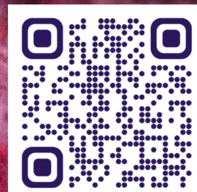
Retail compass

Issue 10 October 2023

YOUR QUICK REFERENCE GUIDE TO LEGAL DEVELOPMENTS IN THE RETAIL AND CONSUMER SPACE

Engaging consumers in a multi-dimensional world



Welcome to this edition

Welcome to the Autumn edition of Retail Compass, where we guide you through key upcoming legal and policy changes affecting retail and consumer brands and provide our thoughts on those crucial, need-to-know issues.

We are delighted to have guest contributions from Ian Jindal, Co-founder and Editor-in-Chief of InternetRetailing, which provides insight and research for Europe's etailers and multichannel retailers, reflecting on key considerations for a customer-centred business strategy. We also focus on steps retailers can take to navigate the risks of "social washing".

With businesses and retailers looking to attract and retain customers in difficult economic conditions and to sell their "story" in an increasingly competitive market, we consider the challenges and opportunities provided by the multi-dimensional world and the likely impact of legislation and regulations on retail and consumer brands across all channels. We take a closer look at developments including, the EU Digital Markets Act; the DMCC Bill; the EU Sustainability Reporting Standards and the new age of sustainability disclosure; Digital Accessibility for websites; the new privacy frontiers for Data Protection and AI; ambush marketing; advertising restrictions on "less healthy" food and drink products and much more.

This edition also includes a section focusing on Europe and developments to look out for in the coming months in key European jurisdictions. We are very grateful to each of the contributors for this section, each of whom is a colleague from a firm within our TerraLex network – Virginie Coursière-Pluntz, Benjamin Jacob and Pierre-Yves Thomé from PDGB in France; Dr. Sascha Pres from SKW Schwarz in Germany and Jelle Blom and Tosca Bokhove from Kennedy van der Laan in the Netherlands.

We also include key statistics and links to our legislation tracker which list all of the UK Government consultations and inquiries relevant to retail and consumer brands.

Following on from the success of our inaugural event in 2022, we will be hosting Retail Compass Live! on 1 November 2023. It promises to be a really engaging afternoon delving into some of the key topics in this issue and we hope to see you there. In the meantime, we hope you find this publication useful, and as always, please do not hesitate to contact us if you have any comments or queries.

FROM TOP
KAREN HENDY
JEREMY DREW
CIARA CULLEN

THANKS FOR READING OUR LATEST ISSUE OF RETAIL COMPASS

If you would like to receive a hard copy of this guide, please get in touch with us at publications@rpc.co.uk or your usual RPC contact.

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Retail Compass is edited by Georgia Davis (Of Counsel), Harpreet Kaur (Associate) and a team from RPC Retail. Thanks go to Eve Matthews, Joshua Ajose-Adeogun, Tom Jenkins and Vianca Razon for their additional contributions. Designed by Jenni Lungley-Down.

Disclaimer

The information in this publication is for guidance purposes only and does not constitute legal advice. We attempt to ensure that the content is current as of the date of publication but we do not guarantee that it remains up to date. You should seek legal or other professional advice before acting or relying on any of the content.

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> "True customer-centric businesses will listen and adapt, proving they're more than just profit-driven."

FOREWORD

Foreword by Ian Jindal

InternetRetailing

CO-FOUNDER AND EDITOR-IN-CHIEF OF INTERNETRETAILING, PROVIDING INSIGHT AND RESEARCH FOR EUROPE'S ETAILERS AND MULTICHANNEL RETAILERS (WWW.INTERNETRETAILING.NET)

Customer-centred

In businesses that sell directly to consumers, understanding that customer is key. This isn't just about goodwill; it's about maximising profit. With modern technology, we can now delve deeper into a customer's preferences and habits beyond and behind their actual purchases.

The customer-focused strategy has two angles. First, it's about tailoring marketing to individual needs, rather than a broad audience. Gone are the days of generic advertising. Today, ads blend visual appeal with science, adjusting to the viewer's likely preferences and behaviour. Second, it's about evolving your products or services based on a broader understanding of customer values, whether that's affordability, sustainability or innovation.

The backbone of this strategy is data. From where a person shops, to what they browse on their mobile, where and how they live and spend, data gives us a deep insight into consumer behaviour. Thanks to affordable computing power, and artificial intelligence, this vast amount of data can be quickly processed and actioned. The result is a tailored marketing experience that increases our profits – whether to an individual consumer or a cohort of millions.

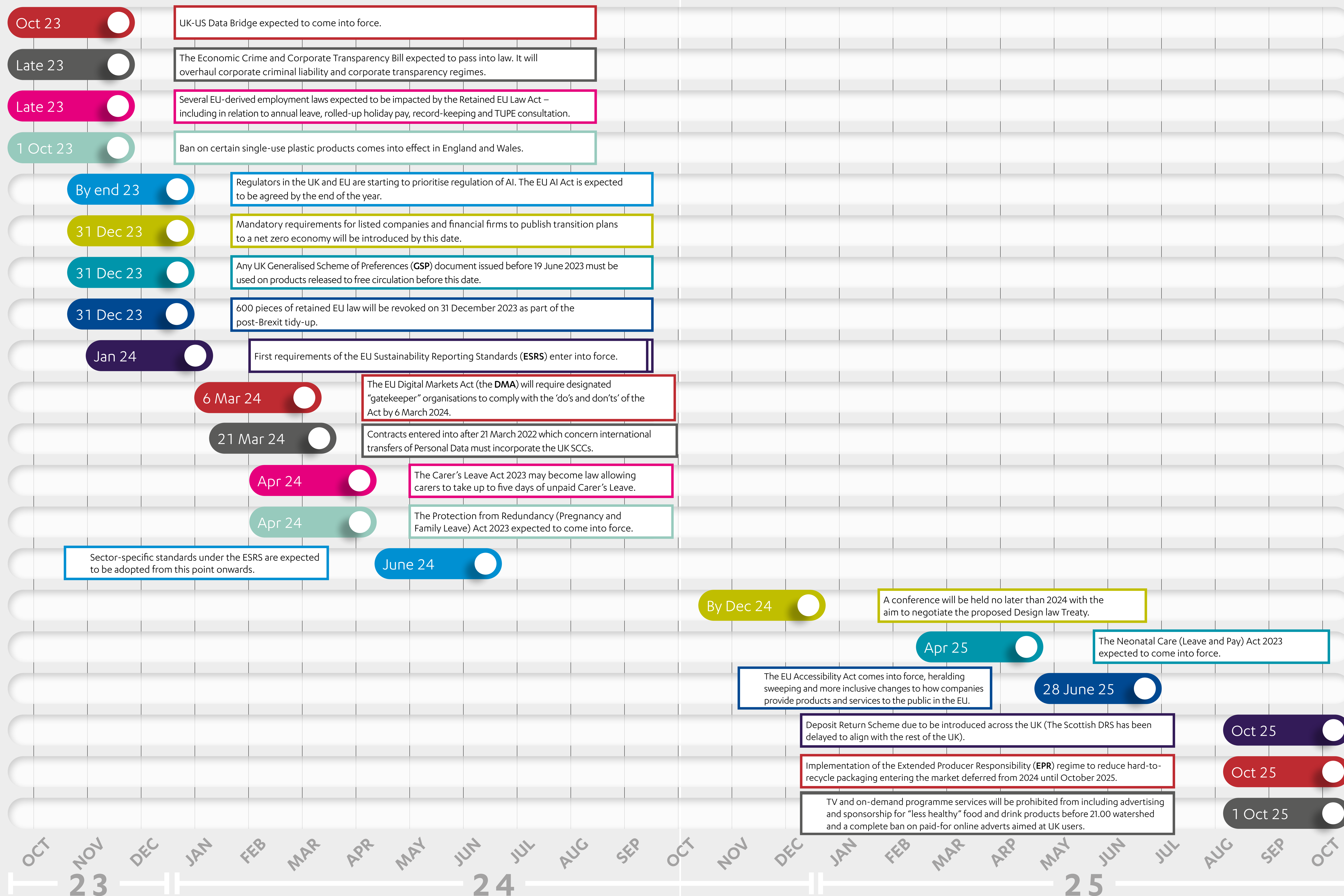
However, with this increased data comes greater responsibility. Company boards must ensure the data's source is valid, that it's of high quality, and used within legal guidelines. And, as technology connects us instantly, the rules of engagement change rapidly. Governments and regulators are adopting more muscular and interventionist approaches, creating tighter regulations on data privacy and alleged monopolistic behaviours. This landscape is far from the old 'business as usual'.

Furthermore, open data and digital transparency works both ways. Just as companies know about consumers, so consumers are more informed about companies. From a company's environmental footprint to how they treat their staff, every behaviour and judgement can come under the reputational microscope. Brands are no longer just about what they say, but what they actually do.

It's not just about gathering information. It's about acting on it. True customer-centric businesses will listen and adapt, proving they're more than just profit-driven. While retailers and brands will of course be assessed on financial performance, a component of that success is how the customer judges them on product quality, ethical stance, and how they contribute positively to society.

To be genuinely customer-focused involves juggling data management, tech advancements, listening to consumer feedback, and upholding values - without losing sight of the bottom line. This report will share insights from experts in this dynamic field. Through the froth and fury of change, however, the end goal remains clear: building a trustworthy, meaningful bond with customers, a bond that will remain vital for years to come.

Retail and consumer timeline 2023 and beyond



Horizon scanning

In this section we consider the key legal, regulatory and policy changes being faced by retail and consumer brands and what steps to consider taking in light of these. We cover both purely domestic aspects and some which tie closely to European Union law and, as such, may impact upon retailers' European operations.

Strictly, when discussing these changes, we may not always be talking about the jurisdictions in which we advise as a firm. Therefore, whilst the following is intended to offer a helpful flag, we recommend tailoring your consideration of the changes to your own specific circumstances as there may be other local law considerations which affect you (and taking local advice where necessary).

The Act will revoke

600

pieces of legislation across 16 government departments.

The Retained EU law (Revocation and Reform) Act 2023

by Nicole Clerk and Paul Joukador

31 DECEMBER 2023

WHAT IS HAPPENING?

On New Year's Eve the UK will not just be heralding in a new year; this year, the UK will be entering a new phase of its relationship with the EU, waving in a modified legal landscape. On 31 December 2023, the Retained EU Law (Revocation and Reform) Act 2023 (the **Act**) will see almost 600 pieces of EU legislation being revoked and removed from the statute book and some key EU law principles no longer being applicable.

Despite the Act seemingly introducing further uncertainties following Brexit, retailers should not be alarmed. The Act, which under previous plans was dubbed the "Brexit bonfire", will facilitate what appears to be more of a tidying up exercise.

WHY DOES IT MATTER?

The government's journey to the Act has been turbulent to say the least. At Bill stage, the government had initially included a sunset clause, which would have seen all retained EU law automatically repealed, unless actively assimilated into UK law by MPs. This approach was met with a wave of criticism from across the economy, with the British Retail Consortium calling out the government for its "rushed assessment" of the regulations.

On 10 May 2023, shortly after the Spring Edition of Retail Compass was published, the government announced that it had scrapped the planned sunsetting of thousands of pieces of legislation; plans which would have seen seismic changes to consumer law, employment law and product regulation through the proposed revocation of the Consumer Protection from Unfair Trading Regulations 2008, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (**CCRs**), Business Protection from Misleading Marketing Regulations 2008, Weights and Measures (packaged Goods) regulations 2006 and the Commercial Agents Regulations 1993, for example.

Now, under the Act almost 600 pieces of legislation, which are considered obsolete or no longer needed, will be revoked on 31 December 2023. All other retained EU law will remain in force unless and until reformed by the relevant government department (see the government's Keeling Schedule).

This is welcome news for retailers as it removes the risk of dramatic and sudden change to the regulatory landscape. Whilst much of the effect of the Act is to remove obsolete rules or to remove references to EU bodies such as Euratom (in which the UK is no longer participating) there are some laws being removed in relation to food, agricultural products and chemicals industries which will mean certain practices are no longer obligatory and may necessitate or permit changes to the way you operate. At this stage they seem very specific to certain activities and industries and focus on removing certain process obligations on businesses operating in the UK. For example:

- Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008 which relates to the provision of information on agricultural products
- Regulation (EC) No 1272/2008 of the European Parliament and Annex VIII of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, which relates to the information contained on packaging around safety when using the substance
- Commission Regulation (EEC) No 3556/87 of 26 November 1987 laying down additional detailed rules for the application of the system of advance-fixing certificates in the case of certain cereal sector products exported in the form of pasta falling within heading No 19.03 of the Common Customs Tariff, which relates to the export of pasta to the US, will no longer be applicable on 31 December 2023.

WHAT ACTION SHOULD YOU CONSIDER?

We recommend that businesses ensure that their compliance departments consider the list in order to identify any legislation that will no longer apply to their operations.

Whilst the Act will not implement sweeping deregulation at the end of the year, it will end the special status of retained EU law in the UK statute book and will enable retained EU law to be more easily amended, revoked and replaced by the government, via legislation including the revocation of the use of statutory instruments. Retailers will therefore need to keep an eye on the government's wide-reaching programme of reforms including both major announcements and what may at first seem like more mundane procedural amendments. For retailers in particular, the Digital Markets, Competition and Consumers Bill will represent substantial reform due to enhanced consumer protections, particularly around subscription services. Also applicable to retailers is the government's product safety review, which launched at the start of August 2023.

Horizon scanning (continued)

The EU Digital Markets Act: a levelling of the playing field or just another hurdle to overcome? by Eleanor Harley and Tania Williams

6 MARCH 2024

WHAT IS HAPPENING?

The Digital Markets Act (the **DMA**) forms part of the EU's Digital Services Act package, placing new obligations on "gatekeeper" platforms who offer core platform services to business and end-users established or located in the EU, irrespective of the gatekeepers' place of establishment, residence, or any national laws applicable to their service. Jurisdictions outside of the EU are expected to emulate this landmark regulatory 'ex-ante' regime for digital markets. For example, the UK's Digital Markets, Competition and Consumer Bill that looks to enforce a parallel position in the UK (see our Compass article).

WHY DOES IT MATTER?

The legislation is designed to provide smaller businesses with opportunities to compete and innovate in the online platform environment. It's therefore important that the consumers, businesses and platforms who rely on gatekeepers' services to deliver their business offering to end-users ("non-gatekeepers"), understand how the DMA will affect them and are prepared to take advantage of new business opportunities that arise within the retail industry as a result.

Why should non-gatekeeper organisations pay attention?

The DMA is expected to bite on the largest digital platforms, such as large e-commerce platforms, search engines, app stores, and messenger services and, in September, the European Commission designated six organisations as gatekeepers: Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft. The Commission has provided examples of expected behaviours ('do's and don'ts') that gatekeepers must exhibit within six months of their designation (see our Snapshot). Whilst non-gatekeepers fall outside the direct application of the DMA, the next 12 months will provide a welcome chance for them to identify the knock-on effects of these new behaviours required of the gatekeeper platforms and identify potential opportunities for retailers and consumer brands alike, to exploit.

