refusal to allow online sales may contravene competition law
Subject: Competition law
Jurisdiction: European Union
Source: Court of Justice of the European Union (EUCJ)
http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-03/cp110014en.pdf

On 3 March 2011, the Court of Justice of the European Union (EUCJ) released the opinion of Advocate General Mazák in the case of Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la Concurrence & Ministre de l'Économie, de l'Industrie et de l'Emploi (Case C‑439/09). Pierre Fabre, a cosmetics company, has contracts with various French distributors which include a clause requiring all sales to be made in a physical space with a qualified pharmacist be present, thereby effectively restricting all forms of selling via the internet.

The AG concluded that a general and absolute ban on selling via the internet has the object of restricting competition and falls within the scope of Article 81(1) EC. The AG went onto state the prohibition also constitutes a hardcore restriction within the meaning of the Vertical Agreements Block Exemption Regulation and as such would be ineligible for the exemption provided by that regulation.

Finally, the Advocate General recalls that any anti-competitive agreement which restricts competition and would, in principle, be prohibited by Article 81(1) EC, may, in principle, benefit from the exemption provided by Article 81(3) EC.

01/03/2011
New online remit enhances consumer protection
Subject: Sales and marketing/Marketing and advertising
Source: Advertising Standards Authority
http://www.asa.org.uk/Media-Centre/2011/New-online-remit-enhances-consumer-protection.aspx

From 1 March 2011 the ASA’s online remit now extends to cover companies’ own marketing claims on their own websites and in other non-paid for space they control. This landmark development brings enhanced consumer protection, particularly for children.

The ASA already regulates internet ads in paid-for space, like banner ads, pop-ups and paid search results, but our new responsibilities mean that we now apply the same high standards to marketing communications on companies own websites and in other non-paid space they control, like Facebook and Twitter.

The UK Code of Non-broadcast Advertising, which includes rules to make sure advertisements do not mislead, harm or offend, will be applied to all UK based company websites regardless of the sector or size of business or organisation.

Since 2008, the ASA has received over 4,500 complaints that it was not authorised to deal with, but now anyone who has a concern about an online marketing communication will be able to refer to the ASA.

The extension to the ASA’s remit was in response to a recommendation from the UK ad industry, which has a long history of being committed to ensuring ads across media are legal, decent, honest and truthful. By extending the ASA’s remit, industry has responded to consumers’ demands.

01/03/2011
Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres.
Court of Justice of the EU C-236/09
Subject : Insurance
Source: EU Court of Justice
http://curia.europa.eu/juris/liste.jsf?language=en&num=C-236/09
This case before the Court of Justice of the EU was a reference for a preliminary ruling made by the Belgian “Cour constitutionnelle” on the legality of Belgian law permitting discrimination between men and women in the context of gender as a factor in the assessment of insurance risks.
The EU Directive 2004/113/EC permits to an extent the use of gender as a risk factor by insurers. The Court of Justice ruled that 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, and that the derogation from the prohibition of such discrimination permitted by Article 5(2) of the Directive should cease to have effect from 21 December 2012. The reason was that Article 5(2) of the Directive was contrary to the Charter of Fundamental Rights of the European Union (Articles 21 and 23.

01/03/2011
Plumbers, gas fitters and heating engineers are being targeted by the tax authorities in a clampdown on tradespeople failing to declare their earnings and pay tax.
Subject: Tax/Administration
HM Revenue & Customs (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=418319&NewsAreaID=2

Plumbers, gas fitters and heating engineers are being targeted by the tax authorities in a clampdown on tradespeople failing to declare their earnings and pay tax.
Under the tax plan, plumbers, gas fitters, heating engineers and members of associated trades who have tax to pay which they have not yet told HM Revenue & Customs (HMRC) about can come forward by 31 May to tell the department of their intention to disclose what they owe. If they make a full disclosure, most face a low penalty rate of 10 per cent, with a maximum of 20 per cent. They have until August 31 to make their disclosure and arrange for payment to be made.

After that date, using information pulled together from various sources, HMRC will carry out targeted investigations aimed at those who have failed to come forward and make a full declaration. Substantial penalties or even criminal prosecution could follow.

The plumbers’ tax safe plan (PTSP) is the first initiative in a campaign focused on tradespeople. It is designed to make it easy for those in the plumbing industry to put their tax affairs right - and keep them that way.

The tax plan operates in two stages:

* From 1 March to 31 May, plumbers can register with HMRC to “notify” that they plan to make a voluntary tax disclosure.
* By 31 August, those who have registered must have told HMRC about tax due and have made arrangements to pay any tax interest and penalties due. This is called “making a disclosure”.

The benefit of the Plumbers Tax Safe Plan is that those who make a full disclosure:
* Will be offered a simple and straightforward way to put their tax affairs right; and
* Will be charged a low penalty rate – (10 per cent for most who sign up, with a maximum rate of 20 per cent).

25/02/2011
The English High Court held that the an insurer was entitled to recover all sums which it had paid under an insurance policy, following a subsidence claim, where the insured person had included a fraudulent element in his claim
Aviva Insurance Ltd v Brown [2011] EWHC 362 (QB)
Source: High Court (Queen's Bench Division)

Note: Legaleze prepared and is solely responsible for the following summary
The High Court (Queen's Bench Division) held that the an insurer was entitled to recover all sums which it had paid under an insurance policy, following a subsidence claim, where the insured person had included a fraudulent element in his claim, even though the rest of the claim was genuine, and the fraudulent element had not in the event been pursued on the basis that the claim made by the defendant in relation to alternative accommodation had been fraudulent.

This case arose out of a claim by Mr. Brown against his insurers Aviva for repairs and losses due to house subsidence. The claim process was very protracted. Eventually the house was repaired. In the course of the claim, Mr. Brown submitted a claim for payment of rent for a house to which he wished to move during the repairs, albeit he in fact owned the house. In fact Mr.Brown did not move in to that house and the insurance company did not pay rent. The judge found that the claim for rent in respect of that house was fraudulent. The judge applied well established English case law that the fraudulent element of Mr. Brown's claim in effect tainted the entire claim for subsidence, thereby entitling the insurance company to reclaim the entire cost it had laid out for the subsidence.

