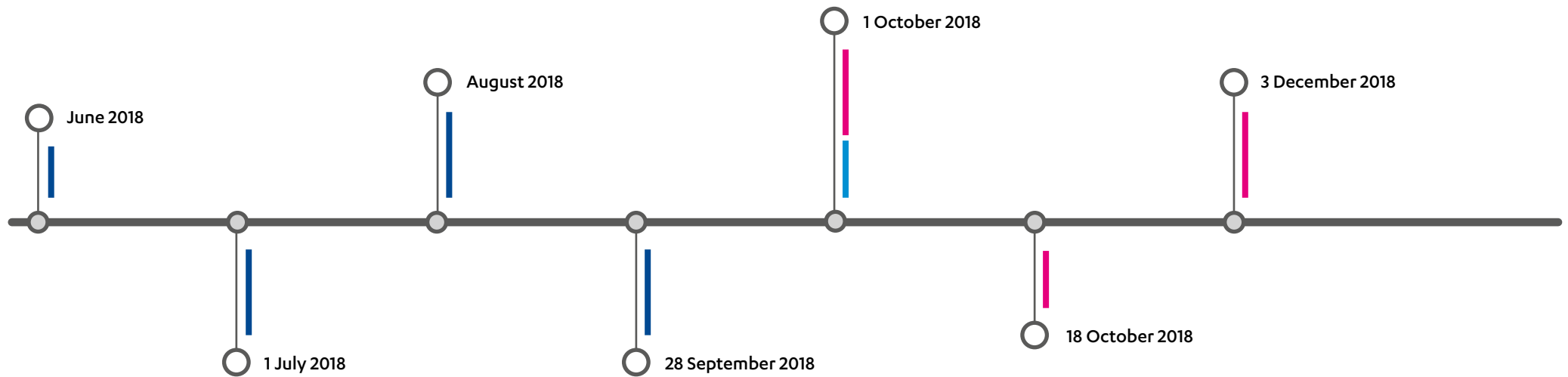




RPC Retail Compass is designed by law firm RPC's Retail Group to help steer you through the key legal and policy changes affecting businesses operating in the fast-moving and competitive retail sector over the next six months.

RPC Retail Compass addresses six primary areas of relevance to retailers, namely:

- Commercial
- Data Protection
- Corporate
- Employment
- Real Estate
- Tax



A greater number of legal and policy changes are due in the first half of 2019, which will be covered in our upcoming Winter edition of the Retail Compass.

For a tracker of legislative bills affecting retail, please [click here](#).

June 2018

## Corporate governance reform – draft secondary legislation

### What is happening?

In response to its green paper public consultation on reforming corporate governance, the UK government has proposed a number of pieces of secondary legislation in its focus areas of: (i) executive pay, (ii) strengthening the employee, customer and supplier voice, and (iii) corporate governance in large, privately-held businesses.

Drafts of the legislation were due to be published in March 2018 but are now expected in June 2018, to be applied from January 2019.



### Why does it matter?

Secondary legislation is expected in the following areas. Many of these are likely to impose additional obligations on retail businesses.

- Executive pay
  - Listed companies will be required to report annually on the ratio of CEO pay to the average pay of their UK workforce, as well as explaining changes to that ratio and how the ratio fits in the context of pay and conditions across the rest of the workforce.
- Strengthening the employee, customer and supplier voice
  - Public and private companies of a significant size will have to explain how their directors comply with the requirements of section 172 of the Companies Act 2006 which requires them to have regard to employee and other interests in pursuing the success of the company.
  - In addition to the guidance produced by the Governance Institute and the Investment Association in September 2017, the government has also invited FTSE 100 General Councils to prepare guidance on the practical interpretation of the directors' duties in section 172.
- Corporate governance in large, privately-held businesses
  - Companies of a significant size, which are not already subject to an existing corporate governance regime, will be required to disclose their corporate governance arrangements in their Directors' Report and on their website, including whether they follow any formal code. See the below update on this.
  - In this area, the government has also invited the Financial Reporting Council (FRC) to work with a number of stakeholders to develop a voluntary set of corporate governance principles for large private companies. The FRC has created a "Coalition Group" which will be chaired by James Wates CBE of the Wates Group.

