PENNINGTONS MANCHES COOPER

ONLINE TRADING: KEY COMPLIANCE REQUIREMENTS

Businesses which provide online services in the UK need to comply with the various statutory requirements that govern the content and functionality of websites. We summarise below the key information that must be made available on all e-commerce websites that operate from the UK.

This note summarises the rules applicable under UK law. UK Businesses that operate in the EU also need to be aware of the impact of Brexit and will need to comply with the national rules on e-commerce applicable to their services in the EU Member States where they operate. For further information on the key impacts of Brexit on e-commerce, see the section headed Brexit below.

INFORMATION TO BE PUBLISHED BY WEBSITE OPERATORS

Businesses which trade online or provide other online services in the UK need to make the following information available to users of their services in order to comply with the Electronic Commerce Regulations 2002:

- the service provider's name;
- the geographical address at which the service provider is established, such as the registered office (a PO box is not sufficient);
- contact details for the service provider, including an email address, to allow an individual to contact a service provider directly and effectively;
- if the service provider is registered in a trade register (or similar register available to the public), they must provide the register's details and their means of ID on the register (usually a registration number);
- where subject to an authorisation scheme, they must provide the details of the relevant supervisory authority;
- where the service provider is a member of a regulated profession (e.g. a doctor) they must provide:
  - the details of the professional body they are registered to;
  - their professional title and member state where that has been awarded; and
  - a link to the professional rules applicable to them.
- where applicable the service provider's VAT registration number;
- where the service provider is subject to any industry codes of conduct this information must be stated and information on how to access electronic versions of the codes provided;
- where applicable, details of any relevant promotional offers and any conditions which must be met to qualify; and
- price or fees, if applicable, stated clearly and unambiguously.

The Electronic Commerce Regulations 2002 require that the above information must be given in a form which is "*easily, directly and permanently accessible*". This requires the website operator to make the information accessible to a customer at any time. An easy way of achieving this is to include an "About Us" page on the website containing the required contact details

Where a contract is completed electronically, the information provided must be "clear, comprehensible and unambiguous". In particular the website must:

- set out the technical steps for the customer to conclude the contract;
- explain whether or not the concluded contract will be filed by the service provider and whether it will be accessible;
- provide technical means for identifying and

correcting input errors prior to the placing of the order; and
- state the languages offered for the conclusion of the contract.

Where an order has been placed by technological means the provider must acknowledge receipt without undue delay.

In addition, the Provision of Services Regulations 2009 (PSR) require most private sector businesses providing services in the UK to make certain information available. There is some overlap between the information obligations imposed by the Electronic Commerce Regulations (see above) and the requirements of The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations (see below) and the Consumer Contracts Regulations (also discussed below). Businesses that are complying with the information requirements in those three Regulations will also need to make the following information available to users of their services in order to comply with the PSR:

- legal status (e.g if a sole trader or partnership);
- general terms and conditions if any;
- contractual terms, if any, regarding the governing law applicable to the contract;
- where the business is required to hold professional liability insurance, details about this, its geographical coverage and the insurer's contact details must be provided;
- where the business carries on multi-disciplinary activities (e.g. an accountancy firm that also provides legal services) information about these and on measures taken to avoid conflicts of interest (information to be available on request).

TERMS AND CONDITIONS

Where the service provider provides terms and conditions applicable to the contract, it must make them available to customers in a way that allows the customer to store and reproduce them.

TERMS OF USE

These are not mandatory but can be useful. They usually contain provisions dealing with the use of the website, including the right to modify or withdraw the website; disclaimers; information about trade marks; keeping account details safe; and rules about unacceptable user behaviour such as hacking and introducing viruses.

In addition, if the website allows for user comments or enables any form of user generated content it is good practice to include terms enabling the business to take down (where necessary) any content that is illegal, defamatory or abusive. . Failure to do so may increase the risk of the business being held liable for potentially defamatory or offensive statements made by website users.

