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 on 6 November 2024, the UK government published the long-awaited guidance on the new corporate offence of failure to prevent fraud, introduced under the Economic Crime and Corporate Transparency Act 2023. The failure to prevent fraud offence will come into force on 1 September 2025 and organisations should take advantage of the nine-month implementation period and take steps to ensure compliance ahead of the new changes. See Bribery, fraud and anti-money laundering for more.

November 2024

Contents

Advertising and marketing 1
Artificial Intelligence 4
Bribery, fraud and anti-money laundering 8
Competition 10
Consumer law 13
Cyber-security 17
Data law 20
Digital regulation 24
Employment and immigration 28
Environment 31
Environmental, social and governance 36
Fintech, digital assets, payments and consumer credit 40
Food law 46
Health and Safety 49
Modern slavery 52
Products 54
Regulated procurement 60
Sanctions and Export Control 63
Telecoms 66

Advertising and marketing

Advertising and marketing

Government introduces Tobacco and Vapes Bill to Parliament: advertising aspects

The Tobacco and Vapes Bill, which introduces various provisions relating to the sale and distribution of tobacco products and vapes, including a ban on selling vaping or nicotine products to under 18s, had its first reading in the House of Commons on 5 November 2024. See the Products section for more details.

The bill prohibits the publication, design, printing and distribution of advertisements for a range of relevant products. It repeals and replaces the Tobacco Advertising and Promotion Act 2002, which already included measures to limit the marketing and promotion of tobacco products, and to reduce exposure to such activities. Part 6 of the new bill makes similar provisions as contained in the 2002 Act, but now also includes herbal smoking products, cigarette papers, vaping and nicotine products. It will apply across the whole of the UK.

Providing an internet service that allows such ads to be published or distributed is also an offence under the new bill (for example, an email marketing service would commit an offence if any of the emails contained an ad for any of the relevant products). In addition, it is an offence for internet service providers to fail to take all reasonable steps to prevent an ad from being further viewed or distributed once they become aware of it.

The bill passed its second reading on 26 November 2024. View the explanatory notes.

ASA publishes update on its vaping project review

Since June 2023, the Advertising Standards Authority (ASA) has been looking into the issue of vaping ads targeted at or likely to appeal to under 18s, particularly on social media, where they are prohibited. Having engaged with platforms displaying vaping ads, and having taken action against non-compliant businesses and individuals (for example, by having social media accounts removed), the ASA will now end its formal co-ordinated response. However, it will continue routine checks and compliance action in this area and it has further enforcement action in the pipeline.

NCSC publishes guidance for brands to help digital advertising partners combat 'malvertising'

The UK National Cyber Security Centre's (NCSC) guidance assists brands in ensuring that their digital advertising partners prioritise security.

The advice sets out certain principle-based actions that brands should expect of their partners, including:

- having "know your customer" checks in place;
- implementing robust cyber security practices across their whole digital advertising operations infrastructure;
- using data from verified sources;
- adhering to industry standards and regulations;
- implementing malvertising detection and removal services before and throughout an advertising campaign;
- collaboration among advertisers, publishers and advert networks to share threat intelligence;
- having in place reliable reporting mechanisms of malicious or suspicious activity; and
- being transparent in efforts to reduce user harm.

CMA takes Emma Group to court for failing to address concerns over misleading sales practices

As part of its online choice architecture enforcement programme, the Competition and Markets Authority (CMA) has been investigating whether Emma Group's online selling practices, including the use of countdown timers and discounts, may mislead consumers. Despite calls from the CMA that Emma Group change its practices and enter into undertakings (see this MarketingLaw article), the group has failed to comply. As a result, the CMA is seeking an enforcement order from the court.

Currently, the CMA cannot directly fine businesses for non-compliance. However, its direct consumer enforcement powers under the Digital Markets, Competition and Consumers Act 2024 should come into force in spring 2025. This will enable the CMA to decide when consumer law has been breached without having to issue court proceedings, and to impose fines.

Advertising and marketing

ASA update on use of 'AI' in advertising

On 14 November, the Advertising Standards Authority (ASA) hosted a webinar on "Future-proof Advertising: How will AI change advertising and regulation?", which considered how the ASA currently regulates AI claims in ads, its own use of AI, and guidance for marketers on how to stay compliant with the UK advertising codes.

The ASA also published a new report, "AI as a marketing term", setting out current trends in the use of "AI" in marketing, as well as some top tips for marketers. For the report, the ASA analysed 16,000 unique paid online ads identified by its Active Ad Monitoring system, which monitors over three million ads each month. Key points include:

- The use of AI as a marketing term has become widespread across a range of sectors.
- Ads using the term "AI" fall roughly into three categories: (a) 68% of the ads identified were for business to business products and services with AI features (for example, accountancy, CRM and cybersecurity software, and tools for content creation, general office productivity and developers working with AI); (b) 9% were for existing consumer products with AI features (for example, personal tech, cameras and home appliances); and (c) 13% were for new "AI-native" products, such as chatbots, image editing tools, tutors, language learning tools.
- When making claims that a product has or uses AI, to avoid misleading consumers, advertisers should not: claim that a product uses AI or has AI features, if it doesn't; exaggerate the functionality of any AI products or features; and claim that an AI product does something better than a non-AI product, without supporting evidence.
- For AI-native products, advertisers should ensure that the products they promote are legal and compliant with any applicable statutory requirements.

During the webinar, the ASA highlighted that advertisers are responsible for the content of their ads and cannot simply blame the AI models if something goes wrong. The regulator also emphasised the importance of human review in relation to AI outputs. Over the next 6-12 months, the ASA will continue to monitor ads in this area and it will produce more guidance and actions if necessary.

Nick Johnson, Partner
T: +44 20 7105 7080
nick.johnson@osborneclarke.com

Chloe Deng, Associate Director
T: +44 20 7105 7188
chloe.deng@osborneclarke.com

Anna Williams, Partner
T: +44 20 7105 7174
anna.williams@osborneclarke.com

Artificial Intelligence

Artificial Intelligence

UK updates

ICO publishes recommendations on use of AI tools in recruitment

Developed following audit engagements with developers and providers of AI sourcing, screening and selection tools used in recruitment, the Information Commissioner's Office's (ICO) recommendations apply to both AI providers and recruiters, and include case studies and examples of good practice.

Key recommendations covered:

- Fairness of processing.
- Transparency and explainability.
- Data minimisation and purpose limitation.
- Data protection impact assessments.
- Drawing the line between controller/joint controller and processor roles.
- Explicit written processing instructions.
- Appropriate lawful basis.

The ICO has also published key questions to ask before procuring an AI tool for recruitment.

UK government creates AI risk resource for businesses

The government has launched a new AI assurance tool, AI Management Essentials or AIME, still in draft, to help businesses assess and mitigate AI risks. The idea is to provide a one-stop shop for information on the actions they can take to identify and mitigate the potential risks and harms posed by AI.

Specifically, the platform aims to collect together guidance and practical resources for businesses to use to carry out impact assessments and evaluations of new AI technologies, and review the data underpinning machine learning algorithms to check for bias.

AIME is subject to public consultation, which is open until 29 January 2025.

UK government experiments with AI chatbot to help people set up small businesses

The government is working on its own AI-powered chatbot, GOV.UK Chat, to allow people to obtain automated, personalised advice on the business rules, tax and support applicable to them. The chatbot is linked from 30 of GOV.UK's business pages. The project is currently at the trial stage and limited to 15,000 business users who will be able to ask it questions. The government will use the trial's results to shape further development of the chatbot, with the next step being potential larger-scale testing.

UK government releases Responsible Innovation tool

The Model for Responsible Innovation is described as a practical tool intended to help teams innovate responsibly with AI and data, and can be used by teams in the public sector, and by private sector teams developing AI intended to be used for a public sector purpose, or which has a "significant societal footprint". Use of the model will see experts from the Department of Science, Innovation and Technology (DSIT) run red-teaming workshops with participants, mapping the systems under development against DSIT's model to identify AI risks and priorities.

Ofcom explains how the Online Safety Act 2023 will apply to generative AI and chatbots

See Digital Regulation section.

Artificial Intelligence

New inquiry into links between algorithms, generative AI and the spread of harmful content online

See Digital Regulation section.

ASA updates on its regulation of AI use in advertising

See Advertising and marketing section.

EU updates

EU AI Act: first draft of the General-Purpose AI Code of Practice published

This draft Code of Practice, prepared by the panel of independent experts, has now been published. The Commission's publication notes stress that this is very much a first draft, and that drafting will be an iterative process, with three further rounds of input and drafting envisaged. See this Regulatory Outlook for details of the drafting process.

There is still a fair amount of detail, including on:

- Content of policies for complying with copyright laws (including details of steps taken to ensure that training does not involve copyright infringement).
- The type of information required to be provided in acceptable use policies.
- The types of detailed information to be included to comply with documentation and transparency requirements, in particular about model creation, training, testing and risks.
- Factors considered as likely to mean that an AI system is one which creates a systemic risk.
- Safety and security frameworks.
- Continuous system evaluation, risk assessment, and risk mitigation.

The Commission also published a Q&A explaining the approach taken in the draft code. Interestingly, it emphasised the AI Act's recognition that the compliance burden should be lighter for small and medium enterprises (SMEs), with simplified ways of complying that would not cost so much that they would discourage the use of general purpose AI models by SMEs.

The plenary participants (the 1000 or so companies and organisations who signed up) have until 28 November to submit comments.

EU AI Act: consultation on prohibited AI and AI System definition

The EU Commission's AI Office has published a consultation on prohibited AI practices, and the definition of "AI system", inviting participants to provide practical examples of AI systems which may come within the various categories, and to explain which areas they need guidance on, and why. Responses will be fed into the processes of drafting guidelines, which are due to be published in early 2025.

The consultation is open for responses until 11 December 2024 and early submissions are "strongly encouraged".

EU AI Act: EU Commission's brief on the state of play of the Act's harmonised standards

The European Commission's Joint Research Centre has published a policy brief on the state of play of the harmonised standards for the EU AI Act. The brief provides key characteristics expected from the upcoming AI standards, currently being drafted by the European standardisation organisations, led by CEN-CENELEC.

The EU AI Act sets out the essential requirements that high-risk AI systems must meet to guarantee their safety. The technical standards will define concrete approaches that can be adopted to meet these requirements in practice and

support AI providers with compliance. When finalised and published in the Official Journal of the EU, the harmonised standards will provide a presumption of conformity with the relevant legal obligations for AI systems developed in accordance with them. The provisions for high-risk systems under the AI Act will start to apply from August 2026 (see our Insight).

John Buyers, Partner
T: +44 20 7105 7105
john.buyers@osborneclarke.com

Thomas Stables, Senior Associate
T: +44 20 7105 7928
thomas.stables@osborneclarke.com

Tom Sharpe, Associate Director
T: +44 20 7105 7808
tom.sharpe@osborneclarke.com

Katherine Douse, Senior Associate
T: +44 117 917 4428
katherine.douse@osborneclarke.com

Tamara Quinn, Knowledge Director
T: +44 20 7105 7066
tamara.quinn@osborneclarke.com

James Edmonds, Associate
T: +44 20 7105 7607
james.edmonds@osborneclarke.com

Emily Tombs, Associate (New Zealand Qualified)
T: +44 20 7105 7909
emily.tombs@osborneclarke.com

Bribery, fraud and anti-money laundering

Bribery, fraud and anti-money laundering

Failure to prevent fraud guidance published

On 6 November 2024, the government published the long-awaited guidance on the new corporate offence of failure to prevent fraud, introduced under the Economic Crime and Corporate Transparency Act 2023.

The failure to prevent fraud offence will come into force on 1 September 2025. Organisations should take advantage of the nine-month implementation period and take steps to ensure compliance ahead of the new changes.

The Serious Fraud Office (SFO) and the Director of Public Prosecutions, Stephen Parkinson, have stated that they intend to make full use of their new powers under the act to secure the prosecution of commercial organisations. Director of the SFO, Nick Ephgrave, said: "The publication of this guidance means that time is running short for corporations to get their house in order or face criminal investigation."

For further information, see our Insight.

Jeremy Summers, Partner
T: +44 20 7105 7394
jeremy.summers@osborneclarke.com

Chris Wrigley, Associate Director
T: +44 117 917 4322
chris.wrigley@osborneclarke.com

Capucine de Hennin, Associate
T: +44 20 7105 7864
capucine.dehennin@osborneclarke.com

Competition

Competition

Merger remedies approach to be reviewed

The UK Competition and Markets Authority (CMA) is set to review its approach to merger remedies in the new year. This is to address competition concerns arising from merger deals.

In a speech at the Chatham House Competition Conference, CMA CEO Sarah Cardell, emphasised the importance of pace and proportionality in merger reviews. The merger remedies review will focus on when behavioural remedies are appropriate, the scope for rivalry-enhancing efficiencies, and preserving customer benefits that offset anti-competitive effects.

Additionally, the CMA plans to enhance engagement with businesses, investors and startups through a new outreach series. The goal is to ensure that every merger capable of being cleared with effective remedies should proceed, while only truly problematic mergers should be blocked.

Businesses should take note of the reviewed merger processes when they are available. While it is positive that the CMA is committed to ensuring growth, what this means in practice remains to be seen.