### What action should you take?

1. Review the draft proposals and identify those which could affect your business.
2. Monitor developments in this area particularly when the draft legislation is laid before parliament.
3. Review any relevant guidance or principles as these are likely to assist in understanding what is required and how you can be compliant.
4. In advance of the entry into force of the legislation, begin to put in place necessary systems and procedures.
5. If in doubt, seek advice on the extent to which the proposals apply to your company and the means by which they should be implemented.

If you would like any assistance, please contact [Karen Hendy](#) or your usual RPC contact.

1 July 2018

## New Financial Conduct Authority (FCA) Conduct of Business Sourcebook (COBS) provisions will take effect

### What is happening?

On 1 July 2018, the FCA's new COBS provisions improving the quality of information which companies are required to make available to market participants during a UK Initial Public Offering (IPO) will take effect.



### Why does it matter?

Under the new rules a prospectus must be published before any connected research is released and providers of unconnected research must be given access to the management of the company offering its shares.

The new provisions are intended to:

- restore the centrality of the prospectus as the main source of information to investors
- make the prospectus available to investors earlier in the IPO process and provide a more diverse range of views on the issuing company's prospects, and
- improve the quality of research reports by introducing more competitive dynamics between connected and unconnected analysts.

The new provisions will need to be taken into account if you are considering a UK IPO. They will bring welcome improvements for individual retail investors participating in IPOs, or whose funds are being invested through institutional investors.

### What action should you take?

Review the new COBS provisions and consider to what extent these provisions impact your business.

If you would like any assistance, please contact [Karen Hendy](#) or your usual RPC contact.

August 2018

## Corporate governance reform – FRC amendments to the UK Corporate Governance Code

### What is happening?

In addition to secondary legislation, the UK government has asked the Financial Reporting Council (FRC) to revise the UK Corporate Governance Code (the Code), which applies to companies with a Premium listing of equity shares on the London Stock Exchange. The FRC's consultation closed in February 2018. It aims to produce final versions of both the amended Code and its supporting Guidance on Board Effectiveness in the summer, to be applied from 1 January 2019.



### Why does it matter?

In the area of executive pay, the FRC's proposed amendments to the Code are numerous and wide-ranging. Some examples include:

- broader responsibility for the remuneration committee in overseeing remuneration policies
- the removal of exemptions for companies which fall outside the FTSE 350, and
- an extension of the recommended minimum vesting and post-vesting holding period for executive share awards from 3 to 5 years.

In the area of strengthening the employee, customer and supplier voice, the FRC intends to incorporate:

- the government's suggestion of creating a new Principle (Principle C) establishing the importance of strengthening the voice of employees and other non-shareholder interests at board level
- a new provision requiring premium listed companies to adopt, on a "comply or explain" basis, one of the following mechanisms: a designated non-executive director, a formal employee advisory council, or a director from the workforce (Provision 3). The FRC chose to include all three potential mechanisms as the government consultation found that companies require a level of flexibility to be able to choose the mechanism most appropriate to them.

### What action should you take?

1. If your company is required to comply with the Code, you should review the FRC's proposals and begin to think about whether new or amended systems and/or procedures will be required in order to ensure compliance.
2. When the amended Code is published, you should review this and the accompanying guidance in detail and begin putting in place the systems and procedures identified before the effective date of January 2019.
3. If you are a FTSE 350 company, consider whether the exemptions on which you have previously relied have been removed.
4. If your company is listed on AIM, the following update explains how these amendments might also affect your company.

If you would like any assistance, please contact [Tim Anderson](#) or your usual RPC contact.

28 September 2018

## AIM-listed companies will be required to adopt recognised corporate governance code

### What is happening?

AIM has proposed changes to AIM Rule 26 which will require AIM-listed companies to adopt a recognised corporate governance code from 28 September 2018.



### Why does it matter?

Currently, AIM companies are required to set out the corporate governance code they adhere to and detail how they comply. If no actual code has been adopted, there should be a statement to this effect and the company's corporate governance arrangements should be disclosed. However, under the new Rule 26, each AIM company will be expected to choose a **recognised** corporate governance code and publish on its website the following information:

- the recognised corporate governance code it has applied
- how the company complies with that code, and
- an explanation for any departures the company makes from its recognised code.

