

# TECHNICAL UPDATES

Our regular roundup of legal and regulatory change

## EMPLOYMENT LAW



**THIS SECTION IS SUMMARISED FROM THE BULLETINS OF VARIOUS LAW FIRMS AND ASSOCIATIONS. NONE OF THE INFORMATION IN THIS UPDATE SHOULD BE TREATED AS LEGAL ADVICE**

### STATS POINT TO LONGEVITY INCREASE SLOWDOWN

Data released by the Office for National Statistics revealed that there were 153,717 deaths registered in England in the first quarter of 2018 (January to March), which is higher than any first quarter for the last five years and 18,145 deaths above the five-year average.

Commenting on the statistics, Helen Morrissey, personal finance specialist at Royal London, said: "These figures add further fuel to the idea that the increases in longevity we have seen for so many years are beginning to slow down and if this trend continues there will be major implications for policy around state pension age for instance."

Morrissey suggested that if the trend indicated by these figures continues,

the government could find itself having to "push back" its previously announced proposal to bring forward state pension age to 68 by 2039.

### NEW OVERTIME GUIDANCE FROM ACAS

ACAS has produced new guidance on overtime.

The guidance covers:

- the different types of overtime (including voluntary and compulsory);
- working time limits on overtime;
- payment for overtime;
- alternatives to payment for overtime;
- overtime for part-time workers;
- the impact of overtime on holiday calculations.

See [tinyurl.com/BAM-Overtime](http://tinyurl.com/BAM-Overtime)

### PLUMBER WINS WORKERS' RIGHTS BATTLE IN KEY SELF EMPLOYMENT CASE

A Supreme Court ruling awarding workers' rights to plumber Gary Smith could have significant ramifications for freelance workers and independent contractors.

Mr Smith had worked solely for

Pimlico Plumbers for six years. After suffering a heart attack in 2010, he sought to reduce his working hours from five days a week to three; Pimlico Plumbers refused this request, removed his company-branded van, and Mr Smith claims he was dismissed.

Mr Smith then issued proceedings against Pimlico Plumbers before an employment tribunal for a number of offences, including unfair dismissal.

While the tribunal found that the latter complaint could not be upheld as Mr Smith had not been an employee under a contract of employment, it did rule that he should be classed as a 'worker' under s.230(3)(b) of the Employment Rights Act 1996 due to features of his contract including his inability to transfer his work to a subordinate.

Pimlico challenged this decision, and its subsequent support in the Court of Appeal, but the Supreme Court ruled that Mr Smith was indeed entitled to workers' rights including holiday and sick pay, despite his being VAT-registered and paying self-employed tax.

Pimlico Plumbers chief executive Charlie Mullins said that judges had missed the opportunity to bring the UK's "out of date" employment law into the 21st century, and that other companies using self-employed contractors could face a "tsunami of claims" as a result of the decision.

This decision could further fuel the demand for clearer guidance on workers' rights within the so-called 'gig economy', with the outcome of the government's Good Work Plan (itself a response to *Good work: the Taylor review of modern working practices*) remaining to be seen.

More information can be found at [tinyurl.com/BAM-SmithPimlico](http://tinyurl.com/BAM-SmithPimlico)

### UNFAIR DISMISSAL STANDS DESPITE MISUSE OF INFORMATION

The Court of Appeal has upheld that the use of leaked information should fall within the scope of 'trade union activities' for the purposes of a claim of automatically unfair dismissal for taking part in trade union activities (s152 ERA).

*Morris v Metrolink RATP Dev Ltd*, relates to Mr Morris, a trade union member, and an assessment centre undertaken as part of a Metrolink restructuring exercise. The outcome of

the assessment centre was that five supervisors were put at risk of redundancy. Four of them were already union members, and the fifth joined shortly thereafter. Mr Morris received a photograph of a diary entry made by a line manager, who it was understood should not have been involved in the assessment, referring to the candidates' performance.

He informed the HR department, raised a collective grievance, and was subsequently dismissed for storing and sharing confidential information. Mr Morris brought claims of ordinary unfair dismissal and automatically unfair dismissal.

The tribunal upheld both claims, but the EAT allowed Metrolink's appeal after finding that the protection for trade union activities did not extend to wrongful or unlawful retention of confidential information.

Though it acknowledged that Mr Morris's actions in accepting the leaked information were perhaps not that of a "strict moralist", the Court of Appeal found that the "very limited way" in which Mr Morris made use of the leaked information, which "directly concerned his members as individuals and which it was in their interest for him to follow up", was not a sufficient departure from good industrial relations practice to take his conduct outside the scope of 'trade union activities' for the purpose of section 152.

The full judgement can be read at [tinyurl.com/BAM-MorrisMetrolink](http://tinyurl.com/BAM-MorrisMetrolink)

## TAX



**NEWS AND UPDATES FROM THE TAX FACULTY WEEKLY NEWSWIRE. VISIT [ION.ICAEW.COM/TAXFACULTY](http://ION.ICAEW.COM/TAXFACULTY) AND CLICK THE SIGN-UP LINK TO SUBSCRIBE FOR FREE**

### CORPORATE LOSS REGIME AND THE TAX TRAP FOR SMES - LATEST WEBINAR

Presented by Peter Miller of The Miller Partnership, the ICAEW Tax Faculty's latest webinar covers the following areas:

- The losses are affected.
- The relaxation to the carry-forward of losses.
- Group implications.
- How the £5m deductions allowance works.
- Reporting and administrative requirements.

Where a company or group has profits in excess of £5m in any period, the maximum amount of loss relief that can be claimed in that period in respect of carried-forward losses is £5m plus half the difference between £5m and the total profits of the company.