Comment: this is a striking example of the well established principle of English insurance law that if any claim includes a "substantial" fraudulent element, it will invalidate the entire claim and entitle the insurance company to recover all expenses laid out, even if the whole or part of the claim could have been made without fraud.

24/02/2011
OFT urges businesses to review their small print or face enforcement action
Subject: Sale and marketing/sale of goods to consumers
Source: Office of Fair Trading
http://www.oft.gov.uk/news-and-updates/press/2011/24-11

The OFT has today sent a clear warning to businesses that consumer contracts must be clear and have no unwelcome surprises buried in the small print.

In publishing its market study into consumer contracts, which found that one in five people had experienced a problem with such contracts in the last year, the OFT has set out its framework for prioritising future enforcement in this area.

The study examined when, how and why contracts may cause difficulties for people and identified the practices and contract terms which have the potential to cause people the greatest harm and which could breach consumer protection laws.

Harm can arise when a small print term alters the deal from what consumers understand it to be, or if the way the contract is presented makes it difficult for consumers to understand the deal properly, in effect hiding unfair terms in plain view. The OFT's research found that 80 per cent of these people who experienced a problem said that it came as a surprise.

Currently 70 per cent of the OFT's consumer enforcement cases relate to contract terms and conditions and the OFT is urging businesses to consider whether their customer contracts contain terms that may be detrimental to consumers. Detrimental terms include:

- Unexpected restrictions to contract scope. For example, the OFT has intervened against football season tickets not guaranteeing seats, and extended warranties offering limited cover.
- Terms that impose unexpected risks on consumers. For example, the OFT intervened on Sale and Rentback deals in part on the basis that the tenancy offered was much less secure than many people realised.
- Complex, deferred or contingent charges that exceed costs. Recently, the OFT brought a successful case against letting agents over small print charges that did not correspond to any service provided.
- Obstructions to consumer switching. Recently, the OFT has intervened against onerous cancellation terms used by gyms.

This does not mean that the use of these practices and terms is automatically unlawful - this will depend on the specifics of the contract and a number of other factors.

For a copy of the final report and more information about the market study go to::
www.oft.gov.uk/consumer-contracts

24/02/2011
Subject: Sale and marketing/sale of goods to children and young persons
Source: Home Office:
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=418258&NewsAreaID=2

New posters warning young people of the risks of using fake ID and guidance to help door staff and those selling alcohol to spot false documents and know what to do once they have confiscated them, have been published by the Home Office today.
Schemes to crackdown on underage drinking such as Challenge 21 and 25 have made it more difficult for people to use fake ID to buy alcohol or get into pubs and bars, but the use of counterfeit ID bought over the internet or borrowed ID from older siblings or friends by some young people can still cause problems. Examples of the kinds of fake ID used include the international driving permit and the provisional motorcycle licence, which don't even exist as real documents.

The new guidance will make it easier for those selling alcohol to understand the law, what ID is acceptable, how to spot fake ID documents and what to do when documents are confiscated, as well as providing practical examples of best practice from around the country. New posters aimed at raising awareness of the consequences involved in using false ID are also available to download from: http://www.homeoffice.gov.uk/drugs/alcohol/

23/02/2011
Small Business Act review will strengthen small businesses and drive growth
Subject: SME policy
Source: European Commission
http://ec.europa.eu/unitedkingdom/press/press_releases/2011/pr1119_en.htm

More must be done to help Europe's small and medium-sized enterprises, according to a review of the Small Business Act by the European Commission.

The Small Business Act (SBA) is the EU policy framework aimed at strengthening SMEs so that they can grow and create employment. Between 2008 and 2010, the Commission and EU

member states implemented actions set out in the SBA to alleviate administrative burden, facilitate SMEs' access to finance and support their access to new markets.

Although all member states have acknowledged the importance of a rapid implementation of the SBA, the approach taken and the results achieved vary considerably between member states.

The review underlines that member states have to step up their efforts to promote entrepreneurship and SMEs to support entrepreneurship in today's difficult economic climate.

Therefore the Commission is proposing a number of initiatives to give fresh impetus to the SBA.

European Commission Vice-President Antonio Tajani, Commissioner for Industry and Entrepreneurship said: "SMEs represent more than 99% of all businesses and employ more than 90 million in Europe. They are the engine behind our economy and must be kept strong, competitive and innovative. Member states must act quickly to ensure that the Small Business Act is fully implemented."

Europe's 2020 strategy and Europe's economy heavily rely on SMEs achieving their potential. In the EU, some 23 million SMEs employ 67% of the private sector workforce.

Giving fresh impetus to the SBA

The Commission is determined to continue to give priority to SMEs. To reflect the latest economic developments, align the SBA with the priorities of the Europe 2020 strategy and continuously improve the business environment for SMEs, the review proposes further action in a number of priority areas.

Improved access to finance to invest and grow

- access to loan guarantees for SMEs through strengthened loan guarantee schemes;

- action plan for improving SMEs' access to finance, including access to venture capital markets, as well as targeted measures aimed at making investors more aware of the opportunities offered by SMEs;

- allow all banks, independent of size, to easily implement EIB loans and EU instruments.

Smart regulation to enable SMEs to concentrate on core business

- improved EU legislation through an SME test for the Commission's legislative proposals paying specific attention to the differences between micro, small and medium enterprises;

- development of "points of single contact" in member states to facilitate administrative procedures;

- quantified targets for reduced "gold plating", the practice of national bodies to exceed the terms of EU directives when translating them into national law.

Making full use of the Single Market

- proposal for a Common Consolidated Corporate Tax Base;

- measures to facilitate cross-border debt recovery;

- revision of the European standardisation system making standards more SME-friendly and easily accessible;

- guidance to SMEs making use of labelling of origin rules.

