



## Regulatory Outlook

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

Key developments to keep an eye out for this month:

- new guidance on how to tackle modern slavery risks in government supply chains;
- the UK government has announced the creation of four new government departments, and the splitting up of the Department for Business, Energy and Industrial Strategy; and
- new 'Windsor Framework' agreed to amend the Northern Ireland Protocol

February 2023

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## Advertising and marketing

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# Advertising and marketing

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## Latest on green claims: updates to CAP guidance

The UK Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) have [updated](#) their "[The environment: misleading claims and social responsibility in advertising](#)" guidance.

The amendments were made to reflect the provisions of the Competition and Markets Authority (CMA)'s guidance on environmental claims on goods and services regarding the use of carbon neutral and net zero claims in advertising. This follows last year's [research](#) into consumer understanding of environmental claims published by the Advertising Standards Authority, which showed the challenges consumers face with this terminology.

The committees have announced that they will be monitoring how the revised guidance impacts carbon neutral and net zero claims in advertising and how these claims are being substantiated for the subsequent six months; if necessary, the guidance on claims substantiation will follow.

This also follows the CMA's announcement that it is undertaking a new market investigation with particular focus on fast-moving consumer goods such as food and drink, personal care and cleaning products.

Please see our [Insight](#) for more details.

## France leads on specific regulation for influencers and the EU may follow

The topic of possible regulation of influencer marketing has recently emerged in the EU. In France, MPs have already addressed this issue by proposing two draft bills. The aim is to fight against the spread of misleading and illegal commercial practices online.

Please see our [Insight](#) for more details.

## HMRC issues letters to online marketplace platforms and content creators

The Chartered Institute of Taxation has [reported](#) that HMRC began issuing letters to online marketplace platforms and content creators as part of its "one to many" letter campaign in the week commencing 16 January 2023. HMRC believes that certain taxpayers have sold services online but have not informed about their income. In particular, the letters relate to:

- Earnings from [online marketplaces](#) sales, which is badged as a "status check" letter.
- Earnings from [creating content](#) on digital platforms.

HMRC has confirmed its plans to continue this work in 2023 and beyond.



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## **Bribery, fraud and anti-money laundering**

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# Bribery, fraud and anti-money laundering

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## Companies House preparing to enforce Register of Overseas Entities

The [Register of Overseas Entities](#), which was introduced by the Economic Crime (Transparency and Enforcement) Act 2022, went [live on 1 August 2022](#).

Overseas companies owning UK real estate are now required to register and provide information about their beneficial owners or managing officers. The transitional period for registering affected overseas entities [ended on 31 January 2023](#).

Failure to comply and update the register is a criminal offence, which may result in fines, potential criminal sanctions for officers and an inability to complete major dealings with UK properties.

On 1 February 2023, Companies House [announced](#) that it is currently assessing and preparing cases for enforcement action. Further regulations are to follow that will empower it to impose financial penalties on land owned by non-compliant organisations.

## Update on Economic Crime and Corporate Transparency Bill

The [Economic Crime and Corporate Transparency Bill 2022](#) is currently [progressing through Parliament](#).

Having completed all its stages in the House of Commons, the bill has now passed onto the House of Lords, with a second reading held on 8 February 2023. The bill's amendments currently include the introduction of a ["failure to prevent" fraud, false accounting or money laundering offence](#).

The bill will also introduce strengthened information requirements for companies, including identity identification requirements for all new and existing registered company directors, people with significant control and those delivering documents to the registrar.

The House of Lords has published a [research briefing](#) on the bill.



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# Competition

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# Competition

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## CMA guidance on competition law and employment – when is sharing information on salaries or entering into non-poaching agreements unlawful?

On 9 February 2023, the Competition and Markets Authority (CMA) published a [short guide](#) for employers on how to avoid breaking competition law.

While companies often feel that employment terms fall outside competition law, the CMA is keen to emphasise that anti-competitive agreements can negatively impact labour markets, including by reducing employees' pay, reducing employee mobility and limiting businesses' ability to expand (by preventing them from employing staff with the necessary skills and experience). This is especially true in digital markets where there is a "digital skills gap" between the needs of employers and those available in the market.

There are three main types of anti-competitive behaviours in labour markets (which are all examples of business cartels):

- **No-poaching agreements:** when two or more businesses agree not to approach or hire each other's employees (or not to do so without the other employer's consent).
- **Wage-fixing agreements:** when two or more businesses agree to fix employees' pay or other employee benefits. This includes agreeing the same wage rates or setting maximum caps on pay.
- **Information sharing:** when sensitive information about terms and conditions that a business offers to employees, including salaries, are shared between businesses. This in turn reduces competition between those in recruitment and retention.

These agreements or practices can cover all types of employment contract including freelancers and contracted workers as well as permanent salaried staff. Indeed, the CMA is currently carrying out an investigation into the purchase of freelance services in the sports broadcasting sector.

There are substantial fines and criminal liability potentially applicable for breaches of competition law. As a result businesses, legal advisers and recruiters should take steps to understand how competition law applies in the context of employment. This includes how competition law impacts on no-poaching and wage-fixing agreements. Businesses should ensure that recruitment and HR staff are provided with training on competition law and how it applies in the employment context.

## CMA horizontal agreement guidance consultation

On 25 January 2023, the CMA [published a consultation on its draft proposed guidance](#) for the application of the Horizontal Agreements Block Exemption Orders (HBEs) for the application of the Horizontal Agreements Block Exemption Orders (HBEs).

The HBEs, which are closely based on the updated draft EU HBERs, were introduced in the UK on 1 January 2023. The updated guidance is intended to provide detailed but practical insights on the application of competition law to many common types of horizontal agreement (agreements entered into between actual or potential competitors). By their nature, horizontal agreements have the potential to facilitate a range of horizontal coordination issues between the parties.

In the EU, shortly before the updated HBERs were due to come into force, the European Commission announced it was extending the application of the old HBERs until 30 June 2023. The delay to the introduction of the new regulations and guidance is believed to reflect the considerable push-back the Commission has received from third parties in response to its controversial proposal in the R&D block exemption that undertakings must be able to demonstrate sufficient "competition in innovation". If this requirement is dropped, then this will mark an important point of divergence with the UK's HBEs.

We have previously discussed the changes to the horizontal regulations themselves in [January's Regulatory Outlook](#).

The [CMA](#) and the [Commission](#) have published their draft guidance to accompany these regulations. These drafts contain some notable additions to the 2010 Commission guidance as well as containing a few discrepancies between them.

The progress of technology since the 2010 guidance was published and how this may facilitate anti-competitive agreements and specifically information exchange is considered in both. Both sets of guidance discuss "algorithmic



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collusion" – where companies can use algorithms to facilitate a collusive outcome (especially with regards to information sharing). This can occur even unintentionally. There are number of structural market conditions required for algorithmic collusion – high-frequency of interactions, limited buyers/buyer power and the presence of homogenous products/services.

Similarly, regarding technical progress, both new sets of draft guidance include "mobile infrastructure sharing agreements". These include passive sharing or site sharing agreements, agreements for the sharing of Radio Access Network equipment and spectrum sharing agreements. Both the Commission and the CMA recognise the potential benefits of these agreements such as cost reduction and quality improvements. In addition, both consider that mobile infrastructure sharing agreements would in principle not be restrictive of competition by object, unless they serve as a tool to engage in a cartel. As a result, their effect on the market must be assessed. Both the CMA and Commission give substantial guidance on when mobile infrastructure sharing agreements can have an anti-competitive effect.

