

Addendum ^{Business}

Issue One

Winter 2011/12

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Welcome to Business Addendum

By **Derek McCulloch**,
Head of Commercial,
Gillespie Macandrew

Welcome to Business Addendum, the first issue of our legal and business briefing for commercial clients. Uppermost in my thoughts prior to producing this publication was how little time many of us have to absorb, reflect and act upon the plethora of legal and regulatory developments which have come into force recently. I wanted to ensure that our lawyers focused on the nub of each of the main issues and to provide you with initial guidance and points of view on the courses of action which are open to you, without the legalese. I'd be interested to hear your opinions on whether you think we have achieved this.

I do hope you enjoy our first edition, and do remember to sign up to receive our monthly email briefing, Commercial Law Update to ensure that you are keeping up to date on recent business and legal developments. ■

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Legaleye

Red tape: increasing or reducing? The jury remains out. Plus: the importance of having a social media policy for your workplace.



By **Chris Smith**,
Partner,
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Businesses could be forgiven for wondering whether the UK Government's Red Tape Challenge is an attempt to create more regulation for business rather than less. Whereas there's no doubting the sincerity of the politicians' aims, the natural tendency of Government to legislate has left businesses – and their lawyers – continuing to grapple with a steady stream of legal changes.

Of most potential serious concern for business was the coming into force earlier in the year of the Bribery Act, which creates criminal penalties for companies and their directors. Businesses had a new policy document to prepare to add to their list of company procedures and policies: an anti-bribery policy.

Similarly, there was recently a second prosecution under the new Corporate Homicide Act, emphasising the need for companies – and their directors – to take seriously their health and safety obligations. It's not just about having

the right policies in place, but about ensuring good practice is constantly enforced.

A major change for many businesses was the coming into force of the Agency Workers Regulations on 1st October 2011 (*see page 8*). The Regulations brought in new protections for agency workers. For example, from the start of their assignment, agency workers will be entitled to access any collective facilities (eg child care facilities) that other workers in the business have access to. The Regulations are, in some respects, complicated, and businesses are still getting to grips with them.

But sometimes Government does actually deliver changes which help business. Both the Scottish and UK Governments are keen to encourage exporting businesses, and earlier in the year new initiatives were launched aimed specifically at helping small and medium-sized businesses (*see page 6*). These included an export finance guarantee scheme aimed at helping exporters gain access to working capital finance, and an export enterprise finance guarantee scheme designed to help businesses qualify for export finance facilities.

Gillespie Macandrew is proud to support the Linlithgow Rose Football Club



Rights for temps



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In these difficult times, many UK businesses are looking to overseas markets to sustain trade, so these initiatives will be welcome for our exporting clients.

Social media continues to be a growing area of interest for employers, with cases earlier in the year holding dismissals to be fair where employees had insulted customers or abused other staff online. But a more recent case went the other way: inappropriate comments on social media don't necessarily justify dismissal unless there can be shown to be real damage, or at least the potential for damage. Again, the message for business is to have a clear policy on the point, and enforce it.

The Red Tape Challenge is ongoing, so let's hope that the vast majority of businesses, which deal fairly with customers and employees, can look forward to a period of relatively few new regulations to contend with. If the Legal Roundup in the next edition of Business Addendum consists of a brief note reporting that there have been no new regulations, I will be as delighted as my clients. But I'm not putting money on it... ■

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Surviving Christmas

More family disputes come to lawyers in January than any other month in the year.



By **John Stirling,**
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We all have so many expectations of Christmas. Therein lies the root of the problem.

A child's expectation is to receive. As maturity arrives, one desires first to give and see joy in the eyes of the recipient and then that one's family should be together in harmony. This ideal is progressively more difficult to achieve. Of course it doesn't help that inhibitions already weakened by blood and affinity are further frayed by tiredness and drink.

This year I hope I can count to ten or more before I speak. Heaven forbid that anything serious happens but if it does, I think I would want to have the problems discussed within the ambit of mediation, where a compromise can be agreed and a solution found. I always stress to my clients that it's better to have something that you can live with, however unsatisfactory, by agreement than something that one can't live with imposed from above.