For instance:

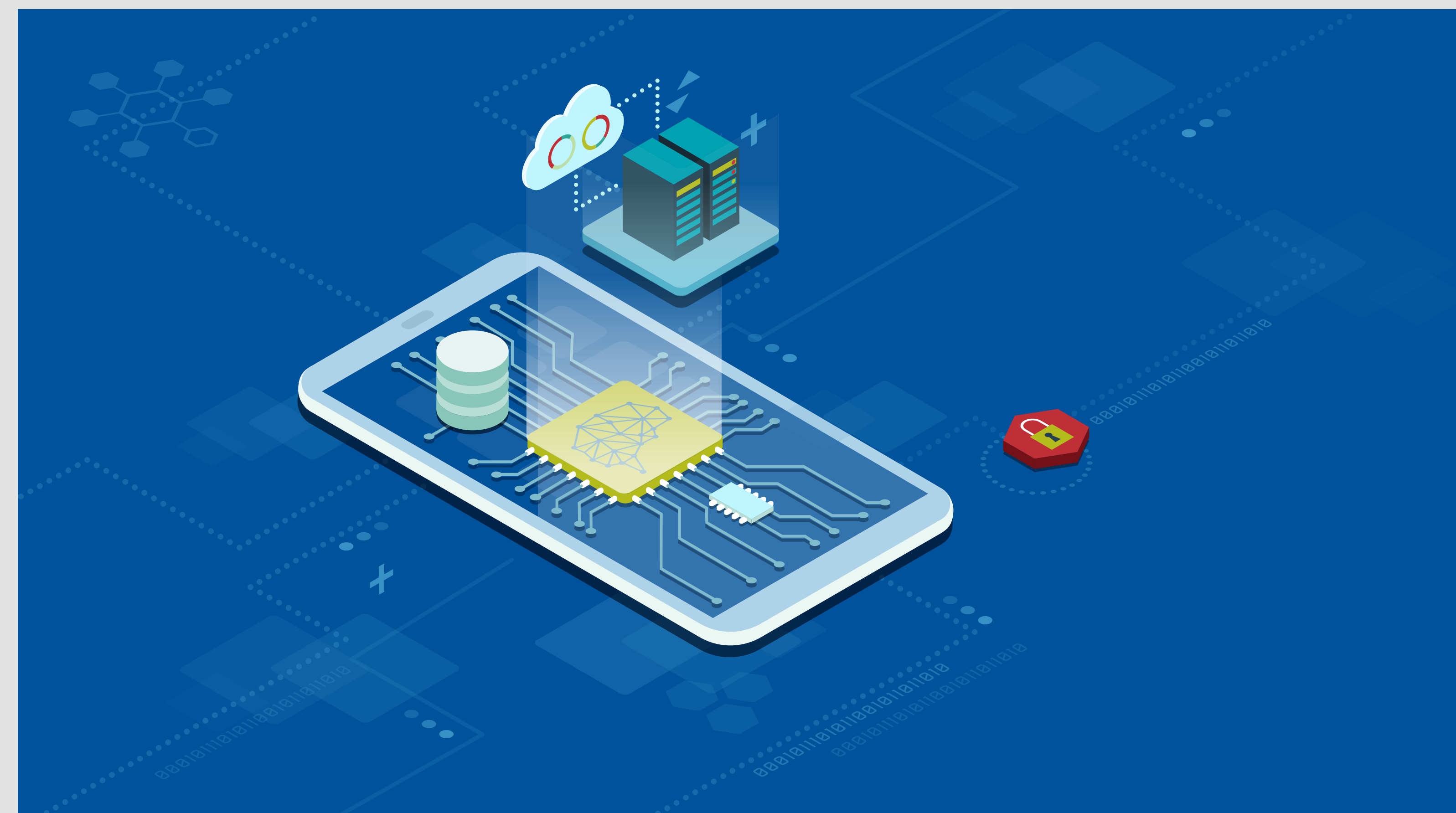
- the DMA prohibits gatekeepers from the cross-use or combining of personal data obtained from their core platform service or from third parties who advertise on their service, with data obtained from another of their services, without permission. To the extent that the relevant consents to process users' data in this way cannot be obtained, this may impact the effectiveness of services used by retailers and businesses, with behavioural advertising being a case in point
- the DMA introduces various prohibitions against self-preferencing by gatekeepers (see our Snapshot) including requiring end-users to use gatekeeper operating systems (eg payment systems for in-app purchases or other features) for business-user services provided via the gatekeeper's core platform services. Retailer business-users may want to take advantage of this new obligation to introduce their own interoperable systems or features, with the added benefit of their preferred UX and branding and a smoother technical journey
- the DMA requires gatekeepers to grant business users real time access to data generated by them and by end users from their use of the core platform service. Increased access to such data and the ability to port the data to business users' own systems, may generate opportunities for new and innovative consumer insights and the consequent tailoring of user experiences in relation to, for example, online shopping and booking.

WHAT ACTION SHOULD YOU CONSIDER?

While gatekeepers can face extensive fines for non-compliance (up to 10% of a company's global annual turnover in the case of repeated infringements), for non-gatekeepers who utilise the services of gatekeepers, the impacts and next steps are perhaps not as obvious.

We recommend that non-gatekeepers who make use of gatekeeper services familiarise themselves with the obligations placed on their gatekeeper business partners and remain alive to any net new rights they might gain (for instance increased choice, flexibility and interoperability), but also consider how limitations placed on gatekeepers might impact the services that they use.

Asking questions now and taking proactive measures in advance of the gatekeeper compliance deadline of 6 March 2024 will put non-gatekeepers in the best position to make the most of changes to business models, adapt affected commercial strategies, and implement changes required to user journeys, in a timely manner.



Horizon scanning (continued)

Clear as day – updates to UK consumer protection regime set to focus on transparency, clarity and fairness by Hettie Homewood, Tom James and Olly Bray

END OF 2023 – RESPONSE TO CONSULTATION EXPECTED TO BE PUBLISHED

WHAT IS HAPPENING?

The Digital Markets, Competition and Consumers Bill (the **Bill**) is currently at Report Stage in its journey through Parliament. When it comes into force, we will see a significant enhancement of the UK's consumer protection regime – with a particular focus on maximising transparency to consumers, to help them find better deals and avoid being ripped off.

Right now, a government consultation by the Department of Business & Trade is underway, seeking input on a number of elements covered by the Bill.

WHY DOES IT MATTER?

The Consultation on Improving Price Transparency and Product Information for Consumers (the **Consultation**) was launched on 4 September and seeks input on some of the key consumer protection elements of the Bill. These include:

- display of pricing information
- hidden fees and drip pricing
- fake and misleading reviews
- online platforms
- online interface orders.

The Consultation closed on 15 October, and we are expecting a response to be published before the year is out.

Whilst the Consultation focuses on some specific elements of the proposed updates to the UK's consumer protection regime, the Bill as a whole will have a wider impact, codifying a more robust legislative backdrop that will safeguard UK consumers in the modern day and the increasingly digital lives that we lead.

The consumer protection aspects of the Bill grant the CMA direct enforcement powers, which will allow the CMA to impose meaningful sanctions and streamline the process currently required for the CMA to take enforcement action.

This should level the playing field and provide a deterrent for businesses who may have previously come close to (or crossed) the line when it comes to unfair commercial practices. In addition, the Bill grants the CMA the power to impose monetary penalties where breaches of consumer law have occurred.

The level of fines is tiered, with the most serious offences incurring penalties of up to £300k or 10% of global annual turnover (if higher).

The Bill also makes substantive additions to the UK consumer protection rules, including in relation to subscription traps, consumer saving schemes and dispute resolution.

Finally, the Bill revokes and restates the Consumer Protection from Unfair Trading Regulations (**CPRs**) with some additions. Perhaps most notably, there is a newly created "omission of material information from an invitation to purchase" offence. This offence will bite without the need to be likely to affect the transactional decision of a consumer, and may prove to be a powerful new addition to the CMA's toolkit when it comes to tackling unfair commercial practices online.

As part of the Consultation, views are being sought on proposed additions to the Schedule 18 "blacklisted" practices in the Bill in order to reduce the prevalence of fake reviews so that consumers can have greater confidence in reviews from other consumers.

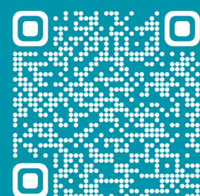
But it's not just the Bill that may be amended as part of the Consultation. Reforms to the Price Market Order 2004 are being proposed, in order to clarify and update the pricing information provided to consumers – so that consumers are able to ascertain more quickly and easily whether a particular price represents a "good deal" or not.

WHAT ACTION SHOULD YOU CONSIDER?

The upcoming strengthening of the consumer protection regime will have a significant impact on the way in which businesses engage with consumers. Following the Consultation and in readiness for the Bill coming into force, businesses will need to address their practices – and particularly their online choice architecture – to ensure that consumers are presented with clear and transparent information and are able to make purchasing decisions without being nudged towards a particular purchasing decision using unfair practices.

Whilst the Bill is not yet formally law, the core elements are unlikely to undergo any significant amendments. However, there may well be some refinements to some of the more specific elements of the consumer protection regime – particularly following the response to the Consultation.

We'll be exploring this topic and others at our Retail Compass Live! event on 1 November 2023. Scan the QR code to secure your place:



Horizon scanning (continued)

ESRS: the new age of sustainability disclosure and the EU's latest reporting standards by Sophie Tuson and Connor Cahalane

JANUARY 2024

WHAT IS HAPPENING?

New and wide-ranging sustainability reporting requirements for EU companies and certain non-EU companies (including UK companies with EU subsidiaries) have been set out in the EU Sustainability Reporting Standards (**ESRS**) which were adopted by the European Commission on 31 July 2023.

WHY DOES IT MATTER?

The ESRS set out the detailed reporting requirements under the EU Corporate Sustainability Reporting Directive (**CSRD**). EU member states must bring into force national laws necessary to implement the CSRD by 6 July 2024 and in scope companies will be required to report in line with the ESRS for financial years commencing, in certain cases, on or after 1 January 2024. Non-EU companies, including certain UK companies with EU subsidiaries, will be required to report for their financial years commencing on or after 1 January 2028.

Details of the ESRS

The ESRS apply to all undertakings under the scope of the CSRD regardless of which sectors they operate in.

Companies must disclose using the 'double materiality' principle on both (i) the 'impact materiality' of their activities on the environment and society; and (ii) the 'financial materiality' of the effects on the business of the risks and opportunities faced by the company from various sustainability issues.

The detailed requirements set out in the ESRS cover the following:

- **environmental disclosures**: environmental topics include climate change (to include disclosures on mitigation related to the company's efforts to limit global warming in line with the Paris Agreement, and scope 1, 2 and 3 greenhouse gas emissions) and, water and marine resources (consumption, withdrawal and discharge from and into water and marine resources). Other topics include pollution, biodiversity, ecosystems and the circular economy
- **social disclosures**: social topics include own workforce information on freedom of association, working conditions and access to equal opportunities, consumers and end-users (which covers the impacts of products and/or services regarding access to quality of information, privacy and the protection of children). Other social topics include workers in the value chain and affected communities
- **governance disclosures**: includes anti-corruption and anti-bribery practices, the protection of whistle blowers, political lobbying and relationships with suppliers.

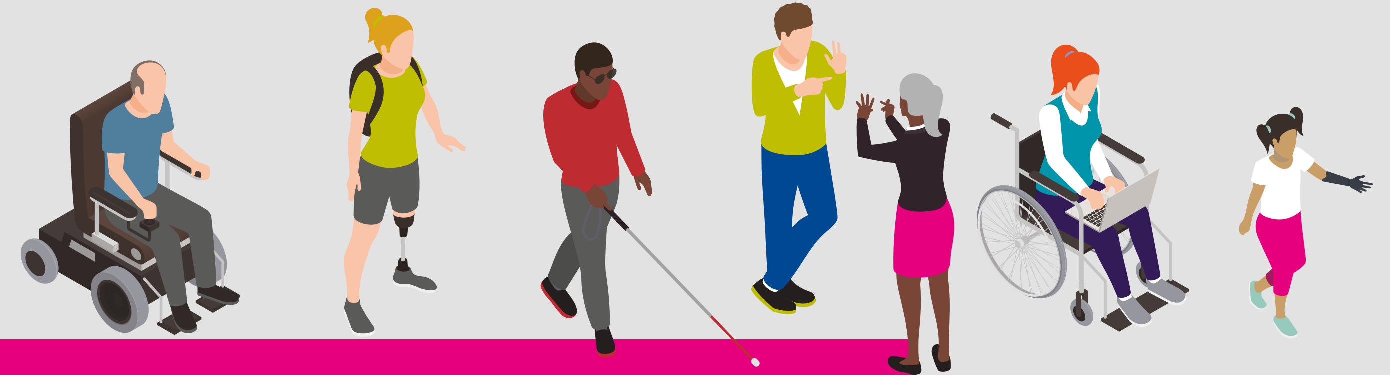
A further set of sector-specific standards, including for food, beverages, textiles, accessories and footwear, are expected to be released in 2024.

WHAT ACTION SHOULD YOU CONSIDER?

Retailers and consumer businesses should consider the following actions in relation to these new requirements:

- ensure the board and executive management are briefed on the CSRD reporting obligations and relevant timelines
- assess internal resourcing, hiring staff and/or setting up a central team responsible for sustainability reporting and coordinating input from around the business, liaising with suppliers, outside advisers, and preparing the relevant disclosures
- review the business' current reporting systems/processes to understand whether existing reporting technologies can assist with data collation and segmentation; and to consider whether any changes are required to meet these new reporting requirements
- map the business's supply chain and identify key parties that the business will need to request sustainability data from to meet the requirements of the CSRD
- set up initial discussions with suppliers and other relevant parties to understand what sustainability data they already have access to, how it is stored, how it can be transferred to you and in what format etc
- review the business's supply contracts to ensure they include relevant reporting requirements, standards and enforcement mechanisms so that the business can meet its sustainability disclosure obligations
- consider what additional specialist support (eg technical and legal) might be required to support the business to comply with its obligations under the CSRD.

Horizon scanning (continued)



The EU Accessibility Act: are your products and services caught by sweeping new accessibility requirements? by Rachael Ellis and Hettie Homewood

28 JUNE 2025

WHAT IS HAPPENING?

The Act is a landmark EU law which, once in force, will require everyday products and services to be accessible for persons with disabilities. Products and services within the scope of the Act include: computers and operating systems; smart phones; smart assistant devices; e-readers; services providing access to audio-visual media services; elements of passenger transport services (including ticketing services); consumer banking services; e-books and dedicated software; and e-commerce services.

WHY DOES IT MATTER?

The Act follows the adoption by the European Commission of a ten-year "Strategy for the Rights of Persons with Disabilities 2021-2030". The new rules will facilitate disabled persons access to public transport services, banking services, computers, TVs, tablets, e-books, online shops, and much more – including aspects of bricks and mortar shopping such as payment terminals in shops and restaurants, ATMs, ticketing machines and interactive information displays.

In-scope products placed on the market (and services provided to consumers) after 28 June 2025 will need to comply with the Act.

In relation to products, businesses will need to ensure that they:

- design and manufacture products in accordance with the applicable accessibility requirements in Annex I of the Act
- draft the relevant technical documentation in accordance with Annex IV of the Act
- hold all relevant documentation regarding technical specifications and conformity with the Act for a period of five years
- indicate their name, trade marks and address on the product or the packaging, and
- provide instructions and safety information alongside the product.

For services, businesses need to:

- design and provide services in accordance with the accessibility requirements (in Annex I of the Act
- include information assessing how services meet the accessibility requirements in their general terms and conditions and make this information available to the public in written and oral format (including in a manner that is accessible to those with disabilities)
- ensure that procedures are in place so that the provision of services remains in conformity with the applicable accessibility requirements
- in the case of non-conformity, take corrective measures to bring the service into conformity with the applicable accessibility requirements as well as immediately inform the competent national regulator of the Member State in which the service is provided, and
- further to a reasoned request from a regulator, provide it with all information necessary to demonstrate compliance of the service with the applicable accessibility requirements.

Penalties for non-compliance with the Act, as well as the relevant enforcement powers of the regulators, are set at a national level. Member States were required to transpose the Act into national law by 2022, although there remain some Member States that have not yet implemented the relevant transposing legislation.

WHAT ACTION SHOULD YOU CONSIDER?

Practical considerations for businesses include:

- auditing and assessing product and service lines to determine any products or services that are in scope of the Act
- where products and/or services are identified as being in-scope, working with designers, suppliers, manufacturers and others in the supply chain to adapt and supply new product/service designs, meeting relevant deadlines
- implementing internal governance processes to ensure ongoing compliance.

"The new rules will facilitate disabled persons access to public transport services, banking service, computers, TVs, tablets, e-books, online shops and much more (including aspects of bricks and mortar shopping)."

