Regulatory Outlook

Welcome to the Regulatory Outlook, providing you with high-level summaries of important forthcoming regulatory developments to help you navigate the fast-moving business compliance landscape in the UK.

The spotlight development this month is that the foundational regulations to establish the Office of Trade Sanctions Implementation (OTSI) statutory powers have been laid and the UK government plans to launch OTSI within the Department for Business and Trade in October 2024.

September 2024

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Advertising and marketing

UK government confirms implementation of advertising restrictions of 'less healthy' food and drink products

The UK government has published its response to the consultation carried out by the previous Conservative government in 2022/23 on draft regulations introducing further advertising restrictions in relation to "*less healthy*" food and drink products on television and online.

The government's response confirms that the regulations will introduce a 21:00 watershed on TV advertising of "*less healthy*" products, as well as a ban on paid-for online advertising of them. The government has also confirmed that the new restrictions will come into effect from 1 October 2025.

Alongside its consultation response, the government launched a new consultation on how the new restrictions will apply to internet protocol television (IPTV) services which deliver TV services and advertising live (as opposed to on demand) over the internet.

See our Insight for more details.

CMA issues guidance for fashion brands on complying with consumer law when making green claims

The UK Competition and Markets Authority (CMA) has issued new guidance to help fashion retail businesses comply with the Green Claims Code and the consumer protection law which underpins it when making environmental claims. The guide applies to fashion retailers who sell their own or third-party products via marketplaces, manufacturers and suppliers (including third-party branded suppliers) as well as wholesalers and distributors. It is relevant to environmental claims about clothing, footwear, fashion accessories and related services, such as packaging, delivery and returns.

The tailored guidance provides practical tips for businesses accompanied by illustrated examples, such as:

- making sure that green claims, whether on the product itself, in advertising materials, in store or online, are clear and accurate and that important information is prominently displayed;
- avoiding general or absolute claims such as "green", "sustainable" or "eco-friendly";
- ensuring that comparative claims are fair and clear;
- making sure that when a business sells a range of products, grouped according to specific criteria relating to their impact on the environment, such criteria is clear and not misleading; and
- making it clear if a claim is based on specific parts of a product's life cycle by summarising the aspect of the life cycle to which the claim relates.

Alongside the guidance, the CMA has advised 17 fashion brands to review their business practices in this area. With the CMA's strengthened consumer enforcement powers under the Digital Markets, Competition and Consumers Act 2024 due to come into force in spring 2025 (see Consumer section), the CMA emphasises the importance of compliance, encouraging businesses to look at all their practices in the round, across the whole business, and make changes as necessary.

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UK updates

UK House of Lords Select Committee inquiry into scaling up AI and creative tech

The UK House of Lords Communications and Digital Committee has launched an inquiry looking at the challenges startups face when seeking to scale up in AI and creative technology.

According to the committee, various initiatives have tried to boost the UK's scale-up potential in recent years, but there are still significant barriers preventing success. Instead of innovative businesses seeking to scale up in the UK, they are often focused on selling to foreign investors or moving abroad, and, as a result, the UK risks losing its competitive edge in strategic economic sectors.

The inquiry will therefore look at what actions are needed from government and industry over the next five years to maximise the economic potential of the sectors in question – technology in the creative industries and AI – and to secure competitive advantage.

The deadline for giving evidence is 16 October 2024.

House of Lords introduce AI Bill into Parliament

Liberal Democrat peer Lord Clement-Jones has introduced a private members' bill entitled "Public Authority Algorithmic and Automated Decision-Making Systems Bill" to help regulate the use of algorithms and automation in public sector decision-making processes. See our Insight for an overview.

ICO's fifth call for evidence on generative AI

The UK Information Commissioner's Office (ICO) conducted its fifth (and final) call for evidence in relation to generative AI, which closed on 18 September 2024. See this Regulatory Outlook for an overview of the previous ICO consultations on generative AI.

This consultation focused on allocating controllership across the generative AI supply chain. It addressed the recommendation for the ICO to update its guidance on the allocation of accountability in relation to AI as a Service (AIaaS), to clarify when an organisation is a controller, joint controller or processor for processing activities relating to AIaaS.

The ICO has provided a summary of its current analysis on the topic as part of the call for evidence. While the consultation provided some indicative scenarios of processing activities, the ICO noted that its list of scenarios was non-exhaustive. The regulator sought evidence on additional processing activities and actors not included in the call, alongside the relevant allocation of accountability roles. Interestingly, the ICO states in its analysis that it thinks that many organisations are assuming that their relationship will be that of controller-processor, whereas the ICO indicates that joint controllership will often be more appropriate.

Government AI Action Plan

The new science secretary, Peter Kyle, has commissioned an AI Opportunities Action Plan to identify how AI "*can drive economic growth and deliver better outcomes for people across the country*".

The Action Plan will consider how the UK can create an AI sector which is competitive globally, adopt AI to enhance growth and productivity, use this technology to enhance people's interaction with the government and strengthen the enablers of AI adoption, such as data, infrastructure, public procurement, and regulatory reforms. Matt Clifford (Chair of ARIA, the UK's Advanced Research and Invention Agency and organiser of the previous government's Bletchley Park AI Safety Summit) will lead development of the Action Plan.

UK AISI plans to build safety case 'sketches' for more advanced models than exist today

The UK AI Safety Institute (AISI) has announced its plans to conduct a series of collaborations and research projects to build safety case "sketches" for more advanced models than exist today, as part of its evaluations of frontier AI models. According to the UK government, a "safety case" is a "*structured argument*" which is supported by evidence and provides a case that a system is safe for a particular application in a specific environment.

AISI says that since the understanding of AI safety is currently at early stages, it is not possible to build full safety cases that would assess the risks posed by models which are significantly more advanced than those available today, such as risks from loss of control and autonomy. Therefore AISI proposes to build an understanding of what such safety cases might look like in the future by developing "sketches" that detail the arguments and evidence it expects for specific safety methods. AISI has already started research collaborations on safety sketches with a variety of organisations.

ICO responds to Meta's announcement on training AI with user data

Following engagement with the ICO and having taken on board feedback from the regulator, Meta has announced that it will begin training its generative AI models utilising content shared publicly by adults in the UK on its social media platforms, Facebook and Instagram. Meta emphasised that only public information will be used for this purpose (and not, for example, users' private messages), and not information from accounts of users aged under 18. Users will be able to object to their data being processed for the purposes of AI training at any time, using an objection form which the company says is now simpler, more prominent and easier to find.

The ICO has responded to the company’s announcement, emphasising the importance of informing users about the ways their personal data is used when training generative AI, and of having safeguards in place before processing the data for this training. Safeguards include providing users with a clear and simple way to object to the processing.

EU updates

AI Act: call for expression of interest to participate in drafting of code of practice and consultation on trustworthy general-purpose AI models

The European AI Office received strong expressions of interest from stakeholders in participating in drawing-up of the first General-Purpose AI Code of Practice under the EU AI Act. The call for expressions of interest closed on 25 August.

The code will set out further details as to how providers of general-purpose AI models and general-purpose AI models with systemic risk can ensure compliance with the EU AI Act (with the rules applicable to providers of general-purpose AI and general-purpose AI with systemic risk 12 months after the entry into force of the EU AI Act, that is 2 August 2025). Providers will be able to "rely on" the code to demonstrate compliance with the EU AI Act.

The code will be prepared in an iterative drafting process which is briefly explained in a useful diagram included in the call for expressions of interest. The first stage comprised the call for expression of interest and a multi-stakeholder consultation. Through the multi-stakeholder consultation (which closed on 18 September 2024), the AI Office aimed to collect views and inputs on the topics covered by the code. The consultation's outcomes will form the basis for the initial draft of the code.

The call for expression will allow the AI Office to identify the stakeholders who will become part of a Code of Practice Plenary. The first plenary is scheduled for 30 September 2024.

The final version of the code should be presented by April 2025. After it is published, the AI Office and the AI Board will assess its adequacy. It will then be for the EU Commission to decide whether to approve and implement the code across the EU.

EU Commission publishes report on competition in generative AI and virtual worlds

Artificial Intelligence

The EU Commission has published a policy brief on competition in generative AI and virtual worlds. The report takes into account the responses to the Commission's consultation which closed in March 2024 (see this Regulatory Outlook), market investigations and collaboration with other competition authorities, including in the UK.

The report acknowledges the positive impact these technologies are set to have on many sectors, among others, manufacturing, retail, finance, education, energy and healthcare. However, it considers that their unprecedented rapid growth is also likely to pose various challenges, including in relation to competition policy and enforcement. The report, among other things, explores competition dynamics and tendencies and potential concerns in generative AI related markets, competition enforcement in this area and the role of the implementation of the Digital Markets Act in it.

EMA publishes guiding principles on use of LLMs in medicines regulation

The European Medicines Agency (EMA) sets out its guiding principles for both users and organisations to ensure that general-purpose large language models (LLMs) are used safely and ethically in regulatory science and for medicines regulatory activities. A one page infographic summary is also available.

User principles include:

- taking appropriate measures to ensure safe input of data – for example, careful prompt drafting, checking that no sensitive information or IP protected content is input;
- applying critical thinking and cross-checking to outputs – for example, it suggests redrafting output to "*prevent the risk of copyright violation or plagiarism*";
- continuously learning how to use LLMs effectively; and
- knowing who to raise concerns with and report issues to, including reporting severely biased or erroneous outputs.

The organisational principles, include:

- establishing governance that helps users use LLMs safely and responsibly, for example, sets policies around specific use cases, risk monitoring;
- help users maximise the value of LLMs through training; and
- encourage collaboration and sharing experiences.

While there is nothing particularly unexpected in the principles, companies active in these areas, and those who look to supply AI systems to them, should pay heed.

Mario Draghi's report on the future of EU competitiveness spotlights AI

The EU Commission tasked Mario Draghi with preparing a report setting out a vision for EU competitiveness. The wide-ranging report covers many areas, one area of focus being the importance of digital technology, including AI. According to Mr Draghi:

- The EU must strive both to lead on the development of AI, and to integrate it into existing industries, in sectors such as robotics, defence, pharma, healthcare, transport and energy.
- Very major investment will be needed to meet the huge and increasing costs of training new foundational AI models, and for providing the enormous computing power required.
- Complexity, plus overlap and inconsistency vis-à-vis the EU AI Act and the EU GDPR, creates higher burdens for EU creators of cutting edge AI, and so undermines investment in EU AI.

Mr Draghi's report starkly highlights the potential of AI to transform economies, and should spur further investments in take-up of AI by Europe-based companies.

US updates

Californian legislators have had a busy summer putting AI laws onto the statute books, including:

- Assembly Bill (AB) 2655, which obliges large online platform companies to remove or label digitally generated or modified deepfake content which relates to elections, and allows election candidates and elected officials and some others to apply for injunctions in respect of the deepfake if a relevant platform is not complying with it.
- AB 2355 requires that any use of AI-generated or altered political election advertisements has to be labelled so that users are made aware of its deepfake nature.
- AB 2839 aims to curb manipulated content that could harm a candidate's reputation or public confidence in an election's outcome, with the exception of parody and satire. Under the legislation, candidates, election committees or elections officials (among others) could seek a court order to get deepfakes taken down.
- AB 2602 requires entertainment studios to obtain appropriate permission from an actor before using AI to replicate their voice or image.
- AB 1836 prohibits companies from creating digital replicas of dead performers unless they have obtained relevant consent from the deceased's estates. Again, the law allows for injunctions to tackle non-compliance.

Beyond these newly-enacted Californian AI laws lie others, including the most controversial of all, the "Safe and Secure Innovation for Frontier Artificial Intelligence Systems Act" (usually known as SB 1047). This bill would require developers building large models to assess whether they are "*reasonably capable of causing or materially enabling a critical harm*". Where risks are identified, companies would be obliged to put in place reasonable safeguards against them. There is as yet no firm indication of whether Governor Gavin Newsom will sign this contentious bill into law. He has until 30 September to decide.

International updates

Council of Europe Convention on AI, Human Rights, Democracy and the Rule of Law signed by EU, UK, US

The UK, EU and US became the first signatories to the Council of Europe's Framework Convention on AI and Human Rights, Democracy and the Rule of Law on 5 September 2024. See this Regulatory Outlook for details. Since then, the Convention has been aligned with the EU AI Act.

