Regulatory Outlook

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

The spotlight development this month is that a general election has been called in the UK, which has affected the progress of some pieces of upcoming legislation and regulatory reform. As well as seeing what impact the election has had on some of the regulatory areas we discuss, see our Insight on what legislation has survived and what has fallen following Parliament's "wash-up" period ahead of its prorogation.

May 2024

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Advertising and marketing

Advertising and marketing

ASA publishes outcome of its consumer research into environmental claims in food advertising

The UK Advertising Standards Authority (ASA) has published findings from its consumer research, conducted over the last year, which looked at the types of environmental claims currently being made in food advertising and how consumers understand them.

Key findings include:

- Generally, consumers believe that advertising is highly monitored and regulated in the UK and that brands cannot make environmental claims in ads without evidence and verification. Therefore, these claims tend to be accepted at face value (for example, broad claims, such as "good for the planet"). However, some consumers did express concern that some claims are too general to be verifiable. The use of specific terminology like "plant-based" or "vegan" is often assumed to be accurate as it is viewed as clear and verifiable.
- Using specific terminology or images in ads can create a "halo" effect, making people associate certain qualities with products even if those qualities have not been claimed directly. For example, using the word "natural" can lead to an assumption that the product is also certified organic.
- Visual imagery can cause people to make assumptions about claims related to the environment, animal welfare, and health. Images of products which appear to be "fresh" can be perceived as inherently "healthy" in the same way that products described as "natural" or "plant-based" are often understood. The use of "green", both as a colour and a word, can lead consumers to perceive a brand as being environmentally conscious even if no explicit claims are made.

In light of these findings, the ASA has identified various steps it and the Committee of Advertising Practice (CAP) plan to take in 2024:

- The ASA will continue its engagement with the Competition and Markets Authority, Department for Environment, Food and Rural Affairs (Defra) and industry stakeholders.
- CAP intends to provide further guidance to industry this summer in the form of a series of insight articles.
- From July 2024, the ASA and CAP will carry out additional monitoring and follow-up engagement to address obvious breaches based on existing ASA rulings and guidance, with the potential to formally investigate other, less obvious cases. Particular focus will be on unqualified sustainability and comparative environmental impact claims.
- The ASA will continue monitoring for potentially misleading "green" imagery issues in 2024.

ASA publishes new guidance on ad labelling in podcasts

The ASA and CAP have published new research and guidance on ways to ensure that ads read by hosts in podcasts are clearly identifiable and can be distinguished from editorial content.

The ASA's consumer research report finds that:

- participants tended to have negative views towards ads in podcasts, however, most of them agreed on the need for ads in podcasts as means to enable free access. There was a tension between the participants' preference for ads to be easy to listen to and the need for ads to be clear and distinct from the main content;
- the use of signifying terms, such as "paid advertisement" or "sponsored by", was considered the most effective way to mark the commercial content in a podcast. Consumers also found it useful when such terms are accompanied by other markers to ensure ads are fully clear and distinct, such as music or a jingle at the start and end or a distinct change in the hosts' tone and making sure that the ad is short and focused on the product being promoted; and
- participants highlighted the need for stricter regulation on the use of personal testimony in host-read ads.

The new CAP guidance aims to help podcast hosts make sure their ads are clearly disclosed as such. CAP strongly advises advertisers to "*disclose advertising content using a clear, up-front signifying term*" and to use other markers additionally (such as those identified by consumer research) in host-read ads.

The guidance takes effect on 16 August 2024.

FCA publishes finalised anti-greenwashing guidance

The UK Financial Conduct Authority (FCA) has published finalised guidance on its anti-greenwashing rule that comes into force on 31 May 2024 and will apply to all regulated firms in the UK. See our Insight for more details.

Advertising and marketing

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Artificial Intelligence

Artificial Intelligence

UK updates

UK regulators publish their strategic approaches to AI

As requested by the government in its response to the AI white paper consultation, various UK regulators submitted their strategic approach to AI to the Department for Science, Innovation and Technology (DSIT) at the end of April, and also published them:

- Bank of England and Prudential Regulation Authority
- Competition and Markets Authority (CMA)
- Equality and Human Rights Commission (EHRC)
- Financial Conduct Authority (FCA)
- Health and Safety Executive (HSE)
- Information Commissioner's Office (ICO)
- Legal Services Board (LSB)
- Medicines and Healthcare products Regulatory Agency (MHRA)
- Office for Nuclear Regulation (ONR)
- Office for Standards in Education, Children's Services and Skills (Ofsted)
- Office of Communications (Ofcom)
- Office of Gas and Electricity Markets (Ofgem)
- Office of Qualifications and Examinations Regulation (Ofqual)

Unsurprisingly, there is wide variation in how engaged the different regulators already are with AI. Some, particularly the four lead regulators for the Digital Regulators Cooperation Forum (DRCF), have already invested considerable time and resource in building their understanding of how this technology interfaces with their respective areas of jurisdiction. Others (such as Ofgem) are less advanced, with work just beginning. We understand that these reports will feed into a "gap analysis" of UK regulation and the challenges of AI.

We have reviewed the MHRA's report in detail (see our Insight). We also held a webinar exploring the financial services regulators' strategic approach to AI – you can catch up with the recording here.
See Data Law section for the details of the ICO's response.

Launch of the AI and Digital Hub

DSIT has announced the launch of the AI and Digital Hub run by the DRCF. This multi-regulator sandbox was promised in the UK government's AI white paper response in February 2024.

The hub is an online portal that will offer free informal advice to businesses on how regulation (across the remits of the four DRCF members) applies to their business proposals. Queries can be submitted online and a combined response will be given from the relevant regulators. The intention is that this will enable businesses to check for compliance and bring products to market more quickly. It is a one-year pilot.

Queries must concern products, services or processes that are:

- innovative – a new or adapted way of conducting an activity;
- focused on AI and/or digital;
- beneficial to consumers, businesses and/or the UK economy;
- within the remit of at least two DRCF regulators.

DRCF's views on fairness in AI

The DRCF has published its views on the principle of fairness – one of the five "high level" principles outlined in the UK government's AI white paper. This follows the government's initial guidance for regulators where it set out its expectations for the existing regulators to interpret and apply the principles within their respective regulatory remits. The EHRC has contributed to the discussion.

The main challenge to fairness identified by the DRCF is algorithmic bias in the adoption of AI. Regulators can struggle to identify whether algorithmic decision-making has been biased because of the indirect nature of bias, the complexity of the models used and the connections between different data points used.

Different regulators have different powers in relation to fairness in AI. For example:

- the ICO has issued guidance on fairness as this is an important data protection principle;
- the FCA has various regulatory requirements concerning fairness that may be in play when firms use AI in relation to providing financial services;
- the CMA addresses fairness from the angle of consumer vulnerability and requiring effective competition, both of which were recently reflected in its foundation model review;
- however, Ofcom does not have direct powers to regulate fairness in AI.

This is a good example of how the approach of using existing UK regulators' powers to regulate AI creates an uneven enforcement patchwork.

ICO publishes fourth call for evidence on generative AI and data protection

The ICO has published its fourth consultation on generative AI and data protection. See this Regulatory Outlook for an overview of the previous ICO consultations on generative AI.

This call for evidence is focused on the ways organisations deploying generative AI provide individuals with an opportunity to exercise their rights to:

- be informed about whether their personal data is being processed;
- access a copy of their personal data;
- have information about them deleted, where this applies; and
- restrict or cease the use of their information, where this applies.

This call for evidence closes on 10 June 2024 and the responses can be provided using this form.

Automated Vehicles Bill

The Automated Vehicles Act received Royal Assent on 20 May 2024. See this Regulatory Outlook for more details on it.

AI legislation on the horizon?

The Artificial Intelligence (Regulation) Bill has lapsed with the dissolution of Parliament ahead of the general election on 4 July 2024 (although it was very unlikely to become law). During the last debate in the House of Lords, a Labour peer commented that "*A Labour government would urgently introduce binding regulation and establish a new regulatory innovation office for AI*". We are monitoring for more information about the Labour Party's plans in this respect in the coming weeks. Our working assumption is that the Conservative Party would continue the current government's approach to regulating AI, if it were re-elected.

EU updates

AI Act timings

The corrected final text of the AI Act was adopted by the European Parliament in late April and on 21 May was also adopted by the Council of the EU. The final text is available here.

The final legislative step is publication of the Act in the Official Journal of the EU, which is expected in late May or early June, becoming law 20 days later in late June or early July.

Our Insight explains the various deadlines for compliance, starting with the prohibitions on certain types of AI which will come into effect at the end of this year.

International updates

OECD updates AI Principles

Artificial Intelligence

The Organisation for Economic Co-operation and Development (OECD) has updated its AI Principles to deal more specifically with issues including privacy, intellectual property rights, AI safety and information integrity. Key changes include the following:

- if AI systems risk causing undue harm or show undesired behaviour, there should be robust mechanisms and safeguards to override, repair, and/or decommission them safely;
- mechanisms should be in place to strengthen information integrity while respecting freedom of expression;
- AI risks and accountability should be addressed throughout the AI system lifecycle by a responsible business approach, including co-operating with suppliers of AI knowledge and AI resources, AI system users, and other stakeholders;
- information about AI systems needed for transparency and responsible disclosure should be clear;
- environmental sustainability should be part of the responsible stewardship of AI; and
- jurisdictions should work together to promote interoperable governance and policy environments for AI.

AI Seoul Summit
Following the UK's Bletchley Park AI Safety summit in November 2023 (see this Regulatory Outlook), the second summit in the series took place in South Korea on 21 and 22 May 2024.

On the first day, South Korea was joined by representatives from France, Germany, Italy, Canada, the US, Australia, Japan, Singapore, the EU and the UK. The "Seoul Declaration for safe, innovative and inclusive AI" was agreed, alongside a statement committing to international collaboration on AI safety science. In addition, leading AI companies agreed to voluntary safety commitments in relation to frontier AI focused on responsible development and deployment of these AI systems.

On the second day, a wider group of 28 countries (including China) and the EU discussed AI safety but also looked at how to boost inclusivity and innovation (and published this statement). The group also considered how trustworthy and sustainable AI can boost productivity.

Ahead of the summit, the UK published its interim "International Scientific Report on the safety of advanced AI". The report seeks to contribute to the debate around AI safety rather than making recommendations and is limited in scope to the current state of understanding of general-purpose AI and its risks. Its conclusions are essentially that there are a great deal of unknowns and a wide variety of opinions, meaning that the future of general-purpose AI is very uncertain, but nothing is inevitable. The final report is planned to be published before the next AI summit in France.