On the subject of impositions, successive

Governments since 1984 have been Scrooge-like and not increased the amounts which can be gifted free of Inheritance Tax once. Gifts that can be made at Christmas free of IHT are:

- Small gifts of up to £250 per person per annum.
- Gifts exceeding £250 but totalling less than £3000 in any year. If any part of this annual exemption is unused in one year it can be carried forward to the next year. If it is not then used it is lost. The maximum that can be gifted free of IHT in any two year period is £6000.
- Normal expenditure out of income. Annual gifts of excess income can be made completely free of IHT but take specialist advice first.
- Gifts to qualifying charities of any amount.
- Gifts to spouses and civil partners.

There is nothing to prevent you making gifts which exceed the exemptions, provided you survive seven years after the gift. If you do the gift is tax free. If you do not, then the gift is included when calculating any IHT payable.

Wishing you a prosperous 2012. ■
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There are signs of improvement, but those seeking credit must be realistic ... and be prepared to jump through a few more hoops.

Borrowing in challenging times



By Kenneth Irons,
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Since 2007 the banking and finance market has been experiencing unprecedented stresses and strains – more severe than the Great Depression. The press continue to cover stories of turmoil in the global financial markets and a squeeze on the availability of credit. Sadly there is no way of avoiding the grim realities – the continued volatility affects lenders' attitudes to risk and as a consequence their approach to lending has undergone cataclysmic change since the meltdown of Lehmans, RBS, Bank of Scotland etc. Borrowers have found that rather than having a number of lenders keen to offer them a deal, shaving their margins, dropping their arrangement fees, taking a view on certain criteria there has been a *volte-face* and in certain circumstances trying to find a lender was not only challenging but practically impossible.

Many relationships between customers and lenders established over decades were destroyed or severely damaged. The banks, under extreme pressure themselves were fire fighting as loans went toxic and customers defaulted or breached lending conditions.

Borrowing Costs

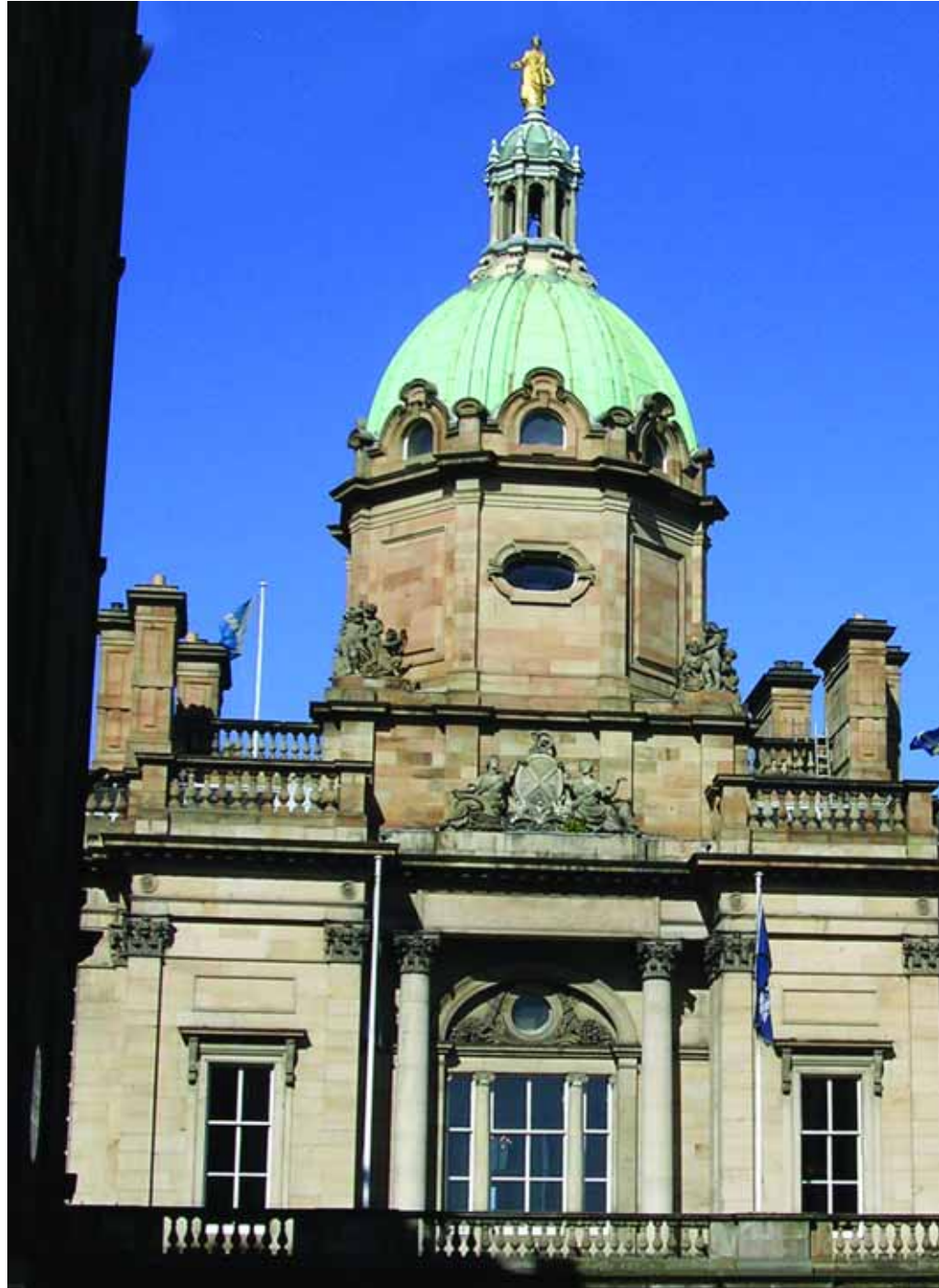
As a result of this much tighter lending environment the banks' borrowing costs have increased and where previously margins, arrangement fees and other borrowing costs had been slashed for lenders to maintain or increase market share that is no longer a factor. Where before, typical interest rates were 1 - 1.5% over Base Rate, now they are more typically 2% - 4% above LIBOR. Historically still very low but a doubling of margin nonetheless.

