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**MAY 2017**

# CALENDAR OF KEY ISSUES

AN INTERACTIVE  
GUIDE TO THE LEGAL  
MILESTONES AHEAD

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This is a guide to key legal developments  
in the coming months and years ahead  
(UK perspective).

# CALENDAR OF KEY ISSUES AT A GLANCE

## 2017

- Country-by-country reporting regulations
- Emissions Reduction Plan
- Implementation of EU Damages Directive
- Installation of sub-meters under the Heat Network Regulations delayed
- Invoice assignment clauses
- Levy Control Framework
- Limited partnership law
- London's Spatial Development Strategy and Transport Strategy
- Neighbourhood Planning Act
- New Electronic Communications Code - impact on landowners
- New Securitisation Regulation
- Nuclear Installations (Liability for Damage) Order 2016/562
- Possible change in the way in which boundary disputes will be dealt with
- Prohibition on corporate directors
- Review of the Corporate Insolvency Framework
- The future of Investor-State Dispute Resolution
- Threshold test for permission to appeal to the Court of Appeal

## SPRING

- Completion of publication of 2016 editions of JCT suite of contracts

## MAY

- Draft Airports National Policy Statement
- Embedded benefits
- Enterprise Act 2016 comes into force
- Environmental Impact Assessment Directive 2014
- Finance Bill 2017 to receive Royal Assent
- Housing White Paper
- New controls on foreign investment in UK critical infrastructure
- Public register of foreign beneficial ownership of UK property

## SPRING/SUMMER

- 2.3 and 3.4 GHz spectrum auction

## SUMMER

- CMA to update *de minimis* merger guidance
- National Infrastructure Assessment
- Revised General Conditions of Entitlement to come into force
- Significant Code Review

## JUNE

- Capacity market
- Certain Digital Economy Act provisions to come into force
- CMA guidance on initial enforcement orders and derogations in merger investigations
- Employment/worker status
- End of retail roaming charges in the EU
- Fourth Money Laundering Directive and revised Wire Transfer Regulation
- General election
- Insurance premium tax
- National Planning Policy Framework
- New Business and Property Courts
- Possible review of the Arbitration Act 1996
- Publication of 2017 editions of NEC4 suite of contracts
- Recast Insolvency Regulation ((EU) 2015/848)
- Register of beneficial ownership
- Shareholder Rights Directive II
- Tax for late-life oil and gas assets
- UK merger control revised merger notification form



## **JUNE/JULY**

- Prospectus Regulation to replace current Prospectus Directive

## **JULY**

- Fixed recoverable costs
- Law Commission projects
- Onshore transmission - Competitively Appointed Transmission Owners

## **MID-2017**

- Corporate Governance and Directors' Remuneration
- First certification decision for UK competition class actions claim

## **AUTUMN**

- Bulk transfers of contracted-out rights
- Carbon price support
- CJEU *Intel* ruling
- Community Infrastructure Levy
- Consultation on the UK Corporate Governance Code
- Corporate criminal offence of failure to prevent facilitation of tax evasion
- Housing and Planning Act 2016
- Publication of 2017 edition of FIDIC Rainbow suite of contracts
- Second Budget

## **SEPTEMBER**

- EU-US Privacy Shield first annual review
- Second CfD allocation round

## **OCTOBER**

- Delayed opening of exemptions register for properties with F and G rated EPCs
- Regulatory information and LEI numbers

## **NOVEMBER**

- Bonn climate change conference

## **DECEMBER**

- Industrial action
- Medium Combustion Plant Directive 2015 implementation due
- UPC Preparatory Committee's anticipated start date for the UPC and availability of UPs
- VAT reclaims by scheme sponsors on pension fund investment management expenses

## **LATE 2017**

- Changes to IPO process
- CJEU *Coty* ruling on the legality of online sales bans
- FCA Listing Rule changes

## **LATE 2017/EARLY 2018**

- New Electronic Communications Code to come into force

## **2017/2018**

- Civil Courts Structure Review - implementation
- EU Circular Economy Package
- European Market Infrastructure Regulation - continued phase in of clearing and margining obligation
- Intra-EU Bilateral Investment Treaties
- Potential changes to the EU merger control rules
- Reforming the Civil Procedure Rules
- Relief from forfeiture of a licence

# CALENDAR OF KEY ISSUES AT A GLANCE (CONT'D)

## 2018

- Grandparental leave
- Guaranteed Minimum Pension equalisation
- OSPAR review
- Senior Managers and Certification Regime

## EARLY 2018

- New EU content portability regime to apply

## JANUARY 2018

- Basel III Securitisation Framework
- EU Benchmark Regulation
- Markets in Financial Instruments Directive (MiFID II)
- PRIIPs Regulation
- Revised Payment Services Directive (PSD2)
- The EU Market Abuse Regulation
- Wider scope of REMIT

## FEBRUARY

- Insurance Distribution Directive

## SPRING

- Reform of EU telecommunications framework to be approved

## APRIL

- Auto-enrolment
- Changes to taxation of termination payments
- Defined contribution contracting-out
- Gender pay gap reporting
- Inflationary indexing of the Lifetime Allowance
- New measures implemented following WLA market review
- Prohibition on letting properties with F and G rated EPCs
- Reform of the taxation of employment termination payments
- Soft drinks industry levy
- Stamp Duty Land Tax in Wales

## MAY

- Cyber Security Directive to be implemented into national law
- ePrivacy Regulation to apply
- EU General Data Protection Regulation to apply

## JUNE

- Capacity market
- EU Trade Secrets Directive
- National Emission Ceilings Directive 2016 implementation due

## MID-2018

- Hydrocarbons and Mining Waste BREFs
- REACH deadline





## **JULY**

- Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015

## **AUGUST**

- "Central clearing" of derivative trades by pension funds

## **NOVEMBER**

- Alignment of State Pension Age
- Climate change conference

## **LATE 2018**

- Amendments to the Audiovisual Media Services Directive expected

## **2019**

### **JANUARY**

- IORP II Directive

### **MARCH**

- Brexit

### **APRIL**

- Auto-enrolment (DB schemes)
- Auto-enrolment (DC schemes)

### **JUNE**

- Capacity market

### **OCTOBER**

- Final deadline to surrender CRC Energy Efficiency Scheme allowances

## BREXIT

Following the result of the UK referendum on membership of the EU in June 2016, the UK Prime Minister gave notice on 29 March 2017 under Article 50 of the Treaty on European Union (**the Article 50 notice**) of the UK's intention to leave the EU, thereby formally starting the Brexit process. This means, almost certainly, that two years from now the UK will leave the EU at the end of March 2019, some 46 years after becoming a Member State of the then "European Common Market" on 1 January 1973.

The Article 50 notice consisted of a six page letter addressed to Mr Juncker, President of the European Council, which in addition to the formal notice of its intention to leave the EU in accordance with Article 50, set out the UK's intended approach to the Brexit negotiations and the key principles to guide this approach. It also referred to the UK's objectives for a future partnership which are set out in more detail in the Prime Minister's Lancaster House speech of 17 January 2017 and the subsequent Great Repeal Bill White Paper published in February 2017, which includes the Government's proposals for ensuring a functioning statute book once we have left the EU.

This was followed by an announcement by the UK Prime Minister on 18 April 2017 that there would be an early general election which will take place on 8 June 2017.

Our [legal guide](#) offers a look at the opportunities and challenges presented by Brexit, viewed from a global perspective. A sector-by-sector analysis of the possible legal impact of a UK exit from the EU, covering 20 industry sectors, can be found on our [Brexit hub](#).



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**8 JUNE 2017**

**General election:** The UK Prime Minister announced on 18 April 2017 that there would be an early general election which will take place on 8 June 2017.

**END OF MARCH 2019  
(OR OTHER DATE  
TO BE AGREED)**

**Brexit:** The UK leaves the EU.

## BANKING, RESTRUCTURING AND INSOLVENCY

Significant changes to both the UK Insolvency Rules and the European Insolvency Regulation will occur over the next few years. The revised Insolvency Rules came into force on 6 April 2017 and the recast version of the European Insolvency Regulation applying to relevant insolvency proceedings is expected to be in force from 26 June 2017.

In addition, the Government is continuing to examine whether any of the significant changes to the corporate insolvency regime, set out in its review of the Corporate Insolvency Framework, should be implemented.



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**26 JUNE 2017**

**Recast Insolvency Regulation ((EU) 2015/848):** EC Regulation 1346/2000 on insolvency proceedings seeks to harmonise the regulation and enforcement of insolvency proceedings among Member States by providing for the affairs of insolvent companies and individuals to be administered in the jurisdiction with which they have the closest connection. A revised version, the Recast Insolvency Regulation, came into force on 26 June 2015 and will apply to relevant insolvency proceedings from 26 June 2017. Changes include:

- a new three month “look back” period which will be relevant when determining a debtor’s “centre of main interest” (used to determine the Member State in which primary insolvency proceedings should be commenced) and which aims to reduce abusive forum shopping;
- new procedural rules to improve co-ordination between insolvency practitioners in group insolvency situations; and
- the creation of a new Europe-wide insolvency register.

**2017**

**Review of the Corporate Insolvency Framework:** In May 2016 the Insolvency Service published a consultation paper setting out a number of options designed to improve the existing corporate insolvency regime. The four areas being considered for reform are:

- the introduction of a new three month moratorium for distressed companies;
- a widening of the definition of essential supplies to allow distressed companies to maintain business critical contracts;
- the introduction of a flexible restructuring plan that would bind both secured and unsecured creditors and introduce a “cram-down” mechanism; and
- amending the rules regarding priorities to allow rescue financing to be put in place.

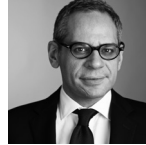
The responses to the proposals have not, in general, been positive. The Government published a summary of the responses on 28 September 2016 and has stated that it is continuing to review the proposals in light of the responses received.

