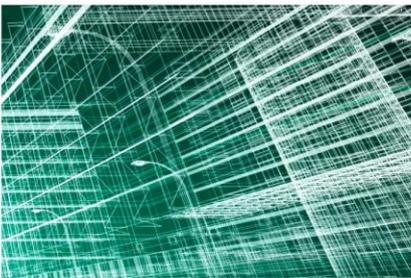


RETAIL FORESIGHT

Think ahead

February 2017



Here to help

This edition of Foresight outlines legislative and regulatory changes which we expect to come into effect in the next 18 months. With a little Foresight, Walker Morris can help you plan ahead.

December 2016

December 2016 saw the launch of the HSE's new [Health and Work Strategy](#). Priorities include work-related stress and musculoskeletal disorders and occupational lung disease. The HSE has published draft plans for health and safety in 19 different sectors, including commercial consumer services.

December 2016

Pricing practices

In December 2016 the Chartered Trading Standards Institute published its new [guidance](#) on pricing practices. The guidance was prompted by customer complaints and a Which? super-complaint and is designed to give shoppers increased confidence and clarity when seeking a fair deal from a retailer. Enforcement bodies have indicated that they will give retailers until April 2017 to comply by implementation of honest and upfront pricing strategies.

December 2016

Food labelling

Inclusion in the prescribed format of nutritional statements for all pre-packaged food became mandatory as of 13 December 2016. Retailers should ensure that their suppliers comply with this.

December 2016

Packaging Waste Regulations

Regulations to consolidate the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 came into force on 20 December 2016. The Regulations aim to make the existing regime more comprehensible rather than to change the law.

December 2016

Competition damages

The Consumer Rights Act 2015 empowered the Competition Appeal Tribunal (**CAT**) to hear stand-alone damages actions. A number of claims have been instituted against MasterCard under section 47A of the Competition Act 1998 in respect of the setting of the interchange fee - Sainsbury's has already successfully sued - and there are likely to be more to follow in the coming months.

Heat Network Regulations

The Regulations apply to landlords of a multi-let building where the heat, hot water or cooling is supplied by a communal system these regulations will apply and impose the following obligations:

- From 31 December 2016 landlords must ensure that a suitable meter which measures the consumption of heating or cooling or hot water of each tenant is installed. Landlords will not be obliged to do this if they can prove that it is not cost-effective or technically feasible to do so. The tests for what is cost-effective or technically feasible are set out in the Heat Regulations. If installing meters is not cost-effective or technically feasible landlords may still be obliged to install heat cost allocators and thermostatic radiator valves on each radiator which heats the room and hot water meter measuring consumption of hot water.
- Bills: any bills issued by landlords to retailers must be based on actual consumption rather than by reference to floor area or a fixed percentage. Landlords should review any existing leases in buildings with a communal heating system where the heat regulations apply and ensure that in future leases charging for heating should be by reference to consumption rather than a fixed percentage linked to floor area.

Insolvency

The Small Business, Enterprise and Employment Act 2015 and regulations made under it introduce changes to insolvency law, including relaxing the obligation to hold physical creditor meetings, the abolition of final creditor meeting and new procedures enabling creditors to opt out of receiving routine correspondence and office holder reports, other than those relating to dividend payments. The changes were expected to come into effect before now and should come into force during 2017.

Payment solutions

Contactless card payments for purchases of £30 and under are increasingly widespread. Mobile payments, which facilitate contactless payments for over £30, are becoming increasingly mainstream. This means more mobile payment programme agreements and, potentially, more pressure from those with interests in the technology (and possibly from consumers themselves) for mobile and other contactless payment facilities. Microsoft's recently launched revised Wallet app and Apple Pay are examples of the advancement of this technology. In addition to the wider strategic considerations, retailers need to have in mind the various regulatory obligations which arise in the context of consumer data and look to ensure sufficient contractual flexibility and robustness to keep pace with technological and regulatory change without being dictated to

by third parties.

2017

Trade unions

It is expected that the Trade Union Act 2016 will come into effect in early 2017. The Act imposes more stringent requirements around the calling of strike action, such as doubling the amount of notice to be given to an employer and increased ballot thresholds.

2017

Sunday working

It is anticipated that provisions concerning the ability of shop workers to opt out of Sunday working by giving notice to their employer, contained in the Enterprise Act 2016, will come into effect. Proposals to give local authorities the power to alter Sunday trading rules have been abandoned.

2017

Food waste

A private member's bill to tackle food waste failed to make progress in 2016. Among other things, the Bill proposed targets for food waste and for businesses to publish annual accounts of food waste created throughout the supply chain. The Bill lacked Government support, the Government's preference being for a voluntary approach, preferring to work with businesses and Waste and Resources Action Programme (**WRAP**) to reduce waste, than setting reduction targets. However, there is increasing momentum towards legislation to tackle food waste.

