KPMG

Protecting your brand

Regulatory and compliance insights for the retail sector to manage reputational risk

December 2018 – Edition 3

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What do your customers care about that may affect your reputation?

Consumers have become more demanding of retail businesses, seeking greater transparency on the way they operate. The rise of the 'conscious consumer' means larger macro-economic issues such as sustainable farming and manufacturing, plastic pollution, and health and wellbeing are increasingly important to their values. How a retailer addresses these themes can impact how consumers perceive their brand, and ultimately, their decision to buy from them.

Energy consumption

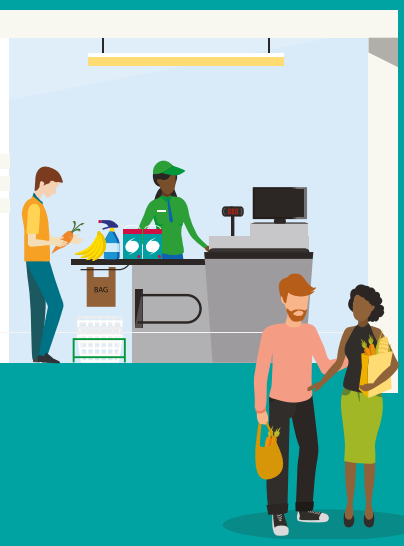
Fridge shelves in grocery stores expend millions of pounds worth of energy. One major supermarket found that their stores accounted for 1% of the whole of the UK's electricity consumption. Half of this came from instore refrigerators[1], a startling proportion that retailers need to be conscious of.

Sustainable fishing

Certain fishing methods are unsafe and cause harm to marine life, severely deplete stock (90% of the world's stocks are now fully or overfished[2]), and put humans at risk of slavery in developing countries. Suppliers and supermarket executives need to ensure that seafood is sourced responsibly to keep consumers shopping with them. Food rating systems and labelling also enable consumers to make informed choices.

1. The Times. *Sainsbury's moves to cut energy consumption*, p 47. 16 November 2017 [Not available online]

2. Nelsen, A (2016) *Global fish production approaching sustainable limit, UN Warns.* The Guardian. Available at: https://www.theguardian.com/environment/2016/jul/07/global-fish-production-approaching-sustainable-limit-un-warns



Deforestation

Timber provides retailers a valuable raw material for packaging, and products ranging from furniture to greeting cards to hairbrushes[3]. But illegal timber sourcing is damaging to the environment, resulting in deforestation, loss of biodiversity and natural habitats for animals. These issues are exacerbated by aggressive land conversion for agriculture, soy and palm oil farming – two ingredients that are found in many of our diets. Retailers need to pay close attention to their supply chain to identify areas to reduce deforestation and promote sustainability.

Fair trade

Over 75% of people living in rural areas in developing countries earn less than one dollar a day[4]. Fair trade requires retailers to pay sustainable prices to farmers and workers in Less Economically Developed Countries (LEDCs), ensuring better prices, improved working conditions, higher living standards, and local sustainability[5].

Plastic pollution

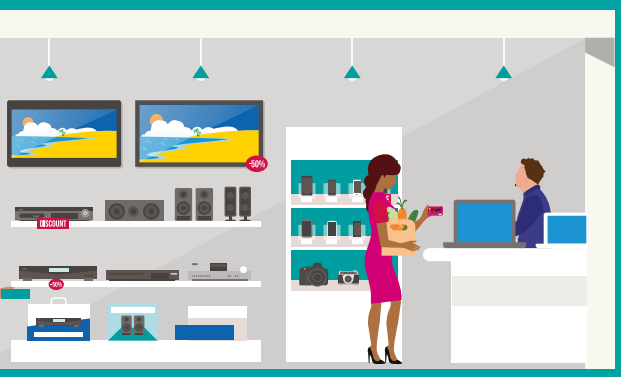
Since the 5p charge for plastic carrier bags was introduced in 2015 (for retailers with 250 or more employees), the number of bags used by consumers has dramatically decreased by more than 80% in England[6]. It's clear that sustainability is increasingly at the heart of what consumers value. Less plastic in circulation means that marine life is safer, communities are cleaner, and less plastic is being dumped in landfill sites. However, plastic bottles and disposable coffee cups also pose threats to environmental protection, and retailers have a big part to play in managing their production, recycling and disposal.