## COMPETITION, REGULATION AND TRADE

Proposals for new controls on the foreign ownership of critical UK infrastructure are expected for consultation imminently, following the Government's previous announcement of a new legal framework for national security reviews of foreign investment in the wake of the Hinkley Point C new nuclear project. Other changes in the merger control field are also underway, with the Competition and Markets Authority (CMA) planning to implement changes to various UK merger control procedures before summer 2017, and the European Commission considering potentially significant amendments to the EU merger regulation jurisdictional thresholds.

In the antitrust sphere, significant rulings from the Court of Justice of the European Union (CJEU) are expected in important cases concerning loyalty rebates and online sales restrictions.

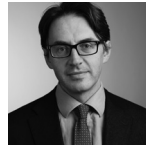
Finally, private enforcement of competition law also continues to be firmly on the agenda, with implementation of the EU Damages Directive taking place across Europe and the ruling of the Competition Appeal Tribunal (CAT) on whether to certify a proposed multi-billion opt-out class action against MasterCard expected by mid-2017.



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**EARLY MAY 2017****New controls on foreign investment in UK critical infrastructure:**

The Government is expected to open a consultation imminently on proposed new powers to scrutinise foreign acquisitions of interests in UK infrastructure for the purposes of national security (see our previous e-bulletin [here](#)). It is understood that the proposals will include a “*cross-cutting national security requirement for continuing Government approval of the ownership and control of critical infrastructure*”, and a review of the current Enterprise Act 2002 merger control public interest regime. Little further detail is currently available, including what infrastructure and what level of control will be covered.

**JUNE 2017****CMA guidance on initial enforcement orders and derogations in merger investigations:**

In March 2017 the CMA published for consultation draft guidance on its practice under the UK merger control regime of imposing initial enforcement orders (IEOs) prohibiting further integration. The guidance reflects the CMA's experience gained since the current system was introduced in April 2014. It aims to provide further clarification in relation to the circumstances in which IEOs will typically be imposed, the form an IEO will typically take, the types of derogations the CMA is likely to grant and the timing for imposing and revoking IEOs and granting derogations. The final guidance is expected to be issued by the end of June 2017.

**JUNE 2017****UK merger control revised merger notification form:**

In March 2017 the CMA launched a consultation on a draft revised merger notice template. The changes proposed in the revised merger notice reflect the experience gained since the current merger notice template was introduced in April 2014. The proposed changes are intended to streamline the pre-notification process by providing additional guidance in relation to the information that is likely to be required by the CMA in the circumstances of each case. Final guidance is expected to be issued by the end of June 2017.

**SUMMER 2017**

**CMA to update *de minimis* merger guidance:** In January 2017 the CMA launched a consultation on its guidance on the exception to the duty to refer in markets of insufficient importance (*de minimis* merger guidance). The CMA is proposing to increase the threshold above which it considers that the market(s) concerned will be of sufficient importance to justify a phase 2 reference from £10 million to £15 million, and the threshold below which it will generally not consider a reference justified from £3 million to £5 million. The final revised guidance is expected to be issued before summer 2017.

**MID-2017**

**First certification decision for UK competition class actions claim:** The first few applications to bring “opt-out” damages claims in the CAT under the new competition law collective redress regime have now been brought. The CAT’s decision on whether to allow a claim for £14 billion against MasterCard on behalf of all UK consumers is expected shortly (the CAT having recently decided to defer its certification decision in the other pending case to allow the proposed class representative to re-plead her claim (see our e-bulletin [here](#))). The CAT’s approach to certification will have a significant impact on claimants’ (and litigation funders’) appetite to bring claims under the new regime.

**AUTUMN 2017**

**CJEU *Intel* ruling:** The CJEU’s ruling on Intel’s appeal against the General Court’s confirmation of the European Commission’s abuse of dominance decision is expected in autumn 2017. The case concerns loyalty rebates granted by dominant companies and their correct analysis under Article 102 of the Treaty on the Functioning of the European Union. In October 2016, Advocate General Wahl held that the General Court was wrong to conclude that Intel’s rebates were inherently anti-competitive and that it was not necessary to consider the circumstances of the case to determine whether the conduct was capable of restricting competition (see our e-bulletin [here](#)). Instead Wahl concluded that an analysis of the circumstances is necessary to ensure that the abuse finding is established to the requisite legal standard.





**LATE 2017**

**CJEU Coty ruling on the legality of online sales bans:** The CJEU is expected to issue a preliminary reference ruling in the Coty case before the end of 2017 (the oral hearing took place on 30 March 2017 but the date for the Advocate General's opinion is not yet known). The case concerns the compatibility of restrictions imposed by suppliers on their retailers selling via third party online platforms (such as Amazon Marketplace or eBay) with the EU competition rules. Such platform bans have been sanctioned by the German competition authority in a number of cases, but other authorities and courts have not taken the same strict approach. It is widely hoped that the ruling will provide much needed clarity.

**2017**

**Implementation of EU Damages Directive:** The deadline for Member States to implement the EU Directive on antitrust damages actions was 27 December 2016. While in the UK legislation implementing its provisions (including on document disclosure and limitation periods) came into force on 9 March 2017, many Member States have yet to implement. They are expected to do so in the course of 2017. It is unlikely that the Directive will impact the – already high – level of competition litigation in the UK, but procedural litigation on the meaning of some of the provisions is likely. A greater number of damages actions and settlements are likely in other Member States where the private enforcement of competition law is currently limited.

**2017/2018**

**Potential changes to the EU merger control rules:** The European Commission consultation on potential changes to the EU Merger Regulation (EUMR) closed in March 2017. The most significant amendment under consideration (consistent with a recent change to the German merger control regime) is the introduction of revised jurisdictional thresholds to catch transactions where the target does not currently generate sufficient turnover to meet the EUMR thresholds, but is highly valued and may become an important competitive force in the future (for example in the tech and pharma sectors). If adopted this may significantly widen the scope of the EUMR. The European Commission is currently considering the consultation responses received and will then announce its next steps.

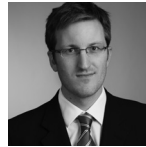
# CONSTRUCTION

The ever-changing landscape of standard forms for the industry is being added to by the reissue of the JCT suite (the largest in the field) from autumn 2016 on a piecemeal basis, contract by contract. This is still in progress. During 2017, the NEC contract suite, commonly used for major infrastructure projects, will reach its fourth edition. The FIDIC suite of contracts, which is mainly for international use, is also expected to be reissued.



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**SPRING 2017**

**Completion of publication of 2016 editions of JCT suite of contracts:** Completion of publication of 2016 editions of JCT suite of contracts including Major Project Construction and Constructing Excellence contracts.

**JUNE 2017**

**Publication of 2017 editions of NEC4 suite of contracts:** Publication of 2017 editions of NEC4 suite of contracts including reissue of complete suite and new Design Build Operate form together with consultation draft of Alliancing contract.

**AUTUMN 2017**

**Publication of 2017 edition of FIDIC Rainbow suite of contracts:** Anticipated publication of 2017 edition of FIDIC Rainbow suite of contracts.

## CORPORATE

Corporate governance, for both publicly listed companies as well as private companies, has been a key theme of the last 12 months and will continue to be a key theme in 2017. In April 2017, the House of Commons Business, Energy and Industrial Strategy Select Committee published its report on UK corporate governance and directors' remuneration. The Department for Business, Energy and Industrial Strategy (BEIS) is expected to publish its White Paper on corporate governance reform this summer. The Financial Reporting Council is then expected to consult on changes to the UK Corporate Governance Code in light of these in autumn 2017.

There are also a number of changes proposed to the UK listing regime. The Financial Conduct Authority (FCA) is in the process of a wide ranging review of the structure of the UK's primary markets and has published both a discussion paper on the UK primary markets landscape, seeking feedback on how the UK primary capital markets can most effectively meet the needs of issuers and investors and whether the current structures should change, as well as a more detailed consultation paper on specific changes to the

provisions currently set out in the Listing Rules relating to eligibility for a premium listing, class transactions and calculation of the class tests and reverse takeovers.



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**26 JUNE 2017**

**Register of beneficial ownership:** The EU Fourth Money Laundering Directive (MLD IV) must be implemented in the UK by 26 June 2017 (see the entry in the financial services regulatory section below for further details). MLD IV includes requirements in relation to the disclosure of beneficial ownership information. UK incorporated companies and LLPs have, since 6 April 2016, been required to keep a register of people exercising significant control (PSCs). The Treasury published draft regulations to implement MLD IV in March 2017. They did not cover possible changes to the PSC regime and stated that a Government statement would follow outlining the changes required following the BEIS consultation paper which was issued in November 2016. In April 2017, Companies House issued a statement saying that from 26 June, it will need to be notified of a change in PSC information within 28 days of the change (rather than annually as part of a company's confirmation statement) and that Scottish Limited Partnerships and General Scottish Partnerships will become subject to the PSC regime from 26 July 2017.

**JUNE 2017**

**Shareholder Rights Directive II:** A Directive amending the current Shareholder Rights Directive is expected to be published in the EU Official Journal in June 2017. The European Commission, European Parliament and European Council all approved the text of the amending Directive in early 2017 and no changes to this text are envisaged. The amending Directive sets out a number of measures to encourage shareholder long-term engagement and increase transparency. These include measures applying to EU incorporated listed companies in relation to directors' remuneration reporting and voting requirements and additional requirements for related party transactions. It also includes obligations on intermediaries to disclose underlying shareholders; enhanced disclosure requirements of institutional investors and asset managers' investment policies and strategies; and obligations on proxy advisers to ensure that their voting recommendations are accurate and reliable. The Directive will come into effect two years after publication in the Official Journal and will need to be implemented through national legislation. UK implementation is dependent on the timing and terms of Brexit.

**JUNE/JULY 2017**

**New prospectus regime:** A new EU Prospectus Regulation is due to be published which, upon implementation, will replace entirely the current EU Prospectus Directive regime. The European Commission and European Parliament have approved the text of the Regulation and the European Council is expected to approve it shortly. The Regulation seeks to simplify the current regime, in particular, there are broader exceptions from the requirement to issue a prospectus and a reduction in generic and boilerplate disclosure. The Regulation is expected to be published in the EU Official Journal in June/July 2017. Most of the provisions would be directly effective in Member States two years following publication (though UK implementation is dependent on the timing and terms of Brexit). Certain of the provisions setting out new, broader exemptions from the obligation to produce a prospectus come into force on the date the Regulation comes into force and certain others will apply 12 months after the Regulation comes into force. The FCA has proposed amendments to the UK Prospectus Rules to reflect the provisions that come into force early in its Quarterly Consultation CP17/6. See also the entry in the debt capital markets, securitisation and derivatives section below.

