

Tough new regulations are on the way for those involved in e-commerce distribution activities in the UK, with significant penalties for non-compliance – and yet many companies are still unaware of the implications, Howard Catherall, transport and logistics law specialist at Gotelee Solicitors. HMRC's Fulfilment House Due Diligence Scheme will place a heavy administrative burden and new obligations on any company or individual storing goods which are imported from outside the EU and being offered for sale online.

"This is a completely new system of regulation and operators simply can't afford to ignore it," says Mr Catherall, a partner with Gotelee Solicitors. "The deadlines are set, the requirements are clear, and there is no room for manoeuvre."

HMRC believes £1.5bn of VAT and Customs duty is not being paid in relation to large amounts of e-commerce taking place under the radar, with fulfilment houses being used by unscrupulous retailers based outside the EU. The Fulfilment House Due Diligence Scheme is designed to clamp down on what has to date been a largely unregulated sector.

"HMRC says there is systematic under-declaration of value and misdeclaration of goods, with no VAT being paid following the online sale," says Mr Catherall.

Although the scheme doesn't officially go 'live' until April 2019, any company engaged in fulfilment services as of 31 March 2018 is required to register with HMRC by 30 June this year. Those failing to do so in time will incur a £500 fine for every month that they are late, up to a maximum of £3,000.

The definition of a 'fulfilment business' goes much further than many might expect, ranging from a large-scale operation to a few spare shelves in a warehouse, to an individual who is channelling products through their spare bedroom or garage.

Each fulfilment house operator will have to keep details of exactly who each customer is and, if the operator knows or has reasonable grounds to suspect that business or individual isn't meeting VAT/Customs obligations, there is an obligation to notify HMRC and not do any more business with that party. Any breach of that would lead to a £3,000 penalty. Non-compliance

Tough new regs loom on e-commerce distribution

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could lead to a company going out of business entirely.

The fulfilment house will be required to keep records of customer details, VAT information, descriptions of the types and quantities of goods being stored, import entry numbers and other information.

“That in itself is particularly onerous – the operator has to do this for each and every individual or business based outside the EU which sells non-EU goods on line, at a time when they are stored in the UK warehouse. It is an incredible amount of work,” says Mr Catherall.

Companies can no longer take an ‘out of sight, out of mind’ approach; they will have to carry out checks on the contents of the boxes they handle, in order to keep an accurate record of ‘type and quantity’. This, in turn, may have implications relating to Trading Standards, because companies could then be held responsible for any goods despatched that don’t meet safety standards.

“If a shipment comes in stating that a carton contains 100 toasters, you can’t simply say you have the carton and the import numbers match up. It requires someone to open the carton and check it does indeed contain toasters, and the right number of them,” says Mr Catherall. “If a faulty toaster went out and subsequently injured someone, inevitably Trading Standards will follow the audit trail back and ask: you looked at the toasters – what did you do to satisfy yourself that they were safe?”

Also, in direct response to the knock-on impact of HMRC’s new rules, the firm has developed a user-friendly App which enables companies involved in e-commerce distribution to go through a series of defined steps to check the safety of the products they are handling.

The App will guide the operator through a simple checklist, looking at issues from labelling to CE marks; with a red for ‘quarantine’ system. It will flag up any problems and enable the operator to make swift decisions where a product appears to be non-compliant.