

Business Law Newsletter



www.contractsdirect.co.uk



Professional Contract Drafting for Business

Jan-Apr'22

Omnibus Edition

What's in this Jan-March '22 Omnibus?

Arts levelling up	3
Arts Council funding to be redistributed	3
Brexit	3
Brexit Benefits bulletin	3
Post Brexit trade volumes in decline	4
New zealand Free Trade Deal	4
Singapore Free Trade Deal.....	4
UK-Australia Free Trade deal	5
Step by step webinars and videos for trading with the EU	5
Goods Vehicle Movement Service Webinar	5
Supplier declarations webinar	5
Freedom from Brexit red tape in a new Bill.....	6
Covid-19	6
Restaurant owner wins its covid claim against its insurer	6
Living with Covid	6
New £1bn support package announced for omicron affected businesses	6
VIP lane for PPE procurement judgment	7
Can employers require employees to have a COVID vaccine?.....	7
Can employer's take action against employees who refuse vaccination?.....	7
Construction	7
Material and Skills Shortages.....	7
Increase in construction companies going bust	8
Consumers	8
Amazon no longer blocks UK Visa Credit cards	8
Contracts	8
Non-competition clauses.....	8
Oral contracts- what jurisdiction applies?.....	8
Time of the essence.....	8
What does it take for a course of dealing to become part of a contract?	9
Smart contracts are give a boost by senior judge	9
Premier League wins in COVID court case	9
Contract Tip#1 of the quarter - website T&Cs	10
Contract Tip#2 of the quarter - Maintaining confidentiality	10
Contract Tip#3 of the quarter- Force majeure	10
Builder makes an oral contract in personal capacity	11
So, what does it take to make a binding commercial contract?	11
Customs Regulations	11
Data Protection	11
The ICO launches a data protection consultation	11
Debt Evasion	12
Crackdown on directors who dissolve companies to evade debts	12

E-commerce	12
‘The Online Rip-Off Tip-Off’	12
Employment	12
Retaining confidential information after employment has ended.....	12
Employment	13
Trade Unions could challenge overnight pay rises.....	13
HMRC’s December edition.....	13
Environment	13
The Environment Act.....	13
HMRC	13
Latest Employer Bulletin	13
Coronavirus (COVID-19) updates and information	14
Tax updates and changes to guidance.....	14
Looking at an Online sales tax	14
Increase of late payment interest rate	14
VAT penalty regime deferred to January 2023	15
Media	15
Music streaming market enquiry.....	15
Film & TV Production Restart Scheme - Process Evaluation	15
Privacy and Defamation	15
SLAPPS	15
Public Procurement for SMEs	16
Government public procurement guide for SMEs published	16
Public procurement reform	16
Ukraine	17
Information on the ukraine crisis	17
The Russian Sanctions	17
Breaching the Russia trade sanctions	17
META’S (formerly Facebook) response to the invasion.....	18
Crypto aid donations	18
Cyber security	18
Publisher’s Notice:	19

Arts levelling up

ARTS COUNCIL FUNDING TO BE REDISTRIBUTED

The DCMS has announced an additional £75m in funding for the arts by 2025 and more than 100 locations to be prioritised for new arts funding. DCMS also expects investment by the Arts Council England across England outside London to rise to almost £250m by 2025.

The Arts Council England says: “As part of our *Delivery Plan for 2021-24*, we identified 54 places across England in which our investment and engagement is too low, and opportunity for us to effectively increase investment and engagement is high – and so we’re prioritising working with them from 2021 to 2024.

In every one of our Priority Places we will work with local stakeholders to set bespoke objectives, hold ourselves accountable for increasing staff time and investment across a range of funds, and track the impact of our investment.”

The priority areas to benefit from the initiative can be found online [here](#).

[Read more about the funding and its implications here](#)

Brexit

BREXIT BENEFITS BULLETIN

The cabinet office has published 'the benefits of Brexit: how the UK is taking advantage of leaving the EU'. The policy paper sets out what the Government sees as the achievements so far, following the UK's withdrawal from the EU two years ago, and its existing plans to reform regulation.

Some of the main business benefits highlighted in the paper include:

- UK regulators have the ability and the resources to make sovereign decisions about globally significant mergers.
- Simplifying the reporting burdens for small and medium companies.
- Establishing our own subsidy regime to support British businesses and innovation.
- Reforming and simplifying our public procurement rules so that the public sector can buy more local goods and services.
- Delivering eight Freeports in England and at least one Freeport in each of Scotland, Wales and Northern Ireland.
- Back in control of our own VAT rates.
- Setting out a new UK pro-competition regime for digital markets.
- Developing our distinctive, pro-innovation approach to artificial intelligence regulation.
- Reforming our data laws and setting a new direction for data regulation.
- Reforming EU financial services regulations.
- £180 million committed to modernise and streamline our import and export controls by creating the Single Trade Window.
- Our own tariff regime set via the UK Global Tariff.
- Taken back control of our waters.
- Restored the UK Supreme Court as the final arbiter of the law that applies in the UK.
- Ensuring our iconic British products all get the recognition they deserve, through our own domestic Geographical Indication (GI) regime.
- Enabling businesses to use a crown stamp symbol on pint glasses.