**MID-2017**

**Corporate Governance and Directors' Remuneration:** BEIS is expected to publish proposals for UK corporate governance reform this summer in response to its November 2016 Green Paper on the subject. Following recent well-publicised corporate failures there has been an increased focus on the behaviour and transparency of large UK businesses, including private businesses, and how the interests of wider stakeholders should be taken into account. This, coupled with the continuing concern about the levels of executive pay, led to the publication of the Green Paper which sets out the potential options for reform of UK corporate governance under three broad headings: executive pay, strengthening the employee, customer and wider stakeholder voice; and corporate governance in large privately-held businesses. The Green Paper is very much a discussion paper looking at a range of options and does not advocate a particular route in relation to the issues raised. The Financial Reporting Council will also consult on changes to the UK Corporate Governance Code in autumn 2017 (see below).



**1 OCTOBER 2017**

**Regulatory information and LEI numbers:** Amendments to DTR 6 require issuers to include a Legal Entity Identifier (LEI) on announcements of regulated information (broadly, inside information, information published pursuant to the Transparency Rules and information required to be published under Member State listing rules) and for those announcements to be classified according to specific categories. The requirements reflect new EU requirements in relation to electronic access to regulatory information published by issuers. These requirements were due to come into force early this year but will now come into force on 1 October 2017 so as to enable primary information providers (PIPs) and issuers to amend their processes and procedures to reflect these requirements. The EU requirements also establish a European Electronic Access Point (EEAP) which will provide access to all published regulatory information via each Member State's existing storage service. The EEAP is scheduled to go live on 1 January 2018.

**AUTUMN 2017**

**Consultation on the UK Corporate Governance Code:** The Financial Reporting Council (FRC) has announced plans for a fundamental review to "simplify and shorten" the UK Corporate Governance Code. The review will take account of the FRC's recent work on corporate culture and succession planning, as well as the issues raised in the Government's Corporate Governance Green Paper (see above) and the House of Commons Business, Energy and Industrial Strategy Select Committee Corporate Governance inquiry. The FRC says that it will consult on its proposals in autumn 2017 following the outcome of the Government's Corporate Governance Green Paper.

**LATE 2017**

**FCA Listing Rule changes:** Changes to the Listing Rules forming part of the FCA's review of the effectiveness of the UK primary markets are expected to come into force in late 2017. The proposed changes are set out in FCA Consultation Paper CP17/4 and focus on three areas: eligibility for a premium listing, class transactions and calculation of the class tests and reverse takeovers. The consultation closes on 14 May 2017. Accompanying the consultation paper was a discussion paper DP17/2 seeking feedback on how the UK primary capital markets can most effectively meet the needs of issuers and investors and whether the current structures should change. Comments on that discussion paper also close on 14 May and if the FCA decides to take forward any specific proposals, it will publish a detailed consultation paper.

**LATE 2017**

**Changes to IPO process:** The FCA is consulting on a range of measures to improve the range and quality of information made available to investors during the initial public offering (IPO) process. The key proposals focus on two areas: the timing of the publication of the prospectus and the interaction between the issuer and analysts. They would be implemented by amendments to the Conduct of Business Sourcebook (COBS). The consultation closes on 1 June 2017 and the FCA expects to publish a policy statement outlining the final rule changes later this year.

**2017**

**Prohibition on corporate directors:** Under the Small Business, Enterprise and Employment Act 2015 (SBEE Act), corporate directors (that is, the use of a company as the director of another company) were to be prohibited, subject to certain exceptions, but this provision, originally due to be implemented in 2016, has not been brought into force. In November 2016, BEIS confirmed in its consultation paper on the beneficial ownership register aspects of the Fourth Money Laundering Directive (see above) that it still intended to bring this prohibition into force. There will be a grace period of 12 months from commencement of the prohibition for existing corporate directors. The Government has consulted on the circumstances where the use of corporate directors could continue, under exceptions to the general prohibition including, for example, subsidiary companies of parent companies with shares admitted to trading on regulated or prescribed markets, but the final details have not yet been published and the timing remains unclear.

**2017**

**Invoice assignment clauses:** Under the SBEE Act, the Secretary of State has the power to make regulations to nullify provisions prohibiting assignment of receivables in certain business-to-business contracts. The Government has consulted on the form and content of the regulations to implement this nullification. The implementation date was originally meant to be April 2016 but the timing for bringing this provision into force remains unclear.





**2017**

**Limited partnership law:** BEIS published a call for evidence in connection with a review of limited partnership law in January 2017. The call for evidence sought responses to a range of questions including: which economic activities and sectors use limited partnerships and why; whether the transparency and reporting requirements for limited partnerships should be increased; and whether some of the legal characteristics of limited partnerships should be amended, for example whether a limited partnership should be required to maintain a presence in the UK and whether a “strike-off” procedure for limited partnerships should be introduced. The call for evidence closed on 17 March 2017 and BEIS is expected to publish any proposals to amend limited partnership law in light of the responses to the call for evidence later this year.

## DEBT CAPITAL MARKETS, SECURITISATION AND DERIVATIVES

The next few years will see continued regulatory change in the capital markets. The proposals for further changes to the regulatory regimes applicable to securitisation and bank capital continue to be politically charged, with industry bodies and different national regimes taking opposing views as to how the frameworks should take shape.

Of interest to all issuers of debt securities and investors will be the replacement of the current Prospectus Directive with a new Prospectus Regulation. The Commission has said that this new regime aims to *“provide all types of issuers with disclosure rules which are tailored to their specific need while making the prospectus a more relevant tool of informing potential investors”*.

On the structured side, proposals for consolidation and harmonisation of the regulatory framework for securitisation continue to move forward, together with the development of criteria for “Simple, Transparent and Standardised” (STS) securitisation, which is intended to benefit from more favourable regulatory capital treatment. More generally, the capital regime applicable to interests in securitisation transactions is due to be overhauled in accordance with the Basel III Securitisation Framework.



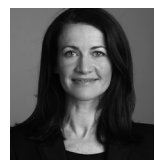
In the derivatives markets, further progress is expected in implementation of the European Market Infrastructure Regulation (EMIR), with the ongoing continued phase-in of the clearing obligation and phase-in of margin requirements for non-cleared derivatives.

Further reform is also expected in the capital regime applicable to banks and other financial institutions, including proposed changes to the minimum requirement for eligible liabilities (MREL) framework applicable to European banks, and a package of reforms to implement the Financial Stability Board’s proposals in relation to total loss absorbing capital (TLAC). The aim of the TLAC principles is to ensure that failing Global Systemically Important Banks (G-SIBs) will have sufficient loss-absorbing and recapitalisation capacity available to enable authorities to minimise impact on financial stability, maintain the continuity of critical functions and avoid exposing public funds to loss.



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**2017**

**New Securitisation Regulation:** On 30 September 2015, the European Commission published its proposal for a Securitisation Regulation, seeking to simplify and harmonise existing legislation on due diligence, risk retention and disclosure. The proposal also establishes a set of European criteria for “Simple, Transparent and Standardised” (STS) securitisations, which would benefit from more favourable regulatory capital treatment.

The legislative process has been more protracted than expected due to significant changes proposed by the European Parliament. Trilogue negotiations between the Parliament, European Council and Commission are ongoing, following which the proposals will be put before the European Parliament again. Open points include the treatment of securitisation transactions structured outside of the EU.

**JUNE/JULY 2017**

**Prospectus Regulation to replace current Prospectus Directive:**

A new EU Prospectus Regulation is due to be published which, upon implementation, will replace entirely the current EU Prospectus Directive regime. The European Commission and European Parliament have approved the text of the Regulation and the European Council is expected to approve it shortly. The Regulation is expected to be published in the Official Journal in June/July 2017 and most of the provisions will apply 24 months thereafter. There are a number of changes for debt capital markets including new requirements on the form and content of risk factors and summaries in prospectuses, the expansion of the wholesale disclosure regime to bonds traded on a regulated market to which only qualified investors can have access and the introduction of the concept of a “universal registration document” to assist frequent issuers. See also the entry in the corporate section above.

*(continued overleaf)*

**2017/2018**

**European Market Infrastructure Regulation (EMIR) – continued phase in of clearing and margining obligation:** The obligation for qualifying counterparties to clear eligible transactions through central counterparties (CCPs) is already in place for qualifying CCP members as well as for Financial Counterparties (FCs) and Alternative Investment Funds (AIFs) with eligible transaction portfolios exceeding EUR 8 billion.

This obligation applies to other qualifying FCs and AIFs on a staggered basis from June 2017 onwards.

The EMIR margining obligation will also continue to come into effect. The requirement for eligible counterparties to exchange initial margin has already commenced for the largest market participants, and will continue to come into effect on a staggered basis. Variation margin must be posted for uncleared over-the-counter (OTC) derivatives transactions (from 1 March 2017 onwards) between qualifying counterparties. The European Supervisory Authorities have encouraged regulatory forbearance on a case by case basis given the lack of market preparedness, however, the expectation is that compliance will be achieved as soon as possible. The Financial Conduct Authority has adopted this approach.

**1 JANUARY 2018**

**Basel III Securitisation Framework:** The Basel III Securitisation Framework aims to address shortcomings in the Basel II securitisation framework in relation to the calibration of risk weights and incentives for good risk management. The new framework introduces criteria for simple, transparent and comparable (STC) securitisations. The revised framework is scheduled to come into effect on 1 January 2018 and its criteria will be implemented in the EU by the proposed STS framework set out in the draft Securitisation Regulation. Changes to the calibration of risk-weights will be implemented in amendments to European regulations governing capital charges (including the Capital Requirements Regulation (CRR) and Solvency II).





