

# Business Law Newsletter



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Professional Contract Drafting for Business

**February Edition**

## What's in this Month?

<b>Brexit</b> .....	<b>2</b>
Step by step webinars and videos for trading with the EU .....	2
Goods Vehicle Movement Service Webinar .....	2
Supplier declarations webinar .....	2
Freedom from Brexit red tape in a new Bill .....	2
<b>Covid-19</b> .....	<b>2</b>
New £1bn support package announced for omicron affected businesses .....	2
VIP lane for PPE procurement judgment .....	3
Can employers require employees to have a COVID vaccine? .....	3
Can employer's take action against employees who refuse vaccination? .....	4
<b>Construction</b> .....	<b>4</b>
Material and Skills Shortages .....	4
Increase in construction companies going bust .....	4
<b>Consumers</b> .....	<b>4</b>
Amazon no longer blocks UK Visa Credit cards .....	4
<b>Contracts</b> .....	<b>4</b>
Premier League wins in COVID court case .....	4
Contract Tip of the Month- website T&Cs .....	5
Builder makes an oral contract in personal capacity .....	5
So, what does it take to make a binding commercial contract? .....	6
<b>Customs Regulations</b> .....	<b>6</b>
<b>Data Protection</b> .....	<b>6</b>
The ICO launches a data protection consultation .....	6
<b>Debt Evasion</b> .....	<b>6</b>
Crackdown on directors who dissolve companies to evade debts.....	6
<b>Employment</b> .....	<b>7</b>
Trade Unions could challenge overnight pay rises.....	7
HMRC's December edition .....	7
<b>Environment</b> .....	<b>7</b>
The Environment Act .....	7
<b>Free Trade Agreement</b> .....	<b>8</b>
UK-Australia FTA .....	8
<b>HMRC</b> .....	<b>8</b>
Increase of late payment interest rate.....	8
VAT penalty regime deferred to January 2023 .....	8
<b>Public Procurement for SMEs</b> .....	<b>8</b>
Government public procurement guide for SMEs published .....	8

## **Brexit**

### [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](#)

#### [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**

### [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 12<sup>th</sup> 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 11<sup>th</sup> 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

#### 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 OF THE MONTH- 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.

[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](#)

## 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 9<sup>th</sup> 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](#)



## Free Trade Agreement

### UK-AUSTRALIA FTA

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](#)

## HMRC

### 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.

### 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](#)

## 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](http://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](#)

**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.

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