The EU Commission has signed the treaty on behalf of the EU, and says that the Convention will be implemented in the EU by means of the EU AI Act. The next steps include the Commission's proposal for a Council decision to conclude the convention and the consent from the European Parliament. According to the UK government, "*once the treaty is ratified and brought into effect in the UK, existing laws and measures will be enhanced*."

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Artificial Intelligence

Bribery, fraud and anti-money laundering

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Parliamentary update on failure to prevent fraud guidance

On 12 September 2024, Lord Hanson, minister of state for the Home Office, provided an update on the publication of the guidance that must be issued by the government before the new failure to prevent fraud offence under the Economic Crime and Corporate Transparency Act comes into effect.

In response to a question asked in the House of Lords by Lord Garnier, Lord Hanson committed to reviewing the work of the previous government in relation to the delayed guidance with a view to expediting the process as a matter of urgency.

It therefore seems possible that publication of the guidance will be subject to further delay, and as such, the offence may now not come into force until the middle of 2025. We will continue to monitor the progress of the guidance and publish updates on the failure to prevent fraud offence.

High Court rules that England is appropriate forum in cross-border conspiracy claim

The High Court held that England was the appropriate forum for conspiracy and related claims against a Monaco-based lawyer in relation to an alleged breach of a worldwide freezing order and evasion of an English judgment by judgment debtor.

To find out more, please see our Insight. For businesses and individuals looking to navigate issues around fraud, enforcement and asset recovery, see our relaunched Fraud, Asset Tracing and Enforcement Update.

FCA emphasises collaboration and a collective effort to address fraud

On 5 September 2024, Andrea Bowe, director of the specialist directorate at the Financial Conduct Authority (FCA), delivered a speech at the Westminster Legal Policy Forum. Ms Bowe outlined the regulator's fraud strategy, stressing that collaboration between public and private sectors with regulators is essential to tackling the issue of fraud.

The FCA urges firms to adopt a collaborative approach to the sharing of information, particularly on suspected mule activity, to disrupt criminal operations and reduce the flow of fraudulent funds.

FCA reinforces commitment to tackle UK financial crime

On 5 September, Sarah Pritchard, an FCA executive director with responsibility for market integrity, delivered a speech at the Financial Crime Summit. Ms Pritchard outlined the FCA's approach to tackling financial crime, reaffirming that it remains a top priority in its enforcement strategy as a key commitment in the regulator's three-year plan.

Our experts take a look at the next steps for the financial services industry following the guidance in our latest Insight. It is also anticipated that the FCA and other regulators will be keen to utilise the new offences introduced in the Economic Crime and Corporate Transparency Act 2023, as discussed in our separate Insight.

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Competition

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Digital Markets, Competition and Consumers Act: implementation insights

A timeline for the implementation of the Digital Markets, Competition and Consumers Act (DMCCA) has been published in a written ministerial statement. The government aims to commence the digital markets and competition aspects of the DMCCA in December 2024 or January 2025.

It is anticipated that the first strategic market status (SMS) designations will follow very quickly.

On 3 September, the House of Lords Communications and Digital Committee held its first public session of the new Parliament to discuss the implementation of the DMCCA. Witnesses provided valuable insights on the priorities and challenges for the CMA in enforcing the new legislation. Giving evidence were individuals from key tech and policy organisations, as well as the legal sector. This evidence is likely to inform the CMA's final guidance on the digital market regime as well as secondary legislation needed to bring the Act into force. The final guidance must be approved by the secretary of state for business and trade before it comes into force.

Participants in the session advocated for swift action and specific conduct requirements to prevent perceived anti-competitive behaviour, particularly in mobile ecosystems, advertising and app stores. Bakari Middleton from Epic Games said there is a need for quick designation of SMS firms and tailored conduct requirements, particularly addressing app store distribution and payment issues. Steve Thomas from Kelkoo Group prioritised addressing self-preferencing behaviour in search and the impact of AI-generated search results on competition. Matthew Feeney from the Centre for Policy Studies suggested adding social media platforms to the CMA's focus areas and emphasised the need for clear market definitions and conduct requirements. Additionally participants in this session supported broad market studies and the importance of balancing security, privacy and competition was highlighted. The session underscored the importance of ensuring that regulation promotes competition without stifling innovation.

The CMA recently held a webinar on the direct consumer enforcement powers under this regime. It highlighted how many aspects of the new consumer law regime are likely to mirror those already seen on the competition side. This includes early resolution, settlements, penalties and appeals. Also highlighted was that the CMA's consumer protection and markets teams have been drawn into a single directorate led by George Lusty. This is intended to give greater flexibility to look at problems from more than one angle, as happened in the CMA's investigations into groceries and housing. The potential for the CMA to use any or a combination of its powers to address issues in relation to the relevant digital activities was also raised in its draft digital market competition regime guidance. Please see our consumer law update for more discussion of this and the timeline for consumer enforcement powers under the DMCCA to come into force.

The DMCCA will have a substantial impact on competition and consumer law in digital markets, as well as more widely. Businesses should remain up-to-date with the latest changes as non-compliance with the law can lead to significant regulatory fines and in some cases criminal sanctions. Please see our recent Insight.

Litigation funding

The government has given an early indication on its initial approach to third-party litigation funding and the future of the former government's abandoned bill to reverse the effect of the UK Supreme Court's *Paccar* judgment in 2023.

The Litigation Funding Agreements (Enforceability) Bill introduced by the former government in March was abandoned after it failed to make it through the parliamentary "wash up" before the general election, and excluded from the subsequent new government's legislative agenda published in July, which left many to consider the bill permanently abandoned.

While the bill is not presently on the legislative agenda, the Civil Justice Council's review of the litigation funding market in England and Wales is ongoing and the final report is due for publication in summer 2025.

The government has not yet taken any action to resurrect the bill. However, in an answer on 1 August to a House of Lords written question for the Ministry of Justice, Labour peer Lord Ponsonby confirmed that the government "*recognises the critical role third-party litigation funding plays in ensuring access to justice*" and confirmed that it would take "*a more comprehensive view of any legislation to address issues*" once the Civil Justice Council's review is concluded. In particular, the government in its written answer stated that it is "*keen to ensure access to justice in large-scale and expensive cases"* while setting up adequate safeguards to protect claimants from unfair terms.

While it is currently unknown whether the bill will resurface once the Civil Justice Council's review has concluded in summer 2025, in light of the recent comments, it appears the government may be minded to introduce amendments to the draft legislation, meaning that the proposed legislation could do more than simply ensure the enforceability of LFAs, as it did in its previous form.

With the increasing use of competition collective actions, businesses of all types should remain aware of this development and consider appropriate funding options for large competition cases, which do not necessarily need to follow on from a finding of a competition law infringement. (For more collective actions, see our Insight.)

European Merger Control

On 3 September, the ECJ set aside the judgment of the General Court and annulled the Commission's decision fining Illumina €432 million and Grail €1000 for "gun jumping", not notifying and then completing a merger without waiting for approval from the Commission.

This represents a significant blow for the Commission in its use of Article 22 of the EU Merger Regulations. Previously, the Commission had issued guidance encouraging the national competition authorities of Member States to refer even those deals which they are not competent to examine under their own national law. In this case that was because neither party had any EU turnover.

The Commission's approach was intended to allow the review of "killer acquisitions". These are where a large company, often in the tech or life sciences sectors, acquires an innovative start-up. It is feared that these acquisitions have a negative impact on competition but are not covered by many current merger regulations. Addressing killer acquisitions is a concern of many competition regulators – as evidenced by the Digital Markets, Competition and Consumers Act which introduces a new turnover threshold, giving the CMA jurisdiction to assess a merger where the acquirer has a 33% market share and a UK turnover of at least £350 million.

The ECJ held that interpreting Article 22 in this way would remove the foreseeability and legal certainty needed by business. The court was clear that undertakings must be able to easily determine whether their proposed transaction will be the subject of a preliminary examination and, if so, by which authority and subject to what procedural requirements. Notably this acquisition was also prohibited by the Federal Trade Commission in the US.

This judgment provides important clarity for businesses with dealmaking ambitions, as it curtailed the power of the Commission to start an investigation of deals which do not have an EU dimension. However it is another example of the diverging regulatory landscape following Brexit.

EU Commission publishes report on competition in generative AI and virtual worlds

Please see AI.

Competition

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Consumer law

Consumer law

UK updates

UK government publishes DMCCA timeline

The UK government has published a ministerial statement setting out a vague timeline for the implementation of the Digital Markets, Competition and Consumers Act 2024 (DMCCA). According to the statement:

- The government expects to commence the consumer enforcement regime in Part 3 of the DMCCA and the new unfair trading regulatory regime in Chapter 1 of Part 4 of the DMCCA in **April 2025**. New savings schemes rules will not commence before April 2025, the government said, and the timeline is subject to continuing engagement with consumers and industry.
- Reforms to subscriptions contracts will not commence before spring 2026 "*at the earliest*".
- The aim is to commence the competition and digital markets parts of the DMCCA in December 2024 or January 2025, with the relevant secondary legislation due to be laid before Parliament this autumn. The government expects the Competition and Markets Authority (CMA) to launch the first Strategic Market Status investigations shortly after the digital markets regime is brought into effect.

The government is clearly keen to ensure that the competition and digital markets aspects of the DMCCA are up and running as soon as possible. However, the consumer enforcement and unfair trading regimes will not be far behind – the CMA is also progressing matters, having already consulted on consumer enforcement guidance (see below). We will continue to follow progress closely.

Please see the Competition section for more discussion of this.

CMA consults on draft direct consumer enforcement guidance and rules under DMCCA

The CMA has consulted on draft guidance and rules for the exercise of its new direct enforcement powers in relation to consumer protection law under the DMCCA. The consultation closed on 18 September 2024.

The draft guidance sets out the CMA's procedures and explains how the CMA will generally conduct direct consumer enforcement investigations. The CMA has also produced draft procedural rules (consumer rules) on the use of its direct enforcement powers which are subject to approval by the Secretary of State.

The CMA sought views on:

- The proposed process for responding to provisional infringement notices, which the CMA can issue to a party if it has reasonable grounds to believe that they are, or are likely to be, in breach or they are an accessory to a breach.
- The factors the CMA will consider when deciding whether to accept, vary or release undertakings if it does not issue a final infringement notice or an online interface notice.
- The factors the CMA will consider when accepting a settlement on an admissions basis, and when determining whether a reasonable excuse for certain breaches exists, including examples of what might amount to reasonable excuse.
- The approach the CMA will take in relation to imposing and setting monetary penalties. In assessing the amount, the starting point will generally be up to 30% of a party's UK turnover. Substantive penalties are capped at 10% of world-wide turnover.

Once it has analysed the feedback, the CMA will prepare its final guidance and consumer rules and will seek secretary of state approval as required by the DMCCA.

Once that approval is obtained, the CMA will publish the guidance and work with the Department for Business and Trade to lay a statutory instrument containing the consumer rules before Parliament, for its approval. The government plans to bring the direct consumer enforcement rules into force by April 2025. We will continue to monitor progress closely.

DMCCA in CMA's annual report 2023-2024

The CMA's annual report 2023 to 2024 explains, among other things, how over the last year, the CMA has been preparing for the new digital and consumer frameworks in the DMCCA.

The CMA says that empowering it to tackle unlawful consumer practices more directly and to issue meaningful penalties means that it can take decisions that have a wide-ranging deterrent effect and that create powerful incentives for businesses to comply with consumer protection law. The regulator sees the new legislation as a "*potential watershed*" moment for it to be able to tackle rip-offs, misleading sales practices and unfair terms.

However, it notes that enforcement will be just one of the tools it uses to achieve a positive outcome and it will continue to assess problems based on the evidence, acting flexibly to deploy whatever interventions are most appropriate. This includes issuing guidance to businesses, running consumer awareness campaigns and working with consumer protection partners.

UK CMA launches investigation into Ticketmaster's Oasis ticket sale

Following the wave of disappointment from Oasis UK fans who could not get tickets to the band's reunion tour because of the "dynamic pricing" system implemented by Ticketmaster, the CMA has launched an investigation into the ticket seller, including into how "dynamic pricing" might have been used.