And finally …
We have launched a series of Insights exploring the implications of the EU AI Act for life sciences and healthcare businesses. Over the coming months, the series will cover AI supply chains, product logistics, research and development, SMEs, compliance monitoring, liability, and more. Here are the Insights we have published so far:

- New EU AI Act is poised to shape the future for life sciences in Europe
- New AI legislation's reach extends into European healthcare
- High-risk AI systems in life sciences face strict regulatory scrutiny from new EU rules
- A new CE marking for European healthcare: when and why?
- Low-risk AI bears high stakes for digital health in new EU regulation
- International Scientific Report on the Safety of Advanced AI - GOV.UK (www.gov.uk)

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Bribery, fraud and anti-money laundering

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HM Treasury publishes AML/CTF supervision report

HM Treasury has published its 2022-23 report on anti-money laundering and counter-terrorist financing (AML/CTF) supervision, detailing the activities of AML and CTF supervisors – HMRC, the Financial Conduct Authority (FCA), the Gambling Commission, and the 22 legal and accountancy professional body supervisors. Among the key points arising are:

- approximately 10% of all regulated businesses were identified as high-risk by supervisors, in line with previous years;
- the total sum of fines across all 25 supervisors was £197,000,000 compared to £504,000,000 in 2021-22, however the report notes this is largely due to fewer large fines by the FCA;
- the FCA imposed the highest fines on average (£19.4 million), followed by the Gambling Commission (£2.8 million), compared with HRMC (£7,000) and the professional body supervisors' (£4,000);
- the FCA's view was that retail banking, wholesale banking, wealth management and crypto-asset firms were most at risk to financial crime and exploitation for money laundering;
- the HMRC identified money services businesses, art market participants, and the trust and company service providers as presenting the highest risks for money laundering; and
- common failings identified include inadequate risk assessments which do not fully address all of the risks present, inadequate staff training leading to poor knowledge or understanding of the regulations and inadequate documentation of policies and procedures.

As previously reported, HM Treasury is currently consulting on reforms to improve the effectiveness of the Money Laundering Regulations 2017 (MLRs). With the general election that will take place on 4 July 2024, the consultation on the MLRs may be extended, given the restrictions on publicity during the election period. HM Treasury is also due to publish its response to its 2023 consultation on reforming the UK's AML/CTF regulatory and supervisory framework (see more in our Insight). The government's second three-year economic crime plan sets out how it intends to continue its work on reducing money laundering, sanctions evasion, fraud and recovering more criminal assets (for further details see our Insight).

Labour's David Lammy has said in a keynote speech at the Institute for Public Policy Research (IPPR) on 21 May 2024, that, if elected Labour plans to introduce a package of measures to tackle corruption and money laundering. This includes collaborating with the private sector in taking action against professional enablers and kleptocrats, creating best practice for anti-money laundering regulation and supervision, and boosting corporate transparency of trusts through regular reporting requirements.

Following the election, the new Parliament will convene on 9 July 2024. On 17 July, the State Opening and a King's Speech will set out the new government's agenda for the coming Parliamentary session. Our Insight looks at the legislation dealt with during the wash-up period ahead of the general election.

JMLSG consults on revisions to AML/CTF guidance

The Joint Money Laundering Steering Group (JMLSG) has launched a consultation on its proposed amendments to Sector 18 (Wholesale markets) in Part II of its AML/CTF guidance for the financial services sector.

The proposed revisions include:

- customer due diligence: a new subsection on authorised personnel acting on behalf of customer; and
- a new section on wholesale subscription finance in private capital funds.

The consultation closes on 1 July 2024. See the press release.

Bribery, fraud and anti-money laundering

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Competition

Competition

A new (lower) bar for dawn raids on domestic premises

Surprise regulatory inspections, or "dawn raids", naturally took a back seat during the pandemic and are now back on the rise – with the Competition and Markets Authority (CMA) also having to grapple with how to carry out dawn raids now so many people work from home.

A recent case has bolstered the CMA's ability to carry out dawn raids at home, further supported by new powers in the Digital Markets Competition and Consumer Act. In-house legal and compliance teams should plan for dawn raids of colleagues at home and may need to update policies and training accordingly.

The High Court has ruled that, when applying for warrants for dawn raids of domestic premises, the CMA does not require additional evidence of a "propensity to destroy documents". However it did confirm that a warrant to conduct a dawn raid on domestic premises required additional scrutiny on human rights grounds.

On 22 April, the High Court held that the Competition Appeal Tribunal (CAT) was wrong to hold that it would be insufficient to infer a propensity to destroy documents from the mere existence of a cartel in relation to warrants to enter and search **domestic premises**.

This decision stems from an application to the CAT by the CMA for warrants to enter and search both business and domestic premises. In December 2023, the CAT substantially granted the CMA's application. The CAT held that the CMA was entitled to infer a propensity to destroy documents from the mere existence of a cartel in relation to **business premises**. This is because a cartel, by nature, is secretive, and the CMA's power to investigate should not be unduly fettered. This confirms the existing legal position of competition dawn raids on business premises.

However, in relation to **domestic premises**, the CAT considered that the mere existence of a cartel was **not** enough to justify the issuance of a warrant, and something more to suggest a propensity to destroy documents needed to be shown, particularly where the premises are occupied by others.

The CMA challenged the CAT's decision. While it accepted that domestic premises warrants required a higher degree of scrutiny, the CMA submitted that the CAT was wrong to interpret the legislative provisions governing domestic and business warrants differently, given that the wording of the respective provisions are identical in the legislation.

Ultimately, the High Court agreed that the CAT had been wrong. There may be cases where such inference is justified without any additional evidence, and this would be a matter to be decided on the facts of each case. Relevant facts include the seniority of the individual being raided and their level of involvement in the cartel.

Dawn raids of domestic premises have become increasingly common with the rise of homeworking and electronic communication. The Digital Markets, Competition and Consumers Act also adds to the CMA's dawn raid powers by including powers to enter a premises under a warrant when there are reasonable grounds for believing the document(s) may be accessible from the premises, the power to operate equipment (most likely computers or laptops) to access the document(s) and the power to require assistance in accessing these. Consequently, businesses must ensure their competition compliance training reflects this as it is possible that the CMA (or other authorities) could surprise employees on domestic premises at any time and obstruction of these officials can lead to fines. It is also vital that employees are aware of their privacy rights in relation to personal documents and images.

Digital Markets, Competition and Consumers Bill

The highly-anticipated Digital Markets, Competition and Consumers Act (DMCC) received Royal Assent on 24 May 2024. This followed a lengthy process of deliberation by both the House of Commons and the House of Lords. We explain the **five things that businesses need to know in our recent Insight.** The first action being that businesses have until 12 July 2024 to respond to the CMA's consultation on how it proposes to use its digital powers.

When thinking about the CMA's powers, how it might use them and the political pressure it might be under, it is interesting to understand the sticking points in the legislative process. We saw the House of Lords pushing back on certain House of Commons amendments, which the Lords saw as restricting some of the freedom of the CMA to intervene in digital markets. However, amendments proposed by the Lords were rejected by the House of Commons on 30 April 2024. Opposition parties in the Commons largely supported the Lord's amendments but were out-voted by the Conservative majority by a margin of approximately 100 each time. This has drawn criticism from some in the Labour Party, who

complain of a "watered-down version" of the legislation, raising the question of whether a potential Labour government might bolster the CMA's confidence as a more interventionist regulator. Undoubtedly, we can expect the CMA to become more political as it flexes its new muscles.

The DMCC returned to the House of Lords on 14 May 2024. This time, the Lords accepted three key amendments made by the House of Commons:

Merits based review

As the DMCC was initially drafted (and before consideration by Parliament), an appeal of any decision made by the CMA under this legislation would needed to have been made by way of judicial review. This is a relatively high bar to meet. However, the House of Commons considered that appeals against the *quantum of fines* imposed by the CMA should be determined on a full merits basis. The House of Lords amendments sought to return the bill to its original state, by requiring appeals against the quantum of fines to be brought on the judicial review basis. The House of Commons held firm and did not agree to the Lord's amendment. The appeals basis has been something of a sticking point during recent months, but the Lords have now backed down and accepted the House of Commons' amendment. The bill therefore becomes law with the merits-based standard for appeals to the quantum of fines imposed by the CMA.

Countervailing benefits exemption

At high level, the DMCC will require the CMA to close a conduct investigation where the relevant undertaking shows that the conduct being investigated provides benefits to consumers that outweigh the detrimental impact on competition resulting from a breach of the relevant conduct requirement, and that the conduct is required for the realisation of those benefits.

The Lords' position was that the countervailing benefits exemption should only apply where the conduct in question was "indispensable" to the benefit to consumers. By contrast, the Commons preferred a less restrictive approach that would apply where conduct was "proportionate" to realise the benefit to consumers.

In the latest round of amendments, the Lords has accepted the Commons' amendment, and it appears that, as a result, potentially anti-competitive conduct of firms with strategic market status (SMS) will be permitted where it is proportionate to achieve consumer benefits – introducing a process more akin to traditional competition law.

Pro-competition interventions and proportionality

The DMCC will give the CMA power to impose conduct requirements on SMS firms and to make pro-competitive interventions in order to remedy behaviour that would otherwise lead to an adverse effect on competition. Some have argued that the House of Commons has sought to fetter this power by requiring the CMA to act "proportionately" in relation to conduct requirements and pro-competition interventions. The Lords disagreed with the House of Commons' approach and preferred that the CMA have the power to act where it was "appropriate", without needing to ensure that action taken was "proportionate". Although largely a point of legal interpretation, this nevertheless has the potential to be a key background for interpretation of the digital markets regime in future.

The Commons rejected the Lords' final amendment on 21 May 2024 and proposed an amendment in lieu. For more discussion of the Lords' amendment, please see our Consumer law section. Following the prime minister's announcement on 22 May of a general election, the Commons' amendment was finally accepted by the Lords the following day and Royal assent on Friday 24 May – demonstrating the weight of support behind this significant piece of legislation.

Competition and financial services

The Financial Conduct Authority (FCA) has issued its feedback statement on the Call for Information (CFI) on potential competition impacts from the data asymmetry between Big Tech firms and firms in financial services. The initial CFI was published in November 2023 following feedback received on a discussion paper on this topic.

The FCA's analysis found that while there are currently no significant competition harms arising from the data asymmetry, there are three key issues that could adversely affect competition in retail financial markets in the future.

Firstly, there is a risk of data asymmetry increasing barriers to entry and expansion in financial markets over time, which the FCA considers could lead to Big Tech firms gaining market power. The FCA says that the value of Big Tech firms'

data in financial services is still unclear, but there are potential use cases in areas such as consumer credit and insurance.