[Read the benefits paper in full here.](#)

[Back to Menu](#)

POST BREXIT TRADE VOLUMES IN DECLINE

The Public Accounts Committee (PAC) has published a report explaining that, since Brexit, UK trade volumes have been suppressed by the impact of coronavirus (COVID-19), the EU exit and wider global pressures, adding costs to business and causing concern.

The total amount of goods traded between the UK and the EU dropped 25% less in quarter one of 2021 compared to the same period in 2018, the last “normal” year before trade flows were impacted by the pandemic and Brexit preparations, according to ONS figures. The fall was “far greater” than drops in the UK’s trade with the rest of the world, the report found.

The report considers the impact of the new border arrangements and the future risks relating to the management of the border, summarising with eight recommendations. The report concludes with the Committee explaining that while the Government’s plans to create ‘the most effective border in the world’, ‘it is optimistic, given where things stand today’ and isn’t convinced that its plan is sufficient to deliver it.

- The new border arrangements have yet to be tested with normal passenger volumes and may be further challenged when the EU introduces requirements for biometric passport checks.
- The new controls in place over the movement of goods from the UK to the EU have created additional costs for businesses and affected international trade flows.
- More could be done by Government to ensure small and medium sized enterprises (SMEs) are prepared to face the additional costs and administration required by new border requirements.
- Government intends to introduce full import controls in phases from January 2022, but much work remains to be done.
- There is more to be done to ensure that traders and hauliers across the 27 EU countries are prepared for UK import controls.
- Government’s arrangements for goods arriving from the EU is untested and could be exploited, increasing regulatory and fiscal risks.
- Government’s ambition for the UK to have the “world’s most effective border by 2025” relies on cross-government digital programmes, in which it does not have a good track record.
- Businesses have faced challenges operating under the Northern Ireland Protocol which need to be resolved.

[Read the PAC’s report here](#)

[Back to Menu](#)

NEW ZEALAND FREE TRADE DEAL

The Department for International Trade (DIT) has reported that the UK has signed a free trade agreement with New Zealand that intends to remove trade barriers on a variety of UK goods and services and provide new opportunities for British businesses. The deal was signed by International Trade Secretary, Anne-Marie Trevelyan, and New Zealand Minister for Trade and Export Growth, Damien O’Connor. The agreement is expected to boost the UK’s economy by £800m.

[Read about the UK-N-Z trade deal here](#)

SINGAPORE FREE TRADE DEAL

The UK and Singapore have signed a Digital Economy Agreement, which the Government has hailed as

“..the most innovative trade agreement ever signed, and the first by a European nation. It will strengthen our trading relationship with Singapore – worth £16 billion in 2020 – by ending outdated rules that affect both goods and services exporters, making it easier for UK business to target new opportunities in both Singapore and the wider region.”

The DEA covers a wide range of activities including digital markets, data flows, consumer and business safeguards, digital trading systems, financial services, tech partnerships, information sharing and submarines cable landing systems.

Specifically, on SMEs the UK Government announced that:

“The UK and Singapore will tackle barriers to the participation of small and medium-sized enterprises (SMEs) in the digital economy, helping companies – no matter how small they are – take advantage of the vast opportunities offered by digital trade and the digital economy.

This will include activities such as:

- *promoting co-operation between SMEs on digital trade and SME jobs and growth*
- *encouraging SME participation in platforms linking them with commercial contacts*
- *exchanging information and best practice across a range of areas to help SMEs adapt to digital trade.”*

[Read more about the trade deal with Singapore here](#)

UK-AUSTRALIA FREE TRADE DEAL

In mid-December, the UK and Australia have signed a [Free Trade Agreement \(FTA\)](#). This FTA is the first post-Brexit trade deal that was negotiated by the UK independently from the EU. The government reports that 100% of UK exports will no longer be subject to tariffs in Australia, and it is estimated that trade will increase by £10.4bn. Among other things, visa restrictions will be removed, allowing young UK citizens the opportunity to travel to Australia for work for three years without restrictions, commitments for UK financial service providers have been made, in particular relating to non-life insurance providers and particular co-operation on cosmetics, medical devices, and human and veterinary medicines has been agreed, with the intention of reducing trade barriers for these industries. The government stated that this FTA will boost the UK’s bid to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

[Read more details on the UK-Australia FTA](#)

[Back to Menu](#)

STEP BY STEP WEBINARS AND VIDEOS FOR TRADING WITH THE EU

The Cabinet Office has released a series of webinars and videos for organisations that trade with the EU following the UK’s exit from the EU Single Market and Customs Union. These step by step webinars provide an overview of the new rules and border requirements that will be required from January and then July for moving goods from the EU to Great Britain.

