



ONLINE TRADING: KEY COMPLIANCE REQUIREMENTS

Businesses and other online providers need to comply with the various statutory requirements that govern the content and functionality of websites when trading online. This note summarises the key information that must be made available on all online trading sites.

INFORMATION TO BE PUBLISHED BY ALL WEBSITE OPERATORS

All businesses which provide online services must make the following information available to users of their services in order to comply with the Electronic Commerce Regulations 2002 and the Provision of Services Regulations 2009 (PSR):

- the service provider's name;
- the service provider's 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 for making complaints and information requests, which must include, a postal address, an email address, and telephone number to allow an individual to contact a service provider directly and effectively;
 - there must be no intermediary; and
 - the response need not be instantaneous but must be within a period of time appropriate to the needs or reasonable expectations of the individual (see **Complaints and Dispute Resolution** below).
- Legal status (e.g. sole trader, partnership or company), corporate entities need to supply their registration number;
- 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 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 the service provider is required to hold professional liability insurance, details about this, its geographical coverage and the insurer's contact details must be provided;
- where applicable, details of any relevant promotional offers and any conditions which must be met to qualify; and
- where applicable, any after sales guarantee which provides more protection that is required by law.

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 all the required information.

Where the service provider makes reference to price, that price must be indicated clearly and unambiguously particularly mentioning whether or not the price is inclusive of tax and delivery costs.

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 and provide effective and accessible technical means for the consumer to identify whether there has been any errors when ordering the product.

Once the order has been accepted or rejected, you must inform the consumer promptly of your decision and ensure that a record is kept of this notification.

TERMS OF USE

Businesses must include a set of terms and conditions on its website in a stable and reproducible form. These terms and conditions should outline (among other things) the information requirements listed above, as well as covering any limitations of liability. If contract terms on governing law and jurisdiction apply these must be provided.

In addition, if the business' website allows for user comments or enables any form of user generated content (i.e. reviews from users of products purchased), the business should have policies in place that enable it to review and/or 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 should they be



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 link to this information should always be visible);
- the trader's address as well as phone number and email address (it is recommended that a link 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.

REGULATED PROFESSIONALS

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.

DISCRIMINATION

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.

Discrimination in the provision of services, goods and facilities in the UK on the grounds of nationality is prohibited under the Equality Act 2010. In addition, the EU Geo-Blocking Regulation 2018 applies to both business to business and business to consumer transactions within the EU. 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. If there is a 'no trade deal' Brexit, the EU Geo-Blocking Regulation will cease to have effect under UK law from the end of the transition period (see **Brexit** below), although it will continue to apply to UK traders who supply goods or services into the remaining EU Member States after Brexit.

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. It used to be the case (pre October 2015) that the rules around unfair terms in consumer contracts only applied to contract terms that had not been 'individually negotiated', but the CRA has removed this qualifications and so the rules apply to all terms between consumers and traders, regardless of the extent of any negotiations.

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

- in 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 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 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

Websites that process personal data are subject to the General Data Protection Regulations (**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 €20 million or 4% of global turnover, whichever is higher, so ensuring compliance is crucial.

The Information Commissioner's Office (**ICO**) has issued new 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 have 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 new ICO guidance.

PRIVACY POLICY

Service providers must include a Privacy Policy on their website to inform users of what personal data they are processing; why, how and for how long their personal data is being processed. The requirements are contained in the GDPR and the Data Protection Act 2018. They 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. 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. For more information on how you can ensure your business complies with data protection laws, Penningtons Manches Cooper offers a GDPR compliance service.

DIGITAL MARKETING

Direct electronic marketing in the UK is governed by both the 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 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 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.

In addition, the Online Dispute Resolution Regulation (ODR) requires that 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. After Brexit, UK based businesses and consumers will no longer be able to access the platform and will need to remove 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.

SLAVERY AND HUMAN TRAFFICKING STATEMENT

The Modern Slavery Act 2015 requires all 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, succinct whilst covering all the relevant points and include 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.

PORTABILITY REGULATIONS

Online content providers must allow their subscribers to access paid-for online content services when they are temporarily in another Member State. To avoid copyright/rights issues arising because of this the consumer is deemed to be consuming the service in their resident Member State.

It does not strictly apply to free content services but providers of these services have the option to "opt in".

WEBSITE ACCESSIBILITY

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.

BREXIT

The UK formally exited the EU on 31 January 2020. While the UK and EU agreed the terms of Brexit, it is still uncertain as to what the future relationship will look like. Many issues will need to be negotiated during the transition period which runs from 31 January to 31 December 2020. During this time, the UK will, for the most part, continue to be treated as if it were an EU member state and as such "business as usual".

In the event that the UK and the EU do not conclude an agreement by the end of the transition period, a 'no trade deal Brexit' is still possible in December 2020.

It can be seen from the above commentary that there are numerous UK laws which come from, or are effected by, EU law. In preparation for Brexit, the UK has passed the European Union (Withdrawal) Act 2018 (EUWA), which establishes the legislative framework for the UK's withdrawal from the EU on Exit day and ensures that most existing EU legislation will become part of the UK's national legislation. This means, as a default position, companies must continue to comply with the rules and regulations set out above.



Uncertainty does exist in that the UK cannot unilaterally replicate EU law aspects which require input from the EU, other member states or rely on EU institutions/agencies. In order to manage the risk of Brexit, businesses should allocate a person (or team) to engage in a structured review of their activities in light of Brexit and should refer to the [UK Government guidance](#) and, in particular should consider:

- the flow of any personal data with EEA member states (EU member states and Iceland, Liechtenstein and Norway);
- the existing agreements with suppliers located in the EU or in jurisdictions which have a trade deal with the EU (in the website compliance context this could be website hosting companies, data analytics providers, cookie tool operators, etc.) and how these agreements may need to be updated;
- the documents currently available on the website (or linked to the website) which reference the EU, EU procedures (such as the ODR platform discussed above) or EU legislation (such as the GDPR), as such references may need to be removed or updated once the UK leaves (the documents may include terms and conditions, website terms, Privacy Policy, cookie policy, etc.); and
- in the longer term, monitoring the UK's divergence from the rest of the EU in terms of compliance and companies will likely need to engage in local law opinions if the company's business relies on EEA involvement.

EU CONSUMER LAW REFORMS

The 2019 [EU Directive on the better enforcement and modernisation of EU consumer rules 2019/2161](#) introduces substantial changes to EU consumer rights laws with a particular focus on protecting consumer rights with regard to online marketplaces and digital services. EU Member States are required to implement the Directive into their national laws by 28 November 2021, with its provisions to take effect from 28 May 2022. The new provisions include requirements for greater transparency with regard to the information supplied to consumers (including with regard to online reviews, endorsements and paid for search

advertising). The Directive also broadens the scope of EU consumer rights so that these apply to free, as well as paid for, digital services, meaning that those providing free cloud or other online service will need to provide certain information (including contract duration and termination conditions) to their users. The Directive also introduces a more onerous penalty and enforcement regime for unfair contract terms and unfair commercial practices, with a fines of up to 4% of annual turnover in the EU Member States concerned.

It is not yet known whether the UK will implement into national law the changes proposed by the Directive. In any event, UK businesses that sell in the EU would be subject to the new EU regime and so will need to understand and prepare for the changes that it brings.

This factsheet is intended to provide a general summary of the law in this area rather than comprehensive guidance or legal advice.

Legal advice should be sought in relation to specific circumstances. The law and practice in this note is stated as at April 2020.

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