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**CHAMBERS UK 2016**

## DISPUTE RESOLUTION

The Rolls Building courts (including the Commercial Court, Technology and Construction Court and Chancery Division) are to be re-styled the “Business and Property Courts of England and Wales” from June this year.

Work continues toward development of the Online Court, as recommended in Lord Justice Briggs’s final report in his Civil Courts Structure Review in July 2016, but the timing of implementation remains uncertain.

Significant changes to procedures for obtaining permission to appeal were introduced in October 2016 in an attempt to address the current backlog of cases in the Court of Appeal. The most controversial change was to remove the automatic right to an oral renewal of permission to appeal applications that have been refused on the documents. A further change to raise the threshold for permission from a “real” to a “substantial” prospect of success is still being considered. If implemented, it is likely to exacerbate the concerns many have expressed that meritorious appeals may be wrongly excluded at the permission stage.



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**JUNE 2017**

**New Business and Property Courts:** In March the judiciary announced that, from June 2017, the “Business and Property Courts of England and Wales” will be the new name for England and Wales’ international dispute resolution jurisdictions and will act as a single umbrella for business specialist courts across England and Wales. The new court will encompass the Commercial Court (including the Admiralty Court), the Technology and Construction Court (TCC) and the courts of the Chancery Division (including those dealing with financial services, intellectual property, competition, and insolvency).

**JUNE 2017**

**Possible review of the Arbitration Act 1996:** In 2016, the Law Commission of England and Wales consulted on whether any aspects of the Arbitration Act 1996 should be considered for reform in its next law reform programme. Areas which the Law Commission itself identified as potential areas for consideration were: changes to improve efficiency and duration of arbitral proceedings (for example, by including an express power under which a tribunal may issue summary judgment) and amendments to allow arbitration of trust disputes. Other issues brought out in the consultation may also be considered for possible reform. The final draft programme will be proposed to the Lord Chancellor in June 2017 and laid before Parliament shortly thereafter.

**31 JULY 2017**

**Fixed recoverable costs:** In a speech in January 2016, Lord Justice Jackson recommended the introduction of a scale of fixed recoverable costs, based on claim value, for all claims worth up to £250,000. In September 2016 the Government announced its intention to extend fixed costs to “as many civil cases as possible”, and in November Lord Justice Jackson was commissioned to lead a new review of fixed recoverable costs to report by the end of July 2017. The threshold at which any regime of fixed recoverable costs might be set is a matter to be considered in the review, but it is understood that Lord Justice Jackson remains particularly interested in cases valued at up to £250,000.

*(continued overleaf)*



**2017****Threshold test for permission to appeal to the Court of Appeal:**

The procedural rules governing appeals to the Court of Appeal were amended and restructured with effect from 3 October 2016, in particular to remove the automatic right to an oral hearing when renewing an unsuccessful application for permission to appeal. A proposal to raise the threshold test for permission from a “real” to a “substantial” prospect of success is still being considered by the Civil Procedure Rule Committee.

**2017**

**The future of Investor-State Dispute Resolution:** Later this year, the EU Commission is expected to report on the public consultation on the future of investor-state dispute settlement, the consultation period having closed on 17 March 2017. The EU has sought public input on its proposal to establish a Multilateral Investment Court System to replace investor-state arbitration. Further details of the focus of the consultation and Herbert Smith Freehills’ response to the EU Commission can be found [here](#).

**2017/2018**

**Civil Courts Structure Review - implementation:** Lord Justice Briggs’s final report in his review of the future of the civil courts structure was published in July 2016. Key recommendations relevant to commercial parties include establishing an Online Court, initially for money claims up to £25,000, and transferring some of judges’ more routine and non-contentious work to case officers, under judicial training and supervision. In “Transforming our justice system: summary of reforms and consultation”, published by the Ministry of Justice on 15 September, the Government stated its intention to create a new process to resolve many disputes entirely online, building on Lord Justice Briggs’ proposals, and to make more use of case officers for routine tasks. Work is currently being done on the development of the online system and rules, but the timing of completion is not clear.





**2017/2018**

**Intra-EU Bilateral Investment Treaties:** The CJEU's decision on whether intra-EU Bilateral Investment Treaties (BITs) are compatible with EU law is anticipated in 2017 or 2018, further to a reference made by the German Federal Court of Justice in connection with proceedings between Slovakia and Dutch insurance group, Achmea (discussed further [here](#)). A decision that intra-EUs BIT are not compatible with EU law may lead to difficulties in enforcing in the EU arbitral awards issued by investment tribunals determining claims brought under intra-EU BITs. The same issue is already the subject of proceedings before the EU General Court brought in connection with a claim brought by investors against Romania under the Sweden-Romania BIT. See [here](#) for further details.

**2017/2018**

**Reforming the Civil Procedure Rules (CPR):** The Civil Procedure Rule Committee is currently considering how it can work towards streamlining, reducing or reformatting the CPR with a view to making them simpler particularly for the benefit of litigants in person. It is not yet clear what changes might be made, or on what timescale.

## EMPLOYMENT

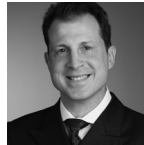
Perhaps the most significant issue for many larger employers over the next 12 months will be the need to comply with the gender pay gap reporting obligations introduced in April 2017 by publishing their pay data by April 2018. Currently, there are few other significant employment law changes confirmed for the next couple of years, although the issue of employee/worker status is set to remain a hot topic and may well give rise to legislative proposals. In the longer term, changes to employment tribunal procedure are to be introduced as part of the wider reform of the civil justice system and the Government may also make proposals following consultations on caste discrimination and pregnancy and maternity discrimination.

Brexit could also significantly impact UK employment law in the longer term given that much employment law is derived from EU legislation. However, the Prime Minister announced on 2 October 2016 that existing workers' rights will be guaranteed during her premiership. Employers will still need to start preparing for new EU law on data protection in force in May 2018, and should also keep an eye on the Government's stance on implementation of the EU Trade Secrets Directive.



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**JUNE 2017**

**Employment/worker status:** The Report of the Matthew Taylor Independent Review of Employment Practices in the Modern Economy is expected in June 2017. This will focus on the rapidly changing nature of work, including the development of the “gig economy” and workers’ rights. The issue of employment status and rights has also recently been the subject of inquiries by BEIS, the Office of Tax Simplification, and the Work and Pensions Committee, so there could well be proposals for reform in the next year or two.

**DECEMBER 2017**

**Industrial action:** The report of an independent review into electronic balloting is expected.

**4 APRIL 2018**

**Gender pay gap reporting:** Private and voluntary sector employers with 250 or more “relevant employees” are required to publish their first set of gender pay gap data by 4 April 2018. Further details are available [here](#).

**APRIL 2018**

**Changes to taxation of termination payments:** Basic pay in respect of unworked notice will be treated as earnings subject to income tax, employer National Insurance Contributions (NICs) and employee NICs, whether or not the payment is pursuant to a contractual obligation (or “pilon” clause). Employers’ NICs will be payable on payments above £30,000 (to align the rules for income tax and employers’ NICs). N.B. These measures have been omitted from the truncated Finance Bill which is to receive Royal Assent before 3 May, but we expect these provisions to be reintroduced in a further Finance Bill later in the year, though this will depend on the outcome of the general election. See the entry in the tax section below for further details.

**MAY 2018**

**Data Protection Regulation:** The General Data Protection Regulation will apply from 25 May 2018, aiming to harmonise data protection procedures and enforcement across the EU. This will have significant implications for employers processing employee data. See the entry in the technology, media and telecommunications section below for further details.

**JUNE 2018**

**EU Trade Secrets Directive:** A new EU Trade Secrets Directive has been approved and must be implemented by Member States by 9 June 2018. This will be before the terms of Brexit are agreed and, therefore, technically the UK should implement the Directive. It is possible the Directive may not be implemented at that point, but the Government may wish to implement it in the future in order to protect inward investment from EU countries.

**2018**

**Grandparental leave:** The Government has plans to extend shared parental leave and pay to working grandparents by 2018.





For the latest developments on employment topics, please visit our [Employment notes blog](#).

## ENERGY AND ENVIRONMENT

Subject to certain grace periods, the Renewable Obligation Certificates (ROC) has closed to new applicants and been replaced by the Contracts for Difference (CfD) scheme. The second allocation round for the CfD scheme, during which £290 million of funding is available, closed to applications on 21 April 2017.

Meanwhile Ofgem has announced its "minded to" decision on changes to embedded benefits which would reduce the residual element of triad avoidance payments available to embedded generators. Ofgem is also currently consulting on whether to proceed with its significant code review (SCR) on residual transmission and distribution charging.

The UK Government has confirmed as part of Brexit that the UK will also be leaving Euratom. Since the Brexit referendum, the Government has been at pains to affirm its continued commitment to tackling climate change. In the White Paper on the Great Repeal Bill, the Government confirmed that all existing EU environmental law will continue to have effect after Brexit. Following this, the Government intends to consult on any proposed changes to the regulatory framework.

The progress made in implementation of the November 2016 Paris Agreement is to be discussed at the Bonn conference

in May 2017. In March 2017 President Trump signed an order to start rolling back Obama's Clean Power Plan designed to assist the US in meeting its Paris Agreement commitments. On 10 April 2017, a G7 Energy meeting failed to produce a joint statement on climate change because of the US's intention to review its membership of the Paris Agreement.

Air quality has returned to the fore. Following ClientEarth's second successful case against the Government for breach of EU air quality legislation the Government has been ordered to publish a new national plan in compliance with EU targets by 31 July 2017 and has committed to hold a public consultation on a draft.

In the oil and gas sector, the Government has published a formal discussion paper on tax issues arising on the transfer of late-life oil and gas assets.



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**16 MAY 2017**

**Environmental Impact Assessment (EIA) Directive 2014:** New regulations to implement revisions to the EIA Directive adopted in 2014 come into force on 16 May 2017. Amongst other things the changes add to the criteria required for screening and assessing project risks and streamline procedures where both EIA and habitats assessment are required.