Secondly, the FCA suggested there is a risk of Big Tech firms' platforms becoming the primary access channel for retail financial services. The FCA's view is that as digital wallets evolve and offer a range of financial services, Big Tech firms could become gatekeepers, adversely impacting competition in downstream financial markets.

Lastly, the statement suggests that there is a risk of financial services firms' upstream partnerships with Big Tech firms being concentrated, limiting the bargaining power of financial services firms. This could affect competition in downstream financial services markets and reduce firms' ability to innovate.

To address its concerns, the FCA has outlined four next steps. These include:

- monitoring Big Tech firms' activities,
- identifying and piloting use cases to test the value of Big Tech firms' data,
- examining how firms' incentives can be aligned to share valuable data, and
- working closely with the Payments Systems Regulator (PSR) to understand the risks and opportunities associated with digital wallets.

Also notable was the concern raised by some financial services firms that competition enforcement is backward looking. The FCA committed to working with the Digital Markets Unit, which now has its powers under the Digital Markets Competition and Consumer Act saying that "*establishment of the new pro-competitive regime for digital markets will proactively drive more dynamic markets and mitigate harmful practices that hold back innovation and growth*".

National Security and Investment Act

The UK government has announced a timetable for changes to the National Security and Investment Act 2021 (NSIA) regime. This follows the Cabinet Office publishing the outcome of its call for evidence, seeking views on how to make the NSIA regime more business-friendly while maintaining national security protections. Please see our Insight for more information on this.

Under the NSIA regime, the government can intervene in transactions on national security grounds in 17 high-risk sectors. On 21 May, the government published an updated statement on how it intends to exercise the call-in power and updated market guidance, including factors for assessing risk and the application of the NSIA regime to academia, research, and outward direct investment.

In April the government committed to launching public consultation on updating the Notifiable Acquisition Regulations will be launched in the summer. These regulations specify the 17 sensitive areas subject to mandatory notification requirements. In the autumn, the government intends to lay legislation on technical exemptions to the mandatory notification requirement which will involve undertaking a national security risk assessment. Whether this consultation takes place and the status of this legislation is uncertain as a result of the general election being called.

The Labour Party's stated approach to the NSIA regime suggests handling the 17 areas through three clusters: clean energy, digital, and advanced manufacturing. The party also suggests incentivising British funds and companies to invest in promising British companies while maintaining a clear position on using NSIA powers to defend against foreign investment posing security risks. However, the paper emphasises the need for deeply connected supply chains with trusted partners such as Australia, the US, Japan, and the EU.

Businesses seeking investment or involved in M&A may be disappointed that the call for evidence has not led to as many changes as expected. The government's plans for targeted exemptions for internal reorganisations will only be considered after a further risk assessment and would require additional legislation. This additional legislation appears unlikely to happen in the short term, especially with the recently announced election.

Competition

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Consumer law

Consumer law

DMCC Bill receives royal assent

The Digital Markets Competition and Consumers Bill has received royal assent and become law as the Digital Markets Competition and Consumers Act 2024 (DMCCA).

As well as introducing a new digital markets regime and changes to competition law, the new legislation also significantly reforms UK consumer law, introducing new requirements for paid subscription contracts and a new regime for consumer reviews. It also gives more powers to the Competition and Markets Authority to investigate and enforce consumer law (including the new subscription contract regime) with the possibility of imposing significant monetary penalties.

Our Insight explores five key things businesses need to know about the changes to consumer law, as well as five key points on the new digital markets regime and the changes to competition law respectively.

Ofcom launches consultation on protecting children from harms online under UK Online Safety Act

Ofcom has launched its second major consultation as part of its work to implement the new online safety regime under the Online Safety Act 2023 (OSA). The first consultation focused on the duties of in-scope services to protect users from illegal content.

This latest consultation focuses on protecting children from legal, but harmful online content. This includes pornography, content relating to suicide, self-harm and eating disorders, content that is abusive and is targeted at or incites hatred against people based on protected characteristics, bullying, and content containing serious violence. The consultation closes on 17 July 2024, and Ofcom expects to publish its final statement and documents in spring 2025.

As part of the consultation, Ofcom published draft guidance for service providers, as well as the codes of practice that it is obliged to prepare to help providers meet their duties:

- Draft guidance on Children's Access Assessments. This is designed for regulated user-to-user and search services (Part 3 services under the OSA) to assist them with carrying out a children's access assessment to establish whether their service is likely to be accessed by children. Ofcom anticipates that most Part 3 services that are not already using "highly effective" age assurance techniques are likely to be accessed by children, meaning that they will be required to carry out a children's risk assessment and to take steps to comply with the child safety duties under the OSA.

- Draft guidance on Children's Risk Assessments. This is designed to help services that are likely to be accessed by children comply with their duty to carry out a children's risk assessment, which is separate and additional to the illegal content risk assessment that all services need to complete.

- Draft code of practice for user-to-user services and draft code of practice for search services. These draft codes outline Ofcom's recommended safety measures for providers of Part 3 services to mitigate the risks of harm to children and comply with specified duties. The recommended measures include robust age assurance measures, safer algorithms, effective content moderation systems and processes, strong governance and accountability, and ensuring that children are given clear and accessible information, as well as easy-to-use reporting and complaints procedures.

Osborne Clarke is holding a seminar on online child safety on 20 June 2024. You can sign up here.

Regulations made naming the 'assessment start day' for VSP compliance with UK Online Safety Act

The Online Safety Act 2023 (Pre-existing Part 4B Services Assessment Start Day) Regulations 2024 specify the "assessment start day" for Video-Sharing Platforms (VSPs) as 2 September 2024.

From this day, or the date that Ofcom publishes the relevant guidance (whichever is the latest), VSPs, known as "pre-existing Part 4B Services" under the OSA, will be subject to the requirement to complete assessments in line with the OSA on the risk of illegal content on their service, the likelihood of children accessing the service, the risk of children encountering harmful content on the service and user empowerment.

VSPs will have three months from the start day (whether that is 2 September 2024 or the day on which Ofcom publishes the relevant guidance) to complete the assessments.

Consumer law

This instrument is the first step towards transitioning services, which are currently regulated under the VSP regulatory regime, to the new online safety regulatory regime created under the OSA.

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Cyber-security

Cyber-security

NCSC guidance for organisations considering payment in ransomware incidents

The National Cyber Security Centre (NCSC) has released joint guidance with the Association of British Insurers (ABI), the British Insurance Brokers' Association (BIBA) and the International Underwriting Association (IUA).

The best practice guidance aims to improve the market's approach to ransom payments, thereby minimising the disruption and cost of incidents, and ultimately reduce the number of ransoms being paid by UK ransomware victims.

The three insurance associations urge organisations to follow the steps outlined in the guidance, such as assessment of business impact and reporting protocols, which organisations and associated third parties should consider when faced with a ransomware attack. See the press release.

The NCSC has also published a blog post regarding the theft and loss of data in the event of a ransomware attack and launched a new podcast series discussing the latest cyber threats and issues.

UK government announces two new codes of practice for cyber security and AI

During a speech at CYBERUK, the government's flagship cybersecurity conference, the Technology Minister, Saqib Bhatti announced two new codes of practice which will help improve cyber security in AI models and software, by setting requirements for developers to build their products in a secure way, with the aim of preventing attacks such as the one on MOVEit software in 2023. (See more in our Insight.)

The AI cyber security code of practice is intended to form the basis of a future global standard, which will address AI safety challenges to ensure the benefits of AI can be realised. The government has launched a related call for views on the new code of practice, originally set to conclude on 10 July but extended to 9 August 2024 in response to the general election being called. To support the call for views, the government has also published a number of research reports on AI cyber security.

The second voluntary code of practice for software vendors sets out fundamental security and resilience measures for organisations which develop or sell software used by other organisations. The government launched a call for evidence seeking views from the industry on the proposed design and implementation of the draft code of practice, which closes on 9 August.

ICO reports on cyber security breaches

The Information Commissioner's Office (ICO) has published the report "Learning from the mistakes of others". It summarises case studies from its regulatory activities to illustrate common types of cyber threats and the key measures that organisations should consider to mitigate threats.

The report focuses on five leading causes of breaches: phishing, brute force attacks, denial of service, errors and supply chain attacks, and stresses the importance of considering the nature of the information (how sensitive it is) and the risk of harm in determining the adequacy of security measures.

The ICO has taken enforcement action in relation to cyber-related data breaches where organisations failed to:

- secure external connections with multi-factor authentication;
- log and monitor systems;
- act on unexpected connections, or alerts from endpoint protection such as anti-malware or anti-virus;
- use strong, unique passwords; and
- mitigate against known vulnerabilities and apply critical patches within 14 days, where possible.

See the press release.

NCSC updates Cyber Assessment Framework

The National Cyber Security Centre (NCSC) has updated its Cyber Assessment Framework, which is aimed at assessing how well operators of essentials services manage cyber security risks under the UK NIS Directive.

Cyber-security

Significant changes have been made to reflect the heightened cyber threat to critical national infrastructure, including revisions to the sections on remote access, privileged operations, user access levels and the use of multi-factor authentication. See the press release.

In February 2024, the UK issued a joint advisory to critical infrastructure operators about the threat from state-sponsored cyber attacks.

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Data law

Data law

DPDI bill falls following UK election announcement

Following the announcement of the UK general election being called for 4 July 2024, Parliament has been prorogued. This means that any legislation that was not passed during the short wash-up period which ended on 24 May 2024 will now fall away and we will have to wait to see whether the newly elected government will introduce the legislation. See our Insight for more details on this wash-up period.

The Data Protection and Digital Information Bill (DPDI Bill) was at the report stage in the House of Lords when the Parliament was prorogued with sitting scheduled for June, and its progression through Parliament has not been accelerated during the wash-up period. This means that the bill now falls and it is open for the incoming government to introduce the bill again (such bills would have to start the Parliamentary process from scratch), but they are under no obligation to do so.

UK government publishes Smart Data Roadmap

The UK Department for Business and Trade has published its "Smart Data Roadmap" setting out how it intends to use its power under the DPDI Bill to make secondary legislation in relation to "smart data" schemes. The government's aim is that these smart data schemes will help to facilitate the secure sharing of customer data, at a customer's request, with "Authorised Third-party Providers" who will then enhance that data with their broader contextual business data.

The roadmap covers the following seven sectors:

- banking and finance;
- energy and road fuels;
- telecoms;
- transport;
- retail; and
- home buying.

Each of these sectors will progress through four stages of implementation – identification, consultation, design and implementation – and the roadmap goes into greater detail regarding these stages in the context of each sector.

