

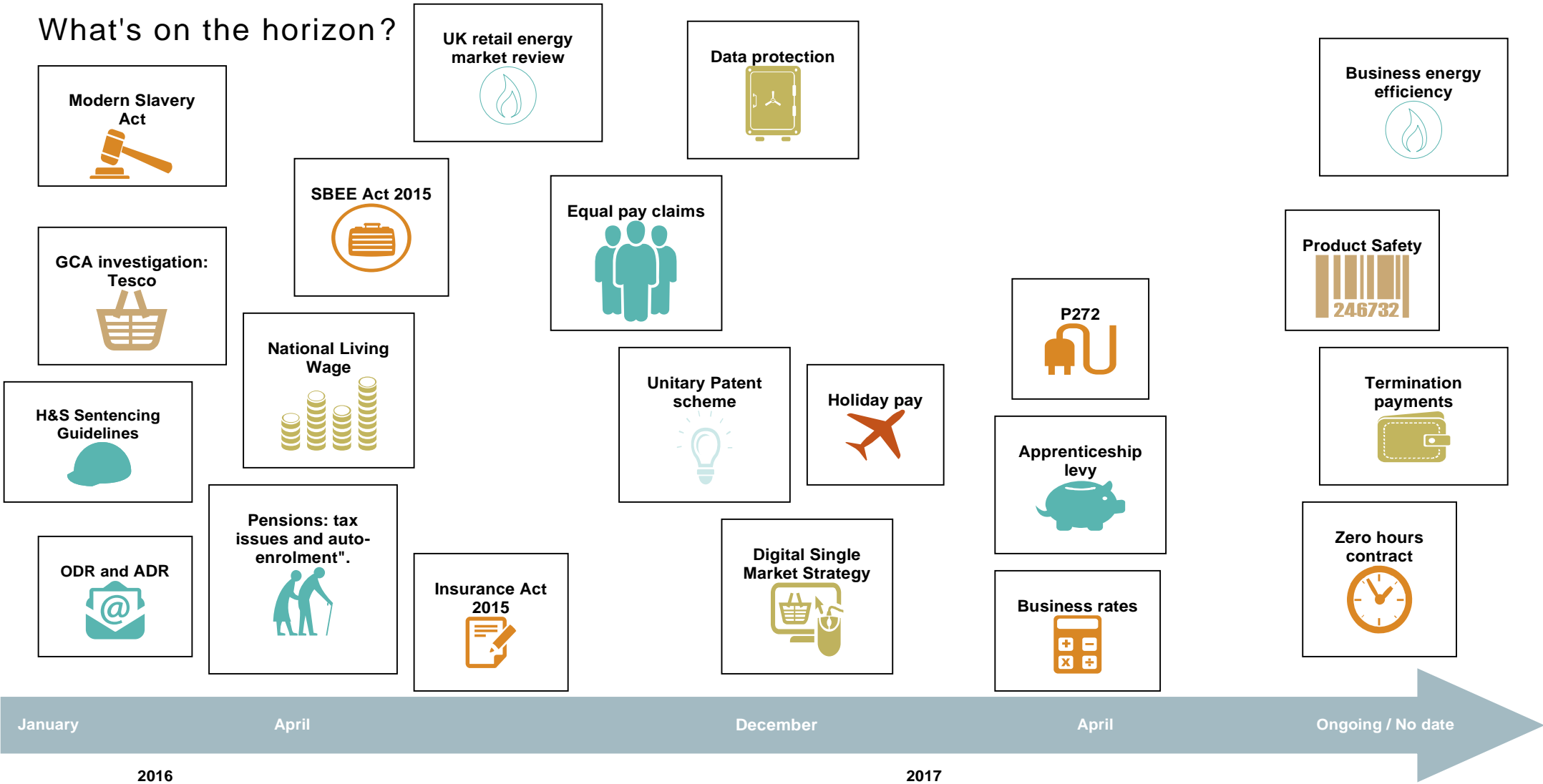
April 2016

# RETAIL & CONSUMER IN 2016 - WHAT'S ON THE HORIZON?



# RETAIL & CONSUMER IN 2016

What's on the horizon?



