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Incorporating Keith A Pearce

**NEWS BRIEF** - legal news that affects you and your business

## Landlords and letting agents could soon face a new regulation system

An independent review of the Private Rented Sector (PRS) has put forward a set of proposals which include a light touch licensing regime for landlords and mandatory regulations for letting agents.

It's hoped such measures would provide better protection for good landlords and vulnerable tenants.

There would also be tax changes, including changes to stamp duty, to encourage good landlords to expand their portfolio of properties. Local authorities would be required to develop a better understanding of the market and to support good landlords at the same time as dealing with those who perform badly.

The review also puts forward proposals to protect vulnerable tenants. There would be an independent complaints

**More support for landlords and vulnerable tenants**

and redress procedure which should help prevent long, drawn out disputes. There could also be more help for people on lower incomes. One idea is to provide more support for landlords who are prepared to house vulnerable tenants.

The review was carried out by Julie Rugg, a member of the Centre for Housing Policy at York University. Ms Rugg and her team were commissioned by the Government in January this year to examine the problems of both landlords and tenants in the Private Rented Sector.

They looked at the professionalism of landlords and the quality of properties as well as a range of issues across the sector. Ms Rugg said: "We want to move to a new agenda for the PRS that looks to establish policy that works with the strengths of the sector.

"We hope the review has signalled the Government's intention to seek a better working relationship with the sector. We



now have a much stronger evidence base, and the opportunity to frame more informed policy."

The review has been welcomed by the Housing Minister Margaret Beckett. She said the Government agrees that there is a need to improve the sector and will now consider the proposals before setting out the next stage.

We shall keep clients informed of developments and are happy to provide advice on all property issues.

## Improved maternity entitlement comes into effect

Employers need to be aware that women who gave birth on or after 5<sup>th</sup> October now qualify for improved maternity entitlement.

A woman is allowed to take 52 weeks maternity leave regardless of her length of service with her employer. The entitlement is made up of two sections.

The first section is the 26 weeks of Ordinary Maternity Leave. At the end of this period the woman has the right to return to the same post and is entitled to the same terms and conditions that she enjoyed before her leave began.

The second section is the 26 weeks of Additional Maternity Leave. When this period ends the woman still retains the right to return to the same job, but if it is not reasonably practicable for the employer to hold the post open, she can be offered another position on similar terms and conditions which are no less favourable.

During Ordinary Maternity Leave the woman must continue to benefit from the same terms and conditions that would have applied had she still been at work, apart from the terms relating to salary. Until now, these benefits did not continue



in full into the 26 weeks Additional Maternity Leave. However, they will do so now for women who gave birth after 5<sup>th</sup> October. For example, they will continue to qualify for contractual benefits such as participation in share schemes, reimbursement of professional subscriptions or gym membership.

They will also be able to continue using company cars and mobile phones, unless they are provided for business use only.

A woman will retain her contractual rights to compensation and statutory redundancy pay if she is made redundant. If her employment is to be terminated then she will be entitled to her contractual notice period and she cannot be dismissed for reasons relating to her pregnancy or maternity leave.

The time on Additional Maternity Leave will count towards the woman's period of continuous employment for the purposes of such entitlements as redundancy payments, assessing seniority and length of service payments.

Women will also continue to accrue annual leave while on Additional Maternity Leave unless they have agreed otherwise with their employer.

# Report says house buyers are being misled by some estate agency HIPs

House buyers are being misled by false information in Home Information Packs (HIPs) produced by some estate agents, according to an investigation by trading standards officers.

The officers from Birmingham Trading Standards visited 15 estate agencies in the city and asked to see HIPs for different properties. They selected six to subject to a detailed inspection and found that five of them were unsatisfactory.

Some wrongly claimed that information was not available or answered questions by stating "not as far as is known" even though the information was readily available from the local authority. The officers suspect that the problems arose because private search companies are cutting corners to save money.

The Trading Standards report gives several examples of faults contained in the HIPs they inspected. Some claimed there was no planning history on the property when in fact it was readily available. Others provided inaccurate dates for planning proposals or stated



that there were no planning restrictions when there was a restriction on permitted development.

There was also a case where the HIP said that planning history only dated back as far as 1990 when in fact the local council held paper records from 1948. The investigation was carried out in Birmingham but it's feared that the same thing is happening in other areas across the country. Councillor Neil Eustace, Chair of the Birmingham Public Protection Committee, said: "The results

of this survey are shocking. Buying a house is one of the most important investments most people will make and they rely on professionals to do their job properly.

"Some of this inaccurate or missing information could result in someone buying a house they would otherwise think twice about. These searches are simply not worth the paper they are written on."

