



Retail Risk Report

June 2016

Contents

Click on the linked headings below to find out more about each change

Introduction	1
Retail regulatory timeline.....	2
Iran trade sanctions lifted	3
Automatic re-enrolment of employees into a pension scheme	3
E-commerce, the EU and anti-trust	4
Deadline for compliance with Energy Savings Opportunity Scheme	4
Information requirements in relation to new Online Dispute Resolution platform	5
Guidelines for health & safety, corporate manslaughter and food safety and hygiene offences	5
EU Digital Single Market Initiative	6
New Trade Mark Regulation	6
Modern Slavery Act 2015	7
Business Rates	7
Implementation of the National Living Wage	8
The Persons with Significant Control Register.....	8
General Data Protection Regulation	9
Brexit.....	9
New guidelines on pricing practices	10
EU Cyber Security	10
Equal Pay and Gender Pay Reporting	11
Regulation on geo-blocking	11
The sugar tax.....	12
Digital Content Directive.....	12
About us	13



Introduction

Our Retail Risk Report is a single point of reference to help retailers understand the legal and regulatory changes taking place in 2016 and beyond. It offers an overview of the changes and practical guidance from members of our multi-disciplinary retail team.

Consumer protection remains the strong focus, underlined by the introduction of the European Commission's new platform for Online Dispute Resolution and the Chartered Institute of Trading Standards' guidance on Pricing Practices.

Greater consumer protection is also at the forefront of reforms to data protection and cyber security requirements with, respectively, the General Data Protection Regulation and the Network and Information Security Directive. These will both have a profound impact on how businesses engage with their customers, and each other, with serious risks for non-compliance.

Retailers also face further obligations with regards to employment matters, notably due to the implementation of the National Living Wage and the introduction of compulsory gender pay reporting.

There is also a focus on supply chains, and increased pressure on retailers to make sure that ethical standards are maintained along their entire length. A key part of this will involve further efforts to eradicate slavery and human trafficking under the Modern Slavery Act 2015.

Each of the updates in this report has been allocated with an impact rating of either low, medium or high to assist you in prioritising any changes that may be required. The ratings reflect our assessment of the likely impact they will have on retailers.

We hope you find this report helpful in planning for the year ahead. If you have any questions about these changes, or would like help preparing for them, please do get in touch.

