A magazine from

IM irwinmitchell

Focus on Manufacturing

Edition 7

An industrial strategy for the UK

Future-proofing manufacturing

Product recall: A quick guide

P16 Are you ready for the next **Industrial Revolution?**

Contents

4 **An industrial strategy for the UK**

6 **Bumps in the road**

8 **Energy efficient manufacturing**

10 **A six-figure saving?**

12 **Immigration and UK manufacturing**

16 **Are you ready for the next Industrial Revolution?**

18 **Insider Roundtable: Future-proofing manufacturing**

20 **M&A trends in manufacturing**

24 **Product recall: A quick guide**

26 **UK Powerhouse: A balancing act**

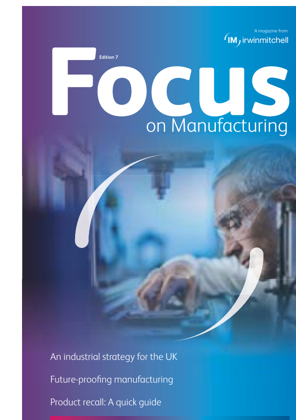
28 **European court ruling leaves manufacturers wide open to holiday pay claims**

Bumps in the road

P6

Energy efficient manufacturing

P8



WELCOME...

to the latest edition of **Focus on Manufacturing**

Britain has a long and proud tradition of manufacturing – but to maintain its standing in a competitive and ever-changing global marketplace is a challenge that must be met head-on by legislators and businesses alike.

In this edition, we explore UK manufacturing's place in the world in 2018 – the issues the sector faces, and the ways in which British manufacturers can remain innovative, efficient and profitable.

Like many organisations, we watched with cautious optimism when the Government announced its Industrial Strategy at the end of last year. A unified plan for the manufacturing sector is clearly a step in the right direction – but a few months down the line, how much of a difference has it made? We consider this in detail on page 4.

As part of its strategy, the Government has also announced its first Automotive Sector Deal, promising significant new funding for automotive manufacturing. Sarah Riding from our Commercial team discusses this on page 6, along with how disruptors such as Brexit will impact on the automotive supply chain.

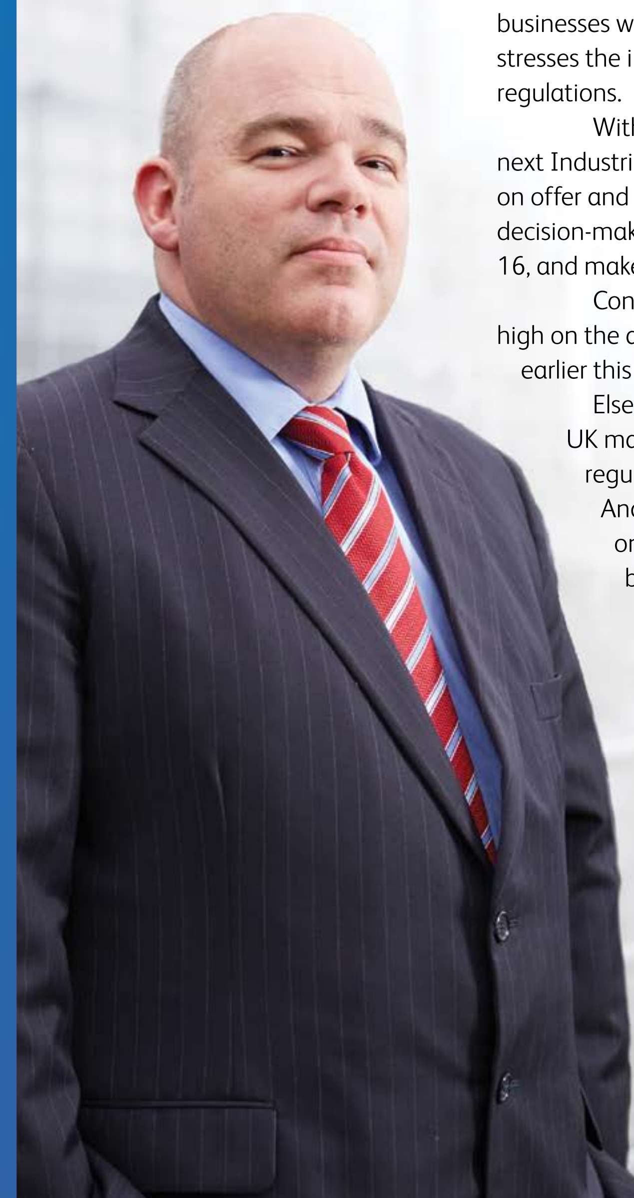
Brexit continues to dominate headlines, with its potential implications for businesses with a non-EU workforce a key concern. On page 12, Mandeep Khroud stresses the importance for UK manufacturers on being up to speed with immigration regulations.

With its proud manufacturing heritage, the UK should be at the vanguard of the next Industrial Revolution – Industry 4.0. But are manufacturers aware of the advantages on offer and how to implement them? We commissioned an in-depth survey of senior decision-makers to find out. The results of our report, titled Go Fourth, are shared on page 16, and make for interesting reading.

Concerns around Industry 4.0 – funding, privacy and impact on staff – were high on the agenda when we hosted a roundtable discussion in conjunction with Insider earlier this year. See how the conversation unfolded on page 18.

Elsewhere in the issue, we explore some of the domestic issues affecting UK manufacturing. Kevin Fox discusses the impact of new energy efficiency regulations for manufacturers who own or rent out their premises on page 8. Andrew Jackson provides a useful guide to mitigating the risk of product recall on page 24, while on page 10, Alex Rook highlights a levy which could be being paid unnecessarily by manufacturers across the country – and explains how identifying this could lead to savings in excess of £100,000.

We are always fascinated to hear from those at the heart of the manufacturing sector, whether at the events we participate in, or simply catching up with our clients in the sector. We are impressed by the positivity and confidence displayed despite the difficulties businesses face, and thus in our view the UK's position at the forefront of global manufacturing is assured.