Arrangement fees are now 1 - 1.5% where before 0.5% was common. Exit fees, non-utilisation fees and other costs are now much more prevalent all depending on circumstances.

Availability of Funding

Since 2009 the availability of funding has improved. Industry sectors or business types which had been difficult lending propositions have gradually become possible. We frequently encounter circumstances where a client is seeking funding but their existing lender may not be prepared to lend and we can introduce other lenders who have a different attitude to their proposal and will offer terms.

However prospective borrowers must be realistic about their proposition and be armed with the necessary information. We are a long



way from the heady days of 2005 but borrowers who satisfy the lending criteria (far right) will be well placed to find a lender.

The Government lending schemes operated through the banks, for example the Enterprise Finance Guarantee Scheme (EFG), remain in place and there has been no indication that this is going to change. Whilst they are only available for certain types of lending nonetheless we have

been involved in deals where it has proved essential and the loan would not have been feasible without it.

Loan or No Loan

There is no question that the banks continue to have a much tighter lending policy across all sectors with debt serviceability and not the quality of assets being the key driver. The purse strings



Pictured: Bank of Scotland headquarters, The Mound, Edinburgh.

Despite signs of improvement, it will be a while yet before the return of the blue sky days where banks queued up to throw loans at companies.



have been relaxed and the lending criteria have eased, but nonetheless, it remains a challenging market. However, with the right proposition, appropriate security, reasonable levels of equity, good management and a realistic business plan, funding should be available. The banks remain interested in doing deals and that can only be good news for business and the economy. ■
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Lending Criteria – the New Model

As we approach 2012, after three tough years, whilst the banks continue to feel the pain and some customers succumb to bankruptcy, there is no question that there has been a gradual improvement in the lending market although for certain sectors finding funding remains problematic. Inevitably, the banks have retrenched and across the market they have applied some fairly basic principles to their lending decisions.

Customer Quality: lenders are much more prepared to lend to customers that have certain characteristics (the more that apply the better)

- well established
- well managed
- experienced management
- low gearing
- healthy balance sheet and P&L

Relationship: having an existing relationship with the lender will often be beneficial. Where there is no current connection the banks are frequently looking for the customer's whole banking requirements to be transferred: discrete loans are not in vogue. Lenders want security across the customer's whole business and a clear picture of their customer's activities.

Security: asset backed security is the order of the day with additional collateral being required if the primary asset is not sufficient eg. guarantees, deposits.

Equity: borrowers are being asked to contribute considerably more capital than had been the case. Typical loan to value (LTV) ratios have dropped eg. in property transactions from typically 75 - 80% down to 60 - 65%.

Due Diligence: there is much closer scrutiny of all relevant information and documentation to ensure that there are no defects in the lending proposal.

