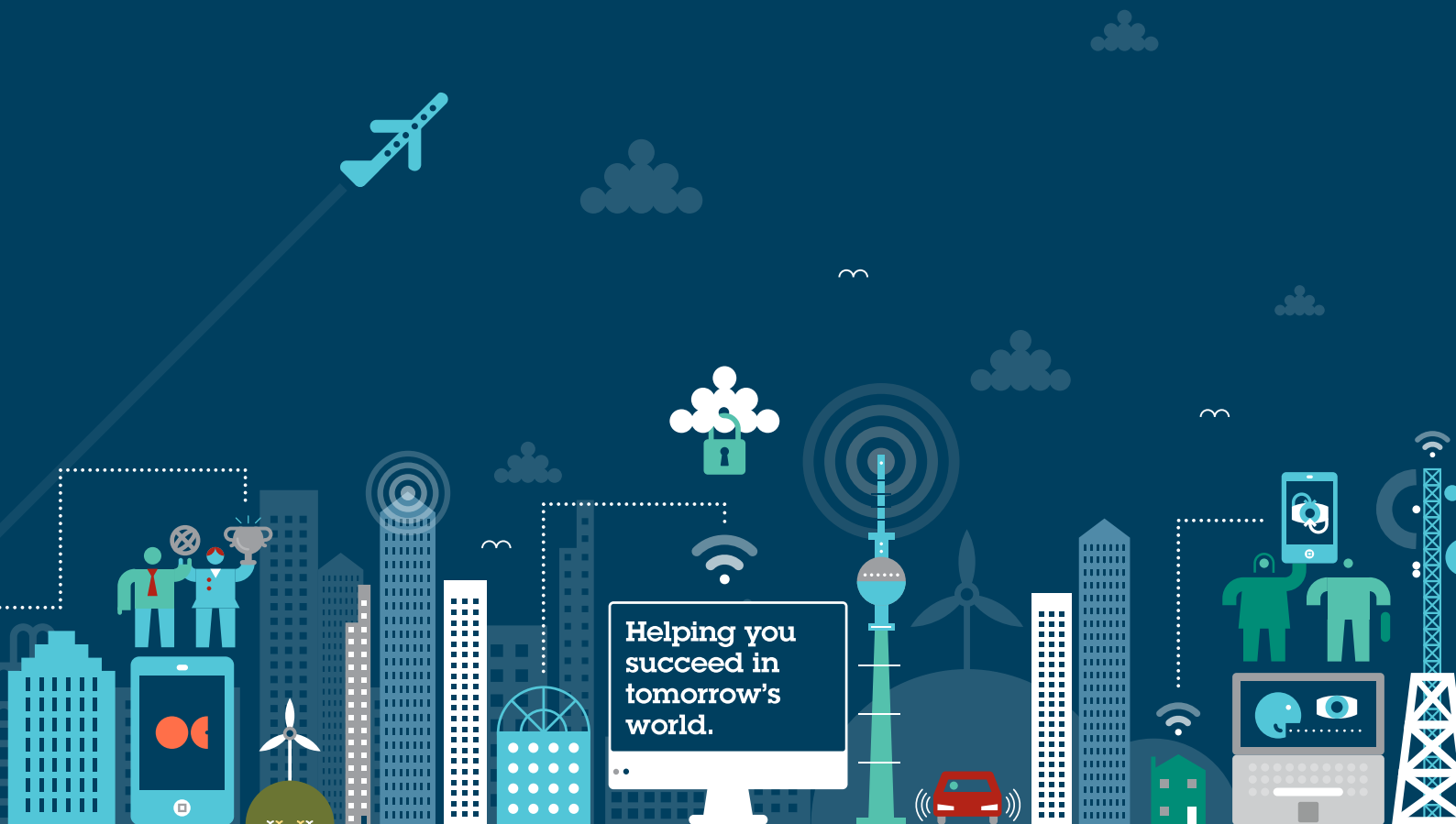


UK Regulatory Timeline

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April 2016



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Introduction



Catherine Wolfenden

Partner and Head of Osborne Clarke's Regulatory Group

T +44 117 917 3600

catherine.wolfenden@osborneclarke.com

What changes in regulation do I need to do something about?

This is the question I am most often asked by clients, and which Osborne Clarke's UK Regulatory Timeline should help to answer. The Timeline draws upon the expertise of over 40 lawyers, working across legal disciplines and sectors. They are all experts in advising clients on the different areas of regulatory law that concern businesses operating in the UK. In this introduction, I highlight three themes that cut across all the areas of regulation covered by this latest edition of the Timeline, and which I think should be on every organisation's regulatory agenda:

- Early engagement with potential regulatory change
- Penalties and pleas
- Internal investigations and self-reporting



1. Early engagement with potential regulatory change

The EU legislators, the UK government and individual regulators are constantly consulting on new regulation and changes to existing regulation. As the Timeline illustrates, consultations at a UK and EU level are currently on-going in nearly every regulatory arena.

To have influence over regulatory change, organisations need to be alive to consultations, get involved with them and – if necessary – challenge the process or outcome.

Consultations can be very broad, with the outcome potentially leading to significant re-shaping of the regulatory landscape – such as the work being undertaken by the Department for Transport into the effectiveness of the current regulatory regime for the railways. Or they can be very specific, leading to focused changes, but often with significant impact on those being regulated – for example, the on-going consultation being run by the Department for Business Innovation and Skills on whether the range of enforcement powers currently available to ensure compliance with consumer protection laws is sufficient.

The question of whether a regulator must consult on changes to regulation is complex. The answer can often require detailed analysis of public and administrative law. Political agendas often drive regulatory change, even in areas where a regulator is independent of government.

The move away from subsidy support for renewables investment is a clear example of a change in a regulatory arena driven by policy of the government of the day. Legal challenge is always an option for organisations which do not consider that the regulator has complied with statutory obligations to consult or has breached other public law duties in relation to regulatory changes.

There have been several legal challenges in the field of renewable energy regulation in the past two years. A 2016 Court of Appeal case concerned the legality of decisions by the Secretary of State for Energy and Climate Change to bring to a premature close a statutory scheme supporting the generation of electricity from renewable sources. That challenge was unsuccessful. However, in May 2015 the same Secretary of State lost an appeal to overturn a previous High Court decision that ruled in favour of 14 UK solar companies seeking damages from the government. In that challenge, the Court of Appeal dismissed the government's appeal after determining that the solar companies suffered direct damage to their 'possessions' for the purposes of the Human Rights Act by the government's 'legally flawed' cuts to the feed-in tariff scheme in 2012.

To protect an organisation's interests in a landscape of regulatory change, it is vital to be alive to the potential changes, by getting involved in consultations and understanding the ramifications of potential outcomes. Organisations need to engage early with industry bodies and regulators to shape change in a way that is best for that organisation.

2. Penalties and pleas

Our regulatory lawyers are seeing increasing action by regulators looking to enforce against corporate bodies; rather than against individuals within those organisations.

The level of financial penalties for regulatory breaches is increasing, principally due to changes in the underlying legislation and guidelines that give enforcers the powers to impose penalties. We are starting to see the effects of the new sentencing guidelines that came into force on 1 February 2016 for all health and safety offences, which encourage the criminal courts to link the level of fine directly to an organisation's turnover. For larger organisations, this is set to increase the level of fines from hundreds of thousands of pounds, where there is culpability and significant harm, to millions of pounds.

With many breaches of regulations enforced against corporates in the criminal courts, the potential impact of a consultation by the Sentencing Council on new guidelines for the reduction in fine levels for a guilty plea could be significant. If the guidelines are adopted, a corporate defendant being prosecuted for a Regulatory breach in the criminal courts will have to admit guilt on the first occasion that a charge is put to it in order to obtain the maximum possible one-third reduction in the financial penalty. At the moment, defendants – for good reason – rarely admit guilt at the very first hearing. This change would leave many corporates with a difficult decision to make early on in a prosecution, often when the full facts and the prosecution's case are not known.

Looking further ahead, increases to potential financial penalties are looming in various areas. For example, when the General Data Protection Regulation comes into effect in 2018, the level of possible fines for breaches of data protection legislation will increase significantly – to EUR 20 million or 4% of worldwide turnover.

3. Internal investigations and self-reporting

Financial penalties are just one reason why organisations need to know what regulations apply to them and to understand the risk of non-compliance.

Even before a regulator pays a visit, starts an inquiry or responds to an incident, many organisations carry out investigations arising from concerns raised from within the business. The vexed question of whether documents produced before or during such an internal investigation are privileged, and so protected from disclosure to a regulator, is something on which Osborne Clarke's regulatory lawyers often advise. The simple take-home message is always to make sure that a lawyer (in some cases it must be an external lawyer) is responsible for starting and leading an internal investigation. In practice, though, it is rarely that simple.

In certain fields there is a requirement to self-report regulatory breaches (for example, in certain regulated professions, including lawyers and accountants). In other areas, whether or not an organisation has self-reported can be a material consideration when it comes to a potential prosecution. For example, the Serious Fraud Office will take into account any self-reporting when deciding whether to prosecute. Recent cases have shown that the SFO will demand a high level of cooperation before considering entering into a Deferred Prosecution Agreement, rather than prosecuting an offence.

Brexit

Turn to any section of our Timeline and many of the key developments in that arena are likely to be EU-driven, whether directly or indirectly. We will find out in June whether the UK will remain in the EU. If the vote is for an exit, what will this mean for the raft of UK regulation that has derived from EU law? We discuss this question in detail on our dedicated [Brexit page](#).

We would be delighted to speak with you about how any area of regulation or regulatory change affects, or may affect, you or your business. Please do not hesitate to get in touch with me or any of the team to arrange a call or meeting.

Advertising and Marketing



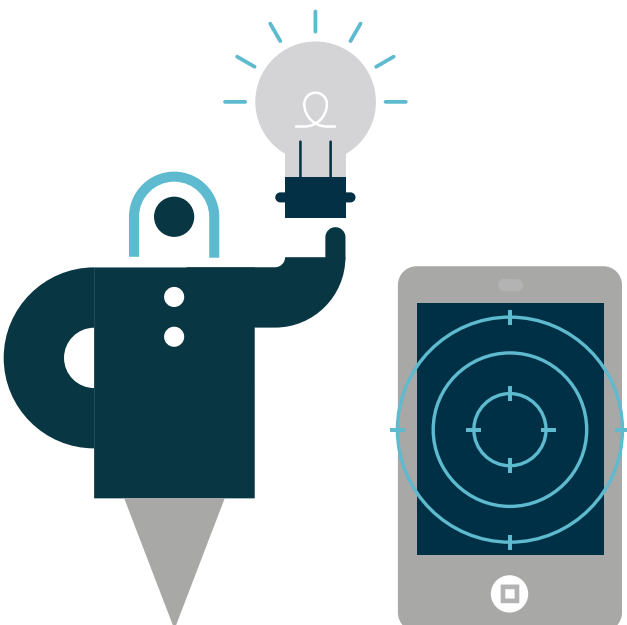
Nick Johnson

Partner

T +44 20 7105 7080

nick.johnson@osborneclarke.com

“The advertising sector can expect significant regulatory changes over the next 12 months and beyond, with a slew of European directives up for review and no shortage of domestic UK developments.”



12 April 2016	ePrivacy Directive	<p>On 12 April 2016 a consultation was launched on revisions to the existing ePrivacy Directive.</p> <p>The ePrivacy Directive contains rules on direct marketing using electronic means, as well as specific measures governing telecommunications providers.</p> <p>Revisions are needed to implement the European Commission's Digital Single Market strategy, and to ensure that the ePrivacy Directive aligns with the new GDPR.</p> <p>Possible areas for change include amendments to cookie rules, and potential changes to the scope of current rules on unsolicited commercial communications.</p> <p>A new draft ePrivacy Directive is expected to be published by the end of 2016. The consultation closes on 5 July 2016.</p>
30 April 2016	Net neutrality	<p>Certain provisions of the EU Net Neutrality Regulation come into force on 30 April 2016.</p> <p>Network-level blocking of specific content types is heavily restricted under the Net Neutrality Regulation and these provisions will therefore give online publishers and advertisers a new argument against network-level adblockers.</p>
20 May 2016	Tobacco Products Directive	<p>The Tobacco Products Directive, which has to be implemented in EU Member States by 20 May 2016, will result in changes to how and under what conditions e-cigarettes may be advertised. At the time of writing, the relevant national legislation has not been finalised and the position in Scotland may diverge from that in the rest of the UK. However, it is likely that advertising of nicotine-containing e-cigarettes will be prohibited other than for products licensed as medicines.</p>
Q2 2016	General Data Protection Regulation (GDPR)	<p>Following political agreement of the new EU GDPR, the final was approved by the European Parliament on 14 April 2016. We expect it to be passed into EU law in the second quarter of 2016 and to be effective in Member States two years later.</p> <p>It seems therefore that businesses will have until around the middle of 2018 to prepare for the new regime, although with the GDPR introducing major changes to the data protection regime, businesses will need to begin preparing for the new regime well in advance of that.</p>
Q2 2016	New rules for advertising food and soft drinks high in fat, salt or sugar (HFSS)	<p>In September 2015, the Committee of Advertising Practice announced it would be consulting on changes to its non-broadcast advertising code, including the potential introduction of rules on the targeting of HFSS food and drinks to children. Currently such rules are found only in the broadcast advertising code.</p>

Q2/Q3 2016	Pricing Practices Guide (PPG)	The Chartered Trading Standards Institute closed its consultation on a proposed new PPG on 20 January 2016. It has promised “in due course” to produce a summary of responses and a final draft of the guidance. Many of the old PPG rules of thumb – such as the “28 day rule” – are likely to be consigned to history, as the new draft seeks to align more closely with the Unfair Commercial Practices Directive.
Q2/Q3 2016	Audiovisual Media Services Directive (AVMSD)	Following a public consultation in 2015, the AVMSD is now set to be reviewed, with potential changes that could affect the advertising of alcohol and/or HFSS foods. For more information on reform of the AVMSD see here .
2016	Misleading and Comparative Advertising Directive	As part of the European Commission’s “REFIT” fitness check of consumer law, the Misleading and Comparative Advertising Directive will be subject to evaluation in 2016, including various proposed consultation processes.
2016	Unfair Commercial Practices Directive	As part of the same REFIT initiative, the Unfair Commercial Practices Directive will also be reviewed in 2016. The European Commission has not yet published further details of the anticipated timings for the review.

