



Crash Course on United Kingdom & Ireland Regulations for US Companies

Annual Compliance & Ethics Institute | Las Vegas
Tuesday, October 23, 2018
11:00am – 12:00pm

This Session Uses Polling

To Participate in Polling

Download “HCCA Mobile” in your app store. Then under the agenda find this session, scroll to the bottom and click “Poll Question” or go to **PolleEv.com/cei18** to answer the active poll.

PRESENTED BY OPTUM COMPLIANCE TEAM:



Eric Brotten
Director
International
Compliance Programs



Sarah Boswell-Healey
Director
International Privacy
Compliance

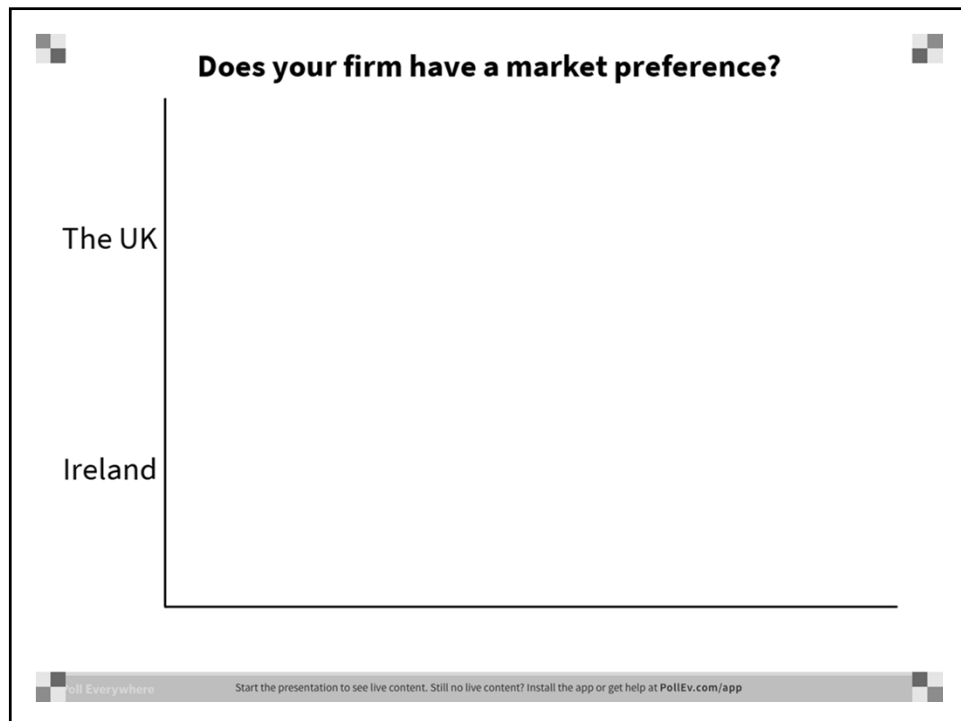
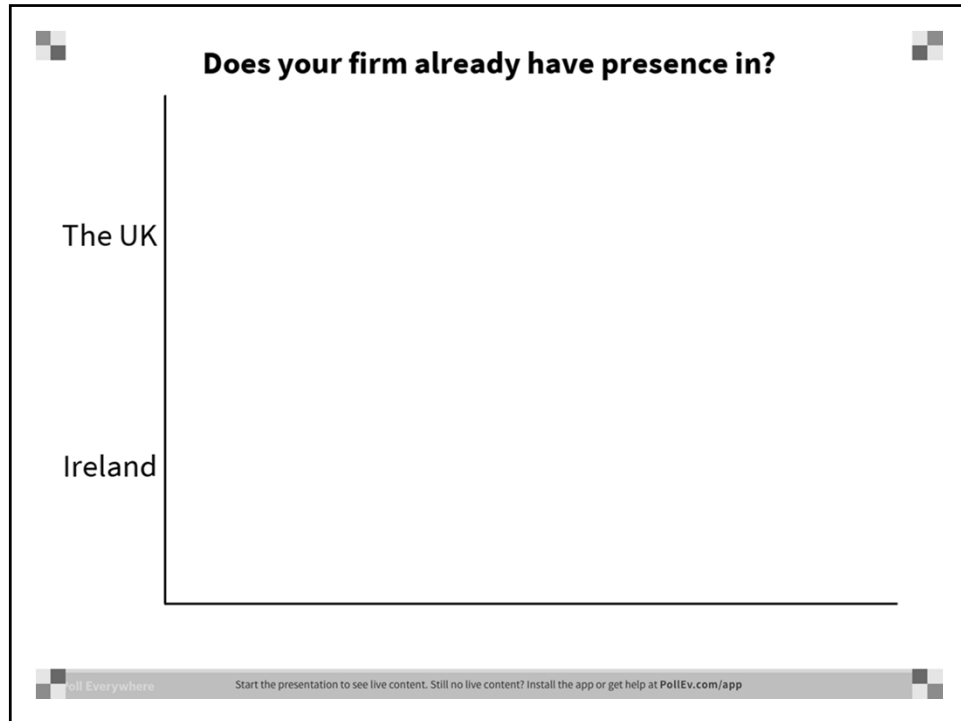
Is your firm considering market expansion to?:

The UK

Ireland

Poll Everywhere

Start the presentation to see live content. Still no live content? Install the app or get help at PollEv.com/app



UK Overview

Population: ~65 M



England: ~55.3 M



Scotland: ~5.5 M



Wales: ~3.1 M



N.Ireland: ~1.9 M



GDP: \$2.6 T

GDP per capita: ~\$40 K

Currency: Pound Sterling (£)

Diverse Economy, Financial Center

Constitutional Monarchy



Why companies choose the UK

- ❖ “Open for business”
regulatory environment
- ❖ Tax benefits
- ❖ Culture / Language
- ❖ Work force
- ❖ Access to *Europe*





UK Corporate Regulatory Overview

Companies Act (2006)



❖ Primary legislation dealing with
company matters

❖ Entity selection and formation

Practicalities:

- Subsidiary: typically a wholly-owned private limited company subsidiary of US parent and a separate legal entity

Versus:

- Branch: typically an extension of the US parent

Tip: Don't underestimate tax implications.

❖ Company registration

Directors Duties (via Companies Act)



- ❖ UK management can be held individually liable for offenses and sanctioned with fines and/or imprisonment

WARNING: DIFFERENT THAN US

- ❖ Named directors vs. senior management

Directors Duties (via Companies Act)



Seven Duties:

- 1 To act within powers
- 2 To act in good faith to promote the success of the company in regard to all relevant matters, including, but not limited to:
 - Likely consequences of any decision in the long-term,
 - The interests of the company's employees,
 - The need to foster business relationships and community impact,
 - Maintaining fairness and high standards of business conduct
- 3 To exercise independent judgment
- 4 To exercise reasonable care, skill, and diligence
- 5 To avoid conflicts
- 6 To not accept benefits from 3rd parties on account of being a director or senior management
- 7 To declare any interest in a proposed transaction or arrangement

Other Directors Duties



- ❖ UK Corporate Manslaughter and Corporate Homicide Act (2007)
- ❖ UK Health and Social Care Act (2008)
- ❖ UK Common Law
- ❖ Health & Safety at Work Act (1974)
- ❖ UK Mixed Bag:
Insolvency Act (1986), Company Directors Disqualification Act (1986), VAT and Taxes Acts, Fraud Act (2006), Theft Act (1968), The Care Act (2014), EC Regulation 1606/2002 (accounting standards), EC Directive 2004/109 (transparency obligations)

Misc. Corporate Regulatory Themes to Consider



❖ Governance (and Reform)

❖ Health & Safety

WARNING: Different than US. Increased fines and oversight.

- 2016: ConocoPhillips was **fined £3m** following a gas leak that occurred, despite the fact that the leak did not cause any actual injury. However, 66 individuals were in danger with 7 people put at extreme risk.
- 2016: The broken leg and dislocated ankle suffered by actor Harrison Ford while filming Star Wars: the Force Awakens resulted in a **£1.6m fine** for Foodles Production.



