

New Company Control Disclosure Deadline Looms



In April, new disclosure requirements came into force that affect any UK company which has non-directors who exert significant control over it, termed 'persons with significant control' (PSCs). The control referred to can be by shareholding (e.g. where a PSC has 25 per cent of the direct

or indirect voting rights of a company) or other relationship that means he or she is a PSC.

The information required to be disclosed includes the name, address, date of birth and nationality of each PSC. Such information is already required of company directors.

It should be noted that a PSC is obliged to provide the company with the required details. Failure to do so is a criminal offence.

From 30 June 2016, companies will be required to provide this information to Companies House on an annual basis and it will be available for public scrutiny. Companies will need to set up and maintain a register of PSCs as part of their statutory records.

For advice on complying with your legal responsibilities as a company, contact us.

Unreasonable Building Contract Term Unenforceable

Contracts have to be reasonable to be enforceable, and that is one good reason why professional drafting is essential. In a case which clearly illustrates this point, the High Court has ruled that a clause which required notification of defects in building works within an unrealistically brief period of time was not worth the paper it was written on.

A contractor had subcontracted ground preparation and piling works in respect of a warehouse development to another company. The latter argued that the subcontract was subject to a standard term which required that it had to be notified of any alleged defect in its work within 28 days of its appearance and, in any event, within one calendar year of the completion of the project.

Nine years after the warehouse was built, its occupiers complained of settlement in the slab beneath the production area. A company which had an interest in the property duly launched

proceedings against both the contractor and the subcontractor involved in its construction. In those circumstances, a preliminary issue arose as to whether the contract term was valid. If it were, the subcontractor would have a good defence to the claim.

In finding that the term fell foul of the Unfair Contract Terms Act 1977, the Court noted that defects in ground works are often disguised by the structures above them and can frequently take years, even decades, to appear in the form of cracking to a building's fabric. In those circumstances, the time limits purportedly set in respect of notification of defects did not satisfy the reasonableness test.

No one can rely on a contractual term which is unreasonable. We can advise you on how to negotiate construction contracts which are both enforceable and offer the maximum possible protection of your interests.

Online Pharmacy Fined for Selling Customer Information

In a move that sends out a clear message to companies that the customer data they hold is not theirs to do with as they wish, the Information Commissioner's Office (ICO) recently fined a Leeds-based online pharmacy company £130,000 under the Data Protection Act 1998 for a serious contravention of the first data protection principle, which is that data must be fairly and lawfully processed.

Pharmacy2U Limited offered the names and addresses of its customers for sale through an online marketing list company. Amongst those who purchased the details were a health supplements company that has been cautioned for misleading advertising and an Australian lottery company subject to investigation by Trading Standards.

The ICO investigation found that Pharmacy2U had not informed its customers that it intended to sell their details, nor had the customers given their consent for their personal data to be sold on.

The incident was initially uncovered by a Daily Mail investigation, which found that more than 100,000 customer details had been advertised for sale. The database was listed as including people suffering from ailments such as asthma, Parkinson's disease, high blood pressure, diabetes, heart disease and erectile dysfunction, and as being able to be broken down into groups, such as 'men over 70 years old'. The records were advertised for sale for £130 per 1,000 records.

The ensuing ICO investigation found that the lottery company that bought customer records appeared to have deliberately targeted

elderly and vulnerable individuals, and it is thought that some of the customers may have suffered financially as a result of their details having been passed on.

The Information Commissioner was satisfied that Pharmacy2U ought to have known that its customers had a reasonable expectation of confidentiality when using an online pharmacy, especially as its own website described the service as 'discreet and confidential', and that there was a risk that people might object to the sale of their data. The Information Commissioner also found that the company knew or ought to have known that the contravention would be of a kind likely to cause substantial damage or substantial distress and had failed to take reasonable steps to prevent it.

The civil monetary penalty is the first of its type.



New Lease, New Compliance Burden



After 1 February 2016, landlords entering into residential leases, having new lodgers or allowing anyone to occupy a property they own for residential purposes are required to undertake checks to ensure the tenant and any other adults who will be living there have the right to reside in the UK.

The rules have applied in Birmingham, Walsall, Sandwell, Dudley and Wolverhampton since 1 December 2014.

British citizens, citizens of the European Economic Area and Swiss nationals have an automatic right to rent, as do those granted indefinite right to remain in the UK.

The four steps necessary to establish the right to rent and prove compliance are:

1. Identifying the adults who will live in the property as their only or main home;
2. Obtaining original versions of one or more of the 'acceptable documents' for adult occupiers;
3. Checking the documents in the presence of the holder of the documents; and
4. Making copies of the documents and retaining them with a record of the date on which the check was made. This copy must be retained for at least one year after the date of the check.

The relevant regulations are contained in Section 22 of the Immigration Act 2014, and the Government has published guidance which shows a list of acceptable documents which can be used as evidence of the right to rent.