The following are examples of the webinars:

GOODS VEHICLE MOVEMENT SERVICE WEBINAR

This webinar is a step by step demonstration to help hauliers and drivers understand how to use the Goods Vehicle Movement Service (GVMS). [Access webinar here](#)

SUPPLIER DECLARATIONS WEBINAR

This webinar is aimed at supporting businesses/traders on supplier declarations and was run in partnership with colleagues from BEIS and Defra. [Access webinar here](#)

[Access to the step by step webinars and videos via this link](#)

[Back to Menu](#)

FREEDOM FROM BREXIT RED TAPE IN A NEW BILL

The Government has announced that a “Brexit Freedoms” Bill is to be brought forward to amend or remove outdated ‘retained EU law’ - legacy EU law kept on the statute book after Brexit as a bridging measure – and will accompany a major cross-government drive to reform, repeal and replace outdated EU law. The reforms are aimed at cutting £1 billion of red tape for UK businesses and ease regulatory burdens.

[Read about the new Bill](#)

[Back to Menu](#)

Covid-19

RESTAURANT OWNER WINS ITS COVID CLAIM AGAINST ITS INSURER

The owner of The Wolseley and other London restaurants has won its application to force its insurer to pay out £4.5m (US\$6m) under a business interruption policy to cover coronavirus (COVID-19) losses.

The Judge ruled that AXA Insurance plc has to indemnify six restaurants owned by Corbin & King Ltd up to £250,000 each in connection with all three national lockdowns imposed by government in March 2020, September 2020 and November 2020 as it battled the coronavirus crisis. The insurer has won the right to appeal the decision of the High Court.

[Read more about the case here](#)

[Back to Menu](#)

LIVING WITH COVID

On 21st February, the Government published its [strategy for living with Covid-19](#) in England, and its plan to remove the remaining legal restrictions while protecting people most vulnerable and maintaining resilience, click for below for details:

- [Living with Covid-19 and removing the last restrictions](#)
- [Protecting the vulnerable](#)
- [Maintaining resilience](#)

[Back to Menu](#)

NEW £1BN SUPPORT PACKAGE ANNOUNCED FOR OMICRON AFFECTED BUSINESSES

It is estimated that around 200,000 businesses will be eligible for the one-off hospitality and leisure grants which will be made available by local authorities in the next few weeks.

- Businesses in the hospitality and leisure sectors in England will be eligible for one-off grants of up to £6,000 per premises, plus more than £100 million discretionary funding will be made available for local authorities to support other businesses
- Government will also cover the cost of Statutory Sick Pay for Covid-related absences for small and medium-sized employers across the UK
- £30 million further funding will be made available through the Culture Recovery Fund, enabling more cultural organisations in England to apply for support during the winter

To qualify for the grants businesses must be solvent and offer in-person services, where the main service and activity takes place in a fixed rate-paying premises, in the hospitality, leisure and accommodation sectors. The amount of grant will be based on the rateable value of the premises.

- Businesses with a rateable value of £0-15,000 will get a grant of £2,667.
- Those with a rateable value of £15,000-51,000 will get a grant of £4,000.
- Where the rateable value is over £51,000 the business will get a grant of £6,000.

[Read more about the support package](#)

[Back to Menu](#)

VIP LANE FOR PPE PROCUREMENT JUDGMENT

A judge ruled on 12th January 2022 that the British government's fast-track route for companies supplying personal protective equipment during the coronavirus (COVID-19) pandemic was unlawful because it hindered competition for contracts worth millions of pounds, even though the court upheld the three deals facing the legal challenge.

It was decided that the Government's policy of adopting a high priority lane for potential suppliers who were known to it was a breach of its obligation of equal treatment under the Public Contracts Regulations 2015 (PCR 2015) and therefore was unlawful.

[Read more about the case here](#)

[Back to Menu](#)

CAN EMPLOYERS REQUIRE EMPLOYEES TO HAVE A COVID VACCINE?

As far as reasonably practicable, employers have a duty to ensure the health and safety at work of their employees. Asking employees to agree to a vaccination against coronavirus (COVID-19) is likely to be a reasonable step to take to reduce the risk to employees' health. However, vaccination requires an individual's informed and voluntary consent and so an employer cannot compel an employee to be vaccinated if they do not wish to be so.

Employers can strongly encourage employees to have the coronavirus vaccine and it is appropriate for them to do so in order to protect themselves and everyone else at the workplace.

As of 11th November 2021, nurses, front line care staff and other individuals working in CQC-registered adult care homes were required to be vaccinated against COVID-19, unless they have evidence that they are exempt from vaccination. This requirement also extends to tradespeople, hairdressers, beauticians and CQC inspectors visiting the care home.

As from 1st April 2022, all staff in patient-facing or service user-facing roles in a healthcare or social care setting should be fully vaccinated against COVID-19.

[Back to Menu](#)

CAN EMPLOYER'S TAKE ACTION AGAINST EMPLOYEES WHO REFUSE VACCINATION?

This is problematic and is likely only possible if an employer believes the individual's reason for refusing the vaccine is unreasonable and the coronavirus vaccination is necessary in order for someone to do their job.

[Read more about COVID employment issues](#)

[Back to Menu](#)

Construction

MATERIAL AND SKILLS SHORTAGES

The Federation of Master Builders (FMB) found 82% of builders were forced to delay jobs due to a lack of materials in 2021, and an additional 60% were forced to pause work due to a lack of skilled tradespeople. In total, it found 89% of builders faced delays due to either materials or skills shortages.