Horizon scanning (continued)

2024 brings designers one step closer to the harmonisation of the global registered design system by Ellie Chakarto and Jeremy Drew

NO LATER THAN 2024

WHAT IS HAPPENING?

The World Intellectual Property Organization (**WIPO**) has agreed to hold a diplomatic conference (ie a conference to negotiate and adopt treaties) no later than 2024 for the proposed Design Law Treaty (**DLT**).

WHY DOES IT MATTER?

Designs are an integral part of many brands. However, unlike patent and trade mark law, design law does not have its own international legal treaty. As a result, design procedures lack global consistency. While the DLT may not resolve all of the differences between design law on a worldwide scale, many hope that it will be a step in the right direction. Dids Macdonald, OBE., CEO of trade association, ACID (or Anti Copying in Design), hopes that the DLT will provide designers with "a level playing field globally so that trade agreements can reflect consistency in term and protection to enhance future trade agreements and to benefit individual designers."

Key changes proposed under the DLT

- **Grace period**. The UK regime provides a 12-month grace period, meaning that an applicant's own disclosures (or disclosures made with the applicant's consent) cannot prejudice their ability to protect a new design, provided their disclosure took place no more than 12 months before the priority date of the design registration. However, a number of countries, including China (the world's largest manufacturing country) does not offer a grace period. Under the DLT, all jurisdictions must choose between offering a six-month or a 12-month grace period.
- **Representation of the design**. Intellectual property offices will be required to allow the use of broken lines to represent matter which is not intended to form part of the claimed design in an application. This will bring jurisdictions in line with those that already allow this (such as the UK and EU) and enable designers to file multiple applications focused on a different selection of features.
- **Time limits**. Under the DLT, if applicants have failed to comply with a time limit fixed by the national intellectual property office, they can request for their application to continue to be processed provided such a request is within two months of the missed time limit.

Aspects not addressed by the DLT

While the DLT does go some way to harmonise the global design system, there are some aspects which the DLT fails to address.

- **Duration**: it is likely that gaps will remain in the duration of protection afforded to a registered design. The World Trade Organisation's Trade-Related Aspects of Intellectual property (**TRIPS**) Agreement mandates that at least ten years of protection should be afforded to a registered industrial design. While this duration is applied by some jurisdictions (such as Australia), others grant greater protection (for example, in the UK and EU protection is granted for 25 years).
- **Unregistered designs**: the DLT only concerns registered design rights and there is, therefore, no consistency afforded for designs for which no formal application is made.

WHAT ACTION SHOULD YOU CONSIDER?

While it could be some time before any changes brought in by the DLT take effect (even if the treaty is agreed by the end of 2024, the government in each participating country will then need to review and approve the DLT), designers in the retail and consumer brands industry should ensure they remain well-informed of any changes in design law.

In the meantime, if you are considering protecting the design of your products, it is important to obtain legal advice (particularly if you are seeking protection across several jurisdictions as significant differences between regimes remain at present).

According to WIPO, where data is available, the design industry is responsible for about **18%** of employment and **13%** of GDP in Europe.

(Source: WIPO)

Horizon scanning (continued)

Ofcom confirms the implementation and enforcement approach to advertising restrictions for "less healthy" food and drink products by Harpreet Kaur and Sarah Mountain

1 OCTOBER 2025

WHAT IS HAPPENING?

As widely reported in previous editions of Retail Compass and RPC Bites (our dedicated, monthly food and drink blog), restrictions on the advertising of products that are high in fat, salt and/or sugar (**HFSS**) have been contemplated, delayed and introduced by the UK Government over the last few years with the aim of halving childhood obesity by 2030. Restrictions on the placement of HFSS products in stores came into force last October and (following a last-minute delay) restrictions on the volume price promotion of HFSS products came into force this October.

The introduction of a 2100 watershed for the advertising and sponsorship of "identifiable less healthy food or drink products" on TV and on-demand programme services (**ODPS**) and a complete ban on paid-for online advertising of such products aimed at UK users was pushed back until 1 October 2025.

This year, Ofcom consulted on its proposed approach to implementing and enforcing the advertising restrictions and published its response to that consultation over the summer. In short, Ofcom has designated the ASA as co-regulator for the paid-for online advertising ban and will amend the BCAP Code and Broadcasting Code to reflect the watershed restrictions for TV and on-demand programme services.

WHY DOES IT MATTER?

By designating Ofcom as co-regulator for the paid-for online advertising ban (mirroring existing co-regulatory arrangements for online advertising) the ASA will have authority to handle both public and industry complaints and publish findings of breach and recommendations. However, where advertisers fail to comply with the ASA's recommendations, Ofcom will retain its statutory enforcement powers which include (amongst others) financial penalties. It has been widely reported that the enforcement of the HFSS promotion and placement restrictions has been minimal due to funding restrictions, but the ASA and Ofcom's co-regulation suggests that these restrictions will be enforced more strictly.

In terms of its amendments to the BCAP and Broadcasting Code for the TV and ODPS watershed restrictions, Ofcom has sought to clarify the definition of "less healthy" food and drink products which fall within the scope of the restrictions as those which are classed as HFSS products, by reference to the Department of Health's 2011 Nutrient Profiling Technical Guidance, or those which fall within the categories to be set out in the forthcoming Advertising (Less Healthy Food Definitions and Exemptions) Regulations 2022 (the **Draft Advertising Regulations**).

However, we are still awaiting the government's response to its consultation on the Draft Advertising Regulations. Only then will there be clarity as to the true scope of the advertising restrictions (including potential exemptions for small and medium enterprises). Even so, as matters stand, the upcoming restrictions are likely to impact a wide range of brands, including those selling HFSS products in the out-of-home sector (contrary to the position in relation to the promotion and placement restrictions).

Ofcom has also confirmed that key definitions will be clarified in subsequent BCAP and ASA guidance, including the meaning of an "identifiable" product. This will be critical for HFSS brands as one of the key concerns with the advertising restrictions (as raised in responses to Ofcom's consultation) is whether they will bite on generic brand advertising. The BCAP Code as amended will define a less healthy food and drink product as identifiable "if persons in the UK (or any part of the UK) could reasonably be expected to be able to identify the advertisements as being for that product." As the BRC have identified, this definition leaves room for ambiguity, so further guidance will be welcomed, particularly as the introduction of the advertising restrictions will likely see brands shift marketing efforts from product marketing towards generic brand advertising.

Although the most recent consultations do not appear to explicitly address the issue, brands should also bear in mind that the restrictions will bite on influencer marketing, to the extent the relevant content represents "paid-for" advertising (ie where an influencer posts content about HFSS products having received payment or another kind of benefit from the brand). We expect guidance in this regard to materialise as we edge nearer to October 2025, or (less helpfully for brands) following findings of breach in this area.

WHAT ACTION SHOULD YOU CONSIDER?

Delays to HFSS advertising restrictions have not been well received by those at the sharp end of the health implications of rising rates of obesity. However, businesses should use this period of delay to thoroughly prepare for the upcoming restrictions to minimise any adverse impact. Tips include:

- monitor the government's response to its consultation on the Draft Advertising Regulations and upcoming BCAP and ASA guidance to confirm which products may fall within the scope of the restrictions
- assess the marketing of those products and the steps required to comply with the restrictions
- in the wake of the proposed restrictions, find new ways to leverage existing brand loyalty and develop generic brand advertising
- consider whether there may be value in developing alternative non-HFSS product lines to bypass the upcoming restrictions
- ensure the terms of influencer marketing agreements oblige influencers to comply with the upcoming restrictions, whether by an express clause in relation to the advertising of HFSS products or via a 'catch all' compliance with any applicable advertising rules clause.

Horizon scanning (continued)

Data protection and AI: navigating new privacy frontiers
by Amy Blackburn, Helen Yost and Jon Bartley

BY END 2023

WHAT IS HAPPENING?

Retailers and consumer brands are increasingly using AI online and in stores. Examples of how the technology could be leveraged include generative AI like ChatGPT, the automation of supply chains or the detection of fraud. Data regulators in the UK and EU are starting to catch up to the use of these technologies and making their positions known.

WHY DOES IT MATTER?

Regulators in the UK and in Europe have confirmed that data protection laws apply to all technologies that use personal data, including any AI systems. Data protection authorities (including the UK ICO) are focussing heavily on the issues raised by AI. This underlines the potential harm that could be caused to individuals due to the misuse or misguided use of AI.

For retailers and consumer brands using these technologies, a key obligation to remember is that set out in the UK and EU GDPR around automated decision making (**ADM**). The law restricts organisations from using solely automated processing to make a decision that has a legal or similarly significant effect on an individual, unless certain exceptions apply. What this means in practice is that individuals have a right to avoid important decisions about them being made purely by a machine with no human involvement.

As may be expected, this can significantly impact the development of a compliant AI technology. Retailers will need to assess both the level of human involvement in any decisions that are made, and the impact that these decisions could have on the individual. Aside from ADM, other data principles such as fairness, transparency and data minimisation all impact on the lawfulness of AI technologies.

In light of the boom in AI technologies in the market, regulators in the UK and EU have started to prioritise their governance of this area. In the EU, the focus has been on legislation in the form of the EU AI Act. The EU Parliament approved its version of the Act's text in June 2023, and an agreed version among European institutions is expected by the end of the year. The act is based on a structured four-tier risk framework, and an EU AI Board will be established to provide formal guidance and assistance on the topic.

As the UK is no longer subject to the EU GDPR and EU guidance following Brexit, it is developing its own data protection laws that diverge in certain key areas from those in the EU. A stated focus for these revised laws has been reducing the impact of regulatory red tape on business and innovation, and the UK's approach to AI is no exception. The UK Government published an AI White Paper in March 2023, which was then subject to consultation with many believing the UK's approach may be too soft. The UK Government has since indicated that there may be more regulation than initially suggested, but that this will not reach the level of that in the EU.

Retailers that operate in the EU and the UK are likely to face a two-tier compliance regime as a result, as even a UK-headquartered retailer will likely be caught by the EU regime if it offers and sells goods to customers in the EU.

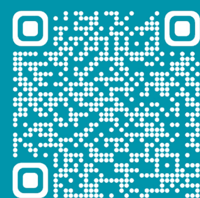
WHAT ACTION SHOULD YOU CONSIDER?

While the exact scope of the new AI regulations in the EU and UK is yet to become clear, there are steps retailers and consumer brands can take now to ensure that their use of AI is more likely to comply with data protection laws. Regulators in both the EU and UK consider this to be a risky area, particularly where the technology also involves the processing of biometric data.

Retailers and consumer brands should first take a step back to assess their own risk appetite for the use of AI, which will help to inform a strategy going forward. Other important initial considerations include making sure that any technology used is understandable and explainable to the end user. At the design phase, consider how a meaningful human review of any decisions could be built into the technology. Staff should also have the training and the authority to escalate and override decisions made by the AI system where these involve the processing of personal data.

A good starting point is the ICO's guidance on AI, found here.

We'll be exploring this topic and others at our Retail Compass Live! event on 1 November 2023. Scan the QR code to secure your place:

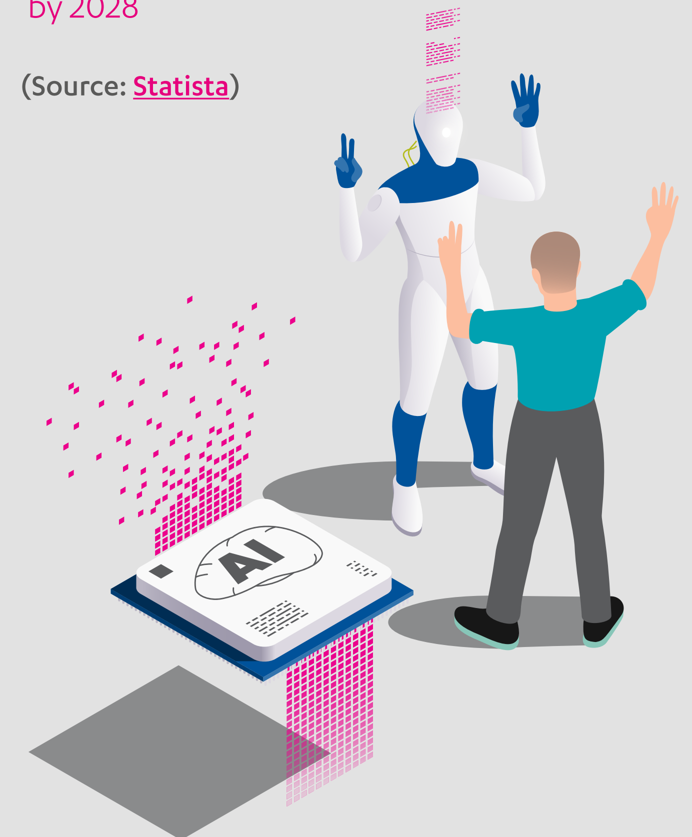


The size of the global AI market in the retail industry is expected to grow to

$31.18bn

by 2028

(Source: Statista)



Horizon scanning (continued)

Proposed reforms to EU retained employment law: what's in the pipeline? by Ellie Gelder and Kelly Thomson

LATE 2023

WHAT IS HAPPENING?

Since our Spring 2023 edition of Retail Compass, where we outlined the areas of UK employment law that could potentially change as a result of the Retained EU Law (Revocation and Reform) Bill, the government has since sought views on the following proposed reforms to four key areas of EU-derived employment law:

- **removing record-keeping requirements** in respect of workers' working hours. According to the government, this proposed reform would generate £1bn in savings
- **introducing rolled-up holiday pay**, whereby a worker's hourly rate of pay includes an amount that represents their holiday pay (with no further pay being due when the holiday is taken), rather than the worker receiving holiday pay only when they take annual leave
- **simplifying annual leave entitlement** by merging the current two separate leave entitlements (EU-derived and UK specific) into one pot of statutory annual leave, while maintaining the same amount of statutory leave entitlement overall
- **changing TUPE transfer consultation rules** by allowing all small businesses (fewer than 50 employees) to consult directly with their employees on TUPE transfers (where fewer than 10 transfer), if there are no union or employee representatives in place, rather than arranging elections for new employee representatives.

WHY DOES IT MATTER?

The proposals form part of the government's aim to reduce existing legislation which "unnecessarily burdens business, impedes competition or acts as a block on innovation". However, there are some important points for retail employers to bear in mind.

In relation to record-keeping, for example, the requirement to record time for national minimum wage and HMRC compliance purposes remains, as well as the health and safety obligation to ensure that employees work no more than a total of 48 hours per week.

Turning to rolled-up holiday pay, this is currently unlawful, as confirmed by European case law, on the basis that it may discourage employees from taking annual leave. Allowing rolled-up holiday pay is therefore a major shift and will help simplify the calculation of annual leave entitlement for irregular workers. Ultimately, however, it will be up to retailers as to whether they use it and, if so, how to ensure worker wellbeing is protected.

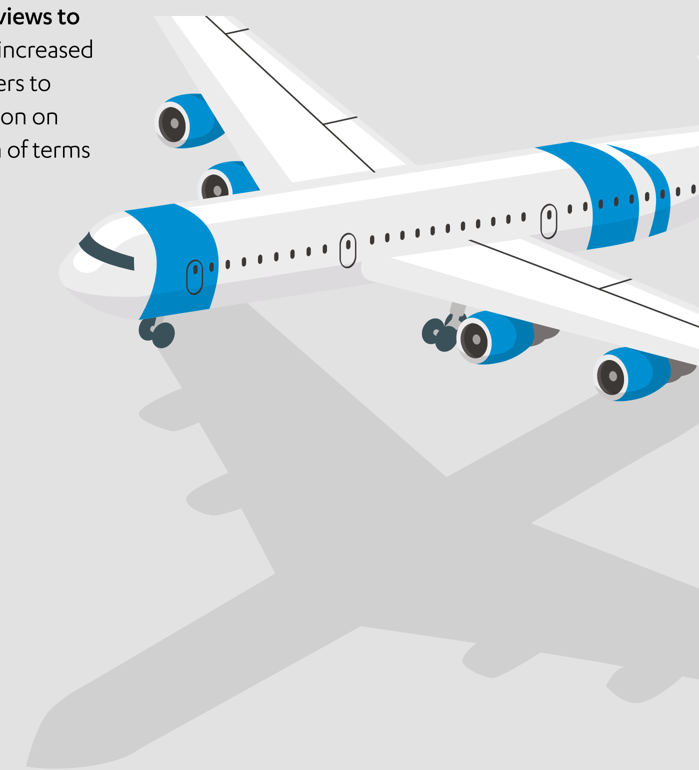
The existing law on holiday entitlement can cause complications because there are two separate entitlements: four weeks of EU-derived entitlement, plus an additional 1.6 weeks under the Working Time Regulations 1998. There are different pay calculations and carry-over rules for each entitlement, which can cause payroll issues.