There are also regulations which apply in respect of tenancies which commenced prior to 1 February 2016, and numerous exemptions, such as student halls of residence and residence rights in hostels and refuges operated by social landlords.

Emails Are Variations in Writing



It is normal for contracts to contain clauses which specify that variations in the contract must be made in writing. The nature of business is

stipulating that any variations had to be agreed in writing and signed by each party.

After the contract had been signed, email correspondence took place between directors of each of the companies which varied the period of the contract and the fees payable under it.

In due course, the validity of those variations came to be disputed. The court ruled that despite the absence of paper documents with formal signatures, the exchanges constituted valid variations to the contract as the directors had authority to vary the terms for their respective businesses.

such that contract variations are relatively commonplace and this can cause difficulty if the paperwork fails to keep up with the variations agreed orally.

In a recent case, an insurance company agreed with a claims handler for the latter to deal with motor insurance claims received, and the signed contract had a clause

If you are considering entering into a contract and wish to ensure that exchanges of emails such as those above will not constitute valid variations, you must make this clear in the contract. We can advise you on how to make sure your contracts are worded to provide you with maximum protection.

Small Businessman Beats BMW in Internet Domain Names Dispute

In the area of intellectual property (IP) law, the small firm has every chance of defeating the megacorporation, especially as regards ownership of Internet domain names.

In one case, which underlined the potential costs of failing to register domain names appropriate to your business or products, a small businessman came out on top in a dispute with car manufacturer BMW in respect of his registration of eight domain names.

BMW had invested heavily in a range of 'eDrive' hybrid vehicles that were sold in the UK and across Europe. The company complained to Internet watchdog Nominet after the businessman registered the domain names, all of which contained the word 'eDrive'.

BMW argued that the businessman was seeking to take a 'free ride' on its worldwide reputation and that any use he made of the domain names was likely to confuse the public and unfairly disrupt its business. In support of its complaint, the company pointed out that the businessman had offered to sell it the domain names for what it argued was an excessive sum of up to £2 million.

For his part, however, the businessman argued that the letter 'e' is a commonly used prefix, giving 'e-commerce', 'e-book', 'e-business' and 'e-mail' as examples. The domain names had not been used in any way that could cause public confusion and had been registered in good faith. He could see nothing wrong with offering to sell the domain names to BMW and had expected them to make a counter offer.

Ruling in his favour, a Nominet expert found that there was nothing inherently wrong with buying domain names with a



view to selling them on. Although the businessman had been less than transparent about what he intended to do with the domain names in the future, the expert was not convinced that he knew of BMW's rights in the 'eDrive' mark at the time of registration or that he had set out to take unfair advantage of the company's goodwill. The expert rejected claims that the registrations were abusive and refused to direct the transfer of the domain names to BMW.

This case illustrates the importance of securing appropriate domain names before an expensive branding exercise is launched. We can advise you on all aspects of IP protection and ensure that the value of a brand investment you intend to make is not compromised by lack of ownership of all the appropriate domains and other IP, such as trade marks.

The courts seem to be raising the bar continuously when it comes to assessing penalties for environmental offences.

When Thames Water pleaded guilty to causing discharges of effluent into the Grand Union Canal over a period of several months and a further similar offence, it probably was not expecting that in addition to a victim surcharge of a mere £120, it would be ordered to pay more than £1 million in fines and costs.

The fine was certainly increased because Thames Water is a very large organisation, but it does seem high when viewed in the context of the severity of the offences compared with the level of the fines in earlier cases.

It may well be that the judiciary is inclined to take a more heavy-handed approach to those who violate environmental law in future.



It should be remembered that the court has the right, where appropriate, to fine a company as much as 100 per cent of its annual pre-tax profits in these sorts of cases.

Tax Tidbits

The recent Budget has attracted much comment and certainly the changes to Capital Gains Tax have long-term implications for many businesses. Here are some important changes pending which were not in the Chancellor's speech.

R&D Tax Relief Update

HM Revenue and Customs (HMRC) have updated their guidance on claiming research and development (R&D) relief to include information about 'advance assurance', which has been available since November 2015 to companies that claim R&D tax relief. Broadly, once a company's application for advance assurance has been accepted, HMRC will allow the claim without further enquiries for the first three accounting periods of claiming R&D tax relief. See <http://bit.ly/1RFpZnQ>.

VAT Refunds

New guidance on obtaining refunds of VAT paid in the EU has been published. See <http://bit.ly/1TqEWNE>.

Employee Expenses Regulations Published

The Income Tax (Approved Expenses) Regulations 2015 set out the method of exempting paid or reimbursed expenses as part of the removal of the 'dispensation' system for expenses incurred by employees. The Regulations came into force on 21 December 2015 and apply in relation to payments made in the tax year 2016-17. See <http://bit.ly/1RKiQc5>.

If you are concerned about or are in dispute with HMRC over tax issues, we can assist.



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