❖ Data Protection / Impact Assessments



UK Tax / Financial / Corporate Offenses Regulatory Overview

Tax Regulation Themes to Consider

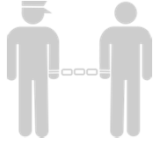


- ❖ Payroll
- ❖ Expat rules
- ❖ Patent Box
- ❖ Research & Development Credits
- ❖ VAT

Tip: GET A GOOD LOCAL ACCOUNTANT!



HM Revenue
& Customs



Corporate Offenses



❖ Bribery Act (BA) (2010)

- Similar to US Foreign Corrupt Practices Act (FCPA), but wider scope
- Six principles: proportionate procedures, top level commitment, risk assessment due diligence, communication, monitoring and review

Tip: Don't rely on your US FCPA compliance program to cover all aspects of the BA

❖ Criminal Finances Act (CFA) (2017)

- Goal of combating tax evasion across all industries
- Similar BA, wider scope than traditional tax evasion regulations

Tip: Finance, Accounting, Payroll, Invoicing, etc. teams are the best place to start with risk assessments and awareness trainings

❖ Misc. Banking/Money Laundering



UK Employment / Social Responsibility / Transparency Regulatory Overview

Employment Regulatory
Themes to Consider



- ❖ Employment: hiring / firing
- ❖ Transfer of Undertakings (Protection of Employment) (TUPE)
(pronounced 'toopy')
- ❖ Equality Act

Social Responsibility /
Transparency
Themes to Consider



- ❖ Environmental
- ❖ Modern Slavery Act
- ❖ Gender Pay Gap / CEO Pay Gap
- ❖ Payments Practices Reporting

In other news



A spokesman for **Medtronic** said "The data in the payment practice report showing a high percentage of invoices paid outside of agreed upon terms is due to the way that pay suppliers initiate".

Company number: 01070807

Due to payment within the Medtronic invoice

book offer Martin Lewis Mr Money Saver's bold new move

Emma Freud Are we making a huge mistake leaving Britain?

Charles Dickens writes in "Where next?"

2017

Ten of the UK's big businesses that fail to pay suppliers on time get named and shamed by the Government

The Daily Telegraph

Firms shamed over women's pay

Harper Lee takes a first look at her 'new' Mockingbird

Pay women more: UK's sexist firms face public naming

BLOATED BLOKES CLUB

Seven best-paid stars are all white men

Furious female celebs demand equality

Corbyn: We would bring in £400k pay cap

BBC

BREAKING NEWS MIND THE GAP

Standard payment terms

Standard contractual terms for goods and services

Standard contractual terms are 30 days. The maximum period for payment is 60 days.

Were there any changes to the standard payment terms?

Note: Images owned by respective media firms.

Ireland Overview

Population: ~4.8 M



Dublin: ~1.17 M



Cork: ~208 K



Limerick: ~94 K



Galway: ~80 K



Republic of Ireland



GDP: \$380 B

GDP per capita: ~\$79 K

Currency: Euro (€)

>1,000 companies have operations in Ireland, spanning industries

Why companies choose Ireland

- ❖ Corporate tax rate (12.5%)
- ❖ Legal/Regulatory frameworks similar to US/UK
- ❖ Culture / Language
- ❖ Work force
- ❖ Access to *European Union* / €



Ireland Corporate Regulatory Overview

Tip: While very, very similar to UK, don't assume identical.

Companies Act (2014)



❖ Primary law governing entity formation and duties

❖ Entity selection and formation

Practicalities:

- Private limited company (LTD) and designated activity company (DAC) or public limited company (PLC)

Versus:

- Branch: typically an extension of the US parent

Tip: Consider differing tax rates on Irish operations and US tax rates and future plans for repatriating profits

❖ Company registration

Directors Duties (via Companies Act)