[Back to Menu](#)

INCREASE IN CONSTRUCTION COMPANIES GOING BUST

The latest government insolvency data shows that between August and October 2021 797 construction firms went bust, up by more than a fifth compared to the previous three months, according to reports. The monthly average number of construction firms filing for insolvency reached 291 in the three months to 30th November 2021, according to the latest UK government data. Materials price increases and a shrinking skilled worker pool have been blamed for the trend of insolvencies in the sector. This case is a reminder of the importance of making clear which legal entities will be the parties to a contract, whether within a contract document itself, or in communications leading up to conclusion of the contract.

[Read more about this issue](#)

[Back to Menu](#)

Consumers

AMAZON NO LONGER BLOCKS UK VISA CREDIT CARDS

<https://twitter.com/CityAM/status/1483402240606052358>

[Back to Menu](#)

Contracts

NON-COMPETITION CLAUSES

Non-compete covenants must, if they are enforceable at all, be no wider than reasonably necessary for the protection of those legitimate business interests which can be demonstrated as required by the party trying to enforce the covenant.

[Read more about the case](#)

ORAL CONTRACTS- WHAT JURISDICTION APPLIES?

The Commercial Court has found in a recent case that the claimant, a Swiss petroleum supplier, had a good arguable case that a jurisdiction clause was incorporated by a course of dealing between the parties, so that the court had jurisdiction. The specific evidential threshold that the claimant had to show was that there was a plausible evidential basis for the application of the relevant jurisdictional gateway. The claimant was able to do this on the facts. The court noted that the course of dealing in question does not have to be wholly consistent or extensive.

[Read more about the case courtesy of Ince, who comment:](#) *"This decision highlights the importance of reducing agreements to writing in the commodities sector, and indeed generally, to avoid disputes of this nature."*

[Back to Menu](#)

TIME OF THE ESSENCE

The High Court has held: that time was of the essence for the performance of a contract for the supply of five million facemasks in weekly tranches of 500,000 made in March 2020 at the beginning of the COVID-19 pandemic; that the defendant who delivered the first tranche but not the remainder was in breach of contract; that although the claimant had chased for updates from the defendant for a period of some weeks it had not affirmed the contract since it was entitled to a reasonable time to consider its position.

The Court's decision that time was of the essence was made taking into account the circumstances in which the contract had been agreed and therefore the defendant was in breach when failing to make delivery by the agreed dates. However, in the light of the reassurances given by the defendant that delivery was 'on

the way' the Court decided that the claimant had a reasonable time to accept the repudiatory breach and was entitled to do so on 3 June 2021. Accordingly, the claim for repayment of the £720,000 succeeded and the counterclaim for specific performance was dismissed.

[Read more about this case](#)

[Back to Menu](#)

WHAT DOES IT TAKE FOR A COURSE OF DEALING TO BECOME PART OF A CONTRACT?

In a recent case, the Commercial Court has decided that a course of dealing over a five-year period meant that a supplier's standard terms and conditions were incorporated by reference into the contract with its buyer.

It's will be question of fact and degree, including the number of previous contracts, how recent they are, the similarity of subject matter and the way in which they were concluded, as to whether or not particular terms are effectively incorporated into a contract as a result of prior dealings between the parties.

In short, it has to be obvious from the parties' dealings with each other that they intended the relevant terms and conditions to apply to their contractual relationship.

The case is: *Provimi France SAS and other companies v Stour Bay Company Ltd*

[Back to Menu](#)

SMART CONTRACTS ARE GIVE A BOOST BY SENIOR JUDGE

The Master of the Rolls, Sir Geoffrey Voss (head of England & Wales' Civil Justice), made an important speech on 24th February 2022 at the launch of the [Smarter Contracts Report](#), the aim of which is to explain how smarter contracts and blockchain technology are being used.

Amongst Sir Geoffrey's notable comments about the emerging technology were:

"The blockchain is now at a stage in its development equivalent to where the internet was in or around 1995. The internet was unstoppable in 1995 and blockchain technology is unstoppable now."

"Many people do not realise that English law governs trading in €600 trillion of OTC derivatives annually, in €11.6 trillion in metals trading, in £250 billion in M&A deals, and in £80 billion in insurance contracts every year – just to take a few examples. My hope is that English law will prove to be the law of choice for borderless blockchain technology as its take up grows exponentially in the months and years to come."

"There are three main developments that will kick start decentralised finance, smarter contracting and the mainstream use of distributed ledgers. First, the launch of wholesale or retail central bank digital currencies. Secondly, the use of digital transferrable documentation such as electronic bills of lading, and thirdly the widespread use of digital/smart commercial documentation in place of analogue applications such as PDF and Word."

"Blockchain technology is not something that might happen in years to come; it is happening now."

[Read the entire speech here](#)

[Back to Menu](#)

PREMIER LEAGUE WINS IN COVID COURT CASE

The Commercial Court allowed the Premier League's summary judgment application against PPLive Sports International Ltd for several instalments due to the claimant under two contracts that had conferred

to the defendant broadcasting company rights to broadcast the Premier League's football matches. PPLive has been ordered to pay at least £213m (£156m) to the Premier League.