Business Crime, Anti-Corruption and Bribery



Tom Ellis

Partner

T +44 207 105 7418

tom.ellis@osborneclarke.com



Jeremy Summers

Partner

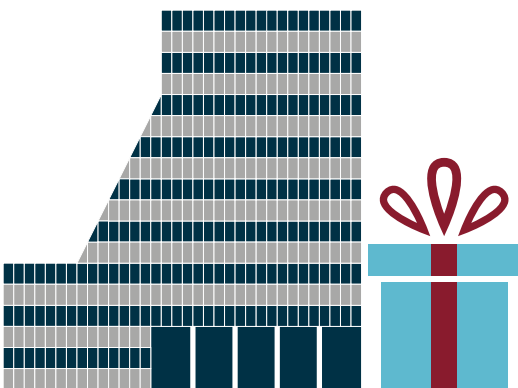
T +44 207 105 7394

jeremy.summers
@osborneclarke.com;

“Businesses continue to face increasing scrutiny and sanctions from enforcement agencies, both in the UK and internationally, with bribery and corruption remaining key targets.

Despite some high-profile investigations and prosecutions having collapsed, the Serious Fraud Office has secured increased funding for key investigations and will have been emboldened by having successfully deployed the section 7 Bribery Act corporate offence of failing to prevent bribery, and secured a first Deferred Prosecution Agreement.

The Financial Conduct Authority’s Senior Managers Regime is now in force and will enable the prosecution, and imprisonment, of senior bankers on the basis of reckless conduct. Meanwhile, the government intends to revise the sentencing regime to encourage guilty pleas at the earliest opportunity.”



March 2016	New rules and responsibilities for senior staff of financial services firms	<p>As of 7 March 2016, senior managers at UK banks, building societies and certain systemically important investment firms could face up to seven years in jail or an unlimited fine if they make a decision which results in the institution failing (under section 36 Banking Reform Act 2013).</p> <p>Also now in force are the Certification Regime, which introduces a regime of regulatory prior approval of regulated firms' key people, and the new Senior Managers Regime. These new regimes will impose duties on key people, including a responsibility to take reasonable steps to prevent regulatory breaches in the areas for which they are responsible.</p>
May 2016	London global anti-corruption summit	<p>In May 2016, the UK will host an anti-corruption summit to bring together world leaders and focus on international action to pursue the following objectives:</p> <ul style="list-style-type: none"> • deterring corruption; • ending impunity for those who commit corruption; and • supporting and empowering those who have suffered from corruption. <p>The UK has invited G20 countries and other countries involved in the fight against corruption, as well as leading international organisations including the UN, World Bank, OECD, and the IMF.</p>
2016	Deferred Prosecution Agreements (DPAs)	<p>Following the Serious Fraud Office's (SFO's) first use of a DPA (see here), the SFO's approach to the use of DPAs is likely to remain a hot topic during 2016. The recent conviction of Sweett Group for an offence under section 7 of the Bribery Act 2010 (see here) indicates that the SFO is not currently prepared to modify its position on what constitutes full cooperation from a business. Sweett Group's level of cooperation was not deemed high enough to warrant the offering of a DPA.</p>
2016	Review of financial impositions in the criminal courts	<p>On 19 February 2016, the Ministry of Justice announced that it would be conducting a review of financial impositions in the criminal courts. This consultation will consider how costs and penalties are imposed on offenders and seeks to bring "<i>greater simplicity and clarity to the system in England and Wales</i>".</p> <p>Increased clarity will help businesses facing potential enforcement action to make informed choices about their options.</p>
Q3/Q4 2016	Investigatory Powers Bill	<p>The Investigatory Powers Bill was passed on its second reading in the House of Commons on 15 March, and is set to come into force before the end of 2016.</p> <p>The Bill is largely based on the draft Investigatory Powers Bill published in November 2015, which detailed new internet and phone surveillance powers, including the bulk collection of large volumes of personal communications data.</p> <p>Although there have been a number of changes to the previous draft Bill, the Bill still contains many controversial aspects.</p> <p>For more information on the Investigatory Powers Bill see here.</p>

2016/17	Enhanced transparency on the beneficial ownership of foreign companies buying property	<p>The Department for Business, Innovation and Skills (BIS) has issued a consultation on proposals to improve the transparency of the beneficial ownership of foreign companies that purchase land or property in England and Wales, or which enter into public procurement contracts in England.</p> <p>The proposed measures are intended to safeguard the UK property markets from becoming a haven for tax evasion, money laundering and terrorist financing.</p> <p>The consultation closed on 4 April 2016. We are expecting BIS's response to the consultation and proposals in the second half of 2016 or in early 2017.</p> <p>These proposals are part of the UK's wider efforts on increasing transparency, which includes the people with significant control (PSC) register, which from 6 April 2016 unlisted UK companies and LLPs need to maintain (see here for more detail on the PSC register).</p>
2016/17	Policing and Crime Bill	<p>The Policing and Crime Bill will introduce a number of reforms to policing, including changes to the pre-charge bail regime.</p> <p>The Bill will introduce a presumption that while an investigation is ongoing, the suspect should be released without bail unless certain pre-conditions are met.</p> <p>Where those conditions are met, the maximum initial period of bail will be longer for SFO investigations (particularly those designated "exceptionally complex"). Any extensions beyond that initial period can only be granted by the magistrates' court, introducing judicial oversight of pre-charge bail for the first time.</p> <p>We expect the Bill to be passed into law in late 2016 or early 2017.</p>
2016/17	Reduced sentences for guilty pleas	<p>In February 2016, the Sentencing Council opened a consultation on proposed new guidelines for the reduction in sentence for guilty pleas.</p> <p>Courts already give a reduction in sentence for a guilty plea, but the proposed guidelines seek to clarify the application of this principle.</p> <p>These guidelines, if adopted, will provide a more limited approach to the maximum reduction than is currently allowed by judicial discretion. Defendants will have to admit their guilt on the first occasion a charge is put to them in order to obtain the maximum possible one-third reduction. The available reduction reduces thereafter.</p> <p>This consultation closes on 5 May 2016.</p>

2016/17

**Fourth Anti-
Money Laundering
Directive**

The EU's Fourth Money Laundering Directive (MLD4) came into force on 25 June 2015. Under MLD4, Member States were given until June 2017 to pass national implementing legislation. However, the European Commission is now asking Member States to pass that legislation by the end of 2016. The Commission is also likely to propose a number of "targeted" amendments, to give further power to the Directive, by the end of the June 2016.

The objective of MLD4 is the protection of the financial system by preventing, detecting and investigating money laundering and terrorist financing. It aims to achieve this by setting out a high level of common standards that must be achieved by Member States as a minimum (it is a 'minimum harmonising directive').

MLD4 covers:

- customer due diligence;
- beneficial ownership information;
- reporting obligations;
- data protection and record keeping; and
- policies, procedures and supervision.

Organisations caught by MLD4 will include: financial services institutions, auditors, external accountants, tax advisers, notaries and other independent legal professionals, trust or company service providers, estate agents, providers of gambling services and any company trading in goods that deals in cash transactions of EUR 10,000 or more.

Competition



Simon Neill

Partner

T +44 20 7105 7028

simon.neill@osborneclarke.com

“The coming months will see the European Commission continue to focus its energies on its flagship Digital Single Market agenda, with results also expected from various other initiatives, such as its on-going e-commerce sector inquiry.

Closer to home, there has been a noticeable increase in the number of market investigations by the UK regulatory authorities, and we expect this wide use of market investigation powers to continue in the future. These on-going investigations proceed against the background of a potential ‘Brexit’, as Britain and Europe await the outcome of the June 2016 referendum.”



21 April 2016	Market review into the ownership and competitiveness of infrastructure provision	<p>In November 2014 the Payment Systems Regulator (PSR) announced a market review into the ownership structures of, and competition in, the provision of payment systems infrastructure.</p> <p>The PSR published its interim report on 25 February 2016, recommending that the top five banks should cut their shares in VocaLink (see here). The regulator has asked for comments from interested parties by 21 April 2016. The final report is expected by summer 2016.</p>
30 April 2016	Net neutrality	<p>On 30 April 2016 the EU Net Neutrality Regulation comes into force, enshrining net neutrality into EU law.</p> <p>The Regulation is designed to ensure that users have access to online content and services without discrimination or interference by internet service providers. All internet traffic must be treated equally, subject to limited exceptions.</p>
Q2 2016	Department for Transport (DfT) review of rail regulation	<p>On 10 December 2015 the DfT published a consultation inviting evidence and views on the effectiveness of the current regulatory regime for the railways and on possible modifications that would be compliant with EU law.</p> <p>The consultation ran until 15 January 2016 and responses are currently being analysed. The outcome of the consultation is expected in April 2016 and will make recommendations for enhancing the effectiveness of the rail regulatory regime to secure a safe, effective and efficient railway, with specific reference to the role of the Office of Rail and Road.</p>
25 June 2016	Energy market investigation	<p>The Competition and Markets Authority (CMA) has until 25 June 2016 to complete its investigation into the energy market. This is an extension on the original deadline of 25 December 2015.</p> <p>The CMA decided to extend the reference period due to the scope and complexity of the investigation, the extent of the possible remedies package that is being contemplated, and the detailed responses it received to its provisional findings.</p> <p>The CMA published a summary of its provisional remedies on 10 March 2016 and the final market investigation report will follow in June 2016, prior to the statutory deadline.</p> <p>Ofgem in particular is likely to be active in taking forward the recommendations made by the CMA following this investigation, and the government has already committed to implementing the CMA's recommendations.</p>
12 August 2016	Retail banking market investigation	<p>The CMA is currently undertaking an investigation into the retail banking market. The original statutory deadline for completion of the investigation was 5 May 2016 but at the end of January 2016 the CMA announced its intention to extend the length of the investigation.</p> <p>The new statutory deadline for completion of the investigation and publication of the final report is 12 August 2016, with a provisional decision on remedies due by May 2016.</p>

Q2/Q3 2016	Market review into the supply of indirect access to payment systems	<p>On 10 March 2016, PSR published its interim report following a market review into the supply of indirect access to payment systems and whether competition is working well for service users.</p> <p>In its interim report, the PSR highlighted certain concerns around the limited choice faced by smaller payment service providers, technical challenges in providing the necessary quality of service, and potential barriers to switching. In view of a number of current or anticipated market and regulatory developments, however, the PSR is not proposing to take any direct action itself.</p> <p>The PSR's interim report is open for consultation until 5 May 2016. It then expects to publish its final report in summer 2016.</p>
Q2/Q3 2016	E-commerce sector inquiry	<p>On 6 May 2015 the European Commission launched a sector inquiry into the e-commerce sector. The aim of the inquiry is to gather information on private barriers (particularly contractual) to trade across national borders set up by companies supplying goods and services online, and to assess these barriers in the context of EU antitrust rules.</p> <p>We anticipate that the Commission will publish its preliminary report for consultation in mid-2016 and its final report in the first quarter of 2017.</p>
Q4 2016	Strengthening Ofgem's powers of enforcement in gas and electricity market	<p>In December 2015 the Department of Energy and Climate Control opened a consultation focused on the strengthening of enforcement powers in the gas and electricity markets. The consultation document put forward a number of suggestions which aim to better equip Ofgem, so it is able to investigate non-compliance by energy companies and take steps to protect consumers. The proposals include plans to widen Ofgem's powers to request information and investigate market abuse, and will apply to all categories of energy licence holder.</p> <p>Changes to the way in which Ofgem is able to operate and enforce its remit, so as to best protect consumer interests, are expected before the end of 2016.</p>

Consumer Protection



Tom Harding

Associate Director

T +44 117 917 3060

tom.harding@osborneclarke.com

“The last few years have seen significant changes to consumer protection laws.

And there’s more to come, with further changes in the pipeline over the next 12 to 18 months (and beyond) at both a UK and EU level. The aim is to improve consumers’ understanding of terms and conditions, ensure compliance, and remove barriers to cross-border trade.”



Q2 2016

BIS consultation on terms and conditions in consumer contracts

On 1 March 2016 the Department of Business, Innovation and Skills (BIS) issued a call for evidence seeking a better understanding of how terms and conditions in consumer contracts could be made more user-friendly.

BIS is also investigating whether the range of enforcement powers currently available to ensure compliance with consumer protection laws is sufficient. In particular, it is seeking views on new powers to impose civil monetary penalties or fines on non-compliant businesses.

The consultation closes on 25 April 2016. The government has committed to making its recommendations in spring 2016.

2016

Digital Single Market

On 9 December 2015, the European Commission released the first legislative proposals under its Digital Single Market strategy. The Commission published draft Directives on:

- contracts for the online and other distance sales of goods; and
- contracts for the supply of digital content.

The proposals aim to tackle what the Commission perceives as the main obstacles to cross-border e-commerce in the EU: fragmentation of laws across the EU, and a lack of trust by consumers when purchasing online from other countries.

These initiatives are priorities for the Commission and we are expecting draft texts to be prepared during 2016, although none of the changes are likely to take effect until 2017 at the earliest.

Following its consultation on the cost of cross-border parcel delivery, the Commission has also announced its intention to propose measures targeting cross-border parcel delivery prices in the spring of 2016.

For more information and analysis see our dedicated [Digital Single Market](#) hub.

2016

BIS consultation on extending consumer protection to small businesses

In 2015 BIS carried out a consultation on the protection of micro and small businesses when purchasing goods and services.

In unregulated sectors, the government concluded that there is a need for further investigation; it will now progress the issue by consulting on whether further protections are needed.

The consultation did not focus on regulated sectors, where the UK Regulators Network will consider what protections its member regulators need, as part of its 2016 programme.

1 October 2016	Consumer Rights Act 2015 (CRA): Consumer transport services	The main provisions of the CRA 2015 came into force on 1 October 2015. The CRA's provisions regarding consumer transport services were due to come into effect on 6 April 2016, but this has been pushed back to 1 October 2016.
2016/17	REFIT: "Fitness Check" of 6 consumer protection Directives	<p>The Commission has started work on its "Fitness Check" of six key consumer protection Directives (including the Unfair Commercial Practices Directive, Sales and Guarantees Directive and Unfair Contract Terms Directive).</p> <p>Although the Consumer Rights Directive is not part of the Fitness Check, the Commission is also required to prepare a report on it during 2016, which will feed into the same process.</p> <p>The Fitness Check is part of the Commission's "REFIT" programme, which is aimed at making EU law simpler and reducing regulatory costs. The Fitness Check will be carried out throughout 2016, with the Commission's report expected in the second quarter of 2017.</p>

Cyber Security



Charlie Wedin

Partner

T +44 117 917 4290

charlie.wedin@osborneclarke.com



Emily Jones

Partner

T +44 117 917 3652

emily.jones@osborneclarke.com

“We continue to see (with ever increasing frequency and ingenuity) major businesses hit with crippling network security breaches and data losses. The financial and reputational consequences can be enormous. As a result of this cyber security is now a top priority for many boards, and is a focus of increased (and not always clear or consistent) regulation and regulatory scrutiny across Europe and beyond.”



