

Duty-bound directors must embrace best practice



Over 500 pages long and eight years in the making, the much-discussed Companies Act finally begins to come into force this October.

There is much to welcome in the new legislation: there are opportunities to save money by greater use of electronic communications for share holders and many small businesses will welcome the reduction in red tape: However, says John Noctor, Head of Corporate Law at Burnetts, the Act will have significant implications on how directors make business decisions.



John Noctor

The Act contains a list of duties owed by a director to his company including a duty to "promote the success of the company for the benefit of the members as a whole." The duty to "promote the success of the company" is new and somewhat controversial. When exercising this particular duty, a director must have regard to a number of factors including: the likely long term consequences of any decision and the impact of the company's operations on the community and the environment.

John explains, "*The duty to have regard to long-term consequences is brand new. To date, actions against directors have usually centred on short term decisions or deals. The emphasis on wide ranging considerations may pave the way for a new sort of claim to be launched against directors, for example, where a decision might bring a short term profit, but eventually leads to a long term loss.*"

The Government says that it is up to directors to decide what will "promote the success" of a company and what constitutes success - decisions on strategy and tactics are for the directors, not the courts, provided the directors are acting in good faith.

"*This is all well and good*" says John "*but if directors have to take into account a broader spectrum of values when making decisions, there may be conflicts between the immediate requirements of a business, and the long term impact of the actions taken to address those requirements. That conflict could provide fertile ground for disputes and claims.*"

The Government is set to publish further guidelines, showing how directors can comply with the new duties. In the meantime, directors need to be mindful of their new obligations, and take the following practical steps:

- keep proper minutes of meetings, and the reasons why decisions are taken.
- review the scope of any directors and officers' insurance cover, to see whether it extends to liabilities arising from actions by shareholders.

It remains to be seen how this area of the law will develop, but the onus is increasingly on good practice and high standards of corporate governance. Directors need to be aware of their new responsibilities and to act accordingly if they want to avoid the prospect of a costly and distracting claim.

For further information visit the Company Advice section at www.burnetts.co.uk or call Burnetts' Corporate Law team on 01228 552222.

Also in this issue..

- Stubbing out workplace smoking
- Property industry gets HIP
- Changes to disciplinary procedures

Passion for Work is Key to Promotion

A passion for their work, a growing expertise and genuine commitment to Burnetts were amongst the reasons for recently recognizing some key staff.

Employment lawyer, Natalie Ruane and family law solicitor, Amy Fallows have been made partners while solicitor David McGill has been promoted to associate.

Natalie Ruane is a member of Eden Runners and a keen cyclist who regularly bikes the 20 mile journey from Carlisle to her home in Penrith. She is also mother to one year old Dylan. She said, "Burnetts is a very warm and human place to work – the people are lovely. It's particularly gratifying that I haven't been held back by being on maternity leave. I've long felt a genuine commitment to Burnetts and I'm looking forward to being more involved in the running of the business."

Amy Fallows, who is Chair of North Cumbria Resolution said, "Soon after I joined in 2002, I knew I wanted to stay with Burnetts for the long term. I work with people who are brilliant and I just love my job. What I have appreciated about Burnetts is that it's very down to earth. Most of my clients are in difficult family situations and need to be able to be honest with you - it wouldn't help to be aloof."

David McGill joined Burnetts from Watson Burton. A former sales and marketing director for a major national food company, he now specialises in the sale of and acquisition of companies and advises on company law. He lives near Hexham.



Natalie Ruane, Amy Fallows and David McGill

No Stopping Home Information Packs



Unpopular they may be, but it now seems certain that Home Information Packs (HIPs) are set to dramatically change the home-buying process this summer.

From June 1st, all homes will need a HIP before they go on the market. The HIP will include documents like evidence of ownership, Local Authority searches and an Energy Performance Certificate. The pack is expected to cost sellers around £400.



Burnetts will be providing HIPs to home sellers as part of our conveyancing service. In preparation we have been hosting meetings with estate agents, mortgage brokers and others involved in the home-buying process to share concerns and discuss exactly how the scheme will work at a local level.