Helping SMEs face the challenges of globalisation and climate change

- proposals to support SMEs in markets outside the EU;

- new strategy for globally competitive clusters and networks;

- specific action on regional knowledge transfer between environmental and energy experts within the Enterprise Europe Network.

Background

Successful SBA Initiatives since 2008

The Small Business Act (SBA) is the first comprehensive SME policy framework for EU member states. Since its adoption in June 2008, considerable progress has been made through actions to strengthen SMEs in a number of areas, such as:

- 100,000 SMEs have benefited from the financial instruments of the Competitiveness and Innovation Framework Programme, creating more than 100,000 jobs;

- through the late payment directive public authorities are now required to pay their suppliers within 30 days, improving the cash flow of businesses.

- in most EU member states the time and cost of setting up a company has been considerably reduced, lowering the EU average for a private limited company from 12 days and 485 euro (£563) in 2007 to 7 days and 399 euro (£463) in 2010.

- streamlined online procedures and opportunities for joint bidding have made participation in public procurement easier for SMEs.
- the new EU SME Centre in China helps SMEs accessing the Chinese markets.

22/02/2011
Cornish pasties win protected status
Subject: Food business/Protected Geographical Origin
Source: Cornish Pasty Association
http://www.cornishpastyassociation.co.uk/

The Cornish Pasty Association (CPA) is celebrating after receiving Protected Geographical Indication (PGI) status for its world famous pasty. The decision from the European Commission means that from now only Cornish pasties made in Cornwall and following the traditional recipe can be called ‘Cornish pasties’.

The CPA submitted the application for PGI in 2002 to protect the quality and reputation of the Cornish pasty and to ensure that only Cornish bakers who make genuine Cornish pasties use this denomination when selling and marketing their produce. Authentic Cornish pasties can still be baked elsewhere in the country but they will need to be prepared in Cornwall.

David Rodda from the Cornwall Development Company and spokesperson for the CPA, comments: “Receiving protected status for the Cornish pasty is good news for consumers but also for the rural economy. By protecting our regional food heritage, we are protecting local jobs.

Thousands of people in Cornwall are involved in the pasty industry, from farmers to producers, and it's important that the product's quality is protected for future generations."

Alan Adler, Chairman of the CPA adds: "By guaranteeing the quality of the Cornish pasty, we are helping to protect our British food legacy. We lag far behind other European countries like France and Italy, that have hundreds of food products protected, and it's important that we value our foods just as much. Today's announcement does not stop other producers from making other type of pasties but they won't be able to sell them as 'Cornish'."

A genuine Cornish pasty has a distinctive 'D' shape and is crimped on one side, never on top. The texture of the filling is chunky, made up of uncooked minced or roughly cut chunks of beef (not less than 12.5%), swede, potato, onion with a light seasoning. The pastry casing is golden in colour, savoury, glazed with milk or egg and robust enough to retain its shape throughout the cooking and cooling process without splitting or cracking. The pasty is slow-baked and no artificial flavourings or additives must be used. It must also be made in Cornwall.

Comment: the PGI designation appears not to have been officially published by the European Commission.

21/02/2011
Free tools to help SMEs get their business records ship shape launched
Subject: Accounts and tax records
Source: HM Revenue & Customs
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=418174&NewsAreaID=2

Free tools to help SMEs get their business records ship shape were launched today by HM Revenue & Customs (HMRC).

The four new products are suitable for the self employed, sole traders and small businesses. They have been produced in advance of the launch of HMRC's new Business Record Checks programme later this year, which will impose penalties for significant record-keeping failures.

Online tools:

* Keeping records for business - what you need to know: a basic guide with a helpful list of where to get more information. www.hmrc.gov.uk/factsheet/record-keeping.pdf

* A general guide to keeping records for your tax return: detailed guidance on record-keeping covering what type of records you may have to keep, common problems and examples for different types of business. www.hmrc.gov.uk/sa/rk-bk1.pdf

* Set up a basic record-keeping system: with examples of spreadsheets and information about setting up a record-keeping system. www.businesslink.gov.uk/recordkeeping

* Find out what records you should be keeping: looks at the records you need to keep and assesses how well you are keeping them. If you are thinking of starting business the tool provides you with a checklist. If you are established it will give feedback and advice on improvements you may need to make. www.businesslink.gov.uk/recordkeepingcheck

17/02/2011
Retirement process and the removal of the Default Retirement Age (DRA)
Guidance update:
Subject: Employment law/Termination/retirement
Source: ACAS
http://www.acas.org.uk/index.aspx?articleid=3203

There has been a clarification of the transitional arrangements to abolish the default retirement age (DRA) concerning the period of intended notice of retirement the employer must give an employee by the deadline for such notifications, which is 5 April 2011. Details are set out below in the transitional arrangements and also in our downloadable PDF file Advisory booklet - Working without the DRA - Guidance for employers [856kb].

15/02/2011
Company found guilty under corporate manslaughter law
Subject: Health and safety/corporate manslaughter
Source: Crown Prosecution Service
http://www.cps.gov.uk/news/press_releases/107_11/

Cotswold Geotechnical Holdings has today become the first company to be convicted of the new offence of corporate manslaughter.

Alex Wright was 27-years-old when he died on 5 September 2008. He was a geologist for Cotswold Geotechnical Holdings and was investigating soil conditions in a deep trench on a development plot in Stroud when it collapsed and killed him.

Kate Leonard, reviewing lawyer from the Crown Prosecution Service (CPS) Special Crime Division, said:

"Alex Wright was a young man, full of promise. His death is a tragedy for all those who loved him and would never have happened if Cotswold Geotechnical Holdings had properly protected him.

"I hope that this conviction offers his family some sense of justice. I send them my sincere condolences once again."