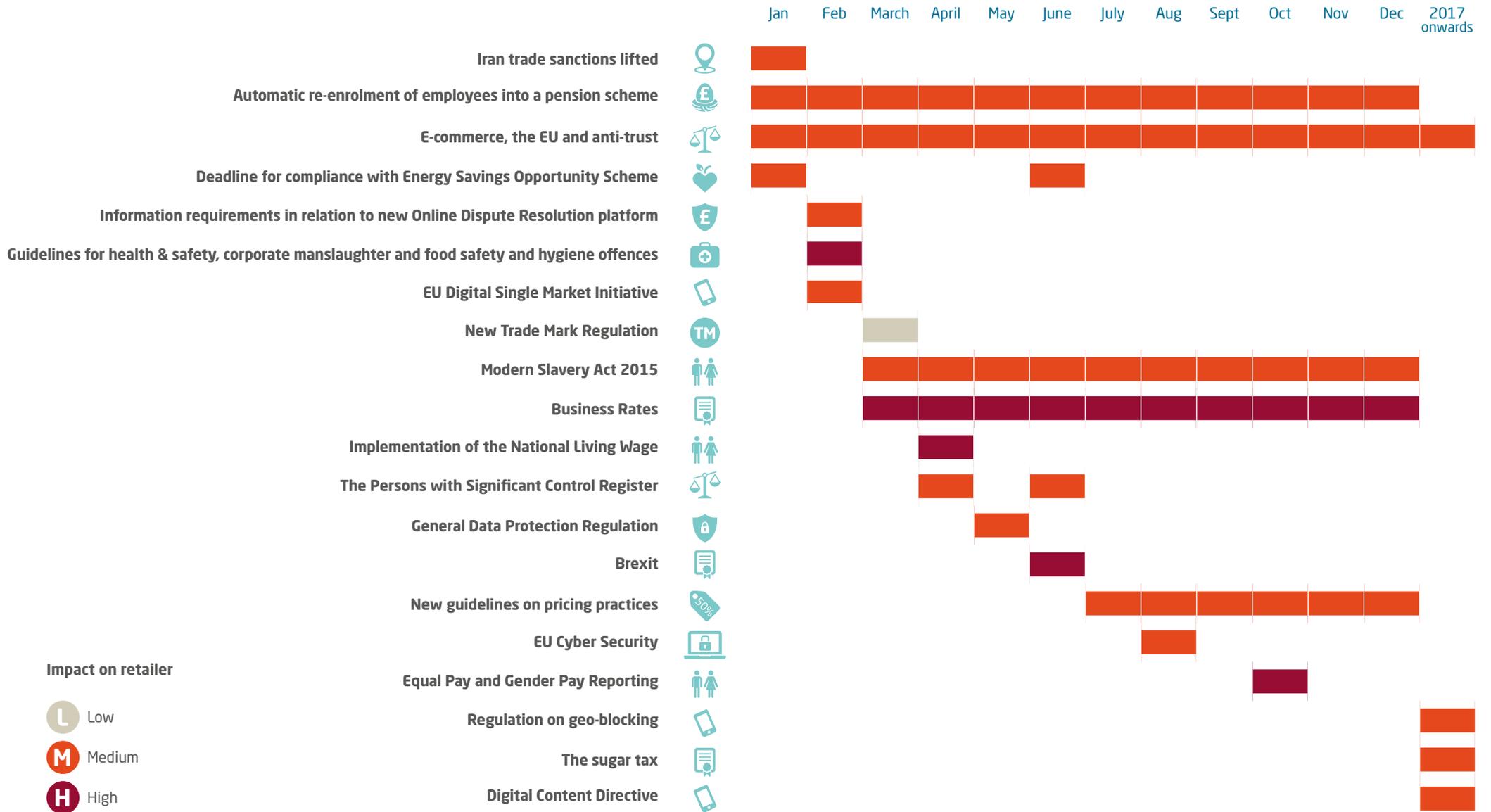


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Retail regulatory timeline 2016



Iran trade sanctions lifted

January 2016 | Global trade  | Impact on retailer 

What is changing?

Retailers looking for new markets will be encouraged to hear that most of the financial and economic sanctions against Iran have been lifted. This follows verification that Iran has completed all necessary steps set out in the agreement with the E3+3 (UK, France, Germany, Russia, China and US) and the EU on its nuclear programme.

What should retailers do to prepare?

Many UK businesses are now exploring opportunities for business with Iran. Whilst the UK government has announced that it fully supports expanding the UK's trade relationship with Iran, it will remain a difficult place to do business in the short term.

Some sanctions will remain in place, so retailers should consider whether their proposed trade could be affected by ongoing restrictions, in particular US sanctions. Also, access to financial services may remain a barrier as it is unclear how engaged the banking sector is.

A cautious approach is recommended. Any retailer exploring opportunities in this area should undertake appropriate due diligence measures and seek guidance if they are unclear on the legalities and operational issues affecting trade with Iran.



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Automatic re-enrolment of employees into a pension scheme

2016 | Pensions  | Impact on retailer 

What's changing?

The three year anniversary of the original staging date for automatic enrolment is approaching for many large businesses. Retailers must ensure that eligible staff that opted-out of their automatic enrolment pension scheme are put back into it. There are three months either side of the anniversary of the staging date in which retailers can choose their re-enrolment date. This in essence gives a six-month window, particularly useful for retailers that rely heavily on temporary and seasonal staff.

There are some increased flexibilities, which have been introduced since retailers originally enrolled their employees into pension schemes that should be considered. For example, employees who left the scheme at their own request in the previous 12 months don't have to be enrolled, and neither do those employees who are in a notice period, depending on when that notice is given. Statutory directors and members of LLPs who are not treated as being employed by the partnership for income tax purposes, are also excepted from this requirement.

Retailers should also note that the upper end of the qualifying earnings band increased from £42,386 to £43,000 for the 2016/17 tax year. This came into force on 6 April 2016.

What should retailers do to prepare?

Retailers should be familiar with the process having gone through it already. However it is important to:

- Look at your existing scheme and consider when to set the cyclical automatic re-enrolment date.
- Assess workers to find out if they meet the eligibility criteria.
- Enrol eligible staff within six weeks of the re-enrolment date.
- Look at the easements that have been introduced and make use of these.
- Re-declare compliance with the Pensions Regulator.
- Communicate with staff throughout the process.