Debt Serviceability: whilst it may appear when the markets imploded one major issue for lenders was

that frequently their customers simply had no means to service their loans never mind repay them. It had never been a major concern – the 'good times' would simply continue, so that if required the assets would be sold and the debt repaid. As a result in 2011, whilst the assets offered in security may be substantial, a borrower's ability to meet both capital and interest instalments has become of prime importance.

Amortisation: frequently banks had been prepared to lend on an interest only basis with no repayments of the primary debt (amortisation) but now that type of lending is rare indeed. Paying down the loan is necessary.

Hedging: where deals are perceived as being more risky and with a view to ensuring that borrowers will be able to maintain their repayments despite significant increases in the underlying Base/LIBOR rates during a loan term, lenders are often insisting that customers take a "hedge" i.e. they fix rate of interest on the whole or part of the debt.

LIBOR: because the banks' cost of borrowing is not Bank of England Base Rate but a higher rate (it varies from bank to bank) at LIBOR (the rate at which banks lend to one another), Bank of England Base Rate is less often the underlying interest rate and LIBOR has been substituted. Currently LIBOR is at 0.99% rather than 0.5% for Base Rate. Accordingly the more volatile fluctuations in the LIBOR Rate are fed through to customers and increase borrowing costs.

Exporting – Scotland must do more

Too many businesses appear unwilling or apprehensive about trying to export or develop new markets. How do we turn this around?



By **Derek McCulloch**,
Partner,
Gillespie Macandrew

After almost three years of recession, headlines like “Scottish economic growth fragile” remain commonplace. Increased exporting of both goods and services can help combat this and we have had some success. For example, manufacturing has been assisted by lower exchange rates while in the food and drink industry we have seen whisky exports increase by 22% in the first six months of this year. However, too many companies appear unwilling or apprehensive about trying to export or develop new markets. So, how to turn this around?

Firstly, we can learn from others. Talking to Lexwork International colleagues has shown me that Scottish business is lagging behind counterparts in addressing export opportunities. For example, professional services companies in France, Italy, Spain and Germany have not only invested resources into familiarisation with the Chinese and other Asian markets, but many are prepared to send personnel to work for a year in the target economy, creating valuable networking links plus building experience and important trade knowledge. Colleagues in North America report similar investments into developing South American markets. These investments are brave as they are up front and will take some time to recoup, but the will is there to see this through, just like we used to do.

Secondly, the Scottish and UK Governments must play a greater role by delivering sound business growth policies and a business friendly environment that encourages investment in local development jobs and successful incubation of high tech businesses. Furthermore, in order to focus on inward investment policies attractive to exporting businesses Government can take two courses of action.

The first is to encourage sector driven economic development and this seems to have been recognised in the latest announcement in early September by Scottish Government Finance Minister, John Swinney, who has moved to boost the renewables sector with the announcement of a £70m fund to leverage private sector investment to help develop the necessary infrastructure to support offshore projects. The renewables and low carbon tech sectors offer Scotland a chance to become not only a significant energy exporter but also a world centre for development of technology and skilled consultants leading to export growth.



Importantly, speaking with central and local government figures they are now realising there is a real danger of a serious shortfall in skilled people to fill the hoped-for growth of development. It has been recognised that port facilities need to be redeveloped but we also need training facilities now and policies which encourage existing local companies to diversify their training and investment into this sector.

The second is to empower city region led economic growth. Enabling city regions the freedom to promote economic growth and inward investment, albeit with proper co-ordination for national strategies, could unlock further drive and potential which brings benefit to the nation as a whole. Appropriate and sustainable infrastructure and attractive environments in which to live, work, study and invest are at the heart of any city plan and create a credible case to put before inward investing and exporting businesses. This also marries with the

European vision of the sustainable Green City against a backdrop of rising energy costs and geopolitical pressures to avoid too much reliance on external energy supplies. Many European cities are already ahead of ours in this field and we will need financial and legislative support.

Thirdly, self-help needs to underpin our spirit of adventure. Scotland remains a centre for high tech industry and skills, but our innovation is often sold on to foreign investors. Let's develop more export opportunities using these skills. Universities are increasingly moving towards such commercialisation opportunities, and there are openings for entrepreneurial business leaders to share investments in developing export potential.

The launch of ‘Smart Exporter’ just over a year ago has been a step forward to assist new exporters and there are Business Gateway and other opportunities to learn about the methods of exporting goods and services. These include



Discrimination is very broadly defined as treating someone less favourably for a reason which is a protected characteristic.

We're all first among equals

The Equality Act 2010 – Interpretation and application in the real world is far from clear cut.



