dynesolicitors
SPECIALISTS IN REGULATORY LAW

Spring Newsletter 2014



Welcome to our Spring 2014 Newsletter

We've had a busy start to the year. Winning a number of Public Inquiries for our transport clients and achieving successful outcomes for some of our regulatory environmental clients and our litigation clients. We'll not be resting on our laurels during the next few months either. We will be appearing before the Transport Select Committee on Tuesday 10th February on behalf of the BSA, visiting the Energy Now Expo in Shrewsbury on the 12th February, the CIWM Conference Cymru 2014 on the 4th March and the IRHA Annual Conference in Kilkenny at the end of March. We've also been invited to take part in a question and answer panel session taking place in February and March being organised by Reaseheath College in respect of Anaerobic Digestion. We're also pleased to announce that our next Transport seminar will take place on Thursday 27th March at Reflex & Allen (R & A) UK in Bodelwyddan in conjunction with HSBC and CLB Coopers. Plans are also underway for our next consultancies meeting. You'll be able to read about all the outcomes of all these events in our next newsletter.

Le-Ann Walker- Commercial Director

Fracking – an objective appraisal of the legal issues

Recent protests in the North West against fracking have been fuelled by, among others, Greenpeace, who have launched a legal challenge, by way of what appears to be a "class action" (i.e. a group of individuals with a common purpose) encouraging "thousands of people" (their words) who are landowners of large or small parcels of land to join the "legal block" against the controversial process.

Greenpeace are basing their case on one of the basic principles of English land law – that the owner of a parcel of land owns it down to the centre of the earth and to the heavens above ("cuius est solum, eius est usque ad coelum et ad infernos"), a principle which was upheld in the judgement handed down by the Supreme Court in 2010 in the case of Bocardo SA v Star Energy Onshore Limited and Another.

Bocardo (a landowning company owned by Mr. Mohammed Al Fayed) sued Star Energy, in trespass, for infringing its property rights by drilling diagonally under land owned by Bocardo in order to access reserves of underground petroleum, some 800-2,900 feet below the surface. The case ended up in the Supreme Court where a majority of the Law Lords held that although a trespass technically had been committed, the measure of damages was only £1,000, as that was considered the "proper compensation" due under s.8(2) of the Mines (Working Facilities and Support) Acts 1966-74 (the "1966 Act") to the surface owner for an interference which had little or no detrimental effect on the surface owner's enjoyment of its land. In fact, Lord Brown went so far as to say that, in his opinion, the compensation under s.8(2) "...would have been assessed at no more than £82.50.."!

The 1966 Act is unique in English law in that it gives a commercial enterprise the right to apply to the Court for compulsory rights to search for or extract minerals important in the national interest. This is utilised if, for example, the person who owns the land (including underground land) in respect of which the rights are to be granted unreasonably refuses to grant them, or demands unreasonable terms.

It is worth pointing out that such applications are relatively rare, and the Act pre-dates both the EU Convention on Human Rights and the corresponding UK Human Rights Act. It can by no means be assumed that if an application were to be made tomorrow by a fracking company for the compulsory grant of such rights, the application would succeed just because the mineral concerned is of national importance.

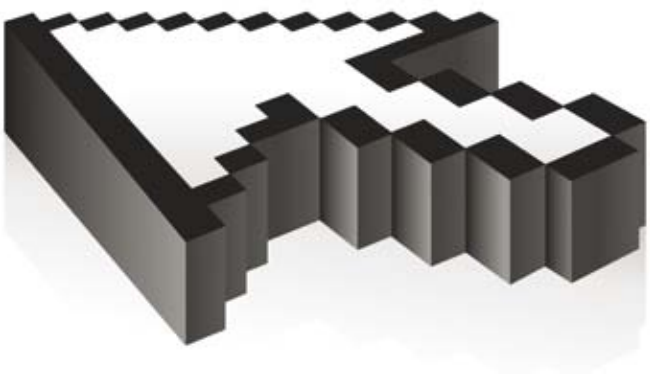
It can also not be discounted that the Government might introduce legislation either amending, or even repealing the 1966 Act in order to ensure that such obstacles to fracking are removed.