NO.	ISSUE	CONSEQUENCES AND POSSIBLE ACTIONS	TIMELINE	IMPACT LEVEL
1	<p><b>Online Dispute Resolution (ODR) and Alternative Dispute Resolution (ADR)</b></p> <p>The UK government has published the principal legislation that will implement the ADR Directive and the ODR Regulation, both of which are designed to promote the use of ADR schemes in order to resolve disputes across the EU (both domestic and cross border) between consumers and businesses.</p> <p>It is hoped that by providing consumers with quick, easily accessible and low cost ADR mechanisms via the ADR Directive and ODR Regulation, consumers will have greater confidence that any problems they encounter with businesses based abroad can be resolved. The aim is that this will lead to consumers being more willing to purchase goods and services from across the EU, driving competition and economic growth.</p>	<p>In practice it is likely to require a review of consumer-facing terms and conditions and also preparatory thought about whether and if so how to engage with a consumers through an ADR processes and with a potential increase in requests to do so.</p>	<p>From 15 February 2016:</p> <ul style="list-style-type: none"> <li>▶ Businesses selling goods or services online must include on their website a link to the EU Commission's ODR Platform (as must all online marketplace websites).</li> <li>▶ Online traders who are committed to using ADR must provide information about the ODR Platform in their contractual terms with consumers. The ODR platform is an online platform which will facilitate communications between the parties and a certified ADR provider in the event of a dispute arising from an online transaction.</li> <li>▶ The ODR platform became operational on 15 February 2016 and will be made accessible in stages.</li> </ul>	Medium
2	<p><b>Health &amp; Safety Sentencing guidelines</b></p> <p>The purpose of the new guidelines is to ensure that companies take their health and safety responsibilities seriously, highlighting that any fine must be sufficiently substantial to have a "real economic impact" on the organisation, to bring home to both management and shareholders the need to comply with health and safety legislation.</p>	<p>Higher fines for companies are inevitable, irrespective of size. Furthermore, individuals are now covered by the guidelines and guidance is given to the length of custodial sentences.</p> <p>In determining an appropriate fine, courts will consider the seriousness of the harm (looking at the risk and likelihood of the harm occurring and not purely the resulting injury) and the culpability of a company/individual, together with turnover and profitability of an organisation to determine the correct sentencing category.</p>	<p>The guidelines will only to sentences after 1 February 2016 (irrespective of the offence date).</p>	High

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3	<p><b>GSCOP: the GCA investigation into Tesco</b></p> <p>In January 2016 the Groceries Code Adjudicator (GCA), Christine Tacon, published her final report following her investigation into Tesco. The GCA joined the SFO and FRC in investigating Tesco, following accounting irregularities and accusations of supplier mistreatment.</p> <p>The GCA found that Tesco had seriously breached binding requirements of the Groceries Supply Code of Practice (GSCOP) that require it to pay suppliers in accordance with contractual terms and in any event within a reasonable time.</p> <p>The GCA required Tesco to introduce significant changes to the way it deals with payments to suppliers, including stopping Tesco from making unilateral deductions from money owed to suppliers, requiring it to pay for goods delivered in accordance with agreed terms, promptly resolving data input errors, and providing transparency and clarity in its dealings with suppliers. In addition, Tesco's buyers and finance teams must be trained on the findings of the investigation.</p> <p>The GCA found no evidence that Tesco had breached GSCOP by directly requiring suppliers to make payments to secure better positioning or increased shelf space. However, the GCA found evidence of practices that may amount to an <u>indirect</u> requirement for payments to secure better positioning or increased shelf space. The GCA intends to launch a consultation on this issue.</p> <p><b>GSCOP: other developments</b></p> <p>Separately, the GCA continues her focus on her "Top 5" issues, which has included publishing a best practice statement on forecasting following a review of retailer practice.</p>	<p>It will take time to assess the impact of the effectiveness of the GCA's recommendations to Tesco, although Tesco is already understood to be making efforts to improve GSCOP compliance. The GCA has also held a number of seminars for suppliers to explain the findings.</p> <p>The GCA was limited in the enforcement actions she could take against Tesco – she could only make recommendations or require information to be published, as the power to fine relevant retailers only applies to breaches of GSCOP that occurred from 6 April 2015 onwards. The consequences of the Tesco report therefore should not be seen as a blueprint for how future investigations may be concluded – fines cannot be ruled out in future.</p> <p>The results of the SFO process are still eagerly anticipated and it will be very interesting to see how they are received by the industry and press, particularly as compared to the GCA's report.</p>	<p>Whilst the GCA has now published the final report into Tesco, the SFO continues its own investigation into Tesco's conduct, a process that is likely to require supplier engagement, and one which may have significant implications for Tesco.</p> <p>Suppliers should also be aware that the GCA may seek information from them in relation to her consultation on indirect requirements for better positioning or increased shelf space.</p>	Medium
4	<p><b>Modern Slavery Act</b></p> <p>The Modern Slavery Act 2015 consolidates offences relating to trafficking and slavery and includes a provision (section 54) for large businesses to publicly state each year what action they have taken to ensure their supply chains are slavery free.</p>	<p>All companies with a business operating in the UK and a turnover of over £36m will be required to make a slavery and human trafficking statement setting out the steps which the company is taking in order to ensure that slavery and human</p>	<p>On 26 March 2015, the Modern Slavery Act 2015 received Royal Assent.</p> <p>Section 54 came into force on 29 October 2015.</p> <p>With effect from 31 March 2016 businesses</p>	Low/Medium