DMA - Booking.com removes all parity clause in EEA

On 13 November Booking published a summary of the steps it has taken to comply with the Digital Markets Act (DMA). From a competition perspective, a significant change is the removal of all parity clauses in the EEA.

These clauses previously required Booking Holdings Inc's partners to offer the same or better rates and conditions on Booking.com as on any other online or offline channels. By eliminating these requirements, BHI ensures that partners are free to offer better prices or conditions on other platforms. Booking says this change was communicated to partners and relevant teams were trained to enforce the new rules. Additionally, Booking has introduced new data access tools and APIs to improve transparency and control over personal data.

Parity clauses are a hot topic in competition law, with different approaches between the UK, the European Commission and some Member States. This latest development demonstrates the higher standard that may be applied to "gatekeepers" under the DMA.

UK-EU cooperation agreement

On 29 October, the UK government and the European Union concluded technical negotiations on the UK-EU Competition Cooperation Agreement, aimed at enhancing cooperation between the EU's competition authorities and the CMA. This agreement will facilitate greater dialogue and information sharing on cross-border competition cases, supporting effective enforcement of global competition laws.

According to the government, the agreement is expected to benefit businesses and consumers in both the UK and the EU by promoting fair competition and economic growth. The agreement will be reviewed by Parliament before being signed. Business and Trade secretary, Jonathan Reynolds, and CMA CEO, Sarah Cardell, have both expressed support for the agreement, highlighting its importance in a globalised economy.

The UK and EU have negotiated the agreement with a view to signature in the coming year. Parliament will have the opportunity to consider the agreement in detail once the text is published for scrutiny.

Businesses with operations in both the UK and EU will welcome this development as divergences between regulators can increase the compliance burden. However, the full details have not been published.

Pricing algorithms

On 8 November the CMA published a blog post on pricing algorithms. These set or recommend prices based on market data, can enhance competition, reduce costs, and allow for quicker price adjustments.

However, the CMA considers they may also pose legal risks, such as facilitating price-fixing or the exchange of confidential information between competitors, which can harm consumers by raising prices and reducing innovation. The CMA highlights the importance of understanding and legally complying with these tools, advising businesses to avoid sharing sensitive information and to seek legal advice if unsure. Providers of pricing services are also warned about their responsibilities.

The report outlines the severe consequences of breaking competition law, including fines, director disqualification, and potential criminal charges. The CMA encourages reporting of anti-competitive behaviour and offers guidance and resources to support fair competition and innovation in the use of algorithms and AI.

Businesses that use an algorithm to drive pricing decisions, get pricing recommendations using software or an external supply, and all those who sell pricing software solutions need to review their practices to ensure continued compliance with the law.

Simon Neill, Partner
T: +44 20 7105 7028
simon.neill@osborneclarke.com

Katherine Kirrage, Partner
T: +44 20 7105 7514
katherine.kirrage@osborneclarke.com

Marc Shrimpling, Partner
T: +44 117 917 3490
marc.shrimpling@osborneclarke.com

Consumer law

Consumer law

UK government consults on new DMCCA subscription contracts regime

The government has kicked off the implementation process for the new subscription contracts regime under the Digital Markets, Competition and Consumers Act 2024 (DMCCA) with a consultation. For an overview of the new measures for subscription contracts, not expected to come into effect until spring 2026 at the earliest, see this Insight.

The consultation seeks feedback on proposed policies to inform the content of secondary legislation that will implement the new regime. It also seeks views on particular issues likely to be covered in guidance. The consultation covers proposals for:

- Cooling-off cancellation rights: returns and refunds.
- Cancellation remedies for breach of implied terms by the business.
- Consumer refund repayments.
- Preventing businesses from using contractual terms which may lead to so-called "subscription traps" where consumers become stuck in subscriptions they no longer want.
- Ensuring consumers can cancel contracts easily and proposals for guidance to clarify DMCCA provisions in this area.
- Additional requirements for reminder, end of contract and renewal cooling-off notices.
- Guidance that may be issued on the DMCCA's pre-contract information requirements.

The deadline for responses is **10 February 2025**.

Businesses should remember that the DMCCA effectively introduces a dual enforcement regime, such that, in addition to the potential for enforcement action to be taken through the courts in the usual way, the CMA will also have enhanced enforcement powers under the new legislation. This is currently expected to come into effect in spring 2025. These powers will allow the regulator to enforce directly and impose fines for breaches of consumer protection laws, including the subscription rules in the DMCCA once they are in effect. Businesses now have a chance to review the government's approach to the new subscription contracts regime and provide their thoughts on the proposals.

CMA publishes advice for trader recommendation platforms on compliance with consumer law

Following consultation, the CMA has published advice, together with an "at a glance" summary, for trader recommendation platforms (TRPs) to help them comply with consumer law.

TRPs are businesses that operate websites or apps that assist consumers with finding traders, or that recommend traders to consumers. The advice applies to TRPs on any channel, including social media, in online ads (such as sponsored ads), posters and sales brochures.

The CMA sets out six principles, illustrated by examples of good and bad practice, which are:

- making clear and accurate representations about the service;
- ensuring effective trader vetting processes are in place;
- having an effective complaints process;
- ensuring ongoing monitoring of trader performance;
- having effective investigation and sanctions processes; and
- ensuring compliant practices in relation to online reviews.

Non-compliant businesses will risk enforcement action by the CMA or Trading Standards Services once the relevant provisions in the DMCCA come into effect (see above). The CMA calls on businesses to review and update their practices promptly.

The regulator has also published practical tips for consumers when using trader recommendation platforms.

Secondary legislation made under Media Act 2024

The Media Act 2024 (Commencement No. 2 and Transitional and Saving Provisions) Regulations 2024 brought into force the following provisions of the Media Act 2024 on 17 October 2024:

- Part 5 (Regulation of radio services) – regulates commercial radio, removing longstanding regulatory requirements for commercial analogue radio services, as well as for local radio and local/national multiplex services. It also contains new local news and information requirements for analogue commercial radio stations and new requirements for multiplex licensees to provide certain information to Ofcom. Ofcom can now proceed with its planned consultation; and
- Section 19 (amount of financial penalties: qualifying revenue), but only for the purposes of enabling Ofcom to carry out the necessary work to bring the section into force. Under the current rules, the maximum penalty that Ofcom can impose on a public service TV channel is set by reference to the "qualifying revenue" of the provider. Section 19(3) will create a new definition of "qualifying revenue" to include revenue from both the provider's traditional linear channel services and its on-demand services.

The regulations also contain transitional and saving provisions.

The Internet Television Equipment Regulations 2024, which came into force on 14 November 2024, set out the descriptions of devices that are considered to be "internet television equipment" for the purposes of the new prominence framework under the Act. Essentially, the regulations name smart televisions and streaming devices as internet television equipment.

The government has also published a policy paper outlining its approach to deciding the categories of TV devices that will be considered internet television equipment. It explains that smart TVs, set-top boxes and streaming sticks will qualify, but that smartphones, laptops, tablets, PCs and video games consoles will not, as watching TV on these devices is not their primary function.

Newer devices, such as home cinema projectors and portable lifestyle screens, internet-connected car touchscreens, virtual reality headsets, smart watches and in-home screens (such as smart fridges and smart speakers with in-built screens) will also be excluded for the same reason. However, the government intends to review the list in one-year's time to reassess.

Culture, Media and Sport Committee re-launches British film and high-end TV inquiry

This inquiry will continue the previous Parliament's work looking at the challenges faced by the British film and high-end TV industry and ways to support the sector and its workforce better. It will also examine the ethical use of AI in film-making.

CMA launches project to consider dynamic pricing

The Competition and Markets Authority (CMA) has launched a project looking at the use of dynamic pricing across various sectors. This follows its letter to the government, published after the dynamic pricing mechanism implemented by Ticketmaster resulted in many Oasis fans being unable to secure tickets for the band's upcoming reunion concert.

Consumer law

This new project is separate to the CMA's investigation into Ticketmaster and is not a formal market investigation or study.

The project will explore different dynamic pricing strategies, their advantages for businesses and consumers, and any challenges they pose for consumers and competition. The project will contribute to the government's thinking on dynamic pricing, in conjunction with its upcoming call for evidence on price transparency in the live events sector.

Government research on potentially harmful choice architecture on e-commerce websites and apps

The government has published research on the prevalence and potential harm of "defaults" in online shopping. Defaults include pre-selected options, automatic opt-ins to certain options or settings, and ordering or formatting options to enhance their prominence or to mimic pre-selection. The review covered consumer journeys on 558 e-commerce websites and apps in the UK.

The key findings include:

- Nearly half of sampled platforms used defaults.
- Defaults were most common in the retail sector, with preselected options and mimicking defaults being particularly prevalent.
- Defaults made 60% of consumers more likely to choose the more expensive item and 70% more likely to select the more expensive shipping option.
- While defaults can influence consumers, the way they are currently used does not indicate that they are misleading consumers. There is therefore no compelling case for active legislative intervention at present. However, given the potential for misuse, the government makes various policy recommendations to protect consumers, such as introducing standards for default settings, increasing awareness of vulnerable consumers, and ensuring online retailers adopt consumer-benefitting practices when investing in online choice architecture.

See also Digital Regulation section for more updates.

Tom Harding, Partner
T: +44 117 917 3060
tom.harding@osborneclarke.com

John Davidson-Kelly, Partner
T: +44 20 7105 7024
john.davidson-kelly@osborneclarke.com

Ben Dunham, Partner
T: +44 207 105 7554
ben.dunham@osborneclarke.com

Nick Johnson, Partner
T: +44 20 7105 7080
nick.johnson@osborneclarke.com

Cyber-security

Cyber-security

ENISA draft technical guidance on NIS2 cyber security risk management measures

As previously reported, on 17 October 2024, the European Commission adopted the implementing regulation setting out the technical and methodological requirements of the cybersecurity risk management measures referred to in the Network and Information Systems Directive (NIS2).

The European Union Agency for Cybersecurity (ENISA) has published draft technical guidance for the NIS2 implementing act, setting out, among other things, additional advice to Member States and in-scope entities on considerations to take into account when implementing a requirement and further explanations of the concepts and terminology used in the act.

ENISA is seeking feedback on the draft guidance. The deadline for responses is 9 December 2024.

For more detail about what steps businesses can take to ensure compliance with NIS2, see our Insight and track the directive on our Digital Regulatory Timeline.

DSIT call for evidence on Cyber Security and Resilience Bill

The Department for Science, Innovation and Technology (DSIT) launched a call for views on its proposals to update the Network and Information Systems (NIS) Regulations 2018, through the Cyber Security and Resilience Bill.

The call for evidence will help DSIT assess the impact of the proposed changes on entities already regulated under the NIS Regulations as well as those who are anticipated to be in scope of the new bill.

The consultation closed on 21 November 2024.

Five Eyes security advice campaign for tech startups

The Five Eyes intelligence partnership published joint security guidance as part of its "Secure Innovation" campaign, aimed at helping emerging technology companies in all countries to protect from a range of threats.

Regional versions of the guidance are also available to companies in all five countries, which reflect the increased commitment from all five countries to working collaboratively to protect against security threats posed by nation-state actors.

Read the press release.

National Cyber Security Centre updates

- The UK and international allies published a new advisory detailing the top 15 most commonly exploited vulnerabilities from 2023.
- The National Cyber Security Centre (NCSC) released a list of NCSC-assured providers who are able to conduct independent Cyber Assessment Framework based audits.
- UK organisations are advised to take action to mitigate a vulnerability affecting Fortinet FortiManager (CVE-2024-47575).
- The NCSC updated its multi-factor authentication guidance, which recommends that organisations should use to secure their data against phishing attacks.

EU Cyber Resilience Act published in Official Journal

Please see Products.

Cyber-security

Charlie Wedin, Partner
T: +44 117 917 4290
charlie.wedin@osborneclarke.com

Ashley Hurst, Partner
T: +44 20 7105 7302
ashley.hurst@osborneclarke.com

Philip Tansley, Partner
T: +44 20 7105 7041
philip.tansley@osborneclarke.com

Nina Lazic, Partner
T: +44 20 7105 7400
nina.lazic@osborneclarke.com

Data law

Data law

Progress of the Data (Use and Access) Bill

The Data (Use and Access) Bill, introduced to Parliament last month, had its second reading on 19 November 2024. The speeches given about it in the House of Lords suggest that it is going to come in for a certain amount of scrutiny. Provisions that were discussed include automated decision making, and the definition of "research". There were also concerns about data issues which are **not** in the bill, including:

- Copyright issues with use of data for training AI systems.
- Readiness (or otherwise) of the GDPR for the increasing processing of data in AI systems.
- Maximising the use of NHS data, including exploitation of it as a valuable national asset.
- Bolstering cybersecurity for sensitive data, such as NHS data.

The bill has now entered the committee stage, with the first committee meeting scheduled for 3 December 2024.

ICO prioritising work to protect children online

As part of its children's code strategy, the Information Commissioner's Office (ICO) has reviewed a number of social media and video-sharing platforms and specifically asked 11 of them to explain issues relating to default privacy settings, geolocation and age assurance. While most of them have engaged voluntarily, the ICO has issued formal information request notices to three companies.

The ICO has also published Children's Data Lives 2024, third party research which highlights that:

- children often do not see entering personal information, posting updates, and interacting with algorithms as "data sharing" or consider their data rights;
- children struggle to understand how companies use their data and find privacy policies difficult to access or process. Some platform features encourage them to share more information;
- many children feel that sharing data is necessary to access online content, but not a choice; and
- most children surveyed had provided incorrect ages to bypass age restrictions on platforms.