A further concern for landowners appears to be registration of ownership of mineral rights by, for example, the Church Commissioners by virtue of their ownership of Lordships of the Manor, in respect of large tracts across the country. This is nothing new – the Land Registration Act 2002 required such rights to be registered by 13th October 2013, failing which the Lord would effectively lose them if there was a subsequent transfer to a third party who didn't know about them. It means that there is another landowner with which the fracking company may have to deal, but does not mean that the church are either for or against fracking.

The Government opened a consultation on 2nd September 2013 on a proposal to ease the requirement for serving notice on owners of underground interests in land of intended planning applications for onshore oil and gas exploration and extraction – the next step could well be legislation to negate or at least water down the basic legal principle set out above…in the light of the Prime Minister's urge to opponents to "get on board"….we shall see!

For more information or advice on Fracking please contact **Brian Wake on 01829 773100**.

Dot.com, Dot.co or Dot.guru?



So what's your current website address? Have you ever thought that being able to change the suffix would make your website address more appropriate or easier to remember? Well, the body who administers the suffixes (and, indeed other has other internet coordination tasks) has recently freed up this part of the internet and introduced new and, potentially unlimited, generic top level domains (gTLD). So rather than being stuck with '.com', '.net', '.org' – or are geographically linked – '.co.uk', '.fr', '.it' you can now potentially have anything you want.

Consider what a consumer would think if he went to a website called www.competitions.coke compared to www.pepsi.com/competitions. The former seems much more modern, dynamic and offers a sense of trust that the domain is the correct one (not to mention being pretty clear what it relates to) whereas, the latter could be construed as old-fashioned, possibly less secure and arguably harder to remember?

In itself, this seems like a very sensible thing to do as it allows any combination of words (provided they are approved by and registered with ICANN) to become a website address. However, it does provide a real issue for brand savvy companies. The risks for blue chip brands such as Coke, Pepsi, Apple or Ford are manifold with a real likelihood of canny individuals registering the new domains before the big brands do so. For example, a Mr Ford simply wants to register a '.ford' suffix (www.images.ford) for his photography business. If he does so before Ford Motor Company, he will undoubtedly have a real impact on Ford's brand strategy. Fortunately, this scenario is pretty unlikely given that the application fee is around £115,000 with an annual cost of £15,000. Moreover, ICANN have also included a Trademark Claims Service that warns trademark holders of potential infringement by the application for a new gTLD. In the above example, Ford Motor Company would have been notified of the potential infringement.

The first few gTLDs are filtering through into the wild with 3 January 2014 seeing '.wien', '.wang', '.kiwi', '.email' and '.immobilien' being launched. These gTLDs join some rather outré relatives including '.solar', '.ninja', '.coffee', '.sexy' and '.guru'.

So what does this mean for you as a business? Jonty Gordon comments "The cost of obtaining a gTLD is prohibitive for all but the biggest brands. However, if a trademark holder finds out that a gTLD has been registered that is similar to their mark then positive action should be taken at the earliest opportunity."

For any further queries on IP and internet law please contact **Jonty Gordon on 01829 773108**.

Will out-of-town shopping ever be the same?

Peel Land and Property Investments plc ("Peel") received an unwelcome Christmas present from the Court of Appeal in the form of a ruling on a test case which many interested in retail planning, including local councils, have been waiting for since last June.

On 19 December the Court issued its' judgement in a case involving 6 retail units on a large out-of-town shopping park known as the Peel Centre at Rishton, Blackburn. In what had become a test case, owners and developers of retail parks, and many involved in retail planning, had eagerly awaited the decision in a case where no less than three local planning authorities had joined in as parties, such was the significance of the outcome. The case arose because the local Council, Hyndburn, had restricted the retail use of the units at the Peel Centre to the sale of bulky goods only, a common practice in out-of-town shopping parks to protect nearby town and district centres. Such a restriction is usually imposed by planning condition, although in this case the restrictions were contained in S.106 planning agreements, freely entered into by Peel as the owner of the shopping park.