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		<p>trafficking are not present in its own organisation or supply chain. Parent companies are not able to publish statements which cover all of their subsidiaries, rather, it is a requirement that each company within a group that operates a business in the UK and has a turnover of at least £36m, publishes its own statement.</p>	<p>must comply with section 54.</p>	
5	<p><b>Abolition of CRC and increase in CCL</b></p> <p>The CRC energy efficiency scheme will close and organisations will report under the CRC for the last time in July 2019, with a surrender of allowances by the end of October 2019. To recover the revenue lost from abolishing the CRC, the main rates of Climate Change Levy (CCL) will increase from April 2019.</p>	<p>In the 2015 Summer Budget, the Chancellor announced a review of the business energy efficiency tax landscape with a view to simplifying the overall regime and HM Treasury issued a consultation on 28 September 2015. <a href="#">for more details. The Government's response</a> was published alongside the March 2016 Budget. Instead of the CRC, there will be a simplified reporting framework which the Government will consult on later this year; and the rates of CCL will increase from April 2019 and the fuel rates will be 'rebalanced' from 2.9:1 electricity : gas to 2.5:1, ultimately reducing to 1:1 by 2025, to incentivise businesses to reduce their gas use.</p>	<p>April 2019</p>	<p>Medium</p>
6	<p><b>Small Business, Enterprise and Employment Act 2015</b></p> <p>Section 78 of the Equality Act 2010 enables the government to make regulations requiring employers with over 250 employees to publish their gender pay gap. However, no regulations have been made to date.</p> <p>Section 147 of the Small Business, Enterprise and Employment Act 2015 requires the government to make regulations (under section 78 of the EqA 2010) requiring private and voluntary sector employers with at</p>	<p>Employers should consider now how they will approach gathering the relevant data. It will be key to identify people with a good understanding of equal pay principles and law and who have the skills to collect and analyse the data. Training and resources may need to be made available to complete the exercise.</p>	<p>The draft regulations were open for consultation until 11 March 2016. It is intended that they will come into force on 1 October 2016.</p> <p>The regulations will require employers to calculate gender pay gaps using data from a specific pay period every April from 2017.</p>	<p>Medium</p>