Protecting children online is one of the ICO's current priorities, and these activities demonstrate that the regulator is proactively pushing companies to improve their children's privacy practices.

ICO publishes report on genomics

This ICO's new report considers issues raised by the development of genomics, not just in relation to healthcare, where its benefits are well-known, but also in education, direct-to-consumer services, insurance and law enforcement. The report considers:

- understanding when genomic data may be personal information;
- the complexities of using and sharing third party genomic information and inferences derived from it;
- the associated risks and challenges of anonymising and pseudonymising genomic information to ensure privacy by design without compromising innovation; and
- the significant risks of bias and discrimination from the processing of genomic information.

It is aimed at organisations looking to deploy innovative forms of processing based on genomic data and is illustrated by plausible scenarios, use cases and solutions.

The ICO invites organisations working in this area to share their views. It particularly wants to hear from those who may be interested in working with its Regulatory Sandbox on embedding privacy by design, and to hear views on the potential creation and development of standards in this area.

ICO publishes recommendations on use of AI tools in recruitment

See AI section

Global privacy authorities publish concluding joint statement on data scraping

Following the initial statement in August 2023 and based on engagement with social media companies and other stakeholders, several national privacy authorities (including the ICO), set further expectations for industry in their concluding statement on protecting from the risks of unlawful personal data scraping.

The statement advises organisations to deploy a combination of safeguarding measures to protect against unlawful scraping. While contractual terms allowing scraping of personal data are an important safeguard, such contracts do not themselves make the scraping lawful. Organisations authorising scraping for any purpose must ensure that they have a lawful basis for doing so, are transparent about the scraping they allow, and obtain consent where required by law. The statement highlights the importance of compliance with data protection, privacy and AI-specific laws when using scraped data sets and/or data from the companies' own platforms to train AI.

ICO seeks permission to appeal DSG Retail ruling on meaning of personal data

The ICO seeks permission to appeal the Upper Tribunal's judgment on its fining of DSG Retail Limited (DSG) to the Court of Appeal. This relates to the Commissioner's fine of £500,000 imposed on DSG in 2020 after a cyber-attack. The First-tier Tribunal (FTT) reduced the fine to £250,000 on DSG's appeal, and DSG was allowed to appeal the FTT's decision to the Upper Tribunal on limited grounds.

In September 2024, the Upper Tribunal sent the case back to the FTT for reconsideration. It held that an organisation is not required to protect data against unauthorised processing by a third party in a case where, even though the data is personal data in the hands of the controller (for example, because the data is pseudonymised but the controller has access to the key), it is not personal data in the hands of a third party (for example, because the data is pseudonymised, and the third party does not have, and is not likely to gain access to, other data which it could combine with the pseudonymised data to re-identify individual data subjects).

In the ICO's view, the Upper Tribunal was wrong in interpreting the law in this way, saying that they have seen "many cases where people have been affected when malicious actors have accessed, deleted or encrypted pseudonymised personal data, for example when medical or financial data is compromised." This issue is important for organisations, as it will affect the nature of the security measures they need to put in place to protect personal data from the ever-increasing risk of cyber-attacks.

Mark Taylor, Partner
T: +44 20 7105 7640
mark.taylor@osborneclarke.com

Tamara Quinn, Partner
T: +44 20 7105 7066
tamara.quinn@osborneclarke.com

Georgina Graham, Partner
T: +44 117 917 3556
georgina.graham@osborneclarke.com

Jonathan McDonald, Partner
T: +44 20 7105 7580
jonathan.mcdonald@osborneclarke.com

Data law

Daisy Jones, Associate Director
T: +44 20 7105 7092
daisy.jones@osborneclarke.com

Gemma Nash, Associate Director
T: +44 117 917 3962
gemma.nash@osborneclarke.com

Digital regulation

Digital regulation

UK updates

Government consults on introducing sanctions for senior executives of online platforms and marketplaces for failure to remove content on weapons and knives

The government is consulting on introducing personal liability measures for senior executives of online platforms and marketplaces who fail to remove illegal content relating to knives and offensive weapons.

Existing laws already make it a criminal offence to manufacture, sell and offer for sale prohibited offensive weapons, and to market knives. The Online Safety Act 2023 (OSA) also requires platforms to remove illegal content when they become aware of it and to protect children from harmful and age-inappropriate content.

However, the government is concerned that social media platforms are being used to sell prohibited weapons and knives, including to under 18s, in ways that encourage violence. Therefore, it believes that stronger action is needed in this area.

The government proposes giving the police the power to issue content removal notices to companies and designated senior executives, requiring the removal of illegal content within 48 hours. If the company fails to remove the content within the time limit, a second content removal notice would be sent to the senior executive. Continued non-compliance would result in a notice of intent being sent to the senior executive, stating that legal action will be taken against them if they fail to comply. The senior executive would have 28 days to object.

Non-compliant senior executives would then face civil action and the possibility of a fine of up to £10,000. The consultation closes on **11 December 2024**.

Ofcom explains how the OSA will apply to generative AI and chatbots

Ofcom has published an open letter to UK online service providers on how the OSA will apply to generative AI and chatbots. Ofcom reminds providers that the following AI tools and content will be in scope of the OSA: user-to-user services; search services and pornographic material.

User-to-user services:

- Sites or apps which include a chatbot enabling users to share text, images or videos generated by the chatbot with other users.
- Services allowing users to upload or create their own chatbots (user chatbots), which are then made available to other users. Any content created by these chatbots is "user-generated content" and is regulated by the OSA.
- Any AI-generated content shared by users on a user-to-user service is user-generated content and would be regulated in the same way as human-generated content (for example, deepfake and human-generated fraud material). This applies regardless of whether the content was created on the platform where it is shared or uploaded from another site.

Search services: generative AI tools that enable the search of multiple websites and/or databases, including tools that modify or facilitate the delivery of search results, or which provide "live" internet results.

Pornographic material: sites and apps that include generative AI tools that can generate pornographic material. These services are required to use highly effective age assurance measures to ensure children cannot normally access such material.

Ofcom is ready to enforce and urges regulated services to start preparing for compliance now, as the first set of duties under the OSA will take effect in December this year. See our recent Insight on Ofcom's OSA implementation roadmap.

Digital regulation

Ofcom calls for evidence to inform its report on researchers' access to information from regulated services under the OSA

The OSA requires Ofcom to report on the ways and extent to which independent researchers access information on online safety matters from providers of regulated services. Ofcom wants to understand how researchers currently obtain information from providers, the challenges they encounter, and how greater access to the information might be achieved. The findings from this call for evidence will inform Ofcom's report. The deadline for responses is **17 January 2025**.

UK government publishes draft Statement of Strategic Priorities for online safety under OSA

The government has set out its focus areas for online safety under the OSA. The draft Statement of Strategic Priorities for online safety, produced under section 172 of the OSA, highlights five priorities that Ofcom must have regard to when implementing the OSA and that industry is expected to adhere to.

The government will prioritise:

- Implementing **safety by design** to deliver safe online experiences for all users, especially children. The government wants industry to see this as a basic principle for operating in the UK market.
- Increasing industry **transparency and accountability**, including algorithmic transparency, to create a "culture of candour".
- Delivering an **agile approach to regulation** to keep pace with emerging technology and behaviour. The government wants Ofcom to design a "forward-looking" approach that can quickly mitigate significant risks that emerge.
- Developing an **inclusive and resilient** online society of well-informed users through Ofcom media literacy initiatives, interventions and research, as well as industry adoption of best practice principles for "literacy by design".
- Fostering the **innovation** of online safety technologies, including effective age assurance technologies.

Before finalising the statement next year, the government will seek additional input from online safety experts, individuals with lived experience of online harms and Ofcom. If it becomes clear that new legislation is the only way to solve certain issues, the government will consider taking this step, but its aim is to deliver results within the OSA's current provisions.

With the first set of online safety duties under the OSA due to commence in December 2024, now is the time for businesses to start bringing their practices into compliance.

Sharing intimate images made a priority offence under OSA

The Online Safety Act 2023 (Priority Offences) (Amendment) Regulations 2024, which make the new offence of sharing intimate images without consent a priority offence under the OSA, were made on 19 November 2024. See this Regulatory Outlook for more information.

The regulations come into force on 10 December 2024.

New inquiry into links between algorithms, genAI and the spread of harmful content online

The House of Commons Science, Innovation and Technology Committee has launched an inquiry to examine the connection between algorithms used by social media and search engines, generative AI, and the spread of harmful and false content online. This inquiry comes in response to the widespread dissemination of misinformation seen last summer and the online safety regulator, Ofcom, saying recently that algorithmic recommendations can contribute to "divisive narratives in a crisis period".

The inquiry will also assess whether existing and proposed regulations governing social media algorithms and generative AI, including the OSA, are effective, and whether additional measures are necessary. The inquiry is currently inviting written evidence to be submitted by **18 December 2024**.

EU updates

EU Commission adopts implementing regulation on transparency reporting under the DSA

The implementing regulation standardises templates and reporting periods for the transparency reports that providers of intermediary services have to publish under the Digital Services Act (DSA) in relation to their content moderation practices.

Very large online platforms (VLOPs) and very large online search engines (VLOSEs) must report twice a year, while other services report annually.

The DSA details the specific categories of information that the transparency reports must contain, such as the number of content items and user accounts removed, the accuracy of any automated systems used and information on content moderation teams. The standardisation provisions in the new implementing regulation should simplify compliance for providers and ensure consistency in reporting practices so that comparisons can be made.

Under the implementing regulation, providers must start collecting data in line with the templates from 1 July 2025, with the first harmonised reports due at the beginning of 2026.

The Commission also plans to update the requirements for submitting statements of reasons to the DSA Transparency Database so that they align with the implementing regulation.

EU Commission consultation on draft delegated regulation on rules for researchers to access online platform data under the DSA

Under article 40(4) of the DSA, VLOPs and VLOSEs have to allow "vetted researchers" (who meet the relevant requirements in the DSA) to access their data, subject to approval from their Digital Services Coordinator, for the purposes of evaluating systemic risks and mitigation measures. The proposed regulation will further specify the procedures, conditions and purposes for such data sharing and use.

The consultation opened on 29 October and has been extended to 10 December 2024. The Commission plans to adopt the rules in the first quarter of 2025.

John Davidson-Kelly, Partner
T: +44 20 7105 7024
john.davidson-kelly@osborneclarke.com

Chloe Deng, Associate Director
T: +44 20 7105 7188
chloe.deng@osborneclarke.com

Ben Dunham, Partner
T: +44 20 7105 7554
ben.dunham@osborneclarke.com

Nick Johnson, Partner
T: +44 20 7105 7080
nick.johnson@osborneclarke.com

Tom Harding, Partner
T: +44 117 917 3060
tom.harding@osborneclarke.com

Employment and immigration

Employment and immigration

'All change' for UK contingent working and gig platforms: 7 predictions for 2025 to 2030

Around the world there is increasing government and media focus on the apparent inexorable growth in gig working and non-standard employment models and the general precariousness of some types of work.
We have analysed how the commercial models of staffing companies and platforms and how use of contingent workers will be affected by proposed tax, employment law and regulatory changes including the UK Employment Rights Bill and October 2024 Budget proposals.

The key predictions are as follows:

Prediction 1: Increases in employment taxes such as employers NICs, "day one" rights for employees and rights to guaranteed working hours for workers will lead to increased interest in self-employment models. This will sometimes be via legitimate self-employment models but sometimes will instead involve aggressive tax-avoidance schemes, perhaps via "dodgy" intermediaries.

Prediction 2: There will still be no clear statutory test by 2030, let alone 2026, as to who is genuinely self-employed, but there may be other new measures making it harder to engage certain types of people safely on a self-employed basis.

Prediction 3: There will be an increase in agency worker usage via staffing companies. The UK will likely retain this mode of engagement for several years, at least, as an alternative to employment and self-employment. Because these agency workers will not be "employees", many organisations may see using agency workers as a way of minimising the impact of day-one employment rights for new starters (and possibly guaranteed hours rights). However, organisations using this approach will need to watch out for possible anti-avoidance rules imposing limits on when agency workers status can be used and, at some stage, guaranteed hours rights may be introduced for some types of agency worker.

Prediction 4: Giving guaranteed hours rights to agency workers will not be straightforward and may not happen quickly – and there may be carve outs for certain types of work. This regime may be particularly difficult for smaller staffing companies and hirers.

Prediction 5: Any surge in tax-driven self-employment will reduce when HMRC steps up enforcement action in the next few years, building on preparatory steps currently being taken by HMRC under IR35 and other tax measures.

Prediction 6: Use of dodgy types of umbrellas, "employers of record" and similar employment intermediaries will come under attack, and many will need to make specific adjustments to their business models. But it will be hard for new umbrella legislation to define what is and is not an "umbrella".

Prediction 7: Regulatory activity will increase under the new Fair Work Agency, with enforcement of holiday pay and better enforcement of NMW obligations of staffing companies and umbrellas – but this may take a year or two to get going properly.

If you would like a copy of the full report, covering the UK Employment Rights Bill and 2024 Budget announcements about NICs and umbrellas, please contact one of the Osborne Clarke experts below.