The CPS told the court that Mr Wright was left working alone in the 3.5 metre-deep trench to 'finish-up' when the company director left for the day. The two people who owned the development plot decided to stay at the site as they knew Mr Wright was working alone in the trench. About 15 minutes later they heard a muffled noise and then a shout for help.

While one of the plot-owners called the emergency services, the other one ran to the trench where he saw that a surge of soil had fallen in and buried Mr Wright up to his head. He climbed into the trench and removed some of the soil to enable Mr Wright to breathe. At that point, more earth fell so quickly into the pit that it covered Mr Wright completely and, despite the plot owners best efforts, Mr Wright died of traumatic asphyxiation.

The prosecution's case was that Mr Wright was working in a dangerous trench because Cotswold Geotechnical Holdings' systems had failed to take all reasonably practicable steps to protect him from working in that way. In convicting the company, the jury found that their system of work in digging trial pits was wholly and unnecessarily dangerous. The company ignored well-recognised industry guidance that prohibited entry into excavations more than 1.2 metres deep, requiring junior employees to enter into and work in unsupported trial pits, typically from 2 to 3.5 metres deep. Mr Wright was working in just such a pit when he died.

There was no person in the dock at Winchester Crown Court during the three-week trial as it is the company, rather than an individual, which is charged with corporate manslaughter.

The case was investigated by Gloucestershire Constabulary and supported by the Health and Safety Executive.

The sentence for corporate manslaughter is an unlimited fine which is to be determined by a judge. The judge may also give the organisation a publicity or remedial order.

Under the Corporate Manslaughter and Corporate Homicide Act 2007, an organisation is guilty of corporate manslaughter if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a duty of care to the person who died. A substantial part of the breach must have been in the way activities were organised by senior management. In charging Cotswold Geotechnical Holdings we concluded that there was sufficient evidence for a realistic prospect of conviction for this offence.

The new offence came into force in April 2008. The Crown Prosecution Service is currently considering a number of other files of evidence in relation to further possible prosecutions for the offence.

Alex Wright graduated in 2002 from Imperial College London, having taken a degree in geology. He worked for a company called Norwest Holst from October 2003 to April 2005, where he was trained in a number of aspects of soil investigation and received relevant health and safety training connected to that work. In January 2006 he started working for Cotswold Geotechnical Holdings Ltd.

Cotswold Geotechnical Holdings was a small company that employed eight people in 2008 and Peter Eaton was in overall control of the way the company managed its affairs. The company director, Peter Eaton, was previously charged with gross negligence manslaughter and a health and safety offence, but a judge ruled last year that he was too unwell to stand trial.

Cotswold Geotechnical Holdings was also charged with failing to discharge a duty contrary to Section 33, Health and Safety at Work Act 1974. After the judge ruled Peter Eaton should not stand trial, he asked the prosecution to consider whether the two different burdens of proof for the two remaining charges might confuse a jury. The prosecution asked the jury only to consider the offence of corporate manslaughter.

Note: The company was subsequently fined £385,000

11/02//2011
Protection of Freedoms Bill
Subject: Law and legislation
Source: Home Office
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=417938&NewsAreaID=2

Millions of people will be protected from unwarranted state intrusion in their private lives with a return to common sense government, the Home Secretary outlined today in the Protection of Freedoms Bill The Bill steps up the coalition government's commitment to restore hard-won British liberties.

An array of sweeping reforms will put an end to unwarranted local authority snooping and unnecessary scrutiny of individuals. It will see:

* an end to the routine monitoring of 9.3 million people under the radically reformed vetting and barring scheme;

* millions of householders protected from town hall snoopers checking their bins or school catchment area;

* the scrapping of Section 44 powers, which have been used to stop and search hundreds of thousands of innocent people;

* the permanent reduction of the maximum period of pre-charge detention for terrorist suspects to 14 days;

* DNA samples and fingerprints of hundreds of thousands of innocent people deleted from police databases;

* thousands of gay men able to clear their name with the removal of out-of-date convictions for consensual acts; and

* thousands of motorists protected from rogue wheel clamping firms.

The Protection of Freedoms Bill follows the review of counter-terrorism and security powers and the scrapping of ID cards as the coalition government delivers on its agreement to put traditional British freedoms at the heart of the Whitehall agenda. It also drew on views put forward by the public through the radical Your Freedom website set up after the coalition government came to power.

Other elements of the Protection of Freedoms Bill include:

* an end to the fingerprinting of children in schools without parental consent;

* the introduction of a code of practice for CCTV and Automatic Number Plate Recognition systems (overseen by a new Surveillance Camera Commissioner) to make them more proportionate and effective;

* restrictions on the powers of government departments, local authorities and other public bodies to enter private homes and other premises for investigations and a requirement for all to examine and slim down remaining powers;

* the repeal of powers to hold serious and complex fraud trials without a jury;

* the liberalisation of marriage laws to allow people to marry outside the hours of 8am-6pm; and

* the extension of the scope of the Freedom of Information Act and strengthening the public rights to data.

The Protection of Freedoms Bill is being introduced with the aim of gaining Royal Assent by late 2011 or early 2012.

11/02/2011
Crown Representative for SMEs
Subject: SME policy
Source: Cabinet Office
http://www.cabinetoffice.gov.uk/content/crown-representative-smes-stephen-allott

Stephen Allott has been appointed as Crown Representative for SMEs with the task build a more strategic dialogue between HM Government and smaller suppliers – giving those suppliers a strong voice at the top table.

There are two main ways that Stephen Allott, as SME Crown Representative, will do this:
1. Understanding the concerns of SME suppliers
Stephen will listen to and understand the issues and concerns that SMEs have, and there are a number of ways in which SMEs can feedback.
•If you're from an SME and would like to give us feedback about your experiences (good or bad) with a specific public sector procurement exercise you can act as a Mystery Shopper through our Supplier Feedback Service. You can tell us about tenders you don't understand or instances of what you believe to be poor procurement practice. We will investigate all your submissions and commit to publish the results of the Mystery Shopper investigations regularly.
•Or, if you're from an SME and have a comment or suggestion to make about making government procurement process better, go to the No 10 website where you can join the online discussion. Comments and suggestions are looked at every day.
•Stephen is a member of the Cabinet Office's SME Panel and engages regularly with SME representative organisations, getting feedback and passing information back through them as well as providing updates to the SME community through this website.