The Law Society said the Birmingham findings seem to confirm reports it had received that some estate agents are being paid commission by search companies to include poor quality searches in their HIPs. The society president, Paul Marsh, urged sellers to consult a solicitor for advice about HIPs.

Mr Marsh said: "If the pack is to provide any value to the consumer at all it needs to be accurate and contain reliable information. That requires those who compile these packs to understand what they are doing. Anyone who buys a HIP from an unregulated estate agent or HIP provider might as well throw their money away.

"It makes perfect sense in a slow market to use the time you have properly and instruct a solicitor not only in the preparation of a HIP but on all the paper work involved in the selling of your home.

"All the research shows that instructing a solicitor early on in the transaction will speed up the process of selling a property significantly and ensure it runs as smoothly as possible."

Please contact us for more information about HIPs or any aspect of buying or selling property.

## Energy Performance Certificates now needed for all house sales

People selling a house which has been on the market for more than a year must now ensure that they have an Energy Performance Certificate (EPC) for the property.

EPCs are an integral part of Home Information Packs, which were introduced in stages for houses of different sizes in 2007 and became a legal requirement for all sales by December of that year.

People who had their house on the market before the respective deadlines are still exempt from

having to provide a HIP but they do now have to provide an EPC. They became a legal requirement on 1<sup>st</sup> October for anyone building, selling or renting out a home. The EPC rates the energy efficiency of the property and grades it from A to G.



The housing market has, of course, been very slow over the last year and it's thought that thousands of people who have had a property on the market for more than a year may not be aware that they now need an EPC. However, they risk being fined if they try to market the property without one.

## Court orders that abducted children be returned to mother

A court has ordered that two children living with their father in England must be returned to their mother in Poland.

The ruling was in keeping with the Hague Convention on the Civil Aspects of International Child Abduction which tries to protect the interests of children caught up in disputes between their parents in different countries.

The couple had been living in Poland and had two children aged nine and six. When the couple separated, the children continued to live in Poland with the mother. However, the father then moved

to England and later kept the children with him without court permission. He sent the older child to school and placed the younger one in a nursery. The mother then began proceedings under the Hague Convention to have the children returned to her. The father opposed the application on the grounds that the children were settled in England and did not wish to return to Poland.

The case was eventually heard in an English court which ruled that the children should be returned to Poland. The lack of contact with their mother was damaging them and the father had not

### Children's needs must come first

been able to produce any evidence to suggest that the usual provisions of the treaty should not apply.

Disputes between parents can be complicated and emotionally draining but as this case illustrates, the courts will always put the needs of the children first.

Please contact us if you would like advice on any aspect of family law.

# Europe agrees directive giving equal rights to agency workers

It has taken six years of wrangling but the European Parliament has finally voted to accept the Directive giving equal rights to agency workers.

The Temporary Agency Workers directive will ensure equal treatment in terms of basic working and employment conditions including pay. This applies from day one of employment unless individual governments negotiate alternative arrangements with social partners such as trade unions and business organisations.

The British Government reached agreement in the summer with unions and the CBI that temporary workers will be entitled to equal treatment after 12 weeks. However, the Government could not implement that agreement until the Directive was adopted by the EU. Now that has happened, the Government says it will move to implement the agreement as soon as possible. It will then come into effect within three years.

In the meantime, there will be discussions between the Government, the unions and the CBI to find mechanisms for resolving disputes regarding the definition of equal treatment and compliance with the new rules. They will also consider measures to prevent firms from trying to avoid the regulations by issuing repeat contracts for the same person.



## ... and they qualify for sick pay

Agency workers who have a contract or a series of contracts for three months or less now have the same right to statutory sick pay (SSP) as other workers – subject to them meeting the usual qualifying conditions. The entitlement applies to any new period of sickness that started on or after 27<sup>th</sup> October 2008 when the regulation came into effect. It will not apply to a period of incapacity for work that started before that date.

Employers must pay the SSP in the same way and at the same time as any wages to which the agency worker would be entitled. The qualifying rules for SSP remain the same and continue to apply. The full title of the new regulation is the Fixed-term Employees (Prevention of Less Favourable Treatment) (Amendment) Regulations 2008 [SI 2008 2776]. Please contact us if you would like more information about agency workers or any aspect of employment law.



## EU wants to simplify rules on mergers and divisions

The European Commission wants to introduce new measures to reduce the administrative burden on public limited-liability companies relating to mergers and divisions.

Company law, together with accounting and auditing, are considered priority areas for relaxing regulations and the new measures are intended to help reach the target of reducing red tape by 25% by the end of 2012. The proposals would reduce the reporting requirements placed on companies in relation to

mergers and divisions, particularly in cases where shareholders feel that certain reports are unnecessary, and with simplified mergers and divisions involving parent companies and their subsidiaries.