Dorrien Peters
Head of Manufacturing

An industrial strategy for the UK

The Government unveiled grand plans for the manufacturing sector at the end of last year – but could more be being done to help British businesses?

When the Government announced the launch of its major Industrial Strategy back in November, it's safe to say there was a mixed reaction.

While the likes of the Confederation of British Industry (CBI) welcomed the move, others such as the Institute of Directors (IoD) were much more cautious and the Chartered Institute of Personnel and Development (CIPD) even went so far as to refer to it as "inadequate". Here at Irwin Mitchell, we recognised that the Government had correctly highlighted both the challenges and opportunities that the UK faces, while also pinpointing the significant rewards which could be achieved by businesses tapping into fresh innovation.

Several months on from the announcement, there is an argument about just how much of a difference the strategy has made to businesses across many sectors so far. The British Chamber of Commerce has even gone so far as to suggest that the Government has become so distracted by Brexit negotiations that it has failed to recognise the basic issues – such as mobile phone 'not-spots' and infrastructure problems – which are affecting a great number of companies. However, there have been some steps taken to push on with the Industrial Strategy – and the developments could well have a significant bearing on the manufacturing sector.

Technological transformation

Prior to the strategy's launch, an independent review by Siemens UK chief executive Professor Juergen Maier hinted how the adoption of industrial digital technology could transform the manufacturing industry. It was estimated that not only would the sector be boosted by £455 billion across a ten-year period, but growth would also increase by 3% a year, jobs would be created and carbon emissions cut. Considering such findings, it is perhaps unsurprising there has been an emphasis on technology-related announcements in recent months.

While some have related to farming, perhaps the one most likely to impact on manufacturing is the launch of three-year review of the UK's driving laws, with the aim of ensuring legislation is compatible with the widespread introduction of self-driving vehicles. Launched as part of the Future of Mobility Grand Challenge set out in the Industrial Strategy, the review is a sign that the UK is keen to become a world leader in self-driving technology. Along with the Automotive Sector Deal announced by the Government in January which has promised significant new funding for innovation and technology in terms of vehicles, this could have a bearing on manufacturing in a couple of ways. Firstly, businesses may be encouraged to bring production of such vehicles to these shores, while secondly manufacturing companies may see new opportunities open up to use driverless technology to transport their goods up and down the country.

Putting people first

While technology clearly has a fundamental part to play in the Government's Industrial Strategy, another announcement highlights that there is more to it than simply the rise of the machines. Manufacturers will need to consider how they may be affected by proposals announced in February to reform a number of areas related to workers' rights.

Among the changes put forward were plans to enforce vulnerable workers' holiday and sick pay for the first time, as well as new day-one rights in terms of entitlements to those benefits. There is also expected to be a right for all workers to request a more stable contract, while the 1.2 million agency workers in the UK could get a clear breakdown of both pay and any costs which may be deducted from their wages.

With the Government also outlining plans to ensure action is taken against any employers who fail to meet their responsibilities when it comes to workers' rights, it is clear that businesses in the manufacturing sector and beyond will need to stay abreast of any developments on this front and how they may impact on their workforce.

Much more to come

So, while the jury may still be out on the Government's efforts to boost British business, there have at least been a few steps taken to push forward with the Industrial Strategy – and manufacturing is certainly one of the sectors which will be affected.

There is no doubt that there is much more to come, and it will be fascinating to see whether ministers can succeed in pushing the UK to a brighter business future.

Sources

[BBC]: http://www.bbc.co.uk/news/business-43319467
[Smallholder]: http://www.smallholder.co.uk/news/16037524.Government_offers___90m_for_food_producers_to_use_robotics__AI_and_data_science/
[GOV.UK]: https://www.gov.uk/government/news/millions-to-benefit-from-enhanced-rights-as-government-responds-to-taylor-review-of-modern-working-practices
[Department for Business, Energy & Industrial Strategy]: https://www.gov.uk/government/publications/made-smarter-review
[BBC]: http://www.bbc.co.uk/news/business-42131742
GOV.UK]: https://www.gov.uk/government/news/government-to-review-driving-laws-in-preparation-for-self-driving-vehicles
[Daily Telegraph]: https://www.telegraph.co.uk/business/2017/11/27/inadequate-industrial-strategy-gets-tepid-welcome/

Bumps in the road

How can manufacturers in the automotive sector protect themselves against supply chain disruption?

There are many factors affecting the automotive sector at present, including Industry 4.0, changes in car ownership, self-drive vehicles, Brexit and the recently announced Automotive Sector Deal.

Up to three quarters of components for vehicles in the automotive industry are not produced by the original equipment manufacturer (OEM) itself, but delivered by the suppliers making up increasingly complex supply chains. Against the backdrop of disruptors in the sector, issues can arise at any stage in the supply chain, leading to a very vulnerable position and a failure in supply.

We are increasingly seeing OEMs and tier one suppliers adopting more complex supply chain structures, modelled on a combination of the concepts of just-in-time and just-in-sequence production. This is especially true with the advent of Industry 4.0, where automotive OEMs have generally been high adopters.

This approach can increase efficiency and improve the production process, but this can also put further pressure on supply chains. A failure or delayed delivery at any point can cause a knock-on trigger throughout the chain, leading to delay in the final product and potential claims for damages. OEMs are increasingly seeking to pass this risk through the supply chain, placing further pressure on suppliers to adopt new technologies and accept increasingly onerous contracts.

Suppliers should focus on contract negotiations and the terms of supply to avoid potential claims and issues. Depending what level of the supply chain they are at, they should also put in place robust terms with their own suppliers to back off any exposure. Customers and tier one suppliers usually seek commitment to a specific delivery time. Suppliers may wish to negotiate, in that delivery times are estimates only – although customers are unlikely to accept this position. As an alternative, a supplier may wish to attempt to limit the damages available for late delivery to ensure that its exposure is quantifiable and restricted to direct losses only.