COMPANY INFORMATION

The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 require that companies incorporated in the UK include the following information on their websites:

- the company's registered name;
- place of registration (e.g. England and Wales) and registered number;
- address of registered office (if different from the service provider's geographical address referred to above);
- in the case of an investment company, the fact it is such a company;
- if the company is a community interest company which is not a public company, the fact that it is a limited company
- in the case of a limited company exempt from the obligation to use the word "limited" as part of its name, the fact it is a limited company; and
- If the company has a share capital and discloses the amount of share capital on its website, it must disclose the paid up share capital.

In addition, the Companies (Trading Disclosures) (Insolvency) Regulations 2008 require that companies include the following information on their websites:

- where a receiver or manager has been appointed, a statement to that effect;
- where a moratorium is in force, a statement to

that effect and the nominee's name;
- while a company is in administration, a statement of the name of the administrator and that the affairs, business and property of the company are being managed by him/her; and
- if the company is being wound up, a statement stating that this is the case should be found on the company's website and on every invoice, order for goods or service, business letter (whether in hard copy, electronic or any other form) issued by or on behalf of the company, a liquidator of the company, a receiver or manager of the company's property (see the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006).

COPYRIGHT NOTICE

The images and text included within the website may be protected by copyright. A copyright notice informs users that the site is protected by copyright, identifies the copyright owner, and shows the year of first publication. A copyright notice is not a legal requirement, but it may be helpful in providing evidence of publication and limit the claim of the defence of innocent infringement should copyright infringement occur.

CONSUMER CONTRACTS REGULATIONS

Where an order for goods, service or digital content is made via a website the Consumer Contracts Regulations 2013 (**CCR**) dictate that the consumer should have the same information as they would if they were making the transaction face-to-face. These Regulations only apply to Business to Consumer transactions.

The CCRs require that the following key information is provided:
- any delivery restrictions (to be provided no later than the beginning of the order process)
- the main characteristics of the goods, services or digital content (this information must be provided directly before the consumer places the order);
- which means of payment are accepted (to be provided no later than the beginning of the order process);
- the identity of the trader (it is recommended that a links to this information should always be visible);
- the trader's address as well as phone number and email address (it is recommended that a links to this information should always be visible);
- if acting on behalf of another trader, the address and identity of the other trader (it is recommended that a link to this information should always be visible);
- the total price of the goods inclusive of taxes, or, if the price cannot reasonably be calculated in advance, the manner in which the price is calculated (this information must be provided directly before the consumer places the order);
- all additional delivery charges and any other costs or how they will be calculated (this information must be provided directly before the consumer places the order);
- where the provision is via subscription, the total cost per billing period (this information must be provided directly before the customer places the order);
- the arrangements for payment, delivery, performance and the time by which the trader undertakes to deliver the goods (this information should be included on both the product page and the confirmation of order and check out pages);
- the trader's complaint handling policy (see **Complaints and Dispute Resolution** below);
- where a right to cancel exists, the conditions, time limit and procedures for exercising that right (it is recommended that a link to this information is included on the product, confirmation and order pages as well as always visible e.g. in the footer and included in the terms and conditions) (see **Right to cancel** below);
- where applicable, the minimum duration of the contract (this information must be provided directly before the customer places the order);
- contract duration and conditions of terminating (this information must be provided directly before the customer places the order);
- where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation and, for distance contracts, if the goods, by their nature, cannot normally be

returned by post, the cost of returning the goods (it is recommended that a link to this information is included on the product, confirmation and order pages as well as always visible e.g. in the footer and included in the terms and conditions);
- where digital content is being supplied, the digital content's functionality and any applicable technical protection measures and any relevant compatibility with hardware and software (this information should be included on the product page)
- any consumer deposits and financial guarantees to be paid or provided at the request of the trader (it is recommended such information is displayed on the product page, confirmation of order and check-out page)
- where applicable, any after-sales services and guarantees offered by the trader and manufacturer (it is recommended that a link to this information is always visible);