For more information see our Insight.

CMA publishes update on its review of loyalty pricing in groceries sector

The CMA has published an update on its ongoing review of loyalty pricing in the groceries sector. See this Regulatory Outlook for background.

To date, the main focus of the review has been whether the loyalty pricing offered by some grocery retailers could mislead consumers. The CMA says that, while its analysis is still ongoing, the results gathered so far indicate that it is unlikely to identify widespread evidence of misleading loyalty promotions.

The CMA is currently looking at the practice of alternating between "was/now" promotions and loyalty price promotions, which raises questions as to what the "regular" price of the product is and therefore whether the claimed savings for "was/now" promotions are genuine.

It is also comparing loyalty prices charged by different supermarkets at the same time. The CMA has also commissioned a consumer survey to understand the impact of loyalty pricing on how people shop.

The regulator intends to publish its findings in November 2024. It also intends to provide retailers with guidance on loyalty price promotions in due course. We will monitor progress closely.

Ofcom consults on draft transparency reporting guidance under OSA

Ofcom has published for consultation its draft transparency reporting guidance under the Online Safety Act 2023 (OSA).

The requirement to publish transparency reports under the OSA is an additional duty under the Act for "categorised services". Under the OSA, some regulated online services, will be categorised as category 1, 2A or 2B services, depending on their key characteristics and whether they meet certain numerical thresholds. It is for the government to set out the thresholds in secondary legislation.

Consumer law

Under the OSA, the transparency reports that categorised services will have to publish will have to contain the information requested by Ofcom in transparency notices, which it must issue to every provider of categorised services once a year. The information that Ofcom may require will mostly depend on the category of the relevant service and the type of service.

Ofcom plans to start sending the transparency notices to relevant services in mid-2025, subject to the necessary secondary legislation mentioned above being passed. It anticipates that providers will have between two and six months to produce their transparency reports in response.

The guidance on which Ofcom is consulting sets out the regulator's proposed approach to deciding the information that categorised services will be required to publish. It also explains how information from these reports will be used to inform its own transparency report, which Ofcom is also required to produce annually, drawing conclusions based on the contents of the providers' reports.

The consultation closes on 4 October 2024.

Ofcom consults on its information gathering powers under OSA

Ofcom has published for consultation draft Online Safety Information Powers Guidance, which explains when and how it might use its powers to require and obtain information to allow it to carry out its duties and functions under the OSA.

The non-binding guidance also explains the legal duties imposed on regulated services and other third parties in relation to information gathering, and sets out Ofcom's expectations on how services or other third parties should respond when it requests information. For example, the information provided will have to be complete and accurate, and delivered by the required deadline. Failure to comply may result in enforcement action, which in certain circumstances could, in theory, involve criminal liability.

The consultation closes on 4 October 2024.

Ofcom's consultation on strengthening its draft illegal harms codes of practice and guidance under OSA to include animal cruelty and human torture

Over the summer, Ofcom consulted on strengthening its draft illegal harms codes of practice and guidance under the OSA by specifying animal cruelty and human torture as types of content that platforms must tackle. The consultation closed on 13 September 2024 and Ofcom's statement is awaited.

Ofcom notes that the OSA lists over 130 "priority offences" and includes animal cruelty. However, the animal cruelty priority offence does not fully capture the online content associated with animal cruelty. In addition, the priority offences under the OSA do not fully capture explicit content depicting human torture. To clarify that providers need to remove this type of content, Ofcom has identified other legal provisions which would require the removal of this content and consulted on including such content in its regulatory documents to clarify that providers need to remove it even if it is not under the priority offences in the OSA.

Ofcom highlights its focus on online safety in annual report 2023-2024

In its Annual Report 2023-24, Ofcom emphasises that online safety is one of its priority areas, with the protection of children being its first priority.

The report also stresses that Ofcom's approach to online regulation is data-led and that throughout the year it has continued to build its capabilities and expertise in data engineering, science and analytics by developing infrastructure, tools and processes. For example, its data and innovation hub examined how recommender systems can be made safer for users and Ofcom has started working with companies developing and deploying generative AI models to examine the risks and benefits to keep users safe.

Ofcom has also been building its technical expertise in online safety and working with the academic sector to influence the direction of research towards AI, privacy and online harms. To support this focus on online safety, it has been reported that Ofcom plans to expand its current online safety workforce of over 460 staff by 20% (550+ people) by next March. Ofcom has also said that it plans to hit the ground running as soon as its duties under the OSA come into force by launching enforcement programmes against non-compliant services.

EU updates

EU Commission publishes evaluation of Consumer Protection Cooperation Regulation

The Consumer Protection Cooperation Regulation (CPC regulation) lays down a framework for EU and EEA consumer law enforcement authorities to cooperate with their counterparts in other EU jurisdictions in cross-border breaches of EU consumer rules or where there are multiple infringements across jurisdictions.

In its recent evaluation report the EU Commission has found that the CPC regulation has generally fulfilled its objectives of enforcing compliance with EU laws, having a positive impact on infringement detection and ensuring consistency in enforcement.

Businesses told the Commission that they appreciated being involved in a common and centralised dialogue rather than having to deal with several different authorities, but consumers said that the CPC regulation is inadequate in terms of significantly decreasing harm to consumers in the medium term – the speed at which consumer markets are evolving and the green and digital transition have led to more consumers being exposed to new threats.

At the same time, the Commission found that CPC authorities are facing new enforcement challenges, including:

- enforcement actions can be long and cumbersome;
- digitalisation has made it easier for illegal practices to spread across borders and new business models, driven by emerging technologies, mean that enforcement authorities are having to develop specialised expertise;
- applying the CPC regulation to businesses established outside the EU/EEA, but that target consumers in the EU, needs to be more straightforward;
- the effectiveness of the CPC regulation is hampered by differences in the capacity of national authorities to deal with cases due to limited resources, different interpretations of the laws and differences in the implementation of minimum investigation and enforcement powers; and
- the deterrent effect of the CPC regulation is limited due to difficulties in coordinating the imposition of fines by CPC authorities.

The Commission concludes that the CPC regulation needs to be strengthened. It is currently carrying out impact assessments to determine whether to keep the current framework as it is or to introduce new legislation. The Commission's "fitness check" on EU consumer law, which focuses on digital fairness and was launched in 2022, is also awaited. Indications are that it might be published this autumn, but that is not yet confirmed.

EU Commission launches call for evidence to inform upcoming guidelines on protection of children online under DSA

The EU Commission has launched a call for evidence to assist it in drafting guidelines on the protection of minors online under the Digital Services Act (DSA). It will then consult on the guidelines and plans to adopt the finalised version before summer 2025.

The Commission is seeking feedback on the proposed scope and approach of the guidelines, as well as on good practices and recommendations for mitigation measures to address the risks that children may encounter online. The guidelines will apply to all online platforms that are accessible to children, including those not directed at children, but which still have child users due to a lack of age-assurance mechanisms.

Consumer law

The call for evidence is open until 30 September 2024.

BEUC publishes report on regulating in-game and in-app premium currencies to protect consumers

The European Consumer Organisation (BEUC) has published a report denouncing "*harmful commercial practices*" in video games, such as the use of loot boxes, deceptive designs and aggressive marketing. BEUC is particularly concerned about in-game purchases.

The report finds that the current EU consumer rules have limitations that need to be addressed once the European Commission's digital fairness "fitness check" is completed. BEUC sets out recommendations for reform to further regulate in-game and in-app premium currencies, that is, virtual currencies (such as gems, points, coins) that can be purchased with real money through an in-game or in-app store.

Recommendations include banning the use of these currencies, at least in relation to under 18s, or at least introducing stricter transparency requirements, such as requiring game and app developers to make clear what the equivalent real monetary value of a virtual currency is before each transaction is processed. BEUC also recommends obliging game and app developers to deactivate in-game payment mechanisms by default, making consumers "opt-in" if they wish to make a purchase, and ensuring that notifications are sent to the payment card holder to validate each transaction before it can be made.

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Cyber-security

Cyber-security

UK data centres to be designated as critical national infrastructure

On 12 September 2024, the technology secretary, Peter Kyle, announced that UK data infrastructure, including physical data centres and cloud operators, will be classed as critical national infrastructure (CNI), underscoring the important role data centres play in the nation's economy.

The CNI designation will place data centres on equal footing with essential services like water, energy and emergency services. A dedicated CNI data infrastructure team will be established to oversee and coordinate access to the National Cyber Security Centre (NCSC) and emergency services during critical incidents.

These new measures aim to better protect vital health and financial data against threats such as cyber attacks, IT outages and adverse weather events, reaffirming the prime minister's commitment to safeguarding the UK's data industry.

For further reading on the importance of robust supply chain risk management amidst rising cyber threats, read our Insight.

ICO and NCA sign memorandum of understanding for collaboration on cyber security

On 5 September 2024, the Information Commissioner's Office (ICO) and the National Crime Agency (NCA) signed a memorandum of understanding (MoU), reaffirming their commitment to collaborating to improve the UK's cyber resilience.

The MoU establishes a framework for cooperation and information sharing between the ICO and the NCA, specifically:

- sharing intelligence about international developments and opportunities in relation to cyber security;
- information sharing regarding cyber threats and incidents, including cyber threat assessments where the threats are likely to affect relevant digital service providers regulated by the ICO;
- reminding organisations of their legal obligations to notify all relevant regulators of a cyber incident;
- coordinating incident management where both regulators are engaged in managing a cyber incident to minimise any disruption to the organisation's efforts to mitigate any harm; and
- coordinating public communications and press releases to ensure consistent guidance and standards on cyber related matters.

The MoU clarifies that the NCA will not share information from an organisation it is engaged with due to a cyber incident with the ICO without the consent of the organisation.

The agreement signifies the ICO and NCA's common aim of supporting companies with the guidance and support they require on cyber security matters, assisting victims of cyber attacks and promoting the reporting of cyber crime.

See the press releases from the ICO and NCA.

NCSC and partners link Russian military hackers to critical infrastructure attacks

The NCSC and its partners in the US, the Netherlands, Czech Republic, Germany, Estonia, Latvia, Canada, Australia and Ukraine have identified a unit of Russia's military intelligence service as responsible for carrying out a campaign of malicious cyber activity targeting government and critical infrastructure organisations around the world.

The international agencies published a joint advisory detailing the tactics and techniques used by the GRU Unit 29155 to target organisations to collect information for espionage purposes, the theft and leaking of sensitive information, disruption of websites and destruction of data.

Cyber-security

The NCSC strongly advises organisations to follow the recommended actions set out in the advisory to strengthen their cyber resilience and defend their networks against GRU-linked attacks, including prioritising routine system updates and patching known vulnerabilities.

See the NCSC press release.

NCSC and partners issue warning over DPRK state-sponsored cyber campaign

The NCSC and international partners in the US and the Republic of Korea issued an advisory warning of the threat from a Democratic People's Republic of Korea-state sponsored group known as "Andariel", which has been targeting critical infrastructure organisations around the world to steal sensitive and classified technical information and intellectual property. The group primarily targets defence, aerospace, nuclear and engineering entities, as well as organisations in the medical and energy sectors.

Read the joint cybersecurity advisory, which outlines technical details and mitigation advice.

NCSC encourages organisations to share lessons learnt from cyber security incidents

The NCSC's chief technology officer, Ralph B, published a blog post encouraging organisations to share information on the "lessons learnt" from cybersecurity incidents and how near misses have impacted their services with the aim of providing greater insight into cross-sector threats and the effectiveness of cyber defences.

The NCSC encourages organisations to share information on their Connect Information Share Protect (CISP) platform or other trusted cyber security groups.

UN finalises new cybercrime convention

United Nations member states and the Ad Hoc Committee established by the United Nations General Assembly agreed on a draft text for the convention against cybercrime. The draft convention aims to strengthen international cooperation in addressing the threat posed by technology used by criminals in committing offences such as terrorism and organised crime.

Once it is adopted by the UN General Assembly, expected later this year, the treaty will become the first global legally binding instrument on cybercrime. For details, see the draft convention.