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	<p>least 250 employees to publish information about their gender pay gap within 12 months of the Act coming into force.</p> <p>In July 2015, the Government published a principles-based consultation seeking views on the key points of detail of the new gender pay reporting regime, which closed on 6 September 2015. On 12 February 2016, the response was published together with a follow-up consultation and the draft Equality Act 2010 (Gender Pay Gap Information) Regulations 2016, which set out the framework reporting requirements.</p> <p>Under current draft regulations, employers with 250 or more employees will have to publish: (i) mean and median overall pay gap figures (including bonus, commission, LTIPs and the cash value of shares); and (ii) mean bonus gap figures on an annual basis. In addition, affected employers must also publish the numbers of men and women paid across salary quartiles within their business and the proportion of men and women who received a bonus payment within a 12-month period.</p>	<p>Although the first reporting deadline is some time away, it would be advisable for employers to begin gathering data and calculating the figures now. This will allow businesses to understand what they are dealing with and consider what remedial steps to put in place now in order to reduce the gap by the reporting deadline.</p>	<p>Employers will initially produce a preliminary "data snapshot" by 30 April 2017. Full reports will not need to be produced until 30 April 2018.</p>	
7	<p><b>National Living Wage</b></p> <p>The National Living Wage (NLW) is essentially a higher rate band of the existing National Minimum Wage (NMW) for those aged 25 and over. The government set the first premium in April 2016 at 50p above the NMW, making the current NLW £7.20 an hour.</p> <p>The Government has asked the Low Pay Commission to continue to monitor, evaluate and review the levels of each of the different NMW rates (including the NLW) and make recommendations on any increases from October 2016. The Government's initial target for the NLW is for the total wage to reach 60% of median earnings by 2020, with the NLW expected to rise to £9.00 per hour by 2020.</p>	<p>The penalties for not paying the NLW are more severe than the penalties under the previous NMW regime. A specialised unit of HMRC has been established in order to track down offending employers and the penalty for non-compliance has been raised from 100% of arrears to 200% (although this will be halved if employers pay within 14 days). The overall maximum penalty of £20,000 per worker remains unchanged.</p> <p>Further, in addition to the previous "naming and shaming" powers, the new regime has also introduced an additional deterrent where HMRC have the power to disqualify offending company directors for up to 15 years.</p>	<p>The National Minimum Wage (Amendment) Regulations 2016 came into force on 1 April 2016 bringing the NLW into effect.</p> <p>The NLW rate applies to any pay allocated on a monthly reference period starting on 1 April 2016. If a pay reference period starts and ends either side of 1 April 2016, employers will need to look at the rate that applied at the start of the pay reference period and pay that rate for the relevant period.</p> <p>Where previously the rates were reviewed in October each year, the government has also announced that all NMW rates will be updated in parallel, each April, starting in 2017.</p>	Medium

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8	<p><b>Pensions auto-enrolment: increase in minimum contribution rates; automatic re-enrolment</b></p> <p>From April 2018 the minimum rate of pension contributions that must be paid to comply with automatic enrolment legislation will increase with the start of the "second transitional period" under the automatic enrolment regime. Where an employer makes pension contributions calculated by reference to "qualifying earnings" under the legislation, the minimum rate of employer contribution will rise from 1% to 2%. Where the employer pays at this minimum rate, employee contributions (inclusive of tax relief) will need to rise from 1% to 3%.</p> <p>The second transitional period was due to start in October 2017, but in his 2015 Autumn Statement the Chancellor announced that it would be delayed until April 2018 to align with the tax year.</p> <p>The auto-enrolment regime requires employers to go through a re-enrolment exercise every three years. The date by which such an exercise is required will vary according to when the requirement to auto-enrol first applied to the employer (which broadly will have been determined by the size of the employer's workforce). Many large employers will hit their re-enrolment date some time during 2016.</p>	<p>Employers should consider whether their existing pension arrangements will still be compliant with auto-enrolment legislation from April 2018, and if not, consider what steps will need to be taken to ensure they are compliant by that date.</p> <p>Employers should consider the cost impact of any contribution increase, taking into account the impact of the National Living Wage (see previous item).</p> <p>Employers should plan for and implement automatic re-enrolment if applicable.</p>	<p>April 2018 for the increase in minimum contributions.</p> <p>Date on which automatic re-enrolment required will vary depending on when employer first became subject to automatic enrolment regime.</p>	Medium
9	<p><b>Changes to pension tax relief</b></p> <p>Changes to the regime for tax relief:</p> <ul style="list-style-type: none"> <li>▶ the annual allowance (the maximum amount of tax-relieved pension saving which an employee can make each year) will reduce on a gradual or "tapered" basis for high earners with "adjusted income" deemed to be more than £150,000 – unless their "threshold income" is less than £110,000. Adjusted income includes the value of any employer pension contributions, but threshold income generally does not</li> <li>▶ the lifetime allowance (the limit on the value of all of an employee's tax approved pension benefits which can be built up during their lifetime without incurring a tax charge) is reduced from £1.25m to £1m. However, it will be index-linked from 6 April 2018, rising in line with inflation (using CPI, the "consumer prices index"); and</li> </ul>	<p>Employers may want to think about ways to mitigate the impact of these changes and how best to communicate them to pension scheme members, particularly any high earners and senior staff that might be impacted. One possible option may be to introduce a right for affected members to receive cash in lieu of pension.</p>	6 April 2016	Medium