The roadmap forms part of the government's wider strategy on increasing access for businesses to many different types of data, which has in our experience been warmly welcomed. However, the timeline included in the roadmap shows that the government is still in the early days of its formation of a "smart data" economy and it is clear that some sectors are further along in this journey than others. It therefore remains uncertain when businesses can expect to start benefitting from the smart data schemes. Since the DPDI Bill, which would create powers for the government to issue implementing legislation for smart data schemes, has fallen following the election announcement, it will be for the next government to decide whether to introduce the bill again and proceed with the regulations.

ICO's AI strategy

The Information Commissioner's Office (ICO) has published its strategic approach to artificial intelligence (AI) as requested by the government in its response to the AI white paper. See AI section for more information.

The ICO's report includes the following:

- It highlights themes in the intersection between its remit and AI (such as personal data for training foundation models, high risk AI and the fairness principles, facial recognition and biometrics, children and AI).
- It explains how the principles of data protection law align well with the UK's "high level principles" set out in the AI white paper.
- It gives an overview of the ICO's work and guidance issued around AI, including a list of its enforcement activity.

- It provides an overview of the ICO's planned work on AI, including its series of consultations on generative AI (see AI section), a consultation on biometric classification tech, and planned updates in spring 2025 to the ICO's guidance on "AI and Data Protection" and "Automated Decision-Making and Profiling".

- It highlights upcoming AI-related work by the ICO's Regulatory Sandbox, including a system to help prevent falls in the elderly, personalised AI for those affected by cancer, AI to help identify individuals who may be at risk of domestic violence, and AI used to remove personal data from drone images.

- Later this year, the ICO plans to issue a report on its audit of providers of AI recruitment solutions, and to review AI technology used in education and youth prison services.

- Finally, the ICO flags a range of its collaborative activity with other regulators, including the Digital Regulators Cooperation Forum, the Regulators and AI Working Group, the government, standards bodies and international partners.

In relation to its own AI capabilities, the ICO notes that "*in the future nearly all data protection roles at the ICO will involve AI to some degree*" and it expects its AI and Data Science team, currently comprising ten people who work full time on AI governance, to grow in the coming years. The ICO flags that it currently has an AI-supported customer service chatbot and an algorithmic tool for email triage. It is also developing an AI solution to help identify websites using non-compliant cookie banners.

European Parliament's civil liberties committee writes to House of Lords European Affairs Committee's inquiry into data adequacy

The European Parliament's Committee on Civil Liberties, Justice and Home Affairs has written to the UK House of Lords European Affairs Select Committee's inquiry into the data adequacy decision and its implications for the UK-EU relationship (see this Regulatory Outlook for background).

The committee expressed its concerns "*about the overall direction of the data policies of the UK Government*" and warns that the provisions in the DPDI Bill "*may increase UK divergence from EU data standards, putting the validity of the adequacy findings into question*". The committee's main concern related to the watering down of the definition of "personal data", potential for undermining of the ICO's role, and the bypassing of EU international transfer rules for countries which are not deemed "adequate" under EU law.

When proposed, the DPDI Bill represented the first major divergence on data protection between the UK and EU since Brexit and is part of a wider pro-business approach being adopted by the UK government. It is therefore not surprising to see some concerns being expressed in Europe but it remains to be seen whether those concerns will be strong enough to potentially jeopardise the UK's adequacy decision. Now that a UK election has been called, the DPDI Bill will not proceed (see further above), but the concerns raised on it may have longer term relevance if the DPDI Bill or an alternative form of divergence is revisited by the next UK government.

EDPB adopts opinion on "consent or pay" models

The European Data Protection Board (EDPB) has adopted an opinion on the validity of consent under the General Data Protection Regulation (GDPR) to process personal data for the purposes of behavioural advertising in the context of "consent or pay" models.

In the EDPB's view, although "consent or pay" models are not prohibited as such, in most cases, it will be hard for platforms to demonstrate valid consent if they only give users a choice between (1) consenting to processing of their personal data for behavioural advertising purposes, and (2) paying a fee to access the service without their personal data being used in this way. This is in part because the EDPB considers that such consent would not meet the GDPR's requirements of being freely given, informed, specific and unambiguous. A controller would therefore need to be able to demonstrate that, notwithstanding the EDPB's opinion, its specific model has been designed so as to meet the requirements for consent.

For details on the potentially different direction of travel for "consent or pay" models in the UK, please see our previous Regulatory Outlook.

ICO publishes fourth call for evidence on generative AI and data protection

See AI section

Data law

ICO report on cyber security breaches

See Cyber security section

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Employment and immigration

Employment and immigration

Employment law reforms

A general election has now been announced for 4 July; should a Labour government be elected, we will see significant changes to employment law. We will be closely watching the commitments from all parties in the run up to the election.

We looked at the implications of a change in government in our latest Eating Compliance for Breakfast Webinar which you can watch here. Our webinar also looks at the new employment laws which came into force in April, as well as those which are still set to come into force over the coming months, including:

- For TUPE transfers taking place on or after 1 July 2024, an extension of the existing exemption for micro-businesses (those with less than 10 employees) which allows information and consultation to take directly with employees where there are no existing representatives in place to: employers with fewer than 50 employees; or employers of any size but where the transfer involves fewer than 10 employees.
- The new duty on employers to prevent sexual harassment in the workplace set out in the Worker Protection (Amendment of Equality Act 2010) Act 2023 and which is due to come into force on 26 October 2024; we are currently awaiting a consultation on amendments to technical guidance from the Equality and Human Rights Commission which will support this new right.

We may also still see some proposals which have effectively already been signed off, pushed through quickly before the current Parliament dissolves, such as the new fire and re-hire statutory code of practice, which was expected to apply from 18 July. It is more unlikely that private members' bills will be prioritised during this period; there is currently a private members' bill which makes provision for paternity leave on the death of a mother or adopter, proceeding through Parliament and which is due to be heard in Committee stage this week; again, it may be that this is pushed through but we now need to wait and see how it progresses.

On 16 May 2024, the government also announced a new consultation on other proposed amendments to TUPE; clarifying that the definition of employee in TUPE does not capture "limb b workers" (as defined in the Employment Rights Act 1996) and that where a service transfers to multiple transferees, an employee's contract cannot be split and will only transfer to one transferee as agreed by those multiple transferees (although the consultation is silent on what mechanism would be in place should the parties be unable to agree). The consultation also looks at repealing the legal framework for European Works Councils in the UK. The consultation closes on 11 July and in light of the General Election on 4 July, these changes are unlikely to be a priority.

UK government publishes guidance on responsible artificial intelligence in human resources and recruitment

The Department for Science, Innovation & Technology (DSIT) has released guidance to assist organisations that use artificial intelligence (AI) in recruitment to ensure that they are adhering to the UK government's AI "high level principles" for the regulation of AI.

The government, per its AI white paper of March 2023 and consultation response of February 2024, will not be introducing new regulation on AI as it stands. Instead, existing UK regulators will apply their existing powers within their respective jurisdictions guided by the "high-level principles".

While there is no overarching "regulator" for general workforce or employment matters, DSIT's guidance addresses any subsequent lack of clarity on how the high-level principles apply to AI used for recruitment. Specifically, it outlines how organisations should adopt AI assurance mechanisms to support the responsible procurement and deployment of AI systems in HR and recruitment. See our Insight.

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Environment

Environment

Environmental Crime Directive published in Official Journal

The Environmental Crime Directive was published in the Official Journal of the EU on 30 April 2024 and entered into force on 20 May 2024. Member States are required to implement this by 21 May 2026 and publish a national strategy on combating environmental criminal offences by 21 May 2027. See this Insight for more on the changes being introduced.

UK Forest Risk Commodities scheme on the back burner

Please see ESG.

CSDDD receives final votes

Please see ESG.

Postponement of European sustainability reporting standards

Please see ESG.

European Parliament adopts position on forced labour regulation

Please see Modern slavery.

European Parliament adopts position on right to repair

Please see Products.

European Parliament and Council adopt position on ecodesign for sustainable products

Please see Products.

European Parliament adopts position on packaging and packaging waste regulation

Please see Products.

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Environmental, social and governance

Environmental, social and governance

UK Forest Risk Commodities scheme on the back burner

The general election has been called for 4 July and Parliament has been prorogued. What this means for the legislative programme is that any legislation that was not passed during last week's wash-up period will now fall away and we will have to wait to see whether the newly elected government will introduce the legislation, but they are under no obligation to do so. (See our Insight for more on this wash-up period)

For the Forest Risk Commodities Scheme, which will be introduced through provisions in Schedule 17 of the Environment Act 2021, the current government had said that the secondary legislation would be introduced "when parliamentary time allows". However this legislation was not introduced and therefore cannot now be passed and we will have to wait for it to be introduced once the new government is in session. As the scheme is a requirement under the Environment Act, the newly-elected government will have to introduce the relevant regulations, but we will not know more on the timeline of the introduction of the scheme until after the election.

CSDDD receives final vote

The European Parliament adopted its final position on the Corporate Sustainability Due Diligence Directive (CSDDD) on 24 April and the Council formally adopted the text position on 24 May.

The rules will apply to EU companies with a minimum of 1000 employees and a net turnover of €450 million. Non-EU companies may also be obligated if they generate €450 million in the EU in the last financial year.

Other requirements include businesses having to integrate due diligence into their policies and adopting transition plans to make their business model compatible with the Paris Agreement global warming limit of 1.5°C. Fines for non-compliance could be of up to 5% of the companies' worldwide turnover, as well as fully compensating victims where damage has been caused due to breaching their due diligence obligations.

The legislation will now be published in the Official Journal of the European Union and enter into force 20 days after its publication. Member States then have two years to implement the CSDDD into national law.

The new rules will be implemented in a phased approach from 2027 to 2029.

Postponement of European sustainability reporting standards

The directive postposing the adoption of the European Sustainability Reporting Standards (ESRS) for certain sectors and third country undertakings has now been formally adopted by both the European Parliament and Council.

The directive delays the adoption of the ESRS to 30 June 2026 in a bid to ease the regulatory burden on companies. The sectors cover oil and gas, mining, road transport, food, cars, agriculture, energy production and textiles. This delay will allow companies to focus on the implementation of the first set of ESRS and limit the reporting requirements to a necessary minimum.

Corporate reporting: UK Sustainability Reporting Standards

The Department for Business and Trade has published a framework and terms of reference for the development of UK Sustainability Reporting Standards (SRS) that will be based on the IFRS Sustainability Disclosure Standards.

The framework confirms that the stages of work needed to create the SRS are the endorsement of the IFRS Sustainability Disclosure Standards followed by implementation through UK legislation and the FCA rules for listed companies.

The UK government aims to make endorsement decisions on IFRS S1 and IFRS S2 by the first quarter of 2025. Endorsement of the IFRS Sustainability Disclosure Standards does not mean that companies will automatically be obliged to report against the resulting SRS, although it is likely that they will lay the foundation for future legal and regulatory obligations fur listed and registered companies.