3 March 2016	Information Commissioner's Office (ICO) guidance on encryption	<p>On 3 March 2016, the ICO issued new guidance on encryption. Organisations will be expected to review and consider whether they should take additional measures to comply with the guidance in the coming months, as part of their overall approach to ensuring compliance with the security requirements set out in the Data Protection Act 1998 (DPA).</p> <p>Whilst the DPA does not specifically require personal data to be encrypted, the ICO takes the view that organisations should consider encryption, alongside other technical measures, to keep personal data safe. Where a lack of encryption has led to a loss of data, the ICO may take regulatory action.</p>
April 2016	Public-private partnership (PPP) on cyber security	<p>The European Commission's Digital Single Market strategy calls for the establishment of a PPP on cyber security and on 18 December 2015 the European Commission launched a consultation on the proposed PPP.</p> <p>The proposed PPP would focus on innovation in cyber security, with the aim of producing for European businesses digital security products that are competitive, trustworthy, interoperable and respect fundamental rights, including the right to privacy.</p> <p>The consultation closed on 11 March 2016 and the European Commission is due to provide its response during April 2016.</p>
Q2 2016	General Data Protection Regulation (GDPR)	<p>The European Parliament and EU Council reached political agreement on a compromise GDPR text in December 2015, which was approved by the European Parliament on 14 April 2016. The GDPR introduces fundamental changes to data protection law, including the harmonisation of regimes across the EU, a significant increase in fines (up to EUR 20m or 4% of worldwide turnover) and the extension of the regime to non-EU businesses that operate in the EU.</p> <p>The GDPR still needs to be formally approved by the Council and published in the EU Official Journal before taking effect. We expect it to be passed into EU law in the second quarter of 2016 and to become effective in Member States two years later. In the meantime businesses and European institutions will have to start taking steps to prepare for implementation.</p> <p>The GDPR will introduce a regime of mandatory reporting of security breaches to the Information Commissioner's Office (ICO) within 72 hours, and also in certain circumstances to individuals affected without undue delay. This obligation will also extend to data processors, who are currently not responsible for compliance under the existing Data Protection Act 1998. The GDPR therefore raises the possibility of competing security breach notification requirements, particularly in light of the incoming EU "cyber security directive" (discussed below), which will require careful consideration and planning by organisations affected.</p> <p>For more information on the GDPR see our note here and update here.</p>

Q2 2016

EU cyber security directive: The Network and Information Security (NIS) Directive

The European Council, Parliament and Commission have reached agreement on the text of the NIS Directive. The NIS Directive requires, amongst other things, that operators of essential services (such as critical infrastructure in sectors such as energy, banking, transport and health) take appropriate security measures and report security incidents to national authorities. A lighter touch regulatory regime will apply to certain digital / technology businesses.

The NIS Directive will likely see the creation of a new regulator in the UK to whom certain network security breaches will need to be reported, raising the spectre of yet more (potentially competing) reporting obligations for businesses hit by a major cyber security incident.

We expect the Directive to come into force during spring 2016. Once in force, Member States will have 21 months to implement the necessary national legislation and another six months to identify the "operators of essential services" to whom the new rules will apply. Businesses potentially caught by the Directive need to start planning now.

For more information on the NIS Directive see [here](#).

Data Protection and Privacy



Emily Jones

Partner

T +44 117 917 3652

emily.jones@osborneclarke.com

“2016 is set to be an important year in data protection when the much anticipated European General Data Protection Regulation finally passes into EU law – the biggest shake up in this area since 1995. Businesses and European regulators will then have two years to get ready for the significant changes that lie ahead.

Organisations will also need to ensure that they are up to date and compliant with the new framework for transatlantic data flows, the EU/US Privacy Shield, following the demise of Safe Harbor last year, as well as various case law developments.”



Q2 2016	General Data Protection Regulation (GDPR)	<p>The European Parliament and EU Council reached political agreement on a compromise GDPR text in December 2015, which was approved by the European Parliament on 14 April 2016. The GDPR introduces fundamental changes to data protection law, including the harmonisation of regimes across the EU, significant increase in fines (up to EUR 20 million or 4% of worldwide turnover) and extension of the regime to non-EU businesses that operate in the EU.</p> <p>The GDPR still needs to be formally approved by the Council and published in the EU Official Journal before taking effect. We expect it to be passed into EU law in the second quarter of 2016 and to become effective in Member States two years later. In the meantime, businesses and European institutions will have to start taking preparatory steps.</p> <p>The Article 29 Working Party (which is formed of representatives from each Member State's data protection authority and the European Commission) has set out an action plan for the implementation of the GDPR, which has four priorities for 2016:</p> <ul style="list-style-type: none"> • setting up a new European Data Protection Board (EDPB); • preparing a one-stop shop (so that businesses can deal with a single regulator) and ensuring consistency; • issuing guidance for data controllers and data processors; and • on-going communications around the EDPB and GDPR.
Q2 2016	Data Protection Directive	<p>As part of the European data protection reform package (which includes the GDPR) the European Council has also agreed on the text of a revised Data Protection Directive, which has been approved by the European Parliament.</p> <p>The Data Protection Directive will govern the processing of personal data to prevent, investigate, detect or prosecute criminal offences or enforce criminal penalties, and the free movement of such data. The timeline for adoption of the new Data Protection Directive is expected to follow that of the GDPR.</p>
Q2 2016	Information Commissioner's Office (ICO) issues new guidance on encryption	<p>On 3 March 2016, the ICO issued new guidance on encryption.</p> <p>Organisations will be expected to review and consider whether they should take additional measures to comply with the guidance in the coming months, as part of their overall approach to ensuring compliance with the security requirements set out in the Data Protection Act 1998 (DPA).</p> <p>Whilst the DPA does not specifically require personal data to be encrypted, the ICO takes the view that organisations should consider encryption, alongside other technical measures to keep personal data safe. Where a lack of encryption has led to a loss of data, the ICO may take regulatory action.</p>
Q2 2016	ICO issues new guidance on direct marketing	<p>On 24 March 2016 the ICO published revised guidance on direct marketing, focusing on the rules in the DPA and the Privacy Electronic Communications (EC Directive) Regulations 2003. The guidance has been updated to provide more information about third party consents, the meaning of freely given consent, and also marketing by not-for-profit organisations.</p>

Q2 2016	ICO consultation on revised privacy notices	<p>On 2 February 2016 the ICO published a new privacy notices code of practice.</p> <p>The new code has been drafted with the digital world and GDPR in mind. The DPA requires that data controllers tell individuals how their personal data will be processed and the focus of the revised code is how to communicate that privacy information to individuals in a “clear and engaging way”. It also covers best practice for obtaining individuals’ consent, particularly in a third party marketing context.</p> <p>The ICO is currently consulting on the new code of practice. We expect it to publish its response to that consultation in the second quarter of 2016.</p>
Q2 2016	ePrivacy Directive	<p>On 12 April 2016 a consultation was launched on revisions to the existing ePrivacy Directive, which contains rules on direct marketing using electronic means, as well as specific measures governing telecommunications providers.</p> <p>Revisions are needed to implement the European Commission’s Digital Single Market strategy, and to ensure that the ePrivacy Directive aligns with the new GDPR.</p> <p>During the 12 week consultation, which closes on 5 July 2016, the European Commission will hold workshops with telecoms and other groups impacted by the legislation.</p> <p>A new draft ePrivacy Directive is expected to be published by the end of 2016.</p>
Q2/Q3 2016	EU/US Privacy Shield	<p>Following the Court of Justice of the EU’s decision in October 2015 in Schrems v Data Protection Commissioner, declaring Safe Harbor invalid, on 2 February 2016 the European Commission announced its intention to establish a new framework for transatlantic data flows – the EU/US Privacy Shield.</p> <p>On 29 February 2016 the European Commission published the legal text of the EU/US Privacy Shield, together with a draft “adequacy decision”. Following the release of details of the arrangements, on 13 April 2016 the Article 29 Working Party adopted an opinion on the EU/US Privacy Shield, raising concerns about a number of aspects of the proposed new framework, and how it will interact with the GDPR. The Article 29 Working Party’s opinion is not binding, but its views will be taken into account by the European Commission.</p> <p>A committee representing all of the Member States will also need to consider the proposals before any “adequacy decision” is submitted for adoption by the European Commission. Once it has been finalised and adopted, businesses will be able to rely on the EU/US Privacy Shield for transatlantic transfers of personal data.</p> <p>For more information on the EU/US Privacy Shield see here.</p>

Q3 2016

Google v Vidal-Hall

In March 2015 the English Court of Appeal in the case of Google v Vidal-Hall held that damages are available for distress caused by a data protection law breach, even if no financial loss has been suffered.

Google has appealed the decision to the Supreme Court. The date for the Supreme Court hearing is yet to be confirmed, but is expected to be during autumn 2016. The outcome of this case could have a significant impact on the frequency and size of claims brought by individuals for breaches of the DPA.

Q3/Q4 2016

Investigatory Powers Bill

The Investigatory Powers Bill is currently proceeding through Parliament. The Bill replaces large parts of the Regulation of Investigatory Powers Act 2000 (RIPA), and aims to consolidate existing powers in one place under the RIPA and other existing legislation in relation to the interception of communications and the acquisition of data about communications. If (as appears likely) the Bill is approved, we expect it to pass into law before the end of 2016.

Digital and Internet



John Davidson-Kelly

Partner

T +44 20 7105 7024
john.davidson-kelly
@osborneclarke.com



Jon Fell

Partner

T +44 20 7105 7436
jon.fell@osborneclarke.com

“2016 promises to be a busy year for all those involved in the communications industry. There will be a focus on both the European Commission and Ofcom, as each pushes forward specific parts of their communications agenda.

At an EU level, we will see the Commission starting to put together formal proposals to bring to life its Digital Single Market initiative. And at a UK level, Ofcom will be pushing ahead with its strategic review of the UK digital communications market, which could see greater regulation in some areas and less in others. We will also see Ofcom – like the other national regulators in Europe – having to grapple with giving effect to the EU’s Net Neutrality Regulation, which comes into force in April 2016.”



30 April 2016

Net neutrality

The EU Net Neutrality Regulation comes into force on 30 April 2016. It will impact on telecoms operators, internet service providers (ISPs) and those wanting to have their content distributed via the internet.

The Net Neutrality Regulation is designed to ensure that users have access to online content and services without discrimination or interference by ISPs. All internet traffic must be treated equally, subject to limited exceptions. This means that the ability of telecoms operators and ISPs to apply traffic management measures will be much more limited. Likewise, the ability to negotiate preferred speeds or quality of service deals will be limited to so-called 'specialised services' whose delivery requires a guaranteed service level – think IPTV, connected cars, telemedicine and certain cloud services. Ofcom will be the body that enforces the Regulation within the UK.

This forms part of the EU's wider reform of the EU telecoms regime, which includes the end of international roaming charges in June 2017.

2016

Digital Single Market (DSM)

The DSM is a major initiative that will affect almost all digital businesses in the EU. It has the potential to impact on everyone, from traditional telecoms providers, over-the-top service providers (such as Skype and WhatsApp), platforms (such as Google, Facebook, Amazon, Airbnb and Expedia) and content providers (such as Netflix, Sky, and traditional broadcasters).

During 2015 the European Commission launched a number of consultations. 2016 seems to be the year the Commission uses the information gathered during these consultations to progress its legislative proposals, although due to various market developments (including Three UK's proposed acquisition of O2 UK) the Commission has pushed back the date for releasing its proposal on telecoms reform from spring to September 2016.

On 9 December 2015 the European Commission published its first three legislative proposals under the DSM initiative:

- a directive on certain aspects of the supply of digital content;
- a directive seeking to harmonise contract laws for the online sale of goods; and
- a regulation for the reform of copyright and cross-border portability of online content, to allow consumers to access content whilst temporarily in another EU Member State.

These proposals aim to tackle what the Commission perceives as the main obstacles to cross-border e-commerce in the EU: the fragmentation of laws across the EU and lack of trust by consumers when buying online from another country. The Commission also believes that harmonising laws will reduce the cost of compliance for businesses.

These initiatives are priorities for the Commission and we are expecting draft texts to be prepared during 2016, although none of the changes are likely to take effect until 2017 at the earliest.

For more information, see our dedicated [DSM hub here](#).

2016

The balance of payments between television platforms and public service broadcasters

We are expecting the Department of Culture, Media and Sport's (DCMS's) conclusion on the regulation of the interaction between television platforms and public service broadcasters.

DCMS has questioned whether certain areas of regulation are still required, including:

- "must carry" and "must offer" obligations;
- Electronic Programme Guide regulations; and
- cable retransmission rights.

The consultation closed on 30 June 2015, but a date has not been published for the conclusion of the consultation.

2016

Ofcom review of digital communications

Ofcom is currently engaged in a wide review of digital communications. The review is looking at all communications services, including fixed, mobile, and pay-TV services, and therefore has the potential to affect all players in the UK communications market.

The consultation document was published in July 2015. Ofcom published its initial conclusions on 25 February 2016. Ofcom's final position is expected later in 2016.

The review is looking at a wide range of issues, including:

- specific wholesale market issues. Ofcom is likely to fall short of requiring for BT Openreach to be split out from the rest of the BT Group as a separate company;
- improvements across the industry in terms of mobile broadband coverage; and
- consumer-related issues, including ways to further consumer empowerment, such as increased transparency and automatic compensation for consumers when their communications service provider(s) fail to deliver.

2016

Investigatory Powers Bill

The Investigatory Powers Bill has been the subject of fierce debate over recent months.

Among other things, it seeks to give enhanced powers to UK government agencies to request access to electronic communications in the UK. For example, communications providers will need to store records of websites visited by every person for 12 months (showing their browsing history but not specific items viewed on that page).

The Bill also seeks to enable security services to acquire bulk communications data (such as NHS health records), and to bypass encrypted services.

If enacted in its current format, this has the potential to place significant regulatory and financial burden on communications networks / providers to comply with the Bill.

A final vote on the Bill is expected in Parliament by the end of April. This could see the Bill come into effect before the end of 2016.