The trader must ensure that when the consumer places the order, the "button" or other means of completing the contract is clear enough that the consumer explicitly understands that their action implies an obligation to pay. It is good practice to display the full details of the order along with the delivery address on the same page as this unambiguous "button". The trader must obtain the consumer's express consent to any additional charges which are payable, for example for insurance or gift wrapping which are added at the end of the order process. The trader cannot rely on the consumer not changing a default option (such as a pre-ticked box). The trader must acknowledge the order by sending an email after the order is placed. This can just be an acknowledgement of order, rather than acceptance.

A durable medium is defined in the CCR as any medium which allows information to be addressed personally to the recipient, allows them to store the information for future reference and allows the unchanged reproduction of the information stored. This includes email.

RIGHT TO CANCEL

The CCR provide for a right to cancel within 14 days of receipt of the goods, or in the case of services, 14 days from the date the contract is made. If the business fails to provide the above information, the cancellation period is extended until it does so for up to one year from the day after the normal cancellation period would have ended.

There are exceptions to the right to cancel including the sale of customised or perishable goods. It is worth checking whether your particular goods or services would fall under any of the exceptions.

The consumer must be informed of the right to cancel as well as the conditions and procedures of exercising this right, including the provision of a model cancellation form to the consumer. Best practice is to provide a full, non-interactive but printable version of the form the website. The trader may also choose to provide a version that may be completed online. If the consumer does give notice to cancel validly, the contract is treated as if it had never been made.

Upon a valid notice of cancellation from a consumer, the business must refund without undue delay and in any event within 14 days from the date the notice was given. For sales contracts where the business has not offered to collect the goods, the CCR allows the business to withhold reimbursement until it has received the goods, or until the consumer has supplied evidence of having sent the goods back, whichever is earliest. The business has 14 days from that point to refund.

EXCLUSIONS AND LIMITATIONS OF LIABILITY

There are certain exclusions and limitations of liability that are never permitted by law, regardless of whether the contract is with a consumer or business. These are:
- death or personal injury caused by negligence;
- fraud or fraudulent misrepresentation;
- implied terms as to title; and
- liability for damage caused by defective goods under the Consumer Protection Act 1987.

The Unfair Contract Terms Act 1977 (**UCTA**) limits the extent to which one party in a business to business contract can exclude or restrict liability to the other. The UCTA provides that the following types of liability

can only be excluded to the extent that such term is reasonable:

- negligence other than negligence resulting in death and personal injury;
- misrepresentation or any exclusion of any remedy available for misrepresentation, in either case other than for fraudulent misrepresentation;
- implied terms as to conformity of goods with description or sample, or relating to their quality or fitness for purpose; and
- when dealing on one party's written standard terms of business, any liability for breach of contract or claim to be entitled to render no performance at all or performance substantially different from that which was reasonably expected.

The Consumer Rights Act 2015 (**CRA**) sets out consumer rights in relation to services, goods and digital content provided by a business and requires the terms of contracts with consumers to be 'fair'. Terms will be viewed as unfair if they give rise to a significant imbalance in the rights and obligations of the parties under the contract and that imbalance is to the detriment of the consumer. Whether a term is fair is to be determined taking into account the nature of the subject matter of the contract and by reference to all of the circumstances in which the term was agreed.

The CRA sets out a list of 'blacklisted' terms that are automatically unenforceable and include:

- in consumer contracts for the supply of goods, any term excluding or restricting liability for satisfactory quality, fitness for purpose, delivery of goods and the passing of risk;
- in consumer contracts for the supply of digital content, any term excluding or restricting liability for satisfactory quality, fit for purpose and conformity to description; and
- in consumer contracts for the supply of services, any term which excludes liability for reasonable care and skill and provision of information and any term which restricts liability to less than the contract price in relation to reasonable skill and care/provision of information or in relation to reasonable price or reasonable time.