2. Open up Government procurement to SMEs
As well as strategic dialogue, Stephen will help Government open up more business to SMEs in three ways.
1.Organise Product Surgeries - where SMEs can present direct to Government buyers. The surgeries are intended to improve Government buyers' awareness of SME offerings, but they are not linked to specific procurements.
2.Input into the redesign on the public procurement process to make it more SME friendly.
3.Give input to officials when they are considering procurement practices and policy, giving SMEs a voice at the top table.

09/02/2011
The Government today welcomed the commitment by the UK's biggest banks on lending expectations
Subject: Finance and funding
Source: HM Treasury
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=417882&NewsAreaID=2

The Government today welcomed the commitment by the UK's biggest banks on lending expectations and capacity, the size of the 2010 bonus pool, pay disclosure and support for regional growth and the Big Society.
This statement by Barclays, HSBC, Lloyds Banking Group, RBS and, with respect to lending, Santander, follows a period of discussion between the Government and the banks, known as Project Merlin.

Lending to businesses

The banks have stated a capacity and willingness to make available £190 billion of new credit to business in 2011, up from £179 billion actual lending in 2010. If demand exceeds this, the banks will lend more.

£76 billion of this new lending capacity will be to small and medium-sized Enterprises (SMEs). This is a 15% increase on the amount actually lent in 2010 actual lending (£66 billion).

Lending to small and medium sized businesses will be part of the performance metrics of each bank's chief executive and those of the senior managers responsible for business lending

The banks' aggregate gross new lending will be collected and published on a quarterly basis by the Bank of England.

Pay and Disclosure

The aggregate 2010 bonus pool of the four banks UK-based staff will be lower than in 2009 and will reflect the explicit consideration and reflection the banks have given to the public mood and their engagement with the FSA, the Government (including through these discussions) and representatives of their leading shareholders on the subject of pay throughout the year, and reflects their duty to manage pay policy to protect and enhance the long-term interests of their shareholders. The Remuneration Committee Chair of each bank, responsible for pay and bonuses, will write to the FSA to confirm that their firm's 2010 pay settlements are consistent with the statement by the banks.

The Remuneration Committee of each bank will review and sign-off the remuneration of the 10 highest paid staff in each business area, where they do not already do so.

The pay of the 5 highest paid 'senior executive officers' will be published annually on an unnamed basis, in addition to the pay of the Executive Directors already published on a named basis in annual accounts. This means that the salary details of at least 7 executives (5 + the minimum of 2 Executive Directors salaries based on current board representation) will be published for each of the banks involved in these discussions, compared to the maximum of five individuals required in the USA.

The banks will voluntarily publish this information in 2011, covering pay in 2010.

The Government will consult with a view to introducing similar disclosures on a mandatory basis for all large banks from 2012 onwards, but go further and consult on the basis that the pay of the 8 highest paid 'senior executive officers' - in addition to those Executive Directors' salaries already disclosed - ought to be published annually.

Supporting Regional Growth and the Big Society

The banks have today announced additional support of £1.2 billion to support regional growth and the Big Society.

Of this the banks will provide £200m of additional capital over two years to set up the Big Society Bank.

The remaining £1 billion will be new capital available as soon as it is needed by the companies targeted by the Fund to increase the size of the Business Growth Fund, announced by the UK Business Finance Taskforce in October last year. Its objective is to increase the amount of equity investment allocated to potentially high-growth SMEs, and to make it easier for these businesses to get access to funding. It will support regional growth through a dedicated network of regional

offices and those offices will actively coordinate with the Regional Growth Fund to support its objectives.

This new support is over and above the finance that will be provided through the commitments to make new lending capacity available.

8/02/2011
Councils fined for unencrypted laptop theft
Subject: Data Protection
Source: Office of the information Commissioner
http://www.ico.gov.uk/~/media/documents/pressreleases/2011/Monetary_penalties_ealing_and_hounslow_news_release_20110208.ashx

The Information Commissioner's Office (ICO) today served Ealing Council and Hounslow Council with monetary penalties for serious breaches of the Data Protection Act after the loss of two unencrypted laptops containingsensitive personal information.

Ealing Council provides an out of hours service on behalf of both councils, which is operated by nine staff who work from home. The team receive contact from a variety of sources and rely on laptops to record information about individuals.

Two laptops containing the details of around 1,700 individuals were stolen from an employee's home. Almost 1,000 of the individuals were clients of Ealing Council and almost 700 were clients of Hounslow Council. Both laptops were password protected but unencrypted – despite this being in breach of both councils' policies. There is no evidence to suggest that the data held on the computers has been accessed and no complaints from clients have been received by the data controllers to date but there was nevertheless a significant risk to the clients' privacy.

The ICO has served Ealing Council with a monetary penalty of £80,000, while ruling that £70,000 is appropriate for Hounslow Council. Ealing Council breached the Data Protection Act by issuing an unencrypted laptop to a member of staff in breach of its own policies. This method of working has been in place for several years and there were insufficient checks that relevant policies were being followed or understood by staff.

Hounslow Council breached the Act by failing to have a written contract in lace with Ealing Council. Hounslow also did not monitor Ealing Council's procedures for operating the service securely.

Following the incident, both councils contacted affected individuals. Both authorities have also put significantly improved policies in place for information security and have agreed to consider an audit by the ICO.

07/02/2011
Prime Minister gives his backing to Apprenticeships
Cable urges more businesses to say 'you're hired' to an apprentice
Subject: Employment/apprenticeships
Source: National apprenticeship Service
http://www.apprenticeships.org.uk/About-Us/News/February-2011.aspx

Prime Minister David Cameron said:

"Apprenticeships offer a fantastic opportunity for people to gain the skills they need for the jobs of the future, equipping the country for our goal to build long-term sustainable growth.