This remains an area of significant media interest. A new drive to reduce waste will see the UK's biggest supermarkets commit to double the amount of surplus food they redistribute. The Courtauld Commitment 2025 is a campaign that aims to tackle the estimated 2m tonnes of food wasted every year and overall, the signatories will aim collectively to redistribute at least 30,000 tonnes by 2020. The food will be given to charities which help the poor.

2017

Food safety and product recalls

A quick glance at the Food Standards Agency website will reveal a steady flow of recalls of Food and Drink products over the last 12 months. The flow has quickened appreciably following the new labelling requirements around allergens. Getting the labelling right - or wrong - has become directly linked to product recalls and, ultimately, potential loss of market share.

2017

Draft pre-action protocol for debt claims

The Civil Procedure Rules Committee consulted last year on a draft pre-action protocol for debt claims. The basis of the debt protocol is that debtors, or alleged debtors, should be provided with sufficient information to enable them to obtain advice on their position prior to the issue of a claim. It is anticipated that the protocol, which will impact upon creditors' debt collection procedures, will be finalised and implemented during 2017.

2017

Self-employed agents

The recent Employment Appeal Tribunal decision that Uber taxi drivers are actually 'workers' of the company has wide-reaching implications for businesses using the services of self-employed individuals or contractors. See our [briefing](#) for further information and advice.

2017

New Electronic Communications Code

A new code governing the rights of communications operators to access public and private land for the installation of communications apparatus is anticipated. In force information is currently awaited.

2017

e-Commerce and competition

The Commission expects to publish its final report on competition in compliance in the e-commerce sector in the first quarter of 2017. It is possible that the Commission will launch separate investigations against companies that it considers have infringed EU competition law. We reviewed the provisional report [here](#).

2017

Comparative advertising

The CJEU should rule next year on a case brought by the French courts in a dispute concerning Carrefour on whether a comparative advertising campaign involving the prices charged by shops of different sizes and formats breached the Comparative Advertising Directive and the Unfair Commercial Practices Directive. Hopefully, the ruling will clarify what is - and is not - permissible in terms of comparative advertising.

2017

e-Commerce and cross-border deliveries

In May, the European Commission proposed a package of measures to boost e-commerce by tackling "geoblocking" (the practice by online providers of preventing users from accessing and purchasing goods or digital content services based on their Member State location being different from that of the provider), making cross-border parcel deliveries more affordable and efficient and giving more powers to national authorities to enforce consumer rights. Whether the Government will commit to these proposals post Brexit remains to be seen. The Commission hopes to implement the Regulation in 2017.

January 2017

European Commission launches consultation on Product Liability Directive

The European Commission launched a three month [public consultation](#) in January 2017 on the rules set out in the Product Liability Directive on liability of the producer for damage caused by a defective product. Part 1 of the Consumer Protection Act 1987 implements the provisions of the Directive into UK law and imposes a strict liability on the producers of defective products for the damage caused by those defects.

31 March 2017

Brexit

The Government has stated that it will invoke "Article 50", triggering the negotiations for the UK's exit from the EU before the end of March next year. After service of the notice, the UK and EU will have two years in which to negotiate the terms of the UK's exit although this period can be extended by agreement.

The [implications of Brexit](#) for retailers will become clearer when the terms of Brexit start to emerge.

1 April 2017

Business rates

New rating lists will come into effect on 1 April 2017.

The Government consulted over the summer on proposals for more frequent business rate valuations in England (at least every three years). We expect further developments next year.

1 April 2017

The Immigration Act 2016 created a new criminal offence of illegal working. The existing offence of "knowingly employing" an illegal migrant has been widened to cover situations where an employer has

"reasonable cause" to believe that a person is an illegal worker. This change means that the burden of proof for prosecution has lowered significantly. From April 2017, employers will be denied the National Insurance Contributions employment allowance for a period of one year if they are subject to a civil penalty for employing illegal workers.

1 April 2017

National Living Wage for over 25s

The National Living Wage is currently set at £7.20 per hour and will increase to £7.50 per hour in April 2017. The Government has said it hopes to achieve a figure above £9 per hour by 2020.

1 April 2017

Alcohol retailers

From 1 April 2017, it will be an offence for alcohol retailers to buy alcohol from a wholesaler whom they know, or have reasonable grounds to suspect, has not been approved for registration with HMRC.

6 April 2017

Apprenticeships Levy

The Apprenticeships Levy is scheduled to come into effect on 6 April 2017. The Apprenticeships Levy will apply to all UK employers with annual pay bills of more than £3 million. We reviewed the Apprenticeships Levy in this [article](#).

6 April 2017

Payment practices

The Small Business, Enterprise and Employment Act 2015 obliges large (as defined in the Act) companies to publish a report on payment practices, policies and performance. The new rules are scheduled to come into force on 6 April 2017.

The Small Business Commissioner recently consulted on a payment complaints scheme for small business. The Commissioner's response is expected during 2017.