2016/2017

Government Budget initiatives to support the digital economy

The government's 2016 Budget announced a number of steps to be taken to support the growth of the UK's digital economy. Providers of broadband will be particularly interested in the following:

- the government is to establish a new 'Broadband Investment Fund', in partnership with the private sector. The aim of the Fund is to ensure that financial assistance is more readily available to the private sector. This could be used to support growth of alternative broadband networks; and
- specific measures will also be explored jointly by Ofcom and the Advertising Standards Authority to look at making broadband more affordable and ensuring that prices (including price comparison tools) are clearer to users.

The government also intends to deliver a 5G strategy in 2017 to look at how the UK can become a world leader in 5G. Spectrum-related measures that will free up more of the spectrum currently used by the public sector have also been included in the government's Budget agenda.

Dual-Use Goods and Export Control



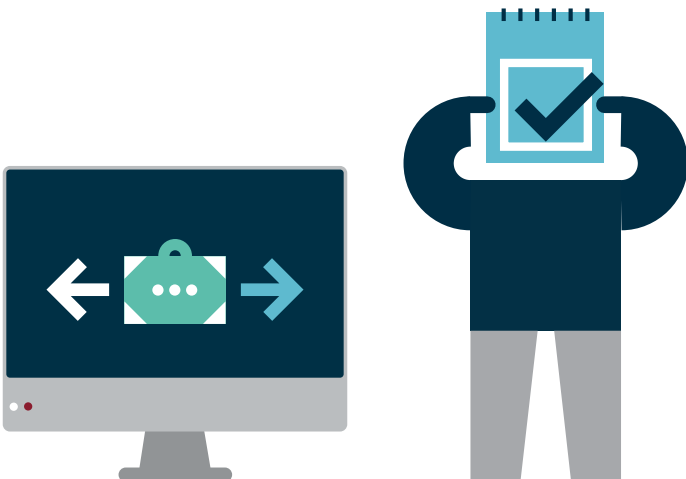
Emily Jones

Partner

T +44 117 917 3652

emily.jones@osborneclarke.com

“Robust export compliance mechanisms – complimented by coordinated and efficient internal policies and practices – underpin the ability of exporters to engage in successful cross-border trade. An awareness of key regulatory changes on the horizon in 2016 is more important than ever, in the context of a constantly shifting geo-political landscape, a number of developing sanctions regimes and a myriad of legislation applicable to dual-use goods.”



16 March 2016	Funding for border security	The government's 2016 Budget confirmed that the Home Office will receive £31 million of funding to form a dedicated group of border officers and intelligence officials to enhance security at UK borders. This is intended to further increase the seizure of non-compliant shipments.
8 April 2016	Release of exporter information	<p>HMRC is starting to publish by default (on its trade statistics website available here) information relating to exporters of goods from the UK to non-EU countries and the goods (which may include dual-use goods) they export, including:</p> <ul style="list-style-type: none"> • the exporter's name and address; • the relevant commodity code and a description of the commodity code covering the goods; and • the month and year of export. <p>HMRC believes that this initiative will facilitate trade, boost UK growth and help exporters to find new markets.</p> <p>HMRC will not, however, publish national strategic or sensitive information, nor commercially sensitive information.</p> <p>Exporters can "opt-out" from having their information published, at any time, by contacting HMRC direct (at: uktradeinfo@hmrc.gsi.gov.uk).</p>
July 2016	UK Strategic Export Controls Annual Report 2015	The government will publish the UK Strategic Export Controls Annual Report 2015 in July 2016. This report will cover the UK's export control policy and practice during the period January 2015 to December 2015.
31 July 2016	Russian economic sanctions	<p>On 21 December 2015 the European Council extended the economic sanctions imposed on Russia until 31 July 2016 to enable the Council to further assess the implementation of the Minsk agreements (ceasefire arrangements agreed upon by the leaders of Ukraine, Russia and pro-Russian separatists on 5 September 2014 and 12 February 2015).</p> <p>The economic sanctions include, among others, a prohibition on the supply of dual-use items which are or may be intended for military end-use or for a military end-user in Russia.</p>
Q3/Q4 2016	EU review of export control policy	<p>The European Commission has for several years been engaged in an extensive and on-going consultation on the future of the European dual-use export control system.</p> <p>As part of the latest impact assessment phase of this review, and following an online public consultation and export control policy review conference during 2015, the European Commission is expected soon to present its Impact Assessment Report to the European Regulatory Scrutiny Board.</p> <p>This report, and the wider impact assessment phase, will enable the European Commission to identify the most suitable actions and to prepare a proposal for amendments to the EU Dual Use Regulation (Regulation (EC) No 428/2009) during the course of 2016.</p>

Employment



Julian Hemming

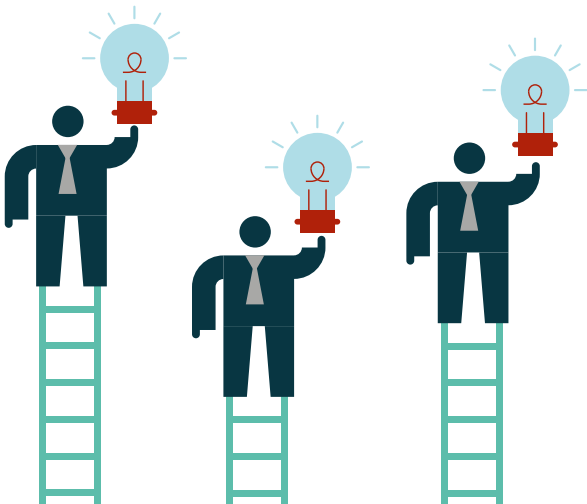
Partner

T +44 117 917 3582

julian.hemming@osborneclarke.com

“One of the most significant reforms in employment law in the next 12 months is a new obligation for businesses with 250+ employees to disclose the gender pay gap in their organisation. Whilst an employer is not required to report on gender pay under the draft regulations until April 2018, bonus and other incentives awarded from May 2016 fall within the new reporting requirements. An employer must also report on a “pay snapshot” taken across its organisation on 30 April each year – the first date being 30 April 2017.

Holiday pay also continues to be an important issue for many employers. Whilst the Employment Appeal Tribunal has confirmed that our working time rules can be interpreted to incorporate commission in holiday pay, we understand this decision may be appealed to the Court of Appeal.”





Kevin Barrow

Partner

T +44 20 7105 7030

kevin.barrow@osborneclarke.com

“Employers should also watch out for the new apprenticeship levy from April 2017 and start considering now how they can ensure that any levy they do pay is brought back into the business via apprenticeships.

So far as temps and agency workers are concerned, the principal development will be the abolition of most so-called umbrella arrangements from April 2016, and the reduction in take home pay for hundreds of thousands of lower paid agency workers in industrial and logistics roles. If that tax measure does not satisfactorily close down perceived tax avoidance in the staffing supply chain, there is the potential for a move towards hirers being liable for tax and national insurance from April 2017 if their suppliers are not administering that properly. This is part of a general attack on the use of personal service companies.”

1 April 2016	New National Living Wage	A New National Living Wage of £7.20 an hour for over 25s was introduced on 1 April 2016. This will rise to over £9.00 an hour by 2020.
1 April 2016	Penalty for failing to pay the National Living Wage or the National Minimum Wage	On 1 April 2016 the calculation of penalties for those who do not pay minimum wage rates rose from 100% of arrears to 200% (although this is halved if an employer pays within 14 days). This is subject to a maximum penalty of £20,000 per worker.
6 April 2016	Limits on employment tribunal awards and statutory redundancy	On 6 April 2016 the maximum amount of a week's pay for unfair dismissal awards and statutory redundancy increased to £479. The maximum amount of a compensatory award for unfair dismissal increased to £78,962.
6 April 2016	Removal of dispensation notices	On 6 April 2016 new tax legislation came into force providing for a range of exemptions from tax and national insurance contributions (NICs) relating to certain business expenses. As a result, the provision for HMRC to grant dispensation notices to employers, waiving the requirement to report certain expenses under the Income Tax (Earnings and Pensions) Act 2003 is no longer needed, and was removed as of 6 April 2016.
6 April 2016	Expenses legislation and related anti-avoidance legislation attacking "umbrella worker models"	On 6 April 2016 the removal of certain tax relief on travel and subsistence expenses for umbrella workers, personal service companies and workers operating via other 'labour service' intermediaries came into effect. The legislation includes tax debt transfer measures which could make hirers and staffing companies liable for tax compliance failures by umbrella companies and personal service companies. Related targeted anti-avoidance legislation (section 289 of The Income Tax (Earnings and Pensions) Act 2003) is also in place to catch arrangements which reduce the amount of employment income that is subject to tax and National Insurance contributions (and one of the main purposes of such an arrangement is to avoid tax or NICs).
1 October 2016	National Minimum Wage	On 1 October 2016 a number of changes to minimum wage rates take effect: the main rate of the National Minimum Wage which will apply to workers aged between 21 and 24 will be set at £6.95; the rate for 18 to 20 year olds will rise to £5.55 an hour; the rate for 16 to 17 year olds will rise to £4.00 an hour; and the apprentice rate will rise to £3.40 an hour. The National Living Wage (see above) will apply to workers aged 25 and over.

October 2016	Gender pay reporting	<p>The government is currently consulting on draft regulations introducing gender pay reporting for employers with 250+ employees. There is currently uncertainty over the definition of employees, which may potentially include workers as well as those individuals engaged on an employment contract.</p> <p>It is anticipated that the new regulations will come into force in October 2016 and will require employers to report by April 2018 on a gender pay snapshot taken on 30 April 2017. Separate reporting requirements are also in place for bonus awards and, as currently drafted, would capture bonus awards made from April 2016.</p>
2016	Reform of strike laws	<p>The Trade Union Bill is currently progressing through Parliament. If passed in its proposed form, it would represent a major change to the law on industrial action.</p> <p>Proposed reforms include the following:</p> <ul style="list-style-type: none"> any strike would need a 50% turn out; if a strike would affect essential public services, the bar would be higher, with the union requiring 40% of those entitled to do so to vote in favour of strike action; a new three month cut-off would apply after a ballot for strike action to take place; the notice period before taking industrial action would increase from 7 to 14 days, although the government has recently conceded that this notice period will remain at 7 days if the employer agrees; and employers would be allowed to use agency workers to cover striking workers. <p>We anticipate that these reforms will come in during 2016, although the more controversial aspects of the reforms will be subject to rigorous Parliamentary debate and adapted as the Bill progresses.</p>
2016	Review of employment tribunal fee system	<p>The government is continuing with its review of the controversial employment tribunal fee system introduced in 2013. The government will consult on any proposals for reforms arising out of this review, which commenced in June 2015.</p> <p>The Justice Committee is also conducting an inquiry into the impact of fees and whilst UNISON recently lost its judicial review of the fee system in the Court of Appeal, it has been granted leave to take its appeal to the Supreme Court.</p>
2016/17	Labour market abuse legislation	<p>The government is consulting on potential new criminal offences of enforcement bodies to deal with breaches of minimum wage legislation, tax legislation and the Modern Slavery Act 2015 in the staffing supply chain.</p>
2016/17	IR35 review	<p>The government will be consulting about changes to the so-called IR35 rules (sections 48-61 Income Tax (Earnings and Pensions) Act 2003) and may propose new simpler tests which, if failed, will pass liability for tax and NICs to hirers who use personal service company contractors</p>

2016/17	Volunteering leave	The Conservative party announced plans as part of its election campaign in 2015 for employees in the public sector and large private sector companies (250+ employees) to be given three days paid volunteering leave. There has been no further news on this, but the indications are that this is still in the pipeline.
Early 2017	Tax free childcare scheme	<p>A new tax free childcare scheme is expected to be introduced to support eligible parents with childcare costs under the Childcare Payments Act 2014.</p> <p>It is envisaged that the government will be providing 20% support up to a maximum of £2,000 per child per year. Parents will qualify if all parents in the household are working, with earnings of not more than £100,000 each a year, and are not already in receipt of tax credits or universal credit.</p> <p>This was expected to be brought into force in autumn 2015 but has now been delayed until 2017. It will replace existing employer-run childcare voucher schemes, although employees will still be able to run these schemes for existing members.</p>
April 2017	Apprenticeship levy	<p>In 2015 the government consulted on introducing an apprenticeship levy, which it is planning on bringing into effect from April 2017.</p> <p>The levy would be at a rate of 0.5% of an employer's wage bill. An allowance of £15,000 would mean that only employers with a wage bill of at least £3m would be caught. It is intended that employers who had paid the levy would take on apprentices under an approved scheme, with the aim that they get back from the apprenticeship system more than they put in.</p> <p>The 2016 Budget announced that, as part of the plans, employers in England would receive a 10% top-up to their monthly levy contribution to spend on apprenticeship training. Guidance and further details are expected to be issued shortly.</p>

Energy



Simon Hobday

Partner

T +44 20 7105 7530

simon.hobday@osborneclarke.com



Alan John

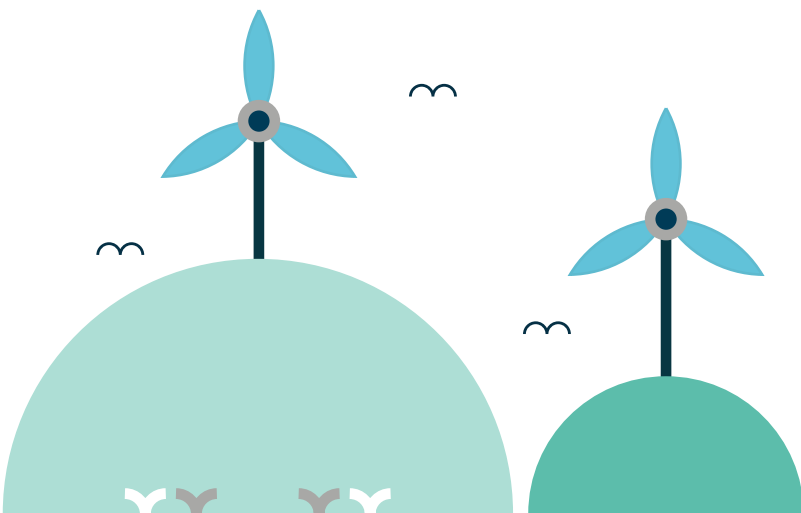
Partner

T +44 117 917 4240

alan.john@osborneclarke.com

“Amber Rudd, the Secretary of State for Energy and Climate Change, delivered her important ‘reset’ speech towards the end 2015. This set out the government’s plans to phase out coal by 2025 and signalled backing for gas and nuclear to make up the resulting shortfall in power generation capacity.