**MAY 2017**

**Embedded benefits:** Ofgem is expected to publish its final decision on the changes proposed to embedded benefits. Ofgem's decision was prompted by modifications proposed to the Connection and Use of System Code by industry and was consulted on until 18 April 2017. More information is available on Ofgem's website [here](#).

**15 JUNE 2017**

**Capacity market:** This is the date by which the Secretary of State must determine whether a T-4 or a T-1 auction is to be held in the auction window starting on 1 September 2017 under the Electricity Capacity Regulations 2014 (as amended), having received a capacity report from National Grid as the Electricity Market Reform (EMR) Delivery Body.

**30 JUNE 2017**

**Tax for late-life oil and gas assets:** The Government has published a formal discussion paper on tax issues for late-life oil and gas assets (see [here](#)). The paper considers tax issues on the transfer of such assets to new investors, and whether any changes to the tax rules could facilitate such transfers in order to support the Government's aim of Maximising Economic Recovery. For example, the paper considers the case for allowing transfers of tax history between buyers and sellers. The deadline for interested parties to make submissions is 30 June 2017. We expect the Government to report on the results at the Autumn Budget 2017.

**JULY 2017**

**Onshore transmission – Competitively Appointed Transmission Owners (CATOs):** The Government has decided to extend the use of competitive tendering to onshore electricity transmission assets that are new, separable and high value. Ofgem is expected to consult further on tender models, processes and commercial and regulatory arrangements for CATOs in July 2017. Ofgem expects to be in a position to run the first onshore transmission tender in late 2017 or early 2018. More details are available on Ofgem's website [here](#).

**SUMMER 2017**

**Significant Code Review (SCR):** If Ofgem decides to launch an SCR into residual transmission and distribution charging, this is when Ofgem has indicated the launch statement will be published. Further information is available on Ofgem's website [here](#).

**11 SEPTEMBER 2017**

**Second CfD allocation round:** This is the date on which the allocation round will end. Developers that have submitted applications should be aware that the non-qualification review request date is 16 May 2017 and the appeals deadline date is 13 June 2017. Further details are available on the BEIS website [here](#) and on National Grid's EMR Delivery Body website [here](#).

**AUTUMN 2017**

**Carbon price support:** In the Spring Budget 2017 it was announced that the Government remains committed to carbon pricing as a driver for decarbonisation of the power sector, that further details on carbon prices for the 2020s would be set out in the Autumn Budget 2017, and that starting in 2021-2022 the Government will target a total carbon price and set the specific tax rate at a later date to give businesses greater clarity on the total price they will pay.

**6-17 NOVEMBER 2017**

**Bonn climate change conference:** The 23rd Conference of the Parties (COP23) to the United Nations Framework Convention on Climate Change (UNFCCC) will be held in Bonn in Germany in November 2017. The focus is likely to be on progress made in implementing the Paris Agreement, a process which the countries participating in COP22 in Marrakech in November 2016 agreed should be completed by December 2018. Click [here](#) to read our e-bulletin on the Paris Agreement.

**19 DECEMBER 2017**

**Medium Combustion Plant Directive 2015 implementation due:** This Directive regulates air emissions from the combustion of fuels in plant with a rated thermal input between one and 50 megawatts. This could include generators and boilers for large buildings, or those providing heat or steam for small industrial installations. The Directive includes limits on emissions of sulphur dioxide, nitrogen oxides and particulates (dust), together with obligations to monitor emissions of carbon monoxide. Certain types of plant benefit from an exemption including: waste incineration and co-incineration; internal combustion engines in non-road mobile machinery; gas turbines on offshore platforms and reactors in the chemicals industry. The





provisions differ for new and existing equipment. A Government consultation on implementation closed on 8 February 2017 and the necessary legislative changes are expected to be published shortly.

**2017**

**Levy Control Framework:** In the Spring Budget 2017 it was announced that the existing Levy Control Framework, which has helped to control the costs of low carbon subsidies in recent years, would be replaced later in 2017.

**2017**

**Nuclear Installations (Liability for Damage) Order 2016/562:**

The 2004 Paris and Brussels Protocols are expected to be ratified by the UK in 2017. This will amend the current liability regime for operators to pay compensation after a nuclear incident. The limits to liability will be increased and compensation for environmental reinstatement costs will be available as well as compensation for pure economic loss suffered by those, like fishermen, whose income depends upon the environment but who do not necessarily have any associated property rights.

**2017**

**Emissions Reduction Plan:** Originally promised for February 2017, the Government has yet to issue its Emissions Reduction Plan. This plan will set out how the Government intends to meet the requirements of its fourth and fifth carbon budgets under the Carbon Change Act 2008. ClientEarth have written to the Government threatening legal action with regard to the continued delay.

**2017/2018**

**EU Circular Economy Package:** The European Parliament and the Council is considering an extensive revamp of EU waste and recycling legislation introduced in December 2015 as part of the Commission's Circular Economy package. It is expected this process could take between one and three years. The package involves a wide-ranging action plan, together with proposals for changes to key waste legislation including the Waste Framework Directive, Packaging Waste Directive, Landfill Directive and Waste Electrical and Electronic Equipment Directive. Key proposals include economic incentives for producers to put greener products on the market and support recovery and recycling schemes, more stringent targets for recycling, and various additional restrictions and incentives aimed at discouraging landfill. The detail of the package is currently uncertain with the Council attempting to weaken targets and extend deadlines. Further detail can be found [here](#).

**3 JANUARY 2018**

**Wider scope of REMIT:** From 3 January 2018 (the implementation date of MiFID II) the EU Market Abuse Regulation (MAR) will widen the scope of activities covered under the EU Regulation on Energy Market Integrity and Transparency (REMIT) by extending the definition of “financial instruments” to include energy derivatives and related products traded on multilateral trading facilities (MTFs) and other organised trading facilities (OTFs).

**15 JUNE 2018**

**Capacity market:** This is the date by which the Secretary of State must determine whether a T-4 or a T-1 auction is to be held in the auction window starting on 1 September 2018 under the Electricity Capacity Regulations 2014 (as amended), having received a capacity report from National Grid as the EMR Delivery Body.

**30 JUNE 2018**

**National Emission Ceilings Directive 2016 implementation due:** The implementation of the revised Directive will affect the UK’s emission reduction commitments for SO<sub>2</sub>, NO<sub>x</sub>, VOCs, ammonia and PM 2.5. The Directive will also oblige the UK Government to prepare and implement a national air pollution control programme by 31 March 2019.

**MID-2018**

**Hydrocarbons and Mining Waste BREFs:** The Best Available Techniques (BAT) Reference document (or BREF) for the Hydrocarbons sector is expected to be finalised by mid-2018. The BREF is intended to summarise BAT already applied under economically viable conditions in the hydrocarbons sector and help the sector share a common understanding of high-level performance. Unusually, the BREF is not intended to be legally binding given the lack of a clear legal basis for its adoption. The BREF is currently being developed through a working group organised by the Commission, including representatives from Member States, the industries concerned and environmental NGOs. A gap analysis undertaken by Amec Foster Wheeler as part of that process has identified a considerable list of items for consideration.

A review of the existing BREF covering Tailings and Waste-rock in Mining Activities is also underway. The revision is intended to adapt the existing BREF for the onshore oil and gas sector, particularly shale gas operations.



**MID-2018**

**REACH deadline:** The last registration deadline for existing chemicals under Regulation 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (**REACH**) will be on 31 May 2018. This deadline concerns companies that manufacture or import substances into the EU in low volumes, between one and one hundred tonnes a year. Businesses would be well advised to ensure they complete their registrations well in advance to avoid bottlenecks arising due to the expected flood of applications. The Environmental Audit Committee has conducted an inquiry into what system will replace REACH when the UK leaves the EU. It is thought this will be a replacement UK system. The fate of REACH registrations held by UK manufacturers and importers remains unclear.

**19 JULY 2018**

**Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015:** All existing production installations (meaning production installations for which there was a current Safety Case immediately before 18 July 2013) in the UK Continental Shelf must have an updated Safety Case approved by 19 July 2018 in order to comply with these Regulations. Please refer to Schedule 14 of the Regulations, which can be found [here](#).

**NOVEMBER 2018**

**Climate change conference:** The 24th Conference of the Parties (COP24) to the UNFCCC is expected to be held in Poland in November 2018.

**2018**

**OSPAR review:** In 2018, the OSPAR Commission is expected to review certain of its rules and decisions, including decision 98/3 which requires complete removal of offshore installations when they are being decommissioned. There is currently no suggestion that the OSPAR Commission will depart from this current requirement of complete removal. However, in recent months various commentators – such as former energy secretary Sir Ed Davey – have argued in favour of a “rig to reef” approach. The oil and gas industry may use the review as an opportunity to argue for a relaxation on the current OSPAR requirements.

**15 JUNE 2019**

**Capacity market:** This is the date by which the Secretary of State must determine whether a T-4 or a T-1 auction is to be held in the auction window starting on 1 September 2019 under the Electricity Capacity Regulations 2014 (as amended), having received a capacity report from National Grid as the EMR Delivery Body.

**OCTOBER 2019****Final deadline to surrender Carbon Reduction Commitment (CRC)**

**Energy Efficiency Scheme allowances:** The CRC Energy Efficiency Scheme will be abolished at the end of the 2018-19 compliance year. The CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) (Amendment) Regulations 2017, which came into force on 31 March 2017, set out the prices for all future allowances and confirm that no applications will be made in 2019.





“I think they’ve been the best possible firm I could have been working with - the partners, on all of the aspects, are international experts and extremely strong. The depth of the bench is extremely strong as well, they do an absolutely outstanding job.”

**CHAMBERS UK 2017**

## FINANCIAL SERVICES REGULATORY

The next three years will bring significant changes to financial services firms. In particular, firms will need to consider challenging business and legal questions which arise from the UK vote to leave the EU. At the same time, various new European legislative measures are due to take effect over the next few years. These include the Fourth Money Laundering Directive (MLD IV) and the revised Wire Transfer Regulation (WTR), the Benchmark Regulation, the Insurance Distribution Directive (IDD), the Regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs) and the recast Markets in Financial Instruments Directive (MiFID II).



