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SPECIALISTS IN REGULATORY LAW

Summer Newsletter 2013



Welcome to our Summer Newsletter

OUR TEAM EXPANDS

We are pleased to welcome **Jonty Gordon** to our Litigation Team. Jonty is a solicitor specialising in intellectual property disputes and protection (trademarks, copyright, patents, design rights, passing off), breach of contract and company law. Jonty has experience of brand protection, brand development and embryonics and he is also able to assist with contractual, civil and negligence issues. He has a particular interest in domain name disputes and cybersquatting/typosquatting and the legal approach to social networking. Jonty is fluent in Welsh and his hobbies include cycling and rugby.

We are also pleased to welcome **Peter Brindley-Slater** as a consultant solicitor. Peter has considerable experience in development work, having previously acted for major regional and national developers and for international developers in Caymanian development projects. Peter also specialises on company commercial matters from company formation, mergers and acquisitions to share purchases/disposal and recapitalisation. Peter's hobbies include reading, history, skiing and cooking.

We are pleased to welcome **Le-Ann Walker** as a Commercial Director. Le-Ann qualified as a solicitor in 1999 and was practising up until having her first child in March 2012. Together with Hugh Megarrell, Le-Ann will be helping DSL to add more value to their services by organising events such as our recent Road Transport Seminar. Le-Ann's hobbies include swimming, golf and she once went on a pig keeping course!

LPC SUCCESS

Miranda Procter, one of our legal assistants, has passed her Legal Practice Course (University of Law, Chester) with distinction. This level of pass is remarkable in itself, but considering Miranda's preparation and studying for the exam was done whilst working full time at the practice, the achievement is of the very highest order. Her colleagues are not only impressed but also delighted by her success.

ENERGY RENEWABLES EXPERT SETS PRECEDENTS

One of our consultant solicitors, Brian Wake, who specialises in minerals and renewable energy, has just finished contributing to the Encyclopaedia of Forms and Precedents/Energy (Renewables). This is a legal practitioner's guide to renewable energy schemes and the new title covers such matters as wind, solar, biomass and small hydro schemes. Brian has been asked to contribute on this due to his wealth of experience and highly regarded reputation in the area of renewable energy law.

21st CENTURY ROAD HAULIERS MEET IN TATTENHALL

Hauliers travelled from around the country to Tattenhall to attend our seminar on Road Transport Law. The seminar provided information on the Operating Licensing Regime, appeals to the Transport Tribunal, Employment Law for the Transport sector, Fleet Efficiency and Saving Money, Using Social Media to grow your Business and the Sale and Supply of Goods and Services to the Transport Industry. Copies of the presentations can be found on our website at http://www.dynesolicitors.co.uk/presentations.htm. We will be holding our next Transport Seminar in October/November 2013.

We are always interested in your feedback on our newsletters and would welcome your comments and views.

Le-Ann Walker and Hugh Megarrell (Commercial Directors)
01829 773112

Causing Serious Injury by Dangerous Driving

The Offence

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has recently introduced the offence of "Causing serious injury by dangerous driving". The offence is defined as follows:

"A person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence."

It is an offence which is triable either way, meaning it can be dealt with by either the Crown Court or the Magistrates' Court. If the Magistrates' Court deems its sentencing powers are insufficient for the alleged seriousness of the offence committed, or if the defendant elects to, then the matter will be heard in the Crown Court.

Sentence

In the Magistrates' Court, the maximum sentence can be up to six months in prison, whilst in the Crown Court, the maximum sentence can be up to five years.

Comments

The offence has been introduced to attempt to plug the gap between dangerous driving, with a maximum sentence of two years, and death by dangerous driving, with a maximum sentence of fourteen years.

Judges were finding that in some cases, although they involved seriously dangerous driving and the victim suffered horrific injuries, perhaps even put into a vegetative state, the Court's hands were tied. As there was no fatality, a maximum sentence of only two years could be handed out when arguably longer was warranted. With the same level of driving but when a victim died, the Court was able to hand out longer sentences which arguably merited the crime. It was for this reason that the Government felt a 'middle ground' offence was required.