- 1 Act in good faith, in what the director considers to be the company's best interests
- 2 Act honestly and responsibly in relation to the conduct of the affairs of the company
- 3 Act in accordance with the company's constitution and exercise powers only for the purposes allowed by law
- 4 Not use the company's property, information, or opportunities for own or anyone else's benefit unless:
 - Expressly permitted by the company's constitution
 - Use has been approved by a resolution of the company in general meeting
- 5 Not agree to restrict the director's power to exercise independent judgment
- 6 Avoid any conflict between the director's duties to the company and the director's other interests
- 7 Exercise due care, skill, and diligence (tested objectively)
- 8 Have regard to the interest of the company's members and employees

Directors Obligations Beyond The Company Act



- ❖ Health & Safety
- ❖ Tax and Revenue
- ❖ Waste Management
- ❖ Anticorruption & Bribery
- ❖ Employment

WARNING: DIFFERENT THAN US



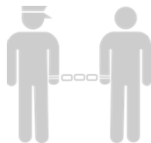
Ireland Tax / Financial /
Corporate Offenses
Regulatory Overview

Tax Regulation Themes to Consider



- ❖ Tax rate / treaties /
- ❖ R&D tax credits / IRD grants
- ❖ “Knowledge development” box
- ❖ Payroll / PAYE
- ❖ Expats
- ❖ VAT

Tip: GET A GOOD LOCAL ACCOUNTANT!



Corporate Offences



- ❖ Criminal Justice (Money Laundering and Terrorist Financing) Act (2010)
- ❖ Criminal Justice (Corruption Offences) Act (2018)

- Similar to US Foreign Corrupt Practices Act (FCPA) and UK Bribery Act (BA), but wider scope in some regards

Tip: Don't rely on your US FCPA / UKBA compliance program to cover all aspects of the Corruption Offences Act



Ireland Employment / Social Responsibility / Transparency Regulatory Overview

Employment Regulatory Themes to Consider



Mostly based on EU Directives:

- ❖ Employment: hiring / firing
- ❖ Transfers
- ❖ Discrimination

Social Responsibility /
Transparency
Themes to Consider



- ❖ Environmental: Heavily linked to EU
 - ❖ Planning and Development Acts (2000 – 2010)
 - ❖ Environmental Protection Agency Acts (1992 – 2007)
 - ❖ Integrated air/water/waste license
 - ❖ EU Directive 2003/87/EC greenhouse gases
 - ❖ Environmental liability
- ❖ Gender Pay Gap



UK & I Considerations



European Union



- ❖ Primary legislation: treaties / ground rules for all EU action
- ❖ Secondary legislation: Regulations (binding), directives (goal), decisions (binding against EU countr(y/ies) or individual)
- ❖ UK&I join in 1973; many recent laws based on EU Directives



General Data Protection Regulation (GDPR)



The General Data Protection Regulation (GDPR) is the new privacy and data protection regime in the European Union (EU). The GDPR largely replaces existing country-specific data protection laws in the EU (and the Data Protection Directive (DPD)) and will directly apply to all Member States. Key objectives of the GDPR:

- ❖ ensure a high level of protection for individuals
- ❖ modernize and harmonize data privacy laws across the EU
- ❖ ensure more robust enforcement

Implementation Go Live Date: May 25, 2018



General Data Protection Regulation (GDPR)



- ❖ Non-compliance fines up to the higher of 20M Euros or 4% of annual turnover of preceding year
- ❖ Expect an impact to US parent company if not already compliant or in scope
- ❖ Expect post-Brexit UK to still have a version; SOFT or HARD?
- ❖ Cross-Border Data Transfer and Electronic Marketing Compliance laws are challenging
- ❖ Breach Reporting within 72 hours
- ❖ Registration?
- ❖ Don't forget – Article 32 and IT Security Requirements



General Data Protection Regulation (GDPR)



*“Data protection laws exist to ensure fair play for everyone in how their identity and personal data is used by big corporations, governments and all sorts of organisations and businesses. **The GDPR is a game- changing overhaul of our current data protection laws. It will impact every type of company and organisation regardless of their size** and require many of them to take significant action well before May 25th 2018.*

*- Helen Dixon, Data Protection Commissioner, Ireland
<http://gdprandyou.ie/wp-content/uploads/2017/05/DPC-Press-Release-365-to-GDPR.pdf>*



General Data Protection Regulation (GDPR)