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**26 JUNE 2017**

**Fourth Money Laundering Directive (MLD IV) and revised Wire Transfer Regulation (WTR):** MLD IV and WTR extend the scope of the current EU anti-money laundering regime. Member States must implement MLD IV by 26 June 2017; the WTR is directly applicable and takes effect from 26 June 2017. See the entry on register of beneficial ownership in the corporate section above for further details.

**1 JANUARY 2018**

**EU Benchmark Regulation:** The manipulation of LIBOR and EURIBOR as well as the investigations and enforcement actions in relation to benchmarks globally have caused concerns about the integrity of benchmarks. In response to these concerns, the Regulation on indices used as benchmarks in financial instruments and financial contracts has been agreed (**EU Benchmark Regulation**). It will apply from 1 January 2018.

**1 JANUARY 2018**

**PRIIPs Regulation:** The **Regulation** on key information documents (KIDs) for PRIIPs introduces a new, pre-contractual disclosure document (KID) for retail consumers when they are considering buying PRIIPs. The Regulation also provides for market monitoring and product intervention powers.

Originally due to apply from 31 December 2016, application has been postponed and the PRIIPs Regulation will now apply from 1 January 2018. The transitional period for undertakings for collective investment in transferable securities (UCITS) will apply until 31 December 2019.

**3 JANUARY 2018**

**MiFID II:** The MiFID Directive (**MiFID II Directive**) and Regulation (**MiFIR**) (together recasting the existing MiFID) will significantly impact both the structure and operation of EU financial markets and provide increased protection for investors. Changes in relation to markets include increased regulation of trading venues including organised trading facilities, broadened scope of systematic internalisers, requirements in respect of algorithmic and high-frequency trading, change in the scope of commodity derivatives and expansion of pre- and post-trade transparency rules. Investor protection changes cover product design and intervention, conflicts of interest, execution-only business and disclosure of costs. MiFID II was originally due to apply from 3 January 2017, but this has now been pushed back to January 2018.



**3 JANUARY 2018**

**The EU Market Abuse Regulation (MAR):** MAR, which has expanded the scope of the market abuse regime, in terms of the types of behaviour targeted, the range of financial instruments covered and the territorial extent of the regime, came into effect on 3 July 2016. The scope of MAR is closely tied to that of MiFID II. References in MAR provisions to organised trading facilities (OTFs), SME growth markets, emission allowances or auctioned products based thereon, will not apply to these entities and products until MiFID II applies, on 3 January 2018.

**13 JANUARY 2018**

**Revised Payment Services Directive (PSD2):** PSD2 updates the current EU framework on payment services, extending its scope to payment service providers that were previously unregulated, as well as increasing transparency and security of payment services. PSD2 came into force on 12 January 2016 and Member States must transpose the Directive into national law by 13 January 2018.

**2018**

**Senior Managers and Certification Regime (SMCR):** The SMCR started to apply to individuals working in UK banks, building societies, credit unions, Prudential Regulation Authority (PRA)-regulated investment firms and UK branches of foreign banks from 7 March 2016. The SMCR is expected to be extended to all financial services firms and an extended range of personnel in such firms from 2018.







For the latest developments on financial services regulatory and corporate crime topics, please visit our [FSR and Corporate Crime notes blog](#).

# INSURANCE

The Enterprise Act 2016 will introduce a new right for policyholders to claim damages in the event of late payment of an insurance claim when it comes into force in May 2017. The Insurance Distribution Directive will, from February 2018, replace and update existing rules applying to insurance sales under the Insurance Mediation Directive. The Senior Managers and Certification Regime is expected to apply to insurers and insurance intermediaries from 2018.



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**4 MAY 2017**

**Enterprise Act 2016 comes into force:** One of the reforms brought about by the Enterprise Act 2016 will be a change in approach to remedies for late payment of insurance claims. Any contract of insurance made after the provisions come into force will include an implied term that if the insured makes a claim, the insurer must pay any sums due in respect of the claim within a reasonable time. Breach of this implied term will give policyholders a potential right to claim damages in the event of late payment. Our briefing on the practical implications for clients can be found [here](#).

**23 FEBRUARY 2016**

**Insurance Distribution Directive:** The Insurance Distribution Directive (IDD) repeals and replaces the Insurance Mediation Directive (IMD) and updates the IMD regime. Its aim is to promote cross-border sales of insurance, while continuing to protect policyholders. The IDD extends the scope of the regime to cover all sellers of insurance products, including insurers and reinsurers. Like the IMD, however, it continues to apply minimum standards which Member States may “gold plate”. The IDD came into force on 22 February 2016 and has to be transposed by Member States by 23 February 2018.

**2018**

**Senior Managers and Certification Regime (SMCR):** The Bank of England and Financial Services Act 2016 provides for the extension of the SMCR to all Financial Services and Markets Act-authorized firms. For insurers, this will mean changes to the Senior Insurance Managers Regime (SIMR), which was introduced in 2016. Insurance intermediaries will become subject to the SMCR for the first time. The intention is that the new regime will apply from 2018. The FCA intends to publish a consultation paper in the second quarter of 2017.

# INTELLECTUAL PROPERTY

As we have mentioned in our previous editions, the advent of the Unified Patent Court (UPC) and a unitary patent right across the EU (UP) have been the most hotly anticipated developments in intellectual property in recent years. Until the announcement of the UK general election last month, 1 December 2017 had been anticipated as the likely start date for the new patent system, despite the UK's exit from the EU in 2019. If the UK election delays ratification of the UPC Agreement by the UK then the whole UPC and UP system will be delayed.



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**DECEMBER 2017**

**UPC Preparatory Committee's anticipated start date for the UPC and availability of UPs:** Whilst the result of the Brexit referendum caused a pause in progress towards the establishment of the UPC, the UPC Preparatory Committee felt confident enough to announce in January 2017 that the likely start date for the new system would be 1 December 2017. The Committee did, however, sound a word of caution, stating that the *"timetable is conditional and provided with the clear disclaimer that there are a number of factors that will dictate whether it is achievable. The most important factors in meeting these dates are the necessary ratifications of the UPCA and accession to the Protocol on Provisional Application. If these are not achieved the time-plan will be disrupted"*. And so it very well may be, by the UK general election which could delay UK ratification and may cause Germany to delay its ratification in turn. If both ratifications are not received by August 2017, a December 2017 start date will not be possible (the UPC Agreement will come into force on the first day of the fourth month after the month where the ratification criteria are met).

The UPC will be a single court system to decide patent disputes on a pan-European basis and will deal with both the UP and current and future European patents with national designations. Once established, there will be a period of uncertainty for companies who will be waiting to see how well the new court operates in practice and may opt-out their patents. Patentees should continue the process of considering whether or not to opt-out their current European patents, and any coming to grant, from the UPC's jurisdiction. If the December start date for the UPC is still achievable then it is likely that the sunrise period for opting current European patents out of its jurisdiction will start in September 2017.

The UPC Agreement cannot come into force without ratification by the UK whilst the UK is still a member of the EU. Thirteen contracting Member States must ratify including the UK, France and Germany. Italy ratified in February 2017, taking the total ratifications to 11 (including one of the mandatory ones, France). If the UK does ratify whilst still an EU member to allow the UPC to be established, as it announced at an EU Competitive Council meeting in November 2016, then there is a question mark over what will happen to the UPC system on Brexit, in particular whether the UK could still remain a part of the new system if not an EU Member State.

*(continued overleaf)*

For more information on this and the new patent system in general, see our UPC and UP hub here: [www.hsf.com/upc](http://www.hsf.com/upc).

See our articles on opt-out from the UPC's jurisdiction (published in *Managing Intellectual Property*, June 2015) [here](#) and on patent portfolio management post the introduction of the UPC and UP (in *PLC Magazine*, November 2015) [here](#). See also our general commentary on IP and Brexit here: [Brexit - what IP issues to consider now?](#)





For more information on UPC and the UP, please see our [UPC and UP hub](#).



## PENSIONS

Consultation on the issues raised by the Government's recent Green Paper on the future of defined benefit (DB) pension schemes closes during May 2017, and it will be interesting to see how the more contentious aspects of this political hot potato are taken forwards – the issues of “stressed schemes” and retrospective changes to accrued rights, and of inflation-proofing of benefits and the wider RPI-CPI debate, being two cases in point. The real key date for the future, however, looks set to be 25 May 2018, from when the requirements of the EU's General Data Protection Regulation will apply automatically to all UK pension funds. The stance of the Information Commissioner's Office on critical aspects of the new regime (such as the giving of consent) is now starting to become clear; and with little more than a year now left to run before compliance with the Regulation becomes a legal obligation in the UK, advance planning is essential if schemes and their trustees are to comply with the new (and significantly more stringent) regime.



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**AUTUMN 2017**

**Bulk transfers of contracted-out rights:** Defects in the legislation dealing with the end of DB contracting-out mean that bulk transfers of members' benefits can only be made to schemes that were formerly contracted-out. The Department for Work and Pensions (DWP) have recognised that there is an issue and have indicated that they hope to be in a position to consult on any proposed changes by autumn 2017. There must, however, be some lingering uncertainty as to whether this will actually happen, particularly given the pressures likely to be encountered by parliamentary draftsmen in preparing the Great Repeal Bill and the 800 to 1,000 associated statutory instruments estimated to be necessary in order to "unpick" UK and EU law prior to Brexit taking place.

**31 DECEMBER 2017**

**VAT reclaims by scheme sponsors on pension fund investment management expenses:** We are still no closer to resolution of the pension scheme VAT saga. HMRC recently announced an extension to the transitional period (during which employers may reclaim VAT on pension fund investment management expenses either under the longstanding "70:30 rule-of-thumb" or in accordance with revised arrangements adopted in light of the CJEU decision in *PPG Holdings*) for a further 12 months, until 31 December 2017. HMRC also confirmed that if employers in the latter category wish to switch back to the previous (ie pre-PPG) means of dealing with VAT reclaims, they will be able to do so.