Merging the two entitlements to a single entitlement would certainly ease these issues but more detail is required, including the minimum rate of pay for the 5.6 week period and how the carry-over rules will operate, in particular whether workers on long-term sick leave will be allowed to carry over the full 5.6 weeks to the following annual leave year (currently carry-over for such workers is limited to four weeks).

Finally, although the ability to consult directly with employees for qualifying transfers would provide greater flexibility for businesses, many have criticised the proposed changes to TUPE legislation as "a missed opportunity" to relax the restrictions on post-transfer harmonisation of terms and conditions, which businesses argue would ease pressure on employers while at the same time help to avoid the difficulties of a two-tier workforce.

WHAT ACTION SHOULD YOU CONSIDER?

- **Watch out for the government's response to the consultation**, as well as further guidance on how the reforms will operate, for example the rate of pay for the new single annual leave entitlement, and how employers can choose to use rolled-up holiday pay.
- **Monitor the outcome to a separate, but related, government consultation** on calculating holiday entitlement for part year and irregular hours workers, which seeks to introduce a holiday entitlement reference period for part-year and irregular hours workers, to ensure that their holiday pay and entitlement is directly proportionate to the time they spend working.
- **Explore whether rolled-up holiday pay is appropriate for your organisation**: Would your annual leave system require a complete overhaul to accommodate different rules for different workers? How would you ensure that workers aren't discouraged from taking their annual leave and avoid any adverse effects on their health and wellbeing?
- **Look out for any further reviews to TUPE legislation**, given the increased demand from business leaders to remove the existing restriction on post-transfer harmonisation of terms and conditions.



12.07%

the additional amount of a worker's pay that employers could pay a worker on each payslip to cover holiday pay, if the government introduces rolled-up holiday pay.

(Source: page 24 of the Government's consultation on Retained EU employment law reforms)

Horizon scanning (continued)

New statutory rights for carers and parents by Charlotte Bray and Kelly Thomson

APRIL 2024 AND APRIL 2025

WHAT IS HAPPENING?

New protections coming for eligible parents and carers:

- one week's unpaid carer's leave per year for employees with dependents with long-term needs
- up to 12 weeks' paid neonatal care leave
- extension of redundancy priority protections to cover pregnant employees and parents who have recently returned from family-related leave.

WHY DOES IT MATTER?

Protection from Redundancy (Pregnancy and Family Leave) Act 2023

Current legislation provides certain enhanced protections for employees on maternity leave who are impacted by redundancy. For example, the right to be offered suitable alternative employment in preference to other employees. However, this protection does not apply when employees are pregnant or after they return to work from maternity leave.

So, in July 2019, the government confirmed these policy intentions to be implemented "when parliamentary time allowed":

- existing enhanced redundancy protection will apply from when the employee notifies the employer of her pregnancy and for six months after return to work
- protection will also be extended for six months after the end of adoption leave and for a period (scope and length TBC) after the end of shared parental leave
- protection will not be extended to paternity leave.

The Act received Royal Assent on 24 May 2023 and came into force on 24 July 2023. However, regulations are needed to bring the changes into effect and, as yet, no date has been announced for those.

Neonatal Care (Leave and Pay) Act 2023

In July 2022, the government announced backing for a Private Members' Bill: the Neonatal Care (Leave and Pay) Bill 2022-23.

The law will allow parents up to 12 weeks of paid leave each, in addition to other leave entitlements including maternity and paternity leave, to spend more time with their baby who is receiving neonatal care in a hospital or other agreed care setting. Neonatal care leave will be available from day one of employment. It will apply to parents of babies admitted into hospital up to the age of 28 days, and who have a continuous stay in hospital of seven full days or more.

This Bill received Royal Assent on 24 May 2023 but the new neonatal leave and pay entitlements are not expected to be effective before April 2025.

Carer's Leave Act 2023

Millions of people across the country provide unpaid care and are balancing work with those responsibilities. Workplace support is critical and not always provided.

In September 2021, the government confirmed it would introduce a statutory right of up to one week of unpaid leave for carers in England, Wales and Scotland, although no timescale was given.

A year later the government announced its backing of the Carer's Leave Bill, a Private Members' Bill. The Bill received Royal Assent on 24 May 2023, becoming the Carer's Leave Act 2023. However, a date for implementation is yet to be announced. It has been reported that this date will not be before April 2024.

WHAT ACTION SHOULD YOU CONSIDER?

The key question is: when the Carer's Leave Act 2023 is implemented, is your workplace ready to respond?

All employees will be entitled to one week of unpaid leave per year for providing or arranging care for a dependent with a long-term care need. Dependants will include a spouse, civil partner, child or parent, someone who lives in the same household (with exceptions) or someone who reasonably relies on the employee to provide or arrange care. That dependant has a long-term care need if they have an illness or injury that requires or is likely to require care for more than three months, a disability or require care connected with old age.

Importantly, employees will then have the same protections that are associated with other forms of family related leave like protection from dismissal or detriment from exercising their right to take carer's leave.

Employees will be able to bring a claim to the employment tribunal if the employer has unreasonably postponed carer's leave or prevented (or attempted to prevent) the employee from taking it.

Employers will need to communicate effectively with their employees and understand their life circumstances in order to discharge these legal obligations and to provide the practical support their people need.

Statistics from the Equality and Human Rights Commission in 2016 showed that **6%** of mothers were made redundant at some point during pregnancy, maternity leave or on return from maternity leave.

To find out more about the proposed reforms to family-related employment law rights, listen to our recent Work Couch podcast with host Ellie Gelder and senior associate Joanna Holford.

Horizon scanning (continued)

Suspension of "ipso facto clauses" under CIGA 2020 – three years on by Harriet Ainsworth and Tim Moynihan

21 FEBRUARY 2023 (DATE OF GOVERNMENT REVIEW)

WHAT IS HAPPENING?

The Corporate Insolvency and Governance Act 2020 (**CIGA 2020**) came into force on 26 June 2020 with the aim of supporting struggling businesses through the pandemic. Three years on, the government has published a review of the effectiveness of CIGA 2020 and have outlined possible areas of refinement including in respect of 'ipso facto' clauses.

WHY DOES IT MATTER?

The government's review focuses on the three permanent measures introduced by CIGA 2020; namely:

- the 'breathing space' moratorium
- restructuring plans
- the suspension of termination (**ipso facto**) clauses.

An ipso facto clause is a provision in an agreement which permits its termination due to the insolvency of a party. Such clauses are now unenforceable under CIGA 2020, although it should be noted that the suspension does not apply to contracts for financial services.

There is a narrow defence available to suppliers wishing to rely on these clauses where the continuing supply would cause 'hardship' to the supplier – although this defence is yet to be tested in the Courts and so what constitutes 'hardship' remains unclear. In addition, the risk to a supplier who intentionally breaches its obligations under this measure remains uncertain.

Although it has said that it would be too early to consider any legislative changes, the government has suggested that, in the interim, guidance could be provided so that insolvency practitioners have a better understanding of how the provisions can be implemented with less sophisticated suppliers, in particular, who may not be aware of the measure.

There have been no timelines provided in relation to the publication of future guidance around the permanent measures, including the maintained suspension of ipso facto clauses, but it is anticipated that, given the rise in insolvencies, there will be increased reliance on this measure which should, in turn, result in there being greater judicial guidance on this measure, at least.

WHAT ACTION SHOULD YOU CONSIDER?

In view of the ongoing suspension of ipso facto clauses, suppliers should consider alternative ways of protecting themselves against losses arising from customers in financial difficulty or insolvency.

Suppliers should consider:

- **retention of title** – ensuring that title to any goods supplied remains with the supplier unless and until the goods are paid for. A retention of title clause in a contract usually requires the recipient to store/preserve the goods separately and affords the supplier the right to recover those goods in the absence of payment
- **early payment/payment in advance** – requesting that payment is made upon delivery or in advance of delivery of any goods/services can minimise the risk of non-payment in the event of an insolvency
- **review of existing contractual terms and policies** – checking that existing contracts comprehensively address all changes brought in by CIGA 2020 and whether insurance policies, for example trade credit insurance, covers the supply to an insolvent company.

Horizon scanning (continued)

In October 2022, the Justice Committee reported that fraud accounted for

40%

of all crimes in England and Wales.

The Economic Crime and Corporate Transparency Bill: significant changes to UK corporate criminal liability and corporate transparency by Sam Tate and Karen Hendy

LATE 2023

WHAT IS HAPPENING?

The Economic Crime and Corporate Transparency Bill (the **Bill**) is set to overhaul the existing corporate criminal liability and corporate transparency regimes.

The Bill is set to increase the tools available to prosecutors to pursue corporates by introducing a new "failure to prevent" fraud offence and amending the existing test for determining corporate criminal liability for economic crime.

The Bill also introduces new reporting and identity verification requirements and will enable Companies House to be a more "active gatekeeper" of economic crime.

People in the UK lost

£1.2bn

to fraud in 2022, the equivalent of £2,300 every minute, according to bank industry group UK Finance.

WHY DOES IT MATTER?

The Bill represents a significant development in Parliament's growing focus on economic crime in the UK.

New "failure to prevent" offence

The Bill is set to introduce a new corporate criminal offence of "failure to prevent" fraud. This will operate in a similar way to the failure to prevent bribery offence introduced by the Bribery Act 2010.

Pursuant to the new offence, large commercial organisations and their subsidiaries which conduct business in the UK could be subject to an unlimited fine if their associated person commits a fraud offence with the intention of benefitting the organisation or (in some circumstances) themselves. The fraud offences that can trigger the failure to prevent offence are broad and will cover issues like greenwashing, misstatements in key financial documents and misleading sales practices by employees and marketing teams. Given the wide range of conduct potentially in scope, retail and consumer companies will need to be prepared for the changes.

After the Bill is passed (likely in late 2023), we expect to see an increase in investigations and prosecutions of corporate fraud. The "failure to prevent" model will make it easier to prosecute organisations in relation to these crimes as, unlike the current position, it does not require a prosecutor to establish the involvement of senior management of the company in the offending.

Importantly, companies will have a defence to the failure to prevent fraud offence if they can demonstrate they had in place reasonable preventative measures. Government guidance will be produced (most likely early in 2024) on what will constitute reasonable preventative procedures. However, companies can begin their planning and gap analysis immediately, particular to ensure that their policies seek to prevent the company and its third parties from defrauding others, rather than solely focusing on preventing the company becoming the victim of fraud.

Proposed revision of "identification doctrine"

The Bill also makes broader changes to the test for establishing corporate criminal liability for a range of economic crimes (including theft, fraud, bribery, and tax offences). Under this new statutory framework, the acts of "senior managers" will be attributed to the company.

This will reform the much criticised "identification doctrine" for these economic crimes, replacing the "directing mind and will test", under which, currently, the actions of only a handful of the most senior people in a company can be attributed to the corporate body.

Corporate transparency reforms

The Bill also includes provisions designed to improve corporate transparency and to give Companies House enhanced powers to tackle economic crime. These include:

- **identity verification** – all new and existing directors, PSCs and persons submitting information to Companies House will be required to verify their identity. Details of the verification process will be contained in regulations which will follow enactment of the Bill. There will be two types of identity verification: direct verification via Companies House, and an indirect route through an Authorised Corporate Service Provider. If a person is verifying their identity directly with Companies House, identity verification will link a person with a primary identity document, such as a passport or driving licence. Alternatively, people might decide to use a corporate service provider authorised by the registrar to verify their identity. There will be a transition period to provide existing directors and PSCs time to verify their identities
- **new reporting requirements** – a company's register of members must include full names of all shareholders and the company must provide a list of shareholder names via the next confirmation statement which falls due after the legislation comes into force. Companies must also provide an "appropriate" email address (which will not be made publicly available) to Companies House and ensure that its registered office address is "appropriate", meaning that documents sent to it by Companies House could reasonably be expected to come to the attention of a person acting on behalf of the company (and be capable of acknowledgment by that person).

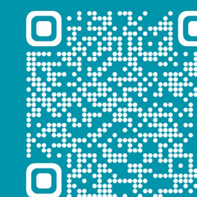
By default, most information provided to Companies House will be publicly available. However, the government intends to introduce a process whereby any individual listed on the Companies House register will be able to apply to have personal information suppressed from public view. There will be no evidential threshold in the regulations to apply to suppress residential addresses, signatures, days of date of birth or business occupations, but applicants will need to provide evidence that one or more individuals is personally at risk of harm to protect names, other particulars (for example, service addresses and partial dates of birth) or "sensitive" registered office addresses. Applications will be accepted before an individual becomes a director or PSC such that, if successful, the personal information of those at risk would not appear publicly.

- **Companies House powers** – Companies House will have more effective investigative and enforcement powers (including the ability to cross check data and share information with external bodies), enabling it to become a more active gatekeeper over company incorporations and a custodian of more reliable data.

WHAT ACTION SHOULD YOU CONSIDER?

- **Failure to prevent offences** – Companies should review their compliance procedures to determine whether they adequately address the risks of fraud offences being committed by third parties (including employees). Prudent companies will commence this work now, to take advantage of the time before the Bill comes into force.
- **Corporate transparency reforms** – Companies should check that their existing registered office address is "appropriate"; check that they have full names for all their shareholders and prepare to update their register of members and confirmation statements when required; and ensure that they will be ready to provide details of a company email address (which will be regularly monitored) to Companies House. They should also plan to arrange identity verification of all directors, PSCs and employees who submit information to Companies House once the identity verification regulations are published.

We'll be exploring this topic and others at our Retail Compass Live! event on 1 November 2023. Scan the QR code to secure your place:



Snapshot of retail statistics

UK

CONSUMER BEHAVIOUR

47% of Britons have tried a new brand, retailer, or product in the past **six months**, and that number is higher (**72%**) for Gen Z and Millennials.

Source: Think with google

Over **70%** of UK retailers expect an increase in sales this Christmas (**2023**) compared to **2021**.

Source: Ecommerceage

CUSTOMER EXPERIENCE

The UK survey results showed **35%** of shoppers are leaning towards online and **26%** opting for in-store shopping.

Source: Klarna

40% of brands and retailers are already investing in CGI technology, with an additional **58%** planning to invest in the near future.

Source: Coresight

78% of shoppers would feel sad if the high street was no longer an option for shopping.

Source: Business Money

ONLINE

The UK is forecast to do more than **$143.8bn** in ecommerce sales in 2023.

Source: Statista

30% of shoppers say more detailed descriptions would encourage them to shop online and more than a **28%** say better images would motivate them to shop online.

Source: Elavon

66% of surveyed adults state that free returns, labels and packaging would encourage them to shop online, whilst **61%** say reliable delivery is a key reason for online shopping.

Source: Retail Week

SUSTAINABILITY

86% of UK fashion consumers want their clothes to be made ethically and **72%** of them sustainably, with as many as **53%** of them willing to pay more to see this happen.

Source: RetailX

Global #1

SUSTAINABILITY

By 2027, the resale market is expected to be worth **$350bn**.

Source: Threadup

65% of consumers have recently used resale and re-commerce services.

Source: Retail touch points

CUSTOMER EXPERIENCE

30% of consumers report that influencer recommendations guide online purchases, compared to only 27% for recommendations from friends or family.