Julian Hemming, Partner
T: +44 117 917 3582
julian.hemming@osborneclarke.com

Kevin Barrow, Partner
T: +44 20 7105 7030
kevin.barrow@osborneclarke.com

Employment and immigration

Gavin Jones, Head of Immigration
T: +44 20 7105 7626
gavin.jones@osborneclarke.com

Catherine Shepherd, Knowledge Lawyer Director
T: +44 117 917 3644
catherine.shepherd@osborneclarke.com

Helga Butler, Immigration Manager
T: +44 117 917 3786
helga.butler@osborneclarke.com

Kath Sadler-Smith, Knowledge Lawyer Director
T: +44 118 925 2078
kath.sadler-smith@osborneclarke.com

Environment

Environment

Draft Greenhouse Gas Emissions Trading Scheme (amendment) (No2) Order 2024

On 22 October 2024, the draft Greenhouse Gas Emissions Trading Scheme (Amendment) (No2) Order 2024 was laid in Parliament along with a draft explanatory memorandum.

This draft order aims to amend the UK Emissions Trading Scheme (UK ETS) by incorporating carbon dioxide venting in the upstream oil and gas sector, reducing free allowances, and introducing a deficit notice along with other enhanced enforcement powers.

Draft Environmental Permitting (Electricity Generating Stations) (Amendment) Regulations 2024

On 30 October 2024, the draft Environmental Permitting (Electricity Generating Stations) (Amendment) Regulations were laid in Parliament along with a draft explanatory memorandum and are due to come into force on 28 February 2026.

Key features of the draft regulations:

- They will amend the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016/1154) and replace the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 (SI 2013/2696) in England, with transitional provisions.
- They introduce a requirement for operators of new and substantially refurbished combustion plants in England to include a decarbonisation readiness report in their environmental permitting application; moving away from the planning consent process.
- Plants must be designed to allow future decarbonisation, either by converting to hydrogen-firing or retrofitting carbon capture technology.

Independent commission on the water regulatory system

The UK and Welsh governments have launched an independent commission on the water sector regulatory system in England and Wales (IWC). This was published on 23 October 2024, and has eight key objectives:

- Set clear objectives and a long-term vision for the water industry.
- Implement strategic spatial planning for water management across sectors and scales.
- Ensure regulatory stability to attract investment and support economic growth.
- Simplify requirements for better environmental and economic outcomes.
- Empower effective regulators to hold companies accountable.
- Enhance delivery capacity and promote innovation.
- Protect consumer interests and ensure affordability.
- Ensure operational and financial resilience of water companies.

The IWC is part of the government's water strategy, which includes the Water (Special Measures) Bill that was introduced earlier in the year.

Updated policy paper on delivering 30by30 on land in England

The Department for Environment, Food and Rural Affairs (Defra) has published an updated policy paper outlining how the government will achieve its target to protect 30% of the UK's land for biodiversity by 2030.

The paper specifies three criteria that land must meet to contribute towards the "30by30" goal in England: purpose, protection and management. Additionally, the government will develop a process to include additional land beyond Protected Sites, either through landowner self-assessment or Defra internal assessment.

This 30by30 commitment aligns with the target adopted at COP15 in 2022 as part of the Montreal Global Biodiversity Framework.

How did the Autumn Budget 2024 have an environmental impact?

The chancellor of the exchequer presented her Autumn Budget to Parliament on Wednesday 30 October 2024. Among its array of announcements, there were a number of changes with a direct environmental impact.

Response to consultation of UK carbon border adjustment mechanism

HM Treasury and HMRC have published the government response to the March 2024 consultation on the design and administration of the proposed UK carbon border adjustment mechanism (CBAM). The response confirms that UK CBAM will be introduced on 1 January 2027 and will place a carbon price on some of the most emissions-intensive industrial goods imported to the UK. These goods will affect the aluminium, cement, fertiliser, hydrogen and iron and steel sectors, which are at risk of carbon leakage.

Plastic packaging tax rates confirmed

The government announced that the UK plastic packaging tax rates will increase with CPI inflation for 2025-2026. This tax applies to the import and production of plastic packaging that has less than 30% recycled content.

Increase in landfill tax rates

The government has confirmed that increased landfill tax rates will take effect from 1 April 2025, aligning with the retail price index (RPI). The policy aims to decrease the amount of material being disposed of at landfill sites and the incentivise the use of alternative, non-landfill options.

These changes will only apply in England and Northern Ireland and will increase the standard rate to £126.15 per tonne and the lower rate to £4.05 per tonne. The new rates will be implemented by the Finance Bill 2025.

Climate change levy and carbon price support rates from 2026

Finally, the Autumn Budget announced that the main rates of the Climate Change Levy (CCL) for gas, electricity, and solid fuels will be adjusted in line with the retail price index (RPI) for 2026 to 2027. However, the main rate for petrol will remain frozen. The reduced rates of CCL will continue to be an unchanged fixed percentage of the main rates.

Climate Change Committee publishes letter advising the government on nationally determined contribution to climate action

On 26 October 2024, the Climate Change Committee (CCC) published a letter to the government providing advice on the level of the UK's Nationally Determined Contribution (NDC) under the Paris Agreement.

Key messages from the letter:

- The CCC recommends that the UK's NDC commits to reducing territorial greenhouse gas emissions by 81% from 1990 levels by 2035.
- Achieving this target, along with the 2030 NDC, requires rapid action which could boost investment and create jobs in the UK.
- It is recommended that international aviation and shipping emissions are excluded from the headline NDC target.

- The government should aim for an ambitious and fair contribution in its COP29 agreement.
- Clear objectives and measurable targets should be established in a programme.
- The UK should develop a plan to align the delivery of the NDC with its international and domestic goals, as well as with key international initiatives such as the Breakthrough Agenda and Climate Leaders' Partnership.

On 12 November 2024, the prime minister announced the UK's new climate target for 2035, committing to the recommendations of the CCC's letter. Thus, the new NDC means the UK must reduce its territorial greenhouse emission by 81% from 1990 levels by 2035.

Finance Bill 2025 published

On 7 November 2024, the first version of the Finance Bill 2025 was published, along with explanatory notes. From an environmental perspective, the bill contains provisions on the rates of environmental taxes, following those that were announced in the Autumn Budget 2024 on 30 October.

Environmental taxes:

- Rates of climate change levy (clause 74);
- Rates of landfill tax (clause 75);
- Rate of aggregates levy (clause 76);
- Rate of plastic packaging tax (clause 77);
- Future carbon levy, no rate included, to help prepare for the introduction of CBAM (clause 83).

Environmental Agency publishes consultation on proposed new charges for waste operators

The Environmental Agency has published a consultation on proposed new charges on waste operators. The purpose of the consultation is to fund regulatory work targeting waste crime with a deadline to respond of 20 January 2025.

The proposals include:

- Waste exemption charges to prevent them being used for illegal waste activities.
- Fees for intervention to cover costs of investigating unauthorised waste operations and resolving breaches.
- A 10% waste crime levy on annual subsistence charges for certain waste permits to combat waste crime.
- Updated hourly rates reflecting current costs for managing environmental permits and new regulatory work.

Businesses should review the contents of the consultation and determine whether they have anything specific to say on the proposals put forward.

FAQS published on sustainability reporting requirements under CSRD

Please see ESG.

European Commission publishes consultation on a draft Regulation to establish the EU CBAM registry

Please see ESG.

FCA provides pre-contractual disclosure examples to meet SDR requirements

Please see ESG.

Environment

EU Deforestation Regulation delayed by a year and goes back to trialogue

Please see ESG.

Strategic Framework for International Co-operation Engagement published in relation to EUDR

Please see ESG.

EUDR Information System open for registration

Please see ESG.

Matthew Germain, Partner
T: +44 117 917 3662
matthew.germain@osborneclarke.com

Arthur Hopkinson, Senior Associate
T: +44 117 917 3860
arthur.hopkinson@osborneclarke.com

Julian Wolfgramm-King, Senior Associate (Australian Qualified)
T: +44 20 7105 7335
julian.wolfgramm-king@osborneclarke.com

Caroline Bush, Associate Director
T: +44 117 917 4412
Caroline.bush@osborneclarke.com

Lauren Gardner, Associate
T: +44 117 917 3215
lauren.gardner@osborneclarke.com

Environmental, social and governance

Environmental, social and governance

Sustainable supply chains drive international success

Geopolitical pressures are on the rise for international businesses and require an increasingly active approach to risk management, building supply chains and horizon scanning – in this environment, general counsels (GCs) need to view sustainability as crucial for a competitive, modern business and ensure a human-machine balance in any uptake of artificial intelligence.

Those were among the headline messages from our Breakfast Briefing at the Economist Impact's 21st annual General Counsel Summit in London. Five broad approaches and crucial steps emerged for GCs to take to benefit their international operations, build sustainable supply chains and strategies, and address business transformation. From this session, we have identified our top five takeaways from the conference – covering the impact of geopolitics on companies and GCs' opportunity to lead on supply chain, sustainability, crisis management and AI adoption.

UK

Autumn Budget 2024

On 30 October, the UK chancellor, Rachel Reeves, delivered the Autumn Budget which contained a number of announcements relevant to ESG. This included confirmation of the UK carbon adjustment mechanism being introduced on 1 January 2027, commitment to a zero-waste economy, and an investment of £3.4bn to increase the energy efficiency and decarbonisation of household energy. See our latest ESG knowledge update for more.

Updates made to the UK's retail disclosure regime

Significant updates have been made to the UK's retail disclosure regime. The draft version of the Packaged Retail and Insurance-based Investment Products (Retail Disclosure) (Amendment) Regulations 2024 has been published, which excludes UK-listed closed-ended investment companies from the UK packaged retail and insurance-based investment products rules, meaning they no longer need to produce a key investor document.

The FCA has updated its statement on forbearance in relation to investment trust disclosure requirements to provide certainty for firms ahead of the new legislation. Additionally, a draft version of the Consumer Composite Investments (Designated Activities) Regulations 2024 has been published setting out the new UK retail disclosure framework for consumer composite investments, setting the legislative basis for these products and their governance. For more detailed information, read our full Insight.

FCA provides pre-contractual disclosure examples to meet SDR requirements

On 1 November 2024, the Financial Conduct Authority (FCA), published a document providing pre-contractual disclosure examples that meet the sustainability disclosure requirements (SDR) regime. Under the SDR, firms must meet specific criteria to qualify for a label supported by disclosures. The published document provides examples and approaches for meeting disclosure requirements across various labels.

For instance, examples of good practices are provided for the sustainability focus label and the sustainability improver label. Examples of poor disclosure practices that do not meet SDR requirements are also included.

The SDR and investment labels regime comes into force on 2 December 2024. However, firms have been able to use investment labels since 31 July 2024.

Future regulatory regime for ESG rating providers

The Treasury has published its response to the consultation on the future regulatory regime for ESG ratings providers under the Financial Services and Markets Act 2000 (FSMA) confirming that it will introduce a provision including ESG rating within scope of the FSMA.

This will mean that ratings produced in the UK and ratings produced overseas made available to UK users by way of a business relationship will now fall within the regulatory perimeter. This consultation response is accompanied by a draft statutory instrument on which the government is inviting comments by 14 January 2025.

EU

EU Deforestation Regulation delayed by a year and goes back to trialogue

As reported last month, the European Commission put forward a proposal to delay the implementation of the EU Deforestation Regulation to (EUDR) by 12 months. The Council of the EU, on 16 October, agreed to postponing the date of EUDR application by 12 months and did not put forward any amendments.

However, an amendment was put forward in the European Parliament to introduce a new category of "no risk" countries which was then passed by the European Parliament on 14 November.

This means that the full EUDR proposal now needs to go back to the Commission/Council for further negotiation on that point. However, the Council is expected to reject the Parliament's amendments and is calling for the EUDR to go through as planned, with only the year delay to be allowed. While the extension of a year has now been agreed across the board, there is a risk that if the EU cannot reach an agreement on the official proposal by the end of the year, then as a matter of law the start date remains January 2025.

EUDR Information System open for registration

From 6 November, economic operators have been able to register in the production system of the EUDR Information System. This system will allow operators, traders and their representatives to make electronic Due Diligence Statements, and submit them to the relevant authorities to show that their products are in compliance with the EUDR. Details on the Information System, including training videos and a detailed user guide, which sets out the steps of registration, are available on the dedicated website.

Strategic Framework for International Co-operation Engagement published in relation to EUDR

A European Commission Communication on the Strategic Framework for International Co-operation Engagement (Framework) in relation to the EU's Deforestation Regulation (EUDR) was published in the Official Journal of the European Union on 7 November 2024. The EUDR aims to eliminate deforestation linked to EU production and consumption of specific commodities: beef, soy, palm oil, wood, cocoa, coffee, and some derived products.

Article 30 of the EUDR obliges the Commission to develop a strategic framework, ensuring compliance with regulatory duties. The framework focuses on partnering with relevant stakeholders to implement EUDR and global commitments to halt deforestation, aiming for a just and inclusive transition to deforestation-free agricultural supply chains by 2030. The success of the framework will depend on the partnership's commitment to delivering global targets that contribute to stopping deforestation.