ESAs publish Systemic Cyber Incident Coordination Framework

The three European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs), will establish the EU systemic cyber incident coordination framework (EU-SCICF). The framework aims to support the EU's Digital Operational Resilience Act (DORA) by strengthening coordination among financial authorities and key actors, creating an effective financial sector response to major cyber incidents with the potential to disrupt key financial services and operations.

Over the coming months, the ESAs will begin the implementation of the framework by setting up various bodies and identifying legal and operational hurdles which will be reported to the European Commission. The development of the framework will be subject to the availability of resources and other measures taken by the Commission.

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Cyber-security

Data law

Data law

EU Commission plans to create new SCCs for data transfers to third country controllers and processors subject to GDPR

The European Commission has announced that it is planning to consult on a new set of standard contractual clauses (SCCs) to specifically address the scenario where personal data is sent to a data importer who is located in a non-EEA country, but is directly subject to the EU GDPR. The new clauses will be complementary to the existing SCCs.

The draft of these new clauses is not available yet and, according to the Commission, the consultation is planned for fourth quarter 2024 with adoption planned for second quarter 2025.

This issue is a known gap in the old SCCs, which was not addressed in 2021 when the Commission released the existing SCCs under the EU GDPR. Even after adoption of the newly announced clauses, it is likely that there will be a reasonable period for implementing them (as there was previously when new SCCs were introduced).

UK ICO launches new tool to help small businesses create privacy notices

The UK Information Commissioner's Office (ICO) has launched a new tool to assist small and medium-sized businesses and sole traders create a tailored privacy notice.

The tool contains sections specific to the finance, insurance and legal sectors, education and childcare, health and social care, and charity and voluntary sectors. It also contains sections designed for other small organisations in sectors such as retail and manufacturing.

The tool offers two types of privacy notices: one for customer and supplier information, which can be placed on the organisation's website; and another for staff and volunteer information to be used internally.

ICO publishes update on children's code strategy and a call for views on processing children's data for recommender systems and age assurance purposes

The ICO has published a progress update on its children's code strategy, which it first published in April 2024. See this Regulatory Outlook for background.

As part of its first phase of work, the ICO undertook a review of a sample of social media platforms and video-sharing platforms, focusing on the priority areas outlined in April 2024. The ICO created accounts using proxies for children of different ages to replicate the sign-up process that children would follow. It observed key account settings and privacy information presented to child users, but did not interact with other users.

Where the ICO has encountered issues, it is engaging with the platforms concerned to secure improvements and says that it will take enforcement action if necessary.

To assist its understanding of how platforms use children's personal data in recommender systems and in relation to profiling techniques used to identify children under 13 years of age, the ICO has also published a call for evidence. The deadline for responses is 11 October 2024.

UK government consults on changes to data protection fee regime

The Department for Science, Innovation and Technology (DSIT) has launched a consultation on proposals to amend the current data protection fees payable by data controllers to the ICO, following a statutory review of the regime launched in 2023.

The review found that current fee levels are no longer adequate to offset the costs incurred by the ICO. Therefore, the government is seeking to increase the annual fees payable to the ICO. The consultation closes on 3 October 2024.

DSIT proposed an uplift to fees of 37.2% distributed evenly across the tiers, although the final decision on the amount of the increase will be informed by the outcome of the consultation. If implemented, this would mean the following increases:

- Tier 1 (micro organisations – maximum turnover of £632,000 or no more than 10 members of staff): increase from £40 to £55.
- Tier 2 (small and medium organisations – maximum turnover of £36 million or no more than 250 members of staff): increase from £60 to £82.
- Tier 3 (larger organisations): increase from £2,900 to £3,979.

DSIT is not proposing to make any changes to the tier system itself, or to the current exemptions. Any changes would not be implemented until 2025.

DSIT says that its proposals aim to secure the financial resources required to support the ICO in fulfilling its functions effectively, including "*to support the successful implementation of the Digital Information and Smart Data Bill announced in the King's Speech*" (see this Regulatory Outlook). The comment perhaps suggests that the government intends to bring a new data bill forward at some point during this Parliament.

ICO takes action against website for unlawfully processing personal data through advertising cookies without consent

The ICO has reprimanded Bonne Terre Limited (trading as Sky Betting and Gaming) for unlawfully processing people's personal data and sharing it with advertising technology companies as soon as users landed on the company's website and before they were asked for consent.

The ICO has found that third-party marketing cookies were being deployed as soon as visitors arrived at the website, and before they had been presented with a pop-up from a cookie consent management platform allowing them to accept or reject them. As a result, visitors' personal data collected by the cookies was made available to and processed by adtech vendors without the users' consent or any other lawful basis, and in breach of the requirements for the processing of personal data to be lawful and fair under Articles 5(1)(a), 6(1)(a) and 7(1) of the UK GDPR.

In deciding to issue a reprimand rather than a fine, the ICO took into consideration the facts that Sky had contractual controls that restricted the adtech vendors' use of the cookies data to certain limited commercial purposes, and that the shared data did not reveal that data subjects had interacted with a gambling website.

This action was taken as part of the ICO's work to crack down on misuse of cookies in advertising (see this Regulatory Outlook for background). The ICO now says that it is investigating the data practices of several data management companies. Later this year, it intends to consult on updated draft cookies guidance, and also, will publish its position on the cookie "consent or pay" business model following a consultation (see this Regulatory Outlook).

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Employment and immigration

Employment and immigration

New sexual harassment duty in force 26 October 2024

The new duty on employers to "*take reasonable steps*" to prevent sexual harassment of employees in the workplace comes into force on 26 October 2024. This new duty is set out in the Worker Protection (Amendment of the Equality Act 2010) Act 2023.

Under existing legislation, employers do currently have a defence to a sexual harassment claim brought by an employee where they can show that they took all reasonable steps to prevent that harassment; however, in light of continuing concerns "*that workplace sexual harassment remains widespread, often goes unreported, and is inadequately addressed by employers*", this new legislation places a specific proactive standalone duty on an employer to take reasonable steps as a matter of course.

The new right will be enforced directly by the Equality and Human Rights Commission (EHRC) – there is no need for a specific incident to have arisen. In addition, an Employment Tribunal will have power to uplift the compensation on a successful sexual harassment claim where it determines that there has been a failure to comply with the new duty. See our Insight for how to prepare for the new duty.

Legislative update: Do we know any more on Labour's employment law plans?

While we await the Employment Bill – expected October 2024 – speculation continues as to the exact form that the government's proposals, as set out in its paper "Make Work Pay", will be implemented. The proposals and its potential implications for employers are set out in our Insight.

While the media has reported on what form some measures may take, it is important for employers not to take this as a final position and to await the draft legislation and consultations on specific proposals. However, as employers prepare for a new employment law landscape, reports on the form measures may take remain helpful in understanding the possible direction of travel and for managing employee expectations. Read more here.

Immigration update

Following changes from April 2024 and the change in government, we provided an Immigration Update webinar on 18 September. We examined the changes that have occurred from April 2024 and their impact, recent changes that the Home Office has planned, and any potential impact of a new government and how these will affect businesses and compliance. View the recording.

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Environment

Nature Restoration: Regulation implemented in the EU

Regulation (EU) 2024/1991 entered into force on 18 August 2024. The first of its kind, this regulation explicitly targets the restoration of the EU's nature, with the hope that it will ease climate change and the results of any natural disasters. Specifically, the regulation sets the following legally binding targets for Member States to comply with:

- to restore at least 20% of the EU's land and sea areas by 2030;
- to restore all ecosystems by 2050;
- to prioritise "Natura 2000" sites until 2030; and
- for habitats deemed to be in "poor condition", take restorative measures of at least 30% by 2030, at least 60% by 2040, and at least 90% by 2050.

Particularly important for those businesses with operations directly or indirectly (through supply chains or group companies) in the EU, the success of this regulation is due to be evaluated by 31 December 2033, to assess its effect on different sectors and its wider socio-economic influence.

Further guidance on the Biodiversity Net Gain scheme

Since the Biodiversity Net Gain (BNG) provisions became mandatory on 12 February 2024 further guidance on this approach to development has emerged:

Planning Inspectorate published guidance on appealing a refused or failed BNG plan

If a Local Planning Authority (LPA) refuses or fails to determine a BNG plan, there is new guidance on appealing the decision:

- Who can appeal? Only the person who submitted the BNG plan to the LPA.
- When? Within six months from either the LPA's decision to refuse the BNG plan; or if the LPA has failed to determine the plan, the date that the LPA should have done so.
- Where? Through the Appeals Casework Portal.
- What? There is further guidance on how to complete the appeal form here.

Planning Advisory Service commissioned model templates to facilitate securing BNG

On 5 July 2024, the Planning Advisory Service (PAS) published four templates to assist legal teams securing BNG via agreement:

- BNG Condition: Securing BNG on-site via a condition;
- S106: Habitat Bank: Securing BNG as part of a wider habitat bank;
- S106: On-Site: Includes monitoring contributions and secures on-site BNG by condition; and
- S106: Off-Site: Includes monitoring contributions and a habitat management and monitoring plan for off-site elements.

These templates and their drafting notes should increase efficiency and clarity when drafting agreements, ensuring that the planning expectations are met.

Guidance on how to amend a registration or allocation, or remove a registration

Environment

Natural England has published guidance on how to amend or remove a registration on the biodiversity gain sites register, or amend an allocation of off-site biodiversity gains to a development. This guidance gives details on:

- who can amend registrations or allocations;
- reasons/conditions for making such amendments or allocations;
- information required to be provided;
- documents to be sent alongside registrations;
- how long the process takes; and
- the cost of amending registration or allocations.

BNG requirements do not apply retrospectively to planning applications

In August, a recent High Court judgment (*R (Weston Homes Plc) v Secretary of State for Levelling Up, Housing and Communities and another (2024)*) held that BNG requirements do not apply retrospectively.

This decision followed a developer challenging the Planning Inspector's decision to refuse its application for planning permission based on its failure to comply with the BNG requirements. It was held that, in refusing the planning permission, the inspector gave BNG requirements retrospective effect contrary to regulations 2 and 3 of the Environment Act 2021 (Commencement No 8 and Transitional Provisions) Regulations 2024.

This decision serves as a reminder that BNG requirements should not be determinative in planning applications entered before 12 February 2024, when the BNG requirements came into force.

Temporary flexibility on new Sustainability Disclosure Requirement rules

Please see ESG.

FAQs on the Corporate Sustainability Reporting Directive

Please see ESG.

Government's Cumbrian coal mine plan blocked on climate grounds

The High Court has ruled that, following the Surrey oil decision earlier in the year, *R (Finch) v Surrey County Council And Others [2024]*, the new Whitehaven coal mine cannot go ahead because the government had failed to consider the full climate implications of the project. Specifically, the government failed to consider the project's emissions impact.

This decision is likely to have future ramifications for fossil fuel projects, making it difficult to see how they will go ahead in years to come. The Labour government has said that it will not contest this ruling, potentially highlighting its commitment to clean energy.

First reading of the Water (Special Measures) Bill

Following on from its introduction in the King's Speech in July, the Water (Special Measures) Bill 2024 had its first reading in the House of Lords on 4 September 2024. The bill strengthens the powers of the water regulator and environment regulators, including enabling Ofwat to make rules about pay and governance in the water industry, requiring sewage undertakers in England to produce annual pollution incident deduction plans and requiring water companies to publish near real-time data on discharges from emergency overflows.

It is due to have its second reading on 9 October 2024.

Welsh government responded to its consultation on proposals for Environmental Governance and Biodiversity Bill

Environment

On 2 August 2024, the Welsh government published its response to its Environmental Bill that was published on 30 January 2024. The response established what will be covered by the bill:

- It will place environmental principles into Welsh law. Particularly, these principles will focus on ensuring a high level of environmental protection and contribute to sustainable development.
- It will establish environmental governance in Welsh law. This will involve an independent body enforcing the environmental law against public bodies.
- It will set biodiversity targets and duties in Wales. This includes reversing nature decline by 2030 and actioning a nature positive purpose.

Lithium-ion Battery Safety Bill

This Private Members' Bill had its second reading on 6 September 2024 and intends to assist the safe storage, use and disposal of lithium-ion batteries; and for connected purposes. It is currently in the Committee stage and waiting approval.