*“What must be recognised is that GDPR is an evolution in data protection, not a total revolution. **It demands more of organisations in terms of accountability for their use of personal data and enhances the existing rights of individuals.** GDPR is building on foundations already in place for the last 20 years.”*

- Steve Wood, Deputy Commissioner (Policy) UK ICO
<https://iconewsblog.org.uk/2017/08/25/gdpr-is-an-evolution-in-data-protection-not-a-burdensome-revolution/>



General Data Protection Regulation (GDPR)



❖ GDPR regulates “processing” of “personal data”

“Processing” defined very broadly – essentially covers doing anything with personal data (e.g., collecting, recording, organizing, structuring, storing, adapting, using, disseminating, combining, erasing, destroying)

❖ “personal data” also is defined very broadly

information relating to an identified or identifiable natural person (a “data subject”)

An identifiable natural person is one who can be identified, directly or indirectly, e.g., by reference to an identifier such as a name, an ID number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person

❖ GDPR applies to pseudonymous data (from which someone could be identifiable when combined with additional data held separately), but not truly anonymous data



General Data Protection Regulation (GDPR)



❖ “Sensitive personal data (or “special categories of personal data”) attracts additional protection:

- ❖ personal data which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership;
- ❖ genetic data;
- ❖ biometric data processed for the purpose of uniquely identifying a person; and
- ❖ data concerning a person’s health, sex life or sexual orientation.

Personal Data

- Contact name(e.g. name, Email, Mailing Address, IP Address)
- Date of Birth

Sensitive Personal Data

- House of Worship Membership (Church, Synagogue, Mosque or Islamic Center)
- Union Membership
- Health History



General Data Protection Regulation (GDPR)



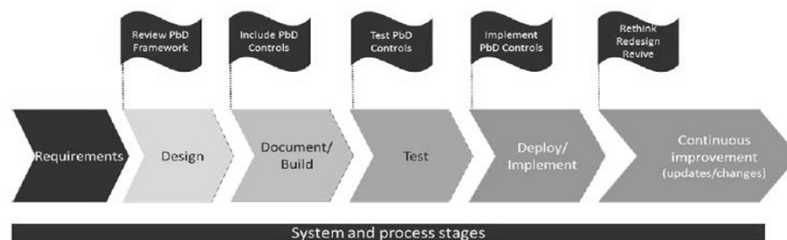
- ❖ GDPR has a broader territorial reach than current law.
 - ❖ Processing of personal data that takes place “in the context of” activities of an establishment of a data controller or data processor in the EU – regardless of whether the processing takes place in the EU
 - ❖ Processing by data controller or data processor outside the EU, but the processing relates to:
 - ❖ offering goods or services to data subjects in the EU; or
 - ❖ monitoring the behavior of data subjects in the EU.



General Data Protection Regulation (GDPR)



Privacy-by-Design (PbD) is an approach which takes privacy into account throughout the business and IT development lifecycle.



General Data Protection Regulation (GDPR)



❖ A **Data Protection Impact Assessment (DPIA)**

is a required assessment to review whether new processing of personal data or changes in the processing of personal data is likely to result in a high risk to the rights and freedoms of individuals. The DPIA also assists in identifying new or additional requirements.

- ❖ The DPIA should be performed **before** initiating new processing or making changes in the processing of personal data.
- ❖ Businesses that process personal data are required by the GDPR to maintain detailed documentation, including the IT Systems that support data processing, measures taken to safeguard data, certification (NIST, ISO, HITRUST, etc.) .





General Data Protection Regulation (GDPR)



❖ Individual Rights for EU Data Subjects include the qualified right to:

- ❖ Access (Data Subject Access Request)
- ❖ Be informed
- ❖ Rectification
- ❖ Erasure
- ❖ Restrict Processing
- ❖ Data Portability
- ❖ Object
- ❖ Rights relative to automated decision making and profiling



Brexit



❖ Top Brexit Issues:

- ❖ Free movement of UK / EU citizens and residency and work permit requirements
- ❖ Trade / Customs
- ❖ Northern Ireland / Hard Border vs. Soft Border
- ❖ Data protection / GDPR
- ❖ Contracts