PPLive argued, among other things, that the disruption caused by the Covid-19 pandemic to the Premier League's seasons, and the conditions under which those seasons were resumed, had been a fundamental change to the format of the competition, such that the defendant could rely upon a contractual term in its defence. The court decided that the changes to the matches resulting from the pandemic had not been changes to the format of the competition, drawing upon the contractual language and commercial sense in its decision.

[Read more about the case here](#)

[Back to Menu](#)

CONTRACT TIP#1 OF THE QUARTER - WEBSITE T&Cs

There is no law that prescribes that terms and conditions must be made available on a website. But they are recommended as they are a way of imposing contractual rights and obligations or addressing legal requirements to provide information.

The documents that are made available, and their contents, will vary depending on the business situation, including whether:

- the website is merely 'informational' or has more complex features and functionality such as the ability for users to interact, generate content or sell their own goods or services
- the website owner supplies goods or services itself
- any goods or services are being provided in exchange for payment or funded by advertising
- personal data is being processed and whether cookies are placed on the user's computer or device
- the intended audience is businesses or consumers
- there is an international element

Ultimately, the documentation and information to be provided needs to be assessed case by case.

CONTRACT TIP#2 OF THE QUARTER - MAINTAINING CONFIDENTIALITY

Protection of a company's confidential information is a key objective. Well-drafted express confidentiality provisions setting out their employees' obligations, both during and after employment is therefore important. These will include:

- Clearly written definitions of what is (and is not) confidential information, including naming specific types where required;
- A requirement for employees to return company property on termination, including any hard and soft copy documents, laptops, memory sticks or other cloud-based storage and devices;
- An obligation to delete permanently (at the employer's direction) any corporate documents stored that are stored on personal devices or email; and
- An obligation that the confidential information remains confidential for a set period of time (which may be in perpetuity depending on its nature and importance) after employment ends.

Consultants and other individuals who have access to confidential information ought to be required to sign similar provisions when they enter service agreements with a company.

[Back to Menu](#)

CONTRACT TIP#3 OF THE QUARTER- FORCE MAJEURE

In contrast with countries that have a civil code (e.g. France) that specifically recognise force majeure, English law has no such concept. Therefore businesses wishing to avoid or limit their liability because of an inability to perform caused by an event such as the COVID-19 pandemic, the outbreak of a war such in

Ukraine or even the imposition of financial sanctions against Russian entities and individuals, then they will need to check that their relevant agreements contain a force majeure clause. Some clauses do not specify particular events that will amount to force majeure, others will set the events out in detail and businesses may be more comfortable with that approach:

“Neither party shall have any liability for any failure or delay in performance of this Agreement to the extent the same results from any event beyond the reasonable control of that party. The party affected by such event shall promptly notify the other party in writing when such event causes a delay or failure in performance and when it ceases to do so. If such event continues for a continuous period of more than [one] month, either party may terminate this Agreement by written notice to the other party.”

[Back to Menu](#)

BUILDER MAKES AN ORAL CONTRACT IN PERSONAL CAPACITY

The Technology and Construction Court has found that a builder entered an oral contract with a homeowner in his personal capacity, and not on behalf of any corporate entity. The contract had been concluded at a meeting between the builder and the homeowner, during which the builder had failed to make clear that he would not be personally bound by its terms. Where the identity of the contracting parties is disputed, the court will disregard the parties’ subjective beliefs and consider what a reasonable person would conclude. The result of this test may be that an entirely different company (or person) is liable under the contract, from what was assumed or intended. So, where a contract (either written or oral) is concluded by an individual, that individual will be regarded as the contracting party, unless it is made clear that they are acting on behalf of a company or other entity.

[Read more about this case](#)

[Back to Menu](#)

SO, WHAT DOES IT TAKE TO MAKE A BINDING COMMERCIAL CONTRACT?

If you're running a business, big or small, you will inevitably get involved in commercial contracts. Not everyone is aware of the law of contract, however familiar they may be with the sort of terms and conditions (T&Cs) to expect to see in their own business field.

[Read this blog guide to contract formation](#)

[Back to Menu](#)

Customs Regulations

HMRC has updated its import, export and customs guidance to reflect the post-Brexit regime. HMRC’s policy on customs controls for exporters from 1 January 2022 in Great Britain.

[Read the HMRC’s policy paper](#)

[Back to Menu](#)

Data Protection

THE ICO LAUNCHES A DATA PROTECTION CONSULTATION

The Information Commissioner’s Office (ICO) has launched a consultation on three draft documents—the Regulatory Action Policy (RAP), the statutory guidance on its regulatory action, and the statutory guidance on its powers under the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) SI 2003/2426, in order to gather views from stakeholders and the public on how the ICO regulates,

monitors and enforces data protection laws. The RAP document covers 11 pieces of legislation including the United Kingdom's General Data Protection Regulation, Retained Regulation (EU) 2016/679 (UK GDPR), the Freedom of Information Act 2000 and the Data Protection Act 2018 (DPA 2018), and sets out how the ICO promotes best practice ensuring compliance.