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	<p>► two new forms of protection against the lower lifetime allowance will give those who have already got pension savings worth £1m or more an opportunity to protect their benefits. "Fixed protection 2016" and "individual protection 2016" are similar to the fixed and individual forms of protection introduced in 2014 when the lifetime allowance was last reduced.</p>			
	<p><b>VAT on pension scheme costs – end of transitional period</b></p> <p>HMRC has removed the concession that has been in operation for many years, under which VAT on certain fees (eg administrator fees) incurred in connection with running a pension scheme can be treated as VAT paid by the employer for the purposes of its VAT return, notwithstanding that the fees have technically been incurred by the trustees. The removal of the concession is subject to a transitional period which ends on 31 December 2016.</p>	<p>The removal of the concession leaves schemes facing a possible increase of 20% in running costs from 1 January 2017. Subsequent communications from HMRC have set out various possible mechanisms for mitigating the impact of the removal of the concession. However, such communications have been somewhat unclear, and HMRC is expected to issue further communications on the subject before the end of the transitional period.</p> <p>Employers and trustees should consider how the operating costs of their pension scheme may be affected by this issue, and whether to take measures to mitigate the effect.</p>	<p>1 January 2017</p>	<p>Medium</p>
<p>10</p>	<p><b>CMA's final report into UK retail energy market review published, along with final remedies.</b></p> <p>Proposed remedies include introducing a new standard condition to electricity licences to require that variable transmission losses are priced on the basis of location; and giving Ofgem more "teeth".</p>	<p><a href="#">See our article</a> for more details. The deadline has now been extended to 25 June 2016.</p> <p>The CMA published its provisional remedies in March 2016 and <a href="#">this article</a> gives details.</p>	<p>June 2016</p>	<p>Low</p>
<p>11</p>	<p><b>Insurance Act 2015</b></p> <p>The Insurance Act 2015 will come into force on 12 August 2016.</p>	<p>The Act will affect the rights of policyholders/insured's under product liability, D&amp;O, E&amp;O, financial lines,</p>	<p>12 August 2016</p>	<p>Low</p>



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	<p>The Act is the first major overhaul of business insurance law since the 1906 Marine Insurance Act and the changes will affect all Retail &amp; Consumer businesses.</p>	<p>business interruption and cyber insurance policies (to name but a few). Insurance is crucial to R&amp;C businesses as it provides protection from the impact of adverse events. Put simply, the Act will strengthen the policyholders'/insureds' position by making it harder for insurers to reject claims and deny insurance coverage. See our <a href="#">article</a> for more information on the changes it will bring.</p>		
12	<p><b>Product safety and market surveillance regulations</b></p> <p>The proposed European regulations are to simplify the existing legislation to improve product identification and traceability, as well as the process by which authorities check product safety.</p>	<p>There may be new obligations on manufacturers including a requirement to label product, packaging or accompanying documentation with the place of origin.</p>	<p>These proposals have been adopted by the European Parliament but are yet to be approved by the European Council.</p>	Medium
13	<p><b>Digital Single Market Strategy</b></p> <p>The European Commission is continuing to develop its Digital Single Market Strategy which comprises of 16 key action points encompassed under three pillars:</p> <ul style="list-style-type: none"> <li>▶ better access for consumers and businesses to digital goods and services across Europe</li> <li>▶ creating the right conditions and a level playing field for digital networks and innovative services to flourish</li> <li>▶ maximising the growth potential of the digital economy.</li> </ul> <p>As one of the first initiatives in its Digital Single Market Strategy, the Commission published proposals for a new Regulation on the cross-border portability of online content services, a Directive on contracts for the supply of digital content, and a Directive on aspects of e-commerce and distance selling of goods.</p>	<p>The next year or so may well dictate the regulatory approach to e-commerce in the retail sector.</p>	<p>The roadmap for the initiative includes measures in the area of parcel delivery and reviews of the Regulation on Consumer Protection Cooperation and the e-Privacy Directive in 2016.</p> <p>As part of the same EU Strategy, the House of Lords EU Internal Market Sub-Committee launched an inquiry into online platform regulation, and has heard evidence from Amazon, Etsy, Google and Airbnb amongst others. It plans to publish its report in Spring 2016.</p> <p>The Commission will publish its initial report on the e-commerce sector for consultation in mid-2016, and final report in 2017.</p>	Medium