Sustainability is another hot topic that is addressed by both sets of guidance. Although the CMA's sustainability guidance has yet to be published, the Commission has included a dedicated chapter on sustainability agreements entered into between competitors within its draft guidance. It will be interesting to see how these compare when the CMA publishes its guidance on agreements which pursue sustainability objectives.

## Housebuilding market study

On 20 January 2023 Sarah Cardell, chief executive of the CMA, [wrote to Michael Gove](#), the secretary of state for the Department for Levelling Up, Housing and Communities, stating the CMA's intention to carry out a market study into the homebuilding sector.

This comes off the back of significant consumer work in relation to leasehold homes where the CMA has focused on ground rent clauses. The CMA expects that promoting competitive markets and tackling unfair practices across the accommodation sector more broadly will be a continued area of focus over the next 12 months. To this end, the CMA board has decided in principle that homebuilding should be prioritised as the next market study launched by the CMA.

The CMA is currently finalising the scope of this project, including deciding on the most appropriate geographic scope. It is expected that this will be put to the board for final decision to launch a market study shortly.

A market study aims to establish if the sector is operating in the interests of consumers, and whether competition is working well: promoting good consumer outcomes. It presents an opportunity to influence the CMA's thinking – this is a key opportunity. Also, a failure to comply with any request for evidence or production of documents can result in significant fines being imposed.

Following a market study, the CMA has the power to require certain market players to change their conduct and may make a more formal market investigation reference. This is likely to result in more detailed requests for information, site visits and hearings involving parties active in the specific market being considered or adjacent ones.



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# Consumer law

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## The European Commission publishes results of its investigation into dark patterns

The European Commission and the Consumer Protection Cooperation Network have [published](#) the results of a screening of 399 retail online shops. The check focused on three types of dark patterns: fake countdown timers; web interfaces designed to direct consumers to purchases, subscriptions or other choices; and hidden information.

Please see our [Insight](#) for more detail and our [dark patterns](#) microsite which covers more updates on the topic.

## Digital Services Act: guidance on the requirement to publish user numbers and a consultation on the draft implementing regulation

17 February 2023 marked the deadline for the online platforms to fulfil the obligation under the EU Digital Services Act (DSA) to publish on their website information on the average monthly active users of their service in the EU.

Previously, the European Commission has [published guidance](#) to clarify the novel provisions in the DSA on the platforms' obligation to publish information about the number of users, following a number of inquiries from providers.

The DSA [includes an obligation](#) for online platforms to publish information on their websites on the average monthly active users of their service in the EU. This should have been done by 17 February 2023 (and at least once every six months thereafter). Based on this information, the Commission will assess whether to designate the platforms as very large online platforms or search engines. In case of such a designation, the online platform will have four months to comply with the obligations under the DSA). The Commission notes that guidance may be subject to changes based on future practical experience. In addition we are still waiting to see if there will be a Commission delegated act which will provide further guidance on how to define and calculate active users.

Further, on 16 February 2023, the Commission launched a [consultation](#) on the draft implementing regulation in relation to the DSA. The DSA gives powers to the Commission to adopt implementing acts relating to arrangements outlined in Article 83 of the DSA. These include such practical arrangements as:

- The proceedings pursuant to Articles 69 (carrying out inspections at the premises of the provider) and 72 (monitoring of the implementation and compliance with the DSA).
- Hearings provided for in Article 79 (namely, the requirement for the Commission to give the provider the right to be heard in case of adopting a decision for non-compliance).
- The negotiated disclosure of information concerning proceedings provided for in Article 79.

The feedback to the consultation on the draft implementing regulation is open until 16 March 2023.

## New UK practice code for apps to protect consumer security and privacy

The Department for Digital, Culture, Media and Sport (DCMS) [has developed](#) a [code of practice](#) for app store operators and developers to protect consumer security and privacy. The voluntary code of practice outlines requirements, for example:

- to provide consumers with security and privacy information in a user-friendly way;
- to make sure their apps operate even if consumers do not allow optional functionality and permissions (for example, a user disables access to geolocation, microphone, etc.);
- to have a clear app vetting process in place so only secure and compliant apps are available for consumers, as well as a vulnerability disclosure process to report any software flaws;
- to make sure developers keep their apps up-to-date and for operators to liaise with them when the app is not published due to security or privacy reasons.

There will be a nine-month period for operators and developers to adhere to these code. The DCMS intended to commence meetings with app store operators (they are the main initial focus) from early 2023, and also to request written reports from them in spring 2023 on how the operators meet the provisions of the new code.

## US addresses subscription dark patterns in consumer finance sector

The US Consumer Financial Protection Bureau (CFPB) has [issued a circular](#) warning companies about the importance of compliant use of "negative option" subscriptions for consumers. Negative option services include subscriptions that

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automatically renew unless a user directly cancels them, and trial marketing programmes where the reduced fee is charged for the initial period and a higher fee applies automatically afterwards.

The CFPB highlights that companies risk violating federal consumer financial protection law if they do not provide sufficient information to consumers about their subscription before the consumer provides consent to it, or do not provide users with an easy option to cancel.

The CFPB outlined the type of cases where companies using dark patterns might be in breach of the consumer protection law:

- Failure to disclose in a clear manner the terms of the "negative option".
- Failure to receive the informed consent from the consumer.
- Misleading consumers who choose to cancel the subscription (for example, making consumers take multiple steps to cancel).

This warning follows similar developments in Germany where the financial regulator BaFin has also addressed dark patterns. The regulator emphasised that important statements, aspects or even warnings may not be obscured, weakened or misleadingly presented, expressly advising against "choice architecture" such as greying out relevant buttons.

### **Latest on green claims: new CMA investigation and updates to CAP guidance**

Please see [Advertising and marketing](#).

### **EDPB final report on cookie consent dark patterns**

Please see [Data protection](#)



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# Cyber security

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## DCMS launches call for views on cyber security risks of software

The Department for Digital, Culture, Media and Sport (DCMS) has launched a [call for views](#) on the cyber security risks of software used by businesses and organisations.

The DCMS is seeking views from organisations with an interest in software security and digital supply chains on how and where the government can share expertise and resources to address cyber risks from software and where the responsibilities should lie.

The aim of the consultation is to help understand how to mitigate cyber security risks from software, ensuring that digital products and services used are secure by design and create a more resilient digital environment.

The call for views closes at 11.45pm on Monday 1 May 2023.

## G7 publishes documents for cyber security assessment in financial sector

The G7 Cyber Expert Group, which was established in 2015 to address the issue of cyber security in the financial sector for G7 countries, has developed a set of [fundamental elements](#) for the effective assessment of cyber security.

The "Fundamental Elements for Effective Assessment" serves as a tool to help guide and drive internal and external discussions on risk management decisions that are critical to cyber security. They can also be of use in regulatory examinations, self-assessments, and independent review by third parties.

## OFSI issues new ransomware sanctions guidance

Please see [Sanctions and dual-use export control section](#).



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# Data protection

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## Update on the ICO's enforcement approach for communication service providers

The ICO published an [update](#) on 2 February 2023 to clarify its position on enforcing Regulation 5A of the Privacy and Electronic Communications Regulations 2003, following the removal of a prior statement on the topic which it published in January.

Under Regulation 5A, public electronic communication service providers (CSPs) are required to notify the ICO within 24 hours of becoming aware of a personal data breach.

In line with the ICO's three year strategic plan on reducing the data protection compliance burden on organisations, the ICO confirms that it will focus its resources on investigations where significant harm to individuals is more likely. The ICO therefore detailed a more proportionate enforcement approach for Regulation 5A, most notably the *"ICO will use its discretion not to take enforcement action against CSPs under Regulation 5C PECR if they fail to comply with the 24-hour notification requirement in relation to such incidents, provided that they are still notified to the ICO within 72 hours of the breach"*.