It also signalled a move away from subsidy support for renewables investment, at least in terms of a shift away from previous policy in which, “success was measured by how fast renewable energy could be installed, not by how cost-effective our carbon cuts were or what the impact on energy security would be”. The themes in the reset speech are taking shape in 2016. In particular we are seeing the phasing out of the bulk of the renewables obligation funding over the year.”



2016/17	Loss of “Grandfathering” protection for certain new solar PV projects	<p>Grandfathering protection guarantees the level of Renewables Obligation Certificates (ROCs) that a project is entitled to under the Renewables Obligation (RO), for 20 years from the date of accreditation for that project.</p> <p>The government is proposing that solar projects of 5MW or less, with an accreditation date between 23 July 2015 and 31 March 2017, that do not qualify for the “significant commitment” grace period will lose their grandfathering protection.</p> <p>In addition, under the RO banding proposals (see below) such a project commissioned by 31 March 2016 would have its level of ROC support reduced to 0.8 ROCs per MWh from 1 June 2016.</p>
1 April 2016	Early closure of RO	<p>The RO closed to new large-scale solar PV (above 5MW) on 1 April 2015. Large-scale solar PV projects eligible for a grace period had to have commissioned and applied for accreditation (with their grace period application) to Ofgem by 31 March 2016 in order to be eligible to receive ROCs under the RO.</p> <p>On 1 April 2016 the RO closed to:</p> <ul style="list-style-type: none"> • new small-scale solar PV projects (5MW or less), subject to applicable grace periods; and • new on-shore wind projects, subject to applicable grace periods, for example, for projects that were at an advanced stage of development by 18 June 2015 (the “approved development” condition).
1 April 2016 and Q2 2017	Renewable Heat Incentive (RHI) changes	<p>On 3 March 2016 the Department of Energy and Climate Change (DECC) issued a consultation on planned changes to the RHI scheme, coming into effect in two stages (the first came into effect on 1 April 2016 and second is planned to come into effect in spring 2017).</p> <p>The key non-domestic proposals are to:</p> <ul style="list-style-type: none"> • introduce a new overall budget cap, above which the RHI will be closed to new applicants (which took effect on 1 April 2016); • remove solar thermal panels from the RHI scheme; • increase heat pump tariffs, reduce biomass tariffs by up to 61%, and potentially reset anaerobic digestion (AD) tariffs; and • reduce or ban the use of dedicated energy crops for AD, and end support for the drying of digestate.
Q2 2016	RO solar PV banding review	<p>The consultation on the government’s proposals for reduced support under the RO for solar PV up to 5MW closed on 27 January 2016. The consultation response is expected during Q2 2016, with the proposals expected to come into effect from 1 June 2016.</p>

Q2 2016	Business energy efficiency taxes	<p>The government intends to consult on its proposed reform of business energy efficiency taxes and associated regulations. The consultation's objective is to review how tax schemes cross over with energy efficiency policies, with the aim of simplifying and improving the current structure. The review will consider, amongst others:</p> <ul style="list-style-type: none"> • the Climate Change Levy; • The Carbon Reduction Commitment; • climate change agreements, • the mandatory reporting of greenhouse gas emissions; and • the Energy Saving Opportunity Scheme.
Q2 2016	Closure of coal fired power stations	<p>The government intends to close all unabated coal fired power stations by 2025 and will issue a consultation in Q2 2016 setting out its detailed proposals.</p>
1 August 2016	Increase in VAT rate on certain "energy saving material"	<p>Following a Court of Justice of the European Union case in summer 2015, the government is proposing to remove the 5% reduced VAT rate for "energy saving material" supplied in residential accommodation.</p> <p>Whilst there are some circumstances where the 5% rate can remain, these exceptions do not apply to solar panels, wind turbines or water turbines. It is proposed that supplies of these items to end consumers will from 1 August 2016 be taxable at the standard 20% rate, representing a significant VAT hike.</p>
31 December 2016	Heat networks	<p>Entities that supply and charge final customers for heating or cooling under a district heat network or similar are already obliged to notify the regulator, the National Measurement and Regulation Office, of all regulated networks.</p> <p>Under the Heat Networks (Metering and Billing) Regulations 2014, from 31 December 2016 suppliers to heat networks in buildings with more than one final customer must carry out viability assessments for individual heat meters and resulting installations must be made where it is technically feasible and cost effective to do so. An assessment tool is anticipated by summer 2016.</p>
Q3/Q4 2016	Next Contracts for Difference (CfD) auction	<p>Amber Rudd announced in her energy policy "re-set" speech on 18 November 2015 that the next CfD auction would be held "by the end of 2016", but that further CfD funding would be made available "if, and only if, the government's conditions on cost reduction are met".</p>

Q4 2016	Low Carbon Networks Fund (LCNF), Network Innovation Competition (NIC) and the Network Innovation Allowance (NIA)	<p>Ofgem is carrying out a post-implementation review of the governance arrangements for the NIA and the NIC, with both having been in operation for two years. It is also reviewing the benefits of the LCNF after five years and setting the level of funding available under the electricity NIC from 2017 until the end of the electricity distribution price control period in 2023.</p> <p>Ofgem's consultation, which closed on 5 February 2016, called for views on the two reviews together, because they involve overlapping policy questions. Ofgem is also planning to commission an independent evaluation of the LCNF.</p>
1 January 2017	Revaluation and increase of business rates	<p>From 1 January 2017, business rates are due to be re-valued based on asset valuations as at April 2015. For renewable energy projects, this will take into account the relevant subsidy regime at that date. As previous valuations were made before the FIT scheme was introduced, it is likely that the 2017 re-valuation will lead to an increase in business rates liability for renewables projects. The concern is that they may not, however, take into account recent cuts to renewables subsidies, which may lead to an unbalanced valuation.</p>
January 2017	Capacity market auction	<p>DECC announced on 1 March 2016 that it was consulting on proposed changes to the capacity market mechanism, including the proposal for an early capacity market auction in January 2017 for delivery in winter 2017/18.</p>
31 March 2017	Closure of RO	<p>The RO closes to new projects on 31 March 2017, subject to applicable grace periods and to early RO closure provisions that have affected on shore wind and solar projects (as set out above).</p>

Environment



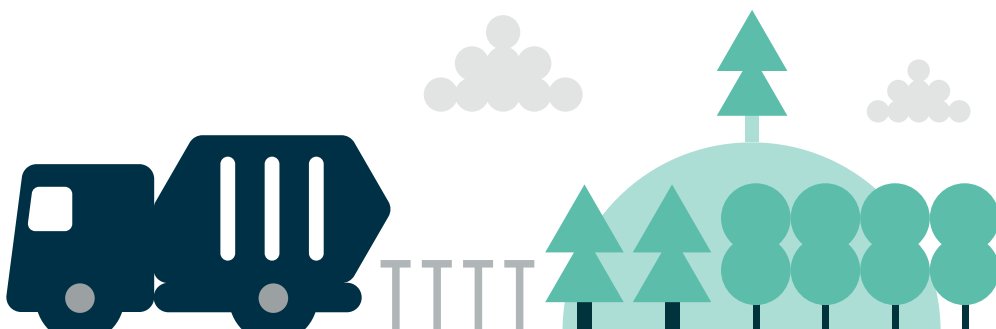
Matthew Germain

Associate Director

T +44 117 917 3662

matthew.germain@osborneclarke.com

“Building on the UK government’s progress under the Cutting Red Tape initiative, 2016 will see a continued focus on the deregulation of environmental activities. A sharper definition of waste is eagerly anticipated in the early part of the year, with refinements to follow in 2017. Meanwhile the EU is still in the throes of developing the circular economy package, so we watch with interest the effect of that on the UK waste economy.”



1 April 2016	Landfill tax	From 1 April 2016, the lower rate of landfill tax increased to £2.65/tonne and the standard rate increased to £84.40/tonne.
1 April 2016	Hazardous waste	<p>From 1 April 2016, the current obligation to register a hazardous waste premises notification for each site, where more than 500kg/year of hazardous waste is stored, produced or handled, has been replaced by a new producer registration obligation.</p> <p>Businesses will now have to fill out a new form of consignment note on each transfer of hazardous waste. When hazardous waste is moved from any premises it will have to be accompanied by the new form of consignment note, which must include reference to the business name instead of the business premises registration. This applies in England only.</p>
22 April 2016	Ratification of the Paris Agreement	The European Commission proposes to ratify the Paris Agreement on behalf of all EU Member States once it opens for signatures on 22 April 2016. The Paris Agreement is the first universal and legally binding deal to tackle global warming and requires Member States to set ambitious targets for cutting their national emissions. The UK's Committee on Climate Change is reviewing the Paris Agreement and will decide whether the UK needs to change its current global warming targets in order to meet the new targets under the Agreement.
24 May 2016	Welsh government: Building Regulations Sustainability Review	<p>The Welsh government is consulting on its plans to incorporate aspects of its Sustainable Buildings National Planning Policy into the Welsh Building Regulations. The proposals relate to the non-energy elements of the policy, including changes to sanitation, hot water security and water efficiency.</p> <p>The consultation closes on 24 May 2016.</p>
30 May 2016	Aviation Emissions Reduction	<p>The European Commission is consulting on using market-based mechanisms (MBMs) to reduce the impact of international aviation greenhouse gas emissions. The consultation is seeking views on MBMs being developed by the International Civil Aviation Organisation as well as in relation to the EU Emissions Trading System (EU ETS). The temporary derogation from the application of EU ETS to flights to and from countries which fall outside the European Economic Area expires at the end of 2016.</p> <p>The consultation closes on 30 May 2016.</p>
Q2 2016	Definition of "waste"	The government intends to deliver its first phase of amended guidance in England in order to clarify the definition of "waste" and "by-products" under the EU Waste Framework Directive. This guidance will be business-focused and will be followed by a second phase of guidance in March 2017 for legal and technical users.
Q2 2016	Restriction of Hazardous Substances (RoHS) Regulations	We anticipate that the European Commission will adopt a proposal to amend the scope of the RoHS Directive 2011 in the second quarter of 2016.

Q3 2016	Waste Electrical and Electronic Equipment (WEEE) Regulations	The government has committed to build on simplifying the accreditation process and reducing the complexity of the WEEE Regulations by summer 2016.
Q3 2016	End-of-life vehicles	The government will launch a consultation on the recovery of recyclable materials from end-of-life vehicles and certificates of technical competence. The consultation is part of the government's wider commitment to reduce bureaucracy in the waste and recycling sector.
Q3/Q4 2016	Packaging recycling targets	<p>The government will legislate later in 2016 to reduce statutory plastic packaging recycling targets for 2016 and 2017. It will also set new recycling targets for glass and plastic packaging for 2018, 2019 and 2020:</p> <ul style="list-style-type: none"> for plastic, the existing target will be reduced from 52% to 49% for 2016, but will then be increased by 2% each year up to 57% in 2020; for glass, the existing target of 77% will be maintained until 2017 and then increased by 1% each year up to 80% 2020.
Q4 2016	Emissions reduction plan	<p>The Department of Energy and Climate Change intends to announce new policies at the end of 2016 to meet emissions reduction targets.</p> <p>The new proposals are expected to reflect the UK's move away from coal towards gas and nuclear power, as well as increased investment in renewables capacity.</p>
2016/17	Environmental permitting	Following the government's pilot scheme in early 2016, the majority of organisations which are regulated under the Environmental Permitting Regulations will soon be able to submit and monitor their emissions and pollution inventory digitally.
2016 to 2019	Circular Economy Package	<p>On 2 December 2015, the European Commission adopted a new Circular Economy Package. The Commission is now calling on the European Parliament and European Council to adopt and implement the legislative proposals contained within that package.</p> <p>The Package will amend European directives for fertilisers (including anaerobic digestate) and waste water, and will introduce significant changes to the national collection and recycling of waste, waste vehicles and electrical and electronic equipment. Stricter limitations will also be imposed on packaging waste and landfilling.</p> <p>The elements of the Package will be negotiated and agreed over the next three years, with new directives expected to be passed into EU law in 2017 and to come into force in 2019.</p>
2016 to 2019	Climate Change Levy (CCL)	CCL rates will be increased by RPI on 1 April each year to 2018, with the main CCL rate to be increased in 2019. CCL discounts will be increased from 1 April 2019 for those with climate change agreements in place.

2016 to 2019	Carbon Reduction Commitment (CRC)	Allowance prices for compliance years 2016/2017, 2017/2018 and 2018/2019 will be increased in line with RPI.
1 April 2018	Minimum energy efficiency standards: private rental sector	Landlords of privately rented domestic and non-domestic properties must not grant new leases to new or existing tenants after 1 April 2018 where the energy performance of the property is below the minimum energy performance indicator of level E. From 1 April 2023, the regulations will apply to all privately rented non-domestic properties. This will include where a lease is already in place.
31 March 2019	CRC	The CRC will be abolished from the end of the 2018/2019 compliance year, with the final surrender of allowances in October 2019.

Financial Services



Kate Johnson

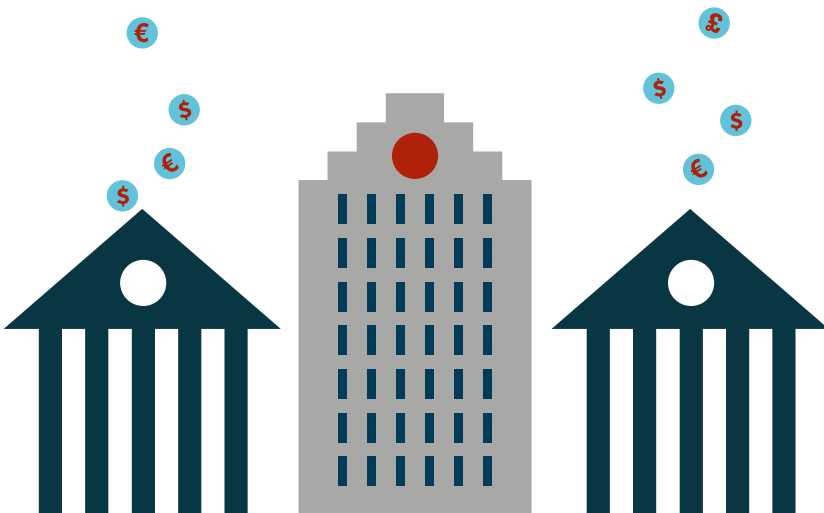
Partner

T +44 20 7105 7230

kate.johnson@osborneclarke.com

“The financial sector will be particularly busy in the next 12 months. Long-awaited European legislation affecting payments and cards, market abuse, money laundering, and market transparency will all finally come into force. Domestically, tax changes and new FCA regulatory regimes and sourcebooks will drive the agenda.