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E-commerce, the EU and anti-trust

2016 | Competition  | Impact on retailer 

What's changing?

In May 2015, the European Commission began its sector-wide e-commerce inquiry. The inquiry focuses on private and largely contractual barriers to cross border e-commerce in digital content and goods. Knowledge gained by the European Commission through the sector inquiry will contribute to enforcing competition law in the e-commerce sector, which will affect retailers.

Since the inquiry's inception, questionnaires have been sent to hundreds of businesses including manufacturers and retailers of branded electronics, clothing and household appliances. The European Commission is keen to understand suppliers' relationships with retailers and online marketplaces, especially how:

- Electronic sales channels have evolved and their importance.
- Distribution agreements are drafted.
- Online sales policies are established and operated.

Contacted companies were obliged to provide their feedback on the most recent questionnaires in January 2016, although further enquiries will follow later this year.

In March 2016 the European Commission published its first findings into the e-commerce inquiry to establish whether some firms impose contractual or other barriers to limit how consumers can shop online across the EU. Geo-blocking occurs

when providers impose restrictions on the basis of consumers' nationality or residence. This practice can include preventing website access; restricting consumers to buy goods by refusing payment or delivery; re-directing consumers to a domestic website. The EU regulator said that geo-blocking is a widespread practice throughout the EU. The report indicated that contracts between suppliers and distributors, which result in geo-blocking as well as unilateral decisions by dominant companies not to sell abroad could face closer competition scrutiny.

A preliminary report is planned for mid 2016 followed by a public consultation. The European Commission's final report is scheduled for the first quarter of 2017.

What should retailers do to prepare?

The outcome is uncertain at this stage. Although ostensibly a mechanism to aid the EU's understanding of online trade and to inform future regulatory developments, evidence gathered may be used to target subsequent individual investigatory and enforcement action.

Businesses engaged in online trade, whether at the supply or retail level, should reflect on contractual terms and brand standards that might, directly or indirectly, limit their ability/or those within their distribution networks to exploit e-commerce effectively and reach customers within the EU.



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Deadline for compliance with Energy Savings Opportunity Scheme

January 2016 | Environmental  | Impact on retailer 

What's changing?

The deadline by which an organisation that falls within the scope of the Energy Savings Opportunity Scheme (ESOS) energy audit has to report its compliance to the Environment Agency was 5 December 2016 (and every 4 years thereafter). But reports confirm that a large number of organisations are yet to comply.

The Environment Agency (the Agency) has stated that qualifying organisations who have not completed and notified a compliance assessment are in breach of the regulations and at risk of enforcement action and penalties.

The Agency has confirmed that enforcement action will not normally be taken provided notification of compliance was received by 29 January 2016.

For retailers committing to achieving compliance through ISO 50001 certification the Agency has confirmed that enforcement action will not normally be taken as long as notification is received by 30 June 2016.

What should retailers do to prepare?

Large retailers that fall within the scope of ESOS will have to:

- Measure their total energy consumption over a 12 month period.
- Conduct an energy audit to identify cost-effective energy efficient recommendations.
- Obtain the necessary board level approvals within the organisation.

The Agency must have been notified by 29 January 2016 once the requirements were implemented. If retailers are using ISO 50001 for ESOS compliance the Agency need to be notified by 30 June 2016.



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[Back to Contents](#)

Information requirements in relation to new Online Dispute Resolution platform

February 2016 | Consumer protection  | Impact on retailer 

What's changing?

Consumer rights law within the EU has faced significant reform and remains a particularly hot topic for retailers.

The majority of reforms were brought into force in 2015 by the European Directive on Alternative Dispute Resolution (the ADR Directive) and the European Regulation on Online Dispute Resolution for commercial disputes (the ODR Regulation). But since 15 February 2016 businesses selling online are expected to provide certain information about the EU Commission's ODR platform on their websites.

The ODR platform is intended to assist retailers and consumers in resolving contractual disputes relating to online purchases via ADR. The platform is a free resource, available in multiple languages that enables access to assistance from ADR bodies, which are recognised as compliant with the ADR Directive.

What should retailers do to prepare?