Peel wanted to free up this restriction, so that the shop units could sell anything, including food and non-bulky goods such as clothes and shoes. An application to lift the restriction was turned down on appeal. Peel then argued that, as a result of a number of planning permissions granted by the Council for external changes and sub-division of some of the units at Rishton, those units had the benefit of new planning permissions that entitled Peel to use them for unrestricted sales. This was based on two High Court decisions in 2010, in which the court had held that planning permission to alter existing retail units could, in certain circumstances, entitle the owner to use those units free from existing restrictions on the goods that can be sold. The Council refused to grant certificates to that effect and Peel challenged that decision in the High Court. The judge appeared to disagree with the earlier High Court decisions (one of which he had himself made!) and sided with the Council, so the matter was referred to the Court of Appeal.

The Court of Appeal decided that the planning permissions to carry out alterations to the 6 units did not include the right to use those units free from the restrictions contained in the S.106 agreements: they only allowed the physical alterations shown on the approved plans. This upheld the decision of the lower court.

The significance of the decision lies in its' application to many similar out-of-town shopping parks up and down the country, most of which have restrictions on the type of goods that can be sold, and which also in many cases have permission for the alteration or re-configuration of units on the park. To be able to use those units for unrestricted retail sales would have significantly raised the market value of those units, whilst adversely affecting existing shops in nearby town and district centres, which do not have the advantage of ample free parking outside their doors. That explains why the decision was eagerly awaited by local Councils, shop and retail park owners and developers, and anyone interested in retail planning.

For now, the Councils have won, but Peel have sought permission to challenge the decision before the Supreme Court. If Peel wins the next round, out-of-centre shopping could become that much more interesting in the near future!

For further information or any planning queries please contact **Lewis Denton on 01829 773110**.

Public footpaths. Simple awareness of their existence and the location of their route is all I need to know isn't it? Think again.

If you are acquiring land and have been notified that a public footpath crosses that land please do not think that that awareness is where matters end. There are several other factors that need to be considered.

Firstly, you should be quite clear as to the maintenance position of the footpath. The majority of public footpaths are publicly maintainable. However, some are privately maintainable while others are maintainable by no-one.

Public footpaths are recorded on a definitive map which shows all public rights of way. Each local authority must keep the map for its area under review and update it if there is evidence that a public footpath exists where none is currently recorded. There may be paper evidence or evidence of public use, or both. It is this evidence that supports the addition of the footpath to the definitive map which in turn determines if the footpath is publicly maintainable or not. A footpath is deemed, by statute (s31 Highways Act 1980), to be dedicated for public use if the public has used it for 20 or more years without force, secrecy or permission and there is no evidence that the landowner did not intend to dedicate the path as a public path. It is not usual for footpaths created in this way to be adopted and therefore, they are not publicly maintainable.

Determining whether a public footpath is publicly maintainable will depend when and how the footpath came into existence. A footpath is publicly maintainable if it existed before 16 December 1949 or if it came into existence after that date and has been formally adopted or if it was created by a specific order or agreement or if it existed as a footpath and has been converted to a cycle track.

A footpath is not publicly maintainable in the following situations:-

- If the footpath was created after 16 December 1949 by express dedication by the landowner and has not been adopted;
- If the footpath was created after 1 January 1960 by dedication at common law or presumed statutory dedication and has not been adopted;
- If the footpath was created by dedication agreement with a parish or community council, although the council may carry out repair or improvement works or contribute towards the cost of such works

There is a slight grey area concerning the maintenance status of footpaths, created by dedication at common law or deemed statutory dedication, between 16 December 1949 and 1 January 1960 which have not been adopted.

Private landowners can be responsible for maintenance of a public footpath by prescription, statute, enclosure (where for some reason the public footpath became enclosed within private land) or tenure (land granted in consideration of a promise to keep a footpath in repair).

If a highway authority disputes public liability for maintaining a footpath, the onus is on the highway authority to prove that the landowner has private maintenance responsibilities.

If it is established that a private landowner does have a maintenance responsibility, it should be noted that there is no defined standard of repair. However, good practice would adhere to the statutory standard of "safe condition and fit for the type of traffic which ordinarily is expected to use them".