By **Morag Radcliffe**
Partner,
Gillespie Macandrew

The Equality Act 2010 brings together and replaces equality rules which were previously contained in numerous different enactments, such as the Sex Discrimination Act 1975 and the Disability Discrimination Act 1995.

Theoretically, this makes it easier for employers and others affected by the Act to understand their responsibilities, but at 218 sections plus 27 schedules, you could be forgiven for thinking it's far from easy.

Understanding the practical implications of the Act is also made challenging because it sets out to establish principles of fairness in very broad terms, and it can often be difficult to decide how it applies to particular circumstances in the real world. In the event of a dispute it would ultimately be for a court to decide, but businesses can protect themselves by at least knowing the basic areas covered by the Act so that they can take appropriate advice if it appears a situation might be covered by it.

What does the Act cover?

The Act is concerned with discrimination and harassment in respect of the following 'protected characteristics':

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Implications for employers

Employers must not discriminate against employees on the basis of the protected characteristics. Employers are not only directly liable for their own actions; they have a responsibility to ensure the actions of their employees don't discriminate or harass other employees. For example, an employer will be liable if some of his staff are bullying another employee because of her religion. The only defence for the employer will be if he can show he took all reasonable steps to prevent it.

Advice for business

The Act doesn't just apply to employment practices and employees. Businesses supplying services must not discriminate against customers on the basis of the protected characteristics. For example, it was on this basis that a gay couple challenged the refusal of proprietors of a bed and breakfast to rent them a double room.

Discrimination is very broadly defined as treating someone less favourably for a reason which is a protected characteristic, and the Act also makes it unlawful to practise harassment or victimisation.

The message for business is to have clear employment policies and business practices designed to ensure these things don't happen, and to keep the nine protected characteristics in mind so that an alarm bell rings when there is any suggestion of unfairness based on a protected characteristic, and advice is taken before decisions are made. There is no upper limit to the amount of compensation which can be awarded to someone who suffers unlawful discrimination. ■

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advice on how to establish sales representatives, branch offices, internet selling, agents, distributors, and the more significant options of local joint ventures or using SDI incubator centres.

However, in my experience nothing beats getting out there, shaking hands and pushing for sales. Do it with a bit of well-planned research, having identified potential 'buddies' in the relevant market and keeping your eyes and mind open. Often it is about lifting our eyes from the immediate problems on our desks or shop floor, identifying a market and going for it with the right tools.

The Scottish desire to export quality goods and services is still there but it needs determined actions, not just ambitious targets, from our politicians and business leaders to ensure companies seize development and exporting opportunities. ■

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Increased rights for temps

A new law has come into force that could impact on anyone engaging the services of agency workers, or 'temps' as they are sometimes known. All businesses doing so need to be sure of where they stand and know the risks now involved.



By **John Norrie**,
Associate,
Gillespie Macandrew

The Agency Worker Regulations 2010, which only came into force on 1st October this year, offer new and increased rights for agency workers. The regulations aim to ensure agency workers have similar basic rights and pay to those they work alongside who happen to be employed directly by the hiring business.

Who is Covered?

When agency workers are used there will normally be three parties to the arrangement: the worker, the agent and the hirer (ie the business in fact using the worker).

The regulations apply to workers supplied by agencies to fulfil temporary roles if the following criteria are met:

- The worker is supplied by the agency to work under the supervision and direction of the hirer.
- The worker has a contract of employment (or contract to provide services personally) with the agency (whether written or verbal).
- The hirer pays the agency who in turn pays the worker.

So, in effect, if you take on agency workers to do work in your business, and you pay the agency for those services who in turn pay the worker, the regulations are engaged.

However, it is important to note that the regulations will not apply to the truly self-employed or to temporary workers engaged or employed directly by the hirer, for example, seasonal work. Nor do the regulations apply to situations where a worker is simply introduced by the agency for a one-off introduction fee, after which the worker is employed directly by the business.

Day One Rights

From day one of any assignment, all agency workers have the right to use collective facilities offered to the employees employed directly by the hirer, including toilets, canteens, transport etc.

More importantly, however, from day one the hirer must also make agency workers aware of any jobs available within the hirers business. It's

considered that to allow agency workers the use of collective facilities is no real issue for most hirers, but informing them of, and in effect inviting applications for, any vacancies within the business will be new for many.