The CRA also sets out a list of terms, which although not automatically unfair, are likely to be and include:

- limiting or excluding the trader's liability for death or personal injury to the consumer resulting from an act or omission of the trader;
- limiting or excluding inappropriately the legal rights of the consumer if the trader fails to properly carry out its obligations under the contract;
- allowing the trader to retain sums paid by the consumer if the consumer decides not to conclude the contract, without awarding the consumer equivalent compensation where the trader cancels the contract;
- preventing the consumer from getting a refund if the trader cancels or decides not to perform the contract;
- disproportionately penalising the consumer where they fail to perform the contract (intentionally or otherwise);
- allowing the trader to terminate an open-ended contract without reasonable notice (unless there are serious grounds for doing so);
- allowing the trader to automatically extend a fixed-term contract where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express a desire not to extend is unreasonably early;
- allowing the trader to alter terms without the consumer's agreement and without a valid reason to do so;
- requiring the consumer to fulfil all of their obligations where the trader does not perform all of theirs;
- allowing disproportionately high exit fees;
- allowing the trader to decide the characteristics of the subject matter of the contract after the consumer is bound; and
- allowing the trader discretion to set the price after the consumer is bound.

Under the CRA a trader must ensure that the terms of its written contracts are expressed in plain and intelligible language. In practice this means avoiding technical legal language in exclusion clauses (e.g. 'consequential loss'), using short sentences and

appropriate headings, giving consideration to font, size/background, colour and giving particular prominence to any terms that could have a disadvantageous impact on the consumer. Where a term is deemed to be unfair, it will not bind the consumer, and the contract itself will continue in force so long as it can survive in the absence of the unfair term.

In order not to fall foul of the rule against hidden terms, businesses should:

- avoid using "browse wrap" or "click free" terms – this is where the website states "By continuing to use our site, you accept our terms and conditions";
- instead use a "click wrap" agreement for the terms – i.e. provide a link to the terms and require the consumer to click on the "I accept" or "I agree" button (or tick a tick box) before placing his or her order;
- as a general rule of good practice, specifically draw attention to any important terms or any terms which might surprise the consumer.

DATA PROTECTION AND COOKIES

From 1 January 2021 in the UK an adapted version of the EU GDPR applies (**UK GDPR**) along with the Data Protection Act 2018. The UK GDPR broadly mirrors EU GDPR, but with consequential amendments made to allow UK GDPR to operate effectively post Brexit.

The EU has granted the UK an adequacy decision under the EU GDPR. This means that transfers of personal data from the EU to the UK can continue without the need for further safeguards, such as standard contractual clauses or data transfer impact assessments. Data transfers from the UK to the EU can also continue to flow freely since the UK has recognised EU member states as providing an adequate level of protection of personal data for the purposes of the UK GDPR.

Note that the EU GDPR has extra-territorial effect. This means that it will continue to apply to UK businesses that an establishment in the EU or who offer goods or services to data subjects in the EU, or who monitor their behaviour (as far as their behaviour takes place with the EU). Such businesses will need to comply with both the UK GDPR and the EU GDPR (although, as noted above they are broadly the same). Where there is no need to distinguish between the two regimes, for ease of reading this guide refers to both as "**GDPR**".

Websites that process personal data are subject to the GDPR. The GDPR has a very wide definition of "personal data" including IP addresses and cookies, which means that even websites with no sign-on requirements will almost inevitably process personal data and so will have to ensure compliance with the GDPR. The GDPR imposes a maximum fine of £17.5 million or 4% of global turnover, whichever is higher, so ensuring compliance is crucial.

The Information Commissioner's Office (**ICO**) has issued guidance on the use of cookies to comply with the Privacy and Electronic Communications Regulations. This requires service providers to:

- state that they use cookies;
- state what they use cookies for; and
- request consent to use cookies which must be freely given, specific and informed (unless strictly necessary for the provision of the service).