This is likely to require an audit of the AIM company against its chosen recognised code to identify any departures and to inform the explanations for any such departures. AIM confirmed in AIM Notice 50 that it will not be defining "recognised corporate governance code" or providing a list of such codes. Rather, it stipulates that in each case, the code adopted should be one that is appropriate for a company admitted to a public market. Two examples of acceptable codes are:

- the Financial Reporting Council UK Corporate Governance Code, and
- the Quoted Companies Alliance Corporate Governance Code.

### What action should you take?

1. If you are an AIM-listed company assess whether you already apply a recognised corporate governance code. If you do not, the board of directors must choose one to adhere to.
2. Carry out an audit of your company against the chosen code to ascertain deviations from the code and the reasons for these.
3. Publish all the above information on your website.

If you would like any assistance, please contact [Karen Hendy](#) or your usual RPC contact.

1 October 2018

## Salary Sacrifice arrangements will lose protection

### What is happening?

Following the scaling back of tax and National Insurance Contributions (NICs) relief on salary sacrifice arrangements in April 2017, certain existing salary sacrifice arrangements (save for a few exceptions) will now only be protected until October 2018.



### Why does it matter?

Under the Finance Act 2017, an optional remuneration regime was introduced with effect from April 2017. That regime restricts the benefits that will continue to benefit from tax and NICs relief if provided through a salary sacrifice arrangement. The only benefits that will continue to benefit from such advantages are:

- enhanced employer pension contributions
- childcare benefits
- equipment provided under the cycle to work scheme, and
- ultra-low emission cars.

While the restriction applies to optional remuneration arrangements entered into on or after 6 April 2017, any existing salary sacrifice arrangements that employees are already locked into will be protected until October 2018 or, in the case of cars, accommodation and school fees, until 6 April 2021 (unless the arrangement is ended, varied or renewed (including auto-renewal) before then).

The taxable value of the benefit will be the greater of the salary sacrificed or the cash value of the benefit.

### What action should you take?

1. Assess how benefits you offer currently to employees under an optional remuneration arrangement will be impacted.
2. Decide how these benefits will be dealt with going forward – there may be certain advantages in having the benefit which outweigh the disadvantage of the benefit being taxable. For instance, death in service benefits provided under a separate insurance policy do not count towards whether someone has exceeded their pension lifetime allowance, but are a taxable benefit.
3. Communicate any proposed changes to employees if the employee's tax liability will increase as a result of the optional remuneration changes.

If you would like any assistance, please contact [Patrick Brodie](#) or your usual RPC contact.



1 October 2018

## Mobile phone service providers will have a duty to allow customers to have billing limits on their contracts

### What is happening?

By 1 October 2018 any retailers that offer mobile phone services as a part of their business will have to allow customers the opportunity to put in place billing limits to their contracts for each relevant period. These limits cannot be exceeded without customers' consent.



### Why does it matter?

After 1 October 2018 no mobile phone contracts can be entered into without giving customers the opportunity to put limits in place.

Should a provider keep providing the service even after a limit has been reached, any excess use by customers will not constitute agreement to extend the limit.

Ofcom can levy a penalty of up to £2 million for contravention of this provision. This is determined based on the appropriateness and proportionality of the penalty to the contravention.

### What action should you take?

1. Allow new customers to specify a billing limit, if desired.
2. Give notice to any current customers to specify a billing limit, or to amend or remove an existing limit.
3. Notify customers with a billing limit, so far as practicable, in reasonable time, if the limit is likely to be reached before the end of the period.
4. Ensure that customers have clearly agreed to any increase to billing limits after a notification of almost reaching a limit.
5. Consider ceasing service provision when a limit has been reached and no clear agreement has been given to increase the limit to ensure that services are not being provided for free.

Any agreed billing limits, decisions to amend or remove any billing limits, or decisions made to extend the billing limit by the customer must be communicated to them in writing.

If you would like any assistance, please contact [Oliver Bray](#) or your usual RPC contact.

18 October 2018

## E-procurement for public tenders will become mandatory

### What is happening?

After 18 October 2018, all public procurement communications, including transmission of requests for participation and submission of tenders (ie announcement of procurement processes, receiving offers from bidding companies or issuing any public tender notices) must be electronic.