Retailers selling goods, services or digital content online to consumers within the EU must now provide a link to the ODR platform on their websites. Failure to do so could result in costly fines and reputational damage. Retailers should review what information is currently provided to consumers about complaints and dispute resolution to ensure compliance.

Any retailers who are obliged to use the services of a particular ADR entity must also provide information about the ODR platform within associated terms and conditions, including contracts and email offers.

Access to the platform is available here:
<https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage>



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Guidelines for health & safety, corporate manslaughter and food safety and hygiene offences

February 2016 | Health & safety  | Impact on retailer 

What's changing?

New guidelines for health and safety, corporate manslaughter and food safety and hygiene offences have been published by the Sentencing Council.

They came into force on 1 February 2016 and will be applied by the courts to any cases heard on or after that date. This is irrespective of when the offence occurred, meaning that they will have retrospective effect.

Previous guidance for judges and magistrates was fairly limited. But the new guidelines intend to aid a more consistent approach to sentencing, improving fairness and proportionality. They aim to strike a balance between the seriousness of the offence, and the culpability and means of the offenders. Larger retailers with greater culpability can expect to see a significant increase in penalties for serious offences.

What should retailers do to prepare?

Retailers must have stringent health and safety systems in place. Such systems should also be rigorously followed and evidenced to minimise the risk of injury in the work place and avoid facing any criminal liability.

If you have a food offering you should ensure that food safety and hygiene procedures are followed robustly to minimise the risk of any failings. If an incident does occur and a retailer is prosecuted for an alleged failing then it will be necessary to consider very carefully what strategy to adopt when responding to any allegations made.

It is anticipated that the new sentencing guidelines will increase the level of fines imposed on larger organisations.



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EU Digital Single Market Initiative

February 2016 | E-commerce  | Impact on retailer 

What's changing?

The European Commission has introduced a range of proposals aimed at removing the barriers to cross border e-commerce within the EU for both digital and tangible goods. The key proposals relevant to retailers are:

- Creating a unified set of cross border e-commerce rules that consumers and businesses can trust.
- Establishing an online dispute resolution platform to handle consumer complaints.
- Preventing unjustified geo-blocking of websites that deny access or charge different prices according to location of the user.
- Removing obstacles to an affordable, high-quality parcel delivery service with the EU.
- Reducing the complexity of the different VAT systems in the various Member States to create a level playing field.

What should retailers do to prepare?

Retailers with an e-commerce operation will need to consider how best to position their brand within a widening EU market. We recommend that retailers:

- Examine justification for any geo-blocking or redirection of EU customers and look at delivery and returns procedures across the EU.
- Review any differential pricing or terms of supply linked to location of customer within EU.
- Consider existing arrangements with suppliers and review any territorial restrictions contained within those agreements.
- From February 2016 be prepared to offer customers the choice to complain using the on line platform.
- Be prepared to update customer terms and conditions to comply with the new cross-EU standards for cross border e-commerce.
- Review language and payment options in anticipation of more cross border business.
- Check labelling and regulatory requirements for products that may be sold within the EU but outside the UK.



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New Trade Mark Regulation

March 2016 | Intellectual property  | Impact on retailer 

What's changing?

From March 2016 the Community Trade Mark Regulation comes into effect. In a welcome simplification, 'Community Trade Marks' will be called 'European Union Trade Marks' and official fees are reduced. More substantive changes are:

- Registered Trade Mark owners will have increased rights to be able to prevent infringing goods bearing the trade mark from entering the EU, including in some circumstances goods in transit.
- The rules requiring graphical representation of the trade mark have been relaxed, clearing the way for a wider range of trade marks to be registered including the registration of sound and moving images.
- From September 2017 it will be possible to register certification marks as European Trade Marks as opposed to having to file them on a national basis.
- The rules governing the way goods and services must be described will be tightened for both new applications and existing registrations (subject to a six month grace period).

- The "own name" defence is limited to use by individuals of their own name and is no longer available to companies and other business entities.

What should retailers do to prepare?

Retailers will want to review their trade mark protection for their brands within the EU and:

- Take advantage of the grace period. By September 2016 make sure you have applied to amend any trade mark specification of existing Community Trade Marks filed before 22 June 2012 that do not comply with the updated specification requirements.
- Consider opportunities to file new marks based on changes in rules for certification marks and greater scope for filing sound marks and moving images marks.
- Review your enforcement strategy against counterfeit or grey goods in light of new powers to stop and detain goods passing through the EU.