The website script should not collect cookies until explicit consent has been obtained. In order for the consent to be valid the various purposes of the cookies must be broken down and the user given the ability to uncheck and check the cookies that they are happy with. Only cookies that are strictly necessary for the provision of the service (such as session cookies to set the individual's language) may be pre-checked. The website must also allow for the consent to be altered at any time by the user.

Businesses should also prepare a cookie policy, outlining what cookies the website collects and if there are any cookies that are strictly necessary for it to operate. The ICO has recommended that all organisations undertake a "cookie audit" so as to understand better the cookies their websites use and the reasons why. Following such an audit, organisations should review their mechanisms for cookie consent and their cookie policy in light of the ICO guidance.

PRIVACY POLICY

Businesses must include a Privacy Policy on their website to inform users about the processing of their

personal data. The requirements are contained in the GDPR and the Data Protection Act 2018. In particular, the Privacy Policy should cover:

- what personal data will be processed;
- how will it be processed and for what purpose;
- how long will the personal data be retained;
- what are the rights of the users of the website in relation to their data; and
- the contact information of the service provider (and its data protection officer, if they have one).

Information should be provided in a clear, concise and easily accessible form (also taking into account the types of users of the website). This means that if the website is aimed at children the Privacy Policy's language should reflect this (and should also take account of the ICO's children's code .). The ICO has provided guidance indicating that layering is deemed a clear and accessible format. Also, Privacy Policies must be easy to find and not require the user to scroll to the bottom of the page.

The GDPR states that personal data should be held no longer than is necessary for the purposes which the data was obtained. So, for example, when service providers retain payment information, they should delete this information after a reasonable period.

The GDPR requires that personal data is held securely by means of 'appropriate technical and organisational measures'. In addition, the NIS Regulations 2018 place a number of security related obligations on operators of essential services and certain relevant digital service providers such as online search engines, online marketplaces and cloud computing services. Both the GDPR and NIS regulations require security breaches to be notified in some instances and impose potentially substantial fines for breaches of the relevant obligations. Security breaches can also have a significant impact on the businesses' reputation as well as customer and investor confidence. Consequently, security should be a key focus area for all e-commerce businesses.

For more information on how you can ensure your business complies with data protection laws, Penningtons Manches Cooper offers a Data protection compliance service.

DIGITAL MARKETING

Direct electronic marketing in the UK is governed by both the UK GDPR and the Privacy and Electronic Communications Regulations (PECR).

Identifying your lawful basis for use of personal data (legitimate interest or consent)

If you plan to carry out electronic marketing (which might typically be via email) to your online customers, it is important to determine your lawful basis for doing so – and this is typically either that the activity falls within your legitimate interests, or that you have the consent of the relevant individual (and we have commented further on these aspects below).

This is a complex area and specific advice should be sought for any particular email marketing campaign to ensure that it is carried out in accordance with legal requirements. For certain marketing campaigns (for example, involving significant volumes of consumer data, or any "bought-in data"), we recommend carrying out a data protection impact assessment before proceeding.

Legitimate interest?

For business-to-business communications, where you are sending emails to an individual at their corporate address, you may be able to demonstrate that your lawful basis for communicating with these individuals is your legitimate interests under the UK GDPR. Essentially, it is possible to rely on legitimate interest as your lawful basis for sending marketing communications unless:

- consent from the relevant individual is required under PECR; or
- the relevant marketing involves special category personal data (e.g. marketing targeting a particular health characteristic), in which case consent is likely to be required under the UK GDPR irrespective of PECR requirements.

We have commented on PECR consent requirements below.

Whether or not you can rely on legitimate interests in any particular circumstances should be considered in light of the "three part test" recommended by the ICO.

All three elements of this three part test must be satisfied before you can rely on legitimate interests:

- Purpose test – is there a legitimate interest behind the processing? What is that legitimate interest?
- Necessity test – is the processing necessary for that purpose?
- Balancing test – is the legitimate interest overridden by the individual's interests, rights or freedoms?