**5 APRIL 2018**

**Auto-enrolment:** Expiry of the first of two transitional periods relating to employer and member contributions to defined contribution qualifying arrangements, during which employers are only required to contribute 1% of earnings and to ensure that total contributions (employer plus member) are no less than 2% overall.

From 6 April 2018 the minimum contribution rates increase from 1% to 2% (employer) and from 1% to 3% (member) for the second transitional period, which runs until 5 April 2019 (and after which full contributions of 3% (employer) and 5% (member) will be required).

**5 APRIL 2018**

**Defined contribution (DC) contracting-out:** Expiry of the six-year transitional period during which schemes that were formerly contracted-out on a DC basis can use statutory modification powers to remove "protected rights" rules, which until the abolition of DC contracting-out in 2012 governed the administration and payment of such benefits, from their scheme's rules.

**6 APRIL 2018**

**Inflationary indexing of the Lifetime Allowance:** The Lifetime Allowance (currently at the reduced level of £1 million since the start of the 2016-17 tax year) will become index-linked to the annual increase in the Consumer Prices Index.

**25 MAY 2018**

**Data protection:** The EU's new General Data Protection Regulation will apply automatically as from 25 May 2018, notwithstanding the UK's pending exit from the EU, and will have a particular impact on pension scheme trustees who regularly process vast quantities of potentially sensitive personal data. Specific points to note include the extension of liability to data processors; increased fines (of up to €20 million, or 4% of worldwide turnover if greater – a significant hike to the current £500,000 limit); mandatory 72-hour notification requirements in the case of any breach; and the obligation to appoint a named Data Protection Officer where large quantities of sensitive personal data are processed. See the entry in the technology, media and telecommunications section below for further details.

**AUGUST 2018**

**“Central clearing” of derivative trades by pension funds:** 16 August 2018 marks the end of the recently-extended transitional period during which pension funds that trade in over-the-counter (OTC) derivatives are exempted from the obligation under the European Market Infrastructure Regulation (EMIR), to undertake central clearing for these transactions.

**NOVEMBER 2018**

**Alignment of State Pension Age (SPA):** Since 2010 the Government has been slowly equalising the age at which both sexes can claim state pension. The age at which individuals are able to receive such benefits is currently 65 for men, and between 60 and 63 for women born on or before 5 August 1953. November 2018 will see the SPA being aligned for both sexes at 65; this will eventually increase to 68 for both women and men born on or after 6 April 1978.

**2018**

**Guaranteed Minimum Pension (GMP) equalisation:** The Government's formal response to its consultation on GMP equalisation, issued during March, confirmed how in its view the revised methodology – which respondents had considered an improvement on the gold-plating of GMPs proposed back in 2012



- would meet the equalisation obligation derived from EU law. That said, it also indicated that Government would reconsider its position in the light of any legal decisions resulting from various cases currently making their way through the legal system which concern the need, or otherwise, to equalise GMPs. In the meantime the DWP will (it is said) be looking at the various technical points raised during the consultation, including possible changes to the means by which "GMP conversion" can be achieved.

#### JANUARY 2019

**IORP II Directive:** "Solvency II", as it is also known, is required to be implemented in Member States by 12 January 2019, and is therefore likely to become something with which UK pension funds must comply - notwithstanding that our exit from the EU will take place, at the very latest, a mere two and a half months later. Although the impact on UK schemes will be less dramatic than originally feared, it will contain additional obligations (particularly the provision of an Annual Benefit Statement to all deferred members) with which they will need to comply. Notably, however, there will be no insurance-style "capital adequacy" funding requirements placed upon DB schemes, and certain onerous elements of the cross-border funding regime will become less restrictive.

#### APRIL 2019

**Auto-enrolment (DC schemes):** Expiry of the second transitional period relating to employer and member contributions to defined contribution qualifying arrangements, during which employers are required to contribute 2% of earnings and to ensure that total contributions (employer plus member) are no less than 5% overall. From 6 April 2019 onwards contributions at the full rate, namely 3% employer and 5% member (or, more accurately, minimum employer contributions of 3% and minimum overall contributions of 8%), will be required.

#### APRIL 2019

**Auto-enrolment (DB schemes):** 5 April 2019 also sees the end of the transitional period during which formerly contracted-out DB schemes that are being used for auto-enrolment purposes may continue to satisfy the statutory "quality test" via an alternative "cost of accruals" measure, based on the benefit structure that was in place whilst accrual was taking place on a contracted-out basis.

## REAL ESTATE AND PLANNING

The next few years will see the gradual introduction of reforms relating to the energy efficiency of properties with the much heralded prohibition on lettings of commercial properties with Energy Performance Certificate (EPC) ratings of F and G coming in on 1 April 2018. There is also interest in the recently published consultation on the Government's plans for a public register showing who owns and controls overseas legal entities that own UK property.

In planning, 2017 brings a continued focus on reform and legislation aimed at achieving the Government's goal of increasing housing supply and availability, and improving transport infrastructure. However, the general election on 8 June 2017 has brought uncertainty to reforms such as the Housing White Paper, proposed amendments to the National Planning Policy Framework, the draft Airports National Policy Statement and the Community Infrastructure Levy review. The substance and timing of these are likely to be affected by both the pre-election purdah period and any subsequent change in government or ministerial team.



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**MAY 2017**

**Housing White Paper:** The Housing White Paper and the Planning and Affordable Housing for Build to Rent consultations were published on 7 February 2017. The Government seeks an increase in the supply of appropriate housing in England to meet demand by planning for the right homes in the right places, building homes faster and encouraging diversification of the housing market. Proposals in the two consultation papers will work with the Neighbourhood Planning Act and the National Planning Policy Framework. For our summary see [here](#). The consultations close on 2 May 2017 and 1 May 2017 respectively. A White Paper generally sets out proposals for further legislation, so a Bill may be published for consultation in due course.

**MAY 2017**

**Draft Airports National Policy Statement (NPS):** This was published for consultation on 2 February 2017, together with a draft UK Airspace Policy. The draft Airports NPS sets out the Government's policy on the need for additional airport capacity in the South East of England, the case for the Heathrow Northwest Runway as the Government's preferred scheme and the general assessment principles that the Secretary of State must use regarding, for example, scheme variation, Environmental Impact Assessment, Habitats Regulations Assessment, climate change adaptation, and pollution control and other environmental protection regimes. For the draft Airports NPS consultation paper see [here](#). The consultation period closes on 25 May 2017. The Airports NPS may be published once consultation responses have been reviewed.

**MAY 2017**

**Public register of foreign beneficial ownership of UK property:** The Government has published plans for a public register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement. Complementing the people with significant control register introduced in 2016 (see the corporate section above), this initiative is part of the Government's drive towards corporate transparency.

Overseas entities wanting to invest in UK property must first register their beneficial ownership information with Companies House and obtain a registration number. Existing foreign property owners will have a year to register. Non-compliance will result in restrictions being placed on the relevant property register prohibiting significant transactions, and may also constitute a criminal offence. The consultation closes on 15 May 2017.

**JUNE 2017**

**National Planning Policy Framework (NPPF):** On 7 December 2015, the Government issued a consultation on proposed changes to national planning policy. This consultation closed on 22 February 2016. The Government's response was published with the Housing White Paper on 7 February 2017. In the Housing White Paper, the Government set out revisions that it proposes to make to the NPPF. The Government announced that these revisions would be published for consultation in June 2017, although this is now uncertain. More detail can be found in our Housing White Paper summary [here](#).

**SUMMER 2017**

**National Infrastructure Assessment (NIA):** The **National Infrastructure Commission (NIC)** is responsible for analysing the UK's long-term economic infrastructure needs, outlining a strategic vision over a 30-year time horizon and setting out recommendations for beginning to meet identified needs. This will be done through the publication of a NIA once a parliament. The NIA will be developed in two stages. Through consultations, a vision of the UK up to 2050 will first be determined, to identify long-term infrastructure needs and medium-term priority action areas. This Vision and Priorities document will be published in summer 2017. This will then be consulted upon to inform the NIC's final conclusions. The NIA will be published in 2018.

**JULY 2017**

**Law Commission projects:** Last year, the Government promised a draft Law of Property Bill to implement the Law Commission's Report, *Making Land Work: Easements, Covenants and Profits à prendre* (2011). The Bill has not yet been published but the Government affirmed its commitment to legislation in its recent Housing White Paper.

Meanwhile, the Law Commission will announce its next programme of reform projects in July 2017. Some of the topics the Law Society and other stakeholders have asked the Commissioners to review are: the liability of guarantors post-assignment under the Landlord and Tenant (Covenants) Act 1995; changes to contracting out of sections 24-28 of the Landlord and Tenant Act 1954; abolition of most chancel repair liability; and leasehold law reforms.



**1 OCTOBER 2017**

**Delayed opening of exemptions register for properties with F and G rated EPCs:** The Government has published guidance on the Minimum Energy Efficiency Standards (MEES) Regulations for non-domestic landlords and enforcement authorities. It provides helpful information about the exemptions available to landlords to enable them to let, or continue to let, sub-standard properties after the Regulations come into force. Landlords will need to register details on a centralised self-certification register, the PRS Exemptions Register (PER). Due to open on 1 April 2017, this date has been put back to 1 October 2017, although landlords may register exemptions from 1 April 2017 as part of a pilot. Given the public nature of the PER, landlords may be reluctant to draw attention to the low energy ratings of their buildings. For more information, click [here](#).

**AUTUMN 2017**

**Community Infrastructure Levy (CIL):** The Government commissioned a review of CIL in 2015. The CIL review team reported in October 2016. The Government published this report with the Housing White Paper on 7 February 2017. The review team found that CIL is not achieving its original objectives but that abolition of CIL is not a practical option. Key recommendations were that CIL should be replaced with a hybrid system of a Local Infrastructure Tariff, together with section 106 agreements for larger developments, and Strategic Infrastructure Tariff for Combined Authorities. For more detail see our Housing White Paper summary [here](#). The Government announced it would respond to the CIL review report at the Autumn Budget 2017. This is now uncertain.