Do be aware that, although the highway authority would be expected to attend to the keeping free from obstruction of public footpaths, private landowners are expected to cut back overhanging vegetation growing on adjoining land which encroaches the footpath and endangers or obstructs footpath users.

Other footpath points to consider:-

- **Stiles and gates.** Landowners are responsible for maintaining stiles and gates in a safe condition and to a standard that prevents unreasonable interference with users of the footpath. New structures can only be erected with the consent of the highway authority. Where a footpath has been dedicated subject to the existence of a gate or stile, the highway authority is responsible for contributing 25% of the costs of maintenance but often highway authorities prefer to supply kits rather than make monetary payments as it is more cost effective and gives the authority control over the quality and design of the structure.
- **Signposts.** A highway authority must erect a sign where a footpath leaves a metalled road and anywhere else the public may need a sign to allow them to follow the footpath with confidence. Highway authorities are obliged to consult with landowners or occupiers before erecting any signs.
- **Ploughing.** Occupiers of agricultural land are permitted to plough the surface of a cross-field footpath if it is not reasonably convenient to avoid doing so, provided that the footpath is reinstated. Reinstatement must take place within 14 days of the first agricultural operation carried out in connection with the sowing of a crop. Any subsequent disturbance must be reinstated within 24 hours. If the legal width of the cross-field footpath is not known, it must be reinstated to the minimum width of 1 metre. Field edge footpaths are not permitted to be disturbed. When the crop grows, in the case of any crop other than grass, the occupier must ensure that the line of the path is kept clear to at least the minimum width.

For more information or if you have any queries relating to a footpath on your land or land you are looking to acquire please do not hesitate to contact **Nick Wheeler on 01829 773 106**.

You think you have an Operator's Licence – but do you actually?

Recently, here at Dyne Solicitors, we have dealt with a spate of operators who have been called to Public Inquiry and each case has involved the same one issue amongst various others. The one issue that was common to all the matters was that each Operator thought they had an Operator's Licence when, in fact, they didn't.

Unfortunately, in all cases the company or partnership that thought it had a licence was in fact operating trucks without a Goods Vehicle Operator's Licence. This is a criminal offence and would be subject to a fine of up to £5000 in the magistrates' court.

How could they be mistaken about whether they had their licence application granted or not, I hear you ask! Surely they applied for a licence and were told it had been granted? Surely they received the discs for their vehicles? That's straightforward isn't it?

Well, in all cases an Operator's Licence had been granted at some point and had been legitimately used. However, the problem was that at some point, and usually on the advice of an accountant for tax purposes, the operator had changed entity. By that I mean a 'sole trader' had become a 'partnership'; or a 'partnership' or 'sole trade' had become a 'limited company'.

It may seem like nothing really has happened and that it's business as usual, except that you are paying a bit less tax. However, the impact that that change has on an Operator's Licence is huge. The new entity (e.g. the limited company) will not have an Operator's Licence and cannot operate trucks legally. The old entity (e.g. the sole trade) still has the Operator's Licence. It can't just be given to the new entity.

There are two solutions to this problem:

(i) Submit a new application, for the new entity, before the new entity starts trading. The application process period can take approximately three months, so make sure you give yourself plenty of time for the application to be processed in time. Once the new licence is granted, then the new entity can start operating vehicles.

(ii) The new entity can subcontract the transport operations to the old entity (the one with the licence). But be careful, the old entity will be operating the vehicles and so the old entity should be employing the drivers and giving instructions etc. This option is littered with pitfalls and should only be considered after legal advice and most likely only as a temporary measure.

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

The Coming Together of 3 Business Brains

On Thursday 27th March, Dyne Solicitors are partnering with HSBC Commercial and CLB Coopers, Chartered Accountants, to present a short seminar to the transport industry. The seminar is being held at the offices of Reflex & Allen (R & A) UK in Bodelwyddan, Denbighshire and will cover such topics as the Operator's Licence, Transport Managers, Operating Centres and how to fund your business. The 'Icing on the Cake' will be a guided tour of the factory.

