

DIRECTORS' BRIEFING



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New business law in 1999

● This briefing provides an overview of the developments in business law in the year 1999, including tax, that are most likely to affect small and medium-sized businesses.

Developments in the specific area of employment law are covered in **New employment law in 1999**, LA 6.

These briefings provide pointers to changes that might affect your business, but do not deal with issues in detail. If you need to know more, talk to your professional adviser, or follow the cross reference to the appropriate Directors' Briefing.

This briefing covers:

- ◆ New laws.
- ◆ New regulations.
- ◆ Key court cases that highlight small business issues.

1 Contracts

Rights to sue were extended under the Contracts (Rights of Third Parties) Act 1999.

- A** A **third party** might now in some circumstances be able to enforce the terms of a contract, even though he or she was not involved in making the agreement. Two conditions must be fulfilled:
- ◆ The third party must benefit under the contract, and it must be plain that the contracting parties intended him or her to be able to enforce the term, or at least had no intention of preventing it.
 - ◆ The third party must be explicitly identified in the contract, either by name or as a member of a class of persons (eg sub-contractors to one of the parties).
- B** The third party will be entitled to no more

rights than are granted in the contract.

- ◆ These rights cannot usually be withdrawn or varied without the third party's consent. They would have to be excluded from the contract at the outset by careful drafting.
- C** Among other exceptions, a third party cannot enforce contractual rights against **employees** or agency workers.

Effective on contracts made on or after 11 May 2000.

2 Business finance

- A** Enhanced **first year allowances** were continued for a second year (see **Tax and NI**, TA 6).

FURTHER HELP

There are other Directors' Briefing titles that can help you. These briefings are referred to in the text by name and by the code given to each briefing. For example, the law briefings have the codes LA 1, LA 2, etc.

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the services available to you.

- ◆ Spending on equipment attracted first year allowances of 40 per cent, instead of the usual 25 per cent.

Effective 2 July 1999.

B There were measures to encourage **serial investment** in small companies (see **Tax and NI**, TA 6).

- ◆ Capital gains tax relief became available cumulatively when gains in one Enterprise Investment Scheme (EIS) company are invested in another.

Effective 5 April 1999 (for disposal of shares in the first EIS company).

C Tax on some items of **equipment used by employees** was eased (see **Tax and NI**, TA 6).

- ◆ This included mobile phones and computers lent for employees' use.

Effective 6 April 1999.

D There were measures to encourage **greener commuting**. (See **New employment law in 1999**, LA 6.)

3 Other measures

A The Immigration and Asylum Act 1999 imposed penalties on people (or businesses) bringing in **illegal immigrants**.

- ◆ The people responsible can be fined £2,000 for each illegal entrant they carry. Owners, hirers and drivers are all classified as 'responsible'.

- ◆ Vehicles can be impounded until fines (and expenses) are paid or other security is arranged.

- ◆ It is immaterial whether the person involved knew or suspected that an illegal entrant was concealed. But ignorance could be a defence, providing adequate steps had been taken to deter such entrants.

It would be necessary to prove you had an effective system for preventing illegal entrants from using your vehicles.

- ◆ Proof that you were acting under duress would also be a defence.

Effective 3 April 2000.

B The **Pollution Prevention and Control** Act brought together various elements of pollution control legislation and updated them to comply with recent EC legislation.

- ◆ It introduced the requirement that (in most circumstances) 'best available techniques' have to be used.

Effective 31 October 1999.

C The **Food Standards** Act created the Food Standards Agency and detailed its functions and powers.

- ◆ These include the power of entry, for example, to obtain information on enforcement of food standards.

Effective 3 April 2000.

D The **Employment Relations** Act introduced wide changes in employment law.

See **New employment law in 1999**, LA 6.

E The **Disability Rights Commission** Act provided the framework for the creation of the Disability Rights Commission and prescribed its functions.

See **Discrimination**, HR 24.

F The **Rating (Valuation)** Act restored the premise that non-domestic properties are rated on the assumption that they are occupied and in a reasonable state of repair.

- ◆ The only circumstances in which they can be rated on the assumption that such repairs have not been made are where the repairs would be uneconomical.