## UK PM overhauls government departments, including focus on innovation and tech

Shortly after his 100<sup>th</sup> day in office, the UK prime minister, Rishi Sunak, [announced](#) the creation of four new government departments, including a new Department for Science, Innovation and Technology (DSIT). One key consequence is the transfer of responsibility for digital and data policy from the Department for Culture, Media and Sport (DCMS) to the new DSIT.

The Research and Insights Director for IAPP (the International Association of Privacy Professionals), Joe Jones, who also previously worked at the DCMS as deputy director of International Data Transfers, said the creation of DSIT *"could pave the way for advances for the UK government's work to reform the GDPR,"* and secure new international *"data bridges"*. It remains to be seen how the reshuffle may – or may not – impact the progress or substance of the Data Protection and Digital Information Bill (which we identified as a "Hot Topic" for 2023 in [last month's Regulatory Outlook](#)).

## European Parliament Committee adopts draft Data Act

In a step forward for the EU Data Act earlier this month, the European Parliament's Industry, Research and Energy Committee [adopted](#) the draft "Regulation on Harmonised Rules on Fair Access to and Use of Data", which European legislators hope will help to innovate the use of data in the EU. Among other issues, the Committee sought to focus on strengthening the Data Act's protection of trade secrets and to set stricter conditions on business-to-government data requests.

The draft Data Act is set to be put to a vote by the full European Parliament during the 13-16 March 2023 plenary session.

## New ICO guidance for game designers on how to comply with the Children's Code

Following a push by the UK government last year to encourage organisations to focus on safeguarding children's data privacy, the ICO has issued a [series of recommendations](#) this month to help game developers better understand what steps to take to comply with the ICO's [Children's Code](#).

Commenting on these recommendations, Leanne Doherty, Group Manager at the ICO, said, *"Gaming plays a central part in so many young people's lives, and the community and interaction around games can be a child's first steps into the digital world. We want those first experiences to be positive ones, and the recommendations we've published today are there to support game developers"*.

The recommendations are based on the ICO's findings following a series of voluntary audits by the ICO within the video gaming industry.

## EDPB final report on cookie consent dark patterns

The European Data Protection Board has adopted a final [report](#) on its Cookie Banner Task Force outlining the EU authorities' opinion on the design and characteristics of cookie banners. The taskforce was launched in September 2021 following a number of complaints from the NOYB-European Centre for Digital Rights (a non-governmental organisation co-founded by privacy activist, Max Schrems) concerning these issues. The final report is the result of coordinated effort by the European data protection authorities (DPAs) led by France's [CNIL](#) and the campaign group.



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Given the number of complaints and countries affected as well as the high importance of the matter for the users' privacy, the EU DPAs agreed on a harmonised position in relation to handling complaints on cookie banners. The main highlights of the report are:

- The majority of authorities agreed that the lack of an option for a user to reject or not consent to cookies that would be as easy as to accept them is a breach of the ePrivacy Directive.
- The taskforce confirmed that pre-ticked boxes to opt-in do not constitute a valid consent under the General Data Protection Regulation or the ePrivacy Directive.
- In terms of cookie banner design, the information should enable users to easily understand what they are consenting to and how to do so.
- In terms of deceptive colours and contrast, the DPAs concluded that they cannot set a standard design for colour or contrast (for example, a highlighted button to "accept all" that leads the user to choose this option) of cookie banners and that these situations should be reviewed on a case-by-case basis.

### MEPs urge European Commission to reject EU-US adequacy

In a potential setback for the proposed EU-US adequacy decision, the European Parliament Committee on Civil Liberties, Justice and Home Affairs (Committee) has released a draft [opinion](#) which does not support the European Commission's decision to extend an adequacy decision based on the proposed EU-US Data Privacy Framework.

The Committee argue that the proposed EU-US Data Privacy Framework "*fails to create actual equivalence in the level of protection*" offered under the EU GDPR and that the European Commission should instead continue negotiations with the US for a mechanism which does ensure equivalence. It is not yet clear how influential this draft opinion will be on the European Commission.

### CJEU issues decision in DPO conflict case

Earlier this month the Court of Justice of the EU (CJEU) issued a [preliminary ruling](#) in the case between X-Fab Dresden and its former Data Protection Officer (DPO).

The ruling concluded that, based on Article 38 of the EU GDPR, DPOs can maintain other tasks and duties within their role, but only if they do not result in a conflict of interest (as determined by a national court on a case-by-case basis). The CJEU affirmed that DPOs should, "*be in a position to perform their duties and tasks in an independent manner*" and "*cannot be entrusted with tasks or duties which would result in him or her determining the objectives and methods of processing personal data on the part of the controller or its processor*".

This is an area where EU and UK GDPR may soon diverge. The CJEU has reaffirmed the requirement of independence of a DPO under the EU GDPR; in contrast the UK government is seeking to move away from this position under its planned reforms to UK data protection law (under the still draft Data Protection and Digital Information Bill, which we identified as a "Hot Topic" for 2023 in [last month's Regulatory Outlook](#) <https://bills.parliament.uk/bills/3322>).

### European Commission to propose new regulation on cross-border enforcement of the GDPR

According to the European Commission's [website](#), it is planning to propose a new regulation which will "*streamline cooperation between national data protection authorities when enforcing the General Data Protection Regulation (GDPR) in cross-border cases*" in the second quarter of this year.

At this stage, there is limited information on the proposal itself, but it is likely to be a response to the growing criticism from privacy activists and campaigners of the lack of enforcement from European data protection regulators.



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# Employment and immigration

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## Menopause and the workplace

The UK government has published its response to the recommendations made by the Women and Equalities Committee's report "Menopause and the Workplace" and has rejected calls to commence immediately section 14 of the Equality Act 2010 to enable employees to bring dual discrimination claims and make menopause a new protected characteristic. But it has recognised the need to take steps to support and retain women over the age of 50 in employment, as they represent the fastest-growing segment of the workforce.

Our [Insight](#) considers the measures accepted by the government that are of most significance to employers, and our webinar considers [practical steps](#) that employers can take to manage legal risk, including with regard to employment documentation and training needs.

## New directive threatens the use of self-employed contractor models in Europe

Use of self-employment models across the EU has been growing and attracting a lot of attention in relation to perceived abuses of workers' rights in areas such as deliveries and taxi services. In some countries, this is leading to a reduction in government tax revenues (in most countries, employment taxes are still the main source of government revenue).

The European Commission has been looking at this development, and there is now a draft directive that effectively means many self-employed contractors and gig workers in Europe (including those supplied via US or UK intermediaries) will have to be engaged as employees – there will effectively be a rebuttable presumption of employment status, which will be hard to overcome. Following a vote in the European Parliament on 2 February the directive seems likely to be adopted over the next year, with local implementation likely through 2024.

Many consultancies, platforms, staffing companies, and employers and agents of record may need to start planning changes to their commercial models and in some cases obtain new licences, work out how to deal with tax implications and pass on related costs to clients, as well as comply with a new range of regulations. New transparency requirements will also be introduced on how technology is used in organising the work of relevant workers. Users of self-employed contractors and consultants supplied via intermediaries will also have to make adjustments or face increased supply costs. If the directive works, a new government in the UK may be tempted to replicate it in the UK.

The changes that affected organisations will need to adopt may take many months to implement – and they will need to start planning soon. Read our [Insight](#) for more.

## Update on employment law legislative reforms in 2023

There are a number of legislative reforms affecting employers in 2023, including: The Retained EU Law (Revocation and Reform) Bill, a private members bill on the right to request predictable working patterns, a bill offering further redundancy protection on pregnancy and maternity leave, the Strikes (Minimum Service Levels) Bill, and developments on ethnicity pay gap reporting.