The Main Right from Week 12

From week 12 of their assignment, agency workers doing the same or similar work to someone engaged directly with the hirer (a 'comparator') must receive the same basic working and employment conditions as that comparator. This includes pay, duration of working time, night work, rest periods, rest breaks and annual leave.

If it later turns out an agency worker has been receiving benefits and pay less than any comparator employed directly with the hirer, the worker will have a compensation claim for the difference.

It is important to note that this 12 week qualifying period doesn't have to be continuous, it is a cumulative total. So it can, for example, be made up of a series of smaller assignments with the same hirer provided the worker is in the same role for each. But, any time accumulated before 1st October 2011 will not be counted.

Notwithstanding these rights, there will be situations and relationships where the regulations apply but are of no real concern. For this right to be of value to the agency worker in practice, they must be able to compare themselves to someone employed directly by the hirer who does either the same job or, alternatively, does a broadly similar job having regard to the level of qualifications and skills involved.

So, if the hirer has no employees of its own, or has no employees doing the same or broadly similar work, the right is of no concern. Some simple examples perhaps illustrate the point:

Example 1: You engage 10 agency workers to pick fruit. You already have 5 employees of your own and those employees are also engaged in picking fruit. After working for 12 weeks the 10 agency workers have the right to the same pay and benefits as your 5 employees.

Example 2: You engage 10 agency workers to pick fruit. You already have 5 employees of your own, but they pick and process vegetables and carry on general labour work.



After working for 12 weeks the 10 agency workers have the right to the same pay and benefits as your 5 employees because their work is broadly similar.

Example 3: You engage 10 agency workers to pick fruit. You already have 5 employees of your own, but they are involved in management. The agency workers have no right to the same pay and benefits as your 5



The hirer is solely responsible for day one rights (collective facilities and job vacancies) and any claim by a worker for a breach of this right will be against the hirer alone.

employees because their work is not the same or even broadly similar.

In each of the above examples, from day one the agency workers would still be entitled to the same collective facilities (toilets, canteen, transport etc) as the hirer's own employees, and they must also be made aware of any job vacancies within the hirer's business.

Who is Liable?

The hirer is solely responsible for day one rights (collective facilities and job vacancies) and any claim by a worker for a breach of this right will be against the hirer alone.

If there is a claim for week 12 rights (for pay and benefits equal to a comparator) the Employment Tribunal will apportion liability between the agency and the hirer to the extent

See back page for fixed fee Employment Health Check for businesses.



each is responsible for the breach. However, the rules on liability are tipped in favour of the agencies as they'll have a complete defence if they can show that they took reasonable steps to obtain information from the hirer about its basic working and employment conditions, and based on that information, acted reasonably in using this information to determine the agency worker's terms and conditions. So, where an agency successfully establishes this defence (for example because the hirer despite being asked has failed to provide any information, or because the information in fact provided was incorrect), the hirer alone will be liable.

It is therefore clearly in the interests of the hirer and agency to work together and share information when agreeing the rates for an agency worker who will be hired for a total of 12 weeks or more. It is recommended that to have the best prospect of escaping or minimising liability hirers should provide all the necessary information to the agency to allow the agency to establish the equivalent pay and benefits given to comparators. Thereafter hirers should seek confirmation from the agency that they will be remunerated accordingly. Such communications with the agency should be in writing so the hirer has evidence of the steps they have taken.

It can in practice be difficult for hirers to monitor what an unscrupulous agency, despite assurances, in fact pays its workers. To try to protect against this it is advised that hirers insist their relationships with agents be committed to a written agreement, under which the agency is asked to indemnify the hirer for any claims made against the hirer flowing from mistakes by the agency.

Summary

Hirers must therefore identify any agency workers affected by the regulations, put in place the day one rights, and do all they can to ensure any agency workers are not being underpaid. Otherwise, the financial compensation for underpayment may lie with them and not the agency.

Any businesses unsure of whether or not the regulations apply to their particular situation should take legal advice at the outset. ■
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Protecting your hard earned reputation

A business with an excellent reputation may have spent years earning it and usually this is tied to your business name, brand image or a logo – ie your trade mark. But there are limitations to your rights.



By Chris Smith,
Partner,
Gillespie Macandrew

How do you protect your reputation by ensuring competitors can't trade on your mark? The good news is that the law provides a degree of automatic protection. This is known as the law of passing off, and its essentials are:

- you've been trading for some time and can demonstrate you've built up goodwill in your trade mark;
- someone comes along and starts using your trade mark, or something similar to it; and
- you can demonstrate that this might confuse your existing customer base into mistaking your competitor's products or services for yours.

