



# BACK TO BASICS: LEGAL REQUIREMENTS FOR THE E-COMMERCE MARKET

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Articles

The barriers to entry to the world of retail have reduced significantly with the rise of e-commerce. This is not a single route to market as the e-commerce world has developed its own structures, such as selling through aggregators, platforms, highly curated markets, as well as simply through a brand's own website.

If your brand wants to 'go it alone' and sell directly to its customers on its own website, what are the key legal issues to consider when selling online, in order to comply with laws in England?

## WEBSITE COMPLIANCE

Legislation requires all websites to make certain factual information available about the company responsible for the website.

Where websites are selling goods to consumers, additional requirements apply related to how goods are advertised, how contracts are formed, how consumers commit to pay, delivery and cancellation rights etc. Whilst these can be covered to some extent in the legal terms and conditions, the design and operation of the website, and the content, must also be compliant.

Most websites, particularly in e-commerce, will run cookies to collect statistics on users visiting the site and how they browse the site. Depending on the functionality included within the site, other cookies may enable log-in to accounts, baskets, payment, social media links and targeted advertising. Cookie notices and policies are required to ensure that the necessary consents are collected.

Other functionality could raise other considerations. User-generated content, for example, should be governed by a policy and a take-down procedure.

## CONSUMER PROTECTION

Consumer protection laws will apply to the sale of the goods. The terms and conditions must comply with the specific provisions regarding quality of goods and services, liability, remedies for faulty goods and services, as well as being written in plain English. The business must ensure that none of its practices would be deemed 'unfair' when dealing with consumers.

## DISTANCE SELLING

Additional protections for consumers apply where contracts for sale and purchase are made over the internet. The key protection is the consumer's cancellation right.

## DATA PROTECTION

Knowledge is power, so any retailer wants as much insight as possible into its customer base in order to better curate its products, focus promotions, personalise its approach to individual customers and ultimately create loyal customers. This drives retailers to want to collect as much information as possible about their customers. Businesses must balance this with the requirements of privacy legislation to only use what is necessary, handle data securely, ensure they meet one of the legal 'grounds for processing' and are transparent about all the ways that they handle customer data. Consumers have more rights than ever to access their data and fines for non-compliance can amount to significant sums.

## MARKETING

Closely linked to data protection, is the retailer's strategy for marketing its products and services to its customers. Understanding when consent is and is not required, how to operate suppression lists, and how to share/use marketing details is critical in order to ensure that marketing practices will not trigger complaints from customers to the regulator.

## ADVERTISING

This is a large topic ranging from advertising that takes place outside of the retailer's website and online competitions to the display of products on the website. The Advertising Standards Authority is an active regulator and ensuring that retailers remain on the correct side of the line can require making fine judgement calls. The digital advertising ecosystem is incredibly sophisticated and navigating the many suppliers involved requires knowledge of the market. Newer advertising trends such as influencers raise different types of issues to traditional advertising.

## LOGISTICS AND INFRASTRUCTURE

Customers are demanding and want their purchases 'now'. Ensuring that the retailer's warehousing and logistics contracts and arrangements are designed to deliver prompt and reliable delivery is critical to build loyal customers.

If goods are sourced internationally, import and export duties and tariffs must be paid and trade compliance must be considered. Structuring international trade, particularly given the uncertainty presented by Brexit, is a key area to efficient delivery and costs.

Just as critical are the underlying IT systems and infrastructure that enable the website itself. As your shop window, ensuring that its operation is smooth, slick and reliable is the first barrier to customer engagement. The trend to software as a service (SaaS) and cloud services does not eliminate these risks, and retailers need to understand potential pinch points, such as ensuring the website can handle spikes in demand on major sales days and how to handle disaster scenarios if a supplier suffers a black-out.

## COMPLIANCE

Depending on your products, you will need to ensure that you have all the necessary licences or permits to trade, approvals for regulated products, authorisations for financial services, safety requirements etc.

## PAYMENTS

If consumers can purchase directly through a website, that website must have payment functionality. Online payments are increasingly complex, sophisticated and regulated and, as ever, the devil is in the detail to understand what role the retailer plays in the payment process to ensure that no authorisations are required.

## INTELLECTUAL PROPERTY

Your brand has value and needs to be protected. Retailers should consider what protections, trademarks, registration etc. are required. If the retailer will sell goods containing third party brands, the retailer will need to have the correct licences from that third party.

This summarises a selection of the key legal considerations for e-commerce businesses selling in the UK. Clearly there will be others depending on the precise nature of the business and functionality of the website or technology through which it operates. We have not included wider business issues, but have focused on issues linked to the retailer's website and interactions with consumers. For more detailed information relating to your sector, please contact one of our experts.

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