In addition, the prime minister has announced the creation of four new government departments, and the splitting up of the Department for Business, Energy and Industrial Strategy. The new Department for Business and Trade is expected to oversee employment policy and regulation.

For more detail on these developments, see our [Insight](#).



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## Environment

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## Environmental Improvement Plan 2023

On 31 January, the Department for Environment, Food and Rural Affairs (Defra) published the [Environmental Improvement Plan 2023](#). This plan is the first revision of [A Green Future: Our 25 Year Plan to Improve the Environment](#) that was published in 2018.

The revised plan reinstates what was already set out in the 25-year plan and outlines some of the forthcoming actions that Defra intends to take in order to make further progress. These include:

- implementing the Environment Act 2021, which includes launching local nature recovery strategies to identify areas to create and restore habitat and achieving "net gains" in biodiversity to enhance the built environment;
- Supporting businesses to implement extended producer responsibility for packaging from 2024 and introduce a deposit return scheme for plastic and metal drinks containers from October 2025 to drive higher recycling rates (see our [previous Regulatory Outlook](#) for more);
- implementing due diligence requirements set out in the Environment Act 2021 to tackle illegal deforestation in supply chains;
- introducing a mandatory digital waste-tracking service to modernise existing waste record keeping to enable regulators to better detect illegal activity and tackle waste crime, including fly-tipping, illegal waste sites, and illegal waste exports;
- banning the export of plastic waste to countries that are not members of the Organisation for Economic Cooperation and Development; and
- publishing the Land Use Framework in 2023 to set out how Defra will balance multiple demands on land including climate mitigation and adaptation.

## Environmental Targets (Biodiversity) (England) Regulations 2023

On 30 January 2023, the [Environment Targets \(Biodiversity\) \(England\) Regulations 2023](#) came into force.

These regulations are made to create legally binding targets in the priority area of biodiversity: to halt the decline in species abundance by 2030, reverse the decline by 2042, reduce the risk of species extinction by 2042 and to restore or create in excess of 500,000 hectares of wildlife-rich habitat outside of current protected sites by 2042. The regulations aim to ensure that the legal requirement under the Environment Act 2021 for the government to set a target that will halt the decline in species abundance by 2030 is met.

## Prime minister creates new Department of Energy Security and Net Zero

On 7 February 2023, it was [announced](#) that Rishi Sunak, the UK prime minister, had created four government departments: a new Department for Energy Security and Net Zero; a dedicated Department for Science, Innovation and Technology; a combined Department for Business and Trade; and a "refocused" Department for Culture, Media and Sport. The full transition programme will complete over the coming months.

The Department for Energy Security and Net Zero will aim to ensure the UK meets its goal to be net zero by 2050 and legally binding carbon budgets. The body will also support the development of markets in renewables, nuclear and other technologies to decarbonise industry.

The ["Making Government Deliver for the British People" policy paper](#) outlines further details on the changes.

## Guidance on emerging techniques for hydrogen production with carbon capture

The Environment Agency has published new [guidance](#) this month on emerging techniques for hydrogen production with carbon capture. The guidance is not a regulatory requirement but sets out and advises on the best practices for preventing or minimising the environmental impact of industrial hydrogen production.

It covers large-scale industrial plants: producing hydrogen using methane (for example, from natural gas) or refinery fuel gas; capturing the CO<sub>2</sub> produced within the process, carbon capture, or using post-combustion carbon capture to make it ready for permanent geological storage.

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## Environment

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The guidance will be useful for operators when designing their plants and preparing their application for an environmental permit, as well as for any other organisation that wants to understand how the environmental regulations and standards are being applied.



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## Environmental, social and governance



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## Environmental, social and governance

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### Government confirms it will introduce legislation to tackle illegal deforestation in supply chains

The Environment Act 2021 introduced [new provisions](#) to make it illegal for larger businesses operating in the UK to use forest-risk commodities that have been grown on land that is illegally occupied or used.

In the recently published [Environment Plan 2023](#), the government stated that it will be introducing these provisions through secondary legislation at the "*earliest opportunity*".

Businesses in scope will also be required to undertake a due diligence exercise on their supply chains, and to publicly report on this exercise every year, or risk fines and other civil sanctions.

### Government outlines how to tackle modern slavery risks in government supply chains

Please see [Regulated procurement](#).



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## Fintech, digital assets, payments and consumer credit

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# Fintech, digital assets, payments and consumer credit

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## Regulation of Buy-Now Pay-Later: HM Treasury consultation on draft legislation

On 14 February 2023, HM Treasury published its [final consultation](#) on the proposed legislative changes to bring Buy-Now Pay-Later (BNPL) products into scope of the UK Consumer Credit Act 1974 (CCA), and the Financial Conduct Authority (FCA) regulation. The deadline for comments is 11 April 2023.

The government is proposing to limit the scope of regulation to BNPL agreements that are offered by third party lenders (unless they fall within an exemption). To achieve this, HM Treasury has published draft legislation in the form of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2023. When finalised this statutory instrument will amend Article 60F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) as well as other regulations.

The outcome of the amendments to Article 60F of the RAO will mean that agreements will become regulated where they are borrower-lender-supplier agreements for fixed-sum credit to individuals or relevant recipients of credit which are:

- interest-free, repayable in 12 or fewer instalments within 12 months or less;
- where the credit is provided by a person that is not the provider of goods or services which the credit agreement finances (third-party lenders); and
- not exempt as a result of falling within one of the exemptions (there are a number of exemptions).

The consultation also confirms the government's proposed approach to the regulatory controls that would apply to agreements that are brought into regulation. The government has set out that:

- merchants would be exempt from FCA regulation (as credit brokers) where they offer newly regulated agreements as a payment option;
- all advertising and promotions of newly regulated agreements would fall within the financial promotions regime;
- certain provisions in the CCA would be disapplied in relation to newly regulated agreements, particularly those relating to the provision of detailed pre-contractual information to consumers where FCA rules would apply instead; and
- the Financial Ombudsman Service jurisdiction would be expanded to cover newly regulated agreements.

The FCA is expected to publish a consultation on the proposed rules shortly. New rules are anticipated to be made later in 2023, when parliamentary time allows. There is expected to be a transition period allowing firms time to familiarise themselves with the regime and make necessary changes to their business models ahead of the day on which the regulation commences.

The consultation also proposes a temporary permissions regime designed to enable firms to transfer into the new regulatory regime before seeking full authorisation at a future date.

## HM Treasury consultation and further call for evidence on regulatory approach to cryptoassets

On 1 February 2023, HM Treasury published a [consultation paper](#) on the UK regulatory approach to cryptoassets. Comments can be made until 30 April 2023. Once legislation is laid, the FCA will consult on its detailed rules for the sector.

The consultation follows the government's commitment in April 2022 to introduce a new regulatory regime for cryptoassets. It sets out proposals for the future regime and marks the next phase of the government's approach to regulating cryptoassets. The consultation focuses on the future UK regulatory framework for cryptoassets used within financial services, rather than the wider application of distributed ledger technology (DLT) in financial services or the use of cryptoassets outside financial services.

HM Treasury intends to create a number of new regulated or designated activities tailored to the cryptoasset market where these activities mirror regulated activities performed in the traditional financial services industry under the RAO. These include:

- Operating a cryptoasset trading venue.
- Dealing in cryptoassets as principal or agent.

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# Fintech, digital assets, payments and consumer credit

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- Arranging (bringing about) deals in cryptoassets and making arrangements with a view to transactions in cryptoassets.
- Operating a cryptoasset lending platform.
- Payment activities relating to cryptoassets.