You should carry out the above assessment, and ensure that you document your reasoning as part of your data protection compliance record keeping, when you believe that you are entitled to carry out marketing activities under your legitimate interest.

Please note that if you are communicating with consumers or any individuals using their private email addresses (or sole traders or partners in unincorporated partnerships), this will fall under the PECR regime described below.

Consent?

The requirement for prior consent before sending electronic direct marketing under PECR applies to communications to individuals at their private email address (the term used in PECR is "individual subscriber"), rather than to "corporate subscribers". "Corporate subscribers" are generally regarded as individuals at their business email address (e.g. [name]@[company].com).

Consent is required before sending emails to individual subscribers (unless the PECR "soft opt-in" applies, in relation to which please see below). Where PECR requires consent, that consent must meet the GDPR standards (including that the consent is a positive action from the individual, freely given, specific and informed, and capable of verification).

PECR – soft opt-in

For individual subscribers where you do not have prior consent to send marketing, you can only send email marketing if the individual is an existing customer who bought (or negotiated to buy) a similar product or service from you in the past, **and** you gave them a simple way to opt out both when you first collected their details and in every message you have sent. If relying on the soft opt-in, you must be able to demonstrate that the relevant individuals were given the opportunity to opt-out both at the time of collection of their details and in every subsequent message.

General tips when intending to carry out electronic marketing

Do:

- consider what your lawful basis is;
- check that you will have the appropriate evidence to back this up, if you intend to rely on consent or the soft opt-in;
- carefully review consent capture language to ensure it is transparent;
- consider if you will be able to evidence that the recipient's details were obtained fairly and lawfully;
- consider if you should carry out a data protection impact assessment or legitimate interests impact assessment before proceeding;
- give the recipient the opportunity to opt out of receiving further marketing communications within each communication;
- take particular care (and seek advice) when sending communications to children;
- ensure that you meet GDPR requirements to provide essential information to individuals (under a privacy policy or other appropriate mechanism).

Do not:

- send marketing emails to someone whose email address was originally obtained for a different purpose;
- assume that marketing consents are valid indefinitely;
- disguise or conceal your identity.

ADVERTISING

The Consumer Protection from Unfair Trading Regulations 2008 (**CPUTR**) prohibit unfair commercial practices, including unfair advertising. Online advertisers are specifically prohibited from making communications to consumers which are:

- contrary to the requirements of professional due diligence;

- misleading actions or omissions; or
- aggressive.

There are a further 31 practices that will automatically be considered unfair in the CPUTR in any circumstances.

When advertising to other businesses, you need to be aware of the Business Protection from Misleading Marketing Regulations 2008. The general rule derived from these regulations is that advertising should not be misleading.

COMPLAINTS AND DISPUTE RESOLUTION

If a trader has a complaint handling policy, the CCR requires that this policy is provided to the customer, usually by way of a link that is always visible.

In addition, the PSR require that UK service providers deal with customer complaints as "quickly as possible" and that service providers use "best efforts" to find a satisfactory solution to these complaints. This obligation will extend to considering additional procedures in the complaints handling process such as providing training to service provider staff on how to deal with complaints.

Also under the PSR, a trader subject to a code of conduct, or who is a member of a trade association or professional body, which provides for recourse to a non-judicial dispute resolution procedure, must:

- inform the recipient of the service of that fact;
- mention it in any information document in which the trader gives a detailed description of the service; and
- specify how to access detailed information about that procedure.

SLAVERY AND HUMAN TRAFFICKING STATEMENT

The Modern Slavery Act 2015 requires companies with a global turnover of £36 million or more to publish a statement on Slavery and Human Trafficking each financial year. This must be published on the organisation's website and be linked in an easily visible part of the homepage.

The statement must be written in simple language and succinct, while covering all the relevant points and including a statement of the steps the organisation has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains/any part of its business (if the organisation has taken any steps). If steps have not been taken at the date of the statement reasons should be provided and details of future steps stated.