Automotive supply contracts usually contain a force majeure clause. This allows the supplier's obligation to deliver to be suspended without liability on the occurrence of certain events outside its control. The Supplier may wish to extend the breadth of this clause so it covers a wider variety of events. Whatever the position adopted, this must be backed off through its own supplier contracts.

Traditionally we have also seen single sourcing options. With the increasing adoption of just-in-time sourcing, this could create issues as alternative suppliers would not be in place to enable production to continue when a failure occurs. Depending on the complexity of the component, establishing an alternative source can take substantial time. Putting in place contingency plans or loss of production can quickly add up to large losses and damage to reputation. In order to mitigate these issues, OEMs and tier one suppliers are also looking to multi-sourcing and more flexibility in the supply chains. Again, a supplier must be aware of the changing nature of supply chains, and look to protect its position both in its contracts and with its own suppliers.

Sarah Riding
Partner, Commercial
T: +44 (0)121 203 5335
M: +44 (0)786 091 0674
E: sarah.riding@irwinmitchell.com

Energy efficient manufacturing

For manufacturers who own or rent out their business premises, new regulations may mean significant fines – are you at risk?

The Minimum Energy Efficiency Standard ("MEES") was introduced by the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ("Regulations"), requiring all rented commercial properties to have a minimum Energy Performance Certificate ("EPC") rating of E. This means that, as of 1 April 2018, landlords are prohibited from granting, renewing or extending a lease for a property with an EPC-rating of F or G. From 1 April 2023, landlords will not be able to allow leases of any properties with an EPC-rating of F or G to continue.

Landlords who breach the Regulations will face a fine of either £10,000 or 20% of the rateable value of the property, whichever is higher, up to a maximum of £150,000.

Kevin Fox
Partner, Real Estate
T: +44 (0)114 274 4341
M: +44 (0)771 866 7921
E: kevin.fox@irwinmitchell.com

Relying on previous EPC ratings

Businesses and property owners should be mindful of placing reliance upon the existing EPC ratings of a property as a guide to what rating the same property would achieve if assessed today. Successive revisions of building regulations have significantly increased the energy efficiency requirements. That trend is likely to continue in line with the Government's 'Clean Growth Strategy'.

Research carried out by Arbnco in its Re-Simulation Analyses of February 2017 simulated the reassessment of 3,500 non-domestic properties with EPCs produced within the last five years. The research found that:

- Nearly a quarter of all properties produced lower EPC-ratings when reassessed
- 33% of all D and E rated properties dropped to F or G ratings.

The first EPCs are rapidly approaching the end of their 10-year validity and, according to the Energy Act 2011, the Secretary of State for Energy and Climate Change must ensure that all leased properties are brought up to at least an EPC rating of D by 2025 and C by 2030. Considering this legislative ambition, it would not be a surprise to see a growing trend of higher standards and more rigorous EPC assessments.

Practical implications for manufacturers

There are certain exceptions and exemptions that property owners may seek to rely on to avoid the immediate bite of the Regulations. For example, industrial sites with a low energy demand are excluded from the Regulations. Previous guidance suggests that the exception relates to very low energy sites, such as greenhouses with a heating system switched on only for a few days to encourage germination. The vast majority of manufacturing premises will therefore be unlikely to qualify.

Even if the exception can be used now, it is likely to become increasingly obsolete as the manufacturing sector increases the use of digital technology as a result of Industry 4.0, meaning higher energy demand as a side-effect of increased efficiencies.

A landlord may be entitled to rely on an exemption, allowing a property to be legally let with an EPC rating below E, if one of the following circumstances applies:

- Devaluation: an independent surveyor concludes that the energy efficiency improvements are likely to reduce the market value of the property by more than 5%
- Third Party Consent: where necessary, consent from a third party has been refused or given with conditions which the landlord cannot reasonably fulfil
- The "Golden Rule": an independent surveyor determines that all improvements have been made or that improvements that could be made would not pay for themselves through energy savings within seven years
- Temporary Exemption: if a landlord has become the landlord recently by any acquisition, the undertaking of works can be delayed for six months.

For any exemptions to be valid, they must be registered on the central government PRS Exemptions Register. They only last five years and cannot be transferred to a new landlord.

Landlords and tenants in the manufacturing sector

It is not unusual for manufacturers to share their commercial premises with another party (or group company) to mitigate overheads, diversify income streams or rationalise the production process.

The Regulations will not be triggered by granting a mere licence to occupy as there will be no renting out of the property. However, if there has been an accidental creation of a tenancy by granting 'exclusive possession', this will be caught by the Regulations. The property owners will therefore need to give some careful thought as to how best to organise their businesses to ensure that the Regulations are not accidentally engaged.

For manufacturer tenants with full repairing leases of whole, landlords will not be able to recover MEES-related costs, unless the lease contains a specific clause to this effect. However, manufacturers with a lease of part and a service charge may find themselves paying (through the service charge) certain MEES costs. This will depend very much on the wording of the lease.

With any new leases, negotiations around specific MEES-related clauses, or clauses talking about energy efficiency improvements in more general terms, may now become more common.

Rent reviews are another potential area which may be impacted by MEES. Arguments about whether it is lawful to grant the 'hypothetical lease' used for such reviews may be made by tenants. Landlords may in turn seek to rely upon any stated assumptions that the property may be lawfully let. However, that may be met by counter-arguments that such assumptions are themselves onerous for review purposes given potential costs of any necessary improvements, and hence cause rents to be lower.

With the impact of a suspected MEES failure being potentially very profound and far-reaching, manufacturing sector landlords and tenants would be well-advised to grasp the EPC nettle sooner rather than later.

A six-figure **saving?**

Alex Rook
Partner, Public Law
T: +44 (0)207 421 3994
M: +44 (0)758 7635 206
E: alex.rook@irwinmitchell.com

Manufacturers could be needlessly paying a training levy.