### Why does it matter?

Any procurement processes that are ongoing when the provision comes into force will have to comply with this requirement.

There are some exceptions to the above, including:

- if it is necessary to use non-electronic communications due to a breach of security
- a high level of security is required that cannot be ensured using available electronic means
- applications that support certain file formats needed are not generally available
- using electronic communication would require specialised office equipment that is not generally available, and/or
- submission of physical or scale models which cannot be sent using electronic means.

### What action should you take?

You should ensure that all public tender correspondence and documentation is transmitted using appropriate electronic means after 18 October 2018.

If you would like any assistance, please contact [Oliver Bray](#) or your usual RPC contact.



3 December 2018

## Terms and Conditions for online sellers can no longer discriminate based on nationality or place of residence

### What is happening?

After 3 December 2018, when the Geo-Blocking Regulation (the Regulation) comes into force, any sellers within or outside the EU can no longer discriminate against any customers within the EU on the grounds of nationality or place of residence. This includes both business to customer, and business to business sales.



### Why does it matter?

Discriminatory acts include:

- blocking or limiting a customer's access to the seller's online interface, or without consent redirecting them to a different version of the interface entirely
- applying different general conditions of access to goods or services, and
- applying different conditions for payment transactions or refusing transactions.

In the UK, enforcement of the Regulation is handled by the Office of Fair Trading, Local Authority Trading Standards Authorities, the Department of Enterprise, Trade and Investment in Northern Ireland, and as required, by the national courts. Exact penalties for any breaches are unclear.

There is, however, uncertainty on the applicability of the Regulation when the UK leaves the EU. It potentially will leave room for better terms for UK-based customers without breaching the Regulation, should it not apply after Brexit.

### What action should you take?

If you are an online seller, you must ensure that all your terms and conditions are the same across the EU, and that no customers within the EU have to use different interfaces when trying to purchase goods or services.

If you would like any assistance, please contact [Jon Bartley](#) or your usual RPC contact.



## Other developments

Retail never stands still and keeping pace can be challenging, particularly in the ever-evolving digital world. Below is a selection of recent key developments and relevant trends.

### Commercial

#### Online retail domination

Traditional bricks and mortar shopping remains under threat with the further growth of online channels, including exclusively online offerings. Fuelled by smartphone use, the trend for “anytime, anywhere” shopping continues to increase. According to the Office for National Statistics, as of May 2018, online spending for food, department and clothing stores has achieved new record proportions of total online retail spend, hitting 5.8%, 17.4% and 17.6% respectively.

#### Automation and robotics

Investment in robotics continues to gain pace in Retail. Not just behind the scenes, in the form of warehousing and stock management, for example, Ocado’s recent multi-million investment in warehouse robotics, but also at the point of sale. AI chatbots and AR-functionality allow purchasing through smart speakers or smartphone cameras and have introduced a totally different landscape. This is heavily linked to improving shopping experiences. Ultimately these will be powerful weapons in the drive for retailers to become more efficient and stay relevant.

#### Retail M&A

Although the number of retail acquisitions in the UK fell 56% in 2017 compared to 2016, 2018 looks set to buck the trend with some high profile deals, particularly in the supermarket/food retail space. For example the recent acquisition of Nisa by the Co-op and the proposed tie-up between Sainsbury’s and Asda, which remains in progress. Much of this recent activity is a reaction to margin compression and driven by a desire for greater economies of scale.

#### Company Voluntary Arrangements (CVAs)

The use of CVAs has continued to be a key trend in an increasingly distressed retailer market. In recent months CVAs have been approved or considered by, amongst others, New Look, Mothercare and Select. This spike in CVAs has been matched by increasing disquiet amongst retail landlords who are often the most impacted creditor in a CVA. June saw the British Property Federation call for an urgent review of the current operation of CVAs and there appears to be an increasing appetite amongst landlords to challenge CVAs.