6 April 2017

Salary sacrifice schemes

HM Revenue & Customs plans to restrict the use of salary sacrifice schemes for the provision of benefits in kind from April 2017, making them chargeable to income tax and National Insurance Contributions. The Government consulted on its proposals earlier in the autumn and feedback from the consultation is expected shortly.

April 2017

Gender Pay Gap reporting

Regulations will come into effect requiring employers, including charities, with over 250 employees to publish details of their "gender pay gap" (and bonus pay gap) on their website. Failure to do so will be a criminal offence.

Draft regulations and guidance have been published and are expected to be come into effect in April 2017. Employers will be required to include analysis of pay and bonuses when preparing the report.

8 May 2017

Assignment of leases

The Court of Appeal is due to start hearing the appeal in *EMI Group Limited v O&H Q1 Limited* on whether a new lease can be assigned by a tenant to its existing guarantor under the Landlord and Tenant (Covenants) Act 1995. The High Court said this was not permissible, which restricts group restructuring opportunities and is also something to be checked on corporate acquisitions as part of due diligence.

July 2017

Payment systems

The Payment Systems Regulator (**PSR**) published its final report on its market review into the supply of indirect access to payments systems in 2016. (For background, see our [article](#) on the interim report.) The PSR is going to monitor developments over the coming months before deciding what, if any, regulatory action to improve competition in the payment systems sector is required.

July 2017

New rules on food and soft drink advertising to children

Following a public consultation, the Committee of Advertising Practice announced the introduction of "tough new rules" from 1 July 2017 banning the advertising of high fat, salt or sugar food or drink products in children's media (targeted at under-16s). The rules apply to all non-broadcast media, including social media.

2017/18

Stamp Duty Land Tax (SDLT)

A consultation on changes to the timings of SDLT filing and the payment process will take place in 2016. There is a proposal to reduce the period for filing the SDLT form from 30 days to 14 days. Any legislation will be included in the Finance Bill 2017 for the changes coming into effect in the 2017-18 tax year.

January 2018

2015 Payment Services Directive

EU Member States have until 13 January 2018 to implement the requirements of the 2015 Payment Services Directive (**PSD**). While the exit timetable and Brexit withdrawal process remain unclear, retailer' implementation programmes for the PSD should continue.

April 2018

Sugar Tax

The Government has published draft legislation to introduce the "sugar tax" as part of its strategy to tackle childhood obesity. The tax is due to come into effect in April 2018. (The Government has withdrawn proposals to restrict the advertising of junk food and ban sweets from store checkouts.)

April 2018

Replacement of SDLT in Wales

Stamp duty land tax is to be replaced with Land Transaction Tax (**LTT**) in Wales from April 2018.

April 2018

Taxation of termination payments

The HMRC is proposing to treat all payments in respect of notice as earnings subject to income tax and NICs regardless of whether or not the payment is pursuant to a contractual obligation (a PILON clause).

April 2018

EPC ratings for commercial properties

A prohibition on letting properties with F and G rated EPCs will come into effect in April 2018. Before any such property can be let, cost-effective energy efficiency improvements will need to be undertaken so the property achieves an EPC rating of at least E.

May 2018

Cybersecurity

EU Member States must impose the Cyber-security Directive (known as the NIS Directive) into national law by May 2018. TheCityUK has published a report which aims to raise the awareness of cybercrime and lists a 10-point cyber Checklist for Boards to help make them more resilient to cyber attack. (See our [earlier article](#) for more on this.)

25 May 2018

Data protection

The EU's General Data Protection Regulation will be in force from 25 May 2018. The Regulation will effect a substantial overhaul of the existing EU data protection regime, including greater accountability for data controllers, enhanced rights of data subjects, stricter rules on obtaining consent to processing and tougher enforcement powers for regulators.

The consensus is that the provisions of the Regulation will continue to apply post-Brexit or that, at the very least, key provisions will be adopted, in order to ensure there are no obstacles to the transfer of data between the EU and the UK. Retailers should therefore start reviewing existing procedures and policies, and also IT systems, at the earliest opportunity to be ready for the new regime.

We reviewed the Regulation, and suggested actions, in this [article](#).

May/June 2018

Trade secrets

The new EU Trade Secrets Directive was adopted in May 2016. Member States were given two years to implement its provisions into national law, although whether the UK will implement the Directive in the light of the referendum result remains to be seen.

The Directive defines a "trade secret" as including a requirement that the material in question has been "subject to reasonable steps" to keep it secret. With this in mind, retailers should start reviewing procedures for safeguarding trade secrets, including contractual arrangements and processes, as well as confidentiality provisions in contracts of employment, well in advance of 2018.

June 2018

Digital content and online and distance sales

Proposals to update consumer law on digital content and on online and distance sales are expected in June 2018. (This is following the recent REFIT fitness check of existing EU consumer protection law.) Brexit may affect the impact of such proposals for UK retailers.

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