In other words, the other business is passing itself off as yours. In that case, you can sue your competitor, asking the court to put things right, for example, by ordering the competitor to stop using your trade mark and to hand over any profits they've made by doing so.

But the law of passing off has its limitations. It requires you to start by proving your goodwill. And you will not succeed unless you can demonstrate the likelihood of confusion in your actual customer base. If most of your customers are in Glasgow, you might find it hard to prove that someone using your name in Edinburgh is damaging your business.

That's why registration of a trade mark is the most effective way to protect your brand. Registration involves application to the Government Trade Marks Registry. If successful, you will be issued with a certificate confirming your exclusive UK rights in your mark for the goods and services specified in the application.

If you have a registered trade mark, your rights against competitors treading on your toes are much easier to enforce in court. You don't need to prove your goodwill, you just need to show your trade mark registration certificate. You don't need to prove you have customers in the same area as



your competitor, or that they're being confused. Your registration gives you exclusive rights throughout the UK to use the registered mark for the specified goods and services.

The process of applying to register a trade mark is quite straightforward. You can do it online via the official website at www.ipo.gov.uk. Fees are £200 per application, covering one class of goods or services, plus £50 for each additional class. If all goes well, things proceed automatically after you've submitted your application, and it takes about three months for the certificate to be issued.

However, there are a few things that can trip you up, which might justify the cost of professional advice at the outset, to avoid wasting time and money on applications which are rejected or opposed.

Only "distinctive" words and logos can be registered as trade marks. This means they must be unique enough to identify only your goods or services, and not general descriptions which anyone should be free to use. You could not, for example, register the words "Dundee Book Shop" as a trade mark.

You must specify which goods and/or services you want your trade mark to cover, choosing from a statutory list of goods and services divided into classes.

You should consider and check whether anyone else has already registered, or is already using, the trade mark you plan to register. Your application will be published in the Trade Marks Journal, followed by a waiting period of two months to see if anyone objects.

If you want protection outside the UK, there are separate application processes, to international bodies, with correspondingly higher fees and more complicated procedures, for:

- Community trade marks, giving protection in all European Union states; and
- Madrid Protocol applications, giving protection in many other countries.

You don't, however, have to register to claim rights in a trade mark. If you have a trading name or logo you can assert your rights in it by putting TM after it. That doesn't necessarily improve your rights, but it does put competitors on notice that you claim it as your trade mark.

If you have registered rights in a trade mark, the convention is to put © after it, to put people on notice that it's protected by a trade mark registration.

Finally, don't fall for the common misconceptions about company names and domain names. Registering a company name at Companies House doesn't give you any trading rights in that name. All it means is that no one else can register a limited company with that name. Similarly, registering an internet domain name just gives you the right to have that name pointed at your website for the period of the registration. Both those things may well be important to you, but only by building up goodwill by trading under a name, or by registering a trade mark, will you acquire legal rights to object to competitors using your brand. ■
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The Alcohol etc (Scotland) Act 2010 is causing considerable controversy and minimum pricing seems inevitable.

Tackling the binge culture



By **Andy Williams**,
Partner,
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The Alcohol etc (Scotland) Act 2010 was passed by the Scottish Parliament on 10th November 2010 and received Royal Assent on 15th December 2010. The main provisions of the Act came into force on 1st October 2011 and some have already led to considerable controversy.

The main provisions are:

'Challenge 25'

The Alcohol Act provides that a condition will be imposed on all Premises Licences and Occasional Licences requiring there to be an age verification policy in relation to the sale of alcohol. This means that you must have in place a policy which indicates the steps which you take in order to establish the age of any person attempting to buy alcohol on the premises if it appears that the customer may be under 25 (or such older age as you may specify in your policy). In effect this is the imposition of a "Challenge 25" policy.

Premises Licence holders should firstly ensure that their age verification policy is in writing and is known by all staff involved in the sale of alcohol. It would seem prudent to include the policy in the mandatory staff training and have your staff acknowledge that they are familiar with it and will adhere to it.

Secondly, premises should make their customers aware of the policy by displaying 'Challenge 25' posters and materials. Remember, the only permitted means of age verification are a passport, a photographic drivers licence or a proof of age card carrying the PASS hologram.