Climate Change (Emissions Reduction Targets) (Scotland) Bill

On 5 September 2024, the Scottish government introduced the Climate Change (Emissions Reduction Targets) (Scotland) Bill, which seeks to amend the Climate Change (Scotland) Act 2009.

This was in response to the Climate Change Committee's advice that Scotland's 2030 emissions targets were beyond reach. Thus, this bill aims to set a more reliable framework for Scotland's emissions reduction targets. Businesses should be aware that this new legislation could lead to further regulatory obligations in Scotland and they should stay informed about any developments.

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Environmental, social and governance

Environmental, social and governance

Commission publishes FAQs on CSRD

On 7 August 2024, the European Commission published detailed FAQs on the implementation of the Corporate Sustainability Reporting Directive (CSRD) which was required to be transposed into national law by 6 July 2024.

The FAQs give an overview of the sustainability reporting requirements introduced by the CSRD as well as answers to questions about individual and consolidated sustainability statements and the reporting of information from non-EU undertakings. With the first reports due in 2025, companies due to report should be collecting and preparing the relevant information ready to meet this first deadline.

Calls for EU to delay EUDR implementation

The EU's Regulation on Deforestation-free products (EUDR) is coming into effect on 30 December 2024 and requires companies to carry out extensive supply chain due diligence before a product is placed on the market in the EU, or exported from the EU. The regulation covers seven commodities: cattle, cocoa, coffee, oil palm, rubber, soya and wood. Many products deriving from these materials (such as leather and chocolate) are included in the annex of the regulation.

As implementation gets closer with technical documents still to be produced by the Commission, there have been numerous calls for the regulation to be delayed, including from the head of the World Trade Organization and the German Chancellor, Olaf Schols, who this month has said he has discussed with Ursula von der Leyen delaying the implementing the EUDR.

Despite the number of reported calls for the delay, the European Commission is yet to comment. It has been reported that the European Commission President Ursula von der Leyen is looking to put forward a proposal which is yet to be seen. Businesses affected by the regulation should ensure they are preparing for its implementation at the end of this year but should keep abreast of any updates from the Commission in response to these calls for delay.

Temporary flexibility on new Sustainability Disclosure Requirement rules

The Sustainability Disclosure Requirement (SDR) rules were introduced by the Financial Conduct Authority (FCA) in November 2023, comprising of sustainability product labels, disclosure requirements for products and entities and an anti-greenwashing rule.

The FCA has released a statement extending the deadline for complying with the naming (ESG 4.3.2R) and marketing SDR rules (ESG 4.3.8R) to 5pm on 2 April 2025. This extension only applies in relation to sustainability products, which are UK authorised investment funds, where the firm:

- has submitted a completed application for approval of amended disclosures in line with ESG 5.3.2R for that fund by 5pm on 1 October 2024; and
- is currently using one or more of the terms "sustainable", "sustainability" or "impact" (or a variation of those terms) in the name of that fund and is intending either to use a label, or to change the name of that fund.

However, if possible, firms should comply with the rules without needing to be flexible. The temporary measures should only apply to the firms in the above circumstance.

Circular Economy (Scotland) Act 2024

The Circular Economy (Scotland) Act 2024 received Royal Assent on 8 August 2024. The Act requires the Scottish ministers to prepare and publish a circular economy strategy, make provision about circular economy targets, and make provisions about the reduction, recycling and management of waste and for connected purposes.

The powers given to ministers will allow them to: set local recycling targets; set statutory targets for delivery of a circular economy; restrict the disposal of unsold consumer goods; place charges on single-use items like disposable cups (see the Products section for more on this); and give local authorities additional enforcement powers.

The Scottish government has also published its analysis of responses to the 2024 consultation on Scotland's Circular Economy and Waste Route Map to 2030, which will complement the provisions set out by the Act. The analysis found that more than 70% of respondents backed proposals to reduce household food waste, introduce a charge on single use, disposable items and set new circular economy targets from 2025. The Scottish government will now use these responses to finalise the policies and will aim to publish the finalised strategy later this year.

Businesses should be aware that this new legislation could lead to further regulatory obligations in Scotland and should stay informed about any developments.

New ESG guidelines in force from November

The official translations of the EU's guidelines on funds' names using ESG or sustainability-related terms have been published, meaning they will apply from 21 November 2024.

Despite being guidelines, they include substantial provisions that go beyond ensuring that fund names are not inherently fair, clear and misleading. For example, they include substantial provisions that regulate fund portfolio constituents.

The guidelines have been drafted by the European Securities and Markets Authority (ESMA) and are intended to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names. They also provide asset managers with clear and measurable criteria to assess their ability to use ESG or sustainability-related terms in fund names.

The financial regulators from each EEA member state must now notify ESMA to what extent they will comply with these requirements.

The guidelines will apply immediately for any new funds created on or after the application date. However, there is a transitional period for funds that existed before the application date and that lasts until 21 May 2025.

Law proposed to regulate ESG raters

The government has proposed that it will introduce a law next year to regulate Environmental Social and Governance rating providers. The chancellor, Rachel Reeves, said that the law would follow the recommendations on ESG ratings from the International Organisation for Securities Commission (IOSCO). We are awaiting further developments and publications for these ESG raters.

Right to Repair Directive enters into force

Please see Products section.

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Fintech, digital assets, payments and consumer credit

FCA outlines good and poor practices in cryptoasset financial promotion

On 7 August 2024, the Financial Conduct Authority (FCA) published a document setting out the findings of its assessment of firms' compliance with financial promotion rules for qualifying cryptoassets.

For a sample of firms, the FCA reviewed its onboarding process and approach to the cooling-off period, personalised risk warnings, client categorisation, appropriateness, record-keeping and due diligence. The report discusses the firms' performance and gives examples of good and poor practice for each category.

It warns that firms should not rely on comparing themselves with their peers to determine what is acceptable practice, and urges all firms to read the examples of good and poor practice.

PSR response to consultation on expanding variable recurring payments

On 15 August 2024, the Payment Systems Regulator (PSR) published a response to its consultation paper (CP23/12) on expanding variable recurring payments (VRPs), that is, payments between accounts in different names.

CP23/12 set out initial proposals on how to expand VRPs into new use cases, through a phase one roll-out that would initially enable VRPs for payments to regulated financial services, regulated utilities sectors, and local and central government.

In the response, the PSR explains how it plans to develop the proposals, with a view to publishing updated proposals in autumn 2024 which will cover the following issues:

- The PSR continues to believe that a multilateral agreement (MLA) could be an efficient way of managing relationships between sending firms and payment initiation service providers, but acknowledges concerns about who could operate the MLA. It will work closely with the VRP implementation group to look at what specific rules and provisions a potential MLA should include, and who might be best placed to operate it.
- The PSR considers that a sufficiently large number of payment accounts supporting VRPs is crucial to the success of phase one, and remains concerned that offering financial incentives to motivate sending firms to offer access to VRP application programming interfaces (APIs) could hinder wider adoption. The regulator will continue to consider whether mandated participation is necessary, and how to identify firms it might mandate, with more details to follow.
- Following a mixed response on how best to price APIs for VRPs, the PSR will evaluate the suitability of alternative access prices or approaches, and consider the potential effectiveness of interventions that do not establish a VRP API access price, such as price transparency or reporting requirements.

Consultation on reducing maximum reimbursement level for APP fraud

On 4 September 2024, the PSR published a consultation paper (CP24/11) on reducing the maximum reimbursement level for the Faster Payments authorised push payment (APP) fraud reimbursement requirement. The consultation closed on 18 September 2024.

The PSR proposes that the maximum reimbursement level is set at the Financial Services Compensation Scheme (FSCS) reimbursement limit, currently £85,000, for each Faster Payments APP scam claim. This is a significant change from the previously proposed limit of £415,000.

The change stems from feedback about the risks and impact of a high maximum level of reimbursement, in particular prudential concerns for some smaller firms in the market. The PSR notes that, under the proposed £85,000 limit, 99.8% of all APP scam cases would still fall below the limit, and around 90% of total APP scams value would be reimbursed. The limit would track any revisions to the FSCS limit.

By the end of September 2024, the PSR intends to publish a policy statement setting out its decision on this point. The go-live date for the mandatory reimbursement requirements remains 7 October 2024.

The Bank of England, as the operator of CHAPS, has decided that it will follow the PSR's lead in terms of the maximum level of reimbursement for CHAPS.

FCA follow-up report on payment account access and closures

On 4 September 2024, the FCA published a report setting out its findings from follow-up work on UK payment account access and closures, including the following:

- Basic bank account (BBA) customer journeys varied, leading to differences in apparent rejection rates. Firms were poor at making customers aware of BBAs.
- Data on account access was limited or unclear.
- The FCA did not see evidence of political beliefs or other views lawfully expressed being used as a rationale for account denial, suspension or termination.
- "Reputational risk" is used in varying ways by different firms to deny or close accounts.

The FCA also received feedback from stakeholders (including consumer groups and charities) that some firms' approach to implementing financial crime controls can create difficulties for consumers. In addition, some customers in vulnerable circumstances are experiencing worse outcomes regarding account access.

Alongside the report, the FCA has published a research report on exploring financial exclusion and a press release.

Property (Digital Assets etc) Bill published

On 12 September 2024, the Property (Digital Assets etc) Bill was published, alongside explanatory notes and further information.

The bill will establish in statute the common law position that certain digital assets can constitute property, making provision about the types of things that are capable of being objects of personal property rights, including a thing that is digital or electronic in nature, despite being neither a thing in possession nor a thing in action.

Publication followed the government issuing a written statement in response to the Law Commission's work in this area, which made clear that the government would be taking forward the bill as recommended by the Law Commission. The government response also accepted the Law Commission's recommendation to set up an expert group on the control of digital assets. Certain other Law Commission recommendations, such as making statutory amendments to the Financial Collateral Arrangements Regulations, are being reviewed by HM Treasury, with an update expected in due course.

The Law Commission maintains a status page on the digital assets project on its website.

LSB announces stronger protections for SMEs using personal guarantees

On 12 September 2024, the Lending Standards Board (LSB) published an updated version of its Standards of Lending Practice for business customers.

As explained in a press release, the updated business standards strengthen provisions for SMEs using personal guarantees. The changes aim to help ensure lenders are clear with guarantors about what they are signing up to, and help avoid situations where a guarantor is surprised to find out they are personally liable for lending to a business.

The key changes to the business standards and accompanying guidance on personal guarantees include:

- Updates to the requirements for lenders on advising potential guarantors of the need to seek independent legal advice.
- Enhanced guidance for lenders on providing information to a guarantor about how the personal guarantee will work and their obligations under it.
- A new requirement for lenders to give guarantors annual reminders that a personal guarantee remains in place. This will ensure lenders can maintain up-to-date records on who is liable for a guarantee and will help guarantors

keep track of any liability. These reminders will serve as prompts for guarantors to speak to a lender if they are no longer associated with a business in receipt of lending, or if they believe the lending is no longer outstanding.

The updates to existing provisions in the business standards and accompanying guidance take immediate effect. The new requirements on annual reminders regarding guarantees will apply from 8 September 2025.

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Food law

Food law

Government confirm HFSS advertising restrictions for October 2025

The government has published the consultation outcome on introducing further advertising restrictions on TV and online for products high in fat, salt or sugar (HFSS), confirming that new restrictions will come into force on 1 October 2025. This will include introducing a 9pm watershed for less healthy food and drink advertising on TV, including all on-demand programme services, and a restriction on paid-for less healthy food and drink advertising online.

The government's response provides some clarity on the HFSS products that will be in scope, noting that only advertisements for "less healthy food and drink" are caught. There is a two-stage approach for defining a product that is considered "less healthy" for the purposes of the restrictions. The product needs to:

- fall within one of the product categories in the schedule to the draft regulations; and
- score four or above for food, or one or above for drink, when applying the 2011 technical guidance to the 2004 to 2005 nutrient profiling model.

This position largely aligns with the promotion restrictions already in place and further guidance will be published on product categories before the restrictions come into place.

The following products will not be caught by the advertising restrictions: infant formula, baby food, follow-on formula, processed-cereal based foods for infants, total diet replacements for weight-control products, meal-replacement products with an approved health claim, food supplements, and drinks used for medicinal purposes.

The response also reiterates the government's intention to introduce a ban on the sale of high-caffeine energy drinks to under 16s. Further information is expected on this.