[Read the ICO's consultation Guide here](#)

[Back to Menu](#)

Debt Evasion

CRACKDOWN ON DIRECTORS WHO DISSOLVE COMPANIES TO EVADE DEBTS

Rogue directors who dissolve their companies and avoid paying liabilities to staff, creditors and the taxpayer can now be disqualified from being a director. [The new legislation](#) extends the Insolvency Service's powers, on behalf of the Business Secretary, to investigate and disqualify company directors who abuse the company dissolution process, including helping to tackle directors dissolving companies to avoid repaying Government back loans to help businesses during the COVID pandemic.

If misconduct is found, directors can face sanctions including being disqualified as a company director for up to 15 years or prosecution in serious cases. In addition, the Secretary of State for BEIS will be able to apply to the court for an order requiring a disqualified director of a dissolved company to pay compensation to those of its creditors who have lost out due to the director's fraudulent behaviour.

[Read more about company director disqualification](#)

[Back to Menu](#)

E-commerce

'THE ONLINE RIP-OFF TIP-OFF'

With almost one-third of all retail purchases now taking place online, after the pandemic fuelled a surge in internet shopping, the Competition and Markets Authority (CMA) has become increasingly concerned about the impact of these "sneaky" sales tactics on consumers.

On 9th February 2022, the CMA launched 'The Online Rip-Off Tip-Off' campaign aimed at helping customers to spot and avoid misleading online practices. A recent survey of over 2,000 UK adults showed that seven out of ten respondents experienced such practices, 85% believed that businesses using them were being dishonest and 83% of those surveyed were less likely to shop with the businesses in the future. The research also found that 85% of those who experienced misleading online practices were most concerned about hidden charges, 83% about subscription traps, 80% about fake reviews and 50% about pressure selling. [Read the CMA's announcement](#)

[Take a look at the 'The Online Rip-Off Tip-Off' campaign's website](#)

Employment

RETAINING CONFIDENTIAL INFORMATION AFTER EMPLOYMENT HAS ENDED

In a recent High Court case, a former employee (the Global General Counsel of Nissan) was ordered to return the confidential documents he had kept after his employment had ended.

The Court held that whether the documents in question had been retained to help the employee get legal advice did not matter and was not justification for their retention.

[Read more about the case](#) courtesy of law firm Lewis Silkin, who acted for Nissan, including their practical points for employers for protecting a company's confidential information:

[Back to Menu](#)

Employment

TRADE UNIONS COULD CHALLENGE OVERNIGHT PAY RISES

It has been reported that trade unions are threatening businesses with litigation on behalf of their members who have received overnight pay rises outside of any collective agreement that the business has with the recognised union, following the Supreme Court's judgment in late October 2021 in the *Kostal v Dunkley* case.

[Read the report](#)

[Back to Menu](#)

HMRC'S DECEMBER EDITION

This is a must read for employers to bring them up to date with the latest Guidance from HMRC on the following topics: PAYE, UK Transition, Covid-19, Tax updates and changes to guidance, general information and customer support:

[Read the Guidance here](#)

[Back to Menu](#)

Environment

THE ENVIRONMENT ACT

The Environment Bill received its Royal Assent on 9th November 2021, coming into law as the Environment Act 2021. It enshrines into law targets on nature, waste and recycling, water, and clean air, delivering, what the Secretary of State for Environment, Food and Rural Affairs, George Eustice, termed 'the most ambitious environmental programme of any country on earth'. The Act, which includes provisions on waste & recycling, clean air, nature and water will, according to the Government's press release, deliver:

- *Long-term targets to improve air quality, biodiversity, water, and waste reduction and resource efficiency*
- *A target on ambient PM2.5 concentrations, the most harmful pollutant to human health*
- *A target to halt the decline of nature by 2030*
- *Environmental Improvement Plans, including interim targets*
- *A cycle of environmental monitoring and reporting*
- *Environmental Principles embedded in domestic policy making*
- *Office for Environmental Protection to uphold environmental law*".

[Read more about the Environment Act here](#)

[Back to Menu](#)

HMRC

LATEST EMPLOYER BULLETIN

HMRC has published its Employer Bulletin for February '22, including the information on the following:

PAYE: basic PAYE tools / changes to the Helpline / NI increase / new national minimum wage

Coronavirus (COVID-19) updates and information

- [Claiming back Statutory Sick Pay due to Coronavirus](#)
- [Update to Job Retention Scheme claims information on GOV.UK](#)

Tax updates and changes to guidance

- [Umbrella Companies: call for evidence due to close on 22 February 2022](#)
- [VAT reverse charge for construction and building services](#)
- [Changes to the Construction Industry Scheme](#)
- [Making Tax Digital for VAT is coming — are you ready?](#)
- [Parental Bereavement Leave and Pay in Northern Ireland — new employment right coming into force — 6 April 2022](#)
- [Impact of the change to National Minimum Wage on Statutory Maternity Pay](#)

[Read the full bulletin content here](#)

[Back to Menu](#)

LOOKING AT AN ONLINE SALES TAX

HMRC has launched a consultation to gather evidence and inform government policy on the proposal for an online sales tax (OST) as a means to rebalance the taxation of the retail sector between online and in-store retail. The consultation will run from 25 February to 20 May 2022.