Participants will need to act early if they are to ride this wave of regulatory change successfully.”



1 April 2016	Carried interest rules	From 1 April 2016, carried interest may be taxed as income or capital gains, depending on how long the underlying assets were held. This may create tension around when to realise assets.
1 April 2016	FCA consumer credit regime	On 1 April 2016, the FCA's regime for consumer credit regulation came into force (replacing the interim permission regime). From 1 April 2016 firms without full FCA permission (or who have interim permission but have not already applied for full permission) must not lend to consumers.
6 April 2016	People with significant control (PSC) register	<p>As of 6 April 2016, unlisted UK companies and LLPs are required to maintain a statutory register of certain information on the individual(s) who ultimately control them. This information needs to be provided to Companies House from 30 June 2016.</p> <p>This will affect investment funds and other investors in UK companies or with UK LLPs in their groups. English limited partnerships will not fall under this regime but it will apply to Scottish limited partnerships from June 2017.</p> <p>For more information on the PSC register see our dedicated hub here.</p>
6 April 2016	Advising on peer-to-peer (P2P) agreements	On 6 April 2016, advising on P2P agreements became a regulated activity. Crowdfunding platforms and others in the P2P sector will need to check their permissions and documentation.
6 April 2016	Innovative Finance ISA	The new Innovative Finance ISA account will allow interest and gains from P2P loans to benefit from ISA tax advantages. P2P lending platforms with the appropriate regulatory permissions (and ISA manager status) have been able to offer these new accounts from 6 April 2016.
9 June 2016	Competition in the card payments market	On 9 June 2016, the final provisions of the EU's Interchange Fee Regulation come into force. From that date, merchants need not accept an issuer's full payment card range. Merchants should review their agreements with acquirers to obtain the best deals.
30 June 2016	FCA complaints handling	The FCA's new "DISP" sourcebook comes into force on 30 June 2016. The new rules change the way regulated firms handle and report complaints.
3 July 2016	EU Market Abuse Regulation (MAR)	On 3 July 2016, the remaining provisions of MAR come into force. MAR will supplement the EU's market abuse regime, with more varied and tougher sanctions.
18 September 2016	Payment Accounts Directive (PAD)	PAD takes effect on 18 September 2016. PAD gives consumers the right to open basic bank accounts (for receiving salary, paying household bills etc) and aims to make it easier for consumers to compare and switch between payment accounts.
3 January 2017	MiFID II	MiFID II comes into force on 3 January 2017. MiFID II aims to increase market transparency and protect the integrity of the financial system and investors.

7 March 2017	FCA's employee codes of conduct within banks, building societies, credit unions and investment firms	<p>The FCA's new regime to increase the accountability of individuals in the financial services industry has applied to senior managers in banks, building societies, credit unions and investment firms (relevant firms) since 7 March 2016. For senior managers in relevant firms, the FCA's APER Handbook has been replaced by the COCON Handbook.</p> <p>From 7 March 2017, the regime will extend to cover most staff at relevant firms (but not ancillary staff such as receptionists, security, cleaners etc.). It affects the HR processes for appraisals, references and training.</p>
26 June 2017	Fourth Money Laundering Directive (MLD4) and Revised Wire Transfer Regulation (RWTR)	<p>MLD4 and RWTR are designed to improve defences against money laundering and terrorist financing.</p> <p>Firms are to adopt a risk-based approach and greater transparency obligations will be imposed.</p> <p>EU Member States are required to implement MLD4 into national legislation by 26 June 2017, which is the date that RWTR comes into effect. However, the European Commission and Council of Europe are pushing Member States to implement MLD4 early – by the end of 2016.</p>
13 January 2018	Second Payments Services Directive (PSD2)	<p>PSD2 introduces greater transparency and information requirements for existing regulated payments entities. Unregulated payments entities may need to become authorised and compliant, or change their business models.</p> <p>EU Member States are required to implement PSD2 into national law by 13 January 2018.</p>

Gambling



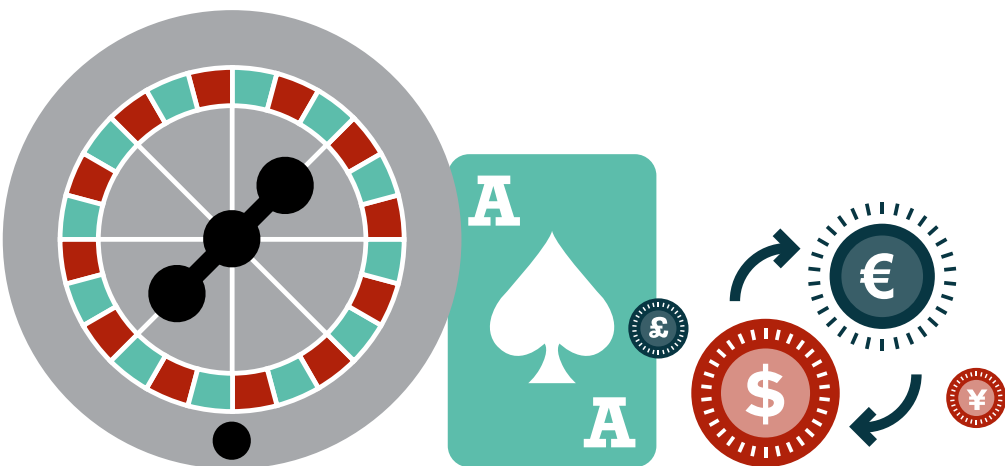
Nick Johnson

Partner

T +44 20 7105 7080

nick.johnson@osborneclarke.com

“Following the transition to point-of-consumption taxation, various code changes and a new Chief Executive now settling in at the Gambling Commission, the good news for British-licensed gambling operators is that we look to be set for a period of relative regulatory stability.”



6 April 2016	Licence Conditions and Codes of Practice (LCCP)	<p>Various new LCCP came into force on 6 April 2016, including:</p> <ul style="list-style-type: none"> • social responsibility code provision 3.5.6 (non-remote multi-operator self-exclusion); • social responsibility code 10.1.1 (assessment of local risk); and • ordinary code provision 10.1.2 (sharing local risk assessments).
2016	Testing strategy for compliance with remote gambling and software technical standards (Testing Strategy)	<p>A Gambling Commission consultation on proposed changes to the Testing Strategy closed on 11 February 2016. Amongst other things, the proposed changes would introduce formal monitoring of game performance, as well as moves towards being more consistent and aligned with gambling regulators in other jurisdictions.</p> <p>We are expecting the Gambling Commission's response to the consultation later in 2016.</p>
2016	Remote gambling and software technical standards (RTS)	<p>The Gambling Commission has said that its consultation on Testing Strategy (see above) will be followed in 2016 by a wider review of the RTS.</p>
2016/17	Under-18s in social media	<p>The 2nd edition of the Gambling Industry Code for Socially Responsible Advertising (part of the LCCP, discussed above) states that <i>"the government intends, in co-operation with the industry and other stakeholders, to undertake further work to ensure that under 18s are suitably protected when using social media"</i>.</p> <p>The timetable and nature of that work are currently unclear.</p>
Q2/Q3 2017	Reform of gambling regulation in Northern Ireland	<p>Legislation to implement changes originally proposed in a Department for Social Development consultation in 2011 was not prepared in time to be introduced to the Northern Ireland Assembly before the Assembly elections in May 2016. The latest announcement states that new gambling legislation is <i>"unlikely to be in place before the middle of 2017, at the earliest"</i>.</p> <p>The proposals would broadly bring Northern Ireland more into line with the position in the rest of the UK.</p>

Health and Safety



Mary Lawrence

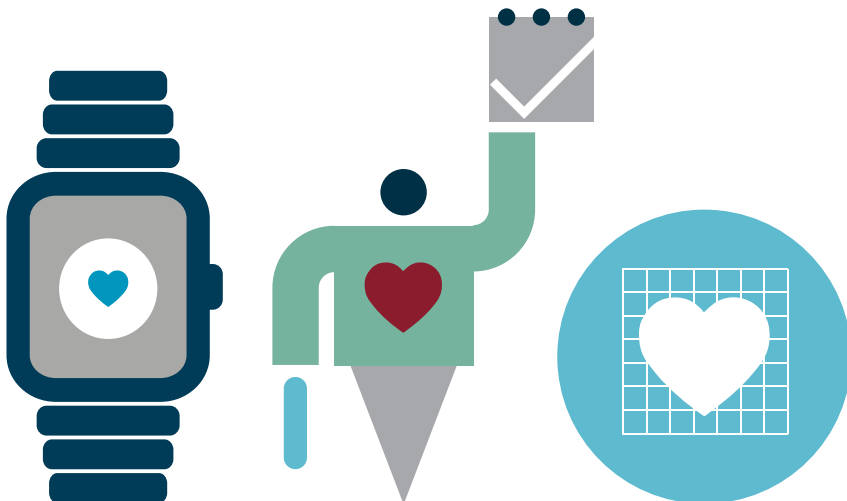
Associate Director

T +44 117 917 3512

mary.lawrence@osborneclarke.com

“The implementation of the new sentencing guidelines for criminal courts dealing with health and safety offences is expected to result in tougher sentences, particularly for those businesses with turnover in excess of £50 million.

The Health and Safety Executive’s ‘Helping Great Britain Work Well’ campaign highlights the HSE’s increased focus on addressing ill health in the workplace, and the role of – and cost to – employers in managing employee ill health.”



Q2 2016

Review of the coroner reforms

We are awaiting the result of the government's consultation on certain reforms introduced by the Coroners and Justice Act 2009. The purpose of the consultation is to find out whether the reforms are operating as planned and whether there have been any unintended consequences.

Key areas being considered, include:

- the publication of statutory guidance for bereaved people;
- the requirement to record inquests;
- the requirement that coroners are available at all times to address matters which must be dealt with immediately; and
- flexibility of the location for inquests and post-mortem examinations.

The consultation closed on 31 December 2015 and we are expecting the government's response during Q2 2016.

January 2016

HSE Helping Great Britain Work Well campaign

The HSE has launched its "Helping Great Britain Work Well" campaign, which is set to be a five year campaign. There is a continued focus on tackling ill health within the workplace.

The six key themes of the campaign are:

1. acting together: promoting broader ownership of health and safety in Great Britain;
 2. tackling ill health: highlighting and tackling the costs of work-related ill health;
 3. managing risk well: simplifying risk management and helping businesses to grow;
 4. supporting small employers: giving SMEs simple advice so they know what they have to do;
 5. keeping pace with change: anticipating and tackling new health and safety challenges; and
 6. sharing our success: promoting the benefits of Great Britain's world-class health and safety system.
-

Q2 2016

New sentencing guidelines for health and safety offences, corporate manslaughter and food safety and hygiene offences

On 1 February 2016, the much-talked about new sentencing guidelines came into force for all health and safety offences, as well as corporate manslaughter and certain food safety and hygiene offences. The new guidelines apply to all organisations and individuals sentenced on or after that date.

Described as the most dramatic change since the introduction of the Health and Safety at Work etc. Act 1974, the guidelines actively encourage courts to link the level of fine directly to an organisation's turnover, whilst also considering the culpability and harm factors to reach the recommended starting point of fines. There is little doubt that for larger organisations this is set to increase the level of potential fines significantly, from hundreds of thousands of pounds to millions of pounds.

In the final weeks before the introduction of the new sentencing guidelines, courts had already started to take a tougher stance on sentencing, with a number of larger organisations being handed fines in the millions of pounds for health and safety offences. Practitioners will be keeping a particularly close eye in the coming months on the levels of fines imposed by the courts, to see how the guidelines are being implemented in practice.

The guidelines for health and safety can be found [here](#).

Q2 2016

Consultation on the reduction in sentences for a guilty plea

The Sentencing Council is currently consulting on a proposal to change the guidelines for reducing sentences following guilty pleas.

Currently, full credit (a reduction of one third of any fine) is generally given for a plea "at the earliest opportunity". It is often accepted that this will be later than the first court hearing, as the complexity of health and safety and corporate manslaughter cases is such that the defendant may not be in a position to confirm a plea by that stage. The consultation suggests that unless a guilty plea is entered at the first court hearing, the discount a defendant is entitled to will reduce to 25% and then to 20%.

In health and safety cases, where fines for large organisations under the new sentencing guidelines are likely to be in the millions of pounds, this could have a very significant financial impact, forcing defendants to consider how best to protect their position at the earliest possible stage.

Life Sciences and Healthcare



Simon Hancock

Partner

T +44 117 917 4106

simon.hancock@osborneclarke.com



Lorna Brazell

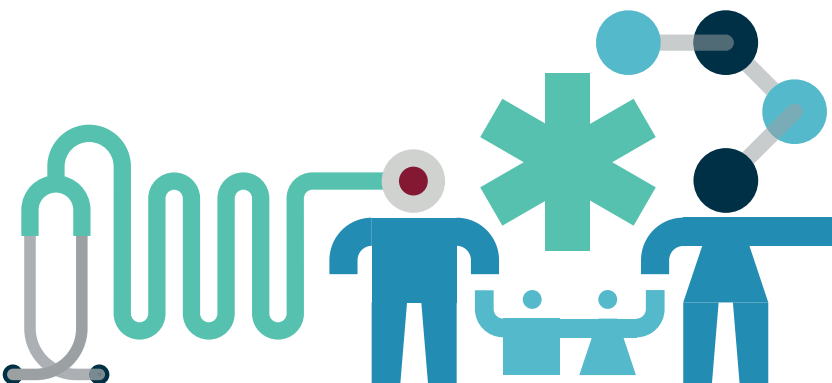
Partner

T +44 20 7105 7600

lorna.brazell@osborneclarke.com

“The implementation plan for the Prime Minister’s Challenge on Dementia 2020 brings the public and private sectors together, across the health and social care and wider Life Sciences communities, in setting measurable goals. The ultimate aim is to pave the way for England to become the best country in the world for dementia care, support, research and awareness.

Life sciences regulation continues to evolve to meet the challenges of new technologies. The new Medical Devices Regulation will bring greater transparency and scrutiny to the medical devices sector. For digital health businesses in particular, the upcoming overhaul of EU data protection law will ensure that the use of personal data continues to present significant regulatory challenges.”