## Other developments continued

### Regulatory

#### **Compliance with CAP rules regarding High Fat, Salt and Sugar products in advertising**

Retailers must continue to be aware of and comply with the Committee of Advertising Practice (CAP) rules regarding the advertising of High Fat, Salt and Sugar (HFSS) products to children. The rules which came in from July 2017 apply across all print, cinema, online and social media. This means that ads directly or indirectly promoting any HFSS products cannot appear where children make up over 25% of the likely audience. Alongside this, use of promotions, licensed characters and celebrity endorsements also continue to be strictly controlled. However, such use is permitted to promote healthier options. Which products are categorised as HFSS will be determined using the Department of Health's nutrient profiling model.

#### **Retail data breaches**

With the recent advent of the General Data Protection Regulation (GDPR), as expected, more data breaches are coming to the fore, with Dixons Carphone and Under Armour being two of the latest victims. All retailers (online or otherwise) need to stay alert but this isn't always easy, particularly if old legacy systems are in use. Most businesses are now alive to the operational and reputational risks but this will continue to be a steep learning curve for many.

#### **ePrivacy Regulation**

Originally expected in May 2018, this regulation is now likely to come into force in late 2018. Retailers with a strong online presence and/or those that engage in direct marketing in any form of electronics communications services should be aware of the planned changes. It will be essential to review and update consent mechanisms (including for cookies). Failure to comply will expose such businesses to large fines which will mirror those for breach of the GDPR (the higher of up to 4% of global annual turnover or €20m).

#### **Requirement to report on payment practices**

The Reporting on Payment Practices and Performance Regulations 2017 requires large businesses to publicly report on their payment practices. This includes standard payment terms, maximum payment periods and a requirement to provide statistics on average time taken to pay invoices. Despite the regulations coming into force from 6 April 2017 and normally requiring two reports per financial year, many large retailers have still not published any reports. In addition to the adverse publicity, a failure to report is a criminal offence by the business, and every director of the company (or designated member of an LLP).

## Legislative bills tracker

Below is a list of bills currently in the UK Parliament which have relevance to the retail sector. Degree of progress as of July 2018 is listed. Although these are not yet in force, they give a flavour of developments to come.

### Degree of progress

1 – Just started

2 – Mid-phase

3 – Likely to pass imminently

Name of bill	Overview	Degree of progress
<b>Automated and Electric Vehicles Bill</b>	Bill to make provision about automated vehicles and electric vehicles.	2
<b>Alcohol (Minimum Pricing) (England) Bill</b>	Bill to make provision about the minimum price at which alcohol may be sold from licensed premises in England.	1
<b>Clean Air Bill</b>	Bill to require the Secretary of State to set, measure, enforce and report on air quality targets, to make provision about mitigating air pollution, including through the use of clean air zones, to make provision about vehicle emissions testing, and to restrict the approval and sale of vehicles with certain engine types.	2
<b>Deregulation Bill</b>	Bill to make provision for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals and to make provision for the repeal or amendment of regulations.	2
<b>Drone (Regulation) Bill</b>	Bill to regulate the purchase and use of drones weighing 5 kilograms or more.	2
<b>EEA Nationals (Indefinite Leave to Remain) Bill</b>	Bill to amend the Immigration Act 1971 to grant indefinite leave to remain in the UK to all EEA nationals, their family members and extended family members who are resident in the UK on the date of exit from the EU.	2
<b>Electronic Cigarettes (Regulation) Bill</b>	Bill to make provision for the regulation of the sale and use of electronic cigarettes, and to exempt electronic cigarettes from UK law derived from the Tobacco Products Directive.	2
<b>Employment and Workers' Rights Bill</b>	Bill to make provision about employment conditions and workers' rights.	2