Source: HubSpot

63% of brands plan to use AI in executing their influencer campaigns, 2/3rd of these brands will use AI for influencer identification.

Source: Influencer marketing hub

TikTok (utilised by **56%** of brands using influencer marketing) is now the most popular influencer marketing channel, jumping ahead of Instagram (**51%**) for the first time, and ahead of Facebook (**42%**) and YouTube (**38%**).

Source: Influencer marketing hub

CONSUMER BEHAVIOUR

Over **50%** of consumers shop online for free delivery, followed by coupons and discounts at **38.7%**.

Source: Data Reportal

ONLINE

By 2024, **21.2%** of total retail sales will happen online.

Source: Insider intelligence

The proportion of global luxury sector sales made online is expected to triple by 2025, reaching **$91bn**.

Source: Luxe Digital

Snapshot of retail statistics (continued)

Global #2

USA

28% of US shoppers use mobile phones while in a physical store to look up discounts, compare pieces, and read product reviews – PYMNTS

B2C online marketplace sales (Think Amazon and eBay) in the US are expected to reach **$2.1tn** by 2024 – Research and Markets

47% of US consumers report purchasing goods through social platforms – Mintel

24% of Baby Boomers in the US prefer to do most of their shopping online – Klarna

The United States stands as the top revenue generator in the Luxury Goods industry with **$75.69bn** in 2023 – statista

Resale shops have grown **7%** a year for the past two years, with over 25,000 stores in the US – Census

ASIA

China continues to lead in global ecommerce sales according to the International Trade Association, accounting for more than **50%** of all retail sales worldwide – International Trade Association

39% of APAC consumers want the in-store shopping experience to be more interesting or exciting. And at **56%**, it's even higher in Malaysia – adyen

36% of consumers in APAC have opted to wait for big-ticket sale events, such as Singles' Day, Black Friday, or the year-end holiday shopping season. This is especially the case in Singapore, where two out of five shoppers are delaying purchases until they can get considerable discounts – adyen

Total retail sales in Hong Kong increased by **20.7%** in the first half of 2023 compared to the same period last year – PwC

The total consumer spending on clothing and footwear in Southeast Asia is forecast to increase by **35.8%** between 2024 and 2028 – Statista

EU

After declining by **4.5%** in 2022, ecommerce sales will grow by **3%** to **$604.33bn** across Western Europe in 2023 – insider intelligence

In Europe, **84%** of consumers perceive branded products as having similar quality to private labels – Mckinsey

74% of consumers are concerned that the cost of everyday items they buy is going up, while **32%** are concerned about their financial situation – Euromonitor

In Italy **37%** of consumers preferred online shopping, with **25%** favouring in-store. Germany had **33%** preferring online shopping and **25%** in-store and **32%** of consumers in Spain showed a preference for online, with **30%** favouring in-store – Klarna

Other developments | UK and Europe

Here we round up some other developments which have occurred since our last publication of Retail Compass (in April 2023). In the first few developments, we look at hot topics for retailers and consumer brands in the UK and Europe. The final few developments should be of particular interest to retailers operating in (or considering operations in) Europe, specifically France, Germany and the Netherlands. As always, we recommend tailoring your consideration of these international topics to your own specific circumstances as there may be local law considerations which affect you.

The European Commission welcomes the approach taken in the draft European Data Act by Preetkiran Dhoot and Jon Bartley

The European Commission has expressed its support for the political agreement between the European Parliament and the Council of the EU in relation to the European Data Act. It took the opportunity to summarise the key aims and features of the draft legislation.

The European Data Act aims to unlock data collected through machines and consumer goods, such as smart devices in the home, to foster a competitive digital market. Like the GDPR, it is slated to have extra-territorial effect so this new law will also be of interest to businesses with an international reach selling into the EU.

The Commission states that the new law will concretely include measures that will: allow consumers to access data generated by their devices and associated services; protect SME's from unilaterally imposed unfair terms to promote a more competitive aftermarket; allow public sector entities to access certain data in emergency situations; allow customers to switch between cloud data processing services; and promote the development of interoperability standards.

The European Data Act will now be subject to formal agreement between the European Parliament and Council, coming into force on the 20th day following its publication in the Official Journal, and will then be applicable 20 months later.

Tips

Businesses are advised to keep abreast of new developments in the European Data Act text once approved by the European Council and Parliament. They should also review their data processing and hosting platforms to ensure that (i) data can be easily shared in compliance with the proposed text; and (ii) they consider strategies to ensure that data revealing trade secrets or confidential know-how is not unduly revealed.

ICO to step up investigations into cookie rejection buttons

by Preetkiran Dhoot and Helen Yost

The ICO has recently announced that companies which fail to put a "reject all" cookies option on the top layer of their cookie banners will be far more likely to be investigated by the ICO, which is cracking down on improper consent mechanisms. However, Stephen Bonner (the Deputy Commissioner) left the door open for businesses to quickly remedy any non-compliant cookie banners to reduce the chance of a fine being issued.

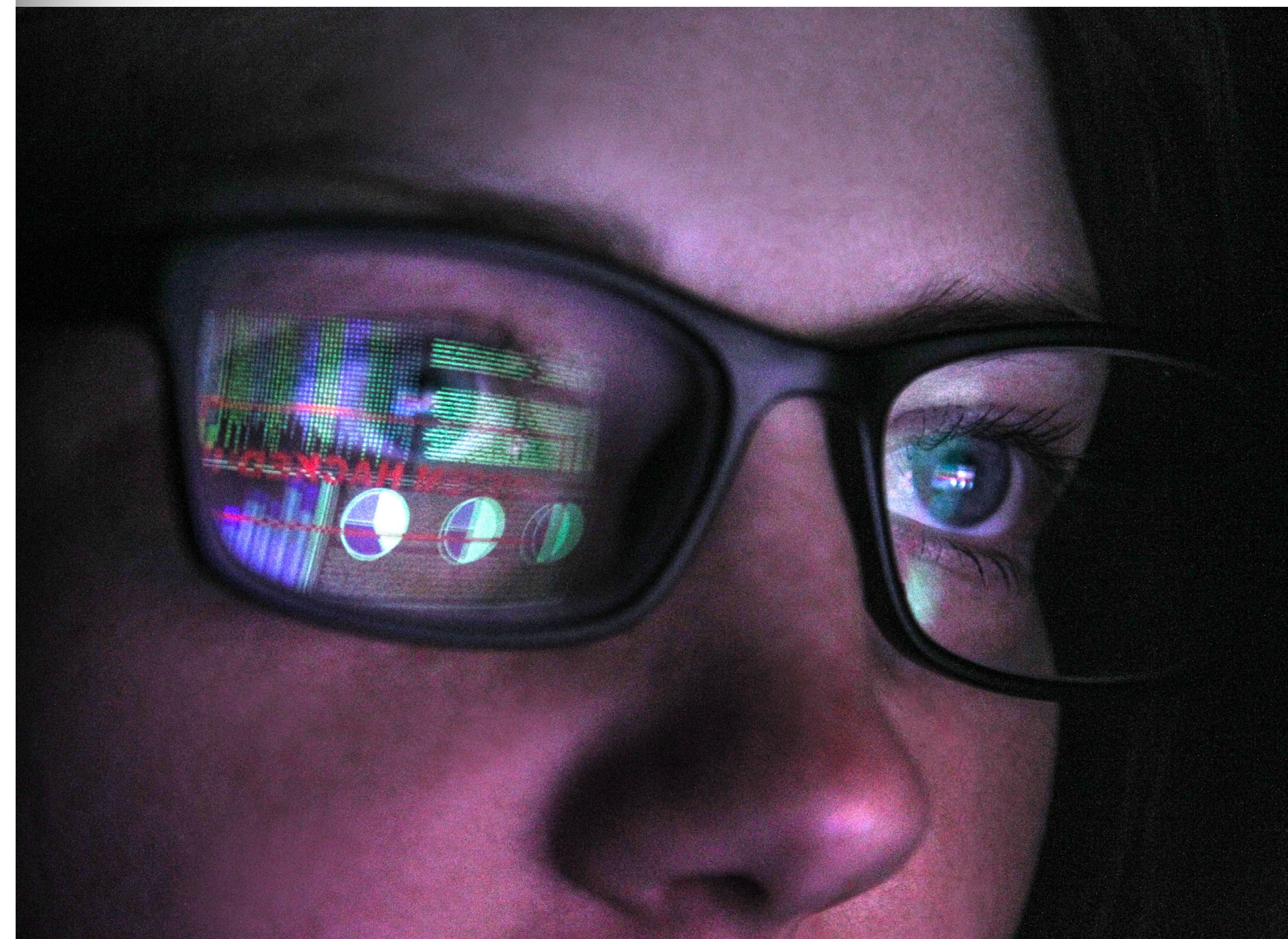
This follows the trend in the EU where regulators have similarly been cracking down on non-compliant cookie banners such as in France where the regulator CNIL issued €210k in fines against three companies. The ICO followed up its announcement with a blog piece reiterating the power that online websites have over their users. This includes affecting the content users may see for several weeks after a cookie may have been accepted. Having a clear "reject all" option is in-keeping with the principle that it should be as easy to reject cookies as it is to accept them, which the ICO is seeking to enforce more frequently.

Whilst for the time being cookie banners are a consistent feature of websites, and therefore invite regulatory risk, they are expected to start disappearing over time as large industry players move away from using third party cookies.

Tips

Businesses should ensure that they have a clear "reject all" option available to customers on their primary cookie banner and comply with the transparency requirements for cookies used.

In recent comments, the ICO has also made clear that it is not acceptable to use the expected relaxation of the cookies consent requirements in the UK's upcoming new data protection legislation as an excuse to avoid compliance with current cookie rules.



Other developments | UK and Europe (continued)

The EU-US data privacy framework and the UK-US data bridge – third time's the charm? by Dan Jackson and Joe Lippitt

The EU-US Data Privacy Framework (the DPF)

On 25 March 2022, President Biden, and European Commission President von der Leyen, reached agreement on the DPF. To comply with the US' obligations under the DPF, President Biden signed an Executive Order providing stronger protections for personal data and creating a new mechanism for European Economic Area (**EEA**) data subjects to seek redress for illegal use of their personal data by US intelligence agencies.

Following these changes, the European Commission adopted an adequacy decision recognising that the US had improved its protection of EEA personal data and had implemented an appropriate means for data subjects to enforce their rights.

As such, where a US business is certified under the DPF, businesses which comply with the GDPR may make certain cross-border transfers of personal data to them, without the need to implement EU Standard Contractual Clauses (**SCCs**). This change will reduce the time which EEA businesses spend negotiating their data processing agreements which, until now, have required the incorporation of SCCs. Further, Transfer Impact Assessments will no longer be required.

While the DPF demonstrates a commitment by the US to the protection of EEA personal data, it is the third attempt to set up a lawful framework for trans-Atlantic data transfers. Given that the Court of Justice of the European Union previously invalidated the Safe Harbour and Privacy Shield frameworks, it is likely the DPF will be the subject of a legal challenge.

The UK-US Data Bridge (the Data Bridge)

On 21 September 2023, the UK government published the Data Protection (Adequacy) (United States of America) Regulations 2023 to provide for a UK Extension to the DPF (ie, the Data Bridge). These regulations state that, under UK data protection laws, the US is an adequate country for the purposes of data transfers from the UK provided: (i) the transfers are to a US business certified under the Data Bridge; and (ii) the recipient complies with the obligations set out in the DPF. Further, the US Attorney General also designated the UK as a 'qualifying state' under US Executive Order 14086 which implements arrangements that are complementary to the DPF. In particular, these arrangements allow all UK individuals to enforce their rights in the newly established Data Protection Review Court.

Much like the DPF, the Data Bridge will significantly cut down the time it takes for businesses to transfer data to the US as it eliminates the need to agree SCCs and conduct transfer risk assessments (**TRAs**). However, given the likelihood that the DPF will be subjected to legal challenge and the potential knock-on effects this could have on the validity of the Data Bridge, businesses may want to consider adopting a "belts and braces" approach to important contracts, and provide that SCCs and TRAs will be agreed and conducted should the DPF be invalidated.

Tips

For a US business to become certified under the DPF, it must:

- be subject to the investigatory and enforcement powers of the Federal Trade Commission, or the US Department of Commerce (as such, the DPF is not available to, for instance, US financial services institutions or insurance companies)
- publicly declare its adherence to the DPF principles
- publicly disclose its privacy policies in accordance with DPF principles fully implement DPF principles, and
- separately sign up to the UK Extension to DPF.

A list of the US businesses which are certified under the DPF can be found here, and the DPF principles are available here.

Timely Puma decision highlights ambush marketing considerations

by Josh Charalambous and Sam Coppard

Following the Lionesses journey to the final of the 2023 FIFA Women's World Cup, the recent Intellectual Property Enterprise Court (**IPEC**) decision in *Puma SE v Transport for London* provides a timely reminder for brands to pay attention to ambush marketing rules when running campaigns at or near sports events – particularly following the Men's Rugby World Cup 2023 in Paris, and the upcoming Paris 2024 Olympic and Paralympic Games, UEFA Men's Euro 2024, and the Women's Rugby World Cup 2025 in England.

Puma filed an application after TfL removed its adverts from Wembley Station ahead of the UEFA Women's Euro Final in 2022.

Whilst Puma was not an official sponsor of the Euros, TfL claimed they'd received complaints from UEFA and The FA that Puma's adverts (showing football players in Puma sportswear) amounted to passing off and ambush marketing. Ambush marketing is when a brand attempts to gain recognition by associating themselves with an event without consent, and deceives the public into believing they are an official sponsor.

Puma v TfL concerns a successful application for an order disclosing details of who demanded the removal of Puma's campaign (given UEFA and the FA denied making complaints) – known as a "Norwich Pharmacal" order. It remains to be seen who complained to TfL and whether Puma takes further action against the party behind the claims. There are very significant and obvious upsides to embarking on clever marketing campaigns around the time of major sporting events, where possible – however, it is important to be aware of the significant impact of ambush marketing claims where campaigns are on (or cross) a line. The repercussions can include claims for urgent interim injunctive relief, claims for damages or account of profits, and significant legal costs.

Tips

If you are considering running a campaign alongside an upcoming sporting event, it is always wise to check whether the event organiser has dedicated collateral relating to how that organiser intends to police its intellectual property. Olympic organising committees and FIFA tournaments, for example, have extensive materials explaining what they will be particularly looking out for. There will also be local law considerations to bake into risk management decisions.

From the perspective of a brand who is not an official sponsor, the key is ensuring the right balance between innovative and clever marketing, and misleading the public into thinking there is an actual connection between your brand and the event. For event organisers, multi-functional and cross-disciplinary means of monitoring marketing activities around your event is crucial to an effective enforcement strategy.

Other developments | UK and Europe (continued)

Navigating innovation in the age of artificial intelligence

by Jani Ihalainen and Matt Jones

In October 2021, the UK IPO initiated a review process aimed at gathering input on how artificial intelligence (**AI**) should be dealt with in patent and copyright law. The review raised concerns about finding a balance within the copyright system to safeguard both human and AI-generated creations, and to appropriately incentivise innovation. Some raised concerns that copyright legislation could impede the advancement of AI, especially when utilising copyrighted materials for AI training, innovation, and research. Similarly, in the realm of patents, potential obstacles to innovation were identified due to the growing use of AI systems.

The government published its full response to the review in June 2022, which showed the potential legislative direction in relation to AI:

- **computer generated works (CGW)** – the government saw no need for legislative changes in terms of CGW, as the responses indicated that there is no evidence that protection for CGWs is harmful, and the use of AI is still in an early stage. The government deferred a further review for the future and left legislative changes as an option should the situation change.
- **text and data mining (TDM)** – TDM is used in the training of AI systems and can infringe copyright in the works mined. Following the review, the government initially intended to introduce a new copyright and database exception which allows TDM for any purpose. However, this exception has since been abandoned due to its potential impact of the creative industry.
- **patents** – the government does not intend to make legislative changes in relation to AI and patents, as it considers that AI is not yet advanced enough to invent without human intervention. However, the government will keep its position under review as the technology advances.