UK & I Closing Note



❖ Your industry likely has its own set of industry-specific regulations:

- ❖ Financial services / banking
- ❖ Agriculture / Fishing
- ❖ Energy / Mining / Oil
- ❖ Healthcare / Med. Device / Rx
- ❖ IT / Software / Digital / Telecom
- ❖ Manufacturing / Automotive

❖ Don't forget:

- ❖ M&A / Competition / Trade
- ❖ Copyright / Intellectual Property
- ❖ Tax / Accounting / Payroll / Finance / Procurement



Compliance Program Practicalities



US vs. UK vs. I Compliance Build-Out/Integration



- ❖ In-country / In-person presence preferred, alternatively frequent travel and site visits

Tip: Build a relationship with the business, and they will share information



UK&I Compliance Program Build-Out/Integration Practicalities



- ❖ Implement the essentials of an effective compliance program until build-out/integration is complete

Tip: Your program requirements will be shaped by your risk assessment; success will require involvement of HR, Tax, Treasury, Finance, Legal, and Business colleagues.





UK&I Compliance Program Cultural Challenges



❖ Understanding culture is essential to creating an effective compliance program

Practicalities:

- There may be an evolving understanding of compliance between companies/divisions
- Languages, time zones, holidays, cultures, etc. make consistent communication difficult

❖ Don't under estimate the differences between the US and UK & I

Tip: Balance an entrepreneurial attitude with basic need to implement a consistent enterprise compliance framework

❖ Embrace commonalities

US Examples of UK & I Cultural Pitfalls



Said	Meant
I only have a few minor comments	<i>Please re-write completely</i>
Very interesting	<i>That's nonsense</i>
Another cup of tea?	<i>Give me more time</i>
I almost agree	<i>I don't agree at all</i>
That's a brave proposal	<i>You are insane</i>
I hear what you say	<i>I disagree</i>



For Discussion - Hypothetical #1: Diabetes Monitoring Software Co.



Company Details

- Company's US-patented app provides diabetic monitoring via smart phone
- \$250M USD annual revenue
- Branch office in Glasgow, Scotland for past 3 years with 140 male and 25 female employees; 30 male and 4 female remote workers in N. Ireland
- Looking to establish Ireland entity with grant funds and Dublin office site to enter EU market
- B2C and B2B customers in US and UK
- App data currently stored on-device, with option for cloud back-up
- Cloud back-up is hosted in India
- Parent company is US-based
- Single compliance staff in Glasgow will manage Ireland in the short term

Compliance Considerations?

- Jurisdiction, i.e. EU vs. UK vs. Scotland
- Location of remote workers/ Brexit
- Gender Pay Gap
- GDPR / Privacy
- Employee health and safety
- Patent filing / med. device compliance
- Application of anticorruption compliance, i.e. FCPA, UK BA, I CJ, etc.
- Hire local compliance staff vs. manage from US office
- Permits, licenses, government approvals, etc.
- Director or Officer approvals
- Other?



For Discussion - Hypothetical #2: FinTech Company Seeking UK&I Govt. Contracts



Company Details

- US-based B2B FinTech payments processing company seeking to expand simultaneously to UK & I to bid on government contracts
- Company wants to lease sales offices in Coventry, England and Cork, Ireland
- Several consultants from both UK&I were hired to identify bid opportunities; some consultants former government employees
- Company's US IT Director thinks GDPR is hard rock band from the '80s
- Company has no "UK&I" experience, other than being a corporate sponsor of a local St. Patrick's Day parade
- Business considering moving some IT development to Ireland

Compliance Considerations?

- Jurisdiction, i.e. EU vs. non-EU
- Local real estate / health and safety / facilities management regulations
- Sales restrictions / regulations / licenses / procurement compliance
- Staff mobility, ex-pats, etc.
- Diligence on former government employee consultants, e.g. conflicts
- Currency / tax regulations
- EU data privacy regulations
- Culture, culture, culture
- Grants / Patent Box
- Permits, government approvals, etc.
- Director or Officer approvals
- Other?



Q&A



Credit:
PA Images

Thank you!