**Degree of progress**

1 – Just started

2 – Mid-phase

3 – Likely to pass imminently

Name of bill	Overview	Degree of progress
<b>Employment Guarantee Bill</b>	Bill to require the Secretary of State to guarantee paid employment for six months for claimants of Jobseeker's Allowance, or the jobseeker's component of Universal Credit, who have been unemployed for six months or longer.	1
<b>Employment Opportunities Bill</b>	Bill to introduce more freedom, flexibility and opportunity for those seeking employment in the public and private sector.	2
<b>Equality Act 2010 (Amendment) (Disabled Access) Bill</b>	Bill to amend the Equality Act 2010 to improve access to public buildings by introducing six-inch and 12-inch rules for step-free access.	2
<b>Fire Safety Information Bill</b>	Bill to make provision about the requirements for fire safety information for occupants of certain buildings, including high-rise residential buildings.	2
<b>Freedom of Information (Amendment) Bill</b>	Bill to make provision for the disclosure of information held by public authorities or by persons contracted to provide services for them or on their behalf, and to amend the Freedom of Information Act 2000.	2
<b>Fruit and Vegetables (Classification) Bill</b>	Bill to make provision for fruit and vegetables to be classified by flavour, condition and size for the purposes of sale in the UK.	2
<b>Haulage Permits and Trailer Registration Bill</b>	Bill to make provision about the international transport of goods by road, and to make provision about the registration of trailers.	2
<b>Holiday Pay Bill</b>	Bill to make provision about holiday pay for employees.	2
<b>Human Rights and Responsibilities Bill</b>	Bill to require persons bringing claims or proceedings under the Human Rights Act 1998 to satisfy a test of reasonableness and equity.	2
<b>Import Tariff (Reduction) Bill</b>	Bill to make provision for the reduction of tariffs on goods imported into the UK.	2
<b>June Bank Holiday (Creation) Bill</b>	Bill to make provision for a national public holiday on 23 June or the subsequent weekday when 23 June falls at a weekend.	2

**Degree of progress**

1 – Just started

2 – Mid-phase

3 – Likely to pass imminently

Name of bill	Overview	Degree of progress
<b>Legalisation of Cannabis (Medicinal Purposes) Bill</b>	Bill to allow the production, supply, possession and use of cannabis and cannabis resin for medicinal purposes.	2
<b>Live Animal Exports (Prohibition) Bill</b>	Bill to prohibit the export of live farmed animals for slaughter or fattening.	2
<b>Manufactured Goods (Trade) Bill</b>	Bill to remove certain restrictions on the production and sale of goods manufactured in the UK for use in the UK, in connection with the withdrawal of the UK from the EU.	2
<b>National Living Wage (Extension to Young People) Bill</b>	Bill to extend the National Living Wage to people aged 18 to 24.	2
<b>Opticians Act 1989 (Amendment) Bill</b>	Bill to make provision for the sale of adjustable focus spectacles.	2
<b>Parental Bereavement (Leave and Pay) Bill</b>	Bill to make provision about leave and pay for employees whose children have died.	2
<b>Parental Leave and Pay Arrangements (Publication) Bill</b>	Bill to require employers with more than 250 employees to publish information about parental leave, and pay in the course of such leave.	1
<b>Packaging (Extended Producer Responsibility) Bill</b>	Bill to require producers of packaging products to assume responsibility for the collection, transportation, recycling, disposal, treatment and recovery of those products.	1
<b>Parking (Code of Practice) Bill</b>	Bill to make provision for and in connection with a code of practice containing guidance about the operation and management of private parking facilities.	1
<b>Pension Benefits (Ill Health) Bill</b>	Bill to require pension providers to make lump sum payments and other pension benefits available to people with ill health, including people with a terminal diagnosis, prior to such people reaching minimum pension age.	2
<b>Pensions (Review of Women's Arrangements) Bill</b>	Bill to establish a review of pension arrangements for women affected by changes made by the Pensions Act 1995 and the Pensions Act 2011.	2
<b>Pensions (Review of Women's Arrangements) (No. 2) Bill</b>	Bill to establish a review of pension arrangements for women affected by changes made by the Pensions Act 1995 and the Pensions Act 2011, and to require the review in particular to undertake costings for a compensation scheme and consider the operation of section 1(4) of the Pensions Act 2011.	2