Some of the questions that are being looked at include:

- Which goods and services would be in-scope of the tax?
- How does one define an online sale, and should this extend to ‘remote’ sales made by phone or post?
- What would be the distinction between a reservation and a completed transaction for the purposes of an OST?
- Would any exemptions be appropriate, such as for click and collect purchases or for certain goods and services?
- At what point in the transaction would an OST be levied – consumer, or vendor?
- What would be the role of intermediaries such as marketplaces?
- What would be the territorial scope of an OST?
- How would cross-border sales be treated?
- Would a threshold or allowance be appropriate to account for smaller firms or those with a lower proportion of sales made online?
- How would an OST be reported to tax authorities and what would the payment schedule be? And what data and systems would be required?

[Read about the consultation here](#)

[Back to Menu](#)

INCREASE OF LATE PAYMENT INTEREST RATE

Following the Bank of England’s decision to increase the base rate, HMRC have announced that their late payment interest rate will increase by 0.25% to 2.85% from 4th January 2022. For companies in the Corporation Tax quarterly instalment payment regime, the change takes effect from 27th December 2022.

[Back to Menu](#)

VAT PENALTY REGIME DEFERRED TO JANUARY 2023

HMRC have announced that changes to the VAT penalty and interest rules due to come into force from April 2022 are to be delayed to 1 January 2023.

[Read the Government's statement here](#)

[Back to Menu](#)

Media

MUSIC STREAMING MARKET ENQUIRY

Streaming has changed the way we listen to music. In the UK, more than 80% of recorded music is now listened to via a streaming service rather than using traditional physical media like CDs and vinyl.

The Competition and Markets Authority (CMA) has launched a study that will examine the music streaming market from a creator to consumer perspective, paying close attention to the roles played by record labels and music streaming services. In its study, the CMA will consider whether innovation is being stifled and if any firms hold excessive power in relation to how well the market caters for audiences. Additionally, the CMA will assess whether the lack of competition between music companies could affect musicians, singers and songwriters.

[Read about the CMA's study](#)

[Back to Menu](#)

FILM & TV PRODUCTION RESTART SCHEME - PROCESS EVALUATION

The Department for Digital, Culture, Media & Sport (DCMS) has published its process evaluation report on the Film & TV Production Restart Scheme. The evaluation focuses on the delivery of the Scheme, the pros and cons of its implementation, and sets out recommendations that can be utilised for similar interventions in the future. The Scheme, which officially launched on 16th October 2020, aims to allow UK film and TV productions to restart after disruptions caused by coronavirus (COVID-19) by providing direct compensation to production companies to meet costs incurred via delay or abandonment of productions. A separate evaluation will be commissioned to evaluate the Scheme's impact and value for money.

The report's recommendations included:

- allowing sector representatives and industry groups to play a central role in the design, delivery, and promotion of similar schemes
- develop a succinct overview document for future schemes with complex rules and registration requirements to ensure potential applicants are well informed
- consider the use of online systems to allow for a more streamlined process
- the government should encourage the return of commercially viable insurance and provide information on the outcome of discussions
- consider the stabilising nature of emergency responses in relation to any changes or updates being made during delivery

[Read about the evaluation](#)

[Back to Menu](#)

Privacy and Defamation

SLAPPS

Strategic Lawsuits Against Public Participation or SLAPPS for short, is a term that describes a legal proceeding aimed at dissuading public criticism through an improper use of the legal

system. SLAPPs tend to target academic research, journalism and whistle-blowing activity concerned with matters of societal importance.

The purpose of a SLAPP is to try to prevent the publication of information by threatening or bringing proceedings. The most common causes of action used are defamation and privacy actions, although the government also believes that privacy claims or bad faith subject access requests under data protection legislation can also qualify as SLAPP tactics.

The Ministry of Justice and Deputy Prime Minister, Dominic Raab, launched an urgent consultation on 17 March 2022 calling for evidence in response to the challenges presented by the increasing use of SLAPPs.

“SLAPPs can be characterised as an abuse of the legal process, where the primary objective is to harass, intimidate and financially and psychologically exhaust one’s opponent via improper means.”- Dominic Raab’s foreword

[Read about the MOJ’s consultation on SLAPPs](#)

[Back to Menu](#)

Public Procurement for SMEs

GOVERNMENT PUBLIC PROCUREMENT GUIDE FOR SMES PUBLISHED

The government has published a public procurement guide for SME to sell their goods and services more effectively to government. The guide highlights how to find contracts, join the supply chain and frameworks that allow access to differently sized contracts offered by government. The guide also covers requirements such as prompt payments, the public procurement review service, and the small business commission, whose role is to support SMEs in their payment disputes with larger businesses.