FAQS published on sustainability reporting requirements under CSRD

The European Commission has published FAQs on the interpretation of certain provisions on the new sustainability reporting requirements introduced by the Corporate Sustainability Reporting Directive (CSRD). These FAQs include, among other things, an overview of the sustainability information to be reported under provisions of the Accounting Directive, a flowchart on the process to determine whether an entity is subject to sustainability reporting requirements and from which financial year, and FAQs on topics such as scope and application, exemptions and value chains.

European Commission publishes consultation on a draft regulation to establish the EU CBAM registry

The European Commission published a consultation on the EU Carbon Border Adjustment Mechanism (CBAM) registry. CBAM aims to prevent carbon leakage of certain goods.

The consultation establishes the registry as the electronic database for filing and managing the CBAM declarations, involving checks, indicative assessments, communication and review procedures. The CBAM registry should include data on authorised CBAM declarants, applicants seeking authorisation, and operators and installations in third countries.

The consultation on the registry closes on 28 November 2024. It will be effective from January 2025 for authorising CBAM declarants and from January 2026 for CBAM reporting obligations.

EU to introduce ESG reporting 'omnibus' regulation

European Commission president, Ursula von der Leyen, has recently reported that in order to try and reduced bureaucratic burden, the EU will introduce an omnibus regulation which will bring together the Corporate Sustainability Reporting Directive, EU Taxonomy Regulation and Corporate Sustainability Due Diligence Directive. This follows on from the report of former president of the European Central Bank, Mario Draghi, which highlighted the need to reduce administrative burdens with ESG reporting. The new omnibus regulation is expected to be published in 2025.

EU Regulation prohibiting products in the Union market made using forced labour receives final approval

Please see Modern slavery.

Please also see our latest international ESG Knowledge Update, for a round-up of legal, regulatory and market news.

Chris Wrigley, Partner
T: +44 117 917 4322
chris.wrigley@osborneclarke.com

Matthew Germain, Partner
T: +44 117 917 3662
matthew.germain@osborneclarke.com

Katie Vickery, Partner
T: +44 20 7105 7250
Katie.vickery@osborneclarke.com

Fintech, digital assets, payments and consumer credit

Third HM Treasury consultation on regulation of BNPL products

On 17 October 2024, HM Treasury published a consultation paper on draft legislation on the regulation of buy now, pay later (BNPL).

In the consultation, HM Treasury seeks views on the legislation that will bring BNPL products within the scope of regulation. It intends to:

- Take certain agreements, referred to as "regulated deferred payment credit agreements", out of the scope of the exemption in article 60F(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (RAO). Credit broking activities that relate to these agreements will be excluded from regulation unless the activity is carried out in the home of a customer.
- Disapply certain information requirements in the Consumer Credit Act 1974 (CCA) in respect of these agreements. The Financial Conduct Authority (FCA) will develop rules on a disclosure regime for BNPL agreements in line with its consumer duty.
- Amend the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529) (FPO) to ensure that financial promotions communicated by unauthorised persons offering third-party BNPL agreements will need to be approved by an authorised person.
- Establish a temporary permissions regime (TPR) that will allow unauthorised firms to continue to conduct their BNPL lending activities until their application for full authorisation has been processed.
- HM Treasury has also published a draft version of the Financial Services and Markets Act 2000 (Regulated Activities etc) (Amendment) Order 2025, which contains the relevant amendments to the CCA, the RAO and the FPO, as well as the legislative framework for the TPR.

The deadline for responses is **29 November 2024**. HM Treasury intends to bring forward legislation as soon as parliamentary time allows. The FCA will then consult on detailed rules, focusing on the disclosure requirements that should apply to BNPL agreements. Firms will be subject to full regulation 12 months after the legislation is made.

FCA blog on cryptoasset businesses registering under MLRs 2017

On 21 October 2024, the FCA published a blog by Val Smith, FCA head of payments and digital assets, Authorisations Division, on cryptoasset businesses registering under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017).

The FCA is often asked about the number of cryptoasset businesses it has registered, as well as the process itself. Some have suggested the FCA is too tough on cryptoasset businesses, setting the bar too high for registration. It has even been said that the FCA's approach could stunt innovation and call into question the UK's position as a global financial leader. Ms Smith makes the following points:

- The FCA never turns applications down out of hand but treats the risk of businesses being used for money laundering extremely seriously. Relaxing standards and creating a race to the bottom will not ensure people and markets are protected. Innovations built quickly on unsafe, unregulated and untrusted foundations become a house built on sand, likely to collapse.
- The FCA knows the cryptoasset industry is still developing and that adapting to new regulatory processes can be challenging. Cryptoasset businesses are encouraged to engage with the FCA early through pre-application meetings and use the wide range of practical support the FCA offers throughout the registration process.
- No two registration applications are ever the same. The FCA's guidance, pre-application meetings and practical examples are there to help each individual applicant. Its decision on whether to register a cryptoasset business

is not just based on the controls and systems that business has in place. The FCA looks at the environment it operates in, the people involved in its processes and the customers it wants to reach. All this means the time it takes to reach a decision can and will vary.

- Although the number of cryptoasset businesses being registered remains under the spotlight, the FCA will only register businesses that meet the required standards. It will continue to weed out cryptoasset businesses that can cause harm.

FCA launches target action against finfluencers

On 22 October 2024, the FCA issued a press release announcing that it has launched a targeted campaign against finfluencers who may be carrying on illegal activity in respect of financial services products. The FCA has used its criminal powers to interview under caution 20 finfluencers who attended voluntarily. It states that it has also issued 38 alerts against social media accounts operated by finfluencers that may contain unlawful promotions.

The FCA explains that finfluencers are trusted by their followers who are often young and potentially vulnerable people attracted to their lifestyle. According to the FCA, nearly two-thirds of those aged between 18 and 29 follow social media influencers, 74% of those said they trusted their advice and nine in ten young followers have been encouraged to change their financial behaviour.

Steve Smart, joint executive director of enforcement and market oversight, warns finfluencers that they must check the products they promote to ensure that they are not breaking the law and putting their followers' livelihoods and life savings at risk. The FCA announced in May 2024 that it had brought charges against nine finfluencers in connection with an unauthorised FX trading scheme.

The FCA published social media guidance in March 2024 to help clarify its expectations of firms and other persons communicating financial promotions on social media, indicating how firms can approach complying with their existing regulatory obligations.

PSR seeking feedback from industry on impact of card-acquiring remedies

On 21 October 2024, the Payment Systems Regulator (PSR) published a press release announcing that it is seeking feedback from businesses on its card-acquiring remedies, which came into force in 2023 (see this Regulatory Outlook).

The PSR has been closely monitoring businesses' efforts to implement the remedies effectively. It is now enhancing its engagement with businesses and trade bodies to get better insights on the practical impact of the remedies. In particular, it is looking at:

- Whether businesses found it easy to locate the online quotation tool (OQT) and the summary box under Specific Direction 14. Also, how accurate they found the OQT and summary box when compared to the actual prices they paid for their acquiring services.
- Whether businesses have seen the trigger messages provided under Specific Direction 15 and if they have ever acted on them.
- Whether businesses have had any issues with hiring, or terminating the hire of, point-of-sale terminals since the 18-month contract limit set out in Specific Direction 16 was imposed.

The PSR will continue to monitor compliance in this area and is planning to run engagement sessions with industry in the next few months. Further information on its website will be available for businesses to join the discussions. Direct engagement and feedback from individual business users is also welcomed via the PSR's CAMR compliance mailbox.

The feedback gathered will help inform the PSR's remedies progress report, which it plans to publish in 2025.

The PSR introduced the card-acquiring remedies to make it easier for SME businesses across the UK to compare prices, negotiate better deals and switch providers if needed.

FCA findings from multi-firm review of consumer credit firms and non-bank mortgage lenders

On 23 October 2024, the FCA published its findings, on a webpage, following a multi-firm review of consumer credit firms and non-bank mortgage lenders (collectively firms).

During the second half of 2023 and the first half of 2024, the FCA conducted a review of a sample of firms to assess their approach to financial resilience and the potential for consumer harm arising from weaknesses in financial resilience. It reviewed firms covering a wide range of business models, operating under different prudential regimes and regulatory requirements.

Overall, it found that the majority of firms could improve their approach to risk governance and risk management. In particular, firms did not always identify and monitor their firm's risks and financial metrics to give a greater insight into the challenges they face.

The FCA's key findings include the following:

- Identifying risks relevant to the business. The FCA identified some firms that had an inadequate approach to identifying the risks that could affect their business. For example, some firms failed to fully consider important external risks such as credit, counterparty, liquidity and funding, operational and market risk.
- Setting risk appetite and establishing appropriate systems and controls. Most firms had an underdeveloped approach to identifying, assessing, monitoring and managing risks, that is, their risk management framework was not fully developed. The FCA expects firms to develop an approach that is appropriate to the size and scale of their business, and which enables the management team to have clear sight of potential issues. This should include mechanisms that provide early warning and relevant performance measures that trigger specific actions.
- Undertaking stress testing and considering wind-down planning. The FCA found that there was a lack of adequate wind-down planning undertaken by firms. To reduce the impact of failure, it expects firms to consider the scenarios leading to financial stress, explore recovery options and plan for winding down the business in an orderly way.

The FCA has grouped its observations under the two different categories of firm it reviewed, with examples of good practice and suggested areas for improvement. All firms operating in the consumer credit and non-bank mortgage lending market should review its findings for both sectors and assess their own approaches and procedures.

It will continue to consider firms' approaches to managing financial resilience and the risk of harm to consumers as part of its ongoing supervisory work.

BoE speech on AI and financial stability

On 31 October 2024, the Bank of England (BoE) published a speech by Sarah Breeden, BoE deputy governor, financial stability, on AI and financial stability.

In the speech, Ms Breeden considers the implications for financial stability of the increasing power and use of AI, particularly generative AI models, and how central banks and financial regulators should respond. She argues that these bodies should focus on the following issues:

- The technology-agnostic approach to micro-prudential supervision. She notes that financial regulators have tended to adopt a technology-agnostic approach to addressing AI risks. This means expecting firms to meet regulators' existing rules, regardless of the technology being used.

- Possible macro-prudential interventions. Ms Breeden argues that central banks and regulators should consider the possible need for macro-prudential interventions to support the stability of the financial system. She highlights potential AI risks concerning interconnectedness and trading behaviours.

She sets out certain features of AI models that, in combination, mean that they warrant particular consideration in the context of financial stability. She states that the BoE will publish shortly the results of its periodic survey of how financial services firms in the UK are using AI and machine learning and that the Financial Policy Committee will publish early in 2025 its assessment of AI's impact on financial stability, which will set out how it will monitor the evolution of potential risks.

Court of Appeal ruling raises questions for UK credit brokers on disinterested duty and informed consent

A Court of Appeal decision in *Johnson v Firstrand Bank Limited t/a Motonovo Finance* has muddied the waters on fiduciary, agency relationships and disclosure of commissions in the motor finance industry – and driven a "coach and horses" through FCA rules and market understanding. See our Insight for details.

Treasury Committee launches inquiry into acceptance of cash

On 4 November 2024, the House of Commons Treasury Committee published a press release announcing the launch of an inquiry into the acceptance of cash.

A related call for evidence provides more information on the scope of the inquiry. It will focus on whether there is a need in the UK to regulate or mandate the acceptance of physical cash in the form of notes and coins. The inquiry will consider the need for legislation or regulation and potential costs to consumers and businesses. The inquiry will not examine the wider questions of access to cash or the tax implications of maintaining physical cash as a form of payment.

The call for evidence contains a list of areas where evidence is welcomed, including:

- The current state of, recent trends in, and forecasts for cash acceptance in the UK.
- Groups in society that disproportionately rely on businesses and public services accepting their cash.
- Whether there are parts of the economy that should always accept cash and how a requirement for cash acceptance affects financial services firms.

The inquiry webpage states that evidence can be submitted until **2 December 2024**.

PSR Dear CEO letter to tech firms on APP fraud enabler data

On 8 November 2024, the PSR published a Dear CEO letter to tech firms explaining its proposals to publish data on the firms that are most commonly reported as enabling contact between fraudsters and victims.

In the letter, the PSR refers to its work on requiring mandatory reimbursement for victims of authorised push payment (APP) fraud, and adds that, in addition to this policy, it wants to take action to prevent fraud occurring in the first place. To achieve this, it needs to understand more about how fraudsters contact victims and earn their trust.

The PSR explains that in 2024, it required the 14 largest banking groups in the UK to provide data reported by victims on fraud committed in 2023. That data includes the frequency of fraudulent activity reported as being enabled via certain tech firms' platforms or services, as well as through other providers.

It plans to publish this data in the week beginning 9 December 2024 and alongside the Dear CEO letter it has sent each relevant firm data on its performance and how it ranks compared to other providers also identified in the data.

The PSR refers to the platforms and services that fraudsters use to contact victims and persuade them to make payments as "fraud enablers". It defines an "enabler" as an entity that a victim reported as either:

- A platform or service through which the fraudster made contact with the victim.
- A website or platform where the victim saw an advertisement or profile that led to an APP scam.

It proposes to publish fraud enabler data every year. Firms are invited to meet with the PSR or to comment by email on its plans by 5.00 pm on **4 December 2024**.

Improvements to cross-border payments

On 21 October 2024, the European Central Bank (ECB) published a press release announcing that it has launched two initiatives to improve cross-border payments by interlinking fast payment systems.