For newly defined RAO activities, firms which are already authorised under the Financial Services and Markets Act 2000 and intend to undertake the activity will generally need to apply for a variation of their permission from the FCA (and the Prudential Regulation Authority for dual-regulated firms). Regulatory permissions will not be automatically granted for firms that are already authorised.

HM Treasury also sets out its proposed requirements for a market abuse regime in the proposed crypto regulatory framework and issues a call for evidence relating to decentralised finance, certain other cryptoasset activities and sustainability in the context of regulating cryptoassets.

## **Financial promotions: HM Treasury policy statement on exemption for cryptoasset businesses approving own financial promotions and FCA statement on the new UK financial promotions regime**

On 1 February 2023, HM Treasury published a [policy statement](#) on regulating certain types of cryptoasset financial promotions.

HM Treasury published its response to its consultation on bringing certain qualifying cryptoassets within scope of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 in January 2022. Since HM Treasury issued its response, and the FCA consulted on its proposed detailed rules for high-risk investments, HM Treasury has received feedback on potential unintended consequences for the industry.

There is concern that the requirement to be authorised means most cryptoasset businesses would be unable to communicate their own promotions, unlike other financial services firms that are typically authorised. There is also concern around a lack of suitable authorised persons in the market willing and able to approve crypto promotions.

In response, HM Treasury is introducing a bespoke exemption from the financial promotion restriction in section 21 of the Financial Services and Markets Act 2000 for certain financial promotions relating to qualifying cryptoassets. This will enable cryptoasset businesses registered with the FCA under the Money Laundering Regulations 2017 (MLRs 2017), who are not otherwise authorised persons, to communicate their own financial promotions in relation to qualifying cryptoassets.

Registered cryptoasset businesses relying on this exemption will be unable to approve financial promotions or to communicate their own financial promotions in relation to other controlled investments. Registered cryptoasset businesses seeking to use this exemption will not require any further FCA registration or authorisation.

The government will introduce legislation giving effect to the planned cryptoasset financial promotions regime, including this exemption, as soon as parliamentary time allows. As part of this, HM Treasury will confer powers on the FCA to enable it to make rules applying to financial promotions communicated in reliance on the exemption.

HM Treasury intends the exemption to be temporary, and will revisit its approach to the exemption as part of its wider review of the future regulatory approach to cryptoassets.

Further, on 6 February 2023, the FCA published a [statement](#) on the new UK financial promotions regime it plans to introduce for firms that market cryptoassets to UK consumers, where it refers to the policy statement published by HM Treasury discussed above.

The FCA:

- Confirms that it will publish its final rules for cryptoasset promotions once the relevant legislation has been made.
- Explains that it expects to take a consistent approach to cryptoassets to that taken in its new rules for other high-risk investments.
- Encourages all firms, including those based overseas, to get ready for the new regime, and commits to take "*robust action*" where it sees firms promoting cryptoassets to UK consumers in breach of the requirements. This may include taking down websites that are in breach, issuing public warnings, and enforcement action.

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# Fintech, digital assets, payments and consumer credit

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- Confirms that cryptoasset businesses already registered under the MLRs 2017 will not have to apply for any further permissions to communicate their own promotions.

## FCA feedback on applications for cryptoasset business registration

On 25 January 2023, the FCA published a [webpage](#) containing feedback on good and poor-quality applications made by cryptoasset business for registration under the MLRs 2017.

On the webpage, the FCA sets out its expectations of applicants during the application process. The bulk of the guidance relates to the information that an applicant should submit as part of its application, including:

- **Business plans.** An applicant's business plan should include details of its business model, roles and responsibilities of business partners, sources of liquidity, detailed customer journey and flow-of-funds charts. Applicants should not submit business plans that do not include forecasts or that provide unrealistic forecasts.
- **Products and services.** Applicants should provide a comprehensive and accurate description of their products and services.
- **Risk assessment and management.** Applicants should design a business-wide risk assessment (BWRA) that is tailored to its business model. The BWRA should identify and assess any proliferation financing risks to which the applicant's business is subject. The FCA will not approve an application where the applicant has an incorrect understanding of the risks associated with cryptoasset products.
- **Policies, systems and controls.** Applicants should establish policies and systems to manage and mitigate appropriately the risks identified in the BWRA. The FCA will not approve an application where the applicant has an underdeveloped AML framework or a weak governance structure.

Since it started supervising UK cryptoasset businesses under the MLRs 2017, the FCA has determined over 260 applications for registration. Of these, 15% were approved, 74% were refused or withdrew their applications and 11% were rejected.

## Treasury Committee report identifies concerns about PSR's proposed approach to introducing mandatory reimbursement for APP fraud

On 6 February 2023, the House of Commons Treasury Committee published a [report](#) on the Payment Systems Regulator's (PSR) proposals to introduce mandatory reimbursement for authorised push payment (APP) scams.

The report sets out the committee's concerns about the PSR's proposal to delegate the mandatory reimbursement of APP fraud to Pay.UK through the Faster Payment scheme rules. Specifically, the committee considers that the proposal is flawed because Pay.UK is an industry body and therefore has an inherent conflict of interest; Pay.UK's governance structures and lack of regulatory powers provide opportunities for banks and other payment service providers (PSPs) to delay implementation of the process further; and Pay.UK lacks the enforcement powers of a regulator.

The committee recommends that the PSR revises its plans to incorporate using its own powers of direction over PSPs. It considers that this will give the PSR more control over the process and result in better outcomes for consumers.

Alongside its report, the committee has also published:

- A [letter](#) it has sent to the Bank of England (BoE), asking whether the BoE is taking similar measures to reduce levels of APP scams using the Clearing House Automated Payment System (CHAPS).
- A [letter](#) it has sent to the FCA, asking whether the FCA intends to implement similar measures for "on-us" fraud, where the victim and fraudster hold accounts with the same PSP.
- A [letter](#) to the PSR, asking why the PSR has proposed a £100 minimum threshold and a £35 excess for reimbursement.
- A [letter](#) it has sent to the Financial Ombudsman Service (FOS) asking whether the slow resolution of reimbursement disputes by the FOS could undermine the PSR's proposals.

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# Fintech, digital assets, payments and consumer credit

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The PSR has also published its [response](#) to the committee's report. It notes that the report includes a misinterpretation of its proposal on use of its powers and that it has clarified this to the committee. It states that it will publish its final position in May 2023.

## BoE and HM Treasury consult on case for retail central bank digital currency

On 7 February 2023, the BoE and HM Treasury published a joint [consultation paper](#) setting out their assessment of the case for a retail central bank digital currency (CBDC).

The authorities consider it likely that a digital pound will be needed in future, and preparatory work is justified. The aim of the consultation paper is to seek feedback on the policy and technical work carried out so far, with a view to informing a future decision on whether to build and launch a digital pound. The authorities are also seeking feedback on current proposals on the form and functions of a digital pound.

A [technical working paper](#) produced by the BoE has been published alongside the consultation paper. It focuses on technical requirements and design considerations for the digital pound.

Interested parties are invited to give their views on both papers until 7 June 2023.

The authorities' work will now move onto a "design phase" to ensure that development of a digital pound can be accelerated if a decision is taken to build it. They explain that a decision about whether to implement a digital pound will be taken around the middle of the decade and will largely be based on future developments in money and payments. The earliest stage at which the digital pound could be launched would be the second half of the decade.

In addition, the BoE has recently published a [speech](#), given by Jon Cunliffe, BoE Deputy Governor, Financial Stability, on a CBDC.

In his speech, Mr Cunliffe talks about the joint BoE and HM Treasury consultation paper discussed above. In particular, he sets out some of the thinking behind the consultation paper and the next steps proposed.