Further New Offence – Causing Serious Injury by Careless Driving?

The obvious next step in terms of new legislation would be the creation of a similar offence for careless driving: Causing serious injury by careless driving. The penalties for this offence would be obviously be lower but, at the moment, there have been no announcements for plans for such an offence.

Implications for Civil Claims

In most cases, a civil claim for damages will follow a criminal prosecution for driving offences which involve death or serious injury. Those trying to defend the civil claim could be severely hampered by the fact that the element of "serious injury" has already been established within the criminal courts.

Insurers may take the view that it is their interests to fund representation in the criminal case, in an attempt to reduce their exposure in the subsequent civil claim. Obviously, if the criminal case is successfully defended then this will reduce, or even avoid, a civil claim.

For advice on transport law, contact **Jared Dunbar on 01829 773 105**.

Relaxation of Planning Rules: Reality Or Illusion?

On 30 May, the coalition government relaxed the rules on "permitted development" (development you can carry out without having to apply for planning permission) in a bid to "promote the use of brownfield land to assist regeneration, and get empty and under-used buildings back into productive use", according to a press release by Eric Pickles, the Secretary of State for Communities and Local Government. This article examines the changes and asks whether the changes really will make a difference or are more of an illusion than reality? As we shall see, the changes are complex, and the headlines need to be read in the light of the small print that follows.

Home Extensions

The right to build a single-storey rear extension to a dwelling without planning permission has been relaxed so that extensions of up to 8 metres in length in the case of detached dwellings, and up to 6 metres in any other case, can now be built. However, the "small print" says the extension must not be more than 4 metres high, it must be completed by 30 May 2016, and it is subject to a "prior approval" procedure. This involves providing details of the proposed extension to the local planning authority ("LPA"), who consult the neighbours, who then have up to 21 days to object. If there is an objection, the LPA has 42 days to decide whether to give prior approval. The time and "prior approval" limitations do not apply to extensions below the new thresholds, which mean the new relaxed rules have additional strings attached: a familiar feature of many of the changes discussed in this article.

Business Extensions

Existing offices, shops, catering and financial/professional services premises can now be extended by up to 100 square metres or 50% of the floor area, whichever is less. Industrial and warehouse premises can be extended by up to 500 square metres or 50%, whichever is less, but only for a temporary period of 3 years.

Offices to Residential

Premises currently in office (Use Class B1 (a)) use will be able to change to residential use without planning permission, but this does not apply to a listed building or to parts of the areas of 17 named local authorities. The use must begin by 30 May 2016, and it is subject to a detailed "prior approval" procedure. This involves a complex procedure in which the developer provides details of the proposal to the LPA, which must then consider any transport and highway or noise impacts, and any flooding or land contamination risks within 56 days, and decide whether prior approval is needed.

Business Uses

Certain classes of business use such as shops, restaurants, pubs, banks and estate agents, offices, non-residential institutional and leisure uses can change to certain other business uses as shops, banks, professional services use and office use without planning permission. The "small print" says that such a change can only last for a period of up to 2 years, and only applies to up to 150 square metres of floorspace.

Agricultural Development

Agricultural buildings can change to a "flexible use" including shops, financial and professional services, restaurants and cafes, offices, storage or distribution, hotels or leisure use without permission, but the change is limited to a cumulative maximum of 500 square metres, the building must have been solely in agricultural use before 3 July 2012 or for a period of 10 years, and, if the floorspace is over 150 square metres, the "prior approval" procedure described above must be followed.

Schools

To assist the development of "free" schools, permitted development rights are given to "State-funded" schools to be set up in premises used for office, hotel, secure and normal residential institution, non-residential institution and leisure purposes without applying for permission. The "small print" says that such a change is subject to the "prior approval" procedure described above.

Conclusions

The changes introduced on 30 May have certainly extended the scope of permitted development rights beyond that which existed on 29 May. To that extent, it is clearly a welcome relaxation of the rules. However, LPAs do not like to give up control of development, and the Secretary of State has been besieged by MP's who are anxious about the public reaction to some of the proposed relaxations, particularly those relating to residential extensions. That probably accounts for much of the "small print", which in many cases significantly limits the scope of the relaxations.