Reflex & Allen is a market leader in the analysis, development and production of innovative machine products, not least of which are components for the new Euro6 diesel engine.

All in all, a very interesting and informative morning is in store for attendees all compacted into three hours. Breakfast will be provided at 7.30 and the tour will finish at 10 am.

Tax tips: A quick guide from Bennett Brooks Chartered Accountants

Thursday 5 December saw George Osborne announce The Autumn Statement 2013. Below we highlight some of the key announcements and their potential impacts on you and your business.

Personal Taxes and Tax Credits

Personal Allowance, Rates of Tax, National Insurance Contributions for 2014-15

As announced at Budget 2013, those who were born after 5 April 1948 will be entitled to a basic personal allowance of £10,000 for 2014-15. The higher rate threshold, which is the sum of the basic personal allowance and the basic rate limit, will be £41,865. As the personal allowance will be £10,000 for 2014-15 this results in a basic rate limit of £31,865. Previously this was £32,010 during tax year 2013-14.

This tax year, the percentage rate of contribution for Class 1, Class 1A, Class 1B and Class 4 National Insurance Contributions will not change, however, we will see changes to all of the thresholds and limits.

Abolition of employer NIC for under 21 employees

Currently, employers are required to pay Class 1 secondary National Insurance Contributions on earnings paid up to the Upper Earnings Limit to any employee under the age of 21. From 6 April 2015 we can say goodbye to this regulation, ensuring that the cost of hiring someone under the age of 21 is reduced.

Continues on next page

Principal Private Residence relief (PPR)
Those owning more than one property must be prepared for capital gains tax rules, which are tightening in a scale back of the previous reliefs. From this April we will see the government reduce the amount of capital gains tax (CGT) "relief" available on sales of second homes from three years to eighteen months.

Currently, when a property that has qualified for PPR relief is disposed of, the last 36 months of ownership becomes exempt. April 2014 will see this reduced to 18 months, and consequently, homeowners will need to accelerate their decision on whether to sell their second property to avoid tax on their main residence. The reduction will affect persons who let out their former homes after moving to a new property, holiday home owners and landlords who exploit these concessions to reduce their tax burdens.

Capital Gains Tax: Non-residents and UK residential property
The Chancellor's Autumn Statement confirmed that, from April 2014, a charge will apply to the capital gains tax on residential property owned by non-resident persons. A full consultation on when they will introduce this will be published in early 2014 and we will be able to update you further once these proposals have been clarified.

Capital Gains Tax: Annual Exempt Amount
The figure everyone wants to know. For 2014-15 the Annual Exempt Amount will be £11,000; for 2015-16 and the subsequent years it will be £11,100. For the majority of trustees the exemption will be £5,500 and £5,550 respectively.

Are you in a partnership? If so, read on…
Partnerships review: partnerships with mixed membership
New and complex legislation introduced in The Autumn Statement is designed to catch artificial arrangements of tax avoidance for individuals.

The first element of these partnerships review measures will affect mixed membership partnerships (i.e. partnerships with a corporate member or Limited company as a member) where partnership profits are allocated to a corporate partner or company in circumstances where an individual member may benefit from those profits.

The second element will affect cases where partnership losses are allocated to an individual partner, instead of a non-individual or corporate partner, to enable the individual to access certain loss reliefs. We see these changes take effect from 6 April 2014 with the exception of anti-avoidance rules concerning tax-motivated profit allocations. These rules come into force from 5 December 2013 in order to protect against risks to tax revenue.

If you think this could apply to you, we recommend you speak to your accountant or call Bennett Brooks where we would be happy to advise you.

Social Investment Tax Relief
2014 is repeatedly being dubbed as the year of social enterprise as the government plan to extend tax relief benefits to this sector in a bid to increase investment. It is good news for social enterprises! From 6 April 2014, investors in enterprise that trade for social good or purpose can receive an income tax reduction.

Prepare for EU VAT changes
It's time for your business to prepare as changes to EU VAT are just around the corner. These changes will affect business to consumer supplies of e-services, broadcasting and telecoms; businesses affected by the change may include those providing downloadable documents including e-journals, e-books and other forms of electronic downloadable communication to non-business customers in a different EU states. From 1 January 2015 we see a prominent change as VAT will be determined on the customer's location instead of the location of the business.