The changes apply from 1 April 2017 and were introduced in Finance (No. 2) Act 2017. But SMEs don't need to do anything about these rules, do they? Actually, they do. Watch the webinar recording now to find out more [tinyurl.com/BAM-CLRegime](http://tinyurl.com/BAM-CLRegime)

### THE TREASURY SELECT COMMITTEE - INQUIRIES

On 27 March, the Treasury Select Committee (TSC) launched an Inquiry into VAT and the TSC sub-committee launched two inquiries: one into Tax Avoidance and Evasion and the second into The Conduct of Tax Enquiries and the Resolution of Tax Disputes.

ICAEW Tax Faculty responded to all three inquiries but has so far only had permission to reproduce the responses to the two sub-committee inquiries. The Faculty will publish its response to the VAT Inquiry when permission is granted to do so.

Keith Gordon, who is a member of the Tax Faculty Technical Committee, submitted a personal response to the Tax Enquiries Inquiry and was called to give evidence before the sub-committee on Monday 18 June. There

is likely to be a second evidence hearing on 9 July and John Cassidy may be called to give evidence on behalf of ICAEW Tax Faculty.

ICAEW may be called to give evidence after the parliamentary summer recess on *Professional Conduct in Relation to Taxation* and upholding ethical principles.

### DRAFT CLAUSES FOR FINANCE (NO. 3) BILL

In a Written Ministerial Statement (HCWS757), it has been announced that the draft clauses for Finance (No. 3) Bill will be published on 6 July. They will be accompanied by explanatory notes, Tax Information and Impact Notes and responses to recent consultations.

The draft legislation published in July will go into Finance (No. 3) Bill, so named because it is the third Bill in the current two-year parliament 2017-2019. The Bill will be published after the Autumn 2018 Budget and will become Finance Act 2019 before the end of the tax year 2018/19. The Bill will probably be given the unofficial name "Finance Bill 2018-19" because that is what they did with the last one.

In line with the approach to tax policymaking set out in the government's documents *Tax Policy Making: a new approach*, published in 2010, and *The new Budget timetable and the tax policy making process*, published in 2017, the government is committed, where possible, to publishing most tax legislation in draft for technical consultation before the legislation is laid before parliament.

All publications will be available on the GOV.UK website.

## FINANCIAL REPORTING



### FRS 102 AMENDMENTS - FAQs

In December 2017, the UK's Financial Reporting Council (FRC) issued amendments to UK GAAP standards arising from its Triennial review. Although many of the amendments aim to clarify rather than change accounting treatments, there are significant changes to some areas. In the latest *Financial Reporting Faculty FRS 102 Update*, we answer some of the frequently asked questions on the changes to the standards.

Read the FAQs at [tinyurl.com/BAM-FRS-102-Amends](http://tinyurl.com/BAM-FRS-102-Amends)

### CRR HOT TOPICS

The FRC encourages companies to provide informative disclosures tailored to their specific circumstances and transactions, and to disclose any key judgements that management would need to make in complying with the new standards.

The FRC returned to this subject in its June 2018 *Corporate Reporting Review Briefing*, stressing that disclosures on the effects of new standards should be clear, concise, company-specific, and focus on the areas of change. IFRS 9 *Financial Instruments* and IFRS 15 *Revenue from Contracts with Customers* are effective for accounting periods beginning 1 January 2018.

Read the briefing at [tinyurl.com/BAM-CRR](http://tinyurl.com/BAM-CRR)

### BLOCKCHAIN

A new report from the UK FRC's Financial Reporting Lab (the Lab) considers how current developments and use-cases of blockchain technology might affect corporate reporting processes in the future. It concludes that, while cost, complexity and lack of standardisation of blockchains might be inhibiting factors, the growing use of blockchain means that those involved in corporate reporting processes need to consider its potential disruptive impact.

The following potential cases for using blockchain are considered:

- In the production of corporate reporting: how transactions processed on a blockchain may help to improve accounting records.
- In the distribution of corporate

reporting: how a blockchain-based European corporate reporting platform (European Financial Transparency Gateway) may help to open up access to corporate reporting, and

- In the consumption of corporate reporting: how blockchain might help to rethink the way that reporting content is defined.

The report recommends actions for various groups who have an interest in this area.

Read the report at [tinyurl.com/BAM-FRC-Lab](http://tinyurl.com/BAM-FRC-Lab)

### HOW DO YOU AUDIT CULTURE?

Culture goes beyond the values promoted by those at the top of an organisation. It is as much about the behaviours and attitudes at every level of the organisation. The chair of one global group, built by his family over 100 years, identified "loss of the corporate culture" as his number one risk. Yet, while the ability to provide an audit perspective on culture should be valued by many, some boards have questioned whether culture can be audited at all.

Assessing the culture of your organisation is not easy, but done well it can be empowering and deliver tangible benefits to the business. A strong culture can help firms to secure a competitive advantage, while significant cultural failures can harm an organisation.

There is no one-size-fits-all solution to auditing culture and carrying it out can be a major challenge for internal audit. However, a carefully-planned and structured audit can be really valuable in highlighting an organisation's cultural strengths and where change might be needed. Boards and audit committees in particular need to understand if established values and behaviours are being unintentionally diluted or eroded.

To help internal auditors deliver an effective audit of culture, ICAEW's Internal Audit Panel has produced a practical guide that highlights eight tips to follow. The guide, *How to audit culture*, includes a section on how to write a report on culture, the list of areas that should be considered when planning an audit, and a series of questions to help internal auditors assess their organisation's culture. The guide is freely available to ICAEW members at [tinyurl.com/BAM-AuditCulture](http://tinyurl.com/BAM-AuditCulture) ●