European Parliament adopts position on forced labour regulation

Please see Modern slavery.

Regulations to eradicate modern slavery in NHS supply chains to be delayed by general election

Please see Modern slavery.

Environmental, social and governance

European Parliament adopts position on right to repair

Please see Products.

European Parliament adopts position on ecodesign for sustainable products

Please see Products.

European Parliament adopt position on packaging and packaging waste regulation

Please see Products.

Environmental Crime Directive published in Official Journal

Please see Environment.

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

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Fintech, digital assets, payments and consumer credit

BoE speech on modernising UK payments

On 15 April 2024, the Bank of England (BoE) published a speech by Sarah Breeden, the Bank of England's Deputy Governor, Financial Stability, which set out how the BoE seeks to deliver trust and support innovation, both as a provider and as a regulator of retail and wholesale money. Ms Breeden also discussed the first-order threats and opportunities facing central banks and the private sector.

Key points on the BoE's work on innovation included the following:

- *Stablecoin regulation.* Ms Breeden refers to the BoE's November 2023 discussion paper proposing a regulatory regime for stablecoins in retail payments (see this edition of the Regulatory Outlook), which focused on ensuring stablecoin and related systems are as safe as those currently used for retail payments. The BoE received valuable feedback from a range of stakeholders in the crypto, payments and banking sectors. This included some respondents saying that the BoE's proposed requirements would challenge stablecoin issuers' business models and so might effectively bar use of stablecoins at systemic scale. The BoE will consider all feedback received and then consult further on a draft rulebook.
- *Potential retail central bank digital currency (CBDC).* The BoE has not yet taken a decision on whether to issue a digital pound. Its work over the next two years or so will focus on making a robust and objective assessment of its potential benefits and costs, including operational and technical feasibility. To do this, the BoE will consider the potential design of a digital pound in greater detail, informed by technology experimentation and proofs of concept with the private sector.
- *Increased focus on wholesale innovation.* The BoE is increasingly focused on wholesale innovation, including how its infrastructure should best evolve to support the settlement of tokenised transactions, to ensure the continued role of central bank money in wholesale payments. The BoE is exploring the benefits of extending the real-time gross settlement (RTGS) system in future to offer synchronised settlement in a variety of assets, by linking the traditional centralised RTGS ledger to other ledgers, including those using distributed ledger technology.
- *Payments innovation by banks.* The BoE wants to encourage more thinking and action by banks in this space. This includes both how tokenisation might be applied to bank deposits to enhance their functionality across the full range of retail payments use cases, and what interbank payment rails would be needed to support this.
- *Forthcoming discussion paper.* The BoE aims to publish a discussion paper on innovation in wholesale payments and payments innovation by banks this summer.

FCA feedback statement on potential competition impacts from data asymmetry between Big Tech and financial services firms

Please see Competition section.

Treasury Committee report on findings from SME finance inquiry

On 8 May 2024, the House of Commons Treasury Committee published a report on the findings from its inquiry into access for finance for small and medium-sized enterprises (SME) – as of 2023, there were more than 5.55 million SMEs in the UK, compared to around 8,000 large businesses.

The Committee found that confidence among SMEs in accessing finance has fallen, and acceptance rates for business credit have dropped significantly. In addition, the Committee flagged increasing levels of "debanking" (bank account closures) and ineffective recourse for disputes with banks.

The report makes the following recommendations:

- The Prudential Regulation Authority's introduction of the new Basel 3.1 standards risks tightening conditions for SMEs even further. Any more stringent capital requirements for SMEs should be abandoned.
- The government must find a way to support the 55,000 SMEs currently served by the Business Banking Resolution Service (BBRS). In the Committee's view, the BBRS has been ineffective, is perceived as lacking in independence, and should close as planned. However, SMEs above the Financial Ombudsman Service (FOS) turnover thresholds will need a route to complain about treatment from their bank, and a consultation on a new mechanism should take place by year end 2024.

- The FCA should provide clearer instructions on the use of "risk appetite" and "reputational risk" criteria – banks should not be able to use risk appetite assessments to close accounts.
- The government must conduct annual assessments of the effectiveness of the British Business Bank (BBB). The found that this organisation plays an important and positive role in providing debt and equity solutions to SME, but awareness of the BBB and its schemes is too low.
- The FCA must use its announced review and existing powers to tighten rules around misuse of personal guarantees, and give the FOS the remit to address related business complaints.

Debanking complaints surge in figures published by Treasury Committee

On 21 April 2024, the House of Commons Treasury Committee published a press release and correspondence on debanking complaints.

The figures were set out in a letter sent to the Committee by Abby Thomas, Chief Executive of the FOS. The press release highlights key points from the data provided, including the following:

- The number of complaints received by the FOS related to debanking has increased by 69% since the financial year 2020/21;
- There has been an increase in the proportion of complaints upheld by the FOS: 36% ruled in the complainant's favour in the most recent year, compared with 27% or below in each of the previous three years; and
- The volume of complaints relating to restricted account closures has almost trebled since 2020-2021 – this refers to cases which involve financial crime concerns, money laundering concerns or where the complaint involves a politically exposed person.

Ms Thomas explains the increases could be due to changes in banks' processes and behaviours, but is also likely to be a result of media interest in the issue.

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Food law

Food law

What the general election means for food law

The upcoming general election on 4 July means the dissolution of Parliament on 30 May. As a result, any legislation that was not passed during the recent wash-up period will no longer be considered. It remains uncertain whether the newly elected government will reintroduce these bills, as they are not obligated to do so.

While media focus has been around the primary legislation that will not be enacted, there are also a number of pieces of secondary legislation, regulations, that were also due to be introduced to Parliament which now no longer will be able to. For food law some of the main ones are as follows:

- Regulatory framework under the Genetic Technology (Precision Breeding) Act 2023 - drafting of the new regulations was underway but not published or introduced into Parliament.
- The draft Marking of Retail Goods Regulations 2024 – these regulations had not yet been introduced into Parliament. These were published in draft form along with a consultation (which we reported on) and were due to extend the requirement for 'Not for EU' labels under the Windsor Framework for agrifood products destined for the GB market from 1 October 2024.
- Wine reforms – as reported last month, the government had announced its intention to continue reforms in this area, with the third phase of consultations concluding on 10 May 2024. These reforms will now need to be put on hold considering no new legislation can be introduced.

For all of the above, we will have to wait to see what the new government will intend to do in these areas. We will be providing further updates on this. Read more about the wash-up period in our Insight.

FSA progresses two novel food applications for CBD products

The Foods Standards Agency (FSA) has progressed novel food applications for two cannabidiol (CBD) products, moving these from the risk assessment phase to the risk management phase. This comes after the FSA concluded both were safe under proposed conditions of use.

One application is for a synthetic CBD product to be used as a food supplement in the form of an oil sold as capsules and drops at the dose of 10 mg per day of CBD (per the provisional Acceptable Daily Intake amount published by the FSA), and the second is for a CBD isolate (with a purity equal to or greater than 98%), which is intended to be used as an ingredient in food supplements, beverages and confectionary for adults.

The applications will now face further scrutiny. While the FSA has not given an exact date of when they will receive full authorisation, it has been reported that the FSA is aiming to issue full authorisations for CBD products in the UK by spring 2025. These recent developments mark an exciting time for those looking to place CBD products on the UK market.

Government scraps plans for mandatory eco-labels on food and drink

In a policy paper published on 23 April, "FDTP: towards consistent, accurate and accessible environmental impact quantification for the agri-food industry", Defra confirmed that "*Government has no plans at present to introduce a mandatory eco-label, nor to endorse an existing or new eco-labelling scheme*." It added that there is limited evidence that eco-labelling has an impact on in-store consumer and business behaviour.

The government's focus is on improving the quantification of environmental impacts and the quality of data used for eco-labels. This involves developing a consistent product level accounting standard and determining the best metrics to measure environmental impact, considering factors like greenhouse gas emissions, biodiversity, land use, water pollution and water usage.

The paper notes that once the quantification of environmental impacts and data quality have been addressed, further development of the eco-labelling methodology, including label design and application, will be considered.

However in light of the upcoming general election, it may be that the new government has different priorities and decides to implement mandatory eco-labels. We will be monitoring this and will update accordingly.

EU regulation to strengthen GI legislation published in Official Journal

The regulation on geographical indications (GI) for wine, spirit drinks and agricultural products was published in the Official Journal of the EU on 23 April 2024 and will apply from 13 May 2024, with the exception of Article 10(4) and (5), Article 39(1) and Article 45, which will apply from 1 January 2025.

The new rules strengthen and protect GIs across the EU, including online. See this Regulatory Outlook for more on changes being introduced by the new legislation.

Council adopts revised Breakfast Directives

The Council of the European Union has formally adopted the revised "Breakfast Directives", see the February Regulatory Outlook for the changes introduced.

The directive was published in the Official Journal of the European Union on 24 May and will enter into force 20 days after its publication (13 June 2024).

Member states must adopt and publish the measures necessary to comply with this Directive by 14 December 2025 and apply those measures from 14 June 2026.

ASA insight on ASA Environmental Claims in Food advertising

Please see Advertising and marketing.

ASA advertising on 'alcohol alternatives'

Please see Advertising and marketing.