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Modern Slavery Act 2015

2016 | HR  | Impact on retailer 

What's changing?

The Modern Slavery Act came into force in October 2015 and applies to all businesses with a global turnover of £36 million or more, which supply goods or services and have a business presence in the UK.

Retailers that fall within this threshold will need to prepare a Section 54 statement setting out the steps they have taken to ensure that their business and supply chains are free from slavery and human trafficking. The statement will need to be approved and signed by a senior member of the organisation and once approved will need to be published on the organisation's website.

Failure to provide a Section 54 statement could result in the Secretary of State pursuing civil proceedings in the High Court for an injunction and the obvious associated negative publicity.

The first businesses required to prepare a statement were those whose financial year ended on 31 March 2016.

What should retailers do to prepare?

The task of preparing the statement is likely to prove particularly arduous for retailers who have large supply chains or supply chains that span across multiple countries. There are a number of actions that organisations may wish to consider in order to prepare, including:

- Appointing someone within the business to take responsibility for ensuring compliance with the requirement to prepare and publish the statement.
- Assessing the organisation's financial status, taking into account any subsidiaries where the organisation forms part of a corporate group, in order to determine whether it is likely to meet the £36 million threshold.
- Establishing and evidencing a clear zero tolerance stance towards modern slavery internally, by incorporating an anti-slavery policy or the provision of training, and throughout its supply chains.



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Business rates

2016 | Regulatory  | Impact on retailer 

What's changing?

The retail sector is the single largest contributor to business rates, having contributed £7.8 billion in the last year a figure expected to increase by £500 million in 2016.

Large scale reform of the business rates regime was expected to be announced in 2015 but the Chancellor's Autumn Statement resulted in a delay until the 2016 Budget. The delay was viewed by most commentators as an unwelcome development for the retail sector. Smaller retailers will also see the impact of the abolition of certain reliefs taking effect in 2016 resulting in an average increase of over 17%.

Ultimately whilst the 2016 Budget made some limited reforms including extending rates relief for premises with a rateable value below £12,000 and taper relief for those under £15,000 the anticipated wider reforms have not materialised. Further consultation processes have been launched.

What should retailers do to prepare?

For the majority of retailers this further delay introduces further uncertainty within the sector. Retailers will need to keep a firm focus on the announcements arising from the latest consultation process as well as the outcome of the forthcoming 2017 revaluation process.



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Implementation of the National Living Wage

April 2016 | HR  | Impact on retailer 

What's changing?

From April 2016 retailers saw the implementation of new statutory pay obligations for employers.

In addition to the long established national minimum wage regime, from 1 April 2016 employers now have to ensure that they are complying with the Living Wage Regulations. These impose a minimum hourly rate of pay for employees of 25 years of age or over, of £7.20, which is 50p higher than the current minimum wage rate for that age group.

Concerns are already being voiced by retailers as it will have a large impact on staff costs. Employers may, consciously or unconsciously, look to employ younger people to avoid the higher wage costs. Also, if they operate zero hours contract, they may elect to offer less work to those people over 25. Both of these actions would expose the employer to age discrimination claims.

What should retailers do to prepare?

This is clearly a major issue for retailers, where a large section of the industry work on minimum wage levels. With the increased cost of employing over 25s you need to:

- Conduct an audit of your pay structures to understand the financial implications of this new law.
- Ensure that minimum pay levels are being met to avoid claims from employees and fines, as the penalties for breaching the minimum wage provisions have been doubled under this new regime.
- Ensure that at an operational level there are no practices in place that could give rise to age discrimination claims, given the higher wage costs of employing those over 25.
- Think carefully about any PR implications of operating practices and claims.



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The Persons with Significant Control Register

6 April 2016 and 30 June 2016 | Corporate and company secretarial law  | Impact on retailer 

What is changing?

On 6 April 2016, the majority of UK incorporated companies (except for those which are fully listed or AIM listed) and limited liability partnerships became subject to a requirement to maintain a "persons with significant influence or control" (PSC) register.

It is a public register and was introduced by The Small Business, Enterprise and Employment Act 2015 in an effort to achieve greater transparency in ownership and thereby help tackle tax evasion, money laundering and terrorist activity.