Businesses could unfairly be paying a levy to the Construction Industry Training Board (CITB), even though they don't meet the requirements to be classified as a construction company – potentially leading to savings far in excess of £100,000.

The CITB can impose a levy on any business that is 'wholly or mainly' engaged in construction, which has been interpreted by the CITB as being 50% of the company's activities. The money raised is used to fund the facilitation and organisation of training across the construction industry.

The levy was challenged by a Sussex-based kitchen company who won a significant legal battle against the CITB – successfully arguing that it isn't a construction firm and therefore shouldn't have to pay a £160,000 training levy.

The company had been asked to pay £160,000 in 2017 by the CITB as it was classified as a construction firm. The company had also paid a similar amount of money to the CITB in 2016.

The company appointed expert lawyers at Irwin Mitchell to challenge the levy on the grounds that it was incorrectly classified by CITB as a construction firm and the training offered by the CITB was not relevant to its employees. Irwin Mitchell and the company together analysed their activities and reached the conclusion that the CITB's definition of 'wholly or mainly' meaning over 50% was questionable, and in any event only 47% of its business should be regarded as being in the construction industry, as it used automated processes in its manufacturing.

The CITB accepted the calculations and removed the business from its register of companies required to pay the levy.

This situation won't be unique to this particular company, and there are likely to be a number of other companies which are incorrectly classified as construction firms. As a result, these businesses will be paying the CITB large sums of money for training services they don't use. On the other hand, the company in question plans to reinvest the £160,000 back into the business, providing relevant training for its workforce.

Our thoughts

Alex Rook, the partner at Irwin Mitchell who represented the company in the case, said: "We support the work done by the CITB and accept that as a statutory body, its purpose is to promote and facilitate training in the construction industry.

"It isn't right, however, that it is empowered to impose a levy on companies, to finance its activity, that are not predominantly construction firms.

"We are delighted to achieve this outcome for our client and believe it is the first time a business has successfully challenged the CITB with these arguments. The business had to pay a significant amount of money every year for training that was not relevant to its needs but as a result of this case, it can now invest the money in training which is much more useful.

"This judgment is particularly significant for other businesses involved in the manufacture, supply and installation of kitchens, bathrooms and wardrobes which are subject to the CITB's levy.

"A key consideration is whether the business uses an automated process, or undertakes activities that are not considered to be construction. Some businesses may not have considered it, or thought that it was not possible to challenge on these grounds. It is clear from this case that you can and that it is possible to achieve a very positive outcome."

Immigration and **UK manufacturing**

Mandeep Khroud
Senior Associate, Immigration
T: +44 (0)207 650 3813
M: +44 (0)784 038 6003
E: mandeep.khroud@irwinmitchell.com

Now more than ever, UK manufacturers with a non-EU workforce must be up to speed on immigration regulations.

The UK's immigration policy remains a politically controversial topic. Complying with UK immigration law is a convoluted process for businesses who are increasingly finding themselves subject to civil penalties and the suspension or revocation of their sponsorship licences for non-compliance with the current immigration policy. The manufacturing industry relies heavily on a non-EU workforce, and businesses simply cannot afford to make any error that may result in the loss of their sponsorship licence.

In 2017, £39.5 million in civil penalties was issued to sponsors, over 750 tier two sponsorship licences were suspended and 605 tier two sponsorship licences were revoked altogether. It is therefore now more important than ever to ensure that businesses are fully aware of the UK immigration regulations on employing and sponsoring non–EU nationals, to prevent unduly harsh civil penalties and delays in processing applications, as well as avoiding unnecessary stress.

There are two main ways that a business can sponsor non–EU nationals to enter or remain in the UK as their employee:

1. If the prospective employee's position does not appear on the Home Office's "Shortage Occupation List", businesses must initially complete the Resident Labour Market Test (RLMT). The RLMT includes advertising the position for 28 days, interviewing candidates that meet the advert requirements, and then applying for a "Restricted Certificate of Sponsorship" (RCoS). Once the RLMT has been completed, and if it is established that the best candidate for the position is a non-EU national, the sponsor must apply for an RCoS.
2. If the prospective employee's position is listed on the Home Office's "Shortage Occupation List", businesses do not have to carry out the RLMT. Examples of positions in the manufacturing industry which currently appear on the "Shortage Occupation List" include electronic engineers in automotive manufacturing and design; aerospace production and process engineers; and design and development engineers.

From 6 April to 5 April of the following year, there are 20w,700 RCoSs available for employers to sponsor non–EU skilled workers. The RCoS's are split into unequal monthly allocations. For example, from April to September 2017 there were 2,200 monthly allocations, but from October 2017 to February 2018 there were only 1,500, and in March 2018 the monthly allocation was just 1,000.

Employers who wish to assign a RCoS to a skilled non-EU national must first apply to the Home Office for a RCoS as part of the monthly allocation cycle. The request must be submitted by the 5th of the month. The Home Office panel meet on the 11th of the same month to decide who will be granted the RCoS.

Applications for occupations that are currently on the "Shortage Occupations List" and PhD occupations are given priority. The rest of the applications are then assessed on the basis of their salary. In essence, the higher the salary the more likely an RCoS will be granted.

Unfortunately, from December 2017 to March 2018, the monthly allocations have already been reached. As a result, hundreds of organisations have not been provided with the RCoS they need in order to employ the non–EU national. In March 2018, RCoSs were not granted if the salary was below £60,000 unless the application was for a PhD level position, a position that was on the "Shortage Occupations List", or where the RCoS application was prioritised for other reasons.

Continued overleaf >>>

As our clients experience the life events that became the content of their personal story, they value an expert hand delivered with a human touch.

Whether it is tax, trusts, estates, family, property, or even when life becomes confrontational, our clients all have something in common – **they look to Irwin Mitchell.**

IM irwinmitchell
private wealth

0370 1500 100 irwinmitchellprivatewealth.com

"IM Private Wealth" is a trading style of Irwin Mitchell LLP, which is authorised and regulated by the Solicitors Regulation Authority.