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14	<p><b>Taxation changes to termination payments</b></p> <p>From July 2015 to October 2015, the Government ran a consultation on reforming the income tax and national insurance exemptions for termination payments with the aim of (1) giving employees certainty about the amount of money they will receive when they lose their jobs (2) simplifying the current position making administration easier for employers and HMRC and (3) tightening the termination payment rules to prevent manipulation.</p> <p>Although a full summary of the responses and a consultation on the draft legislation is expected later in 2016, the Chancellor has already announced a number of changes in the Budget 2016 including that:</p> <ul style="list-style-type: none"> <li>◆ all payments in lieu of notice (regardless of whether they are contractual or not) will be subject to income tax and NICs in the same way as other payments of earnings;</li> <li>◆ the rules will be tightened to ensure that certain contractual payments cannot be paid as damages (instead such payments will be treated as earnings and subject to tax and NICs);</li> <li>◆ the current exemption for foreign service will be removed; and</li> <li>◆ alignment of the rules so that employer NICs are due on those payments above £30,000 that are already subject to income tax. The full payment will remain outside the scope of employee NICs.</li> </ul> <p>These changes will be introduced in the Finance Bill 2017 and a future National Insurance Contributions Bill.</p>	<p>The proposed changes are likely to result in significant additional costs for employers.</p> <p>Further, although it would appear from the Chancellor's announcement that some of the more complex proposals floated in the recent consultation have not been taken further at this stage, employers should be mindful that further information from the Government and a further consultation are expected in 2016, which may lead to additional changes being implemented.</p>	<p>The Government will publish a summary of the responses and a consultation on the draft legislation later in 2016, with proposed changes coming into effect in April 2018.</p>	Low/Medium
15	<p><b>Zero hours contract (ZHC) regulations</b></p> <p>On 26 May 2015 a ban on the use of "exclusivity clauses" in ZHCs came into force. Exclusivity clauses provide that the worker is not entitled to work for another employer, even when their primary employer has no work available for them. CIPD research published in November 2013 had found that 9% of individuals engaged on ZHCs were subject to exclusivity clauses. The ban was followed in October 2015 by new</p>	<p>Although ZHCs are most commonly associated with the public and voluntary sector, they are used by 17% of private firms. All employers, regardless of their size or sector, must pay attention to the BIS guidance and how the new regulations will work in practice to avoid unintended consequences. For example,</p>	<p>The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 and the Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2015 came into force on 11 January 2016.</p> <p>Acas guidance on the use of zero hours</p>	Medium