Pricing of Alcohol

The new Act provides that all Premises Licences and Occasional Licences will have a condition preventing the sale of packages containing more than one alcoholic product for less than twice the price of the individual product if sold individually. The condition will not apply where the retailer does not offer the individual product. So for example, a multipack of 8 cans of beer does not require to be twice the price of a 4 can multipack if the retailer does not sell the beer cans individually.

Already there has been a deal of controversy over this provision as retailers have indicated



their intention to offer multibuy deals over the internet (if they are based in England where there is no equivalent legislation) and others fear queues of white vans heading down the A68 to collect their bargains south of the border.

It would seem inevitable that to give this provision teeth, a minimum price for alcohol, a long stated aim of the current administration, will need to be introduced.

In addition, there are new provisions which extend the prohibition of irresponsible promotions based on a quantity discount to off sales.

Drinks Promotions

The Alcohol Act imposes a condition on Premises Licences restricting the display of alcohol that is for sale for consumption off the premises to the alcohol display areas (as defined in your Layout Plan) or a Tasting Room should you have one. Drinks promotions in the vicinity of the premises will be prohibited if such promotions are in connection with the premises. This means that you cannot promote the sale of alcohol in the vicinity of your premises (subject to certain exceptions) but a manufacturer or other retailer may well be permitted to do so. ■
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Employment Health Check

Employment law has seen vast changes in recent years. It can be hard for businesses to keep up. If you have not reviewed your contracts and policies recently, it may well be that they need to be updated to reflect these changes. Our health check is designed to help you identify which of your practices and procedures fall below legal requirements.

How can the employment health check benefit my business?

- It checks that your current contracts and supporting documents meet the requirements of your business, and whether they comply with employment legislation.
- We will provide you with a report pointing out any potential issues, give you a prioritised schedule of items and outline the cost of putting them right. You then decide what action you want to take, if any. There is no obligation on you to take things further.

Why should I have an employment health check?

The pace of change in employment law is rapid, therefore your documentation and procedures may be out of date. Alternatively, you may have grown rapidly in size and now need employment contracts and documents that protect you more now that you have a larger workforce.

Compensation for unfair dismissal can cost an employer up to £68,400. For claims involving unlawful discrimination, there is no upper limit to the compensation which can be awarded.

Having up to date and comprehensive contracts, policies and procedures will help you:

- avoid, minimise or defend any tribunal claims against your business;
- address persistent or long-term sickness absence;
- tackle poor performance;
- stop misconduct; and
- avoid inadvertently discriminating against certain employees.

How much does it cost?

Charge depends on the number of employees:

Up to 10 employees:	£ 600 plus VAT
10-19 employees:	£ 750 plus VAT
20-99 employees:	£1,000 plus VAT
100+ employees:	£1,250 plus VAT

If, after receiving your health check you want to take it further, we will let you know in advance the cost and agree with you before doing anything more.

To arrange an employment health check contact John Norrie on 0131 225 1677 or email: healthcheck@gillespiemacandrew.co.uk



www.gillespiemacandrew.co.uk

Our current online highlights:



Commercial Law Update:

Monthly business and legal news delivered straight to your inbox and available in our News and Views section.

To be added to the mailing list email: marketing@gillespiemacandrew.co.uk with the subject title Subscribe – Business.



Gillespie Macandrew News:

Hazel Tait, formerly of Southern and Scottish Energy has joined Kirsty Macpherson's team as a Partner further strengthening our energy team.



Wilson's Blog:

Wilson Hunter provides hints and tips for anyone looking to buy or sell a home. See Wilson's blog on the Hunters Residential website at www.huntersresidential.co.uk



Brown Shipley:

Gillespie Macandrew's investment and finance arm has been sold to Brown Shipley. The firm will continue working closely with Charles Fotheringham and his team to ensure clients experience the same seamless service they have come to expect.



Annual Results:

The firm's annual results for 2010 -11 were announced in September. With an increase in Partner numbers and turnover, the firm is well placed for the year ahead.



UK Business & Personal Tax Rate Cards:

You can download a copy of our up to date business and personal tax rates and allowances or request a pocket sized guide to be mailed to your letterbox.



Gillespie Macandrew library:

We've begun to compile business, charity, private client and land and rural business libraries on the website. It's a work in progress, but the casual reviewer of the serendipitous may well be rewarded.

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Our other services and market sectors include:



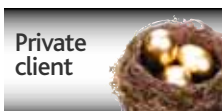
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