Tips

- Consider any (future) implementation of AI in your retail business and its potential implications in relation to IP rights.
- Negotiate clear agreements with AI system providers protecting your business from inadvertent infringement of AI through robust indemnities and/or warranties.
- Continue to monitor the ongoing legislative landscape in relation to AI, which will change in the future as the technology evolves and is further implemented into businesses and society.

UKIPO issues guidance for the classification of trade marks relating to NFTs and virtual goods and services in the metaverse

by Emma Dunnill and Ben Mark

Triggered by an increase in trade mark filings for non-fungible tokens (**NFTs**) and virtual goods and services in the metaverse, the UK Intellectual Property Office (**UK IPO**) recently issued guidance indicating how such goods and services are to be classified in new trade mark filings, including:

- "NFTs", "virtual goods" and "virtual services" will not be accepted as classification terms in their own right, and must be registered with reference to the goods and services to which they relate
- **NFTs** should be registered in the class(es) of goods they are being used to authenticate, eg class 16 for artwork or class 18 for handbags. For services relating to NFTs, filings can be classified as retail services in class 35, indicating where the NFTs are sold (eg in shops or on online market places) or as entertainment services in class 41, if they are used as membership of a club or to access an event
- **virtual goods** are to be classified in class 9 but must clearly define the goods to which they relate (eg downloadable clothing)
- for **virtual services** provided in the metaverse or via other means (such as video conferencing or instant messaging), the classification will be dictated by the type of services being provided. Specifications must indicate whether those services are "provided by virtual means" or "provided in the metaverse". Where services may not be capable of being provided virtually in the same way as they are traditionally (eg providing food and drink in the metaverse), they might be protectable as entertainment services in class 41 instead.

Further detail can be found here.

Tips

- There remains ongoing debate as to whether NFTs are assets in their own right or whether they act as a means of authenticating ownership of an underlying asset (for example, artwork or luxury goods). The UK IPO's guidance suggests that, at least in a trade mark context, they believe it's the latter, as the acceptable classification wording is "...authenticated by non-fungible tokens [NFTs]" in the context of the goods to which they relate. Other IP rights will therefore need to be used to protect the NFT itself, if required.
- If you are intending to provide NFTs, virtual goods and/or virtual services now or in the near future, consider filing new trade mark applications for your key brands, in key territories, covering these additional goods and/or services. While not having trade mark applications covering virtual goods and services did not prove detrimental to Hermès' case in its claim against Mason Rothschild regarding the 'MetaBirkins', having registrations covering virtual goods and services will provide additional protection in the event of misuse by third parties.
- The UK IPO's guidance has immediate effect; however, if the UK IPO examiner considers the specification applied for is vague, an objection will be raised and the applicant will be given two months to provide a response and/or amend the specification, and can request a hearing, if necessary. For now, we'll need to watch this space to see how trade mark filing practice develops in response to the rapid development and adoption of virtual goods and services.

Other developments | UK and Europe (continued)

Another copycat case... but not as you know it

by Noonie Holmes and Sarah Mountain

Copycat products have become a familiar sight in recent years, particularly on supermarket shelves. While the usual story for copycatting is one of discount supermarkets mimicking well-known brands, the latest copycat case involved one of the UK's largest supermarkets taking inspiration from a discounter's iconic branding.

In April this year, Tesco's "Clubcard Prices" logo was found to constitute passing off of Lidl's "yellow circle on a blue background", and infringed Lidl's trade mark. The Clubcard Prices scheme had been introduced by Tesco in 2021 to offer loyal customers discounts on products, identifiable by a distinctive yellow and blue banner on the shelf. The decision was unusual amongst copycat claims as the court found that passing off had occurred, even though consumers hadn't been deceived into thinking the Clubcard logo was associated with Lidl: it was sufficient that consumers might believe that Tesco's goods were "of equivalent quality and price" to Lidl's. Tesco now has to remove its Clubcard Price signs from all stores.

The supermarket space is a crowded one, and retailers are working hard to gain an edge to attract customers during this period of significant food-price inflation. Consumer demand for lower prices is typified by Aldi's recent replacement of Morrisons in the UK IPO's top four supermarket rankings, which until then, had been unchanged for 20 years. In the past, it was thought that businesses would stay on the right side of the line, if there was no confusion regarding the origin of goods but this decision suggests that an association of equivalence may be enough to cause problems. Interestingly, whilst Lidl was successful here, this judgment has the potential to impact on the sale of its "equivalent" own-brand products in the future.

Tips

Retailers will need to take note from *Lidl v Tesco* when developing new own-brand products designed to exist in the same space as a household name brand. The development may be more welcome to well-known brands as they may now have an easier time of stopping competitors piggybacking on their reputations.

Allergen labelling: FSA revises best practice guidance

by Harpreet Kaur and Ciara Cullen

The Food Standards Agency (**FSA**) has recently published its updated Food Allergen Labelling and Information Requirement Technical Guidance (the **Guidance**) following a consultation on precautionary allergen labelling (**PAL**) earlier this year. The Guidance aims to support food businesses to effectively manage allergen labelling requirements and secure consumer safety, and is particularly pertinent in the wake of changing consumer dietary requirements with demand for gluten/dairy free products, for example, seeing a surge in recent years.

PAL provides consumers with information about the unintentional presence of the 14 major allergens that may be found in food products. Whilst PAL is entirely voluntary, it is strongly recommended and if used, should be as accurate as possible. Therefore, the FSA's updated Guidance advises food business to:

- only use PAL if there is an unavoidable risk of allergen cross-contamination which cannot be sufficiently controlled by segregation and cleaning
- specify the exact food that the PAL refers to ie, whether the relevant major allergen is a food group such as "nuts" confirm the type of nut that may be present
- use PAL statements in combination with a 'vegan' label (where appropriate) if a risk of cross-contamination with an allergen that is also an animal product has been identified. In this respect, the guidance clarifies the distinction between vegan claims which do not concern food safety and free-from claims/PAL which do.

Tips

- Carefully consider whether PAL is appropriate ie, is there an unavoidable risk of allergen cross-contamination which cannot be sufficiently controlled by segregation and cleaning? Whilst at first blush, a "better to be safe than sorry" attitude may seem appropriate, blanket use of PAL can limit consumer choice and sales.
- Revisit PAL on all product lines to ensure it is in line with the FSA's updated Guidance otherwise there is a risk of misleading consumers which can hinder brand loyalty and (at the extreme end of the food safety spectrum) result in unexpected adverse allergic reactions. This includes reaching out to suppliers to ensure their PAL information is in line with the updated Guidance.
- Continue to regularly review product lines containing PAL to determine whether labelling needs to be amended, for example where suppliers or ingredients are changed.

Other developments | UK and Europe (continued)

Service charges – "pay now, argue later" by Brooke Reed and Jon Ely

The Supreme Court has reviewed the mechanics of a commercial service charge in the recent case of *Sara & Hossein Asset Holdings Ltd (a company incorporated in the British Virgin Islands) v Blacks Outdoor Retail Ltd* [2023] UKSC 2 resulting in a "pay now, argue later" approach being adopted.

The case concerned a lease of commercial premises in Liverpool by Blacks Outdoor Retail Limited (**Blacks**). Blacks refused to pay a service charge which was significantly higher than usual.

The lease provided that the landlord could issue a certificate as to the amount payable by the tenant and "in the absence of manifest or mathematical error or fraud such certificate shall be conclusive." However, under the lease the tenant was only liable for a "fair and reasonable proportion" of the total and reasonable costs to the landlord of providing the services and the service charge schedule of the lease included a dispute resolution provision.

By a majority, the Supreme Court dismissed Blacks' appeal – holding that the service charge is conclusive as to what is to be paid, but not as to Blacks' liability. Therefore, the service charge set out in the certificate was required to be paid by Blacks to avoid breaching the lease but did not preclude Blacks from later challenging the amount of the service charge.

This alternative approach, which neither party put forward, was said by the Supreme Court to protect the landlord's cashflow concerns, whilst also allowing the tenant to contest arguable claims as to service charge liability.

Tips

In light of this case, tenants should be aware of the likely requirement to "pay now" to avoid breaching their lease. However, landlords do not have free reign to determine the service charge figure and should be aware of the potential for tenants to "argue later" and challenge the recoverability of costs under the service charge provisions of the lease.

Going once... going twice: vacant commercial properties subject to rental auctions under new Levelling Up and Regeneration Bill

by Josh Green and Elizabeth Alibhai

The Levelling Up and Regeneration Bill is making its way through Parliament with the aim of giving local leaders and communities better "place-making" powers. Controversially, these include a power for local authorities to fill vacant commercial properties on high streets by way of rental auction.

Qualifying properties must have been unoccupied for the whole of the previous year or been vacant for at least 366 days in the previous two years. The auction process can be carried out following the service of an Initial Notice and a Final Notice, provided the local authority considers the occupation satisfies a "local benefit condition".

Tips

Landlords should be vigilant of the notice procedures making their properties eligible for rental auction. An Initial Notice must be served. If the property is not let after 10 weeks, a Final Notice can be served providing the Landlord with a further 14 weeks to react. On expiry, the rental auction process may be carried out.

Existing lender or superior landlord consent requirements are no blocker – and they will be deemed to have provided their consent to any tenancy granted.

It remains to be seen whether the Act, once in force, will achieve the aim of re-energising high streets. Running costs and business rates already incentivise landlords to let properties where they can.

Developing Countries Trading Scheme goes live!

by Liam McKay and Adam Craggs

The new Developing Countries Trading Scheme (**DCTS**) entered into force on 19 June 2023, replacing the UK's Generalised Scheme of Preferences (**GSP**). The DCTS has been touted as a simpler and more generous preferential trading scheme designed to boost trade with developing countries by strengthening their exports to the UK and expanding their economies in order to support their development.

Under the DCTS, 65 countries across Africa, Asia, Oceania and the Americas classed as least developed, low income and lower-middle income will benefit from lower or zero tariffs and the removal of conditions on the goods they export to the UK, along with a simplification of trading rules including more liberalised rules of origin. In return, UK businesses will have access to thousands of products from around the globe at lower prices, thereby reducing costs for UK consumers.

While there is no transitional period, UK GSP documents issued before 19 June 2023, can be used to claim a preferential duty rate under the DCTS provided the relevant goods are released to free circulation on or before 31 December 2023.

Tips

Importers should familiarise themselves with the new rules that apply under the DCTS, check whether the countries from which they import goods are subject to the new regime, and ensure that any UK GSP documents issued before 19 June 2023 are utilised before 31 December 2023.

Other developments | UK and Europe (continued)

Alcohol duty – changes from 1 August 2023

by Robert Waterson and Alexis Armitage

On 1 August 2023, the biggest Alcohol Duty reforms in 140 years came into effect.

Under the old system, alcoholic products were charged in a variety of ways according to a complicated system which consisted of four separate taxes covering beer, cider, spirits, wine and made-wine. For example, beers were charged per hectolitre per alcohol by volume (**ABV**), ciders and wines were calculated per hectolitre of product only, and spirits were charged per litre of pure alcohol in the product.

Under the new Alcoholic Products (Excise Duty) Regulations 2023, excise duty is payable on products with an ABV of 1.3% or more for any of the following six standardised alcohol duty bands:

- beer
- cider, including perry
- spirits, including spirit based ready-to-drink (**RTD**) products
- wine, including sparkling and fortified wines
- other fermented products (previously called made-wine) like fruit ciders
- drinks with ABV below 3.5% will be taxed at a lower rate, while drinks with an ABV of more than 8.5% will all be taxed at the same rate, whether they are wines, spirits or beer.

The changes mean still wines below 11.5% ABV and some sparkling wines will become cheaper, but higher-strength wines will be more expensive. The changes apply to all individuals and businesses involved in the manufacture, distribution, holding and sale of alcoholic products across the UK.

Tips

All affected businesses should familiarise themselves with the new rules. Small businesses producing any alcoholic products with an ABV of less than 8.5% should check whether they are eligible for "Small Producer Relief" which includes reduced rates on qualifying products if they produce less than 4,500 hectolitres per year.

Employee rights – right to request flexible working to become a "day one" right – new Statutory Code of Practice to be published

by Rachel Lord and Patrick Brodie

Following a campaign by the Labour MP Yasmin Qureshi, the government has agreed to widen access to flexible working by backing the introduction of legislation – specifically, the Employment Rights (Flexible Working) Act – which will grant employees the right to request flexible working from day one of employment. It will also double the number of requests that an employee can make per year from one to two and will include a requirement for employers to respond to requests within two months of the date of the request (down from three). Employers will also need to consult with employees and explore flexible working options (including job-sharing, flexitime and staggered hours) before they can reject a request.

As well as providing clear benefits to workers by allowing them to fit other commitments around work, the legislation is also believed to be good for business. Research shows that 6% of employees changed jobs last year as a result of the absence of flexibility in their workplace. It is, therefore, hoped that the legislation will improve staff retention and productivity, while also encouraging greater diversity in the workplace.

The expectation is that the legislation will come into effect in a year's time. It will be supported by an ACAS statutory Code of Practice, on which consultation is currently taking place.

The Code will set out practical steps that employers should follow when considering flexible working requests, together with an explanation of the law on the right to request flexible working.

To find out more about the reforms to the right to request flexible working, listen to our recent Work Couch podcast with host Ellie Gelder, partner Kelly Thomson and consultant Victoria Othen.

Tips

Retailers should look out for publication of the new Code and review and, if necessary, revise their flexible working policies and procedures. Managers should receive training on any new requirements.

Retail insolvencies on the rise – landlord and tenant considerations

by Will Beck and Finella Fogarty

Figures compiled by RPC have shown that the number of retail insolvencies has risen sharply by 56% in the last year.

At the same time, the restrictions preventing landlords from taking enforcement action, which were introduced by the government in response to the COVID-19 pandemic, have expired. The deadline for referring disputes to the rental arbitration scheme, which only saw limited uptake, has also closed.

Since the lifting of these restrictions, landlords may exercise any of their enforcement options, unless the rent is subject to an ongoing arbitration under the scheme. This includes taking forfeiture action, using Commercial Rent Arrears Recovery, commencing Court proceedings or issuing a winding-up petition.

But landlords will need to consider carefully in the current economic climate whether enforcement in each case is their best option. This may depend upon how easy, or otherwise, it would be to obtain a replacement tenant and/or to make a substantial recovery of the outstanding rent.

Given the potential increase in recently vacated property as a result of store closures, retail tenants may instead find that landlords may be more willing to agree a compromise of, or variation to, the terms of their existing lease.

Tips

The protections afforded to tenants under the pandemic in respect of unpaid rent have now largely expired. But with retail insolvencies on the rise, it may be that a renegotiation of lease terms, rather than enforcement action, in some cases may be the most beneficial option for both landlords and tenants.

Other developments | UK and Europe (continued)

CMA focuses on cost of living pressures including rising food and road fuel prices by Leonia Chesterfield

As pressures on household finances continue to mount, the CMA has stepped up its work in scrutinising key markets including groceries, road fuel and housing.

- In the **grocery** sector, the CMA has examined retail competition, in particular between the major supermarkets and discounters. It has looked at whether weak or ineffective competition has been contributing to higher food prices. In the CMA's July 2023 report on Competition, Choice and Rising Prices in Groceries, it set out its initial findings as to food price inflation and retail competition issues.
- The CMA has identified various product categories for further consideration in its next phase of work, including household staples such as baked beans, milk, pet food and ready meals. The CMA is continuing to gather evidence and monitor competition to ensure consumers benefit as input costs fall. A further update is expected in the autumn. The CMA also reported its findings following its review of grocery retailers' unit pricing practices.
- Also in July 2023, the CMA published its **road fuel** market study findings. It found that competition had weakened and drivers were paying more for their fuel. Greater price transparency is being introduced with legislation expected soon. A temporary CMA scheme allowing retailers to make recent fuel pricing data available voluntarily has now been in place since the end of August. That data can then be used by comparison apps/sites to support consumer choice. The CMA has published a list of the participants and links to the pricing data provided. As at September 2023, there are at least twelve retailers participating in the CMA's voluntary scheme.
- In August 2023, the CMA updated on its work in the **housing** sector – its consumer protection project on problems experienced in the rented housing sector and its market study probing competition in housebuilding.

