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- With effect from the 6 April 2008 EPCs will be required for all commercial buildings with a floor area over 10,000 square metres when built, sold or rented. EPCs will be required on construction for all dwellings.
- With effect from 1 July 2008 EPCs will be required for all commercial buildings with a floor area over 2,500 sq metres when built, sold or rented.
- With effect from 1 October 2008 EPCs will be required on the construction, sale or rent of all remaining buildings and all remaining dwellings. Also from 1 October 2008 Display Energy Certificates (showing the building operational rating) will be required for all public buildings greater than 1,000 sq metres.

If you need advice on your obligations under the new regulations relating to EPCs please contact us, asking for Varsha Pattni in the first instance or email vap@lockharts.co.uk.

1. Energy Performance Certificates

Energy Performance Certificates ("EPCs") will soon be required for all commercial and residential buildings and will grade performance on a scale from A-G. There will be two types of certificate for commercial buildings, asset certificates and operating certificates.

Asset certificates will measure the intrinsic energy performance of a building flowing from its design, and will be required to be renewed every 10 years and produced on sale, lease and renewal of lease. Operating certificates will measure the overall performance and management of the building, and will have to be renewed annually.

Some important dates to note are as follows.

2. Success in the House of Lords for Doctors' Association

The British Association of Physicians of Indian Origin (BAPIO) succeeded in the House of Lords against the Department of Health. The Lord's ruling handed down on 30 April 2008 found that Department of Health guidance on the employment of junior doctors who are not nationals of the UK or any other member state of the European Economic Area was unlawful.

The guidance, issued on 13 April 2006 was to the effect that doctors who are non-EEA/UK nationals should not be offered positions as junior doctors in post-graduate training positions where:

- the doctor's leave to remain under the Immigration Act 1971 did not extend beyond the duration of the position on offer; and
- there were suitable candidates who were UK or EEA nationals to whom the positions could be offered.

BAPIO argued that in order for the guidance to have had legal effect it would have had to have been made in compliance with the Immigration Act 1971. One of the requirements of the 1971 Act is that changes to the immigration rules must be laid before Parliament and made subject to annulment by negative resolution of either House.

As Lord Bingham of Cornhill noted:

"...no official draft, record or statement of the guidance has been placed before the House, which has instead been referred to an e-mail beginning "Dear All" sent by an official [...] in response to confusion caused by some earlier confusion. It is for others to judge whether this is a satisfactory way of publishing important governmental decisions with a direct effect upon people's lives."

His Lordship also noted the sad case of the second claimant, Dr Imran Yousaf, an International Medical Graduate from Pakistan who was adversely affected by the changes introduced by the guidance and who "perhaps as a result" took his own life in January 2007.

For advice on disputes with public bodies within the Department of Health please contact Andrew Lockhart-Miramis at aim@lockharts.co.uk or Michael Rourke at mbr@lockharts.co.uk.

3. The Future of the PCT Estate

Future models of healthcare service provision and the premises from which those services are provided are inextricably linked. As a result of PCT commissioners tending increasingly to engage providers on shorter

contracts of 3 to 5 years, providers hoping to develop their own new premises may find themselves faced with a high degree of risk.

While providers may face such risks, PCT commissioners will be forced to explore ways of controlling premises over the longer term where the providers occupying those premises are likely to change more frequently. There are various options open to the PCT's current estate. For example: it could continue to own and manage the estate; it could encourage provider organisations including GPs to take it on and manage it; it could transfer it to a third party to manage on its behalf, or it could enter into partnership with the private sector and create a vehicle (NHS LIFT) to own and manage the estate.

All parties involved in developing premises for provision of healthcare will need to stay abreast of such developments and ensure they obtain specialist advice in order to understand the advantages and disadvantages of all their options. If you would like advice on any of these issues please contact Varsha Pattni at vap@lockharts.co.uk.

4. New Chemical Regulations

The European Union regulation for the Registration, Evaluation and Authorisation of Chemicals (REACH) came into force in June 2007. The new rules are designed to regulate the use of around 30,000 chemicals, which are in daily use, in order to provide better protection for people and the environment.

Users of certain chemicals are classified by the new rules as "downstream users" and have certain obligations. However, many small organisations using products routinely and in accordance with directions by the supplier will not be significantly affected. The main onus is upon manufacturers and importers of chemicals who may be required to comply with REACH registration and the associated obligations, which include providing detailed information – in the form of 'safety data sheets' and 'exposure scenarios' – on the hazards associated with certain substances.