3. Marks and Spencer (2018) *Protecting Forests*. Available at: https://corporate.marksandspencer.com/plan-a/our-approach/business-wide/natural-resources/protecting-forests

4. Fairtrade Asia Pacific (2018) *Advantage Fairtrade*. Available at: http://www.fairtradenapp.org/about-fairtrade/advantage-fairtrade/

5. Fairtrade foundation (2018) *What fairtrade does*. Available at: http://www.fairtrade.org.uk/What-is-Fairtrade/What-Fairtrade-does

6. Department for Environment, Food & Rural Affairs (2018) *Carrier bags: why there's a change*. Available at: https://www.gov.uk/government/publications/single-use-plastic-carrier-bags-why-were-introducing-the-charge/carrier-bags-why-theres-a-5p-charge



Modern slavery

The Modern Slavery Act requires retailers, with an annual global turnover of at least £36 million operating in the UK, to publish an annual statement describing what they have done to ensure modern slavery and human trafficking are mitigated from their supply chain. While there's no formal financial penalty for failure to comply, the reputational impact can have serious consequences, potential loss of customers and loss of profit. The Government aims for stakeholder pressure to force compliance along the supply chain in a waterfall effect[7].

Consumer credit

The number of new store and credit card accounts opened tends to peak during and shortly after the Christmas shopping period[8]. However, retailers are increasingly under the microscope when it comes to responsible lending. More light is being shed on the high interest rates they carry, the fact that young people are being targeted, and that store cards are being mis-sold by untrained sales assistants who lack financial expertise[9].

Corporate citizenship

The link between corporate value and economic and societal value is strengthening. Understanding the value that individual companies, initiatives and events create for the economy and society as a whole is becoming increasingly important for consumers, employees and investors. It is also of interest to broader stakeholders, such as the Government and regulators, especially where funding, policy changes or other forms of support are under consideration.

7. KPMG (2016) Modern slavery and human trafficking statement. Available at: https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/01/modern-slavery-statement.pdf

8. Loudenback, T (2017) *Store credit card applications skyrocket around Black Friday – but the discounts they offer come with a catch* [Business Insider]. Available at: http://uk.businessinsider.com/black-friday-store-credit-cards-2017-10

9. The Modern Advice Service (2018). *A guide to store cards.* Available at: https://www.moneyadviceservice.org.uk/en/articles/store-cards-explained

How well do you understand the regulatory impact on your reputation?

Regulations are continually evolving to protect consumers, safeguard employees, boost local and international economies, and protect retail businesses themselves. But as the cost of non-compliance shoots up, retailers need to keep up to date with the latest regulatory developments to manage reputational and financial risk. Here's what you need to know.

Regulation or guideline	Senior Accounting Officer Regime	Groceries Supply Code of Practice (GSCOP)	UK Bribery Act 2010	Right to Work
Implementation date	Financial years that begin on or after 21 July 2009	February 2010	1 July 2011	15 May 2014
Impact on your business	Qualifying retailers must notify HMRC of the name of their Senior Accounting Officer (SAO). They must also provide a certificate to HMRC by the filing deadline, documented tax policies and procedures, a tax governance framework, a risk register, and conduct regular assurance checks to avoid financial penalties.	The Groceries Supply Code of Practice (GSCOP) was introduced to regulate the way retailers manage their relationships with their direct suppliers, preventing them from transferring excessive risk and unexpected costs. Currently 12 large grocery retailers are GSCOP regulated.	The UK Bribery Act 2010 was enacted to tackle bribery and corruption, placing the accountability on companies to try and prevent these behaviours. The regulation applies to acts of bribery committed anywhere in the world by companies incorporated in the UK.	Before hiring a new recruit, all businesses must undertake a 'right to work' check to ensure that the prospective employee is entitled to work in the UK.
Key challenges to ensure compliance	– Retailers need to consider whether their existing tax governance framework meets the current HMRC expectations, and must be able to evidence implementation of the requirements above on request.	– Understanding the code and how it affects your organisation. – Ensuring the person responsible has the correct knowledge to safeguard your organisation from unfair dealing.	– For some companies, effective due diligence procedures including policies and training programmes, and ongoing monitoring pose a huge challenge, particularly those with a vast network of third party agencies that they transact with.	– Companies don't always know which documents can be accepted and will constitute as a compliant check as many different types can be supplied as proof of right to work. – Requirements in relation to EU nationals working in the UK may also change due to Brexit with increased resourcing needed in HR departments to manage the transition.

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UK Modern Slavery Act 2015

October 2015

The UK Modern Slavery Act 2015 (MSA) requires businesses to prepare a modern slavery and human trafficking statement demonstrating their commitment to address these issues. Non-compliance can lead to 'naming and shaming' by the Government, reputational and financial damages.