WEBSITE ACCESSIBILITY AND NON DISCRIMINATION

The Equality Act 2010 (or the Disability Discrimination Act 1995 in Northern Ireland) imposes certain requirements of accessibility on websites. Businesses should ensure they take steps that are reasonable in all the circumstances to enhance accessibility of their website to disabled users. Common measures include allowing users to select different font, font size and colour of the website to allow for those with visual impairments to more easily access the website. What is reasonable will be determined by the size of the business operating the website as well as whether the business of the website is targeted at those who would typically struggle with reading.

New regulations came into force for public sector bodies on 23 September 2018. The regulations are called Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 and build on the existing obligations under the Equality Act 2010 (or the Disability Discrimination Act 1995 in Northern Ireland), which apply to all UK service providers. The 2018 Regulations say that all public sector websites and apps must: meet accessibility standards **and** publish an accessibility statement.

Discrimination in the provision of services, goods and facilities in the UK on the grounds of nationality is prohibited under the Equality Act 2010.

The PSR provides that service providers must not discriminate against individual customers in the provision of their services on the basis of place of residence (town, region or country) in their general conditions of supply. The prohibition does not apply if the differences in general conditions of access are directly justified by objective criteria.

BREXIT

The UK formally exited the EU on 31 January 2020 and the transition period put in place to enable the UK to move away from the EU's laws ended on 31 December 2021. As noted above, the effect of Brexit is significant for UK businesses that operate in the EU. Trade is not as frictionless as it was previously with the movement of goods between the UK and EU now subject to new customs checks and procedures. A summary of other key changes in practice for e-commerce businesses is set out below:

Country of origin - The 'country of origin' principle no longer applies in the UK. This means that online retailers and other online service providers established in the UK and providing services in the EU will need to comply with the relevant local law applicable to their services in each member state in which they operate. Although most of the information requirements that apply to online traders in the UK are the same as those that apply in the EU there are some differences in implementation. Consequently, a UK business offering goods or services in the EU should check the local requirements in each relevant member state.

Intermediary liability – Following Brexit, the limitations of liability on e-commerce set out in the EU E-Commerce Directive no longer apply to intermediary service providers established in the UK. UK service providers will continue to have access to these limitations of liability in respect of services provided in the UK. Where a services provider, established in the UK provides services in the EEA they will need to comply with the relevant local law in each EEA country in which they operate since the country of origin principle no longer applies.

Geo-blocking - Although the EU Geo-Blocking Regulation 2018 ceased to apply in the UK following Brexit, it continues to apply to both business to business and business to consumer transactions within the EU. This means that UK businesses trading in the EU will need to ensure their terms and practices comply with the Regulation. The Regulation prohibits unjustified geo-blocking and certain other forms of geo-discrimination based on customers' nationality, place of residence or place of establishment within EU.

Some goods and services are exempt from the EU Geo-Blocking Regulation, including transport services, audio-visual services, gambling activities and healthcare services, as well as services linked to copyrighted content.

Portability - Following Brexit, the EU Portability Regulation ceased to apply in the UK. This means that online content service providers are no longer required to provide content ordinarily available in the UK to a customer who is temporarily present in any EU member state and online content services provided customers located in the EU do not have to be made available to such customers when they are present in the UK.

Online Dispute Regulation - All EU online retailers must include a link to the EU's ODR platform, managed by the European Commission. The platform is intended to make it simple for consumers to resolve disputes relating to online purchases cheaply and fairly whilst also freeing up precious court time. Following Brexit, UK based businesses and consumers are no longer able to access the platform and so should ensure that they have removed any links to the ODR from their websites. UK based businesses should also, following Brexit, check and update any references to the ODR in their terms and conditions.

Business should refer to the **Government Guidance for DCMS sectors on the UK's exit from the EU**, which includes further and sector specific advice.