A possible solution to this problem was to increase the prospective employee's salary so that an application for an RCoS may have a higher prospect of being granted. However, if the employer is considering this option, it is vital that they check that the salary offered falls within the range stated in the adverts that were posted. If the new salary is higher than the salary offered on the advert, the RLMT must be completed again to show the increased salary.

One of the requirements that must be met under the RLMT is that the vacancy is advertised (for at least 28 days) within 6 months before the RCoS is assigned to the non-EU national.

As mentioned above due to the delays in granting RCoSs, applications run the risk of being granted after their RLMT has expired. As a result of this, if an employer assigns an RCoS to a non-EU national after the expiration of that six month period, the employer would not be compliant with the current Home Office guidance regarding sponsoring non-EU nationals. As a result of this, their sponsorship licence would be revoked.

It is likely this that this issue would not be picked up on at the time of the RCoS being granted, but instead at the time of an unannounced post licence compliance visit when the non-EU employee has been employed by the company for perhaps several months, and has become an integral part of the business.

It is apparent that the immigration process involved in employing non–EU nationals is convoluted. Despite this many businesses rely on non-EU nationals to develop and grow varying aspects of their businesses, as clearly indicated by the number of RCoSs that have been applied for since December 2017 to present.

Employers must remain compliant at all times, as it is inevitable that businesses will be subject to unannounced Home Office compliance audits. Businesses must be aware of all the responsibilities applicable to them as sponsors, or risk high fines and the complete loss of a non-EU workforce that figures show is indispensable to the manufacturing industry.

irwinmitchell

Are you ready for the next Industrial Revolution?

Technologies such as 3D printing, virtual reality and robotics are transforming UK businesses – and there are huge benefits for those who prepare well.

The increased use of 'Industry 4.0' technologies within UK factories will cause a significant swing towards higher skilled positions which are most likely to be distributed in London.

That's according to Go Fourth – our exclusive Industry 4.0 report, produced in conjunction with the Centre for Economic & Business Research (Cebr).

The report, which incorporated a YouGov study of senior decision-makers in 300 UK manufacturing companies, examines the impact on the manufacturing sector of new technologies such as full autonomous robots, 3D printing and augmented reality.

The use of the technologies create 'Smart Factories', which offer many benefits including higher productivity, increased speed of production and improved product quality.

A common fear associated with Industry 4.0 is a loss of jobs. According to our study, employment levels within the manufacturing sector will increase by 0.8% between now and 2021 as a result of the increased utilisation of Industry 4.0 technology.

However, our report says that certain occupations will be hit harder, and the impact of this will be felt to a greater extent in some areas of the UK.

The report forecasts that in the next four years, lower skill professions and administrative jobs will fall, whilst there will be a 12% increase in managers, directors and senior officials and a 7% rise for professional occupations.

The report reveals that Yorkshire is amongst the regions where manufacturers employ the highest percentage of at-risk occupation groups, while London and the South East employ the least.

In the South East, for example, only 5% of jobs are elementary occupations, for which employment is expected to decline by 10% by 2021, while the figure for Yorkshire and Humberside is 11%.

These regional results suggest Industry 4.0 will generate a change in the distribution of manufacturing jobs within the country. Aggregate employment is not forecast to change significantly, and job creation will occur in areas with more employment of managers and professional occupations, of which there are a higher proportion in London and the South East.

Download our exclusive report now to learn how our experts can help you take advantage and deal with any challenges

bitly.com/Go-Fourth

Future-proofing **manufacturing**

We recently hosted a roundtable discussion in conjunction with Insider, covering topics such as workplace culture, data, and the next Industrial Revolution.

Recent research suggests only one in four manufacturers have invested in Industry 4.0 technologies such as big data, cloud solutions and rapid additive manufacturing/3D printing. Many manufacturing businesses report concerns about the cost of investment.

This roundtable featured manufacturing businesses from several industries looking at the advent of Industry 4.0 and the impact of new technologies on higher productivity, increased speed of production and improved product quality.

The discussion also assessed the importance of workplace culture, keeping control of data and IP protection once big data analytics are used more widely.

Dorrien Peters, Partner and National Head of Manufacturing at Irwin Mitchell, said: "It is encouraging to hear how business is collectively grasping the nettle for a competitive advantage. Putting sensors on a machine is not expensive; the greater effort is in the skills and the cultural shift needed to implement Industry 4.0 beyond just operating a machine. It's also the quantum leap of what you do with the data once you have collected it."

Adam Carnell, Managing Director at Bluetree Group, said: "We are online web print specialists, and see ourselves as trying to disrupt the print industry and move it from craft to an almost industrialised process. The key thing for me if that we have a lot of data but no way of using it, so how do we take that to the next level and mine it for benefit?"

Professor Rab Scott, Head of Digital at the Advanced Manufacturing Research Centre (AMRC), said: "Unfortunately we are now in a transitional phase where we have mixed demographics on the shop floor – 60% of engineers are over 50. We need to merge and blend new skillsets and transfer the knowledge of the younger and older people."

David Wilson, Operations Manager at Inspired Pet Nutrition, said: "We were operating at 50% efficiency and have increased it to 75%. For us, it wasn't just about putting sensors on pieces of kit, but understanding why. The bigger change was a cultural perspective – people understanding that downtime is an issue, and if it happens we have to implement corrective action."

Laurence Gavin, Corporate Partner at Irwin Mitchell, said: "Something that will ultimately cost money but bring benefits is the connectivity and relationships. The disaggregation of capacity will bring with it an awful lot of complex new relationships, which people will have to invest in along with machinery and IT and systems. If you are relying on people outside of your company, unless you are in charge of that relationship or at least actively engaged in it, some of the other things you are invested in aren't going to pay you back in the way that you expect."