- Few MSA statements report in detail as companies struggle to understand their complex supply chains, comply with competing regulatory demands, get internal and external buy-in to implement programmes to combat modern slavery, and find the balance between the commercial and compliance aspects of their organisation's responsibilities.

Country by Country Reporting

18 March 2016 (Accounting periods commencing on or after 1 January 2016)

Country by country reporting is a UK statutory requirement for UK-headed multi-national businesses to report certain revenue, taxes paid and capital to HMRC. This allows assessment of any international tax risks and there are penalties for non-compliance.

- Gathering the correct information can be time consuming.
- Once the correct information has been prepared, it is important to consider how the data may be interpreted by HMRC (and other overseas tax authorities).
- Potential risk areas and possible mitigation strategies need to be identified.

National Living Wage (NLW) & National Minimum Wage (NMW)

1 April 2016

The NMW and NLW are the statutory minimum pay per hour regulations that almost all workers are entitled to depending on age. The NLW is obligatory for workers aged 25 and above, and the NMW starts at age 16. It is against the law for employers to pay workers less than the NMW or to falsify payment records.

- Making sure all workers are on the correct rate of pay.
- Setting up payroll systems correctly.

Tax Strategy Publication

24 June 2016 (Accounting periods starting on or after 15 September 2016)

Large businesses are required to publish their tax strategy on their website on an annual basis. The legislation is designed to provide more transparency concerning the UK tax arrangements of businesses to the public, HMRC and other stakeholders.

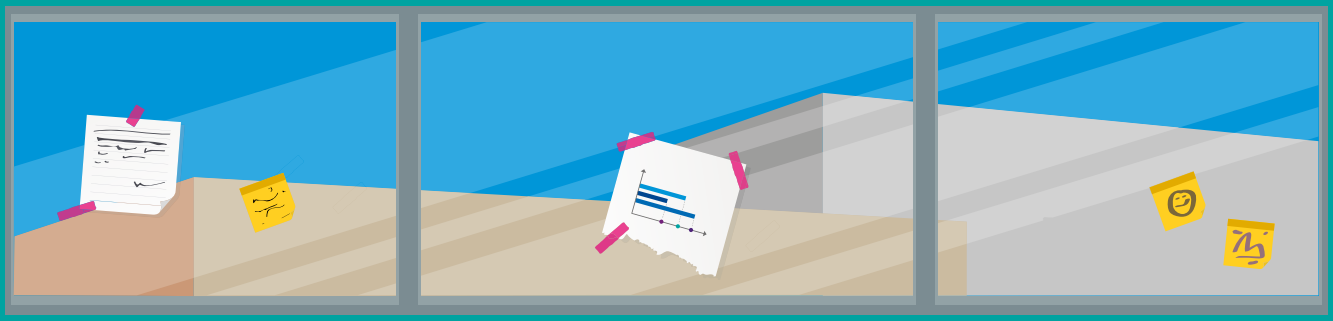
- Predicting how the strategy could be interpreted by the public, and the impact this could have on brand perception.
- Drafting a strategy that meets the legal requirements of the legislation whilst still adopting the public tone and style of the business.
- Ensuring that the contents accurately reflect the reality of the business and can be articulated to HMRC if required.

Gender Pay Gap Reporting

22 February 2017

In April each year, any organisation with more than 250 employees in the private, public and voluntary sectors is required to report its gender pay gap. Failure to do so may have negative implications on recruitment practices, remuneration policies, employee relations, talent retention and public reputation.

- Using data to identify the cause of any gaps.
- Implementing a new reporting system.
- Reviewing staff remuneration and employee benefits.
- Reviewing recruitment policies and managing reputation with candidates.



Apprenticeship Levy

6 April 2017

All UK employers with a wage bill greater than £3 million will be subjected to an Apprenticeship Levy of 0.5% of their total pay bill. This can only be used to fund the training of the employer's apprentices. However, it is possible to share unspent Levy funds with your supply chain. Any unspent funds expire after 24 months.

- Attracting and retaining talent and increasing diversification through apprenticeship programmes.
- Considering the impact of digitalisation on your organisation and designing apprenticeship training to address the skills shortages.
- Offsetting the costs of existing training programmes by aligning or replacing with new schemes.

Payment Practices and Performance Reporting (PPPR)

6 April 2017

PPPR regulation requires large companies to report on their payment practices, policies and procedures and present statistics on actual payment performance to help ensure fair treatment of suppliers. Results are publicly available allowing for peer to peer comparison.