The focus on food, fuel and housing (all key areas of consumer spending) reflects the CMA's 2023/2024 Annual Plan – over the next three years, the CMA has stated it will 'consistently focus on the areas where consumers spend the most money and time'.

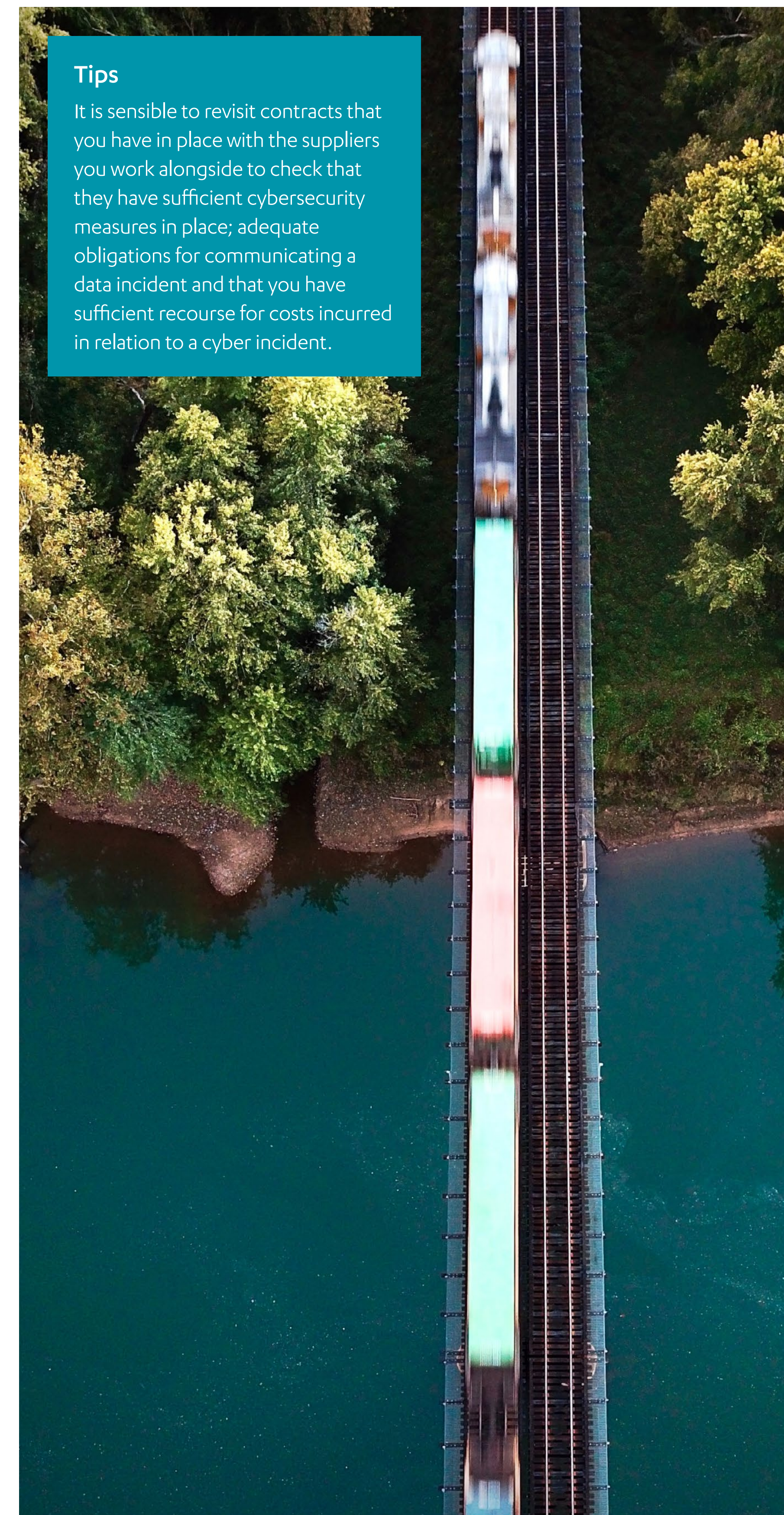
Supply-chain cyber considerations by Richard Breavington and Elizabeth Zang

Cyber attacks are a common occurrence and a major cause for concern amongst retailers of all kinds. The recent Cl0P ransomware gang exploitation of a zero-day vulnerability in the MOVEit Transfer tool has brought to the fore the potentially far-reaching ramifications a cyber incident affecting one organisation may have on hundreds of global organisations reliant on their software.

In an increasingly globalised and interconnected marketplace, organisations must ensure that the suppliers they work alongside are deploying sufficiently resilient cybersecurity measures. Organisations should look to engage suppliers that are actively adopting sound technical and security measures to minimise the likelihood of a cyber incident taking place. It is worthwhile conducting effective due diligence searches when looking to partner with a supplier. This will allow an organisation to ensure that any contractual arrangements entered into include obligations on a supplier to maintain appropriate technical and organisational security measures. This in turn means that should a breach occur, an organisation could reference the steps they adopted to ensure partner suppliers' security practices were adequate.

However, in circumstances where a cyber attack on a third-party supplier is successful, what measures should an organisation take to protect its own position? Again, ensuring that supply contracts contain proper contractual obligations to notify and keep updated could be pivotal. A good line of communication from the supplier is critical in circumstances where, as a potential data controller, an organisation may be required to notify the ICO, and potentially their clients or other affected data subjects.

Finally, it is worthwhile ensuring that any limitation of liability clauses that may be in place do not preclude your organisation from exercising recourse against any supplier for the costs of responding to a cyber incident if caused by a breach of contractual requirements, such as failure to have appropriate security measures in place.



Tips

It is sensible to revisit contracts that you have in place with the suppliers you work alongside to check that they have sufficient cybersecurity measures in place; adequate obligations for communicating a data incident and that you have sufficient recourse for costs incurred in relation to a cyber incident.

Other developments | Focus on Europe

In this section we are delighted to welcome contributions from our partners within the TerraLex network, who consider some key legal, regulatory and policy changes being faced by retail and consumer brands in Europe, in particular France, Germany and the Netherlands. Whilst the following is intended to offer a helpful flag, we recommend tailoring your consideration of the changes to your own specific circumstances as there may be other local law considerations which affect you (and taking local advice where necessary).

France: first ever law on influencers in Europe

by Virginie Coursière-Pluntz and Benjamin Jacob (Partner firm PDGB)

There are around 150,000 active influencers in France via YouTube, Instagram, TikTok, Snapchat, and similar sites.

Hence, France has just passed the first-ever law on influencers in Europe in the form of the new Influencers Act of 9 June 2023. Adopted in less than six months, it aims to regulate commercial influence and combat the abuse of influencers on social media. Until now, France addressed influencer marketing via the rules governing misleading advertising.

A few months before the adoption of the Influencers Act, the French regulator (**DGCCRF**) had investigated nearly 30 influencers, resulting in 18 injunctions to cease unlawful practices and 16 criminal proceedings. There is little doubt that the Influencers Act will make the DGCCRF's action even more efficient.

Influencers who violate the prohibitions or obligations laid down by the Influencers Act will risk imprisonment and heavy fines (up to €300k) as well as a ban on practising influencer marketing.

Framing the status

The law defines and regulates the activities of influencers on social media. Influencers targeting a French audience from abroad must now have a legal representative in France. It may be any natural person or legal entity established in France, unless the influencer uses an influencer agency established in France, in which case the agency is designated as the legal representative.

Influencers, their agents and brands are required to sign written contracts, subject to French law, where a certain level of remuneration/benefits is to be received by the influencer.

Prohibiting certain product placements

In addition to compliance with the general rules on advertising (including those on promoting foods high in fat, salt and sugar), influencers can no longer promote certain products or services on social media, in the interest of public health and safety, eg, cosmetic surgery, crypto-assets and alternatives to medical treatments (amongst others).

Increasing transparency

Influencers must clearly announce their promotional content as "advertising" or "commercial collaboration".

Brands and influencers are jointly and severally liable for any damage caused to third parties in the performance of their influencer marketing agreements. The aim of this joint and several liability is to ensure better consumer protection, to facilitate compensation for victims of scams and fraud and to make the parties involved in the influencer marketing contract more accountable.

When a product is sold via dropshipping, influencers must state this clearly, provide all mandatory pre-contractual information and are responsible for ensuring the availability and legality of the products.

Reinforcing the role of social networks

Pursuant to the new law and in line with the EU Digital Services Act, online platforms now have to provide their users with a mechanism for reporting illegal content, particularly that which contravenes the Influencers Act.

France: a step towards a paperless retail sector

by Benjamin Jacob and Pierre-Yves Thome (Partner firm PDGB)

Since 1 August 2023, French retailers have been prohibited from automatically printing receipts for customers in order to reduce waste. Instead, retailers are now required to offer customers three options: no receipt, a paper receipt (only if explicitly requested by the client), or a digital receipt.

Who does this rule impact?

This new regulation, originating from a law passed on 10 February 2020, affects a wide range of retailers. It encompasses various types of receipts, including those generated in sales outlets, vending machines, bank card transactions, and vouchers or discount tickets. While this rule is comprehensive, there are exceptions. Paper receipts can still be provided in specific cases, such as the purchase of durable goods, cancelled or credited bank card transactions, vending machine receipts for product or service access, and when using non-automatic weighing instruments that provide paper receipts.

How can retailers prepare?

Given the broad scope of this regulation, retailers who haven't already adapted need to prepare to provide digital receipts. These can be delivered through methods such as text messages, emails, banking app messages, or QR codes. To successfully implement this change, consider these key steps:

Update your payment solution

The first obvious step is of course to adapt technically to this new requirement, which means that all businesses that use cashing solutions need to have it adapted. This could lead to certain difficulties if the cashing solution a retailer uses is not supported anymore. If it still is, we would recommend the retailer ensures that the adaptation work to be provided is well defined in a contract (or addendum to an existing contract) with the cashing solution provider. This contract should outline service levels, penalties for failure, and the integration of real-time support and remote maintenance services to protect your interests.

Beware of data protection

As data protection becomes increasingly important, it should be integrated into not only your IT contracts and solutions but also into the in-store customer experience. Follow guidance from the French Data Protection Authority on informing customers about digital services, including both in-store and online information.

In an ever-evolving legal landscape and competitive market, adapting to these new rules can set your retail business apart from others.

Other developments | Focus on Europe (continued)

Germany: proposed HFSS product advertising restrictions in Germany by Dr Sascha Pres of SKW Schwarz

Around 15% of children in Germany are overweight[1]. The number is rising, due in part to the impact of the COVID-19 pandemic. A scientific study at the end of 2022, monitoring the sugar, salt and fat content of food, found that the sugar content of drinks marketed to children has barely decreased over the past five years and has, in fact, increased[2].

Following these evaluations, Cem Özdemir, the Federal Minister of Food and Agriculture of the Federal Republic of Germany, has proposed a ban on advertising High in Fat, Salt, and Sugar (**HFSS**) products targeted at children under the age of 14. This proposal has been the subject of intense debate in Germany in recent months, with some arguing for stricter regulations, while others believing the current proposal may be unconstitutional as it could affect adults due to comprehensive advertising bans[3].

Unlike the UK, Germany currently lacks legal regulations prohibiting the advertising of HFSS products. Under the minister's proposal, TV and radio advertisements for unhealthy foods are to disappear. Similar to the UK regulations, the advertising ban in Germany would be time-limited, applicable from 1700 to 2200 on weekdays, as well as from 0800 to 1100 on Saturdays and from 0800 to 2200 on Sundays, when children tend to watch TV. Advertising and sponsorship of HFSS products would also be prohibited on social media aimed at young children and teenagers (eg influencer marketing) and on posters outside schools and kindergartens[4]. However, there is no ban planned on advertising food in shop windows, for example[5].

Additionally, certain items like milk, fruit juices, and less sweetened yoghurt would be exempt from the advertising bans. The criteria for high sugar, fat, or salt content would follow the World Health Organization (**WHO**) nutrient profile model.

Prior to this year's political summer break in Berlin, the draft legislation was still being coordinated between the various ministries. In the further course, the Federal Ministry of Agriculture will now ask interested associations and market participants to comment on the draft before it is introduced in the German Bundestag to continue the legislative process. Depending on the intensity of the discussion, the legislative process is likely to last until early or mid-2024.

1. https://www.verbraucherzentrale.de/aktuelle-meldungen/lebensmittel/verbraucherverbaende-fordern-werbeverbote-fuer-ungesunde-lebensmittel-70476 (accessed on 18 September 2023).
2. https://www.bmel.de/SharedDocs/Pressemitteilungen/DE/2023/091-produktmonitoring.html (accessed on 18 September 2023).
3. https://zaw.de/fakten-lebensmittelwerbung/#werbegesetz (accessed on 18 September 2023).
4. https://www.sueddeutsche.de/politik/lebensmittel-fett-zucker-werbung-oezdemir-gruene-fdp-1.5931344 (accessed on 18 September 2023).
5. https://www.absatzwirtschaft.de/oezdemir-will-werbeverbot-enger-fassen-248942/ (accessed on 18 September 2023).

Other developments | Focus on Europe (continued)

Netherlands: the EU strategy for sustainable and circular textiles and its impact on fashion retail

Kennedy Van der Laan

by Tosca Bokhove and Jelle Blom (Partner firm Kennedy Van der Laan)

What's happening?

On 30 March 2023, the European Parliament adopted the EU Strategy for Sustainable and Circular Textiles (the **Strategy**), implementing commitments of the European Green Deal and Circular Economy Action Plan. It is a clear call from Brussels on businesses to start rethinking fashion and textile production, waste management, and reducing their environmental impact.

What is changing?

The Strategy sets key actions points which in the foreseeable future will be addressed through new EU legislations and reforms:

- introduction of mandatory Ecodesign requirements
- stopping the destruction of unsold or returned textiles
- tackling microplastics pollution
- introducing information requirements and a Digital Product Passport
- tackling unreliable green claims
- extended producer responsibility and reuse and recycling of waste, and
- increased enforcement to ensure fair competition and compliance.

This follows the European Commission's adopted proposal for a Regulation on Ecodesign for Sustainable Products, creating binding and product-specific Ecodesign requirements to ensure that textiles will become more durable, reusable, repairable and recyclable. It also contains a transparency obligation requiring large companies to publicly disclose the number of unsold products they discard. Additionally, it introduces a Digital Product Passport for textiles based on mandatory information requirements on circularity and other key environmental aspects.

The European Commission also initiated a revision of the EU Waste Framework Directive on 5 July 2023, introducing a mandatory Extended Producer Responsibility scheme that includes obligations to take waste prevention measures eg by reusing clothes and recycling more textile waste. Note that some countries, like the Netherlands, already adopted more stringent rules for the recycling and (re)use of textiles in clothing and textile production.

The European Commission also clearly sees an important role laid down for consumers in the 'green transition'. In March 2023 the European Commission adopted proposals for a Directive on Green Claims, the Directive on the Common rules promoting the Repair of Goods, and a Directive on Empowering Consumers in the Green Transition Directive. Together, the directives aim to tackle misleading environmental concerning products and services (called "green-washing") and allow consumers to make informed environmental choices. For example, the directives set criteria for the use and substantiation of environmental/green claims and new rules on labelling.

The established EU Product Compliance Network will coordinate and support cross-border market surveillance practices in the EU in priority areas and ensure cross-sectoral coordination between different Administrative Cooperation Groups.

Many of the legislative initiatives are still subject to the full legislative process in the EU.

What actions should be considered?