“Contracts Finder is the government’s single online portal on which contracts valued above £10,000 in central government and above £25,000 in the rest of the non-devolved public sector are listed. It’s free to use to find opportunities: www.gov.uk/contracts-finder. You don’t have to register, but if you do, you can set up an account to have new opportunities that suit your business emailed to you on a regular basis.”

[Read the new Selling to Government Guide here](#)

[Back to Menu](#)

PUBLIC PROCUREMENT REFORM

At around £300 billion, public procurement accounts for around a third of all public expenditure every year.

Under the current procurement rules, parties can be excluded from bidding for public contracts on the basis of their past conduct. For example, a bidder must be excluded if it has been convicted of certain crimes, such as corruption offences. On 6th December 2021, the UK government published its response to the consultation on its Green Paper ‘Transforming Public Procurement’, including how it intends to modify the current exclusion regime in the wake of Brexit.

The new framework promises to clarify important areas of difficulty in relation to the exclusion rules, including a new ground of mandatory exclusion for failure to disclose beneficial ownership

and exclusions for: foreign offences; misconduct by related parties; and a public interest exemption.

[Read about the proposed public procurement reforms here](#)

[Back to Menu](#)

Ukraine

INFORMATION ON THE UKRAINE CRISIS

The CBI's website carries a useful page signposting information on the crisis.

[CBI website](#)

[Back to Menu](#)

THE RUSSIAN SANCTIONS

Since Russia's invasion of the independent sovereign state of Ukraine the UK Government has started to introduce a series of trade and other sanctions.

These include the freezing of assets of certain Russian banks, including VTB its largest bank and preventing Russian companies from borrowing on the UK markets.

The UK is moving to ban the export a range of high-end critical equipment and components in sectors including electronics, telecommunications and technological development.

Certain Russian individuals are also being sanctioned and prohibited from travelling to the UK.

The sanctions either already introduced or in process include:

- asset freezes against all Russian financial institutions;
- measures to prevent Russian companies from issuing transferable securities and money market instruments in the UK. This will form a sweeping addition to existing financial restrictions. This is in addition to the prohibition of the Russian state raising sovereign debt in the UK already announced;
- a power to prevent designated banks from accessing Sterling and clearing payments through the UK. This will match the power the US already has. Banks subject to this measure will be unable to process any payments through the UK or have access to UK financial markets;
- new restrictions to cut off wealthy Russians' access to UK banks including £50,000 limits on bank accounts;
- a set of measures to strengthen significantly our trade restrictions against Russia. This will include a prohibition against the export of a range of high-end and critical technical equipment and components in sectors including electronics, telecommunications, and aerospace;
- the previously announced extension of financial and trade measures applying to Crimea to the DNR and LNR regions.

[Read more about the sanctions](#) courtesy of law firm Baker McKenzie

[Back to Menu](#)

BREACHING THE RUSSIA TRADE SANCTIONS

The Gov.uk website makes clear that any breach of the trade sanctions prohibitions in the Regulations is triable either way and carries a maximum sentence on indictment of 10 years' imprisonment or a fine (or both). Any breach of the trade licensing provisions is also triable either way and carries a maximum sentence on indictment of 2 years' imprisonment or a fine (or both).

[Read more about the trade and other sanctions](#)

[Back to Menu](#)

META'S (FORMERLY FACEBOOK) RESPONSE TO THE INVASION

Meta has announced its policies on state-controlled media outlets, stating that it has restricted Russia Today and Sputnik across the EU, following Regulation (EU) 2022/350 that has banned the transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed.

Facebook itself is being blocked in Russia and has announced as a result:

“..due to the difficulties of operating in Russia at this time, ads targeting people in Russia will be paused, and advertisers within Russia will no longer be able to create or run ads anywhere in the world, including within Russia “

[Read Meta's announcements on the Ukraine crisis here](#)

[Back to Menu](#)

CRYPTO AID DONATIONS

Elliptic, a blockchain analysis provider, has reported that, as at the date this Newsletter is published, the Ukrainian government and non-governmental organisations (NGOs) raised more than US\$56.8m via over 113,000 crypto asset donations since the start of the Russian invasion on 24 February 2022.

As crypto assets allow for quick, cross-border donations which bypass financial institutions, they have become an important crowdfunding alternative. The majority of donations have been in Bitcoin and Ether, but non-fungible tokens have also been donated.

[Read about Elliptic's report on aid to Ukraine](#)

[Back to Menu](#)

CYBER SECURITY

The National Cyber Security Centre (NCSC) has published guidance regarding operational and cyber resilience following Russia's invasion of Ukraine.

[Read the NCSC's guidance about taking action when cyber security threat is heightened](#)

The NCSC has also issued guidance for [large firms](#), [small and medium sized firms](#) and [microbusinesses and sole traders](#), and a [Cyber Essentials scheme](#).

[Back to Menu](#)

Publisher's Notice:

Publisher: Atkins-Shield Ltd: Company No. 11638521

Registered Office: 71-75, Shelton Street, Covent Garden, London, WC2H 9JQ

Note: This publication does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. The information contained in this document is intended to be for informational purposes and general interest only.

E&OE

Atkins-Shield Ltd © 2022