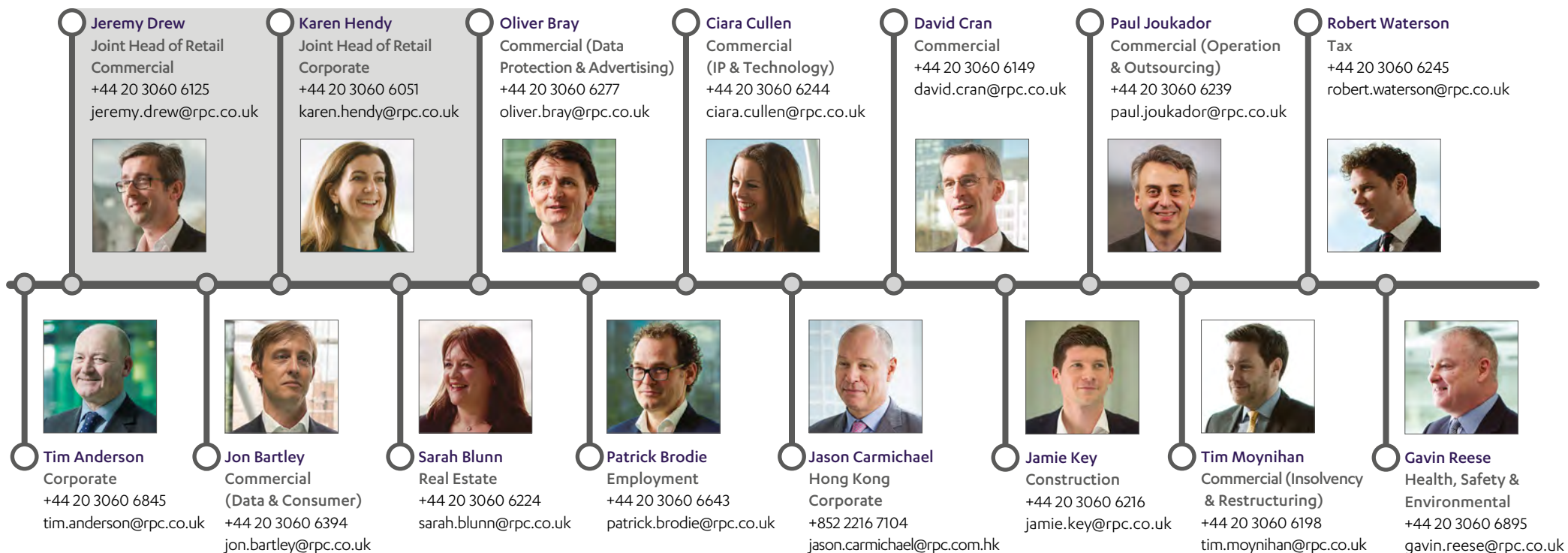


### Degree of progress

- 1 – Just started
- 2 – Mid-phase
- 3 – Likely to pass imminently

Name of bill	Overview	Degree of progress
<b>Plastics Bill</b>	Bill to require the Secretary of State to set, measure, enforce and report on targets for the reduction and recycling of plastic packaging, to require that such targets following the UK's withdrawal from the EU at least match such targets set by the EU, to establish enforcement mechanisms in respect of such targets and associated provisions, and to make provision for support for the development of sustainable alternatives to plastic packaging.	1
<b>Protection of Pollinators Bill</b>	Bill to make provision about the protection of pollinators (eg bees).	1
<b>Taxation (Cross-border Trade) Bill</b>	Bill to impose and regulate a duty of customs by reference to the importation of goods into the UK, to confer a power to impose and regulate a duty of customs by reference to the export of goods from the UK, to make other provision in relation to any duty of customs in connection with the withdrawal of the UK from the EU, and to amend the law relating to value added tax, and the law relating to any excise duty on goods, in connection with that withdrawal.	2
<b>Trade Bill</b>	Bill to make provision about the implementation of international trade agreements, to make provision establishing the Trade Remedies Authority and conferring functions on it, and to make provision about the collection and disclosure of information relating to trade.	2
<b>Unpaid Trial Work Periods (Prohibition) Bill</b>	Bill to prohibit unpaid trial work periods in certain circumstances.	2
<b>Unsolicited Calls (Prevention) Bill</b>	Bill to make provision to prevent unsolicited calls.	2
<b>Value Added Tax Bill</b>	Bill to enable the maximum turnover threshold for exemption from the requirement to register for VAT to be raised and to make provision for the exemption of certain goods and services from liability to VAT.	2
<b>Workers (Definition and Rights) Bill</b>	Bill to amend the definition of worker and to make provision about workers' rights.	2
<b>Working Time (Regulations) Bill</b>	Bill to make provision for the expiration of the Working Time Regulations 1998 and to provide for regulations governing working time.	2

## Key contacts



Or your usual RPC contact.

© RPC, July 2018

*This information 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.*