Points of interest include the following:

- "Public" money (that is, money issued by the state for general use), will become increasingly less useful and usable. New forms of money are likely to emerge, offering new possibilities, issued by new as well as established players. This raises the question of how the UK can continue to ensure that all types of money used in the UK are denominated in sterling, remain safe and that each is interchangeable on demand with all other types of money without loss of value.
- The experience of digitalisation is that new products and services, enabled by new technology, can be adopted rapidly at scale. The government has identified several characteristics of digital markets that may lead to concentration, which suggest that the future development of private money issuance could tend towards a small number of firms taking a significant market share. Although concentration and market power are not inherently harmful and may reflect innovative products and services, they can damage consumer choice, competition and innovation.
- If designed appropriately, a digital pound could complement and support new forms of private digital money and payment services, for example, by acting as the "bridging asset" between different platforms enabling convertibility. By establishing technical standards available to all, it could help ensure interoperability between different platforms.
- The planned research and development work is expected to have important benefits for both the BoE and the FinTech industry even if the eventual decision is not to introduce a digital pound.
- A digital pound may not be best suited for wholesale markets as there are other routes that might, more quickly and effectively, allow for new forms of digital representation ("tokenisation") of central bank money to be used in financial transactions.

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## Fintech, digital assets, payments and consumer credit

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## Food law



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## Food law

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### CMA launches programme to tackle grocery unit pricing issues

The Competition and Markets Authority (CMA) has [announced](#) that it has launched a programme of work looking into unit pricing practices online and instore in the groceries sector.

This follows on from the CMA's response to the [groceries "super complaint" by Which? in 2015](#), where it considered pricing and promotional practices in the groceries market, and which found that complexities and inconsistencies with unit pricing may prevent people from spotting which deal gives them the best value.

The newly launched programme will consider the following:

- if the unit pricing issues identified during the "super complaint" continue to be an issue now;
- the compliance with the law by retailers; and
- consumer awareness and use of unit pricing information.

The programme is currently at an early stage and the CMA has not produced a view on the issues identified, but it expects to publish an update on this later in 2023.

### Reporting requirements to measure the health, environmental sustainability, and animal welfare impacts of food

The Grocer magazine has reported that the government is planning to move forward with a recommendation that was proposed in the [Dimbleby report](#) to create mandatory reporting requirements for food companies to measure the health, environmental sustainability and animal welfare impacts of food.

It is reported that the Food Data Transparency Partnership (FDTP), which was formed under the [government's food strategy](#), will have a five-year remit to work together with a number of businesses and government bodies (including Defra) to bring forward these requirements.

The government strategy outlined that FDTP will ensure there is *"a robust framework for tackling some of the fundamental questions for our food system, raising transparency and responsibility"*.

### Groceries Code Adjudicator's Annual Survey for supplier feedback

Direct and indirect suppliers (and other stakeholders) have until 26 February to [provide feedback to the Groceries Code Adjudicator](#). See [more information](#). This is intended to be a survey for confidential feedback on experiences in dealing with the 14 large retailers in the UK.

Following this feedback, it will then be interesting to see any general reports of experiences and whether any updates are made to the Grocer's Code.

### Consultation on alcohol advertising in Scotland

The Scottish government has recently launched a [consultation](#) into alcohol advertising and promotion in Scotland, which will close on 9 March 2023.

A particular focus for this consultation has been the exposure of alcohol marketing in relation to children and young people. As a result of this consultation, further restrictions on alcohol advertising in Scotland are likely to be introduced in the future.



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## Health and Safety

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# Health and Safety

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## Developers given six weeks to sign contract to fix unsafe buildings

The government has recently written to certain developers asking them to sign the [developer remediation contract](#), which requires them to take responsibility for all necessary work to address fire-safety defects arising from design and construction of buildings 11 metres and over in height that they developed or refurbished over the last 30 years in England.

The government has set a six-week deadline for the contract to be signed, which needs to be done no later than Monday 13 March 2023, failing which, developers could face "*significant consequences*". These consequences will be introduced under the Responsible Actors Scheme with legislation bringing this in due this spring. Ultimately this will allow the secretary of state to block developers that have not signed the contract or that have failed to comply with its terms from carrying out any development in England.

Developers need to carefully review its application as to whether they are within scope and, if so, to consider how it would affect current property portfolios.

## Risks posed by falling trees

In 2023, two Health and Safety Executive (HSE) prosecutions led to two separate businesses being handed six-figure fines for failing to identify the extent of decay or to manage the risk posed by trees. These cases highlight the importance of businesses undertaking necessary risk assessments to prevent falling trees that could cause harm to individuals. In light of these recent prosecutions, businesses should ensure they are familiar with the [HSE guidance](#) on managing risks from falling trees or branches and appropriate risk assessments are put in place.

## Building Safety Act 2022: government publishes consultation response and releases draft legislation

The government has published its response to its [consultation](#) on its proposals for the in-occupation phase for higher-risk buildings in the new safety regime for occupied higher-risk buildings under the Building Safety Act 2022 (BSA). Following its response, the government has also published the draft [Higher-Risk Buildings \(Key Building Information etc.\) \(England\) Regulations 2023](#), which details the parts of a building for which an Accountable Person is responsible and the building information provisions that will apply to occupied higher-risk buildings.

The draft regulations:

- Set out what information comprises building information that must be submitted to the Building Safety Regulator (BSR) by the Principal Accountable Person alongside their application for registration. All higher-risk buildings (whether new or existing) will need to be registered with the BSR once the new regulations come into force.
- Clarify the information required in relation to the use of the building, materials used, fixtures on external walls, the structure, staircases, energy supply, energy storage and emergency planning.
- Set out the duties on a Principal Accountable Person and Accountable Person regarding submitting building information to the BSR and keeping the information up to date.
- Mandate that building information must be provided in electronic form.
- Assign responsibility for the BSA duties that apply over certain parts of the building once the higher-risk building is occupied between specific accountable persons, principally based on their legal ownership or the area for which they have a repairing liability as set out in a lease or under legislation.

The duties of the Accountable Person are significant and compliance will rely heavily on the sufficiency of the information provided about their building.

For those in development it will be essential that such information is captured by the developer, particularly where it relates to fire safety. For existing higher-risk buildings it may be challenging to obtain historic information and while the BSR's focus is likely to be more on the current management of risk (such as the systems in place, inspections and maintenance regimes), it may be necessary for intrusive inspections to be conducted in order to evidence how the building was built.

## House of Lords scrutinises REUL Bill

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## Health and Safety

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The Retained EU Law (Revocation and Reform) Bill is at the Lords Committee Stage over the next couple of weeks. Proposed amendments being discussed include extending the Sunset Clause deadline from 31 December 2023 to 31 December 2028 for all retained EU law caught by the bill regulations, to specific carve outs for certain regulations (a number of food, product and H&S regs). Without these amendments (or, if the bill passes in its current form, without proactive steps being taken by ministers ), at the end of this year, the UK will get rid of a swathe of EU-derived regulations including over 100 regulations that provide more prescriptive information about how health and safety law should operate in the UK. See our [Insight](#) for more.



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## Modern slavery

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## Modern slavery

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### Government outlines how to tackle modern slavery risks in government supply chains

Please see [Regulated procurement](#).



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## Products

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# Products

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## New 'Windsor Framework' agreed to amend Northern Ireland Protocol

On 27 February, the UK prime minister, Rishi Sunak, and European Commission president, Ursula Von der Leyen, reached an agreement to change the original Northern Ireland Protocol by introducing the new [Windsor Framework](#) which amends the text and provisions of the protocol.