The government has also launched a consultation on the proposed exemption of Ofcom-regulated internet-protocol television services from these online advertising restrictions on less healthy food and drink. The consultation closes on 10 October.

Food Standards Agency discusses regulation on a national level for large food businesses

Following a trial with five major supermarkets, the Food Standards Agency (FSA) board has discussed whether it is possible to work with primary authorities to regulate some large businesses with strong compliance records. The proposals discussed on 18 September would have the FSA scrutinise the overall risk management controls and data systems of these businesses rather than rely on local inspection. The proposal is that this would apply to a small number of large national food businesses, such as supermarkets, and these would be regulated at a national level rather than on a premises-by-premises basis.

For the FSA to act as the direct regulator and to implement this system fully, legislation is required that will be subject to consultation with a wide group of stakeholders and will take several years to develop. Therefore, in the meantime, the paper says they will look at implementing national regulation on a smaller scale and will then return to the board in 2025 to look at the longer-term plans.

Businesses should keep an eye on upcoming consultations which we expect to see in the near future.

Food Standards Agency issues national allergy advice on concerns over products containing mustard

The FSA is working with businesses and industry to identify products affected by peanut contamination in mustard ingredients. Industry has been asked to review food supply systems and remove from sale any products that may contain contaminated mustard ingredients.

This is a reminder for food businesses of the importance of good supply-chain due diligence and understanding the risks of the unintended presence of allergens in food products. Currently, food businesses are required to reduce the risk of cross contamination in the food chain as far as possible through food-allergen management practices including carrying

out risk assessments to inform food safety management systems. Where it is not possible to eliminate or reduce the risk to the required level, voluntary precautionary allergen labelling (PAL) – for example, "*may contain*" – can be used to highlight the potential of the presence of allergens to consumers.

Codex has proposed that thresholds based on reference doses of allergens could be used to standardise the use of PAL. The FSA board has recently discussed the benefits and risks of this proposal with their comments pending.

Expansion of 'Not for EU' labels across GB to be postponed

The former Conservative government earlier this year consulted on introducing "Not for EU" labelling requirements to apply to agrifood products across Great Britain and not just in Northern Ireland. Currently, these requirements are only for certain agrifood products being placed on the Northern Ireland market via the "green lane". The reason for this change was to ensure no incentive arises for businesses to avoid placing goods on the Northern Ireland market.

On 5 August, guidance on the labelling requirements for certain products moving from Great Britain to retail premises in Northern Ireland under the Northern Ireland Retail Movement Scheme was updated to say that the consultation responses were being "*considered carefully*", and it has now been reported that the new government is planning to postpone these plans indefinitely following warnings from industry bodies that it would cause chaos for producers and suppliers.

However, businesses moving in-scope agrifood products via the "green lane" to Northern Ireland should note that phase two of the requirements to label products with "Not for EU" comes into force on 1 October 2024. This means that from 1 October 2024, all prepacked meat and meat products, meat packed on sale premises and dairy products will need to be labelled with "Not for EU" if they are being moved between GB to Northern Ireland via the Northern Ireland Retail Movement Scheme.

Guidance updated on importing food to the UK

Government guidance on importing organic food into the UK has recently been updated to highlight that from 1 January 2027, businesses will need a certificate of inspection to import organic food from the EU, European Economic Area and Switzerland to Great Britain. These changes were due to come into effect from 1 February 2025.

Marketing standards controls for fruit, vegetables and green bananas imported from the EU into Great Britian, which were due to come into effect on 1 February 2025, have been moved to 1 February 2027.

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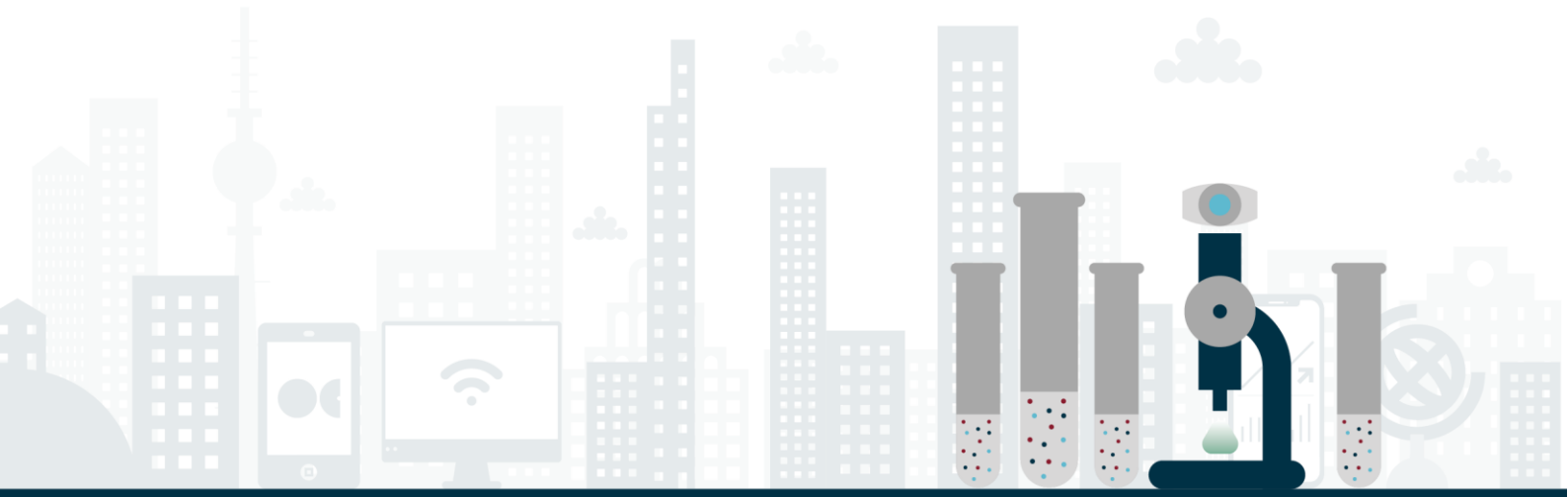

Health and Safety

Health and Safety

The Terrorism (Protection of Premises) Bill 2024

The Terrorism (Protection of Premises) Bill (also known as Martyn's Law) was introduced into Parliament on 12 September 2024. The bill was amended to reflect the feedback from the consultation on standard tiers and its pre-legislative scrutiny. Individuals or entities with control over qualifying premises or events are responsible for meeting the bill's requirements.

There are some significant amendments to the draft bill, most notably that "standard tier" qualifying premises will now be those where 200 people or more may be present, as opposed to a capacity of 100 people or more as in the previous version.

It also appears that the government has decided that the regulatory body responsible for oversight of these duties, and associated enforcement action, will be the Security Industry Authority.

The bill will apply to qualifying public premises and events.

Premises qualify if they are buildings or land used for specified activities (such as retail, education) and can host 200 or more individuals.

Premises are categorised into standard duty (200-799 individuals) and enhanced duty (800+ individuals).

Enhanced Duty Premises are qualifying premises where 800 or more individuals may be present.

Qualifying events are events held at premises that are not classified as enhanced duty premises but where 800 or more individuals may be present at some point. The explanatory notes outline that an event will be out of scope if it will be attended by 800 or more individuals over the course of the event but there will never be that number of individuals on the premises at any one time.

All venues with a capacity of more than 200 people will be classed as standard tier and would be legally required to have plan to deal with an attack at their premises (previously this applied to those with a capacity of 100 people or more). This will require them to implement public protection procedures such as evacuation and lockdown procedures.

Venues with a capacity of more than 800 people will fall into the enhanced tier and will need to comply with additional measures, such as having CCTV or security staff. They will also be required to document compliance and provide it to the Security Industry Authority.

The bill is scheduled to have its second reading on 14 October 2024.

Grenfell Tower Public Inquiry – final report

The Grenfell Tower Inquiry Phase 2 report was published on 4 September 2024 and provides a detailed and technical evaluation of the incident. It heavily criticises many of those connected with the tower and its refurbishment, including the government, the local authority (including its building control function), the tenant management organisation, the fire service, those who manufactured and certified materials, construction parties and certain industry bodies.

The report makes 58 recommendations, covering central and local government, the fire service and the construction industry. They include:

- ***Regulation:*** Creation of a single construction regulator responsible for the entire industry (including certifying construction products and licensing contractors to work on higher-risk buildings) reporting to a single secretary of state.

- ***Government:*** A new secretary of state for fire safety to be supported by a new chief construction adviser, bringing government responsibility for fire safety into a single department.
- ***Legislation and guidance:*** "Urgent review" of the definition of higher-risk buildings in the Building Safety Act, given that building use and the presence of vulnerable people in it is more relevant for the purposes of the definition than the height of a building. Urgent review of Approved Document B (statutory guidance on fire safety) and keeping all Approved Documents (the suite of guidance that that accompanies building regulations) under review and consideration of whether building control functions should be performed by those with a commercial interest in the process.
- ***Fire engineers:*** Formalising the profession and qualification of fire engineers and taking urgent steps to increase the number of places on masters level courses accredited by the professional regulator.

The prime minister's response to the report confirms the following intentions on the part of the government:

- To write to all companies found by the Inquiry to have been part of the failings as a "first step" to stop them being awarded government contracts.
- To introduce a new Residential Personal Emergency Evacuation Plan policy (a recommendation from the first report) for anyone whose ability to evacuate could be compromised and funding this for those renting in social housing.
- Willingness to force freeholders to assess their buildings and enter remediation schemes within set timetables, with a legal requirement to force action if deemed necessary and further steps on remediation to be set out in the autumn. This follows government comment, after a fire at a tower block in east London at the end of August, that the pace of removal of unsafe cladding has been too slow.
- To reform the construction products industry.
- To ensure social landlords are held to account for the decency and safety of their homes.
- To respond in full to the recommendations within six months.

Golden Thread guidance published

Building safety legislation requires dutyholders and accountable persons to compile, maintain and share a golden thread of information for higher-risk buildings (HRBs) from design stage to (and throughout) occupation, to support building safety risk management.

The Construction Leadership Council has now published new guidance on the content of that information and requirements at different stages of a building's lifecycle. It will be particularly relevant for dutyholders and accountable persons, and will also be useful for those responsible for HRBs constructed before 1 October 2023 (when these rules came into force) or covered by the transitional building control arrangements. The guidance aims to provide greater clarity and support for responsible persons who have had to grapple with significant changes to their responsibilities in recent months, and ultimately improve the operation and management of HRBs.

HSE launch call for evidence on preventing and managing work-related stress

The Health and Safety Executive (HSE) is funding a new research project to collect information on work-related stress. It has launched a call for evidence inviting businesses to submit information on how they manage work-related stress in practice. The information they gather will be used to inform policy decisions and create practical guidance for employers.

The deadline for submissions is 30 September 2024. With the HSE using the information collected to feed into practical guidance and policy decisions, businesses should review the call for evidence and decide whether to submit their information.

Suicide awareness

On 10 September it was World Suicide Prevention day which aims to increase awareness of mental health and remind those suffering of the support that is on offer to them. For businesses, this provides a timely reminder of their duties under section 2 of the Health and Safety at Work Act 1974 to ensure the health and safety of employees so far as is reasonably practicable, and this extends to mental health. In order to meet this duty, businesses should carry out mental health risk assessments, including the consideration of suicide risk and to consider factors and behaviours in a workplace which need to be examined and action plans to put in place.

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Modern slavery

Modern slavery

Nothing to report this month.

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Products

Products

Jump to: General / digital products | Product sustainability | Life Sciences and healthcare

General / digital products

Draft Product Regulation and Metrology Bill published

On 4 September, the draft Product Regulation and Metrology Bill was published and had its first reading in the House of Lords. It is scheduled to have its second reading on 8 October 2024. The bill allows for the creation of product and metrology regulations aiming to make it easier for the government to update the relevant legislation, as well as allowing for alignment with EU standards.

The bill is broad in scope in terms of the products it applies to, defining products as a "tangible item that results from a method of production". In its current form, the bill does not apply to intangible products, such as AI systems, but the regulations which can be introduced may include requirements relating to a products components, which includes intangible items, such as software.

A key aspect of the bill is that the new regulations can outline that a product can meet relevant product requirements by meeting specified provisions in relevant EU law. This means the government will be able to decide whether to align or diverge from new or updated EU rules.