1 April 2016	Personalised medicine	<p>New scientific guidelines on pharmacogenomics came into effect on 1 April 2016. The guidelines cover:</p> <ul style="list-style-type: none"> • how to evaluate pharmacovigilance-related issues for medicinal products with pharmacogenomic associations; and • how to translate the results of these evaluations to appropriate treatment recommendations in the labelling. <p>The guidelines also highlight aspects of pharmacovigilance activities and risk minimisation measures for the use of medicinal products in genetic subpopulations.</p>
1 April 2016	Care Quality Commission (CQC) fees	<p>The Care Quality Commission (Fees) (Reviews and Performance Assessments) Regulations 2016 came into force on 1 April 2016.</p> <p>The Regulations give the CQC a power to charge fees for performance assessments and reviews carried out under section 46 of the Health and Social Care Act 2008.</p>
April 2016	Care support means testing	<p>The upper and lower capital limits for means-tested support had been expected to be increased for the financial year 2016/17, with the intention that more people would become eligible for local authority financial support. However, it has recently been announced that the relevant upper limit and lower limits will remain the same as for the financial year 2015/16.</p>
15 April 2016	Good Manufacturing Practice Guidelines for products for export of human investigational products	<p>Updated EU Good Manufacturing Practice Guidelines regarding medicinal products or investigational medical products for human use came into effect on 15 April 2016.</p> <p>The guidelines relate to the certification by a qualified person on batch-release within the EU, or made for export, of medicinal products for human or veterinary use, or investigational medicinal products for human use.</p> <p>The revision follows on from the Falsified Medicines Directive (2011/62/EU) and implements ICH quality guidelines Q8-Q10.</p>
18 April 2016	End of transitional arrangements for NHS procurements	<p>On 18 April 2016 the transitional arrangements under the Public Contracts Regulations 2015 (PCR 2015) came to an end. Procurement exercises for NHS contracts commencing after that date will be governed by the new regime, under the PCR 2015, rather than the old regime under the Public Contracts Regulations 2006.</p> <p>For more details on the changes, please see here.</p>
2016	Custodial health services	<p>Legal responsibility for commissioning of custodial health services in England is expected to transfer to NHS England during 2016.</p>
2016	Medical Devices Regulation	<p>The new draft Medical Devices Regulation did not receive approval from the European Council in December 2015, but is expected to pass in the course of 2016 and is unlikely to come into effect before 2019. The Regulation will represent a major overhaul of the regulatory regime for medical devices.</p>

Q4 2016	Dementia: deprivation of liberty safeguards	The Law Commission is due to provide its full proposals by the end of 2016 on whether the current safeguards relating to the Mental Capacity Act 2005 are sufficient. The underlying issue is that where an individual lacks the mental capacity to consent to accommodation, this could amount to a "deprivation of liberty".
9 February 2019	Falsified medicines	From 9 February 2019, most medicines, including some non-prescription medicines for human use will need to include a unique identifier (a 2-dimension barcode) and an anti-tampering device on the packaging.
2020	Dementia Research Institute	Under the government's "Challenge on Dementia 2020: Implementation Plan", the national Dementia Research Institute is set to be fully operational by 2020.
April 2020	Cap on costs of care	The provisions under the Care Act 2014 limiting the amount people have to pay towards their eligible care and support have been deferred from April 2016 to 2020. This is in part to give the private insurance market time to respond.
2016	General Data Protection Regulation (GDPR)	<p>With data of central importance across the life sciences and healthcare sectors, all organisations should be aware of the incoming GDPR.</p> <p>The GDPR, which represents the biggest change to the law on data protection for 20 years, is expected to be passed in 2016 and come into effect in 2018.</p> <p>For more information, see here.</p>

Product Regulation



Tom Harding

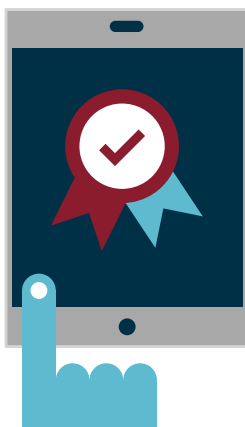
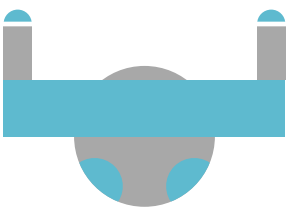
Associate Director

T +44 117 917 3060

tom.harding@osborneclarke.com

“This year is a significant one for the tobacco industry, with the Tobacco and Related Products Regulations 2016 and controversial Standardised Packaging of Tobacco Products Regulations both coming into force on 20 May 2016. In relation to the latter, the industry awaits the outcome of the litigation brought by four of the world’s heavyweight tobacco companies against the UK government.

There are also some updates on the automotive front, with a review of the current UK regulations underway and tighter rules for safer and cleaner cars being overhauled.”



22 March 2016	Community Rolling Action Plan (CoRAP)	On 22 March 2016 the European Chemicals Agency (ECHA) adopted the final CoRAP for 2016-2018. CoRAP is a list of substances proposed by Member States for risk evaluation over a period of time. Substances are listed where there is a concern that they may pose a risk to human health or the environment. The ECHA encourages registrants of listed substances to coordinate their actions and to contact the evaluating Member State.
20 April 2016	Consumer electrical product legislation	The following EU electrical product directives have been replaced with new versions: <ul style="list-style-type: none"> • Low Voltage Directive; • Electromagnetic Compatibility Directive; and • Radio Equipment & Telecommunications Terminal Equipment Directive (to be replaced with Radio Equipment Directive). <p>All electrical products placed on the market in the UK/EU on or after 20 April 2016, caught by the new legislation, must comply with the new measures to avoid enforcement/sanctions.</p>
20 May 2016	Tobacco and Related Products Regulations 2016	The Tobacco and Related Products Regulations 2016, which will bring into effect the EU Tobacco Products Directive 2014, will come into force on 20 May 2016. The legislation governs the manufacturing, presentation and sale of tobacco products, but is not to be confused with the Standardised Packaging of Tobacco Products Regulations 2015 (see below). Amongst other things, the draft Regulations: <ul style="list-style-type: none"> • require the warning “Smoking kills – quit now” for tobacco products; • require the warning “This product contains nicotine which is a highly addictive substance” for e-cigarettes; and • introduce a registration scheme for cross-border distance sales of tobacco products, e-cigarettes and refills.
20 May 2016	Standardised Packaging of Tobacco Products Regulations	The controversial Standardised Packaging of Tobacco Products Regulations 2015 come into force on 20 May 2016. The Regulations are designed to make cigarettes less appealing to consumers and stipulate that cigarettes are only sold in packaging that is uniform in size, shape and design. Only the brand name (in non-distinctive typeface) and health-warnings can be printed on the box. Aside from the health warning, the packaging must be either dark brown or green in colour. <p>Four of the world’s largest tobacco firms have begun a legal challenge against the government, saying that it will infringe their intellectual property rights, and will not reduce smoking. The outcome of this challenge is pending.</p>

20 July 2016	New rules for infant and follow-on formula	<p>The EU Regulation on Foods for Specific Groups, which comes into force on 20 July 2016, will set additional rules for manufacturers and sellers of infant and follow-on formula to comply with, by:</p> <ul style="list-style-type: none"> • setting general compositional and labelling rules. This extends to the labelling of follow-on formula and the existing restriction of use of pictures or text which may idealize the use of products (currently only applicable to infant formula); and • requiring the European Commission to replace the current Infant and Follow-on Formula Directive with new regulations.
2016	Medical Devices Directive and In Vitro Diagnostic Medical Devices Directive	<p>The European Commission has proposed to replace the current Medical Devices Directive and In Vitro Diagnostic Medical Devices Directive (implemented in the UK by the Medical Devices Regulations) with two new regulations, dealing with medical devices and in vitro diagnostic medical devices respectively.</p> <p>The new legislation is still at draft stage and is being debated, but once in force will have direct effect and replace local UK legislation. We expect to know more in the coming months.</p> <p>The focus is on ensuring patient safety via tighter restrictions on designation of notified bodies, increased transparency, traceability and market surveillance and greater protection of those undergoing clinical investigations.</p>
1 July 2017	Driverless cars	<p>A full review and amendment of the current UK regulations is expected to be completed by summer 2017, with a view to accommodating driverless vehicle technology. The hope is that the legislative changes will mean that, at the very least, semi-autonomous vehicles are properly legislated for in the UK.</p> <p>Thereafter, the UK government is predicting that this will link into a change in international regulations by 2018.</p>
1 January 2018	Novel Foods Regulation	<p>The EU Novel Foods Regulation entered into force on 31 December 2015 and the majority of provisions will come into effect on 1 January 2018, though some are already in, or can be brought into effect before this date. It revises Regulation (EC) 258/97.</p> <p>The Regulation aims to streamline the process for approval of novel foods for sale in the EU, and also to make the process cheaper, whilst ensuring food safety. It will also clarify the definition of novel food, which currently means foods and ingredients not consumed in the EU to a significant degree before 15 May 1997 (the date the current Novel Food Regulation entered into force).</p>

TBC

**Tighter rules for safer
and 'cleaner' cars**

The European Commission is proposing to overhaul the current approval framework relating to the certification of vehicles and monitoring compliance with EU law.

The intention is to raise the quality and independence of vehicle testing, as well as to improve the oversight of cars already purchased. Under the current system, national authorities are responsible for checking the compliance of car manufacturers – these checks are currently paid for by car manufacturers, raising the possibility of conflicts of interest. Amongst other changes, the new regime will modify this practice to avoid such financial links.

The new Regulation is currently in draft form and once adopted will repeal and replace the 'Framework Directive' (2007/46/EC). The Commission is looking for the legislation to be finalised and adopted as soon as possible.

Regulated Procurement



Catherine Wolfenden

Partner and Head of Osborne Clarke's Regulatory Group

T +44 117 917 3600

catherine.wolfenden@osborneclarke.com

“The entry into force of the Utilities Contracts Regulations 2016 and Concession Contracts Regulations 2016 (together with their Scottish counterparts) on 18 April 2016 completed the biggest modification of UK procurement law in a decade.

On the longer-term horizon, contracting authorities, utilities and central purchasing bodies need to complete their move to fully electronic procurement, and suppliers will have to be ready to embrace electronic procurement systems, from April 2017.”



18 April 2016	Utilities Contracts Regulations 2016 (UCR 2016)	<p>The UCR 2016, which refresh the rules around utility procurement, came into force on 18 April 2016.</p> <p>Among the key areas of change under the draft UCR 2016 are:</p> <ul style="list-style-type: none"> • a new definition of a utility, including removal of the method of identification of utilities by list; • codification of the rules on pre-procurement market engagement; • removal of the distinction between Part A (fully regulated) and Part B (lightly regulated) services; • limitation of the duration of framework agreements to eight years; • introduction of a positive requirement for utilities to investigate abnormally low tenders; and • limitations on the modification of contracts during their term (also referred to as material variation). <p>The thresholds above which the regulations apply, and the rights and remedies of bidders in the event that a utility is in breach, will remain unchanged under the UCR 2016.</p> <p>Similar regulations applicable to Scotland – Utilities Contracts (Scotland) Regulations 2016 – came into force on the same day.</p>
18 April 2016	Concession Contracts Regulations 2016 (CCR 2016)	<p>Wholesale codified regulation of concessions contracts is almost entirely new in UK law, with previous regulations applying only to works concession contracts.</p> <p>The CCR 2016, which came into force on 18 April 2016:</p> <ul style="list-style-type: none"> • introduce codified regulation for procurement of public utility and concessions; and • provide remedies for suppliers in the event that a utility or contracting authority fails to adhere to CCR 2016 in procuring a concession contract. <p>Similar regulations applicable to Scotland – The Concession Contracts (Scotland) Regulations 2016 – came into force on the same day.</p>
18 April 2016	“Light Touch” procurement regime	<p>In place of the previous distinction between Part A and Part B services in the Public Contract Regulations (PCR) 2006, the PCR 2015 introduce a new “light-touch” procurement regime for social and other specific services, which applies to procurement exercises commenced from 18 April 2016.</p> <p>The threshold for the light-touch regime is EUR 750,000. Where this regime applies, contracting authorities will have a high degree of choice in how they run tender exercises and the evaluation criteria that they can take into account when awarding contracts.</p>

Q2 2016	Energy Solutions v Nuclear Decommissioning Authority	<p>Substantive judgment is expected soon in the much-anticipated case of Energy Solutions EU Limited v Nuclear Decommissioning Authority (NDA). Energy Solutions brought a damages-only claim against the NDA after expiry of the standstill period (the statutory period following the award of a contract, before the contract can be entered into, during which unsuccessful bidders may decide to challenge that award). On appeal on a preliminary issue, the Court of Appeal confirmed that issuing a claim within the standstill period was not a precondition to be able to bring a damages claim, and the case continued to trial.</p> <p>If Energy Solutions is successful in its claim for breach of the Public Contracts Regulations 2006, the case will be a landmark decision in the award and quantification of damages in public procurement challenges.</p>
Q2/Q3 2016	Enhancing transparency of beneficial ownership information of foreign companies	<p>In March 2016, the Department of Business, Innovation and Skills (BIS) issued a discussion paper on enhancing the transparency of beneficial ownership information concerning foreign companies either purchasing property or bidding for public contracts in England.</p> <p>BIS' discussion paper (available here) sets out options under consideration by the government, which would require bidders for public contracts above £10m in value to declare fully their beneficial ownership or face exclusion from the procurement process.</p> <p>The closing date for responses to the discussion paper was 1 April 2016. We are expecting BIS's response later in 2016.</p>
June 2016	Australian accession to the World Trade Organisation's (WTO's) Government Procurement Agreement (GPA)	<p>Australia intends to complete its membership negotiations with the WTO and existing GPA members in 2016, following the launch of its bid to join the global agreement on access to public sector supply markets in June 2015.</p> <p>As part of the deal proposed, Australia would open up a procurement market to GPA parties valued at over A\$ 100 billion (US\$ 71 billion) at the federal, state and local levels. Australian businesses would in return gain access to markets (and protection of their rights under relevant procurement legislation) in other GPA signatory states.</p>
August 2016	European Commission report on the EU Defence Procurement Directive	<p>The European Commission is conducting a review of the operation of the Defence Procurement Directive 2009 and is due to report its findings to the European Parliament and Council of the EU in August 2016. This may be a precursor to a refresh of the Directive in line with the recent public and utilities sector Directives.</p>
18 April 2017	E-procurement: Central Purchasing Bodies (CPB)	<p>Under PCR 2015 and UCR 2016, CPBs have until 18 April 2017 to implement fully electronic systems covering all documents and communications in their procurement processes.</p>
18 October 2018	E-procurement: contracting authorities and utilities	<p>Following on from CPBs, contracting authorities and utilities have until 18 October 2018 to implement fully electronic systems covering all documents and communications in their procurement processes.</p>

Telecoms



Jon Fell

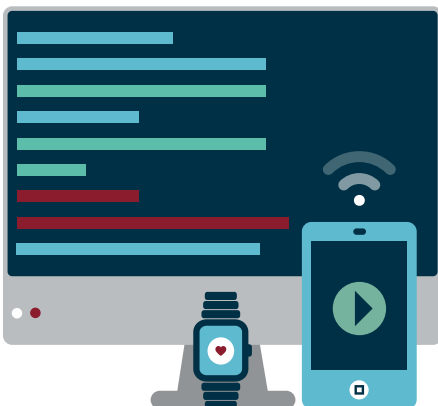
Partner

T +44 20 7105 7436

jon.fell@osborneclarke.com

“As the Internet of Things continues to gather speed, the need for additional spectrum which can accommodate multiple connected devices in a resilient manner will remain an important topic in 2016 for industry players and Ofcom. Measures are already underway to try to release valuable spectrum in the 700 MHz band (currently used for digital terrestrial TV), but it will still be a few years before the spectrum is actually available for use.