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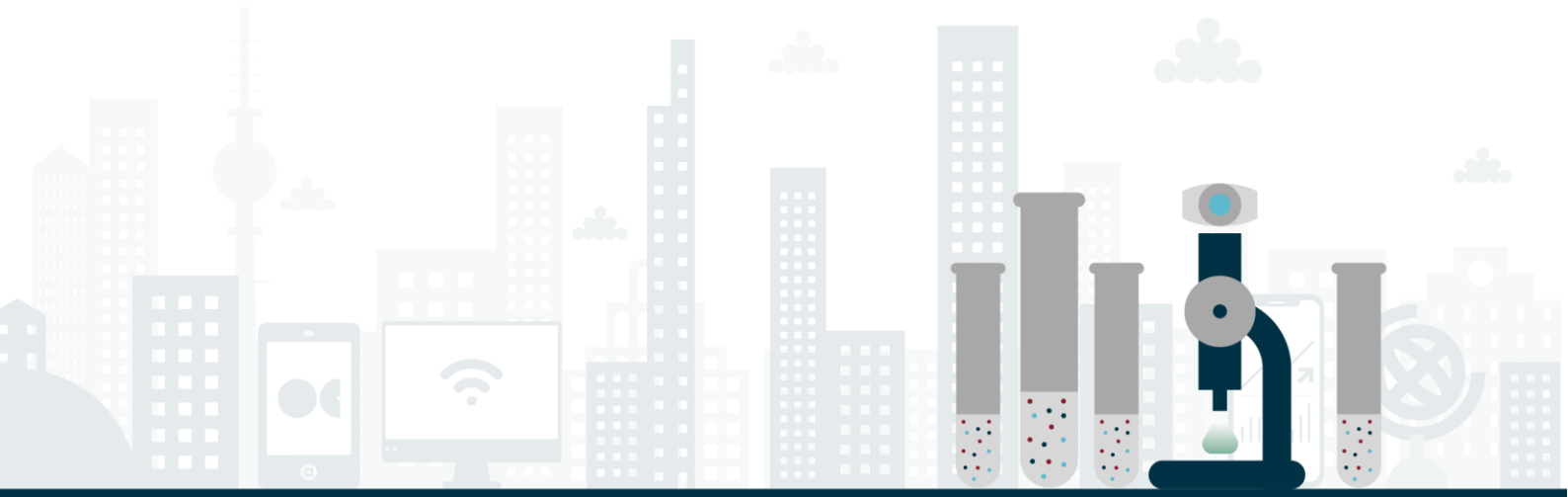

Health and Safety

Health and Safety

General election impact on the Terrorism (Protection of Premises) Bill

The upcoming general election on 4 July means the dissolution of Parliament on 30 May. As a result, any legislation that was not passed during the recent wash-up period will no longer be considered. It remains uncertain whether the newly elected government will reintroduce these bills, as they are not obligated to do so.

One of the bills affected by this is the Terrorism (Protection of Premises) Bill, which had not yet been introduced in Parliament and has now fallen away. The decision to continue with this legislation lies with the newly-elected government, and there is a possibility that it may choose not to pursue it.

Considering the significant support behind this legislation, commonly referred to as "Martyn's law" and developed in response to the Manchester bombings, it provides some hope that it might come back on the next government's agenda. Labour has been supportive of the Bill and recent media reports illustrate that the party want to get this onto the statute book as soon as possible so if they elected, it seems likely that they will take it up again. Furthermore, the recently concluded consultation in March on the standard tiers could provide valuable insights for the new government to make amendments to the draft legislation. However, at present, we must wait and see what actions the new government will take.

For more on the wash-up period, read our Insight.

HSE publish strategic approach to AI

The Health and Safety Executive (HSE) has published its strategic approach to AI which outlines that the use of AI comes within the scope of the Health and Safety at Work etc Act 1974 and so the principles of health and safety law need to be taken into account when using AI.

In assessing and managing risk, the regulator expects businesses to undertake a risk assessment for uses of AI which impact on health and safety and ensure measures are in place to reduce risks so far as reasonably practicable.

The HSE goes on to set out how it is developing its regulatory approach to AI which is as follows:

- Coordinating AI work internally through an AI common interest group.
- Collaborating with government departments to shape AI regulation.
- Engaging with international standards organisations to establish benchmarks for AI interaction with machinery and functional safety.
- Establishing relationships with industry and academic stakeholders to share knowledge on AI use cases and impact on health and safety.
- Collaborating with other regulators to encourage a consistent regulatory approach.
- Identifying AI developments through horizon scanning and monitoring activities.
- Building AI capability and experience across specialist areas of HSE.
- Supporting research bids aligned with HSE's research interests to develop safe use and regulation of AI.
- Setting up and trialling an Industrial Safety tech Regulatory Sandbox to explore barriers to adoption in construction.

Those businesses that may be starting to incorporate AI should ensure they have taken into the account the risks this may have on health and safety and that necessary measures are in place to mitigate these risks. See also the Artificial intelligence section.

Mental Health Awareness Week

Mental Health Awareness Week was on 13 to 19 May. In light of this, the HSE reminded businesses of its Working Minds campaign which raises awareness of how to promote good mental health at work. As another spotlight on mental health,

after stress awareness month last month, it gives businesses another important reminder to ensure mental health is managed properly within the workplace.

Building completion certificates

The HSE and the Department for Levelling Up, Housing and Communities have published guidance on how to apply for a completion or partial completion certificate for higher-risk building work or building work to an existing higher-risk building (HRB).

Building completion certificates need to be submitted in order to register an HRB which must be done before residents occupy the building.

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Modern slavery

Modern slavery

European Parliament adopts position on forced labour regulation

The European Parliament has adopted its position on the regulation to prohibit products made with forced labour going on the EU market. Under the regulation, Member State authorities and the European Commission will be able to investigate suspicious goods, supply chains and manufacturers. Investigative decisions will be based on factual and verifiable information that, for example, can be received from international organisations, cooperating authorities and whistleblowers.

If a product is deemed to have been manufactured using forced labour, it will be prohibited from being sold on the EU market (including online) and products will be seized at EU borders. If evidence can be provided to authorities that forced labour has been eliminated, then the product may be able to return to the EU market.

The text now needs to undergo linguistic review, after which the new European Parliament will need to adopt the text again (likely to be in September 2024, after the June elections). After this, the Council will then formally adopt the text. EU countries will have to start implementing the rules within three years of its entry into force.

Modern Slavery Act 2015: statement registry updated

The Home Office published, on 26 April, a press release announcing that it has updated the registry for statements required by section 54 of the Modern Slavery Act 2015.

Section 54 requires large businesses to produce a statement each year highlighting the steps they have taken to ensure that their business and supply chains are free of modern slavery, or a statement that they have taken no steps to do this.

Companies can add their statement to the registry – alongside publishing it on their websites – which allows people to search for an organisation's statement. The use of the registry is currently voluntary. The registry has been updated to encourage businesses to upload their annual modern slavery statements and the changes are as follows:

- One-off email notification to registered companies who have not uploaded a statement since the registry was launched in 2021.
- Email reminders to registered companies every year to prompt them to submit their latest annual statement. If companies have not yet uploaded their annual statement, they will first receive a reminder one month before the deadline; a further reminder will then be sent two weeks before the deadline and a final reminder one week before the deadline.
- Changes to the statement summary pages and search pages to clearly show how many of the recommended sections a company has completed on the registry.

While using the register is not required under the Modern Slavery Act 2015, businesses should consider whether the wish to use it.

Regulations to eradicate modern slavery in NHS supply chains to be delayed by general election

As reported in our March issue, the government announced its plans to introduce regulations to eradicate modern slavery in NHS supply chains, which are required under the Health and Care Act 2022. While there were reports that these had been drafted, they had not yet been introduced into Parliament and so due to the calling of the general election and dissolution of Parliament, these can no longer be brought forward and it will be for the newly-elected government to introduce the regulations.

CSDDD receives final vote

Please see ESG.

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Products

Products

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

The upcoming general election on 4 July means the dissolution of Parliament on 30 May. As a result, any legislation that was not passed during the recent wash-up period will no longer be considered. It remains uncertain whether the newly elected government will reintroduce these bills, as it is not obligated to do so.

During the wash-up, the Tobacco and Vapes Bill (see previous Regulatory Outlook) was not passed and so will fall away. It will now be down to the new government as to whether it wishes to resurrect this or not. For more on the wash-up period, read our Insight.

There are also a number of pieces of secondary legislation, regulations, that were also due to be introduced to Parliament which now will not be. For products these are as follows:

- The draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 – these had not been introduced into Parliament and cannot be introduced until a new government is formed. This raises the question as to whether there will be further delay to the extended producer responsibility scheme for packaging.
- Deposit Return Schemes – in a recent joint statement (see product sustainability section for more), the implementation had been delayed to 2027. However the new government is not obligated to bring these changes in and so this may be revisited.
- Medical Devices amending regulation- the amending regulations had not yet been published or laid in Parliament so this regulatory reform will need to be taken up by the new government.

For all of the above, we will have to wait to see what the new government will intend to do in these areas and will be providing further updates on this.

While no legislation had yet been drafted or introduced, the announcement of the general election is also likely to affect the progress of the UK's product safety review: publication of the government's consultation response is still awaited. Even so, it will be for the new government to decide what legislation is to be introduced under this review.

General/digital products

UK

The Product Safety and Metrology etc. (Amendment) Regulations 2024

The Product Safety and Metrology etc. (Amendment) Regulations 2024 were made on 23 May and come into force on 1 October 2024. These regulations amend 21 product regulations, including toys and radio equipment (see the full list), by removing the expiry of the provision that recognises the EU conformity assessment (that is, CE marking). This means that businesses can continue to use either the CE or UKCA mark indefinitely when placing products covered by the regulation on the Great Britain (GB) market.

Certain sectors, such as medical devices and construction products, have specific arrangements led by relevant government departments and are not covered by these measures.

The Department for Business and Trade has also updated its guidance pages "'Placing manufactured products on the market in Great Britain", "Using the UKCA marking" and "CE marking" in line with the new legislation which continues the recognition of the EU conformity assessment (see last month's Regulatory Outlook). Manufacturers should refer to this guidance when placing products on the market and for guidance on using either the CE or UKCA mark.

Updated guidance on consumer connectable product security regime

The government has released additional guidance on the security regime for consumer connectable products which came into force on 29 April 2024.

The new guidance specifies that the product's statement of compliance (SoC) must be "accompanied" by the product itself, and defines the SoC as a "document". However, the terms "document" and "accompany" are not clearly defined in the PSTIA (Product Security and Telecommunications Infrastructure Act). Therefore, each business that falls under the regime must determine how it will comply with the requirements for their individual products.

The guidance also mentions that certain categories of products may be exempted from the regime. Amending regulations introducing these have been drafted and exempt the following categories of products: motor vehicles agricultural, two- or three-wheel vehicles and quadricycles and forestry vehicles. These regulations are in draft form and were debated in the House of Commons on 21 May and will need to be approved by the House of Lords before they can enter into force.

If you missed our recent Eating Compliance for Breakfast Webinar on the new regime, you can request the recording.

Automated Vehicles Bill receives Royal Assent

The Automated Vehicles Bill received Royal Assent on 20 May.

This new legislation will introduce a regulatory framework for automated vehicles which will require self-driving vehicles to achieve a level of safety at least as high as careful and competent human drivers.

It will also place liability on the companies for the behaviour of the vehicles on the road when in self-driving mode, rather than the driver of the vehicles. This will mean that businesses such as manufacturers and software developers will be held responsible for the behaviour of the car.

The government has also recently published its response to its consultation on safety ambition. Respondents on the topic of regulation noted that the safety standards should be aligned with European and international regulations. The Department for Transport will use the consultation responses to inform the development of secondary legislation and guidance which a series of consultations will be launched on in due course now the bill has become law.

UK government announces two new codes of practice for cybersecurity and AI

Please see Cyber security.