The work builds on the Eurosystem's TARGET Instant Payment Settlement (TIPS) service. It will include:

- The implementation of a cross-currency settlement service in TIPS. As explained in a document, the service will allow instant payments originating in one TIPS currency to be settled in another TIPS currency and in central bank money. Initially, euro, Swedish kronor and Danish krone will be available for settlement. The settlement service serves as a basis for linking TIPS with other fast payment systems and settling cross-border payments beyond the EU.
- Exploratory work on linking TIPS with other fast payment systems. This will include developing links with partners outside the EU to improve cross-border payments globally.

ECB consults on amendments to SIPS Regulation

On 18 October 2024, the ECB published a consultation on a recast version of the ECB Regulation on oversight requirements for systemically important payment systems (SIPS Regulation), together with a related press release.

The main changes that the ECB intends to make to the SIPS Regulation relate to:

- The definition of a SIPS operator.
- Governance.
- Cyber risk.
- Outsourcing.

The ECB has also published the proposed text of the recast SIPS Regulation and a tracked changes version, comparing it to the current text. The deadline for responses is **29 November 2024**.

The SIPS Regulation sets out the oversight requirements for both large-value and retail payment systems of systematic importance. It applies to payment systems operated both by central banks and by private operators.

Nikki Worden, Partner
T: +44 20 7105 7290
nikki.worden@osborneclarke.com

Paul Anning, Partner
T: +44 20 7105 7446
paul.anning@osborneclarke.com

Paul Harris, Partner
T: +44 20 7105 7441
paul.harris@osborneclarke.com

Seirian Thomas, Senior Knowledge Lawyer
T: +44 20 7105 7337
seirian.thomas@osborneclarke.com

Food law

Food law

Autumn Budget 2024

On 30 October, the UK chancellor, Rachel Reeves, delivered the Autumn Budget which contained a number of announcements relevant to food law. This includes that the Food Standards Agency (FSA) will receive £116.0 million in 2025-26 to continue delivering an effective food regulatory scheme, representing a growth rate of 2.7% from 2023-24 to 2025-26. With this increase in funding, we may see the FSA make further progress in regulatory developments in 2025, such as novel food approval.

Investigation into mustard products contaminated with peanuts draws to a close

The Food Standards Agency has provided an update on the recent investigation into mustard products contaminated with peanuts (see this Regulatory Outlook). The statement confirms that all necessary food safety measures have been put in place and affected products have been removed from sale.

Businesses are still advised to check whether they still have any affected products listed and, if so, to take necessary actions. Businesses should also sign up to the FSA's allergy alerts to keep informed of any future product recalls and take action if required.

European Court overturns ban on aloe vera preparations

On 13 November 2024, the European Court handed down a judgment in favour of Aloe Vera of Europe BV, a company that sells aloe vera-based products, including beverages made from the inner jelly of aloe vera leaves. The case was brought against the European Commission after it adopted Regulation (EU) 2021/468, which banned the use of "preparations from the leaf of Aloe species containing hydroxyanthracene derivatives (HADs)" in foods. This ban was based on concerns raised by the European Food Safety Authority (EFSA) about the potential genotoxic (DNA-damaging) and carcinogenic (cancer-causing) properties of HADs.

Aloe Vera of Europe BV challenged the regulation, arguing that there was no clear scientific evidence proving the harmful effects of aloe vera inner leaf gel. They also claimed that the Commission had not established a safe level of HADs and had relied on insufficient evidence regarding the harmful effects of specific HADs (aloin A and aloin B). Additionally, the company argued that the regulation was adopted through an improper procedure and that it unfairly imposed a total ban on aloe vera preparations, violating principles of fairness and proportionality.

The court reviewed whether the Commission had followed the rules set out in Regulation No 1925/2006, which requires identifying a harmful health effect and establishing a risk threshold before banning a substance. The court found that the Commission had not set a safe level for HADs and had banned all aloe vera leaf preparations containing HADs, regardless of the amount. As a result, the court concluded that the Commission's decision did not comply with the necessary legal requirements.

Consequently, the court annulled the part of Regulation (EU) 2021/468 that prohibited "preparations from the leaf of Aloe species containing hydroxyanthracene derivatives."

This case highlights the need for a clear scientific basis and risk thresholds when regulating substances in food products and may impact the way in which other botanicals are assessed by the EFSA and the Commission in future.

Wales pulls out of UK-wide Deposit Return Scheme

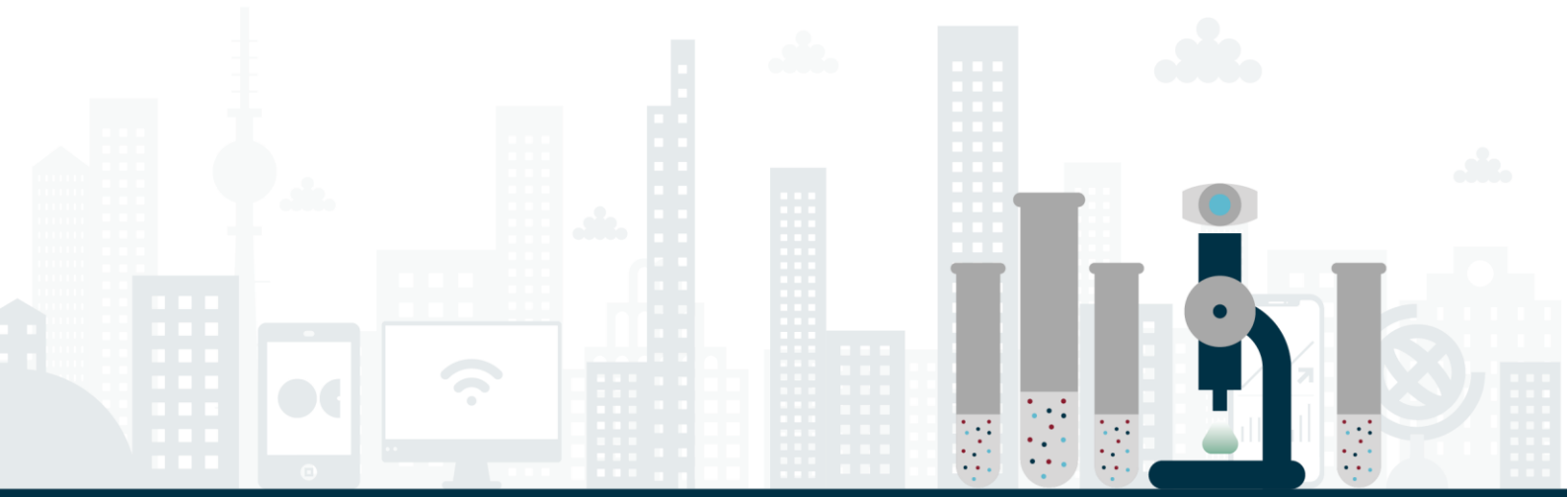
Please see Products.

Food law

Katie Vickery, Partner
T: +44 20 7105 7250
katie.vickery@osborneclarke.com

Veronica Webster Celda, Associate Director
T: +44 20 7105 7630
veronica.webster@osborneclarke.com

Anna Lundy, Associate Director
T: +44 20 7105 7075
anna.lundy@osborneclarke.com



Health and Safety

Health and Safety

Terrorism (Protection of Premises) Bill completes Commons Committee stage

On 31 October 2024, the Terrorism (Protection of Premises) Bill completed its committee stage in the House of Commons where minor amendments were made. The bill has been reprinted in advance of its report stage where it will be debated and further amendments proposed. The date for the bill's report stage and third reading is yet to be announced.

Key changes made at committee stage include:

- **Monetary Penalties:** The maximum penalty for an individual for non-compliance with a notice to attend and answer questions is set at £5,000 (clause 18).
- **Disclosure of Information:** Any person can disclose information to the Security Industry Authority (SIA) for regulatory purposes, and the SIA can disclose information held in connection with its functions (clause 28).
- **Clarification of definition of "Visiting Members of the Public":** Access limitations to premises, such as paid entry, invitations, passes, or membership, do not prevent the duties of the Bill from applying to qualifying public premises and event (Schedule 1, paragraph 20).

In addition, a number of factsheets to accompany the bill have been published. These are a helpful resource for understanding the scope of the bill as applicable to premises and events; how to calculate the number of people that may be "reasonably expected" to be present at a premises or event; obligations of the Responsible Person; duties for standard dutyholders and enhanced dutyholders; and detail about the SIA's powers as regulator.

Higher Risk Buildings: confusion over whether a roof garden counts as a storey

A First-tier Tribunal (FTT) judge has recently rejected government guidance on the Building Safety Act, ruling that under the actual legislation and contrary to what the guidance said, a building's roof-top garden was a storey and consequently that the building concerned was a higher-risk building (HRB). While government guidance can provide a useful steer on how legislation will be interpreted, the courts will not always follow it. The government has since amended its guidance to say that it is considering the views expressed by the FTT but is also urging sector and regulatory bodies to continue to refer to existing government guidance.

In general terms, an HRB is a building of at least 18 metres in height or which has at least seven storeys. The definition of a "storey" is therefore of critical importance in determining the legal obligations in relation to some buildings.

This ruling brings greater uncertainty to the process of working out whether a building comes under the definition of a "higher-risk building" for the purposes of the Act. As there is now a question mark over whether the government guidance is valid, organisations that own or manage multi-storey residential buildings should review whether they may fall within the definition of a "higher-risk building", if the review of the government guidance results in the roof gardens exclusion being removed.

Businesses should also be aware of the need to refer back to the primary legislation rather than relying solely on the guidance, and err on the side of caution if their building has a roof garden which takes the height of the building over seven storeys.

HSE publish annual statistics on work-related injury

On 20 November, the Health and Safety Executive (HSE) published its 2023/24 statistics on work-related injury. The latest statistics show that work-related stress, depression or anxiety remain broadly similar to the previous year, but the rate in 2023/24 is still higher than the 2018/19 pre-coronavirus level, which the HSE says has been driven by a higher

rate of self-reporting. Other trends include a similar rate to fatal injuries to pre-coronavirus levels and a downward trend in Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) reported injuries.

These figures serve as a timely reminder for businesses of their duty to ensure that employees are not exposed to risks that could affect their mental health and wellbeing. Companies should carefully review these latest statistics to assess how they align and to identify any areas that may require action.

Changes to the wording relating to sentencing very large organisations

Amendments are being proposed to the criminal sentencing guidelines, including a change to sentencing very large organisations (VLOs). The Environment Agency (EA) raised concerns about fines for VLOs during a consultation on environmental guidelines and argued that current guidelines for sentencing VLOs are too limited and courts need clearer guidance.

The Council's guidelines aim to support courts in sentencing parameters, in this case in relation to VLOs. The current guidelines for organisations states that for VLOs, it may be necessary to move outside the suggested range to achieve a proportionate sentence. The proposed expanded wording clarifies that there is no precise turnover level that defines which companies will be considered to be a VLO and emphasises the need for proportionate fines that reflect the seriousness of the offence and the financial circumstances of the organisation. It therefore seems the Council's intention is for the renewed VLO guidance to enable the courts to impose financial penalties that have a punitive effect on defendants.

These changes are being implemented in relation to environmental cases, but the paper states that, if adopted, the expanded wording would be added to guidelines for breaches of health and safety. A consultation on these amendments ran until 27th November and once the results of the consultation have been considered, the updated guidelines will be published and used by all courts.

Mary Lawrence, Partner
T: +44 117 917 3512
mary.lawrence@osborneclarke.com

Matthew Vernon, Senior Associate
T: +44 117 917 4294
matthew.vernon@osborneclarke.com

Reshma Adkin, Associate Director
T: +44 117 917 3334
reshma.adkin@osborneclarke.com

Georgia Lythgoe, Senior Associate
T: +44 117 917 3287
georgia.lythgoe@osborneclarke.com

Alice Babington, Associate
T: +44 117 917 3918
alice.babington@osborneclarke.com

Amy Lewis, Associate
T: +44 117 917 4407
amy.lewis@osborneclarke.com

Modern slavery

Modern slavery

EU Regulation prohibiting products in the Union market made using forced labour receives final approval

On 19 November, the Council of the EU adopted the regulation prohibiting products in the Union market that are made using forced labour. Under the new regulation, if a product is deemed to have been manufactured using forced labour, it will be prohibited from being sold on the EU market (including online) and products will be seized at EU borders. If evidence can be provided to authorities that forced labour has been eliminated, then the product may be able to return to the EU market.

The regulation has now completed its legislative journey and, after being signed by the President of the European Parliament and the President of the Council, the regulation will be published in the Official Journal of the European Union and will enter into force on the day following its publication. It will apply three years after the date of entry into force.

Although the regulation will not be in force for over three years, businesses affected by its obligations should use this interim period to prepare for compliance with the regulation's duties by identifying and addressing forced labour in their supply chains.

UK government launches consultation on eradicating modern slavery in NHS supply chains

Please see Regulated procurement.

Chris Wrigley, Associate Director
T: +44 117 917 4322
chris.wrigley@osborneclarke.com

Alice Babington, Associate
T: +44 117 917 3918
alice.babington@osborneclarke.com

Products

Products

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

Autumn Budget 2024

On 30 October, the UK chancellor, Rachel Reeves, delivered the Autumn Budget which contained a number of announcements relevant to general/digital products, product sustainability and products within the life sciences and healthcare sector.