For many companies, their PSC register will look very similar to their shareholder register. But where companies have shareholding structures involving trusts, overseas companies, nominees, investors or other entities, the officers of that company will have the time consuming task of identifying the people who have a significant say in how the company and its business are run.

Failure to carry out a PSC analysis and prepare a PSC register has potentially severe consequences for a company and its officers, not least fines, imprisonment and reputational damage.

What should retailers do to prepare?

- Take reasonable steps to identify anyone who is or might potentially be a PSC (whether an individual or other legal entity) in relation to each of its UK group companies and LLPs.
- Issue notices (seeking clarification and detailed information) to those they suspect to be PSCs, those they believe have ceased to be PSCs and any person likely to know that information.
- Details of any PSCs must be notified to Companies House from 30 June 2016, by way of a company's confirmation statement filing, which replaces the annual return from 30 June 2016.
- Check and confirm at least every 12 months that the information contained in their PSC registers is up-to-date.



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General Data Protection Regulation

24 May 2016 | Data protection  | Impact on retailer 

What's changing?

For the past four years the European Commission has been working towards a reform of EU Data Protection Rules. This will impact any business involved in the use of the personal data of any EU citizen.

The General Data Protection Regulation (GDPR) has now been finalised and was published in the Official Journal of the European Union on 4 May 2016. The legislation is in force as of 24 May 2016, but businesses have a two-year implementation period within which to comply. Compliance must be reached by 25 May 2018. The changes brought in by the GDPR include:

- The range of sanctions extending from a warning or reprimand up to 4% of global turnover, for specific breaches of the GDPR.
- The requirements for fair processing notices will be more rigorous - customer consent must be demonstrable, easily accessible and intelligible.
- There are new requirements to maintain internal documentation on processing activities and controls.

- A new obligation on data controllers to provide individuals with information on whether profiling is being carried out. Broadly, profiling is where data is collected about a person and analysed in order to segment or categorise the individual in some way and is often used to target advertising and offers.

What can businesses do to prepare?

Although businesses have two years to comply with the GDPR, the new requirements are likely to require significant changes. Therefore, retailers should start reviewing their data protection procedures now and think about what system changes will need to be made over the next two years.

Preparing for compliance will also include reviewing processes, such as those for training staff that handle personal data. You should also review breach management processes, even if you have been fortunate enough never to have had to use them.



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Brexit

23 June 2016 | Regulatory  | Impact on retailer 

In a recent survey conducted by TLT, only 12% of retailers said that they were prepared for Brexit.

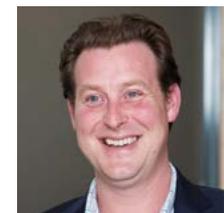
30% of retailers considered that membership within the EU was either harmful or very harmful to the UK's growth, whilst 46% considered it to be either helpful or very helpful to the UK's growth. Only 24% thought that it doesn't really affect the UK's growth. Clearly, the polls are split and we will have to wait until the referendum on 23 June to find out what this means for the UK.

Our survey asked retailers to tell us their key concerns for 2016 and employment rights featured high on the list. Many of the employment rights currently in existence within the UK derive from EU laws, and there is the potential for these to be revoked if the UK were to leave.

But given the complex nature of the UK's membership in the EU, and the extent to which EU law underpins the UK's legislative framework, it is unlikely that we would see a significant legislative overhaul, or at least not in the short to medium term.

EU membership currently allows the UK to enjoy free movement of people and goods across member states, and such rights could be lost unless the UK is able to negotiate to keep them. Should the UK vote leave on 23 June, it is likely that it would seek to agree terms of a free trade agreement in order to allow for the free movement of goods between the UK and EU to continue. The agreements which the EU has with Norway and Switzerland have also been discussed as potential options.

Cyber security was another key concern. The General Data Protection Regulation (GDPR), referred to separately in this report, will come into force across the European Union in 2018. Given the fact that a minimum of 2 years' notice is required to leave the EU, this means that the GDPR will apply in the UK regardless of whether it votes to leave or not.



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New guidelines on pricing practices

Second half of 2016 | Advertising & promotions  | Impact on retailer 

What's changing?

The Chartered Trading Standards Institute (CTSI) has published a draft Pricing Practices Guide (the PPG), helping retailers ensure that their price promotions comply with the Consumer Protection from Unfair Trading Regulations (the CPRs).