Downstream users will continue to receive information on dangerous substances and preparations, and may now also receive an exposure scenario for certain substances which will provide further information on safety measures. Downstream users must comply with any risk management measures set out in the safety data sheets and exposure scenarios and observe any restrictions on the use of substances.

Downstream users are also permitted to communicate with their supplier if they find that their particular use of a chemical is not covered by the exposure scenario. Where a downstream user discovers new information on the hazard of a substance or preparation, or they believe that the risk management measures provided are inadequate, they must contact their suppliers with the information. Certain downstream users and users of certain very dangerous substances are required to provide customers with additional kinds of safety information as set out in the regulations.

Additionally, downstream users must not place on the market or use any substances which are not registered in accordance with REACH.

5. Healthcare Procurement during 2008

One of the chief recommendations of Lord Darzi's Interim Report on the NHS Next Stage Review (October 2007) was that Primary Care Trusts (PCTs) should procure new GP practices and health centres to ensure equal quality and access to primary care medical services across the country. The Department of Health has since published numerous documents on how the procurement process is to take place, but our current experience suggests that not all PCTs are interpreting the documents in the same way and clients are asking us for advice on the correct procedures to be followed.

With respect to new GP practices, it is predominantly the lowest ranking PCTs who will be participating in the process, although some middle ranking PCTs will also participate; 50 PCTs will procure a total of

113 GP practices. As a minimum the new GP practices must provide core GP services, have a list size of at least 6,000 patients, have a minimum of 5 hours extended opening per week, engage in Practice Based Commissioning, have wide and overlapping practice boundaries and the intention of becoming an accredited training practice.

With respect to health centres, there must be a minimum of one new health centre procured for each PCT in England. As a minimum each new health centre should demonstrate integration with existing social and community services, be located for accessibility, open from 8am to 8pm seven days a week, have walk in services as well as bookable GP appointments, have both registered and non-registered patients and operate GP-led care.

By contrast to health centres Lord Darzi's plans for polyclinics are focussed predominantly in London. Polyclinics will be larger containing around 25 equivalent GPs plus other healthcare professionals; they will offer a much broader range of services and will be open for up to 24 hours a day. PCTs that are not part of the pilot for polyclinics will be expected to procure a GP-led health centre instead.

Lockharts have undertaken an extensive analysis of the proposals for both Polyclinic s and GP-led health centres and have considerable concerns about the lack of regulatory clarity and particularly the absence of clear provisions as to how the employment arrangements of the employed staff are to fit together. The secondment of staff is a highly complex area and one where the law is far from settled.

Enquiries about Polyclinics, GP-led health centres together with regulatory and employment issues should be made to Andrew Lockhart-Mirams at alm@lockharts.co.uk or Alison Oliver at ao@lockharts.co.uk

6. iwantgreatcare.com

Lockharts share the concerns which have been expressed about this website which invites patients to rate their GP on a scale of 1 - 100.

It is the case that the website contains terms of use to regulate its use but they run to 6 closely typed pages and we suspect that few, if any, reviewers will read the terms of use and/or understand them.

It may be that the site will have limited use but Lockharts will be pleased to advise any GPs who have particular concerns about entries that are posted in their name. Please contact Michael Rourke at mbr@lockharts.co.uk.

7. Firm News

We are pleased to announce that the Property Team has been joined by James Press who will be working alongside Varsha Pattni and Stephen Carter as a paralegal.

Previous Issues

If you would like to receive previous issues of the Lockharts Newsletter please contact Richard Gilligan at csd@lockharts.co.uk.

Distribution of our Newsletters

We prepare newsletters for practitioners at approximately monthly intervals and occasional newsletters for LMCs. LMCs are welcome to distribute these to their constituents in their entirety.

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If you have any questions about this, please contact Andrew Lockhart-Miramis at alm@lockharts.co.uk.

Cessation

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'... Lockharts leap frogs the lower tiers to the top, following market recommendation... Having acted for over 1,500 GP practices, the firm was pivotal in the formation of and structure of GP contracts, and regularly advises medical committees in London and across the country ... a team that "definitely knows its onions."

Chambers UK, A Client's Guide to the Legal Profession 2008

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