Some of the other key points from the bill are as follows:

- **Responsibilities within supply chain –** the regulations may impose obligations on: manufacturers, those who market a product (such as distributors and retailers) in, or import a product to, the UK and a person who controls access to, or contents of, an online marketplace or an intermediary. It adds that this is **not an exhaustive list** and requirements may be placed on others carrying out activities in relation to a product.
- **Cost Recovery –** the regulations may include mechanisms for recovering costs incurred by the authorities detailing who is liable and the charge conditions.
- **Enforcement –** the bill provides for both criminal and civil sanctions to be included in the regulations and also allows for authorities to accept undertakings to secure compliance with the regulations.
- **Excluded products** - the draft bill does not apply to: food, feed stuff, plants, fruit and fungi, plant protection products, animal by-products, products of animal origin, aircrafts, military equipment, medicines and medical devices.

The bill also includes provisions in regards to the creation of metrology regulations which gives powers for regulations to be made about:

- the units of measurement that must be used to express quantities (whether of goods or other things);
- how units of measurement are to be calculated, determined, or must and may be referred to; and
- the quantities in which goods may or must be marketed.

CE marking extended for construction products

The government has confirmed that the use of the CE mark on construction products can continue to be used beyond the current deadline of June 2025. Construction products were one of the product categories that fell outside the indefinite extension of CE marking recognition. Rushanara Ali, the secretary of state for building safety and homelessness, set out in her written statement that the government will extend the period of recognition of CE marking for construction products and added that *"any subsequent changes to the recognition of CE marking would be subject to a minimum 2-year transitional period".*

BSI PAS 7770: energy-related consumer products

Products

The Office for Product Safety and Standards (OPSS) has sponsored the new PAS 7770. Publicly available specifications are often referred to as “fast-track standards”, and PAS 7770 sets out how manufacturers and designers can assess a product’s environmental impact across its entire life cycle, from raw material extraction through to end of life. This PAS provides guidance on the measurement and reporting of the environmental performance of energy-related consumer products, such as household appliances, consumer electronics and toys, and aims to assist businesses navigate existing sustainability standards.

PAS 7770 considers the environmental implications of how products are made, bought, used, and disposed of. This includes the use of recycled materials for manufacturing, reuse, repair, reconditioning or refurbishment, upgrading, upcycling, recycling, increasing product durability and lifespan, and waste prevention and reduction. Issues covered in the guidance include product functionality and product user safety that might be introduced as a result of replacing or repairing product parts and also includes the information that should be provided to consumers, such as in regards to reuse options and maintenance information. PAS 7770 will be a helpful tool to those businesses looking to reduce their products' lifetime environmental impact. The PAS is free and can be downloaded here.

Courts consider whether a time-limited subscription to a SaaS application also counts as a 'sale of goods'

The Court of Justice of the EU, in *Computer Associates UK Ltd v The Software Incubator Ltd* (Case C-410/19) [2021], ruled that obtaining a perpetual licence to download and use software is considered a sale of goods.

LivePerson, which offers a SaaS product called LiveEngage, hired Kompaktwerk to market this software. Kompaktwerk claimed it was a commercial agent under the Commercial Agents (Council Directive) Regulations 1993 and sought compensation after their arrangement ended. It argued that Software-as-a-Service (SaaS) is similar to traditional software purchases and should follow the CJEU decision in *Computer Associates*.

LivePerson countered that SaaS does not involve a "sale of goods" but rather an ongoing service. Judge Christopher Hancock KC agreed with LivePerson, ruling that:

- A "sale" involves a permanent transfer of the seller's interest in the product. SaaS customers only get a limited, renewable licence, akin to a rental, not a sale.
- SaaS involves the provision of services rather than the sale of goods, as customers access software hosted on the provider's servers. The judge said the "*heart of the product was the service to which the customer subscribed*".
- The key documents were the contracts, and factual disputes did not change the conclusion on the "sale of goods" issue.

This indicates that the UK might be diverging further from the EU's stance on whether software is a product. The Product Liability Directive and the General Product Safety Regulation suggest that the EU would likely take a different view and would probably consider the *Computer Associates* judgment as applicable to time-limited subscriptions as well.

EU

European Parliament approves revised Product Liability Directive

On 18 September 2024, the European Parliament plenary approved the new EU Product Liability Directive. The Council now needs to approve it, after which it will be published in the Official Journal of the European Union and Member States will have two years to transpose the new directive into national law.

The new directive represents the biggest reform to the civil liability framework for defective products since the introduction of the first Product Liability Directive in 1985. See our infographic for more on the changes being implemented.

Products

European Parliament adopts Cyber Resilience Act

On 18 September 2024, the European Parliament plenary approved the legally revised text of its first reading position. The Council is expected to formally adopt the regulation without further amendments, after which it will be published in the Official Journal of the European Union.

The Cyber Resilience Act's rules will be phased in over a three-year period to give manufacturers sufficient time to adapt to the significant new obligations. See our Insight for more on the changes being introduced.

Product sustainability

UK

Defra publishes initial illustrative base fees under EPR

On 15 August, Defra published its initial illustrative base fees for different materials for 2025/26 to be imposed through the new extended producer responsibility (EPR) scheme. The proposed fees range from between £130 and £330 a tonne for glass to between £410 and £665 a tonne for fibre-based composites. These figures are the first estimate and the government will publish refined illustrative figures in September 2024. The exact fee rates for the first year of EPR will not be known until after 1 April 2025 (after the deadline for reporting data).

The fees payable are for year one and do not include regulator charges or costs associated with meeting packaging recycling targets. The guidance also notes that from the second year of EPR (2026), fees will be modulated in a bid to reduce the amount of unsustainable packaging being placed on the market. Information will be published on the types of packaging that will be subject to these modulated fees in autumn 2024.

Following the publication of these fees, there has already been backlash from the glass industry as to how high the fees are for glass. Defra has responded to these calls saying that it will be looking again to the way it calculates fees for glass and emphasises that the figures are likely to change.

EPR guidance updated to reflect dates and deadlines for reporting 2024 and 2025 data

The extended producer responsibility guidance on packaging data has been updated to reflect dates and deadlines for reporting 2024 and 2025 data as follows:

Large organisations

If businesses have all the data under the new rules for 2024, they should report it in 2 batches:

- report data for 1 January to 30 June **from 9 August 2024 (deadline to report: 1 October 2024)**
- report data for 1 July to 31 December **from January 2025 (deadline to report: 1 April 2025)**

If businesses do not have all the data required under the new rules, they should still report in two batches. In England, Scotland and Wales:

- businesses should not report any data relating to packaging supplied between 1 January and 30 March 2024;
- they should report data collected under the new rules from 1 April to 30 June – do this from 9 August 2024 and before 1 October 2024; and
- report their 1 July to 31 December data from 1 January 2025

The environmental regulators will use the data submitted to calculate the 3 missing months (January, February and March 2024).

All the data they submit must follow the new rules for data from 2024. The deadlines for reporting are:

- **1 October 2024** to report for January to June 2024.
- **1 April 2025** to report for July to December 2024.

Small organisations must collect data for 2024 and report this by 1 April 2025.

Businesses in scope must ensure that they have submitted the relevant data by 1 October 2024 and are then collecting the correct data ahead of the next deadline in April 2025.

Government not to implement recycling labels under extended producer responsibility

It has been reported this month that the government is telling businesses the mandatory recycling labelling requirements under EPR, that were to be introduced in April 2027, will no longer be required from that date. Originally, under the scheme, businesses were to be required to place the OPRL Recycle Label on its packaging from April 2027. However, reports suggest the government has stopped plans to impose this as the EU considered it was not consistent with its labelling plans.

Scottish consultation on charging for single-use disposable cups

The Scottish government has launched a consultation on the introduction of a national mandatory 25p charge on single-use disposable beverage cups. The powers granting the Scottish government to implement this charge was provided for in the Circular Economy (Scotland) Act 2024.

Views are being sought on the proposals which include:

- a charge of at least 25p on all single-use beverage cups when an individual buys a drink of any kind, including through a loyalty scheme, to maximise coverage and ensure the charge is easily understood;
- the application of the charge regardless of cup material, including biodegradable materials or bio-based plastics;
- exemptions from the charge when a drink is free, for instance in non-retail settings such as hospitals and care homes;
- retailers would be able to retain reasonable implementation costs from the charge, in line with the approach taken for the single use carrier bag charge; and
- net proceeds of the charge to be used for the advancement of environmental protection or improvement, or other purposes that are similar.

The consultation closes on 14 November 2024 and the Scottish government are aiming to implement the charge by the end of 2025.

EU

Right to Repair Directive enters into force

The Right to Repair Directive entered into force on 31 July 2024. Member States will need to bring into force laws, regulations and administrative provisions to comply with the directive by 31 July 2026. Please see our Eating Compliance for Breakfast webinar recording and relevant slides on the directive.

Life Sciences and healthcare

UK

NHS report provides potential areas of reform

The publication of Lord Darzi's report on the NHS looks to a number of areas which have contributed to the current state of the NHS, which Darzi states "*is in serious trouble*". Areas of concern which the report looks to include the

following, and while the detail on proposed regulatory reform is yet to be seen, both this report and the government's response outlining that long term reform will be put into place, indicate that reform of these areas could be on the horizon:

Digital transformation - Lord Darzi compares how technology has revolutionised many aspects of daily life, whereas the NHS remains in the early stages of digital transformation. The last decade could have been a golden era for embracing technologies that shift the model from "diagnose and treat" to "predict and prevent". Lord Darzi advocates integrating advanced digital solutions into the healthcare system.

What to watch out for: regulatory reform in line with the MHRA's roadmap, leading to new medical device regulations expected in 2025.

Clinical trials - The UK is ranked fourth in the number of clinical trials initiated in 2021. However, Lord Darzi notes the need to simplify and expedite the process for establishing trials in the UK, pointing to the O'Shaughnessy review that recommended simplifying and speeding up the process for establishing clinical trials to maintain the UK's competitive edge.

What to watch out for: the UK government has recognised the need to reform regulations over establishing clinical trials.

Health data - The NHS holds extraordinarily rich datasets that are largely untapped. Lord Darzi explains how these datasets could revolutionise clinical care, service planning, and research. Investment in information technology has predominantly focused on acute hospitals, meaning that investment is needed in technology in community-based services and other providers.

What to watch out for: updated guidance from the NHS Health Research Authority on the use of patient data in research

AI - Lord Darzi notes the potential for AI to transform patient care: from discovering new treatments to automating routine processes. With its vast datasets and the UK's position as a global AI hub, the NHS could lead this transformation, benefiting patients nationwide. Lord Darzi argues for a fundamental shift towards technology adoption.

What to watch out for: the development by the MHRA of its AI strategy (published in April), particularly guidance and regulations over accountability and governance

Windsor Framework - supplying medicines into Northern Ireland

Changes to the supply of medicines from Great Britian to Northern Ireland (NI) being introduced under the Windsor Framework (WF) come into force on 1 January 2025. Amending regulations and further guidance has recently been published ahead of this implementation.

The Human Medicines (Amendments relating to the Windsor Framework) Regulations 2024 amend the Human Medicines Regulations 2012 to implement the arrangements relating to the supply of medicines from Great Britain to Northern Ireland (NI) as set out in the Windsor Framework agreement, including the provision of two categories of UK-wide marketing authorisation. The regulations come into force on 1 January 2025.

Under the WF, medicinal products that previously required EU-wide authorisation must now be authorised by the Medicines and Healthcare products Regulatory Agency (MHRA) according to UK law. This allows all types of medicines to be supplied with a single licence and pack for the entire UK.

The 2012 Regulations have been amended to include two categories of UK-wide marketing authorisation (Categories 1 and 2), depending on whether the product would have fallen under the centralised EU procedure. This eliminates the need for separate packs for Northern Ireland and Great Britain. The 2012 Regulations still allow for marketing

authorisations limited to Northern Ireland, but no longer for Great Britain. Additionally, the WF removes the EU law requirement for medicines packaging to include a bar code for an EU-wide database.