The measures would remove the need for double reporting in cases where other EU rules may also apply, and would introduce the opportunity for companies to use the internet and email to publish the draft terms of the merger or division and provide shareholders

with the required documentation.

The Internal Market and Services Commissioner, Charlie McCreevy, said: "The directives that we want to modify date back about 30 years. If we want to keep administrative burdens for EU companies to a minimum we must make sure that these rules are brought in line with today's technological possibilities and business processes."

We shall keep clients informed of developments.

## Divorcee to get £50,000 a year to care for her horses

A wife is to receive a divorce settlement which includes £50,000 a year to care for her three horses.

The award was made after the court was told that she was devoted to the animals which were a key part of her life. Her husband, who is an investment banker, was also ordered to give her £900,000 so that she could buy a house with surrounding fields so the horses could graze. The woman will also receive £30,000 a year maintenance for herself in a divorce package worth a total of £1.5m.

The district judge made the award after being told that horses had been a prominent part of her life. The couple, who have not been named, had been

married for 11 years and had no children. The court was told that the horses were like a child substitute for her, particularly after she had lost a baby in 2001. She told the court: "Horses are my family. I see them every day. You form a very close bond with horses." The couple, who live in Gloucestershire, had joint assets of £3m.

The Court of Appeal has upheld the district judge's award. Sir Mark Potter, one of the three Appeal Court judges hearing the case, said: "During the marriage the horses played a major part in the wife's life with the consent and encouragement of the husband." He added that while the husband remained in his post with his current level of income, "it was not right to expect the

wife to work full-time so she was left with no time for her horses". This is an unusual case which sets something of a precedent but it doesn't mean that divorcing wives will automatically be able to claim large sums to pay for the maintenance of their horses or other animals.

Each case will be different and, of course, a couple would have to have considerable assets for this to become an issue. However, it is possible that in certain circumstances, a person could receive maintenance for pets if they could show that they were an important part of their life.



# Registering Lasting Powers of Attorney to become 'cheaper and easier'

The Government has announced plans to make it easier and cheaper to register Lasting Powers of Attorney (LPA).

It's hoped the move will encourage more people to prepare for a time when they may be unable to make important decisions for themselves about their finances and about their health and welfare.

The proposals have been put forward as part of a review of how well the Mental Capacity Act 2005 is working. The Act came into force in October 2007 and introduced LPAs as a replacement for the previous system involving Enduring Powers of Attorney.

The new LPAs proved even more popular than expected. The Office of the Public Guardian (OPG), which administers the registration process, says that three times as many people applied to register powers of attorney over the last 12 months as in previous years.

The sudden surge in demand has led to delays which the OPG has been trying to address. It is to carry out a wide ranging review of the Act but will concentrate at first on powers of attorney. It is now considering a number of proposals including reducing the registration fee from £150 to £120.

There are also plans to redesign the form and guidance notes to make them clearer and "introduce a new level of supervision of court-appointed deputies to give short-term support and scrutiny where needed". It's hoped that some of the proposed changes will be introduced in April.

LPAs offer a wide range of options to people who want to



prepare for a time when they may lose some of their mental capacity. The property and finance LPA allows you to appoint someone to look after your financial affairs if you become incapable of doing so yourself. The personal welfare LPA lets you grant an attorney authority over such matters as health care and the kind of treatment you receive.

The Office of the Public Guardian needs to register LPAs before they can be used. Registration is followed by a 42-day statutory waiting period to allow people to raise objections to the registration. This waiting period is one of the safeguards built into the process to ensure that the LPA has been drawn up properly and is not fraudulent.

Please contact us if you would like more information about Lasting Powers of Attorney.

## New powers for courts to settle disputes between parents

Family courts now have new powers to help resolve disputes between estranged parents over contact arrangements for their children.

The new measures are part of the Children and Adoption Act 2006 and are effective from 8<sup>th</sup> December 2008. They're designed to help resolve conflicts between parents over such things as who the child should see, how often and under what conditions.

The changes mean that courts now have the power to direct a parent in a dispute to undertake a contact activity. They will also be able to attach an activity condition to contact orders.

If one of the parents suffers a financial loss from the other's failure to comply with a contact order then the court will be able to award compensation. The court will also be able to impose an unpaid work requirement on the person who breaches the contact order.

The Government says the background to the changes is the principle that the "well-being and interests of the child are of paramount importance" rather than the personal interests of either parent.

We would be happy to provide more information about the new measures or any aspect of family law.



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