General/digital products

Earlier this month, the government released a new industrial strategy green paper which outlines the government's commitment to developing a long-term and targeted industrial strategy. This strategy identifies eight growth-driving sectors, including advanced manufacturing. The Budget indicates that the full strategy will be published next year, detailing individual plans for each of these sectors. Further, investment in advanced manufacturing includes £975 million for the aerospace sector and over £2 billion for the automotive sector up to 2030 and the Made Smarter Innovation Programme will receive up to £37 million in 2025-26 to assist firms in integrating digital technologies into manufacturing.

Product sustainability

The government reaffirms its commitment to a zero-waste economy and the implementation of the Collection and Packaging Reforms Programme, noting that the extended producer responsibility for packaging is expected to generate over £1 billion annually. As the government advances its plans towards a zero-waste economy, businesses will need to stay informed about new initiatives and adapt their operations to comply with the reforms. This may involve changes in packaging materials and waste management practices, among other adjustments.

Additionally, the Plastic Packaging Tax (PPT) rate will increase for 2025-26 in line with CPI inflation. It also confirmed that PPT businesses will be allowed to use a mass balance approach to evidence recycled content in chemically recycled plastic for PPT. These changes will mean that businesses will, in due course, pay less if they reduce the amount of packaging and use recycled materials. With the upcoming increase in the tax rate, exploring more sustainable packaging alternatives will become increasingly important.

Life sciences and healthcare

Significant developments for the life sciences and healthcare sector were set out in the budget, including £1.5 billion for new surgical hubs and diagnostic scanners and up to £520 million of longer-term funding being made available for a new Life Sciences Innovative Manufacturing Fund. Read our Insight for more.

General / digital products

UK

Product Regulation and Metrology Bill starts committee stage

The Product Regulation and Metrology Bill started it Lords committee stage on 20 November, and it is this stage which is the most opportune point in the legislative procedure for significant amendments to be introduced: it is the most detailed part of the bill's scrutiny in the Lords without a fixed time limit, and every clause has to be agreed in a line-by-line review before the bill moves on.

Following its second reading, over 100 proposed amendments were made, covering topics from jurisdictional scope, environmental considerations, the definition of a product, the definition of an online marketplace, enhancements to consumer safety, reviews of technical standards, and enforcement powers. Considering the number of concerns and amendments raised with the bill so far, it is anticipated that the committee stage will take some time.

Government publishes response to the Product Safety Review

The government has published its response to the Product Safety Review. The response highlights the current challenges with the product safety framework including the mass of technical legislation regarding product safety, limited powers in domestic legislation to update legislation, and the need for regulations to be updated in line with technological advancement. These were also reasons for the introduction of the Product Regulation and Metrology Bill and as such the response links back to how these issues will be rectified with the introduction of the new bill.

The response sets out what was found both from the call for evidence in 2019 and the public consultation that ran last year. This included addressing the growth of online markets and the need for better enforcement, and consumer safety and the need for a more responsive framework to emerging hazards.

In terms of next steps, under the Product Regulation and Metrology Bill the government intends to introduce new requirements on online marketplaces at the earliest opportunity to clarify online marketplace responsibilities. It will also monitor changes to EU product and metrology legislation and notes that new legislation may be introduced in line with its two call for evidences on noise measurement from outdoor equipment and common charger (see the previous Regulatory Outlook).

The government also flags in its response cross-cutting hazards, such as the choking hazard of button batteries and the fire hazard of lithium-ion batteries, as an area where further legislation could be needed in the next year. The government is also considering whether to move wholesale towards the provision and sharing of product safety information digitally by default. Longer term, it will consider how technological advancements can be integrated into the existing framework, aligning with the industrial strategy to be published in spring 2025. Further consultation and secondary legislation is expected in all these areas.

Tobacco and Vapes Bill
The Tobacco and Vapes Bill has been introduced and had its first reading on 5 November. The bill introduces a number of provisions relating to the sale and distribution of tobacco and vapes including, among others, a provision prohibiting the sale of tobacco to people born on or after 1 January 2009 and provision about the licensing of retail sales and the registration of retailers; to enable product and information requirements to be imposed in connection with tobacco, vapes and other products; and to ban the manufacturing and sale of oral tobacco products such as snus. The bill passed its second reading on 26 November. View further documents including the explanatory notes.

While subject to change as it progresses through parliament, businesses who will be affected by this legislation should familiarise themselves with the bill and its effect on them.

To note, the bill sits separately to the recently introduced regulations banning the supply and sale of single-use vapes from 1 June 2025 (see the previous Regulatory Outlookhttps://www.osborneclarke.com/insights/regulatory-outlook-October-2024-products).

Government consults on introducing sanctions for senior executives of online platforms and marketplaces for failure to remove content on weapons and knives
Please see Digital regulation.

EU
EU Product Liability Directive published in the Official Journal of the EU
On the 18 November, the EU Product Liability Directive was published in the Official Journal of the EU. Member States will have until 9 December 2026 to implement the directive into national law. This means that products placed on the Union market or put into service from 9 December 2026 will be subject to the new directive. Those products are already on the market or put into service before 9 December 2026 will still be subject to the former Product Liability Directive.

If you would like to receive our infographic which sets out the incoming changes and practical steps you can be taking now, then please get in touch.

You can also track the directive on our Digital Regulatory Timeline.

EU Cyber Resilience Act published in Official Journal
The EU Cyber Resilience Act (CRA) was published in the Official Journal and will enter into force on 10 December 2024. The CRA has a 36-month transition period, meaning it will apply from 11 December 2027.

The CRA introduces stringent cybersecurity requirements for products with digital elements, such as connected home devices. Potential fines for non-compliance with the CRA is up to €15m or 2.5% of the worldwide annual turnover. Key elements include:

- EU-wide cybersecurity standards for hardware and software.
- CE marking to indicate compliance.
- Application to all connected products, with some exceptions.

Products

With the CRA now in force, manufacturers that place products with digital features on the EU market will need to understand what their obligations are under the new legislation and what they will need to do to ensure compliance. Businesses who are already complying with the UK's Product Security and Telecommunications Infrastructure Act 2022 will see some similarities in a few of the compliance requirements, see our Insight for a comparison of the two.

You can also track the directive on our Digital Regulatory Timeline.

EU Regulation prohibiting products in the Union market made using forced labour receives final approval
Please see Modern slavery.

Product sustainability
UK
Wales pulls out of UK-wide Deposit Return Scheme
On 18 November, the Welsh government issued a statement announcing its decision to withdraw from the UK-wide deposit return scheme (DRS), which is due to be rolled out in October 2027. The statement highlights unresolved issues regarding the inclusion of glass in the scheme leading to Wales's decision not to participate in the UK-wide initiative.

However, the Welsh government reaffirmed its commitment to developing a DRS for Wales, specifically noting that it will consider the inclusion of glass containers.

The UK government published a statement in response reiterating its commitment to implementing a DRS across England, Northern Ireland and Scotland in October 2027. Additionally the government has published draft regulations for the scheme confirming its intention to adhere to the current timeline.

This development suggests that the UK-wide and Welsh DRS could differ in terms of the materials in scope, especially given Wales's intention to include glass. It will be interesting to observe the UK government's response to this and businesses that will be affected by the introduction of the DRS should keep on top of developments.

EU
Update of the EU's PHAS restriction process
On 20 November, the European Chemicals Agency (ECHA) published an update on the restriction proposal for per- and polyfluoroalkyl substances (PFAS) (see our Insight for more). As a reminder, this proposal looks at restricting around 10,000 PFAS which would be on the manufacture, placing on the market and use of PFAS. The initial PFAS restriction contains two restriction options: a full ban or a ban with time limited derogations (where alternatives are not yet available).

Following the 2023 consultation on the proposal, the five authorities who submitted the proposal, along with ECHA's scientific committees for Risk Assessment (RAC) and for Socio-Economic Analysis (SEAC), have been considering the 5,600 comments received. These responses have highlighted uses of PFAS that were not specifically named in the original proposal, including sealing applications, technical textiles, printing applications and other medical applications, such as packaging and excipients for pharmaceuticals. Additionally, consideration is also now being given to whether restriction options other than a ban may help to reduce PFAS emission following these comments.

The update outlines that work is to progress during 2025 which will lead to an opinion of the RAC and a draft opinion of the SEAC. Following this, a consultation will be held on the draft opinion of the SEAC.

Although the ECHA is to continue its work on PFAS restrictions into next year meaning draft legislation may not be ready until later into 2025, businesses should be using this time now to prepare for new law which will phase-out PFAS. Businesses should be having internal conversations around PFAS and looking at what changes may need to be made to supply chains as well as looking to mapping out areas of risk.

Consultation on the DPP rules for service providers
The European Commission has launched a consultation in regards to a delegated act it intends to adopt which will set out the rules on the operation of digital product passport (DPP) service providers. The DPP is set out in the Ecodesign for Sustainable Products Regulation and so will be gradually introduced for product groups being placed on the EU market. Additionally, from 18 February 2027, a DPP will be mandatory for certain types of batteries.

The delegated act will outline the requirements for DPP service providers, who will store and process DPP data for economic operators that opt not to do it themselves. For those who host the DPP themselves, service providers will store a mandatory backup copy. The Commission will conduct an impact assessment to evaluate potential options, effects, and the feasibility of a certification scheme to ensure compliance. Comments are to be made by 10 December 2024.

European Commission establish Ecodesign Forum
On 29 October 2024, the Commission Decision (EU) 2024/2779, which establishes the Ecodesign Forum under the Ecodesign for Sustainable Products Regulation (ESPR) was published in the Official Journal of the EU. This forum is a group of experts on ecodesign for sustainable products and energy labelling who will act as an advisory body to the Commission in relation to the ecodesign requirements they will introduce under the ESPR. The forum will be consulted on all key steps of the ecodesign process, including the development of ecodesign requirements and the preparation of ESPR working plans, which will set out the products and measures to be addressed over a given period.

Members will be individuals appointed to represent a common interest, organisations, Member States' authorities, or other public entities. Those wishing to apply to the forum must meet a selection criteria and follow the instructions set out in the call. The call for applications for members of the forum opened on 7 November 2024 and closes at noon on 5 December 2024. Businesses should review the call to see whether they fit the criteria and wish to apply.

EU Deforestation Regulation delayed by a year and goes back to trialogue
Please see ESG.

Life Sciences and healthcare
UK
Government to refresh post-market surveillance requirements for medical devices

On 22 October 2024, the draft Medical Devices (Post-market Surveillance Requirements) (Amendment) (Great Britain) Regulations 2024 were laid before Parliament. These draft regulations amend the Medical Devices Regulations 2002 to impose more stringent requirements and obligations on manufacturers to undertake post-market surveillance (PMS) practices on their medical devices. Changes being introduced include to PMS system and plan, preventative actions and reporting obligations. We explore this further in our Insight.

Consultation on Medical Devices Regulations: Routes to market and in vitro diagnostic devices

The Medicines and Healthcare products Regulatory Agency (MHRA) has launched a consultation on forthcoming regulations on routes to market for medical devices and in vitro diagnostic (IVD) devices.

The MHRA is seeking views on four areas:

International reliance – introduce an international reliance scheme, that would complement the UKCA process, aimed to expedite GB market access for certain devices approved in countries with comparable regulatory systems to the UK: Australia, Canada, the EU and the USA.

UKCA marking - removing the current requirements for devices which undergo the UK conformity assessment process to bear a UKCA marking and instead assign devices with a Unique Device Identification (UDI) to allow for traceability of medical devices. The conformity assessment process would not be impacted by this proposal.

In vitro diagnostic devices – amending the IVD system to classify IVD devices into four risk classes based on patient and public health risk they pose. This will closely align with the structure used by the International Medical Device Regulators Forum and EU in order to support global harmonisation and assist in providing a risk-based approach to classification of IVD devices.

Assimilated EU law - proposal to remove the revocation date of four pieces of assimilated law as the regulations are still in use and need remain in place until the transition to an updated medical devices regime:

- Commission Decision 2002/364 on the common specifications for in vitro diagnostic medical devices
- Commission Regulation [EU] No 207/2012 on electronic instructions for use of medical devices
- Regulation [EU] No 722/2012 concerning particular requirements for medical devices manufactured utilising tissues of animal origin
- Regulation [EU] No 920/2013 on the designation and the supervision of approved bodies.

The consultation closes on 5 January 2025. Businesses should review the consultation and determine whether they wish to respond.

Guidance on supply and advertisement of medicines in the UK after 1 January 2025 published
On 1 January 2025, new arrangements for human medicines introduced by the Windsor Framework come into effect. From 1 January 2025, all medicines in the UK will be licensed by the MHRA and authorised under the Human Medicines Regulations 2012.

The MHRA has published new guidance on the main changes being introduced by the framework and businesses placing medicines on the UK market should be aware of the changes coming into force on 1 January 2025 and how these will impact them. See this earlier Regulatory Outlook for more.

New guidance has been also published providing information on the advertising and promotion changes coming into effect. Products that were eligible for authorisation by the European Commission in Northern Ireland will now be authorised by the MHRA. The guidance states that marketing authorisation (MA) holders can still obtain an NI MA, and the MHRA may issue GB MAs after 1 January 2025 in exceptional circumstances to protect patients' health in the UK. It adds that the vast majority of MAs will be UK-wide, meaning that these medicinal products can be advertised across the UK, except in exceptional circumstances where a medicinal product is only licensed in part of the UK.