If adopted it will mark a major shift in approach from the current version of the guide, published by BIS in 2010. Many retailers will be accustomed to the clear and widely-understood rules within the existing PPG. But the CTSI have proposed dropping all prescriptive rules in favour of a more flexible, principle-led approach.

The changes are likely to cause uncertainty at first and some retailers have commented that the proposed PPG is harder to follow and apply in practice. However, others welcome the more flexible approach proposed by the CTSI.

The public consultation on the draft PPG closed on 20 January 2016 and the CTSI are now considering responses. Given the extent of the proposed changes, it is likely there will be considerable delay before the new PPG comes into force.

What should retailers do to prepare?

It is worth stressing that the substantive law relating to pricing is not changing: just the guidelines. But as the CPRs are difficult to interpret in practice, retailers have typically relied heavily on the existing guidelines when formulating their internal pricing rules for sales and promotions.

If your existing policies are based on the 2010 BIS guidelines, be aware that under the CTSI's proposals it will not be as easy to demonstrate compliance with the CPRs by relying on the current thresholds.

Retailers should think about how they would want to position themselves if the new PPG is adopted. Will you decide to stick with your existing internal pricing policies or will you make changes?

It is also worth considering how your immediate competitors may respond to the more flexible guidelines. The sector could start to see greater divergence in pricing policies between different retailers if the 2010 rules fall away.



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EU Cyber Security

August 2016 | Cyber Security  | Impact on retailer 

What's changing?

The final text of the EU Network and Information Security Directive (NISD) was formally adopted on 17 May 2016. It comes into force in August 2016 and Member States will have 21 months to implement the NISD into national law.

The NISD will apply to digital service providers (DSPs) including those who offer an 'online marketplace'. It will be relevant to a large proportion of the retail sector.

The obligations of DSPs under the NISD will include:

- Ensuring the security of networks and systems.
- Notifying any serious security breaches to public authorities.
- Notifying any suspected or serious cyber criminal activities to relevant enforcement authorities.

The new NISD could also impact DSPs based outside of the EU. DSPs not established in the EU which offer services within the EU are considered to be within the scope of the NISD and are obliged to 'designate a representative' based within the EU to act on its behalf under 'written mandate'.

What should businesses do to prepare?

Retailers that offer online services should start preparing now. You should consider:

- Evaluating the current security measures in place to protect your business against cyber attacks to establish if they are robust enough to resist any such attacks.
- Reviewing your policy on the management of security breaches.
- Starting to put in place internal procedures governing the escalation and notification of breaches.

With the rise of e-commerce providing new and innovative ways of shopping, a host of compliance and security challenges have emerged.

Figures from the British Retail Consortium reveal fraud incidents rose 12% last year, while retail businesses are reporting a rising tide of cyber attacks. The agreement of this text is therefore a timely reminder of the risks associated with online retailing and the need to mitigate them.



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Equal Pay and Gender Pay Reporting

October 2016 | HR  | Impact on retailer 

What's changing?

There is an ever increasing volume of equal pay litigation being brought, and the retail sector is currently significantly affected, with high profile cases being brought against many of the major supermarkets.

2016 will see the introduction of regulations providing for compulsory gender pay reporting for any employer with over 250 employees. This is going to affect the majority of retailers and is going to be a big cultural shift for many, as it will involve sharing data regarding internal pay and bonus structures externally.

Some retailers will see this as an opportunity to demonstrate their transparency and clear non-discriminatory pay structures, whilst others may be more concerned about how their organisation is represented by their statistics.

What should retailers do to prepare?

- Start getting to grips with what information you are obliged to publish.
- Consider doing an equal pay audit sooner rather than later to see how your stats stack up. This will give you the opportunity to address any issues voluntarily before being compelled to do a public report.
- Consider your brand - is there an opportunity to shout about positive statistics to promote your brand as a retailer and employer of choice? Even if work needs to be done to improve the statistics, it could be an opportunity to promote the proactive steps you are taking.



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Regulation on geo-blocking

2017 | E-commerce  | Impact on retailer 

What's changing?

The European Commission has published a new Regulation aimed at ending "unjustified" geo-blocking as part of its Digital Single Market Strategy. The proposed legislation seeks to ensure that consumers buying products and services in another Member State are not discriminated against when it comes to access to prices, sales or payment conditions.