EU

Council adopts position on updated toy safety regulation

The Council of the EU has, on 15 May 2204, adopted its position on the updated toy safety regulation. The Council's negotiating mandate aligns the obligations of economic operators with the general product safety regulation (GPSR) and sets out toy-specific obligations for providers of online marketplaces, in addition to those required by the existing legal framework (like the digital services act (DSA) and the GPSR). The Council's position also ensures that toys sold online that do not conform with the toy safety regulation will be regarded as illegal content for the purposes of the DSA.

With regard to chemicals, as well as the ban on the presence of substances classified as carcinogenic, mutagenic or toxic for reproduction (as set out in the Commission's proposal), the Council's position also introduces a ban on certain categories of skin sensitisers (chemical substances that provoke an allergic response following skin contact), a ban on toys that have a biocidal function, and a ban on the treatment of toys with biocidal products.

Negotiations between the Council and European Parliament (which adopted its position in March) will start as soon as the new Parliament adopts its position later this year.

Ecodesign and energy labelling requirements for computers

The European Commission has launched consultations on energy labelling and ecodesign requirements for computers. The consultation pages sets out that a review of the current Ecodesign Regulation 617/2013 on computers and computer servers is ongoing and a suitable testing method for assessing computer's energy efficiency is now available and therefore the introduction of an Energy Labelling Regulation for computers may be required. The consultation is seeking views from both consumers and stakeholders on the introduction of energy labelling for computers. Both consultations close on 18 July 2024.

Product sustainability

UK

Government confirms delay of DRS to 2027

Products

As reported last month, there was speculation that the deposit return scheme (DRS) would be delayed by two years, which the Department for Environment Food & Rural Affairs (Defra) has now confirmed in a joint policy statement: implementation of the DRS will be delayed to October 2027.

The statement also highlights that the scope of drinks containers in England and Northern Ireland, Wales, and Scotland will include drinks containers made of polyethylene terephthalate (PET), steel, and aluminium cans. It adds that the position on glass containers will be set out in separate statements issued by each administration. Wales has already confirmed in a statement that it will also be including glass within its DRS when the scheme is launched in 2027.

The joint policy statement also confirmed that online takeback will not be a requirement under the DRS in the UK.

It should be noted that the general election may affect the implementation of the DRS as the new government is not obligated to introduce the DRS and so it may be revisited.

Government publishes updated draft EPR regulations

On 1 May 2024, the government published the updated draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 which were amended following the consultation last year and stakeholder engagement. These will introduce the extended producer responsibility regime (EPR) for packaging in the UK which is due to come into force in October 2025.

Defra ran a webinar earlier this month on the updated regulations and explained that these have been reworked extensively to provide further clarity, but the obligations have not changed. Some of the key changes are as follows:

- mandatory recyclability labelling requirements are to come in from April 2027, this will not be retrospective (it was previously expected that these would be introduced in 2026);
- they have removed the provision on take back disposable cups, but this will be introduced via a separate statutory instrument (SI);
- binned waste and litter payments will also be introduced via a separate SI, but Defra remain committed to introducing these obligation in 2026 (year two of EPR);
- the provision for fee modulation exemption for online marketplaces has been removed and replaced with a power that enables the Scheme Administrator to decide whether to defer the introduction of modulation of fees for online marketplaces;
- there is a new provision on the implementation of DRS noting that should these schemes be delayed beyond 1 January 2028, then producers of drinks containers made of PET, aluminium and steel will be subject to the EPR regulations; and
- the recycling targets for 2025-2030 have been added (see Schedule 5).

However, with the announcement of the general election these will not be introduced due to the dissolution of Parliament and we will have to wait and see what the newly elected government intends to do.

EPR enforcement to start at the end of this month

As reported last month, after 31 May 2024 enforcement action will be taken for late submission of an organisation's details for the EPR for packaging.

Defra has also recently updated its guidance on organisation details providing more detail about what turnover and total tonnage mean, as well as clarifying the difference between "primary and secondary packaging" and "primary and secondary packaging activities".

Businesses that have not done so already should review the updated guidance and assess the packaging they are responsible for and ensure they have reported the necessary information by the end of this month.

EU

Products

European Parliament adopts position on right to repair

The European Parliament has adopted its final position on the Common rules promoting the repair of goods directive. Under the new rules, manufacturers will be required to repair those products which are repairable under EU law (those that have repairability requirements), even if the legal guarantee has expired. This includes items like washing machines, vacuum cleaners and smartphones and this list can be expanded in the future.

Manufacturers will also be required to provide spare parts and tools at a reasonable price which does not *"deter"* access to spare parts. They will be prohibited from using contractual clauses, hardware, or software techniques that hinder repairs. This means they cannot prevent independent repairers from using second-hand or 3D-printed spare parts, nor can they refuse to repair a product for economic reasons or because it was previously repaired by someone else.

Once the directive is formally approved by Council and published in the EU Official Journal, Member States will have 24 months to transpose it into national law. See the full text.

European Parliament and Council formally adopt Ecodesign for Sustainable Products Regulation

The European Parliament has formally adopted its position on the Ecodesign for Sustainable Products Regulation. The new regulation will extend the current ecodesign framework to all physical goods placed on the EU market which will be introduced by the European Commission via delegated acts.

The adopted position includes to prioritise a number of product groups in its first working plan, including iron, steel, aluminium, textiles (notably garments and footwear), furniture, tyres, detergents, paints, lubricants and chemicals.

The regulation will also ban the destruction of unsold consumer products, which will come into force two years after the regulation enters into force. Digital product passports will be required for all products and the European Commission will manage a public web portal allowing consumers to search and compare information included in product passports.

The Council adopted the regulation without any further amendments on 27 May 2024. After being signed by the President of the European Parliament and the President of the Council, the regulation will be published in the Official Journal of the European Union and will enter into force on the 20th day following its publication. It will apply from 24 months after the entry into force.

European Parliament adopts position on Packaging and Packaging Waste Regulation

The European Parliament has formally adopted its position on the Packaging and Packaging Waste Regulation. Under the new rules certain single-use plastic packaging types will be banned from 1 January 2030.

These include packaging for unprocessed fresh fruit and vegetables, packaging for foods and beverages filled and consumed in cafés and restaurants, individual portions (for example condiments, sauces, creamer, sugar), accommodation miniature packaging for toiletry products and very lightweight plastic carrier bags (below 15 microns). The regulation also includes a ban on the use of PFAS above a certain threshold in food contact packaging. Further, all packaging (except for lightweight wood, cork, textile, rubber, ceramic, porcelain and wax) will have to be recyclable by fulfilling a strict criteria which will be set out in implementing acts and delegated acts.

In terms of next steps, the Council now needs to formally approve the law before it can come into force.

European Parliament adopts amending CLP regulation

The European Parliament has formally adopted the regulation on classification, labelling and packaging of chemical substances and mixtures (CLP Regulation). Under the new rules, changes include to labelling (including setting minimum dimensions in millimetres of labels, pictograms and font size found on packaging, as well as rules on voluntary digital labelling) and related technical requirements, such as the information being searchable, accessible in less than two clicks to all users in the EU, free of charge and for a period of at least ten years.

The rules also ban the use of "green claims" for substances or mixtures classified as hazardous - advertisements must not contain statements such as "non-toxic", "non-harmful", "non-polluting", "ecological" or any other inconsistent with their classification.

The Council now needs to formally adopt this regulation before it can enter into force.

Life sciences and healthcare

UK

Medicines and Healthcare products Regulatory Agency outlines AI strategy

As requested in the government's response to its white paper, "A pro-innovation approach to AI regulation", the Medicines and Healthcare products Regulatory Agency (MHRA) has published its strategic approach to AI. The strategy outlines how the MHRA is, and will be, implementing the principles of the white paper: safety, security and robustness; appropriate transparency and explainability; fairness; accountability and governance; and contestability and redress.

The MHRA's AI strategy focuses on three perspectives: as a regulator of AI products, as a public service organisation delivering time-critical decisions, and as an organisation making evidence-based decisions that impact public and patient safety.

The MHRA recognises the opportunities that AI offers and the regulatory reform that is required to ensure safety while embracing the advantages of AI, such as through the launch of the AI Airlock. Read our Insight for more.

MHRA announce international recognition of medical device

On 21 May, the MHRA published a statement outlining a draft policy for international recognition of medical devices in Great Britain. Under this policy, the MHRA will be able to *"utilise the expertise and decision-making of other regulatory partners"* via international recognition which will see the UK government recognising regulatory approvals of medical devices from Australia, Canada, the EU and the US. The press release notes that the MHRA will continue to review the list of comparable regulator countries, with Japan currently being considered. Interestingly, unlike the international recognition procedure for medicines (see this Regulatory Outlook), Singapore and Switzerland are not yet being considered.

The draft policy also provides a number of conditions that have to be met to be eligible for the proposed framework, including having English language labelling and packaging and having a UK responsible person. The policy is still in draft form and the proposed framework is expected to come into force along with the new medical device regulations (see our Insight for more).

Consultation launched on common specifications requirements for IVDs

The MHRA has launched a consultation on introducing amendments to the Medical Devices Regulations (MDR) 2002 to introduce common specification requirements for in vitro diagnostic devices (IVDs). Currently, in the UK, there is a list that determines the classification of IVDs. However, this system is currently in the process of being reformed in that instead of using a fixed list, the classification will be based on the level of risk associated with the device. This means that certain high-risk IVD devices, previously classified as List A, will now be classified as Class D devices. The problem is that with this change, the common technical specifications that ensure the safety of high-risk IVD devices will no longer apply. This creates a gap in the regulations.

Therefore the government are proposing to introduce common specification requirements as a means for certain class D IVD devices in the future regulation to demonstrate conformity with applicable essential requirements. The common specifications the MHRA are proposing to adopt are to:

- introduce common specification requirements for certain Class D IVD devices to be consistent with EU Commission Implementing Regulation 2022/1107. This is to ensure that manufacturers have enough safety checks in place for certain Class D devices that are the highest risk to patient safety;
- introduce the inclusion of common specification requirements in a Post Market Performance Follow-up (PMPF) Plan. In the In Vitro Diagnostic Medical Device Regulation 2017, a PMPF plan must be submitted as part of the technical requirements for an IVD device before it can be placed on the market; and
- remove the requirements for COVID-19 test devices from the MDR 2002.

Products

The consultation closes on 14 June 2024. Manufacturers should review the consultation and decide whether they wish to submit their views on the introduction of common specification requirements to the regulatory framework before IVD devices can be placed on the GB market.

The general election may affect the outcome of this consultation.

New veterinary medicines regulation come into force

On 17 May 2024, the new Veterinary Medicines (Amendment etc.) Regulations 2024 came into force. These amend the Veterinary Medicines Regulations 2013 in a bid to modernise them.