Effective (retrospectively) to the rating lists which came into force on 1 April 1990 and 1 April 1995.

G The **Company and Business Names** Act protected 'Chamber of Commerce' (and its Welsh equivalent) from improper use.

4 New regulations

A **Piracy**.

- ◆ Anyone seeking help from Customs & Excise in stopping the import of goods which infringe their intellectual property rights (for example, pirated videos or CDs) must be prepared to indemnify the Commissioners against all 'actions, proceedings, claims and demands whatsoever' in relation to those goods.
- ◆ They must also be prepared to pay a fee (£200 plus VAT for one month, rising to £1,200 plus VAT for a year), where the Commissioners have agreed to exercise their vigilance.
- ◆ And they must be prepared to inspect a sample of detained goods and say whether or not they infringe their intellectual property rights within ten days (or longer by agreement).

Effective 1 July 1999.

MORE INFORMATION

- ➔ See **Suing**, LA 1.
- ➔ See **Being sued**, LA 2.
- ➔ See **Health and safety**, LA 3.
- ➔ See **Health and safety risk assessment**, LA 4.
- ➔ See **Intellectual property**, LA 5.
- ➔ See **Your firm and the Data Protection Act**, LA 14.
- ➔ See **Tax and NI**, TA 6.

B Patents.

- ◆ Patent Office fees for preliminary search and examination in respect of any international application for a patent designating the UK have been reduced (because a search will already have been conducted by the International Search Authority).
- ◆ But a fee for such a patent entering the national phase is to be maintained, because otherwise the process would be automatic (whether the patent holder wanted it or not).

Effective 4 May 1999.

C Corporate requirements.

- ◆ The requirement on companies to list directors' other directorships has been scrapped.
Effective 28 September 1999.
- ◆ Companies filing data at Companies House can now use forms taken from the website (www.companieshouse.gov.uk).
Effective 18 October 1999.

D Finance.

- ◆ The new Individual Insolvency Register has come into operation. It lists bankruptcies lifted up to five years previously, and Individual Voluntary Agreements (IVAs) completed up to two years previously.
Effective 19 March 1999.

E Whistleblowers.

- ◆ All the provisions of the Public Interest Disclosure Act 1998 (the whistleblowers' protection Act) have come into force.

Effective 2 July 1999.

F Consumer rights.

- ◆ Prices must be clearly displayed on items offered for sale, so that consumers do not have to ask.
Effective 12 November 1999.
- ◆ Junk faxes to individuals and partnerships have been banned. Companies can sign up with the Direct Marketing Association to stop receiving them.
Effective 1 May 1999.

G Health and safety (see Health and safety, LA 3).

- ◆ A new version of the Management of Health and Safety at Work Regulations has been published. There are some changes. For example, employers must arrange the necessary contacts with the emergency

services on first aid, medical care and rescue. They must designate workers to undertake fire-fighting procedures.

The regulations also make it clear that blaming your employees is no defence.
Effective 29 December 1999.

- ◆ New COSHH (Control of Substances Hazardous to Health) Regulations have come into force.
Effective 25 March 1999.
- ◆ New CHIP (Chemical Hazard Information and Packaging) Regulations have come into force.
Effective 1 March 1999.
- ◆ Businesses that transport quantities of dangerous goods by road or rail must appoint qualified safety advisers.
Effective 31 December 1999.
- ◆ All types of work with asbestos or asbestos insulating boards are now controlled under the asbestos regulations. (This particularly affects building workers, such as carpenters and electricians.)
Effective 1 February 1999.

5 Case law

These cases have been selected because they are potentially important or interesting to small and medium-sized companies.

Decisions in the House of Lords (HL) take precedence over those of the Court of Appeal (CA), which take precedence over those in divisions of the High Court (eg Chancery or Queen's Bench Division (QBD)). Decisions in the European Court of Justice (ECJ) take precedence over those in British courts.

A Directors.