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	<p>guidance on how ZHCs should be used.</p> <p>Further legislation designed to protect zero hours workers was introduced by The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 and the Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2015, which came into force on 11 January 2016.</p> <p>The Regulations provide zero hours employees/workers with the right to bring unfair dismissal and detriment claims as a result of breaching exclusivity terms in a ZHC and differ from the original draft regulations published in March 2015, most notably in the absence of the minimum income threshold.</p> <p>The Order extends the limitation period to facilitate Acas early conciliation and gives Acas the power to conclude a conciliation agreement in relation to claims under the Redress Regulations.</p>	<p>following the ban of exclusivity clauses, employers should review their employment contracts and ensure they are adequately protected in relation to confidentiality and competition issues, without falling foul of the regulations.</p>	<p>contracts for employers and workers was expected at the end of 2015 but no such guidance has been published to date.</p>	
16	<p><b>Equal pay claims</b></p> <p>In 2008, around 300 female Asda workers brought equal pay cases in the Employment Tribunal, arguing that they should be paid the same as male workers working in its distribution centres on the basis that their jobs were of equal value. The claims were initially brought by the GMB trade union. These claims were stayed and in 2013 an agreement was reached between GMB and Asda, whereby the GMB agreed not to pursue the claims in return for a four year "working party" with Asda about equal pay. Following this, the law firm, Leigh Day, took over the cases.</p> <p>The case is notable as it is the first large-scale equal pay claim brought against a private-sector employer (Brierley v Asda Stores Limited).</p>	<p>This case will be of particular interest to supermarkets and other retailers who own distribution centres. If the employees are ultimately successful, they could be entitled to up to six years' back pay for the difference in earnings.</p>	<p>A hearing is expected in the course of 2016.</p>	<p>Medium</p>
17	<p><b>Unitary Patent (UP) scheme</b></p> <p>The UP will allow uniform patent protection for inventions throughout the Europe. It is an EU-wide single patent granted centrally by the European Patent Office (EPO), effective in all EU member states except Spain and Croatia.</p>	<p>Businesses with existing patent portfolios or inventions in the pipeline should be considering a review of their patent strategy.</p> <p>Advantages of the UP include a</p>	<p>Towards the end of 2016 the unitary patent is expected to be up and running in at least 26 of the EU's 28 member states.</p>	<p>Medium</p>

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	<p>The Unified Patent Court enables, for the first time, pan-European court decisions on the infringement and validity of the new UP and European bundle patents granted by the EPO.</p> <p>At present the cost of applying for and maintaining a European patent across the EU is around €159,000 over 20 years. This will fall to €35,500 under the new plans.</p>	<p>reduction in the overall patent application cost, and enforcement through a single court rather than litigation in separate national Courts. Disadvantages are possible exposure to a pan European injunction, and the fact that an invalidity decision could lead to revocation of the patent in 28 countries.</p>		
18	<p><b>Apprenticeship levy</b></p> <p>From 21 August to 2 October 2015, the Government consulted on a proposal to introduce an "apprenticeship levy" which would be collected from larger public and private employers in the UK. Employers would then receive vouchers to pay for apprenticeship training for apprentices of 16 years of age or older.</p> <p>The levy will be payable by employers across all sectors, including the retail sector, in the UK at a rate of 0.5% of an employer's total gross pay bill (excluding benefits in kind). All employers will receive an annual allowance of £15,000 against the levy, which, in practice, means that the levy will only be payable to the extent that the pay bill exceeds £3 million per year. However, groups of companies, will only receive one allowance.</p>	<p>Retail businesses will need to consider how they will absorb the cost of the levy and consider alternative options such as: increasing prices, reducing staff numbers, cutting staff benefits packages and/or simply accepting reduced profits.</p> <p>Funding for training will be accessible to all employers in England and employers who pay the levy will be able to access more funding than they have put in, although if the funding is not used within two years it will expire. Employers will need to consider how they wish to use the funding and institute an action plan to ensure the funding is utilised effectively before access expires.</p>	<p>The consultation closed on 2 October 2015 with a response published on 25 November 2015 and further detail provided in the Autumn Statement 2015.</p> <p>On 4 February 2016, HMRC published a policy paper and draft legislation for inclusion in the Finance Bill 2016 to allow the imposition and collection of the apprenticeship levy, with comments invited by 2 March 2016.</p> <p>The levy is to have effect from 6 April 2017</p>	Low
19	<p><b>Business rates reform</b></p> <p>HM Treasury is due to report back on its wide-ranging review of business rates which, as it states in the foreword to its Terms of reference and discussion paper, is "in response to concerns from many business ratepayers that business rates are in need of reform to make them fit for purpose in a 21st century economy" .</p>	<p>The plans, set out in the Chancellor's Autumn Statement, to devolve the setting of business rates to local authorities have caused some concern that this might be the extent of the reform, but more, surely, is needed.</p> <p>A number of national retailers, who have large property portfolios (and therefore large business rates bills) will be hoping</p>	April 2017	Medium