The amending regulations set out the controls on the marketing, manufacture, distribution, possession, and administration of veterinary medicines and medicated feed. Changes include giving the Secretary of State power to require a marketing authorisation holder, manufacturer, wholesale dealer, keeper of food-producing animals, feed mill or vet to provide information on the sales and usage of antibiotics.

It also allows the submission of a single dossier for marketing authorisation for the European region and tightens advertising rules, including that medicines can only be advertised if they are authorised to be marketed. The government has published updated guidance in line with these changes.

FSA progresses two novel food applications for CBD products

Please see Food law.

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Regulated procurement

Regulated procurement

Procurement Act 2023: commencement regulations and further guidance

Despite Parliament being prorogued, the necessary regulations for the Procurement Act 2023 to go live from 28 October 2024 made it through. The Procurement Act 2023 (Commencement No 3 and Transitional and Saving Provisions) Regulations 2024 were signed on 23 May. These regulations legislatively set out the go-live date of 28 October 2024, bring into force the revocation of the existing procurement regulations other than in respect of devolved Scottish procurements and include the transitional provisions which determine the relationship between the current and new procurement regime.

The Cabinet Office has also updated its guidance collection page which is now arranged to list guidance documents under the four stages of the commercial pathway: Plan, Define, Procure and Manage. The page sets out the full list of guidance documents, both published and unpublished. The latest guidance documents that were published on 24 May were as follows:

• Guidance: Utilities Contracts

• Guidance: Defence and Security Contracts

• Guidance: Concessions Contracts

• Guidance: Light Touch Contracts

• Guidance: Reserved Contracts for Supported Employment Providers

For more on what went through before Parliament was prorogued ahead of the general election, please see our Insight.

Procurement Regulations 2024

The House of Commons debated the draft Procurement Regulations 2024 on 13 May and approved the regulations.

The House of Lords also then approved the regulations on 20 May, meaning the regulations are now made and will come into force alongside the Procurement Act 2023 on 28 October 2024.

Updated National Procurement Policy Statement published

The National Procurement Policy Statement was laid in Parliament on 13 May and will come into force alongside the Procurement Act on 28 October 2024.

Contracting authorities must have regard to this statement as set out in section 13 of the Procurement Act. The main priorities are:

1. **Value for money:** Contracting authorities must prioritise value for money by optimising the use of public funds and achieving the intended outcomes of the procurement, including wider socio-economic and environmental benefits. This is also explicitly referred to in the Act itself.
2. **Social value:** Authorities should consider outcomes such as creating resilient businesses, opportunities for quality employment and skills development, improving innovation and supply chain resilience, and tackling climate change and reducing waste. While much shorter than the previous NPPS, the social value section remains largely the same and there have not been any substantive changes.
3. **Small and Medium-sized Enterprises (SMEs):** Authorities should support SMEs and open up public procurement opportunities to them, reducing and removing barriers in the procurement process to create a competitive marketplace.
4. **Commercial and procurement delivery:** Authorities should consider having the right operational policies and processes in place to manage the key stages of commercial delivery, following the principles and guidance provided in the government's Playbook series.
5. **Skills and capability for procurement:** Authorities should assess their organisational capability and workforce plans to ensure they have the necessary procurement and contract management skills and resources to deliver value for money effectively.

Regulated procurement

Guidance published on the Procurement Review Unit

The Cabinet Office has published guidance on the Procurement Review Unit (PRU) and how it will support the implementation of the Procurement Act 2023. The role of the PRU is to ensure compliance with the new procurement regime and improve practices of contracting authorities. The PRU is comprised of three services:

- Public Procurement Review Service (PPRS). The PPRS investigates complaints from suppliers about specific procurements and issues recommendations for improvement.
- Procurement Compliance Service (PCS). The PCS focuses on investigating systemic and institutional non-compliance issues and can make statutory recommendations to contracting authorities.
- Debarment Review Service (DRS). The DRS manages debarment and exclusions, ensuring that only suitable suppliers can bid for public contracts.

Overall, the PRU's ambition is to raise standards in public procurement and drive accountability for contracting authorities and suppliers in the UK.

DHSC update commercial procurement pipeline

The Department for Health and Social Care has updated its commercial procurement pipeline. This provides a forecast of potential commercial activity over the next 48 months where spend is over £2 million. Suppliers should review this pipeline to decide if there are any forthcoming procurements they wish to bid for.

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Sanctions and Export Control

Sanctions and Export Control

New sanctions legislation

The Sanctions (EU Exit) (Miscellaneous Amendments and Revocations) Regulations 2024 was approved by Parliament during the "wash up" period of legislation following the general election announcement. The regulations, which came into force on 16 May 2024, make changes to a number of UK sanctions regimes (including Russia, Belarus and Syria) by introducing a prohibition on designated persons from acting as directors of UK companies, as outlined in the UK's sanctions strategy.

Following the election, the new Parliament will convene on 9 July 2024, followed by the State Opening and a King's Speech outlining the new government's agenda for the upcoming Parliamentary session. In the event that the Labour Party forms the next government, shadow foreign secretary, David Lammy, has said that the party will strengthen the UK's sanctions regime. This would include targeting professional enablers and launching a new whistleblower reward scheme, which aims to incentivise individuals to provide information that leads to the identification of assets belonging to sanctioned individuals and entities held within UK jurisdictions.

For more on the legislation dealt with during the wash up period, see our Insight.

UK updates Russian import sanctions guidance

The Department for Business and Trade (DBT) has updated its information on monitoring and enforcement and displaying supply chain history in its guidance on import sanctions imposed on Russian diamonds, and iron and steel. The guidance encourages organisations in all parts of the supply chain for third country processed diamonds, iron and steel imports to undertake the necessary due diligence to ensure compliance with the sanctions regime.

The notice to importers should be read alongside statutory guidance published by the FCDO. See an overview of the current import prohibitions in force.

Update to financial sanctions enforcement and monetary penalties guidance

The Office of Financial Sanctions Implementation (OFSI) has updated its financial sanctions enforcement and monetary penalties guidance:

- OFSI will now, as a matter of policy assess all financial sanctions breaches in line with the latest version of the enforcement guidance;
- providing clarification as to how OFSI will apply and split "case factors" that are used to assess suspected financial sanctions breaches; and
- introducing two new case factors, "Knowledge, intention and reasonable cause to suspect" and "Cooperation".

Update to financial sanctions general guidance

OFSI has updated its financial sanctions general guidance to amend the following:

- section 4.1 "Ownership and control", the example for ownership and control relating to individuals; and
- definitions for extraordinary situations and expenses in the section on OFSI's approach to licensing grounds.

OFSI launches new FAQs

OFSI has published UK financial sanctions frequently asked questions (FAQs), a new form of additional guidance aimed at providing technical support on sanctions. OFSI encourages organisations and individuals to review the FAQs alongside its existing guidance and legislation, which take precedence.

There are currently FAQs relating to:

- specific regimes and countries including Russia and Libya;
- licensing;
- Russian oil services ban; and
- definitions.

OFSI states that FAQs will be published on an "as-needed basis", such as to support significant policy changes, new general licences, enforcement actions or in relation to wider implementation problems. see the press release. OFSI may also withdraw FAQs at its discretion, which will be listed on the government website.

New OFSI legal services general licence

A new general licence INT/2024/4671884 relating to legal services came into effect on 29 April 2024, it expires on 28 October 2023. The existing general licence INT/2023/3744968 expired on 28 April 2024 and has been removed.

The main changes to the general licence are:

- the professional legal fees and expenses caps have been reset and users will be able to make use of the legal fees (£500,000 including VAT) and expenses caps (10% of the legal fees up to £50,000 including VAT) under Parts A and B of the general licence;
- the professional legal fees and expenses caps now apply to each law firm instructed by designated persons to cover all matters on which the law firm is instructed;
- Part B of the general licence now permits brief fees and refresher fees to be paid to counsel, where they are fixed fees and not subject to hourly rates;

the definition of counsel now includes barristers who are regulated by the Bar of Northern Ireland, and advocates who are regulated by the Faculty of Advocates (in Scotland).

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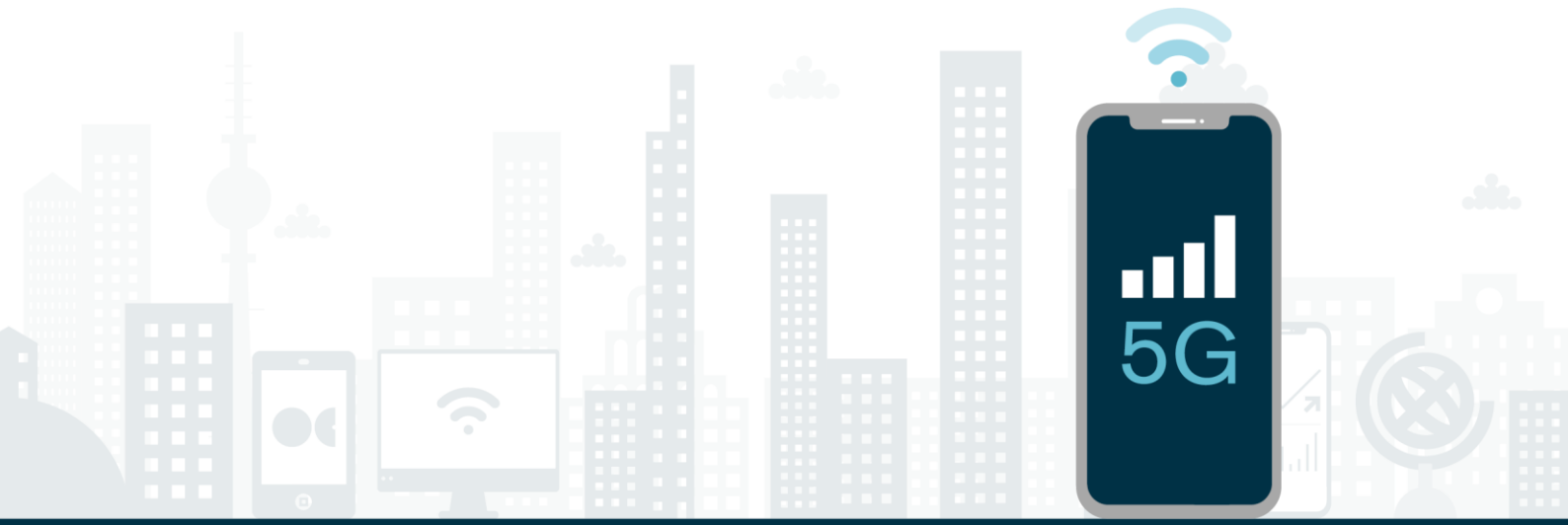

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Nothing further to report this month.

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