"That is why despite some difficult decisions on spending; we are boosting the number of Apprenticeships. We think this is absolutely vital not just to help people into work for the short term but to make sure they can have successful long term careers.

"With hundreds of events around the country taking place, Apprenticeship Week is a great opportunity for more businesses, young people and potential apprentices to get involved, and benefit from all that apprenticeships bring."

Business Secretary Vince Cable and Skills Minister John Hayes urged more employers to drive economic growth by creating a new generation of skilled workers, while underling the government's commitment to increase the budget for Apprenticeships to over £1,400 million in 2011-12. Dr Cable welcomed the expansion of British Airways successful engineering apprenticeship scheme, to take on 120 students this year. This will give more students the opportunity to become full time employees of British Airways.

Ministers also praised UK firms including British Gas, Superdrug and Procter and Gamble, which between them will create thousands of new apprenticeship places this year. BT, which hosted the event, is offering 250 places across the Group, and Jaguar Land Rover will create 1,200 new Apprenticeship places. Calling on firms to follow the lead of these employers, Dr Cable said that the Government wanted to work with business to deliver 100,000 more apprentices by 2014. He welcomed the news that Apprenticeships refer to on-the-job training leading to nationally recognised qualifications, developed by industry.

03/02/2011
New plans for streamlined regulation
Subject: Law and legislation
Source: Department for Business, Innovation and Skills (National)
http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=417780&NewsAreaID=2

Business Minister Mark Prisk today outlined plans for streamlining and improving how regulators deal with businesses, following a six month review of the Local Better Regulation Office (LBRO).

The proposals mean that LBRO will be replaced by a new organisation that builds on the expertise of LBRO's staff and continues the expansion of the Primary Authority scheme, but is part of the Department for Business, Innovation and Skills.

The new organisation will work closely with local enterprise partnerships across the country to find the best way to tackle red-tape at a local level and share this knowledge. It will also promote the Primary Authority scheme as a way to improve consistency in regulatory enforcement, reduce bureaucracy and create the right conditions for economic growth.

This streamlined approach will also give a renewed focus on improving the way that regulations impact at the front line. The new organisation will work closely with the Better Regulation Executive, the Regulatory Policy Committee and national regulators to ensure there is a more joined-up approach on regulation and enforcement from across Government.

In order to retain the crucial independence and technical expertise of LBRO, the new organisation will have special governance arrangements and a number of interested groups will be invited to form a steering group for the new organisation. This will make sure that it is accountable and relevant to the businesses and the regulators that it serves, while also improving the accountability of the new organisation.

The results of the review have also been welcomed by the Welsh Assembly Government which has been pleased to support the work of LBRO in Wales to date. These proposals will mean continuity for further work to secure efficiency and innovation within the public sector in Wales, benefiting both citizens and businesses.

Work on the implementation of an EU directive should start immediately after agreement is reached in Brussels. By starting implementation work early, businesses will have more chance to influence the approach, ensuring greater certainty and early warning about its impact.

Early transposition of EU regulations will be avoided except where there are compelling reasons for early implementation. This will ensure that British businesses are not put at a disadvantage to their European competitors.

European directives will normally be directly copied into UK legislation, except where it would adversely affect UK interests eg by putting UK businesses at a competitive disadvantage.

A statutory duty will be placed on ministers to conduct a review of domestic legislation implementing a European directive every five years. This will allow businesses to influence any necessary improvements based on their own practical experience of applying the rules.

03/02/2011
ECJ could overturn football's business model if advisor's opinion followed
Subject: Intellectual property
Source: European Court of Justice
Cases C‑403/08 and C‑429/08
Football Association Premier League Ltd and Others v QC Leisure and Others
(Reference for a preliminary ruling from the High Court of Justice, Chancery Division, United Kingdom)
Karen Murphy v Media Protection Services Ltd
(Reference for a preliminary ruling from the High Court of Justice, Administrative Court, United Kingdom)
http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-403/08

One of the Advocate Generals of the European Court of Justice (ECJ) has delivered an opinion in the above case. The opinions of Advocates General are not binding on the ECJ but the judges tend to follow their opinion in most cases.

The role of the ECJ in this type of case is to give a ruling on European Union law in reply to questions referred by EU member state courts. These cases are referrals by the UK High Court who are dealing with sets of actions. The first set of actions are claims brought by the Football Association Premier League (FAPL)to stop satellite tv decoder cards supplying cards and publicans showing English games via legitimately bought Greek or Arab tv satellite television services. The second action is a case brought by a UK publican, Karen Murphy, against the collecting agent for Sky TV.

The opinion of the Advocate General is that EU law prevents member state football leagues from using licence agreements on a national basis to block the use of decoder cards which are imported in order to give access to less expensive foreign coverage of football games.

Commentators have said that the case could have a major impact on the funding of football business.

02/02/2011
Office of Fair Trading v Purely Creative Limited
Subject: Selling and marketing/ Consumer Protection from Unfair Trading Regulations 2008
Source: English High Court; [2011] EWHC 106 (Ch); Case No: HC09C04850

Purely Creative Limited and related companies (the defendants) were in the business of promoting prize competitions. The Office of Fair Trading (OFT) became concerned about particular promotions consisting of the sending to consumers, in the form of personalised letters and of inserts in newspapers and magazines, of invitations to claim prizes, awards or rewards which were alleged to be misleading in a number of specified respects.

The OFT and the defendants, after a process of consultation and negotiation, failed to agree upon satisfactory undertakings. The OFT applied for an order under section 215 of the Enterprise Act 2002 ("the Act") to prevent the defendants from continuing to distribute promotions to consumers which were alleged to involve unfair commercial practices prohibited by Regulation 3 of the Consumer Protection from Unfair Trading Regulations 2008 ("the Regulations").