- Interpretation of legislation and application to specific companies can be complicated.
- PPPR requires detailed analysis of transactional level data which many companies may not have undertaken previously.
- Significant PR and reputational risk may be increased for companies who are adverse outliers in performance when benchmarked against peers.

Money Laundering Regulations 2017

26 June 2017

All luxury goods retailers and sole traders who make or receive payments in cash of €10,000 must register with HMRC for anti-money laundering and counter terrorist financing supervision. They must also implement policies and procedures to help prevent financial crime or risk prosecution.

- Conducting risk assessments to identify potential areas of financial crime.
- Developing or enhancing financial crime policies, controls and procedures including due diligence checks, reporting suspicious activity and providing guidance and training to staff to ensure compliance.

OECD Transfer Pricing Guidelines

July 2017

The revised Transfer Pricing Guidelines were released by the Organisation for Economic Co-operation and Development (OECD) in July 2017.

For retailers that operate globally, the profits returned in the OECD's member countries must accurately reflect the value generated by those local operations.

- Ensuring that tax models and transfer pricing policies keep pace with business change, especially where the relative value or the location of key functions change.

Corporate Criminal Offence (CCO)

30 September 2017

Under Corporate Criminal Offence (CCO) legislation, corporates are subject to prosecution if their employees, contractors or other 'associated persons' facilitate tax evasion by a third party, for example, a customer or supplier. They must also have 'reasonable procedures' in place to prevent that facilitation.

- Understanding the risk that an associated person could facilitate tax evasion whilst acting on their behalf.
- Evaluating the extent to which these risks are mitigated by existing controls.
- Addressing any gaps that are identified.

IFRS 15

1 January 2018

The new revenue standard, IFRS 15, will impact the timing of revenue recognition, treatment of payments to distributors and retailers, and systems and processes for data collection.

- For many companies, the length and complexity of the implementation phase has posed a huge challenge. They may also face public scrutiny for failure to comply.

Defined Contribution Pension Schemes

6 April 2018

This is a statutory requirement for auto enrolment pension schemes to increase minimum employer contributions to 2% of qualifying earnings, with an increase to 3% in April 2019. Employee contributions will also increase to 3% in 2018 and 5% in 2019 where the employer is only paying the minimum.

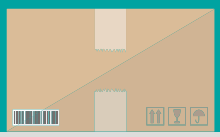
- All open pension schemes will need to satisfy the minimum requirement.
- Businesses will need to manage the impact of the cost increase to their organisation and employees. Salary sacrifices may be incurred to offset the costs, and some employees may opt out of the pension scheme altogether.

Soft Drinks Industry Levy

6 April 2018

Companies that produce, package or import soft drinks into the UK with added sugar will need to register for the Soft Drinks Industry Levy, informally known as the 'Sugar Tax'. The revenue will be invested to enable retailers to help decrease rather than add to the level of obesity in the UK.

- Companies may choose to reformulate their products to reduce the sugar content, for example through recipe changes or resizing portions to reduce the impact of this levy.
- Prices may also need to be revised for products whose sugar content remains above the threshold.



Minimum Unit Pricing

1 May 2018

Minimum Unit Pricing (MUP) legislation came into effect in Scotland to combat rising levels of alcohol misuse. All products containing alcohol must have a minimum price of 50p per unit. Any entity with a licence to sell alcohol in Scotland is affected except wholesalers who conduct trade-to-trade business only.

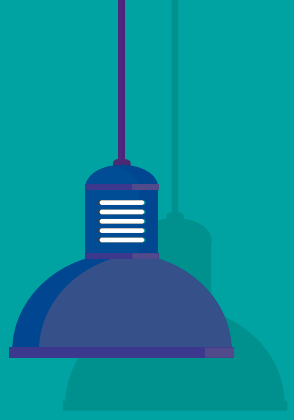
- Although MUP is currently only applicable in Scotland, the legislation is considered a test case for the rest of the UK which may see similar regulation enforced in the future.

General Data Protection Regulation (GDPR)

25 May 2018

GDPR is designed to increase privacy for EU residents and give them more control over how businesses use their personal information. Their personal data must be gathered and processed in line with regulatory requirements, and businesses may be restricted on which personal data they can continue to use.

- Retailers may have a limited understanding of their level of exposure to data breaches, and therefore risk significant fines for failure to comply with GDPR.
- They may also have low visibility of how consumer data is managed in their organisation, and/or lack the right operational processes, systems and tools to manage it in a compliant way.