Vince Middleton, Chairman of Newburgh Precision Engineering, said: "We are not a high volume manufacturer, so it is low-volume, high-value, niche products. We are engaged with a servitisation project with Innovate UK looking at how we can integrate sensors into machines to monitor performance. We are also writing software to almost interface machine tools to our maintenance to our machine tool suppliers so that we have cloud-based integration."

Keith Jackson, founder of 8-Q Ltd, said: "If you think about the current measures on return on investment, they are pretty crude and if we are trying to predict ROI it is difficult. Given that Industry 4.0 is such a transformational change, we have to think about different metrics. How are we adding value by maybe improving capability?"

Simon Norris, Managing Director at Contract Production Ltd, said: "We are a contract manufacturer assembling electronic products. We were running machines that were 15 to 20 years old, so we have made an investment. We have just increased our capacity by 400% by investing in new capability. Customers said we had limitations. Now they said those have gone."

Dr Roy Woodhead, Senior Lecturer in Digital Construction Innovation at Sheffield Hallam University and owner of IoT Transforms Ltd, said: "I would say Industry 4.0 has completely changed the business mindset. What I think is unfolding is an opportunity to build relationships."

Dan Stephenson, Machinery Sales Manager at Pryor Marking Technology, said: "Traditionally we made tools and stamps for putting marking and serial numbers on a whole range of equipment. We now make the equipment for doing that. Automation is used to remove any chance of operator error and everything is recorded to a networked database so that all the data generated can then be interrogated. We know that automation is not right for everyone, but using a unique ID to track a part with simple software tools and a few handheld readers should be."

Tom Martin, Managing Director at Eric Richmond, said: "We have been looking at putting a cloud-based material requirements planning (MRP) system into our business. How to justify that and go from systems that have depreciated way beyond their economic lives to something that is hundreds of thousands per month on a recurring revenue stream is a tough management challenge."

Richard Halstead, Membership Director – North at EEF, said: "I always say I lived through the third industrial revolution. I joined Lucas in 1985. We had a typing pool and a telex facility. Look at offices today. Everybody has a computer. To embrace Industry 4.0, we need to take that ageing workforce and complement it with youth and innovation. That will create challenges and tensions, so leadership is the key."

With thanks to Insider Media Limited.

M&A trends in **manufacturing**

Chris Rawstron, Partner and National Head of Corporate at Irwin Mitchell, explores business confidence in the manufacturing sector and highlights what it could mean for future mergers and acquisitions (M&A) activity for the remainder of 2018.

It's certainly been a mixed picture for the UK manufacturing sector since the turn of the year.

Recent monthly statistics from the UK Purchasing Managers' Index show that output continued to slow in February, and that manufacturing as a whole lost further ground after hitting a four-year high in November 2017.

Although consumer, intermediate and investment goods sectors all saw a slowdown during the month, there was some positive news shown by the increase in new orders, at a faster pace than in January. According to the influential report, companies highlighted that domestic demand was better and new export business was also rising.

Mixed picture

It was also pleasing to see that, overall, UK manufacturers' outlook remained positive. Indeed, over half (56%) of the companies surveyed at the end of February said that they thought their firm's output would be better in a years' time, with only 6% expecting a decline.

Ongoing expansion and expected future output growth also boosted job creation in February with new positions increasing for the 19th month in a row.

At the same time, however, the study found that manufacturers have had price increases on a range of commodities and raw materials, resulting in average input costs rising fast in previous months.

It's an unpredictable sector but, outside of the many surveys about how the sector is performing, on the ground we are seeing investment at the higher tech end of the sector. The recent commitment by Toyota to build the new Auris model in the UK also shows that, despite the many challenges and the uncertainties associated with Brexit, manufacturing remains an engine for growth.

Impact on M&A

Manufacturing was our most active sector for deals last year, but what does the current nature of the manufacturing sector in the UK mean for M&A over the next 12 months?

As is often the case, an uncertain economic picture tends to hamper deal activity. This was the case across all sectors last year, with a 5.5% fall in deal volumes in 2017 compared to 2016.

The impact on the manufacturing sector seems to have been even greater. In fact, according to Experian's MarketIQ database, annual deal volumes in the sector fell to 1,507 in 2017 compared to 1,805 in the previous 12 months, which represents a 16.5% fall in volume.

Although the sector continued to be the second most active, just behind financial services and ahead of infocomms, the combined total value of all deals fell 38% from £142 billion to £88bn.

Faced with a challenging and uncertain sector, it would be safe to assume that volumes and values will continue to fall in 2018. According to analysis of Experian's MarketIQ database so far this year, this looks likely to be the case with only 160 sector deals currently recorded in the first two months with a value of £3.5bn.

Continued overleaf >>>

Chris Rawstron
Partner, Corporate
T: +44 (0)121 214 5294
M: +44 (0)7730 274 439
E: chris.rawstron@irwinmitchell.com

IM irwinmitchell

A law firm at the forefront of manufacturing

From Brexit to Industry 4.0, UK manufacturers are facing significant challenges – but there are huge opportunities for those who prepare well. Our dedicated team of manufacturing specialists have a unique understanding of the sector. As legal partner of the **Manufacturing Advisory Service**, we offer the expert advice that's had proven results for national and international manufacturers.

Visit **irwinmitchell.com/manufacturing** and learn how we can help your business unlock its potential.

For a list of our offices visit our website
Irwin Mitchell LLP is authorised and regulated by the Solicitors Regulation Authority.

International

Despite the 16% fall in the number of manufacturing transactions between 2017 and 2016, an interesting and developing trend we're seeing in the data is the increasing proportion of international deals.

Last year, 9% of deals had an international aspect to them; with a significant proportion involving either a US-based target or acquirer. In 2016, the proportion of international transactions was just 7% but already this year we are seeing this figure remain at 9%.

From our experience, this is something that we're seeing across our client base. We're pleased to say that, despite the uncertainty here in the UK, there are some businesses that are keen to tackle the uncertainty head on, take matters into their own hands and take advantage of acquisition opportunities in different countries.