In regards to licence numbers, from 1 January 2025, the EU licence number assigned to licences in respect of NI will no longer apply and suggests that the number should be phased out "at the earliest available opportunity".

Katie Vickery, Partner
T: +44 20 7105 7250
katie.vickery@osborneclarke.com

Peter Rudd-Clarke, Partner
T: +44 20 7105 7315
peter.ruddclarke@osborneclarke.com

Veronica Webster Celda, Associate Director
T: +44 20 7105 7630
veronica.webster@osborneclarke.com

Thomas Stables, Senior Associate
T: +44 20 7105 7928
thomas.stables@osborneclarke.com

Anna Lundy, Associate Director
T: +44 20 7105 7075
anna.lundy@osborneclarke.com

Jamie Roberts, Associate
T: +44 20 7105 7345
jamie.roberts@osborneclarke.com

Regulated procurement

Regulated procurement

UK government launch consultation on eradicating modern slavery in NHS supply chains

On 20 November, the government launched a consultation on proposals to prevent goods that are linked with modern slavery from being sourced in the NHS. New regulations will be introduced to legally require public bodies procuring goods and services for the NHS to identify and mitigate the risk of modern slavery in supply chains.

The new regulations will apply to all public bodies procuring health goods and services (including NHS trusts, integrated care boards and local authorities) and will require them to undertake risk assessments and to take reasonable steps to mitigate identified modern slavery risks in order to remove modern slavery from their supply chains.

The regulations will apply to all contracts for goods and services supplied to the NHS and also contain requirements for frameworks and dynamic markets. The draft guidance published alongside the consultation provides further detail on how to comply with these duties, including using the modern slavery assessment tool to identify risks and relevant reasonable steps for low, medium and high risks that public bodies can take.

The wide scope of the regulations is notable, as it impacts any public body procuring any goods or services (other than excluded goods and services) for the purposes of the health service in England, beyond just NHS entities. This includes a wider scope of entities than the current procurement policy note 02/23: tackling modern slavery in government supply chains which only applies to central government departments, executive agencies, non-departmental public bodies and, notably, NHS bodies. The new regulations will not apply retrospectively, but those in-scope public bodies will still be required to comply with PPN 02/23.

Suppliers of goods and services provided to the NHS will be required to supply relevant information about their supply chains and may face barriers to future contracts if they cannot provide information that demonstrates alignment with the new regulations.

The consultation closes on 13 February 2025.

Are you prepared for the forthcoming changes on prompt payment terms for public tendering in the UK?

Among the measures Rachel Reeves announced in her Budget was that, from October 2025, companies must report average payment days of 45 or fewer in either of the two previous six-month reporting periods and continue to meet the existing requirement to pay 95% (90% with an action plan) of invoices within 60 days. If a company does not meet this measure, it will not meet the conditions to participate in procurements for central government contracts worth over £5m.

At present, contracting authorities are only required to ask questions about supplier payment times, with no specific consequences for suppliers if they fall below the targets.

This announcement creates a new and direct link between two previously separate areas of the public procurement regime – prompt payment and not meeting a pass/fail criteria for being able to participate in procurements for central government contracts worth over £5m. Read our Insight for more.

Guidance published on the Central Digital Platform

The Cabinet Office has published guidance and a factsheet on the central digital platform (CDP) under the Procurement Act. The CDP will be where all UK contracting authorities publish information relating to procurements, including procurement notices, and will also be used to store core supplier information.

Once registered, suppliers will input their commonly used information and may then choose to share this with authorities they wish to bid to. Over time, the CDP will be the go-to place to find not only opportunities to bid for, but also for information on contracts that have been let, how the awarded supplier is performing and how contracts are being changed. The CDP guidance also contains some helpful comments on the types of situations in which information

which should otherwise be published in a notice may be withheld from publication, including some breakdown of what "sensitive commercial information" is in these circumstances.

Suppliers only need to register at the point that they want to bid for a contract after the law comes into force on 24 February 2025.

MoD announces major defence reforms

The defence secretary has launched the biggest reform of the defence sector to fix what the Public Accounts Committee calls the "broken" defence procurement system and to strengthen UK defence. As part of this reform, the Ministry of Defence is creating a new National Armaments Director to ensure that the armed forces are suitably equipped, lead on UK defence exports and ensure that procurement is closely aligned with wider government, industry and international partners.

Catherine Wolfenden, Partner
T: +44 117 917 3600
catherine.wolfenden@osborneclarke.com

Craig McCarthy, Partner
T: +44 117 917 4160
craig.mccarthy@osborneclarke.com

Laura Thornton, Associate Director
T: +44 20 7105 7845
laura.thornton@osborneclarke.com

Kate Davies, Associate Director
T: +44 117 917 3151
kate.davies@osborneclarke.com

Millie Smith, Senior Associate
T: +44 117 917 3868
millie.smith@osborneclarke.com

Gabrielle Li, Associate
T: +44 117 917 3233
gabrielle.li@osborneclarke.com

Sanctions and Export Control

Sanctions and Export Control

Changes to sanctions legislation

On 14 November 2024, the Sanctions (EU Exit) (Miscellaneous Amendments) (No.2) Regulations 2024 were laid before Parliament. The regulation makes a number of changes, including:

- expanding the definition of relevant firms subject to financial sanctions reporting obligations to cover high value dealers, art market participants, insolvency practitioners and letting agents;
- amending existing reporting requirements on relevant firms and persons to report suspected of sanctions regulations;
- introducing a requirement for all UK persons holding funds or economic resources owned, held, or controlled by a designated person, to provide an annual report to the Office of Financial Sanctions (OFSI) with details of the assets; and
- new civil monetary powers in relation to Russia land prohibitions.

All of the changes will come into force on 5 December 2024, save for the extension of reporting obligations to high value dealers, art market participants, insolvency practitioners and letting agents, which will come into force on 14 May 2025.

The guidance on Russia financial sanctions, reporting information to OFSI, high value dealers and art market participants as well as enforcement and monetary penalties has been updated to reflect the above changes. New guidance has also been published for insolvency practitioners and letting agents.

See the OFSI press release.

New sanctions package against Russia

On 7 November 2024, the UK announced its largest sanctions package against Russia since May 2023, targeting the country's military activity.

The package consists of 56 new designations on the UK Sanctions List. Sanctioned entities include suppliers of machine tools, microelectronics, drone components, ball bearings and other military equipment used in Russia's war against Ukraine.

As previously reported, the Foreign, Commonwealth and Development Office launched a new search function to the UK Sanctions List in September 2024.

OFSI and OFAC two-year enhanced partnership anniversary

On 19 November 2024, OFSI published a blog post celebrating the two-year anniversary of its enhanced partnership with the US's Office of Foreign Assets Control (OFAC) in global sanctions implementation.

The post reflects on the partnership's work, including joint engagement with the private sector, information-sharing initiatives and organisational modernisation efforts. The organisations reaffirmed their commitment to global security through the continued development and implementation of sanctions.

OFSI clarifies deadline for frozen assets review

On 7 November 2024, OFSI added a financial sanctions FAQ in relation to the submission date of reports to the Frozen Assets Review 2024.

FAQ 123 clarifies that the "as of" date for frozen assets reported under the review is 30 September 2024. Therefore, relevant institutions should have collected the information by 30 September in advance of the reporting submission deadline.

Sanctions and Export Control

To support industry stakeholders, OFSI has extended the reporting submission deadline by two weeks to 25 November 2024.

OFSI general licences

OFSI has published general licence INT/2024/5394840. This allows relevant institutions to process payments made in 2022, from or through a designated credit or financial institution, provided that the sender and recipient are not designated persons. The licence takes effect from 7 November 2024 and expires on 6 November 2025.

OFSI has extended general licence INT/2022/1710676. The extended licence allows for the continuation of business operations of the North American subsidiaries of Evraz. The licence now expires on 30 September 2025.

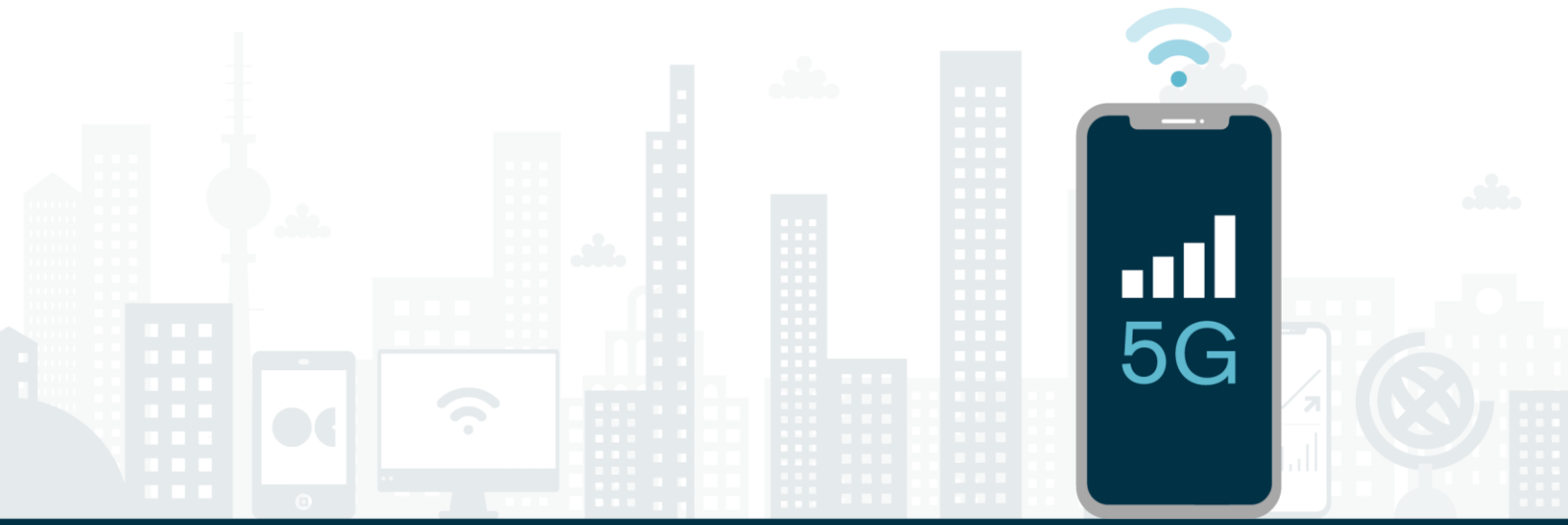
Greg Fullelove, Partner
T: +44 20 7105 7564
greg.fullelove@osborneclarke.com

Kristian Assirati, Associate Director
T: +44 20 7105 7847
kristian.assirati@osborneclarke.com

Chris Wrigley, Partner
T: +44 117 917 4322
chris.wrigley@osborneclarke.com

Galina Borshevskaya, Senior Associate
T: +44 20 7105 7355
galina.borshevskaya@osborneclarke.com

Carolina Toscano, Associate
T: +44 20 7105 7086
carolina.toscano@osborneclarke.com



Telecoms

Telecoms

mmWave to take place in 2025

The next UK spectrum auction is approaching, with Ofcom publishing the final regulations text earlier this month.

In 2025, Ofcom will release spectrum in the 25.1-27.5 GHz and 40.5-43.5 GHz bands, known as millimetre wave (mmWave) spectrum. These high-frequency bands are ideal for high-data transmission in densely populated areas like stadiums, busy streets, and train stations.

Ofcom has also published guidance ("Enabling mmWave spectrum for new uses") for auction participants, including:

- **Practical Guidance**: Instructions on navigating the auction, application procedures, and indicative timings.
- **Spectrum Information**: Details about the available spectrum and usage conditions.
- **Licensing Information**: Locations where the spectrum will be licensed.

The auction will occur in 2025, with further updates on timings expected by year-end. This auction offers a significant opportunity to secure valuable spectrum for high-capacity data needs in urban environments.

Ofcom investigation into the misuse of phone numbers

Ofcom has launched an investigation into communications provider Tismi to determine if it failed to take appropriate measures to prevent the misuse of phone numbers allocated to it.

Ofcom allocates telephone numbers to telecoms firms, who can then transfer these numbers to individuals or businesses. Communications providers must ensure these numbers are not misused (for example, using them for scam calls and texts). Ofcom expects firms to conduct "know your customer" checks and monitor their customers to prevent misuse.

The investigation into Tismi is part of a broader enforcement programme initiated by Ofcom to combat phone and text scams, aiming to promote best practice and adherence to Ofcom's rules. It has issued formal demands to several companies with high levels of complaints to provide information on their measures to tackle scam calls and texts. The outcome of these investigations could lead to further scrutiny and enforcement actions.

Telecoms firms should pay attention to the progress of the enforcement programme and ensure their processes are compliant with Ofcom rules. Ofcom will be publishing any further investigations on its enforcement bulletin.

Jon Fell, Partner
T: +44 20 7105 7436
jon.fell@osborneclarke.com

Eleanor Williams, Associate Director
T: +44 117 917 3630
eleanor.williams@osborneclarke.com

Hannah Drew, Legal Director
T: +44 20 7105 7184
hannah.drew@osborneclarke.com

TK Spiff, Senior Associate
T: +44 20 7105 7615
tk.spiff@osborneclarke.com

Matt Suter, Associate Director
T: +44 20 7105 7447
matt.suter@osborneclarke.com