The UK government’s recent Budget has also announced a number of measures aimed at freeing up spectrum for new and innovative technologies. The challenge for both Ofcom and industry will be how to make the most of these initiatives to ensure that the UK does not lag behind in IoT development.”



30 April 2016

Net neutrality

The EU Net Neutrality Regulation comes into force on 30 April 2016. It will affect UK telecoms operators, internet service providers (ISPs) and those wanting to have their content distributed via the internet.

The Net Neutrality Regulation is designed to ensure that users have access to online content and services without discrimination or interference by ISPs. All internet traffic must be treated equally, subject to limited exceptions. This means that the ability of telecoms operators and ISPs to apply traffic management measures will be much more limited. Likewise, the ability to negotiate preferred speeds or quality of service deals will be limited to so-called "specialised services" whose delivery requires a guaranteed service level – think IPTV, connected cars, telemedicine and certain cloud services. Ofcom will be the body which enforces the Regulation within the UK.

The Body of European Regulators for Electronic Communications (BEREC) is currently working on putting together guidance to assist national regulators such as Ofcom with interpretation of key aspects of the Regulation. However, BEREC's guidance is unlikely to come into effect until the end of August 2016.

The Net Neutrality Regulation forms part of the EU's wider reform of the European telecoms regime, which includes the end of international roaming charges in June 2017.

2016

Ofcom review of digital communications

Ofcom is currently engaged in a wide review of digital communications. The review is looking at all communications services, including fixed, mobile, and pay-TV services and therefore has the potential to affect all players in the UK communications market.

The consultation document was published in July 2015. Ofcom published its initial conclusions on 25 February 2016. Ofcom's final position is expected later in 2016.

The review is looking at a wide range of issues, including:

specific wholesale market issues. Ofcom is likely to fall short of requiring BT Openreach to be split out from the rest of the BT Group as a separate company;

improvements across the industry in terms of mobile broadband coverage; and

consumer-related issues, including ways to further consumer empowerment, such as increased transparency and automatic compensation for consumers when their communications service providers fail to deliver.

1 July 2016	Electronic signatures	<p>Regulation 910/2014 on Electronic Identification and Trust Services for Electronic Transactions in the internal market replaces the existing E-Signatures Directive (Directive 1999/93/EC).</p> <p>The European Council believes that the failure to make greater use of electronic signatures within the framework of an independent certification system has hindered the creation of a fully integrated digital single market. It remains to be seen whether the new Regulation and related initiatives will result in greater use of electronic certification facilities.</p> <p>With some exceptions, the new Regulation will apply from 1 July 2016.</p> <p>For more information, see here.</p>
2016	General Conditions of Entitlement under the UK general authorisation framework	<p>All communications providers that are subject to the UK general authorisation regime (such as fixed, mobile providers, and providers of managed (cloud) communications services) should be aware of Ofcom's forthcoming review of The General Conditions of Entitlement.</p> <p>The issues being considered include whether some of the conditions can be removed, for example on the basis that regulation is no longer necessary or the types of products have moved on, and therefore the current Condition is no longer appropriate, as well as the impact that new services (such as over-the-top (OTT) services or VoIP calling) have on the current wording.</p> <p>No specific proposals have been released yet as to which conditions may be changed. We expect that further details on each of these items will be released later in 2016.</p>
2016	Ofcom market reviews at wholesale level	<p>Ofcom's draft Annual Plan for 2016/17 sets out the following areas where Ofcom will conduct market reviews:</p> <p>mobile call termination rates: the wholesale charges that mobile network operators (MNOs) demand from one another to connect a call on that MNO's network;</p> <p>wholesale broadband access: the wholesale broadband products that communications providers provide for themselves and sell to each other; and</p> <p>wholesale local access: the local connection between an end-user's premises and the local exchange which is used to provide fixed-line services such as voice calls and broadband internet.</p> <p>Ofcom is also looking at whether an obligation should be placed on UK communications providers by way of a universal service obligation to provide a minimum level and speed of broadband. This would be intended to address areas (particularly rural) where there is a lack of good quality, reliable broadband.</p>

2016 **Investigatory Powers Bill** The Bill has been the subject of fierce debate over recent months.

Amongst other things, it seeks to give enhanced powers to UK government agencies to request access to electronic communications in the UK. For example, communications providers will need to store records of websites visited by every person for 12 months (showing their browsing history but not specific items viewed on that page). It also seeks to enable security services to acquire bulk communications data (such as NHS health records), and to bypass encrypted services.

If enacted in its current format, this has the potential to place significant regulatory and financial burden on communications networks / providers to comply with the Bill.

A final vote on the Bill expected in Parliament by the end of April. This could see the Bill come into effect before the end of 2016.

For more information on the Investigatory Powers Bill see [here](#).

Q3/Q4 2016 **More radio spectrum for mobile data (700 MHz)** On 11 March 2016 Ofcom issued a consultation setting out proposals to:

bring forward the date from which spectrum in the 700 MHz band would be available for national mobile use, by 18 months (now Q2 2020 rather than 2022); and

free up 25 MHz of spectrum in the 700 MHz band for mobile data use.

The 700 MHz band is currently used for digital terrestrial TV (DTT) and wireless microphone applications. In order to bring forward the date from which the spectrum is available for mobile use, Ofcom is looking at changing frequencies used by some temporary DTT services that operate in the 600 MHz band. The 25MHz of the spectrum that would be released sits in the middle of the band and is a "centre gap" (a bit like a buffer zone) between the uplink and downlink parts of the band.

The closing date for responses to the consultation is 20 May 2016. Allowing Ofcom in time to review the responses to the consultation, we could see a decision on this Q3 2016, and possibly see the centre gap spectrum being released before the end of 2016 or early 2017.

2016/17 **Spectrum awards** Ofcom is intending to award spectrum in the following frequencies, which are particularly useful for offering 4G services:

2.3 & 3.4 GHz; and

700 MHz.

The award is likely to be made by way of spectrum auction. A date has not yet been set for either of the above awards. Ofcom has stated it will hold off from running any award process for the 2.3 and 3.4 GHz bands until after the European Commission has issued its decision in the Three UK/O2 UK merger (the deadline for which is 22 May 2016).

2016/17

Government Budget initiatives to support the digital economy

The government's 2016 Budget announced a number of steps that it intends to take to support growth of the UK's digital economy. Providers of telecoms services will be particularly interested in the following:

the government is to establish a new Broadband Investment Fund in partnership with the private sector. The aim of the Fund is to ensure that financial assistance is more readily available to the private sector. This could be used to support growth of alternative broadband networks;

specific measures will also be explored jointly by Ofcom and the Advertising Standards Authority to look at making broadband more affordable and ensuring that prices including price comparison tools are clearer to users;

the government plans to consult on ending the practice of handset locking outside any initial contract period. The government has hinted at its preference for industry to come up with a voluntary solution so that legislative action is not needed. A consultation is expected to be published later in 2016;

the government has announced that it intends to deliver a 5G strategy in 2017 to look at how the UK can become a world leader in 5G; and

the government has also given a commitment to free up more of the spectrum currently used by the public sector (750 MHz of public sector spectrum in bands under 10 GHz to be made available by 2022, with 500 MHz of this being made available as soon as 2020).

Transport



Lara Burch

Partner

T+44 117 917 4268

lara.burch@osborneclarke.com



Simon Spooner

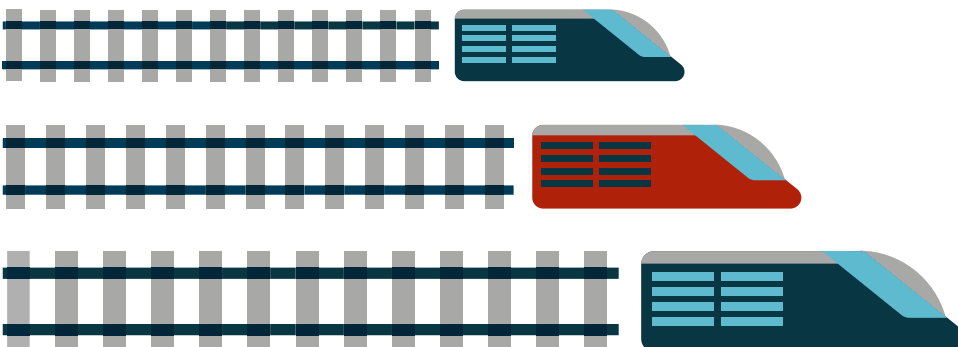
Partner

T+44 117 917 4112

simon.spooner@osborneclarke.com

“Whilst HS2 gathers pace, the recommendations from Nicola Shaw’s review of Network Rail dominate the regulatory headlines, but change during 2016 will be small-scale and incremental.

This year also sees more transport devolution, with increasing responsibility passing to Transport for the North and to the Welsh government.”



March 2016	Northern powerhouse	<p>The DfT and Transport for the North's (TfN's) "northern transport strategy, spring 2016" report proposes to transform travel in the north of England.</p> <p>The DfT and TfN plan to support the development of a 'northern powerhouse' by better connecting the major cities of the North using a high-quality rail network. The report also outlines TfN's implementation plan for 'Smart North', a smart-ticketing system to simplify fares, reduce queuing times and help passengers switch easily between buses, trains and trams.</p> <p>The strategy outlined in the report is expected to drive a host of initiatives throughout 2016 and the longer term.</p>
March 2016	Shaw Review	<p>The Shaw Review was published in March 2016 and made the following key recommendations:</p> <ol style="list-style-type: none"> 1. place the needs of passengers and freight shippers at the heart of rail infrastructure management; 2. plan the railway based on customer, passenger and freight needs; 3. focus on the customer through deeper route devolution, supported by independent regulation; 4. develop industry-wide plans to develop skills and improve diversity; 5. create a route for the North; 6. clarify the government's role in the railway and Network Rail; and 7. explore new ways of paying for the growth in passengers and freight on the railway. 8. We expect these recommendations to act as a starting point for long-term change, although little is likely to occur during the next 12 months.
March 2016	Competition between passenger train operators	<p>In March 2016 the Competition and Markets Authority finalised its report on competition between passenger rail operators in Great Britain, having issued its interim report in July 2015.</p> <p>The interim report set out four options to address competition on the three main intercity routes in Great Britain – the East and West Coast main lines and the Great Western route.</p> <p>Following industry-wide consultations regarding the interim report, this final report concludes that, in the short-term, allowing more open access operators would improve competition and benefit passengers. It concluded, however, that the best option from a long-term perspective is to replace the franchising system with a multi-operator licencing system.</p> <p>We expect this policy document to influence the DfT and Secretary of State for Transport's decisions on passenger rail policy over the next two to three years.</p>

5 May 2016	European consultation on rail passenger rights	Between 9 February and 5 May 2016 the European Commission is running a consultation on the rights of rail passengers. The European Commission is examining options to better protect rail passengers in the EU. The result is likely to be a strengthened version of EC Regulation 1371/2007.
Q3 2016	Wales and Borders rail franchise	<p>In January 2016 the Welsh government launched a public consultation on services, capacity, performance, fares, ticketing and rolling stock in order to inform the specification for the next Wales and Borders rail franchise. We are expecting the Welsh government to report on the consultation after elections to the National Assembly for Wales in May 2016.</p> <p>Responsibility for this rail franchise is expected to transfer from the Department for Transport (DfT) to the Welsh government in early 2017, in time for the next franchise award, which is due to commence in 2018.</p>
1 June 2016	East Anglia passenger rail franchise	The contract award is expected for the East Anglia passenger rail franchise on 1 June 2016. Abellio East Anglia Limited (Stagecoach has now withdrawn from what was originally a joint venture proposal with Abellio), First East Anglia Limited and National Express East Anglia Trains Limited are all in the running.
Q2 2016	DfT review of rail regulation	<p>On 10 December 2015, the DfT published its consultation inviting evidence and views on the effectiveness of the current regulatory regime for the railways and on possible modifications that would be compliant with EU law.</p> <p>The consultation ran until 15 January 2016 and responses are currently being analysed. The outcome of the consultation is expected in Q2 2016 and will make recommendations for enhancing the effectiveness of the rail regulatory regime in securing a safe, effective and efficient railway, with specific reference to the role of the Office of Rail and Road.</p>
October 2016	Card and contactless payments for all London taxis	<p>A TfL consultation at the end of 2015 found that 86% of respondents backed card acceptance in taxis, with 68% agreeing that passengers should also be able to pay using contactless payments.</p> <p>As a result, from 3 October 2016, all London taxis must be fitted with a TfL-approved card payment system, with contactless, chip-and-PIN and magnetic swipe functions. The change is aimed at making travelling by taxi easier and a more attractive option for passengers.</p>
Q4 2016	High Speed Two (HS2)	<p>The High Speed Rail (London – West Midlands) Bill 2013-2014 to 2015-2016 should receive Royal Assent by late 2016 if it progresses smoothly. The Bill confers the powers required to construct phase one of HS2.</p> <p>HS2 is the planned new high-speed railway linking London, Birmingham, the East Midlands, Leeds, Sheffield and Manchester.</p>

Q4 2016

Buses Bill

The new Buses Bill aims to reform local bus travel in the UK. Local authorities will be given stronger powers to impose minimum service standards as part of their partnerships with bus companies.

The Bill will also enable councils to take forward TfL-style bus service franchising. In addition, it will pave the way for Oyster-style ticketing schemes across wider areas outside London.

We are expecting the Bill to go before parliament towards the end of 2016, but it is unlikely to come into effect before 2017.