Wholesalers and manufacturers guidance following agreement of the Windsor Framework

New guidance has been published to support manufacturers and wholesalers implement the requirements under the WF for those medicines supplied to NI. This guidance is intended to be read in conjunction with the labelling and packaging guidance and associated Q&As. The WF will ensure that human medicines can be approved and licensed on a UK-wide basis by the MHRA.

From 1 January 2025, to be placed on the UK market, all medicines must be labelled as "UK Only" to ensure they do not move into any part of the EU or European Economic Area. The guidance adds that joint packs between the UK and EU will no longer be possible.

Pharmacovigilance following agreement of the Windsor Framework

The MHRA has published guidance on the implementation of changes to pharmacovigilance for medicines authorised in the UK following the agreement of the WF. These changes will be implemented from 1 January 2025. The guidance notes that pharmacovigilance requirements will remain broadly in line with current requirements. However, there will be aspects of pharmacovigilance which will be impacted depending on whether the product is Category 1 or 2 and the guidance provides information on these different requirements. Businesses should review this guidance to determine how pharmacovigilance is impacted in relation to their products.

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Regulated procurement

Regulated procurement

New procurement regime delayed to February 2025

The government announced on 12 September 2024 that the new procurement regime being brought in under the Procurement Act 2023 will be delayed by four months, pushing the go-live date to 24 February 2025.

The written statement announcing the delay states this will allow the new government to rewrite the National Procurement Policy Statement (NPPS) which currently *"does not meet the challenge of applying the full potential of public procurement to deliver value for money, economic growth, and social value".* The government confirmed that the current regulations will remain in place until the new commencement date.

The current NPPS will be withdrawn and a new NPPS, once drafted and following consultation, will then be laid to complete a 40-day passage in Parliament.

The amending regulations to update the transitional and saving provisions were published on 16 September and came into force on 17 September to reflect the new go-live date of 24 February 2025. This includes amendments to the period of validity of dynamic purchasing systems awarded under the previous legislation, which has been changed from 27 October 2028 to 23 February 2029.

Whilst the implementation of the new regime has been delayed, contracting authorities and suppliers should not take their "foot off the pedal" completely and should continue to upskill on the new regime and its implications for their business.

Further guidance on the Procurement Act published

The Cabinet Office has published further technical guidance in relation to the Procurement Act 2023. New documents that have been added include guidance on: exclusions; debarment; frameworks; key performance indicators; and contract modifications. For the full list of published guidance see here.

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Sanctions and Export Control

Sanctions and Export Control

Office of Trade Sanctions Implementation

In December 2023, the government announced the creation of a new Office of Trade Sanctions Implementation (OTSI), which will be responsible for the enforcement of trade sanctions (see our previous Regulatory Outlook). The new UK government has now laid the foundational regulations to establish the OTSI statutory powers before Parliament – nine months after the new body was first announced.

OTSI, which is part of the Department for Business and Trade, will be responsible for the civil enforcement of certain trade sanctions relating to UK services and trade of sanctioned goods outside the UK. The Trade, Aircraft and Shipping Sanctions (Civil Enforcement) Regulations 2024 introduce new enforcement powers, including the power to impose monetary penalties of up to £1 million or 50% of the estimated value of the breach (whichever is higher) for breaches of aircraft, shipping and certain trade sanctions.

Other enforcement tools include publishing reports where a breach of sanctions regulations has occurred, reporting obligations for relevant persons and trade sanctions information requests. Failure to comply with the new obligations can give rise to criminal liability.

All UK companies and overseas branches of UK companies should take note of the new regulations, which will enter into force on 10 October 2024. See the press release. For details on the additional compliance burdens for the industry, financial services and legal sectors, see our Insight.

Annual frozen asset reporting exercise

As part of its annual review, HM Treasury requests that all persons holding or controlling funds or economic resources belonging to, owned, held or controlled by a designated person/entity to report details of those frozen assets.

Anyone possessing this information or have previously reported frozen assets must complete the form and submit it to OFSI by 11 November 2024.

UK amends Russia Regulations on legal advisory services

On 6 September 2024, the Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2024 came into force, amending the Russia (Sanctions) (EU Exit) Regulations 2019, clarifying that the provision of legal advice in relation to compliance with non-UK sanctions and criminal legislation is permitted.

The amendment also makes a number of other changes, including to the definition of legal advisory services, the exceptions to the prohibition and the knowledge a person must have before the prohibition on the provision of certain legal advisory services applies.

This instrument replaces the general trade licence for legal advisory services published in August 2023 (see our previous Regulatory Outlook), which has been revoked.

The government's Russia sanctions guidance and guidance on services sanctions has been updated accordingly. For further details and assistance on these changes please get in touch with our experienced sanctions team below.

UK expands designation criteria under Russia sanctions

The UK government published the Russia (Sanctions) (EU Exit) (Amendment) (No.3) Regulations 2024, which amends the Russia (Sanctions) (EU Exit) Regulations 2019 by expanding the activities for which a person may be designated.

Persons can now be designated for being "involved in destabilising Ukraine or threatening the territorial integrity, sovereignty or independence" if they own, control, or are working as a director, trustee or other manager or hold the right to nominate a director, trustee, or other manager or equivalent of, a person, other than an individual, who falls within sub-paragraphs (a) to (g) of Regulation 6(3).

Persons can now be designated for being "involved in obtaining a benefit from or supporting the Government of Russia" if they provide financial services, make available funds, economic resources, goods or technology, to a person who falls within sub-paragraphs (a) to (e) of Regulation 6(3).

For further information see the explanatory memorandum.

New open general licence

The Department for Business & Trade published an AUKUS specific open general licence (OGL) permitting the export of dual-use items, military goods software, or technology and trade of military goods between and among the UK, Australia, and the US.

The OGL follows a "historic breakthrough" in defence trade between the UK, Australia, and the US, whereby the three nations announced export control changes which will lift certain export controls and restrictions on technology sharing.

To use the OGL, exporters and recipients of the goods must be on the AUKUS nations' authorised users list. Find out more about how to become an authorised user and to use the OGL in the accompanying guidance note.

The OGL entered into force on 1 September 2024 and is of indefinite duration.

OFSI general licences

The Office of Financial Sanctions Implementation (OFSI) published the following general licences:

- INT/2024/5028385: This general licence allows payments and other permitted activities to take place in relation to the insolvency proceedings associated with East-West United Bank. The licence came into effect from 9 August 2024 and expires on 8 August 2029.
- INT/2023/3781228: This general licence has been updated to allow for the payment of fees to local authorities for business improvement district levies by designated persons.
- INT/2024/4919848: This general licence allows for the sale, divestment or transfer of financial instruments held at the National Settlement Depository and the payment of safe keeping fees. The licence came into effect from 3 July 2024 and has been extended to 12 October 2024.

New export general licence

The Department for Business and Trade's Export Control Joint Unit (ECJU) published the open general licence (global combat air programme). The licence permits the export and transfers from the UK of dual-use items, military goods software, or technology, and the trade of military goods for use of the Global Combat Air Programme (GCAP).

The licence came into effect on 14 August 2024 and is of indefinite duration. For further details see the guidance note.

The ECJU provides training for exporting and trading individuals and companies with the aim of increasing understanding of the UK's strategic export controls. Register for available courses, webinars, seminars and workshops.

New UK Sanctions List search function

The Foreign, Commonwealth and Development Office launched a new search function to the UK Sanctions List. Users are now able to search for designated persons, entities and ships under the Sanctions and Anti-Money Laundering Act 2018 without having to download the list in its entirety.

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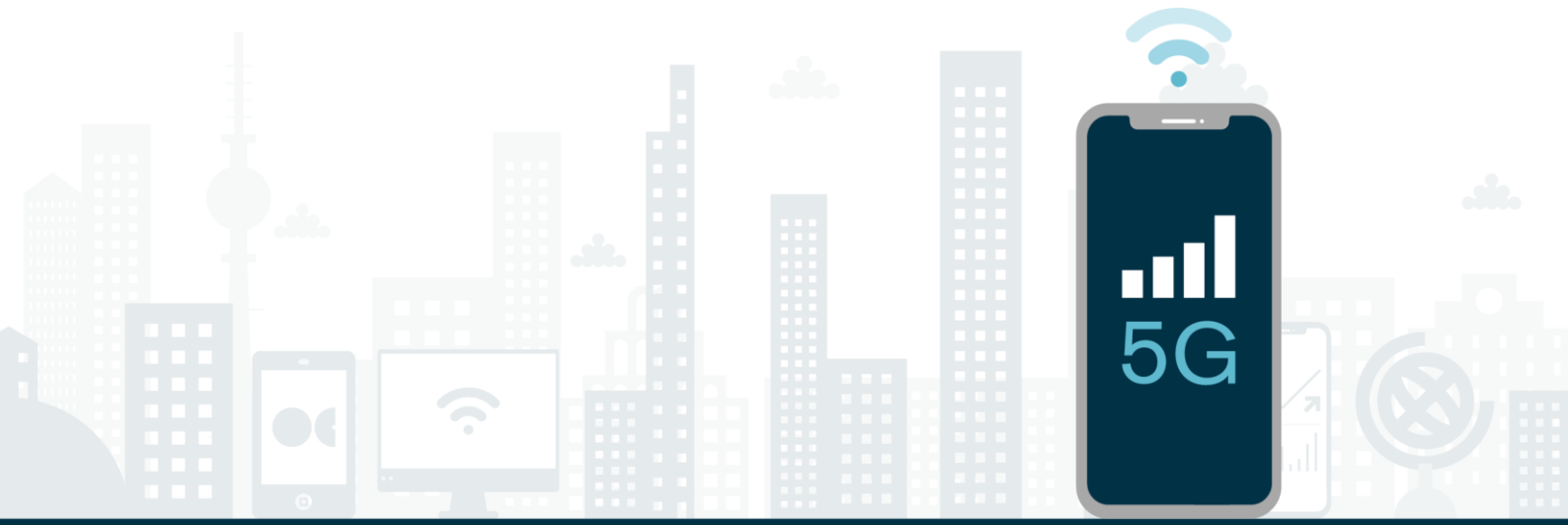

Telecoms

Telecoms

Ofcom publishes statement and further consultation on its shared access framework
On 24 July Ofcom published a statement and further consultation for supporting increased use of shared spectrum. This follows the consultation which it launched in November 2023, based on which it has decided to:

- reduce separation distances between users in the 3.8-4.2 GHz spectrum band;
- open up rules relating to sharing in order to support new use cases (for example an increase in the maximum power limit of its "Low Power" product in 3.8-4.2 GHz by 3 dB);
- add new spectrum at 2320-2340 MHz to the framework. This will be available for Low Power indoor use; and
- make improvements to the application process for users. For instance having a simpler route for requesting exceptions.

Ofcom's target implementation date for the above changes is Q4 2024.

In order to support greater use of the Shared Access framework, Ofcom is now proposing to:

- enable operation at Medium Power use in the 1800 MHz and 3.8-4.2 GHz band in all urban areas other than Greater London, without any need to apply for an exemption;
- apply a new price for Medium Power deployments in urban areas that is double the cost for Low Power ones. The aim would be to encourage efficient use of the bands;
- remove the requirement to register mobile terminals connected to Low Power outdoor base stations in the 3.8-4.2 GHz band. The hope is that this would enable the creation of new business models.

Ofcom guidance on broadband information comes Into force
On 13 December 2023 Ofcom published guidance on the information that must be provided to consumers regarding their broadband services. As of 16 September 2024 providers must now comply with that guidance. More specifically, they must:

- *"give a short description of the underlying network technology of each broadband product using one or two terms that are clear and unambiguous, such as 'cable', 'copper', 'full-fibre' or part-fibre'. These descriptions should be offered at point of sale on the website, and before the final purchase in contract information, and in the contract summary;*
- *not be use the term 'fibre' on its own to describe the underlying broadband technology. This would mean, for instance, that 'full-fibre' (or a similar term) is only used to describe networks which use fibre-optic cables all the way from the exchange to the home. Similarly, 'part-fibre' (or a similar term) would describe those services with a fibre-optic connection from the local exchange to the street cabinet and then usually a copper wire connecting the street cabinet to the customer's home; and*
- *give a more thorough explanation of the underlying broadband technology - for example through a link - so that consumers can understand in more detail what it means for them. This information must be provided in an accessible form that is easy to understand."*

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