IFRS 16	E-Privacy Regulation	Making Tax Digital	IR35	Digital Services Tax
1 January 2019	Still undergoing the legislative process. Agreement likely in 2019/2020.	April 2019	6 April 2020	April 2020
IFRS 16 will require companies to bring most leases on-balance sheet from 1 January 2019. Failure to comply with the new requirements could lead to a qualified audit opinion and public scrutiny.	The new EU E-Privacy Regulation will update the existing regime, covering cookies, analytics, direct marketing and allowing for technological developments and alignment with GDPR. Companies could be fined up to 4% of global turnover or €20m, whichever is higher, for non-compliance.	Making Tax Digital (MTD) is one of the HMRC's key strategic priorities, with the aim of transforming and modernising how tax is reported and managed. Any entities with a UK VAT registration will be affected and face penalties for late filing or non-submission.	Businesses who engage self-employed contractors using their own personal service company (PSC) – an intermediary – must now determine whether they are subject to the same tax and national insurance contributions as an employee providing the same service directly.	Digital Services Tax is a proposed 2% tax on revenues derived from certain digital activities. Retailers that derive revenues from UK users from social media platforms, digital marketplaces and/or search engines will be affected.
– Measuring the new lease liabilities and leased assets will be a real challenge for retailers who have hundreds, or even thousands, of lease contracts. – This is not just an accounting change, key financial metrics such as EBITDA, EPS and net debt will also change and new systems and processes will be required.	– Retailers may need to review the extent to which they can rely on their existing records of 'soft opt-ins' for future marketing. – Customer consent will still be required in respect to data stored on user's terminals, such as by means of 'cookies'. – Customers may also need to be advised at regular intervals of their right to withdraw consent.	– The new requirements demand businesses to implement technology to communicate directly with HMRC's systems via an application programming interface. Further requirements also include digital record keeping and a complete digital audit trail from source system to return.	– Establishing key stakeholders with responsibility for engaging labour, and delivering training on new requirements. – Identifying relevant engagements and assessing their exposure to issues with quality, cost and performance as a result of potential changes to the workforce composition.	– Determining whether any part of your business may be subject to DST when it comes into effect. – Calculating the amount of revenue linked to UK users.

How important is your reputation?

Reputational risk remains important for all businesses as highlighted by KPMG's UK CEO Outlook Survey, with brand and reputation a top five factor that CEOs expect to impact their business growth over the next three years. For retail and consumer goods executives in particular, consumer trust and loyalty rank as top business concerns.

We're seeing the regulatory landscape in retail continue to change, and quickly. And although regulations are being enacted to safeguard retail businesses, suppliers, customers, and society more broadly, they are growing in numbers and rigour, adding increased complexity and cost pressures to the sector. The cost of non-compliance is mounting up, often resulting in severe financial penalties. There are also guidelines that retailers are expected to adhere to, and although these may operate within a more relaxed financial penalty framework, they can't be ignored as reputational damage can still be incurred.

Furthermore, retailers have been struggling to keep pace with rising customer expectations. Consumers have become more demanding of retail businesses, seeking greater transparency on the economic, environmental and societal impact caused by their everyday actions as issues such as sustainability, climate change and pollution, for example, are increasingly at the forefront of their minds. Failure to address these areas can negatively affect a retailer's reputation. And as social media continues to widen the sphere of influence, negative customer comments can spread rapidly and result in reduced sales.

We recognise that retailers are being challenged. You're having to rethink the way you do business to respond to the regulators and satisfy consumers at the same time. But at KPMG, we're committed to helping you adapt your approach to grow profitability in a compliant way. That's why we've produced a third edition of this brochure to provide you with the critical regulatory information and consumer insight that you need to know to manage your reputation and financial performance.

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Brand risk is now a top **5** factor that UK CEOs expect will impact their business growth over the coming years[10]

72% of UK CEOs invested highly in regulation in 2017, and this is set to continue[10]

Customer-centric organisations are **38%** more likely to report greater profitability that their competitors[11]

Only **40%** of CEOs in the UK see the protection of customer data as their personal responsibility

The cost of non-compliance

Retailers and brands could face large monetary penalties for non-compliance. Examples include:

- Corporate Criminal Offence
- General Data Protection Regulation
- Gender Pay Gap Reporting
- Money Laundering Regulations 2017
- Right to Work
- Payment Practices & Performance reporting

See more detail overleaf.

10. https://home.kpmg.com/uk/en/home/insights/2018/05/uk-ceo-outlook-survey-2018.html
11. https://www.nunwood.com/excellence-centre/publications/global-cee-analysis/global-customer-experience-excellence-analysis

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