Of course, the need for businesses to register in every EU member state where their clients reside would be counterproductive, therefore, a voluntary simplification procedure known as the 'Mini One Stop Shop' (MOSS) will operate in each EU member state. This will enable the relevant businesses to account for VAT via a single VAT return, in their own member state, removing the requirement for multiple EU VAT registrations that would inevitably result from the change of 1 January 2015.

Company car benefits
The Chancellor declared that the Finance Bill 2014 will incorporate two measures to better standardise the car benefit rules. The first measure will make sure that taxable car benefits can only be reduced by payments for private use made in the relevant tax year. The second measure will ensure that where an employer leases a car to an employee at reduced rates, the benefit is taxed as a car benefit rather than as employment earnings.

Continues on next page

dynesolicitors
SPECIALISTS IN REGULATORY LAW



Also in the news...

HMRC's approach to debt collection

Last month HMRC published an issue briefing 'Our approach to debt collection'; this issue set out exactly how HMRC approach businesses and individuals who are struggling to pay their taxes on time. If you are experiencing difficulty paying your taxes then you may be eligible to enter into a 'time to pay' arrangement with HMRC, this way you can settle the liability in fixed instalments over an agreed period. As soon as you experience any general problems or your personal circumstances change you should call HMRC immediately or alternatively contact us at Bennett Brooks; we are experienced in assisting in any negotiations with HMRC and may be able to help you resolve any issues.

P35's and Real Time Information (RTI)

The introduction of Real Time Information (RTI) prohibits the need to complete an Employer's Annual Return (P35). However we must acknowledge that the End of Year Declaration must be submitted to HMRC at the earlier date of 19 April, not 19 May as in previous years.

Pensions

Everyone knows that saving through a pension is an excellent way to gain tax relief, however, with limits to your pension lifetime allowance, you may need to take a second look at the forthcoming effects.

You can save as much as you wish into a pension however, what people seem to forget is the limit on the amount of tax relief you're allowed. From 6 April 2014 we see some prominent changes as the lifetime allowance for pensions will reduce for £1.5m to £1.25m. On the outset, this appears to be a large figure but it can be surprisingly easy to breach what seems like a very generous allowance. The purpose of the lifetime allowance is to cap the level of tax advantaged pension funds that an individual can accumulate within their lifetime. As you may expect, a tax charge is imposed for benefits accrued in excess of the lifetime allowance.

Let us not forget, this is not the first time the lifetime allowance has been reduced. In April 2012 we saw a drop from £1.8m to the current level. The good news? There will be two forms of transitional protection available for individuals who are affected by the reduction. If you think you may be affected you should contact your financial advisor to discuss your options.

So what next for the approaching tax year?

The Autumn Statement 2013 provided an update on the government plans for the economy based on the latest forecasts from the Office for Budget Responsibility. With the new tax year approaching fast it is important that your business understands the amendments, alterations and new regulations that may affect you and your employees. Being organised can help avoid any future complications and ensure your business is in line with tax regulations, whilst being as profitable as it can be. Start with ensuring your records are in an orderly fashion; keeping note of everything is the height of importance to running a business successfully.

You can contact Bennett Brooks for all your accounting needs. We are a Top 100 accountancy firm who tailor our services to fit your specific needs. We go the extra mile to ensure we resolve your business problems and offer a wide range of services from tailored solutions for startups to payroll services and everything in between.

For more information visit our website, **www.bennettbrooks.co.uk** or alternatively **call us on 0845 330 3500**.

Thank you for taking the time to read our newsletter. We hope you found it useful and informative.
Should you have any questions or if you would like to contribute to our next newsletter then please contact our
Commercial Directors, Le-Ann Walker or Hugh Megarrell on 01829 773100.

Dyne Solicitors Limited • The White House • High Street • Tattenhall • Chester • Cheshire CH3 9PX
Tel: 01829 773100 • Fax: 01829 773109 • Email: info@dynesolicitors.co.uk

www.dynesolicitors.co.uk