Irwin Mitchell Deal Highlights

Company	Deal
Anatolia AS	Acquisition of Whitworths
AMT Limited	Joint venture with Midwest Prototyping LLC
Hills Numberplates Limited	Acquisition of US-based John R Wald
Begbies Traynor (administrators)	Sale of The Great Northern Envelope to Encore Envelopes
Investacast Ilfracombe	Acquisition of Investacast Ilfracombe on behalf of private investors
Montrose Group Limited	Acquisition of Thunderbolts Group Limited

Product recall:
A quick guide

Andrew Jackson
Partner, Litigation
T: +44 (0)238 083 1271
M: +44 (0)773 330 5385
E: andrew.jackson@irwinmitchell.com

The costs of a product liability claim which may result in a product recall can be enormous to any manufacturer. In addition to the prospect of costly litigation, the damage to a company's brand can be immeasurable. However, if the right procedures are put in place and followed, such damage can be limited or avoided altogether.

What is product liability?

An area of law that deals with claims arising from any product defect including:

- Manufacturing
- Design
- Manufacturer's failure to warn
- Product related warranties
- Repairs or service failures relating to the product.

Avoiding product liability claims

- Have written safety policies and an agreed recall plan in place, and share with suppliers
- Appoint a product safety manager/committee
- Carry out regular audits and maintain record-keeping
- Manage supplier risks by ensuring transparency and traceability throughout the supply chain
- Address issues before they become claims – be proactive.

Dealing with product liability claims

As well as preserving all physical items, documents and information and notifying insurers, there are several factors that should be considered in a recall, whether it is a simple case of collecting a product from a customer's home or removing thousands of units from retail stores or, indeed, any other point along the supply chain:

- Act quickly and initiate the recall plan. If a problem with a product comes to light and it is clear that it will necessitate a response from the manufacturer, retrieving products from the market as quickly as possible is essential. A proactive product retrieval plan can assist every link in the recall process from the manufacturer through to distribution, retail, and ultimately the consumer. Any delay could potentially to expose the manufacturer, distributor and retailers to possible legal action and brand damage.
- Draft your recall message clearly and simply and consider new technologies to deliver your message to the market.
- Work with relevant agencies and statutory bodies. While navigating potentially complex regulations, it is important to account for all products and maintain the integrity of the product for additional testing and analysis. This means that the product's journey must be meticulously documented, not only for potential legal issues but to maintain consumer trust in the brand.
- Appoint/notify PR agency and third parties to deal with consumers/suppliers. Product recalls usually happen without warning, so it's difficult for manufacturers to fully prepare in advance. With a complex supply and distribution chain, it may not be financially feasible to hire full-time staff to manage a recall and instead utilise internal resources. But this may be counter-productive because taking staff away from their normal work interrupts day-to-day business and can delay the retrieval process, resulting in higher costs. Use of a third party specialist to oversee and manage recalls is an often used alternative method.
- Monitor recall and measure success. A manufacturer's image and reputation are often on the line, so accurately retrieving all affected products is vital for the long-term integrity of the brand. If products remain on shelves, in the warehouse or in homes, a manufacturer's liability increases along with the risk of regulatory or legal action and brand damage. To prevent non-affected products from the same manufacturer also being removed from shelves, it is essential to ensure that the manufacturer's representatives visit distributors and retailers in person to ensure the focus is only on the affected product.
- Consider how to re-launch your product. Once the recall has taken place, thought should be given to how and when a re-launch can take place. Any long term absence of the product from the market will weaken consumer confidence and allow competitors' brands to establish themselves.

The recall of a product in any industry sector, whether to protect customers, a brand or to gather intelligence, can have a devastating impact on a manufacturer, its finances and its reputation. However, if managed well, a successful recall can underline a manufacturer's commitment to its customers and their safety.

A balancing act

Southern economies are set to continue their domination over the next 10 years.

Victoria Brackett
CEO of Business Legal Services at Irwin Mitchell
victoria.brackett@irwinmitchell.com

"Our report highlights that the faster rates of economic growth continue to be concentrated in locations in the South and around the so-called 'Cambridge-Milton Keynes-Oxford Arc'. All businesses need to operate in an economic environment that allows them to flourish, and we firmly believe the government can do more.

"This latest report paints a mixed picture for the economy. Although quarterly growth within the services and manufacturing sectors performed well, construction continued to struggle and household consumption growth fell.

"However, gross fixed capital investment grew by 1.1 % quarter-on-quarter, compared with a 0.2 % increase between Q2 and Q3. There is the potential for business investment to pick up significantly over this year and next, particularly if Brexit negotiations deliver further clarity to firms regarding the UK's future economic position."

City economies within the 'Northern Powerhouse' and 'Midlands Engine' regions are expected to be growing at half the speed of Milton Keynes, Reading and Cambridge by 2028, according to our latest UK Powerhouse report.

Our quarterly study, produced in conjunction with the Centre for Economic & Business Research (Cebr), reveals that the league table of the top 10 fastest growing city economies will continue to be dominated by locations in the South of England.

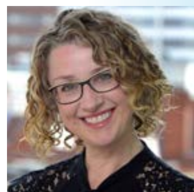
Utilising Cebr's sophisticated economic modelling, our latest report highlights that the Government's plans to rebalance the UK economy are not working and that more needs to be done to unlock regional growth.

It predicts Milton Keynes, Reading and Cambridge will be in the top three for gross value added (GVA) growth by the end of 2028, whilst Manchester will be in 25th place, Leeds in 33rd and Newcastle in 36th position. The three fastest growing cities in terms of employment are expected to be Bournemouth, Bristol and Swindon.

UK Powerhouse also reveals that Cambridge had the UK's fastest-growing city economy in the final three months of 2017.

The report, which publishes economic data on city economies one year ahead of the Government's official figures, placed Derby in second position. Inner London rose by 10 places in the table, which could be a signal that growth is returning to the capital after Brexit uncertainty had been plaguing confidence.

