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The eCommerce Directive After the Transition Period



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HSA & Co

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At the end of the transition period, the eCommerce Directive will no longer apply to the UK. You should begin to prepare for these changes now.

The following has been extracted from the Government website: <https://www.gov.uk/guidance/the-e-commerce-directive-after-the-transition-period>

CHANGES FROM 1 JANUARY 2021

Rules relating to online activities in European Economic Area (EEA) countries may newly apply to UK online service providers who operate in the EEA from 1 January 2021.

The eCommerce Directive currently allows EEA online service providers to operate in any EEA country, while only following relevant rules in the country in which they are established. This framework will no longer apply to UK providers as the UK will have left the EEA

You should consider whether your services are currently in scope of the Directive, and if so, ensure that you are compliant with relevant requirements in each EEA country you operate in.

Depending on the nature of your online services you may already comply with these requirements. This could mean that there are little or no immediate changes you need to make to be compliant from 1 January 2021.

You may also wish to seek legal advice.

The government intends to fully remove the eCommerce Directive's Country of Origin principle from UK legislation, to bring EEA online service providers in scope of UK laws, which they were previously exempt from. As this principle is found in a number of pieces of legislation it will be removed at different points, when parliamentary time allows and as of 16 October no legislative changes have occurred.

The eCommerce Directive applies to "information society services." These are defined as any service that is normally provided:

- for payment, including indirect payment such as advertising revenue
- 'at a distance' (where customers can use the service without the provider being present)
- by electronic means, and
- at the individual request of a recipient of the service

This covers the vast majority of online service providers, for example online retailers, video sharing sites, search tools, social media platforms and internet service providers.

The Directive refers to this as your 'place of establishment' and is the fixed establishment where you pursue your economic activity for an indefinite period of time. See paragraph (19) of the recitals to the Directive for further guidance: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2000:178:FULL&from=EN>

CHECK FOR NEW LEGAL REQUIREMENTS

If you are established in the UK, you should check for any legal requirements in any EEA countries you operate in. The rules that you may need to start following are those that fall within the Directive's 'coordinated field'. This covers legal requirements in individual EEA states which apply to information society services, for example, rules relating to:

- online information
- online advertising
- online shopping
- online contracting

UK online service providers may also become subject to 'prior authorisation' schemes, such as licensing requirements, in EEA countries where they operate.

RECOMMEND ACTIONS

We also recommend that you ensure that you have processes in place for ongoing compliance if individual EEA states change their requirements governing online activities and you consider legal or other professional advice ahead of the 1 January 2021.

We always recommend that you seek advice from a suitably qualified adviser before taking any action. The information in this document only serves as a guide and no responsibility for loss occasioned by any person acting or refraining from action as a result of this material can be accepted by the authors or the firm.
