



For Business

Cleaning up your act!

Environmental systems can help cut costs and are good for your business's reputation.

Employment law changes

Be aware of important changes taking place this year.

Insolvency – for business

Protect your business cashflow by ensuring debtors pay your invoices promptly.

Case study Life skills centre

Successful negotiations ensure the smooth sale of a business.

Cleaning up your act!

Officers of companies could, in certain circumstances, find themselves responsible for breaches of environmental obligations by the company.

Legislation allows for officers of a company convicted under criminal law (many environmental statutes carry criminal liability) to be held personally liable where the offence is proved to have been committed with the consent or connivance of the director, or is attributable to the director's neglect. The good news for directors is that there is no general duty to protect the environment, independent of other obligations – for example under an environmental permit. It may also be possible to argue in mitigation that, for example, the director did not have the personal competence to know that the business was operating outside the conditions of its environmental permit – the company employs people with the relevant experience to ensure compliance. However, some enforcement

authorities are pressing for the offence to be seen as an absolute one, but for the degree of the director's knowledge to go to mitigation rather than the actual commission of the offence.

Connivance will occur where the director's agreement to what is going on is tacit, not actively encouraging it – letting it happen and saying nothing about it.

Most company constitutions will allow the directors to delegate their powers and it would be prudent to ensure that that is done to a 'technically competent person'.

A director must act in the way he considers, in good faith, would be most likely to promote the success of the

company for the benefit of its members as a whole, and having regard to the impact of the company's operations on the community and the environment (amongst other matters) – S.172 Companies Act 2006. So environmental considerations can be included within the scope of the overall directorial burden and if the director breaches that duty, the company can hold them to account. It may be prudent to have environmental management systems in place, undertaking environmental audits, proper training and awareness or reforming the corporate governance. At the very least, check your 'Director's insurance policy'!

Many will already be aware of the increasing need to include environmental matters in corporate reporting – and those requirements are likely to increase, no matter what the outcome of Brexit may be.

You do not have to be a 'tree-hugger' or believe that climate change is unstoppable to want to 'clean up' your

Round up of employment law changes

There are a number of important employment law changes taking place this year of which businesses should be aware. I've set out some changes that are happening imminently below.

All public sector organisations with over 250 or more employees as at 31 March 2018 and private sector organisations as at 5 April 2018 have until 30 March 2019 and 4 April 2019 respectively to comply with the Gender Pay Gap Regulations and publish the required report.

Increases to statutory payments:

On 1 April 2019

The national minimum and living wage rates increase as follows:

25 and over from £7.83 to £8.21

21 to 24 year olds from £7.38 to £7.70

18 to 20 year olds from £5.90 to £6.15

Under 18 from £4.20 to £4.35

Apprentice rate (under 19 year olds or in the first year of apprenticeship) from £3.70 to £3.90

The daily accommodation offset increase from £7.00 to £7.55

Insolvency – for business

A recent report by the Insolvency Service has shown that corporate insolvencies have risen to their highest level since 2014, with a staggering 16,090 companies entering insolvency during 2018.

Even the largest of household names such as Patisserie Valerie, Blue Inc. and HMV have struggled in the current climate. Although recent governmental figures have shown the weekly amount spent by consumers has hit its highest level since 2005, much of this expenditure is being swallowed by increased living and transport costs. In turn, this is having a major impact on consumer-facing businesses.

One way to make sure your company does not follow suit is to ensure that debtors pay your invoices promptly. Cash flow problems can inevitably stem from those consumers who are slow in paying your business once an invoice has been raised. At Birkett Long, we have a dedicated debt collection team who can assist in recovering unpaid debts in a timely and cost-efficient way.

If you wish to know more about our debt collection services or require some advice in relation to an insolvency matter, please do not hesitate to contact me.

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company. Investor pressure, reputational pressure, NGO pressure, peer pressure and regulatory pressure all make this a sensible thing for any business to consider. Not only might it help you and the company avoid criminal or civil sanction, but good environmental systems can help cut costs in the medium/long term and help improve your bottom line.

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On 6 April 2019

Statutory sick pay will increase from £92.05 to £94.25 per week

The limit on a week's pay (used to calculate, for example, statutory redundancy pay) increases from £508 to £525

The minimum auto-enrolment pension contributions increase for employers from 2% to 3% and employees from 3% to 5%

On 7 April 2019

Statutory maternity pay, paternity pay, shared parental pay and adoption pay increases from £145.18 to £148.68 per week (or 90% of the employee's normal weekly earnings if this is lower)

Currently only employees are entitled to an itemised payslip. New legislation in force from 6 April 2019 will require all employers to provide all workers with an itemised payslip. In addition, employers must include the number of hours on payslips for workers and employees who are paid by the hour. These changes only apply to salary and wages for periods commencing on or after 6 April 2019.

Paid time off for parental bereavement leave is expected to be introduced in April 2020 along with the introduction of a requirement to give new employees minimum contractual information (often called a section 1 statement) no later than the first day of their employment. The information that must be given is also being extended.

Finally, new legislation is expected requiring some private sector employers to account for tax and national insurance through PAYE for people engaged through personal service companies (sometimes called IR35 arrangements). We will be running events on this subject in autumn of this year, look out for details on our website if this topic affects you.



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Case study: Life skills centre

Business sale

Tim Field led this matter and the clients were also provided with property advice by Katie Lockwood, a solicitor within the Commercial Real Estate team at Birkett Long.

We were instructed to deal with the due diligence enquiries raised by the seller, so we set up a secure data room. Some hurdles, as explained further below, needed to be overcome.

The company hired a church in which they could carry out the business of the company. The hire agreement between the company and the church was coming to an end and the church was refusing to allow the company to rehire. This could have meant the sale falling through, but both Tim and Katie were able to work closely with the clients and successfully negotiated with the other side. Because of these negotiations, the sale did not fall through and there were no wasted costs for the clients.

The above was subject to the preparation of accounts which were being organised by the company's accountant. We worked closely with the accountant to confirm the terms of the Share Purchase Agreement were correct and that the clients were not in breach of any of the warranties. Working with the accountant ensured that the sale proceeded as smoothly as possible. The company had a significant amount of retained profits which were to be paid to the clients as part of the purchase price and required the inclusion of a completion accounts mechanism to be negotiated and drafted within the share purchase agreement.

The company also adopted donkeys on behalf of the Donkey Sanctuary. As part of the sale, the buyer was to inherit the donkeys. This included a process in which passports for the donkeys needed to be obtained and passed to the buyer on completion, this added a layer of complexity to the matter.

Finally the seller was CQC (Care Quality Commission) registered in respect of respite services which the company provided, an awareness of CQC requirements was also necessary to ensure the transaction completed.

The whole process only took approximately 6 months to complete.

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Our client wanted to sell their company, which assisted young adults with learning disabilities. The matter included selling the entire share capital of the company, together with a property and a parcel of land. The consideration for the transaction was £1,200,000.

The real estate and commercial departments worked closely together to provide joined up timely commercial advice to the client. Knowledge of the CQC requirements relating to the share sale of a business also ensured that the clients did not fall into any regulatory traps.

Tim Field

...thank you to you, Katie and your team for all your efforts on our behalf with regard to the sale of our business and associated properties.

What our client said

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