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		<p>for something radical, for example basing the liability on economic output (as per the French system, which is linked to business turnover) or on number of employees rather than purely on rateable value of properties. There is a clear disparity between contributions to business rates between those bricks and mortar retailers and their purely online competitors.</p>		
20	<p><b>Holiday pay – inclusion of commission based payments</b></p> <p>A continuing area of uncertainty in calculating holiday pay has been how variable components of pay should be treated for these purposes.</p> <p>Previous case law had established that workers who earned a basic salary plus additional sales-based commission were only entitled to holiday pay based upon their basic salary.</p> <p>However, in May 2014, the ECJ ruled that, under the European Union Working Time Directive, workers should receive their "normal remuneration" whilst on holiday and this includes any variable remuneration payments which are "intrinsically linked" to the performance of the tasks which a worker is contractually required to perform.</p> <p>In February 2015, in the case of <i>Lock v British Gas Trading Ltd</i>, the Employment Tribunal (ET) ruled that the domestic Working Time Regulations 1998 could be interpreted so as to be consistent with EU law by applying an extra clause.</p> <p>British Gas appealed the ET's decision that the domestic legislation could be read in line with EU law but, in a decision handed down on 22 February 2016, the EAT dismissed the appeal. British Gas have appealed again to the Court of Appeal.</p>	<p>Given the ongoing litigation concerning the calculation of holiday pay, some employers may wish to take a more robust stance when it comes to making adjustments to holiday pay. Many will prefer to wait for a definitive ruling from the Courts.</p> <p>Employers should remember that the position at EU level is unchanged by this appeal: UK law must provide for holiday pay to be based on normal remuneration, which may include commission payments. However, if British Gas's appeal succeeds then the Government would need to rewrite the Working Time Regulations 1998 before private sector employers would be obliged to comply with this requirement (and any changes would not retrospective).</p>	<p>The Court of Appeal hearing is due to take place by 17 February 2017.</p>	<p>Medium</p>
21	<p><b>P272</b></p>	<p>Retailer and food businesses may have</p>	<p>The deadline for implementing is 1 April</p>	<p>High</p>

NO.	ISSUE	CONSEQUENCES AND POSSIBLE ACTIONS	TIMELINE	IMPACT LEVEL
	<p>New Ofgem legislation requiring the reclassification of all Non-Half-Hourly meters fitted with automated metering reading (AMR) technology in classes PC 5-8 as Half-Hourly (HH) meters.</p> <p>The aim is to give business consumers a better understanding of their consumption, as well as accurate bills which better reflect the actual cost of the energy provided.</p>	<p>multiple meters with this classification.</p> <p>It could mean that energy costs increase as bills will be based on actual rather than the current industry wide forecast method.</p>	<p>2017.</p>	
22	<p><b>Data Protection regulation</b></p> <p>The Regulation will significantly change the landscape of EU privacy and data protection in several key areas, including:</p> <ul style="list-style-type: none"> <li>▶ substantial new penalties</li> <li>▶ more stringent requirements for obtaining valid consent to the processing of personal data</li> <li>▶ mandatory data breach reporting obligations with no de minimise provisions</li> <li>▶ increased territorial scope, which will capture businesses that do not have compliance obligations under current EU data protection laws</li> <li>▶ restrictions on profiling and targeted advertising</li> <li>▶ direct legal compliance obligations for “data processors;” and</li> <li>▶ enhanced data protection rights for individuals, including the “ right to be forgotten/right to erasure.</li> </ul>	<p>In order to assess readiness for the Regulation it would be a good idea for organisations to invest in a data audit to assess areas of non-compliance and deficiencies with current privacy legislation. As the Regulation builds upon existing principles, this groundwork will provide a solid basis to spring board into the additional compliance requirements imposed by the regulate in a more streamlined way, to avoid minimal business interruption and medium uptake across the organisation.</p>	<p>On 15 December 2015, the European Parliament and the Council reached agreement on the EU data protection reform package, concluding trilogue negotiations between the Commission, Parliament and Council. The current patchwork of data protection rules and four years of reform-related debate ended in early 2016 by formal adoption of the data protection reform package. However, the Regulation will not come into force until 2017-2018, allowing organisations to adjust their compliance practices in light of the new law.</p>	High

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