In testing whether a commercial practice is misleading, the Regulations refer to the "average consumer". The Regulations state that the average consumer must be considered to be "reasonably informed, reasonably observant and circumspect". The judge rejected the defendants' argument that the average consumer must therefore be assumed to read the whole of the text of any relevant promotion.

In one of the prize promotions, the judge found that of 1,498,814 letters sent to consumers, no less than 99.92% of the targeted consumers were allocated electrical goods, which could only be claimed by tendering payment of £8.50, a requirement identified only in the small print and stated to include insurance and delivery.

The judge found that the promotion conveyed to a consumer who was allocated a Zurich watch (over 99% of the recipients of the promotional letter) a false impression that he had won a prize or other equivalent benefit contrary to Paragraph 31 of the Regulations.

The judge also found that one of the defendants went out of its way in one promotion to conceal the fact that, far from being a payment for insurance and delivery of the watch, the £8.50 P&P charge payable by the consumer was on a unit basis sufficient to fund slightly over 90% of the fourth defendant's total cost of acquiring, storing, handling, packing and delivering the watch to the consumer. This deception was achieved in two ways. The first was by attributing the £8.50 to delivery and insurance. Although in the small print below the letter this was described as a payment "which includes insurance and delivery", the watch voucher described the payment as "a cheque or postal order for £8.50 to cover P & P and delivery insurance". In fact, the fourth defendant did not insure and, on its own evidence, delivery cost was only £3.25 (post and packaging).

The defendant also misrepresented the geographical origin or place of manufacture of the watch, or at least of its assembly. The defendants admitted that the use of the Swiss shield emblem alongside the word Zurich created a misleading impression that the watch had been made or assembled in Switzerland, or at least by a Swiss firm.

The judge held that there had been a wholesale engagement in conduct altogether prohibited by paragraph 31 of the Regulations.

Legaleze comment: this is the first fully tried case arising from the Consumer Protection from Unfair Trading Regulations 2008. The judgment is lengthy and closely reasoned. There is no doubt that the Regulations have made a major change in UK marketing law. The impact of EU legislation and jurisprudence is striking. The judge remarked:

“The starting point under English common law in relation to pre-contractual negotiations is caveat emptor. That may be qualified both by statute and even by the common law in relation to particular types of transaction, such as the obligation to disclose latent defects when negotiating a sale of land, and the obligation of utmost good faith on an applicant for insurance. Again, these English law concepts must be put on one side, not least because in systems of civil law widely used in Europe there exist general obligations of good faith in contractual relationships which have no parallel in the common law.”

One crumb of comfort in the judgment for traders generally are the judge’s comments about regulator’s assurances that they can be trusted not to pursue technical breaches of regulations;

“[Counsel for the OFT] tried to meet that objection by submitting that the OFT could be trusted not to pursue infringements of that type as a matter of discretion. I regard that approach as objectionable in principle. A trader is entitled to know what is or is not prohibited conduct, rather than to be in technical breach for activity which plainly does not harm consumers, and then be dependent on the discretion of the enforcer not to pursue him”.

02/02/2011
Lancashire businessman in court after worker breaks back
Subject: Health and Safety
Source: Health and Safety Executive
http://www.hse.gov.uk/press/2011/coi-nw-78wilson.htm?ebul=hsegen&cr=10/07-feb-11

A Lancashire businessman has been sentenced after one of his employees broke his back when he fell off a ladder.

The Health and Safety Executive (HSE) prosecuted Michael Wilson following the incident at Roadferry Transport Yard on Carr Lane in Farington, Leyland, on 3 March 2010.

South Ribble Magistrates' Court in Leyland heard that the man, who has asked not to be named, had climbed up a ladder at the commercial vehicle garage to reach the release mechanism for a lorry cab.

The employee fell to the ground when the ladder slipped, causing him to break a vertebrae in his spine. He is still unable to return to work, nearly a year after the incident.

The HSE investigation found the ladder had missing feet at both ends, the bottom rung was damaged and it appeared to have been cut off at the top.

Michael Wilson, trading as M Wilson Commercials, admitted breaching Regulation 5(1) of the Provision and Use of Work Equipment Regulations 1998 by failing to make sure the ladder was well maintained. He was fined £4,000 and ordered to pay prosecution costs of £2,000 on 2 February 2011.

On average, 12 people a year die after falling from ladders in British workplaces, and more than 1,200 suffer major injuries. Information on working safely with ladders is available at:
www.hse.gov.uk/falls

31/01/2011
Consultants invited to sign up to new benchmark register for health and safety
Subject: Health and Safety
Source: Health and Safety Executive
http://www.hse.gov.uk/press/2011/hse-oshcr.htm?ebul=hsegen&cr=2/07-feb-11
Health and safety consultants are being invited to sign up to a new independent register from today (Monday 31 January) that is intended to become a new benchmark for standards in the profession.

The Occupational Safety and Health Consultants Register (OSHCR) is being set up in response to recommendations in the Government-commissioned report on the UK health and safety system − Common Sense Common Safety.

It aims to increase employers' confidence in accessing good quality, proportionate advice and also to address concerns that some employers - especially SMEs - can find it difficult to know how and where to get external health and safety advice.

OSHCR has been established by a number of professional bodies representing general safety and occupational health consultants across the UK, with support from the Health and Safety Executive (HSE).

The register, which is voluntary, is open to individuals who provide commercial advice on general health and safety management issues and who have achieved at least one of the following:-

Chartered status with IOSH (Institution of Occupational Safety and Health); CIEH (Chartered Institute of Environmental Health); or REHIS (Royal Environmental Health Institute of Scotland) with health and safety qualifications
Fellow status with IIRSM (International Institute of Risk and Safety Management) with degree level qualifications
Member or Fellow status with BOHS (British Occupational Hygiene Society) Faculty of Occupational Hygiene
Registered Member or Fellow status with IEHF (Institute of Ergonomics and Human Factors).
In addition, all consultants wishing to join the register will be asked to declare that they will:

Demonstrate adequate continuing professional development;
abide by their professional body's code of conduct;
provide sensible and proportionate advice; and
have professional indemnity insurance or equivalent to cover the nature of their duties.
The application process will include a check of an individual's membership status with the relevant professional body.