Under the new framework, a new "[Green Lane](#)" for goods travelling from Great Britain into Northern Ireland will be introduced. Businesses will be able to access the green lane via the new UK Internal Market scheme, which will replace the current UK Trader Scheme.

The green lane will also be open to food retail products that will come under the [Northern Ireland Retail Movement scheme](#), and which will come into force in autumn 2023. Within the food sector, they have also agreed, among other things, to remove health certificates for individual food products and remove bans on British products moving to Northern Ireland, including products such as chilled Lincolnshire sausages.

In regards to [medicines](#), it has been agreed that those medicines approved by the MHRA will be able to be placed on the market in Northern Ireland. This means manufacturers of medicines will only need approval from the MHRA to supply medicines to Northern Ireland and not the European Medicines Agency. Medicines going from Great Britain to Northern Ireland will also travel via the new green lane referred to above, meaning a reduction in the customs paperwork.

Other agreements made in the framework include: changes to alcohol duties, cut on VAT on energy saving materials, and a new "Stormont Brake".

The government has noted that businesses do not need to take any action right now and should move goods in the same way as they do now. It will be consulting with businesses in due course ahead of implementing any changes introduced by the arrangements under the new framework.

## Medical Technology Strategy

On 3 February, the Department of Health and Social Care published its first [medical technology \(medtech\) strategy](#). This encompasses a vision focused on three objectives: right product, right price, right place. It aims to ensure health and care systems and patients have access to innovative medical technologies. The strategy builds on and supports the [Life Sciences Vision](#) with the aim to secure the UK's position as a "*global science superpower*."

Four priority areas for action are set out in the strategy:

- Resilience and continuity of supply – including increasing UK medtech manufacturing capability and capacity.
- Innovative and dynamic markets – enhancing clear demand signalling for industry and streamlined, class-based, product evaluation.
- Enabling infrastructure – ensuring collaboration between industry, government and the clinical and commercial communities of the health and care system.
- Specific market focusses – increase the focus on medtech within the community.

The government's focus will also be on educating clinicians on medtech products and increasing benefits to the life sciences sector, such as the upskilling of workers and boosting focus and investment in research and development.

An implementation plan for the strategy will be published in early 2023, and the government expects to see an increased focus of the strategy over the next five to 10 years.

## UK to introduce regulatory framework for point of care manufacturing

The Medicines and Healthcare products Regulatory Agency (MHRA) [announced](#) at the end of January that the UK will be the first country to introduce a tailored framework for the regulation of innovative point of care (POC) products, following a [consultation](#) that ran from August to September 2021. Examples of POC products are blood glucose analysers and pregnancy tests.

The new framework will ensure that there are no regulatory barriers to innovative manufacturing and that products made have the same assurances of safety, quality, and effectiveness as those for traditional medicinal products. The aim of this framework is to bring a range of benefits to:



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## Products

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- **Patients and carers** – by providing access to new and more personalised treatments in a timely and more convenient manner with the potential for less travel and time spent in hospitals.
- **Healthcare professionals** – by providing a greater range and more effective treatment options and improve patients' adherence to those treatments.
- **Innovators** – by providing clear regulatory expectations and enabling easier product development.

The framework will apply to all POC products manufactured in the UK once implemented, including a range of advanced therapy medicinal products, such as cell therapy, gene therapy and tissue-engineered products, 3D-printed products, blood products and medicinal gases.

Legislation will be introduced to Parliament later this year to amend the UK's legislation on human medicines and clinical trials in order to implement the new framework.

### Commission launches call for evidence for its proposal on ecodesign for sustainable products

The European Commission has opened a [call for evidence](#) for its ecodesign for sustainable products proposal, which aims to make products sold in the EU subject to performance and information-related requirements to ensure greater sustainability (see our [Insight](#) for more on the proposal). The consultation is focusing on what the new product priorities under the [proposed Ecodesign for Sustainable Products Regulation](#) should be.

The Commission is seeking views on the categories of new products and measures to address so that it can set priorities transparently and inclusively. The accompanying [consultation document](#) outlines that a number of new products and horizontal measures were identified as potentially suitable for action under the proposal:

- **End-use products.** Textiles and footwear, furniture, ceramic products, tyres, detergents, mattresses, lubricants, paints and varnishes, cosmetics, toys, fishing nets and gears, and absorbent hygiene products.
- **Intermediary products.** Iron and steel, non-ferrous metals, aluminium, chemicals, plastic and polymers, paper, pulp paper and boards, and glass.
- **Horizontal measures.** Durability, recyclability, post-consumer recycled content.

The call for evidence closes on 25 April 2023. The Commission is aiming to adopt a communication in the first quarter of 2024.

### Government publishes response to Regulatory Horizons Council report on medical devices

In 2021, the Regulatory Horizon Council (RHC) published its [report](#) on medical devices regulation that addressed the overarching question: *"How can the UK encourage international investment, innovation and improve safety in the medical devices area through regulatory and non-regulatory changes?"*

At the end of last month, the government published its full [response](#) to the report. The government noted its plans to amend the regulatory framework in order to *"increase patient safety and promote innovation, thereby growing the life sciences sector in the UK"*. Additionally, the government states that it will increase the number of UK designation approved bodies to assist with the transition to the UKCA mark, increase international engagement and amend in-vitro diagnostics (IVD) regulation to ensure the fast-tracking evaluation of new IVDs can occur in response to pandemics.

While the government's response does not provide us with an exact timeline of when it will be implementing these changes, it gives businesses a clear indication of what is coming down the line.

### CTIS mandatory since 31 January for all new clinical trial applications

The European Medicines Agency recently [announced](#) that from 31 January 2023 the use of the Clinical Trials Information System (CTIS) would become mandatory for new clinical trial applications.

CTIS is the information system supporting the implementation of the Clinical Trials Regulation in the EU, which changes the way that applications for authorisation of clinical trials in the EU are submitted, how the clinical trials are authorised and supervised. Further details on CTIS can be read [here](#).

### Registration for Scottish Deposit Return Scheme closes next month

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## Products

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With the start of the Scottish Deposit Return Scheme [approaching](#) in August, the deadline to be a part of the scheme for businesses that wish to manufacture or sell drinks in Scotland to register with the Scottish Environment Protection Agency (SEPA) is **1 March 2023**. Failure to register may result in businesses not being able to sell drinks in Scotland after August 2023.

### Government confirms the introduction of legislation to tackle illegal deforestation in supply chains

Please see [ESG](#).



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## Regulated procurement

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# Regulated procurement

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## Government outlines how to tackle modern slavery risks in government supply chains

The Cabinet Office has published [procurement policy note \(PPN\) 02/23: Tackling Modern Slavery in Government Supply Chains](#), which outlines actions contracting authorities must take to ensure modern slavery risks are identified and managed in government supply chains, for both existing and new contracts. This PPN applies to central government departments, their executive agencies and non-departmental public bodies and NHS bodies.

The [guidance](#) published alongside the PPN sets out details on identifying and managing the risks in new contracts, tackling modern slavery risks in existing contracts (including advice on monitoring and supply chain mapping) and advice on what steps to take when modern slavery is identified within the supply chain.

Contracting authorities that fall within the scope of this PPN should read and become familiar with this guidance it. The PPN is applicable to new procurement activity from 1 April 2023.

## PPN 01/23 - Requirements to publish on Contracts Finder

The Cabinet Office has published [PPN 01/23](#) and [guidance](#) for in-scope organisations on how to publish procurement information on its platform service Contracts Finder.

The new PPN replaces PPN 09/21 and clarifies that the contract value limits have been raised to £12,000 for central government authorities and to £30,000 for sub-central contracting authorities and NHS Foundation Trusts.