- ◆ Anyone with real influence in the affairs of a company, other than its professional advisers, could be identified as a shadow director for the purposes of the Directors' Disqualification Act. If properly appointed directors surrender their discretion and follow directions from the alleged shadow director, that is enough.
Secretary of State for Trade and Industry v Deverell and Another (CA), 21 December 1999.
- ◆ A controlling director can also be an employee, depending on circumstances. In deciding whether a director is also an employee (and so entitled to redundancy pay), a controlling shareholding is not the only factor. The court may also consider whether there was a genuine employment

LETTER OF THE LAW

The full text of all Acts of Parliament is available on the HMSO website at www.legislation.hmso.gov.uk, complete with explanatory notes and a search engine to help locate information quickly.

"It is important to ensure that whoever is responsible for health and safety in the workplace (for example, the nominated 'competent person') is updated promptly when health and safety regulations change — and that any new requirements are put into effect without delay."

*Jacqueline Jaynes,
Opal Services*

**DIRECTORS'
BRIEFING**

BRIEFING LA 7

contract, whether an employee/employer relationship existed and whether the director was answerable to anyone else.

Secretary of State for Trade and Industry v Bottrill (CA), 12 February 1999.

B Business failures.

- ◆ When a company is being wound up, its officers are required to co-operate actively with the liquidator in disclosing property he or she might not know about. They should not keep silent if the liquidator fails to ask enough questions.

R v McCredie; R v French (CA, Criminal Division), 30 July 1999.

- ◆ An administrator appointed under the Insolvency Act can dispose of assets without leave of the court, ahead of approval of his proposals by the creditors. In re T & D Industries plc and Another (Chancery), 8 November 1999.

C Corporate relations.

- ◆ Where two businesses have been conducting discussions (in this case, about a patent) on a 'without prejudice' basis, one may not then sue the other on the basis of these discussions. Each side is entitled to expect to be able to speak freely and the fact they agreed to the meeting being arranged shows that this is their intention.

Unilever v Proctor & Gamble Company (CA), 28 September 1999.

D Damages.

- ◆ If a member of a partnership is injured as a result of someone else's negligence, and a friend or relative volunteers to help manage the business while the partner is off sick, a claim for compensating the helper cannot be made as part of the damages, unless he or she is paid under the terms of an agreement.

Hardwick v Hudson and Another (CA), 18 May 1999.

E Branding.

- ◆ Words understood in a generic sense (eg 'Bach Flower Remedies', referring to herbal remedies prepared according to the theories of Dr Edward Bach) are not capable of distinguishing goods made by one company from those made by another. They cannot therefore be registered as trade marks.

Bach Flower Remedies Ltd v Healing Herbs Ltd (CA), 21 October 1999.

- ◆ A geographical name cannot usually

be registered as a trade mark, where it represents a specific place already associated with a category of goods.

However, if a geographical name comes, through use, to be associated with a particular product, it could be registered.

Windsurfing Chiemsee Produktions und Vertriebs v Boots und Segelzubehor Walter Huber and Another (ECJ), 4 May 1999.

F Patents.

- ◆ To be valid in a member state, European patents may have to be translated into the official language of that state. Member states may require such a translation as part of their national law, and this is not contrary to European law.

BASF Ag v President des Deutschen Patentamts (Case C-44/98) (ECJ), 21 September 1999.

G Insurance.

- ◆ Where an insurance broker fails to arrange proper insurance cover (including all the usual and customary clauses) for a client, for whatever reason, he breaks the contractual and tortious duties he owes to his client. (In this case the client was a mortgagee of a property damaged by fire, on which the insurers refused to pay up.)

FNCB Ltd v Barnet Devanney & Co Ltd (CA), 1 July 1999.

H Landlord and tenant.

- ◆ If a tenant gets in a third party to manage a property and the third party makes improvements, the tenant will nevertheless be held to have carried out the improvements (for the purposes of rent reviews), providing he can establish some involvement in identifying, supervising or financing the works.

Durley v Cadogan (Chancery), 19 October 1999.

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◆ Business law is complex and changes rapidly. This briefing reflects our understanding of the basic legal position as known at the last update. Obtain legal advice on your own specific circumstances and check whether any of the relevant rules have changed.

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**DIRECTORS'
BRIEFING**

BRIEFING LA 7