The application fee will be £60, but applications received by 30 April will be subject to a discounted fee of £30. The fee, which is non-refundable, covers the cost of processing the application and is payable annually on renewal of registration. Individuals who apply to join the register during the discounted period will be given a registration renewal date of 30 April 2012.

To apply to join the register visit:
www.oshcr.org
The register will be freely accessible and searchable for employers from early spring.

21/01/2011
A Cheshire council has been sentenced after a maintenance worker suffered a permanent loss of movement to his hands.
Subject: Health and Safety
Source: Health and Safety Executive
http://www.hse.gov.uk/press/2011/coi-nw-73cheshireeast.htm

Cheshire East Council was prosecuted by the Health and Safety Executive (HSE) after the 56-year-old employee from Crewe developed a severe form of hand arm vibration syndrome.

The worker, who has asked not to be named, joined Crewe and Nantwich Borough Council as a mechanic in 1984 and regularly used heavy-duty vibrating equipment, including pneumatic drills and hand-held grinders.

South Cheshire Magistrates Court in Crewe heard that the council, which became part of Cheshire East Council in April 2009, first identified the early stages of the condition in July 2005. The worker was recommended for annual assessments but, despite being reassessed in 2006, he was not seen again until 2009.

He now has difficulty picking up small objects, such as coins, and his hands become very painful in cold weather.

Cheshire East Council pleaded guilty to two breaches of the Control of Vibration at Work Regulations 2005 at South Cheshire Magistrates Court on 21 January 2011. The council, of Westfields in Sandbach, was fined £5,300 and ordered to pay £5,860 towards the cost of the prosecution.

Nearly two million people in the UK work in conditions where they are at risk of developing hand-arm vibration syndrome. Information on preventing it is available at www.hse.gov.uk/vibration/hav

21/01/2011
Golden Ocean Group Ltd v Salgaocar Mining Industries PVT Ltd and another
Subject: Selling and marketing/Contracts/writing/guarantees
Source: English High Court decision [2011] EWHC 56 (Comm), 2010 Folio 272,
Original case report provided by BAILII is acknowledged with thanks. Contains public sector information licensed under the Open Government Licence v1.0.:
http://www.nationalarchives.gov.uk/doc/open-government-licence
Note: Legaleze prepared and is solely responsible for the following summary

The High court has held (in an interlocutory decision) that an exchange of emails was potentially capable of satisfying the requirements of the Statute of Frauds 1677 that a guarantee must be in writing and signed by the guarantor or his agent.

11/01/2011
Consultation on the repeal of the Property Misdescriptions Act 1991
Subject: Regulated businesses/Estate Agents

The Department for Business, Innovation and Skills is seeking views on the possible repeal of the Property Misdescriptions Act 1991 (PMA). The PMA makes it an offence to make false or misleading statements in the course of an estate agency or property development business about property offered for sale. The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) provide similar protections for consumers. This duplication may be unnecessary; putting additional

burdens on business, without providing additional protection for consumers. The consultation considers whether the Government should repeal the PMA, now that the CPRs are in place.

Consultation period:: 11 January to 5 April 2011
Consultation document:
http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/11-505-consultation-repeal-property-misdescriptions-act

04/01/2011
Regulations banning the sale of different unwrapped bread sizes and small measures of wine are set to be scrapped
Subject: Selling and marketing/Weights and measures
Source: Department for Business, Innovation and Skills

Regulations banning the sale of different unwrapped bread sizes and small measures of wine are set to be scrapped, Science Minister David Willetts confirmed today.
Current laws restrict bakers to producing loaves of unpackaged bread in set sizes while licensed premises are limited to selling alcoholic drinks in certain measures.

These rules were aimed at protecting consumers but have not taken account of changes to trade practice or consumer demand in recent years. The Government plans to update the rules to introduce greater flexibility and to scrap those that are no longer needed.

Under current regulations unwrapped bread weighing more than 300g must be made up in quantities of 400g or multiples of it.

Wine cannot be sold in measures less than 125ml while beer must be sold in thirds, halves or multiples of half-pints. Fortified wine must be sold in the same quantities as normal wine.

Under the government's changes, premises will be able to sell wine in measures under 75ml, beers can be sold in 'schooners' which are two-thirds of a pint while fortified wine will be sold in smaller sizes of 50ml and 70ml.

Fixed sizes for unwrapped bread will be scrapped so bakers will be free to innovate.

A Statutory Instrument introducing these changes will be laid before Parliament during the coming session.

5/01/2011
BCC calls for reform to employment tribunal system
Subject: Employment/HR
Source: British Chambers of Commerce
http://www.britishchambers.org.uk/zones/policy/press-releases_1/bcc-calls-for-reform-to-employment-tribunal-system.html

Average cost for employer to defend themselves at tribunal is £8,500. Three-fifths of claims are settled due to high costs; average settlement is £5,400

The British Chambers of Commerce (BCC) today released figures highlighting the costs for business in the current employment tribunal system.

With the number of employment tribunals increasing - last year saw the highest ever number of claims – the average cost for an employer to defend themselves at tribunal is £8,500. However, the average settlement is £5,400, often making it cheaper for employers to settle, even if faced

with a spurious claim. In fact, overall, three-fifths (58 per cent) of cases are settled, two-fifths (39 per cent) through Acas and one-fifth (19 per cent) privately.

Rather than fearing losing the claim, the main reasons employers tried to settle were to keep costs down (51 per cent) and because it was convenient to do so (25 per cent). While there are provisions to allow businesses facing unmeritorious claims to reclaim costs, the number that do so are miniscule, and have decreased each year since 2004/05.