Bearing in mind that the whole point of giving permitted development rights is to free developers from time-consuming red tape and involvement by the LPA, the latest changes in many cases introduce many new complexities, and still involve detailed involvement by the LPA. We therefore believe that the government's aim of encouraging regeneration and getting empty and under-used buildings back into productive use may turn out to be something of an illusion. The next three years will provide the answer!

For more information, please contact **Lewis Denton on 01829 773110**.

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Have your drivers obtained their CPC?

The Driver CPC was introduced across Europe for Large Goods Vehicle licence holders from 10 September 2009. It became applicable both for drivers already holding an LGV vocational licence and for new drivers acquiring an LGV licence. Without it, a driver is unable to drive LGV's professionally.

There are two parts to the Driver CPC:

- Initial qualification for new drivers. (Drivers who already held a vocational a licence in September 2009 were given acquired rights for the initial qualification.)
- 35 hours periodic training to be completed every 5 years.

Acquired rights drivers of goods vehicles must therefore complete a total of 35 hours training by September 2014. For bus or coach drivers, this date is September 2013. The Senior Traffic Commissioner, Mrs Bell, has stated that drivers who failed to complete their training could be called to a driver conduct hearings where they may well have their licences suspended until they complete the periodic training.

However, Operators should not rely on their drivers to complete the training. Mrs Bell has also suggested that those Operators who have failed to be proactive in getting their drivers to complete the requisite training, could also be called to disciplinary Public Inquiries.

On qualification, drivers get issued with a Driver Qualification Card and will be required to carry evidence that they hold the Driver CPC when driving professionally. If a driver is found to be driving without their Driver Qualification card, the penalty could be a fine of up to £1000 for the driver.

If a driver does not actually have the CPC qualification and is found driving, then they are liable for a fine of up to £1000, with their employer also liable for a £1000 fine.

There will no doubt be a last minute surge in goods vehicle drivers attempting to complete their periodic training next year. This could result in market forces driving the prices up to extortionate levels or alternatively places just not being available meaning drivers are left unable to complete their training and unable to drive legally. The advice to all drivers and operators is to organise your training requirements now.

For advice on Driver CPC's, or for any other transport law advice, contact **Jared Dunbar on 01829 773 105**.

Income from Patents – The Patent Box

The 1st of April 2013 saw the introduction of the new Patent Box regime that offers corporation tax breaks to companies who derive income from patented goods or processes.

It is widely believed that the implementation of this new tax regime is to shift the UK's reliance away (if only slightly) from the service industries, and more on to the manufacturing sector and, in turn, to stimulate the economy.

In essence, Patent Box gives companies relief from the full 23% of corporation tax on profits generated from UK-patented (or European) products or processes. In 2013/14, the relief on profits from products developed and patented in the UK will mean an effective corporation tax rate of 15.2%. The relief will be gradually phased in culminating in a rate of 10% in 2017/18 onwards.

Patent Box applies to the profits of a whole product that incorporates a patented aspect or component. Therefore the total profits from a computer will benefit, even if only a single heat sink has been patented by the UK manufacturer. It is also worth pointing out that this applies to worldwide profits and not just those of the UK. Patent Box also applies to non-patented products if they are made using a patented process.

The scope of the relief also extends to licence fees (from exclusive licences only) received on patented products and even to damages for patent infringement awarded by a court in the UK and insurance, compensation or damages in respect of non-UK infringement.

Patent Box will apply up to six years prior to a patent being granted, which is especially important in sectors where technology moves at lightning speed and a new technology could be obsolete before it has been granted a patent.

The reality is that the cost of obtaining a patent (£600-£1200 a year over 20 years) to specifically take advantage of the relief must be balanced against the reduced corporation tax liability and may not be viable. But, where patents have already been granted or profits are likely to be exceptionally high, it will be a welcome bonus.

If you would like advice on patents or would like an audit of your brand or intellectual property, contact **Jonty Gordon on 01829 773 108**.

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