There are several exclusions where the retailer can objectively justify the reasons for restricted access such as VAT or certain public interest legal provisions and where a retailer is a small business that falls under a national VAT threshold. The proposed Regulation also does not impose an obligation on retailers to actually deliver products across the EU. It does mean that asking for consumer IDs, re-routing customers back to a country-specific website, or requiring payment to be made with a debit or credit card from a certain country will be banned.

Geo-blocking also forms part of an ongoing competition inquiry into the e-commerce sector, focused on potential anti-competitive geographic restrictions. The final report is expected in early 2017 and if it reveals competition concerns, the European Commission could open case investigations to evaluate compliance with EU competition law. The initial findings have shown that 38% of retailers selling consumer goods use geo-blocking in the form of refusal to deliver abroad, accept foreign payments but 12% of retailers stating contractual restrictions prevent cross border sales which is where the Commission is particularly concerned.

What should retailers do to prepare?

Retailers should be aware that they may well need to:

- Remove all barriers to online sales across the EU (other than cross EU delivery if this not already part of your operations or future plans).
- Make sure that consumers are able to allow access to the same goods, at the same prices, to consumers in all member states.
- Review IT services and agreements to consider if changes are needed to existing systems and processes in light of any new legislation.
- Review current practices when it comes to selling across borders and consider the measures that they would need to implement to allow cross-border sales on the same terms as domestic sales.

You should also be aware that following the competition enquiry, contractual arrangements that amount to agreements to geo-block may well be considered anti-competitive. Retailers should consider reviewing all distribution contracts to evaluate the contractual position and ensure that the terms do not restrict competition.



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The sugar tax

By 2018 | Regulatory  | Impact on retailer 

What's changing?

The government has confirmed that it intends to introduce a new levy on sugar in soft drinks in 2018.

The levy, or 'sugar tax', will consist of two tax bands for soft drinks dependent on the sugar concentration:

- one for soft drinks with more than 5g of sugar per 100ml; and
- one for soft drinks with more than 8g of sugar per 100ml.

Certain exemptions will exist for small producers and pure fruit juices.

What should retailers do to prepare?

How high the tax will be is not yet known, however a delay in bringing the tax into force has been agreed in order to allow drinks producers time to prepare.

Any retailers which manufacture their own soft drinks will need to review their sugar content and perhaps consider how those with higher content can be reformulated.

Given the increased media focus on sugar consumption, retailers may also wish to consider how they label sugar on their own products to make them more transparent to customers.



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Digital Content Directive

Second half of 2018 | E-commerce  | Impact on retailer 

What is changing?

Under the Digital Single Market initiative the European Commission has proposed a Digital Content Directive that differs significantly from the equivalent provisions in the Consumer Rights Act (CRA).

Unlike the CRA the Directive will:

- Apply to all supplies of digital content for consideration, personal data or any other data.
- Require suppliers to return to consumers user-generated digital content on termination of the contract.
- Introduce a permanent reversal of the burden of proof for digital content supplied.
- Controversially for the UK market - prevent suppliers from imposing contracts longer than 12 months for the supply of digital content.

What should retailers do to prepare?

Retailers should be familiar now with the provisions in the CRA on digital content.

The Directive is still at an early stage in its legislative journey. But it is very likely that the provisions will make it through to the final draft. When that happens retailers should review and put in place processes to allow for the return to customers of any digital content that customers may have generated.

Retailers should also be aware that just because the digital content they provide is free, the Directive will most likely still apply. Therefore are retailers able to repair and replace digital content provided for free if the customer asks, on the basis that the digital content is not how you originally described or is defective in some way?

The Directive will not be in force before the end of 2018 so you will have time to familiarise themselves with it.



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About us

We advise many of the UK's leading retailers and consumer goods businesses. Our multi-disciplinary team of retail lawyers has a genuine understanding of the industry, which we use to give advice in context and deliver solutions that work in this dynamic market place.

We provide the full range of legal services needed by retailers and can support you throughout the UK from our offices in London, Bristol, Manchester, Edinburgh, Glasgow and Belfast.

If we can help you to grow your business or deal with any legal or regulatory challenges you face, please do get in touch.

Get in touch



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