Mike Wood, Head of Conveyancing said, "Whether or not we agree with the principle of HIPs, we all have to be able to guide our clients smoothly through the new system. I'm confident we are well prepared for the introduction of HIPs on June 1st."

If you have concerns about selling your home, visit www.burnetts.co.uk/hips.asp or contact Mike Wood.

New! - Electronic Employment Law Update

Burnetts' employment law team is now producing a monthly electronic employment law update.

Delivered in the first week of each month, the new e-bulletin gives practical advice on dealing with issues like grievances, dismissal and agency workers, as well as highlighting relevant legal cases. There's also a short update on the latest legislation.

To receive your copy, sign up on Burnetts' website or email ash@burnetts.co.uk



Stubbing Out Workplace Smoking

The much publicised workplace smoking ban is now less than two months away.

The Smoke Free (Premises and Enforcement) Regulations 2006 will finally be introduced in England and Wales on 1st July 2007 when a ban on smoking in all enclosed places to which staff or the public have access will come into force. If you have not yet considered the impact this legislation will have on your business, now is the time to do so.

This legislation "calls time" on designated smoking areas and smoking rooms within the workplace and forces employers to end their tolerance of informal smoking arrangements.

James Stables is an Associate Solicitor in Burnetts' Commercial Property department. He said, "Importantly, the legislation covers any enclosed workspace including company vehicles. Even an employee's private vehicle will be covered when the employee is using it in the course of their duties. This means that the car shares of eco-friendly employees could potentially be caught and employers are under a duty to make their employees aware of this."

This is because the legislation makes it obligatory to take steps to ensure that staff, customers and even visitors are aware that premises are smoke free. This includes prominently displaying the mandatory no

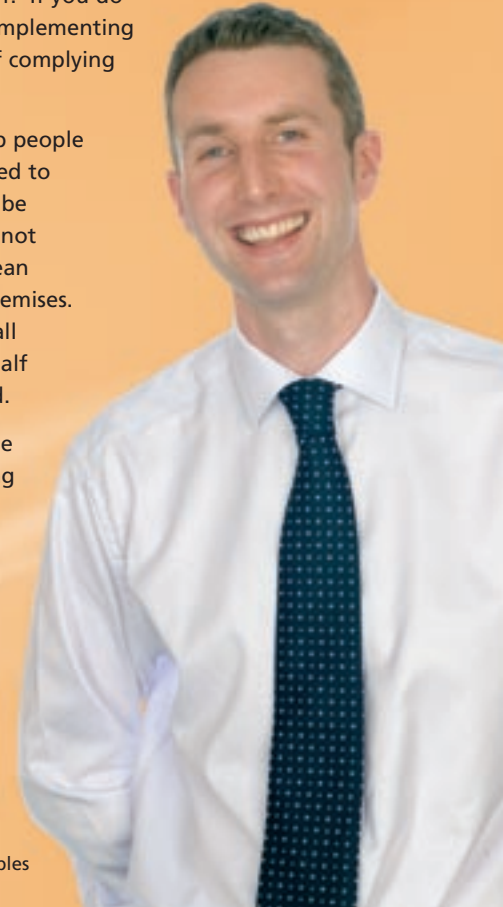
smoking sign but employers should consider going further than this. Employers should take this opportunity to review any existing smoking policy and re-issue a revised policy to all staff. If you do not currently have a smoking policy, implementing one now could be a pro-active way of complying with the regulations.

This legislation is not designed to stop people smoking. Employers will still be allowed to provide a smoking shelter but should be aware that just because a structure is not made of bricks or mortar does not mean that it will escape the definition of premises. Even a canvas tent or awning could fall foul of the regulations if more than half of the structure's wall area is enclosed.

The Government has proposed a range of penalties and fines for new smoking offences including a Fixed Penalty Notice of £50 for smoking in a smoke free premises or vehicle and another of £200 for failure to display no smoking signs. It is expected that enforcement action will only be taken when efforts to encourage compliance have failed.

Contact James Stables for further information.

James Stables



Done Deals...