- Putting emphasis on building a sustainable, green and socially responsible supply chain.
- Map out and assess the potential impact on commercial strategies, production and distribution processes, supply chains and compliance risks.
- Assess if, and ensure that, product design (including materials and durability), safety, labelling and waste management requirements are complied with.
- Assess if, and ensure that, products include adequate information on eg the lifespan of products, including the possibility of repair both within and outside the legal warranty period, and (precontractual) information on commercial guarantees.
- Assess if, and ensure that, all advertisements comply with rules on green claims, substantiate these claims and avoid greenwashing practices.
- Be alive to changes to competition rules and restrictions in relation, among others, sustainability agreements, production agreements, commercialization of products and services, standard sale conditions, joint purchasing agreements, and information and data exchange, including renegotiating any non-compliant agreements.

Retail Compass Live!

1 November 2023

Engaging the consumer in a multi-dimensional world

Ask yourself: how do you connect with and retain the consumer in the midst of a rapidly evolving and highly competitive environment, against a backdrop of political turmoil, economic uncertainty, rising costs, reduced spending and ever increasing regulatory pressure?

Join us on 1 November 2023 at Retail Compass Live! where leading consumer brands, retailers and industry experts will reveal their insights and inspire ideas to help you navigate this multi-dimensional world and truly engage with the end consumer.

Location:

Tower Bridge House
St Katharine's Way
London
E1W 1AA

Timings:

1530 – registration and coffee
1600 – main event
1800 – drinks and canapé reception

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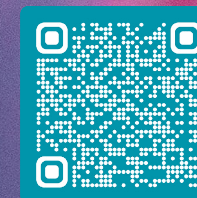


Insights and opinions

A roadmap for retailers in navigating social washing risk

Kelly Thomson, Partner at RPC

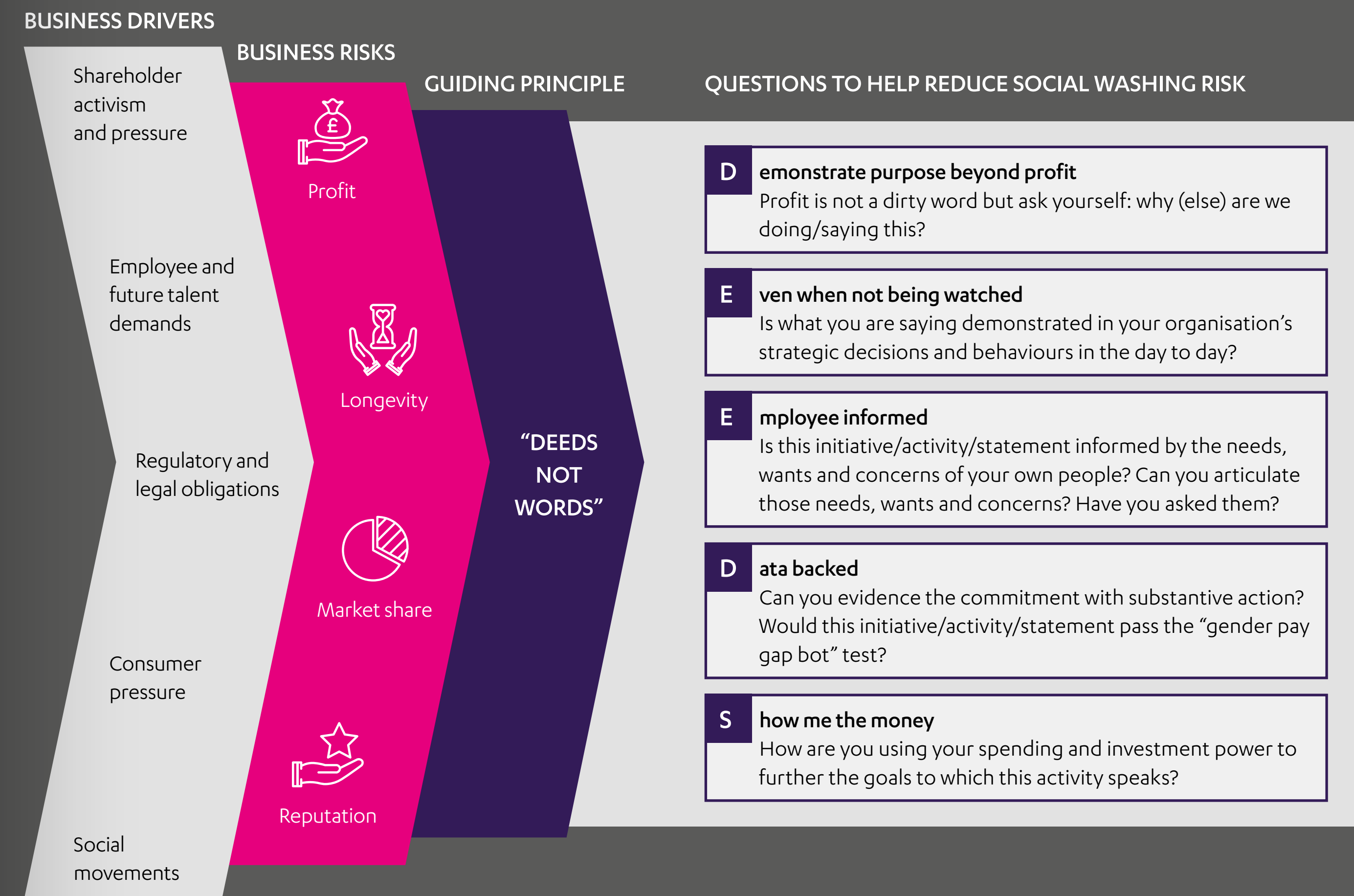
Retailers are increasingly aware of the significant risks associated with "greenwashing". Those wanting to play in the green space must be able to back up their eco-friendly claims or face the wrath of regulators and consumers. But how many have got to grips with the equivalent business risks of being accused of "social washing"? I suspect significantly fewer. Social washing is the practice of trading off perceived or advertised social credentials which are not reflected in the way the business operates. It's about putting a black square or #BLM on your social media whilst having no people of colour in any leadership roles. It's about selling rainbow flag adorned Pride merchandise but letting your trans employees be bullied. Like greenwashing, social washing is about profiting from what you say or project, without backing it up with what you do when no one is watching (or buying). Businesses fail to appreciate this disconnect at their peril, as illustrated beautifully by the Gender Pay Gap bot, set up with this simple mission: "If you tweet about #IWD2023 [International Women's Day 2023], I'll retweet your gender pay gap". In other words, if you tell me yours, I'll show you yours and you won't like it.

But there is here an innate tension. Retailers often want – need – to proactively engage on pressing social concerns of the day. There are many good and ethical drivers at play. You ask your employees to bring their whole selves to work but you know they can't do that if issues affecting them outside work never infiltrate the door of the store or the walls of the boardroom. Your consumer base is diverse, and your products and services must speak to that diversity if you can hope to cater to their needs. You are responsible corporate citizens that understand you have an important role to play in the communities in which you operate.

Staying silent on social issues is rarely a viable option if you are going to meet the competing demands of your stakeholders.

And not meeting their demands risks profit, market share, reputation and, ultimately, business longevity. No responsible leadership team would want to steer the boat in that direction.

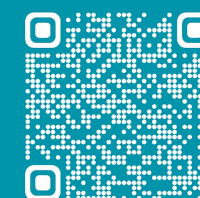
The good news is that balancing this tension is not impossible. It's not always easy. But it isn't impossible. How precisely to strike that balance will vary from retailer to retailer, from issue to issue. After all, your sector is not homogenous, and neither are your markets or business priorities. That said, there are some key anchor points which can help you navigate the risks, obstacles and opportunities as illustrated in our roadmap:



"Authenticity" may be a much over used word in business but in the ESG space it really is critical. Say what you do and do what you say.

To hear more on these issues, sign up to RPC's biggest retail and consumer event of the year, Retail Compass Live! on 1 November 2023 at our London office where our panel of leading voices in retail will explore these themes and much more besides.

We'll be exploring this topic and others at our Retail Compass Live! event on 1 November 2023. Scan the QR code to secure your place:



Special feature

When dawn raids go wrong and how to be better prepared

Adam Craggs and Michelle Sloane, RPC

The following is based on real events across a number of previous raids carried out by regulators.

It's 0700 on a Tuesday morning. A group of 15 officials in stab-proof vests with the name of a UK regulator emblazoned in bold yellow across the back arrive at the office and inform the security guard that they have no appointment and are here to conduct a search. They are let into the public reception area, shared with other businesses, where one of the officials puts a document down on the reception desk and asks to be let up to the 6th floor.

Simultaneously, other regulatory officials arrive at the personal residential address of the Managing Director and two other Directors.

- Director 1 is home with his terminally ill wife. He is arrested. She is very distressed and unable to cope with the situation. Director 1 is frantic about the condition of his wife. Director 1 is taken to a police station for interview.
- Director 2 is at the gym and arrives back at their home to find the search in progress. Director 2 is diabetic and, being unable to enter the kitchen, starts to go into hypoglycaemic shock. Regulatory officers arrest Director 2. Seeing Director 2's condition deteriorate, they call an ambulance, which they later cancel, when their condition appears to improve. Director 2 is taken to a police station for interview.
- Director 3 has left for the office and is on their way to the office.

Here's what unfolded.

The office:

- The receptionist lets the officials into the 6th floor and rushes back to contact the Directors. She is unable to do so.
- The receptionist keeps trying to contact the Directors, without success.
- At 0900, staff start arriving at the office. The search has been in progress for two hours and regulator officials are looking at all files and folders in the office. The regulator's digital officers have started to image all servers.
- One member of staff contacts the solicitors the company instructed previously in relation to the negotiation of a lease. Unfamiliar with dawn raids, the solicitors send one lawyer to the business premises. They are ushered by the search officers into a separate room to speak with onsite staff. The lawyer remains in that room taking notes and does not have oversight over what has been seized or the conduct of the search.
- The regulator's officials question staff as they arrive about their roles and the events of the past 10 years.

Regulatory officials have:

- Uplifted over 100 files including material they consider may be relevant.
- Have viewed material which may attract legal professional privilege (LPP) because LPP claims were not made.
- Obtained statements from staff which contain disclosure of privileged information and are inadvertently inaccurate.
- The servers have been seized, halting the businesses operation.

The directors:

- Director 1 is informed that his ordeal will be shorter if he gives a full comment interview. Desperate to get back to his wife, he provides a full comment, including information which proves to be incorrect.
- Director 2 is impaired on their arrival at the station and provides a full comment interview, in which they make statements which are inaccurate.
- Director 3 is arrested on her arrival at the office and conveyed to a police station.

As a result:

- Directors 1 and 2 are more likely to be criminally prosecuted due to the incorrect information given during interview.
- Additional expenditure on professional fees is likely in order to address queries arising from the regulator's review of additional non-relevant material.
- Judicial review proceedings may be necessary in order to obtain the return of the servers and the material seized in excess of the scope of the warrant.
- A wide-ranging review will be required of the seized material in order to identify (1) LPP material; and (2) relevant material.
- Evidential challenges to the admissibility of the statements of Directors 1 and 2 likely.

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"A group of 15 officials in stab-proof vests arrive at the office"

Rewinding to 0700, here's what could have happened with different preparation and actions

The office:

- The receptionist activates the Response button on RPC's Raid Response App. RPC is immediately notified that a raid is in progress.
- Following the guidance provided by the App, the receptionist requests that the regulatory officials wait in a room on the 6th floor until the RPC team arrive.
- The Response App advises the receptionist to request the name and contact details of the Officer in Charge, which are provided. RPC makes contact and request that the start of the search is delayed until RPC arrive.
- RPC begins to contact the people notified as 'key contacts' and dispatches people to the search addresses.
- RPC is unable to contact the three Directors, who are therefore marked as 'detained' and begin to contact the delegated decision makers.
- The Response App advises the receptionist to upload copies of the warrant, which RPC reviews to ensure its validity.
- RPC arrives at the premises and identify the files which may contain legally privileged material and those containing relevant material. RPC monitors the regulator officials closely and ensure they seize only material permitted under the terms of the warrant.
- RPC liaises with the company's in-house IT team and the regulator's digital forensics personnel to ensure that the relevant parts of the server are imaged.

Regulatory officials have:

- Uplifted 40 files.
- LPP material has been placed in opaque secure envelopes for review by Independent Counsel in due course.
- Received carefully considered and accurate responses to their queries.

The directors:

- RPC, having recorded the Directors as detained, contacts the regulator officer in charge who confirms that Directors 1 and 2 have been arrested and taken to separate police stations. RPC representation is dispatched to the relevant police stations to represent them.
- RPC notes that Director 2 is diabetic and contacts the custody sergeant to advise accordingly.
- Directors 1 and 2 receive appropriate legal representation at the police station.
- Director 1 provides an accurate prepared statement and a 'no comment' interview.
- Director 2 is not interviewed as they are medically unfit to be interviewed. An agreement is reached that they are to attend for a 'voluntary' interview the following day.
- RPC agrees with the regulator that Director 3 will attend a 'voluntary' interview the same day and is not arrested.

As a result:

- Seizure limited to relevant material only, and therefore limited 'relevance review' required.
- The LPP review will be focussed as the LPP material was identified during the search.
- The criminal investigation will be more focussed and shorter in length.

RPC's Raid Response app was designed specifically for handling these kind of UK regulator raids. Download the Raid Response from Apple Store and Google Play.

It gives you:

- immediate 24/7 access to RPC's specialist team – to reduce the cost and PR embarrassment from having to rectify mistakes that are often made in the first 24 hours of a raid by unprepared organisations and non-specialist advisers. Prevention is better than cure, and is certainly more cost effective
- an interactive step by step guide to walk frontline staff and internal crisis management responders through the various phases and requirements of a dawn raid – a plan in your pocket (reinforcing other training), even if you can't access other systems
- real-time events logging functionality to record key events, documents and interactions with search officials – incredibly useful for future evidencing and outlining a timeline, in case subsequent litigation becomes necessary.

Also, you have nothing to lose by having it – it costs you nothing if you never have to use it.

For more information, speak to Adam Craggs or Michelle Sloane (details above), or your usual RPC contact.

Key UK consultations and inquiries tracker

There are numerous ongoing Government consultations and inquiries affecting retailers. You can view all of the up-to-date information here.

Legislative bills tracker

We maintain a list of bills, currently in the UK Parliament, which are relevant to the retail sector. These bills are not yet in force as law, but they give a flavour of developments to come.

RPC contacts

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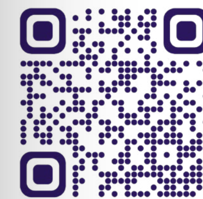

An overview of RPC and TerraLex

Full service firm

RPC is an innovative law firm, providing a full service to UK and international clients. Retail and Consumer is one of five key focus areas for RPC – and serviced by every single practice area of the firm. We have a fantastic retail practice – ranked Tier 1 for Retail and Consumer by Legal 500 – which provides expert sectoral focus and transparent and honest advice.

Retail through and through

We have over 70 retail lawyers (30+ of those partners) engaged on retail issues across our four offices (London, Bristol, Singapore and Hong Kong). More broadly, with over 300 lawyers across offices – and as a founder-member of global network TerraLex and co-chair of its Retail Sector group – RPC offers a seamless service in more than 100 jurisdictions across the world.

We are recognised as a leading voice on retail issues

Twenty of our lawyers have been quoted or mentioned across 58 publications, including FT, The Telegraph, The Times, The New York Times, The Business of Fashion, Luxury Law Alliance, The Grocer, Drapers and Retail Gazette in the last 12 months.

What others say about us

Retail clients quoted in Legal 500 2024

"This is a group with real sector expertise; they get it. As well as high-end legal advice, I am consistently impressed by the insights I get from their experience elsewhere."

"A very personable, interested and interesting firm that has a keen awareness of the commercial and business context in which legal questions, problems and opportunities play out."

Retail clients quoted in Chambers and Partners 2023

"The lawyers are very skilled and commercially astute, with good retail sector knowledge."

"The team are able to embed a deep commercial understanding in the advice and support provided."

"The team have great attention to detail."

"They are practical, very personable and have a good work ethic."

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