European court ruling leaves manufacturers wide open to **holiday pay claims**



Joanne Moseley
Senior Associate, Employment
T: +44 (0)121 214 5217
M: +44 (0)742 343 4853
E: joanne.moseley@irwinmitchell.com

The Court of Justice of the European Union (CJEU) has ruled that workers who have not taken paid leave because they have been wrongly treated as self-employed contractors can obtain compensation for all holiday they have accrued – even if this goes back many years.

The decision in King v Sash Windows could impose huge financial burdens on manufacturers who have engaged self-employed contractors who, over time, have morphed into members of staff.

Background

Under the Working Time Regulations 1988 ("WTR's"), all workers are entitled to 5.6 weeks paid leave per year (pro-rated for part-time staff). Unless they are ill, workers must take their holiday in the holiday year in which it accrues, and they cannot receive a payment in lieu of untaken statutory holiday unless their employment is terminated.

The facts

Mr King worked as a commission-based salesperson for Sash Windows for 13 years. He was offered a contract of employment after seven years, but turned this down and continued to work on a self-employed basis until he was dismissed when he reached the age of 65. In order to bring a claim of age discrimination, he had to argue that he was a "worker" (rather than being self-employed) and, as a result, was also entitled to paid holiday.

Mr King had taken some holiday during his 13 years with the company, but none of this was paid. He argued that he was entitled to receive compensation for the unpaid holiday he had taken, plus a payment in lieu of all 24.5 weeks of untaken holiday that had accrued since the start of his employment.

Sash Windows agreed that if Mr King was a "worker" rather than being self-employed, he was entitled to receive a payment for accrued holiday pay in the current holiday year only, but not payments for previous years as these were time-barred.

Mr King's case was referred to the European Court to clarify whether workers can claim holiday pay going back a number of years.

CJEU judgment

The court set out very clear principles:

1. A worker must know that he is going to be paid before he takes leave
2. Workers have the right to be compensated for untaken and unpaid leave
3. A worker can carry over and accumulate such untaken leave until the end of their employment relationship, and is not restricted in the same way as workers unable to take holiday due to long-term sickness.

These principles apply even if the employer wrongly believes that the worker is not entitled to paid leave. Employers are under an obligation to correctly determine the status of their workforce, and if they get it wrong they "must bear the consequences".

The WTRs only provide workers with a remedy if they have taken leave which has not been paid either at the correct rate, or at all. This is incompatible with the Directive.

What happens next?

The case will return to the Court of Appeal in November 2018 to determine if the WTRs can be interpreted to give effect to this decision and, if so, how much compensation Mr King will receive.

It will be interesting to see if Mr King is compensated for untaken holiday at the same rate as applies to the leave he did take which was unpaid. The latter is calculated by reference to his earnings in the 12 weeks before he took the leave. However, there are likely to be arguments put forward about how much he should be paid for his untaken leave.

When the employment appeal tribunal examined this issue, it decided that Mr King was not out of pocket because he had worked rather than had taken holiday, and to pay him for this time would amount to "double recovery". It held that payment should be limited to an amount to compensate him for loss of enjoyment and welfare benefits rather than it being calculated on the basis of a week's pay.

This is not an attractive argument. If holiday pay is not calculated in the normal way, this could act as a disincentive to take leave – which, the CJEU has said on numerous occasions, must be discouraged.

Continued overleaf >>>

Does the two-year limitation on holiday pay claims or three-month gap requirement limit the amount Mr King will receive?

No. Legislation introduced after the recent overtime holiday pay cases limited the length of time a Claimant could go back to claim unlawful deductions to two years, and imposed a requirement that there cannot be gaps of more than three months between underpayments.

However, Sash Windows (and other employers facing similar claims) will not be able to limit their exposure to simply that two-year period. This is because Member States cannot impose limitations on the right to receive paid annual leave until a worker is made aware that he has that right.

Does this apply to all holiday pay a worker is entitled to?

No. In common with other European decisions about holiday pay, it will only apply to the 20 days holiday in each holiday year required under the Working Time Directive, and not the additional eight days holiday provided under the WTR's (i.e. the UK legislation) or any contractual holiday.

Implications for manufacturers

Businesses engaging individuals on self-employed contracts, in circumstances where they later turn out to be "workers", will now face huge financial liabilities for holiday pay (and also for underpayments in respect of the National Minimum Wage, as well underpayments in respect of PAYE and NI).

Manufacturers should review the status of anyone engaged as a contractor to make sure that this correctly reflects their relationship. We can help you with this, and have developed a number of strategies to help you minimise liabilities in the event your contractor turns out to be a member of staff. Please contact Joanne Moseley for more details.

There when you need us

Employment Law – Effective Advice – Best Results

Our national employment lawyers offer flexible pricing structures combined with responsive, quality and pragmatic advice, including:

- **Fixed price annual retainer**- no lengthy 'lock-ins' but cost certainty for your annual legal spend
- **Banked hours**- blocks of hours purchased at reduced hourly rates, giving flexibility for ad hoc support
- **Fixed fees**- for specific projects, such as contract reviews and restructures
- **Capped tribunal fees**- hourly rates up to pre-agreed caps allowing cost savings if the matter completes or settles early

Glenn Hayes
Partner, Employment
T: +44 (0)113 218 6484
E: glenn.hayes@irwinmitchell.com

0370 1500 100 **www.irwinmitchell.com** **@imhrplus**

Irwin Mitchell LLP is authorised and regulated by the Solicitors Regulation Authority.

irwinmitchell

GDPR

Don’t Be Slow Out Of The Blocks

All businesses that use personal data must comply with the new **General Data Protection Regulation** or risk fines of up to €20m or 4 % of annual turnover.

Our experts can help you over the finish line.

www.irwinmitchell.com/gdpr-2018

0370 1500 100 **@irwinmitchell**

Irwin Mitchell LLP is authorised and regulated by the Solicitors Regulation Authority.

BLS-M-0104