## UK NHS suppliers required to commit to net zero by 2050 or lose out on future contract opportunities

The NHS has set itself a target to achieve [net-zero emissions](#) by 2040. From April 2023, in every procurement for a contract above £5 million per year, the NHS will seek an express commitment from bidders to reach net zero by 2050. This commitment needs to be demonstrated by a bidder in a Carbon Reduction Plan. Read more about this in our [Insight](#).

Publishing a Carbon Reduction Plan on a website homepage means businesses need to be prepared to be held accountable for their commitments to net zero. Crucially, any commitments an organisation makes need to be evidence-based and there must be a willingness to implement carbon reduction projects and reach targets.

It is also important for businesses to have the next NHS milestone in mind when considering their position as a supplier. The April 2023 milestone represents a big move by the NHS towards reaching its net zero goals – but requirements will get more strict from then on. The most onerous change will be when the individual carbon footprint of a single product will need to be measured, monitored and (potentially) reduced, by 2028.

## Defence Sub-Committee launches inquiry into MOD equipment procurement process

The UK Parliament Defence Sub-Committee has launched an [inquiry](#) into Defence Equipment and Support (DE&S), which is the body that manages a range of defence equipment and service purchases for the Ministry of Defence. The inquiry will examine the strengths and weaknesses of DE&S, its effectiveness and efficiency and determine what can be learned from the UK's history of defence procurement and current international comparators. The inquiry closes on 31 March 2023.

The sub-committee's chair on defence equipment and support, Mark Francois MP, said: *"This inquiry will place DE&S under the microscope, examining the agency's strengths and weaknesses. It will ask how effective our current approach to procurement is and whether we have the necessary skills and incentives. We'll also look to lessons from the past and overseas to establish what more we can do to improve the DE&S' performance."*



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## Regulated procurement

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# Sanctions and Export Control

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# Sanctions and Export Control

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## OFSI issues new ransomware sanctions guidance

On 9 February 2023, the Office of Financial Sanctions Implementation (OFSI) published [new guidance](#) on sanctions in ransomware cases.

The guidance explains how making funds available to "threat actors", such as paying ransomware – and including crypto assets – is prohibited under the [Cyber \(Sanctions\) \(EU Exit\) Regulations 2020](#). Breaches of these financial sanctions is a criminal offence and may result in a custodial sentence or a monetary penalty or both.

Organisations are encouraged to implement robust cyber security and incident management systems in order to prevent and manage serious cyber attacks.

The government publishes a [collection of guidance](#) offering further information on the UK's cyber sanctions regime and the [full UK Sanctions List](#), as well as [updates](#) on specific sanction action that has been taken.

## New Russia trade sanctions

On 24 February 2023, the UK government announced a new package of internationally co-ordinated sanctions and trade measures against Russia.

These include sanctions on Russian individuals and entities, as well as export bans on every item Russia has been found using on the battlefield to date, including aircraft parts, radio equipment and electronic components. The UK will also ban the import of 140 goods including iron and steel products processed in third countries.

For wider guidance in relation to sanctions and export control please see our website, and view the full UK Sanctions List [here](#).

## UK government publishes updated Russia services sanctions guidance

On 7 February 2023, the Department for International Trade (DIT), in conjunction with the Export Control Joint Unit, published [updated guidance](#) on supplying professional and business services to a person connected with Russia.

The guidance includes a new section detailing the professional and business services sanctions which were prohibited from 16 December 2022. These include:

- Advertising.
- Architectural and engineering.
- Auditing.
- IT consultancy and design services.

Illustrative examples of activities that are not in scope of the sanction – and are therefore permitted – are given, as well as guidance on applying for licences and what information to include in the cover letter for licence applications under [Regulation 54C of the Russia Regulations](#).

## OFSI publishes update on oil price cap

The UK, in partnership with the G7 countries, Australia and the European Union, has implemented a ban on the seaborne transportation of [Russian refined oil products](#) from Russia to and between third parties, that came into effect on 5 February 2023. OFSI has issued a [General Licence](#) to implement a "price cap exception", as well as a wind-down General Licence for oil products.

The UK and coalition partners previously [implemented](#) a ban on the import of Russian crude oil that came into effect on 5 December 2022.

[Updated guidance](#) on the Maritime Services Prohibition and the Oil Price Cap has also been released.

(Wider guidance in relation to sanctions and export control may be found on our [website](#), and further reading on the Russian oil services ban may be found [here](#).)

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## Sanctions and Export Control

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**Telecoms**

## Ofcom reviews telecoms price rises linked with inflation

Ofcom has launched a review to examine whether phone and broadband customers are given sufficient certainty and clarity over inflation-linked, mid-contract price rises and when they can be expected to pay.

The regulator is concerned about the uncertainty that consumers face about future price rises on the basis of inflation. Research has found that a third of mobile/broadband customers do not know whether their provider can increase their price. One of the regulator's main priorities is to look specifically into the practice of in-contract price rises linked to inflation and percentage changes, which a number of telecoms firms introduced in 2021.

Consumer law does not prevent companies from increasing their prices during a contract period, provided it is done fairly. Ofcom has rules in place which mean that providers who specify price rises in contracts must make this clear before customers sign up. The regulator launched an enforcement programme into this in [December last year](#).

In the midst of a cost of living crisis, it is essential for customers to have sufficient certainty about the prices they will have to pay during their contracts. That said, telecoms providers also face cost rises. Ofcom does not set retail telecoms prices and looks to support competition in this sector. For competition to work, consumers have to be able to shop around and have a clear understanding of the prices they will pay.

## Ofcom consultation on Openreach FTTP pricing offer

Ofcom is consulting on a pricing offer for full-fibre broadband that Openreach intends to introduce [from 1 April 2023](#).

Under the regulator's rules, Openreach must notify Ofcom of certain offers 90 days before they come into effect. This is so Ofcom can prevent Openreach from harming competition, by restricting any offers that are found to be anti-competitive.

In December 2022, Openreach notified Ofcom of its new wholesale pricing arrangements for its new full-fibre service called "Equinox 2". Ofcom has provisionally concluded that it should not prevent Openreach from introducing this offer on the basis that the offer is not anti-competitive and is consistent with the rules Ofcom previously consulted on in its market review in 2021.

Ofcom invites responses to the consultation by 5pm on 4 March 2023, before deciding how to proceed. The intention is to publish the final decision before the end of March 2023.

## EU confirms desire for a single telecoms market

The European Commission has confirmed its desire for the bloc to have a single telecoms market.

The Commission is looking to balance the anti-competitive effects of lesser competition with potential efficiencies for having a more consolidated market. It is of the opinion that *"Europe needs truly pan-European telecom players and a single telecoms market"*.

Although the UK is no longer in the EU, a single European mobile market would have an impact on all of its mobile network operators, especially those that have operations in several European countries or those that are owned by entities based in mainland Europe.

## Key dates for diary

Date	Description	Summary
March 2023	Ofcom Plan of Work	Ofcom plans to publish its finalised "Plan of Work" for 2023/24 setting out the areas of focus for the next financial year.
Spring 2023	Ofcom consultation into digital content gateways and online communications services to be published	
3 April 2023	General Conditions updates	Updates to General Conditions - changes to B3, C1, C7 and Definitions to implement the European Electronic Communications Code and introduce

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## Telecoms

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		a new process for switching landline and broadband services with effect from 3 April 2023
Autumn 2023	Ofcom responses to cloud services market and net neutrality reviews to be published	
31 March 2024	Telecoms Security Rules	"Tier 1" telecoms providers will now be expected to implement the most straightforward and least resource intensive measures (for example, maintaining accurate records of all externally-facing systems) by 31 March 2024.



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