GOING NUCLEAR

In November 2006, Head of Corporate Law John Noctor acted for the Nuclear Decommissioning Authority (NDA) in its high profile acquisition of United Kingdom Nirex Limited and its subsidiaries. Burnetts' secured a two year contract with the NDA late last summer. Under the two year deal, Burnetts will act in specific fields including property and planning; employment; company commercial; dispute resolution and intellectual property.

KNOWLEDGE SALE KNOW-HOW

In March, Head of Commercial Property John Priddle acted for UCLan in their multi-million pound disposal of Harris Knowledge Park in Fulwood, Preston. John has acted for UCLan for more than a decade. Last year he advised on the 4.5 million pound disposal of Preston Business Centre.



FREE Legal Advice for Start-Ups

Setting up a new business can be a daunting process, but at Burnetts we're determined to make it a little bit easier for Cumbria's entrepreneurs through the Lawyers for your Business scheme operated by The Law Society.

If you are setting up a business or have a business which is less than 6 months old, you can now claim a free half hour of legal advice from one of our commercial experts. **To find out more contact Sam Lyon on 01228 552222.**

**LAWYERS
FOR YOUR
BUSINESS**

Dismissal for "unfair" disciplinary procedures



The Employment Act 2002 (Dispute Resolution) Regulations 2004 look set for repeal after a government-commissioned review called them "bureaucratic and complicated".

In his report, "Better Dispute Resolution" published in March 2007, Michael Gibbons says that the over-prescriptive procedures for dealing with grievances and dismissal should be scrapped.

Senior Partner John Morris was one of the employment law experts invited to take part in the Gibbons review. He would like to see a return to the system in place before these Regulations were introduced in October 2004.

He said, "*The current Regulations are just too draconian and are seen as unfair by employees and employers. An employer could sack an employee who was caught red-handed with his hands in the till, but if he didn't follow the three-step disciplinary procedure, any employee would win a case of unfair dismissal along with any compensation being increased by up to 50%.*"

Meanwhile, employees are prevented from bringing tribunal cases against bad employers if they have not previously complained to their employer in writing. It's an unjust system with unduly harsh sanctions and penalties."

The Dispute Resolution Regulations came into force on 1 October 2004 and set down minimum standards for disciplinary and grievance procedures. Their aim was to encourage early resolution of disputes between employer and employee. Instead, the Regulations have led to the use of formal processes to deal with problems which could have been resolved informally and there has been an increase in tribunal cases. The average cost to business of defending an employment tribunal claim has been estimated at around £9,000.



Michael Gibbons, who is a member of the DTI's Ministerial Challenge Panel and of the Better Regulation Commission, also suggests a simplification of tribunal processes and an increased role for mediation so that more disputes are settled in the workplace.

The Government's current consultation on dispute resolution closes in June 2007.

To read the Gibbons report, visit the Employment Advice section at www.burnetts.co.uk.

John Morris

Forthcoming events

HIPS for Landlords

If you are buying to let, the Home Information Pack could be an important part of the process. These short, free sessions aim to make landlords aware of what to look out for in a seller's HIP.
Time: 1pm – 2.30pm or 5pm – 6.30pm
Date: Wednesday 13th June
Venue: The Library, Burnetts, Carlisle
Cost: FREE



Small Business Essentials

Taking on your first employee, the intricacies of leases and good account keeping are just some of Small Business Essentials covered in this breakfast seminar being hosted jointly with accountants Dodd & Co.
Time: 8am – 11am
Date: Wednesday 19th September
Venue: Dodd & Co, Rosehill, Carlisle
Cost: £25 plus VAT



Free Debt Recovery Seminar

Late payment continues to be the number one headache for small businesses which is why Burnetts is hosting a free seminar to help local businesses find out more about recovering debts effectively.
Time: 5.30pm – 6.45pm
Date: Thursday 4th October
Venue: The Library, Burnetts, Carlisle
Cost: FREE



Burnetts Annual Employment Law Update

A concise round-up of the latest legislation, hosted by Burnetts' employment law team.
Time: 3.45pm – 6.30pm
Date: Thursday 11th October
Venue: The Library, Burnetts
Cost: £35 plus VAT



For further details or to make a booking, email Angela Huck at ash@burnetts.co.uk or visit the Events Section of Burnetts' website at www.burnetts.co.uk