**AUTUMN 2017**

**Housing and Planning Act 2016:** This Act received Royal Assent on 12 May 2016. Various provisions are now in force. Provisions yet to come into force include those relating to starter homes, rogue landlords and property agents, abandoned premises, insolvency of registered social housing providers, planning obligations, some provisions relating to compulsory purchase, and the disposal of land owned by public authorities. Provisions relating to starter homes were incorporated into the Housing White Paper of 7 February 2017. Provisions relating to planning obligations may be followed up in the Government's response to the Community Infrastructure Levy review. Further information on the coming into force of the remaining provisions is awaited.

2017

**Possible change in the way in which boundary disputes will be dealt with:** A private members Bill entitled “Property Boundaries (Resolution of Disputes) Bill 2016-17” sets out a new compulsory statutory procedure to be followed, supported by a Code of Practice, to guide disputing parties to settle claims relating to the positioning of boundaries on neighbouring land. The procedure is akin to that set out in the Party Wall etc Act 1996, whereby the owner of land who wishes to establish a precise boundary is required to serve notice on its neighbour. If the notice does not result in the boundary being agreed, a dispute is deemed to have arisen, which is then resolved by a surveyor. Their finding will be conclusive unless appealed. The Bill is progressing rather slowly, and the Committee stage is yet to be scheduled.

2017

**New Electronic Communications Code - impact on landowners:**

A revised Electronic Communications Code will be introduced under the new Digital Economy Bill. Under the Code, the value of the land will be assessed by reference to its value to the landowner, which may result in lower rents and fees. Also operators will be under no obligation to seek the landowner’s consent to share or upgrade their equipment or interest. With the aim of ensuring that disagreements between landowners and operators are resolved effectively, the dispute resolution procedure will be moved to specialist tribunals. The Code will come into force on a date to be set by regulations. For further commentary on the Code, please see the Technology, Media and Telecommunications section below.

2017

**Neighbourhood Planning Act:** The Neighbourhood Planning Bill should receive Royal Assent before 2 May 2017 when it will become an Act of Parliament known as the Neighbourhood Planning Act 2017. It aims to help identify and free up land for housing and speed up the delivery of housing. It sets out changes to the compulsory purchase regime, introduces restrictions on the use of pre-commencement conditions in planning permissions, provides for strengthening of the neighbourhood planning process, enables the direction of joint local plans by the Secretary of State, requires local planning authorities to identify strategic priorities and requires regular review of local plans. Provisions of the Act will come into force throughout 2017 and beyond.





**2017****London's Spatial Development Strategy and Transport Strategy:**

The Mayor of London has a duty to keep his Spatial Development Strategy, otherwise known as the London Plan, under review (see [here](#) for more information). This review is underway. Informal consultation closed in December 2016. The Draft London Plan will be consulted upon in autumn 2017, with an Examination in Public in summer 2018. The final London Plan will be published in autumn 2019. The Mayor is also required to publish a Transport Strategy (MTS) and to keep that Strategy under review. A consultation draft of the MTS is expected in May 2017 with publication of the final version expected in late 2017 (see [here](#) for more information).

**2017****Installation of sub-meters under the Heat Network Regulations**

**delayed:** The Heat Network (Metering and Billing) Regulations 2014 (as amended) required landlords, developers and managing agents of multi-let buildings to install, by 31 December 2016, sub-meters to measure energy consumption by individual occupiers and then re-charge them accordingly. Research shows that metred usage and charging encourages communal users to reduce their energy consumption by up to 18%.

The deadline was extended following the European Commission's revision of its cost-effectiveness guidance on sub-meter installation, which forced the UK Government to withdraw its own technical feasibility test, set out in Schedule 1 to the Regulations. Compliance with this part of the Regulations is on hold pending a consultation that has not yet been announced.

**2017/2018**

**Relief from forfeiture of a licence:** The Court of Appeal could hear an appeal against the High Court decision in *General Motors UK Limited v The Manchester Ship Canal Company Limited* [2016] EWHC 290 (Ch). This is the first reported case in which relief from forfeiture of a licence (rather than a lease) has been granted. The court's view was that, as a licence granted in perpetuity, and which had been in place for 50 years, it came as close to a possessory right as one could imagine, and used its discretion to grant relief on terms. The case raises interesting questions about whether other types of licences might attract the same status. We understand that an application has been made for permission to appeal. If granted, the appeal will be heard in 2017/2018.

**1 APRIL 2018****Prohibition on letting properties with F and G rated EPCs:**

Regulations are in force in England and Wales prohibiting the grant of new leases or renewal leases of commercial properties which are rated F or G on their EPCs on or after 1 April 2018 (**MEES Regulations**). Before such properties can be let, cost-effective energy efficiency improvements must be installed so that the property attains an EPC rating of E or above. Where this cannot be achieved, an exemption must be registered on the PRS Exemptions Register before letting the property. For more information, click [here](#). From 1 April 2023, the Regulations will apply to all leases, including those already in existence.

**APRIL 2018**

**Stamp Duty Land Tax (SDLT) in Wales:** The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill was passed by the National Assembly for Wales on 4 April 2017 and is expected to receive Royal Assent in May 2017. It will replace SDLT in Wales with a land transaction tax (LTT) – Wales' first new tax in almost 800 years – with effect from April 2018. The Finance Secretary will announce the rates and bands for the new devolved tax by 1 October 2017 and regulations will be laid following the UK Autumn Budget.





For the latest developments on real estate and planning topics, please visit our [Real Estate Development notes blog](#).

# TAX

Following the introduction of a number of significant business tax measures from April 2017, including changes to the tax deductibility of corporate interest expense and reform of the corporation tax loss regime, industry bodies and businesses alike have called for a slowdown to the pace of change.

Despite this, a number of previously announced measures will take effect in the coming two years, including the new corporate criminal offence of failure to prevent facilitation of tax evasion, the new soft drinks industry levy and reform of the taxation of employment termination payments.

The second Budget of 2017 is expected to take place in the autumn, giving the Chancellor of the Exchequer an opportunity to outline the shape of future UK tax policy in the light of commencement of negotiations for the UK to leave the EU. This timetable, and the content of the Budget, will of course depend on the outcome of the general election.



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**APRIL/MAY 2017**

**Finance Bill 2017 to receive Royal Assent:** A number of significant measures have been dropped from the Finance Bill 2017 (including the corporate interest restriction, reform of the loss relief rules, the deemed domicile rules for individuals and the new penalties for enablers of defeated tax avoidance schemes). This truncated version of the Finance Bill is expected to receive Royal Assent before dissolution of Parliament on 3 May. It is expected that the provisions which have been omitted will be reintroduced in a further Finance Bill following the general election, but this will depend on the outcome of the election.

**JUNE 2017**

**Insurance premium tax:** The standard rate of insurance premium tax will increase by 2%, to 12% from 1 June 2017.

**AUTUMN 2017**

**Second Budget:** Depending on the outcome of the general election, the Chancellor of the Exchequer is expected to present the second Budget of 2017 in the autumn. From autumn 2017 a new Budget timetable will be introduced. The Autumn Budget will be the single major fiscal event of the year, with a spring Statement providing a response to the Office of Budget Responsibility's spring forecast. Following the general election, it is possible that an emergency Budget will be held before the autumn.

**AUTUMN 2017**

**Corporate criminal offence of failure to prevent facilitation of tax evasion:** The corporate criminal offence of failure to prevent facilitation of tax evasion is currently making its way through Parliament and Royal Assent is expected before dissolution of Parliament on 3 May. The Government intends the new offence to be introduced prior to information exchange beginning under the Common Reporting Standard, which is expected to be September 2017.

**DURING 2017**

**Country-by-country reporting regulations:** Country-by-country reporting regulations require UK-parented multinational entities with annual consolidated group revenue of €750 million or more to file an annual report with HMRC showing, for each jurisdiction in which they do business, revenue, profits and taxes (as well as other matters) in respect of fiscal years beginning on or after 1 January 2016. The report must be submitted within 12 months of the group's financial year end. Accordingly, the first reports are due during 2017.

*(continued overleaf)*

**APRIL 2018**

**Soft drinks industry levy:** The new soft drinks industry levy (also known as the “sugar tax”) will be introduced from April 2018. Rates for the levy were announced in this year’s Spring Budget: the levy rate for added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres will be set at 18 pence per litre, and those with 8 grams or more per 100 millilitres will be charged at 24 pence per litre.

**APRIL 2018****Reform of the taxation of employment termination payments:**

Termination payments made from April 2018 will be subject to new tighter rules. Various changes will be made under the new regime, including the imposition of employer National Insurance contributions (NICs) on termination payments above £30,000, all payments in lieu of notice (whether contractual or otherwise) being made subject to income tax and NICs and the repeal of the foreign service exemption for employees who have spent part of their employment abroad. Although these measures have been omitted from the truncated Finance Bill which is to receive Royal Assent before 3 May, it is expected that these provisions will be reintroduced in a further Finance Bill later in the year, though this will depend on the outcome of the general election.







“They do a great job – I like their style and willingness to advocate on behalf of their clients.”

**CHAMBERS UK 2017**

# TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS

In the highly regulated Technology, Media and Telecommunications (TMT) and data sectors, we have continued to see unprecedented activity around data regulation. In the last six months we have seen the welcome publication of initial guidance for organisations seeking to comply with both: (i) the new EU General Data Protection Regulation (GDPR) from 25 May 2018; and (ii) the Network and Information Security Directive (the so-called Cyber Security Directive) which Member States need to implement into national law by 9 May 2018. There has been an overhaul of the EU e-privacy framework as well – with the European Commission proposing a new draft ePrivacy Regulation (relating to the processing of personal data and protection of privacy in the electronic communications sector) along with a challenging timetable for it to be finalised and to apply on the same date as the GDPR.

The EU-US Privacy Shield (for transatlantic transfers of personal data) is being challenged by two privacy advocacy groups in the European General Court and will be subject to its first annual joint review by the Commission and the US Department of Commerce later in the year. We also await further clarification regarding the status of international data transfers with the referral of the so-called

Model Clauses to the Court of Justice of the European Union (CJEU).

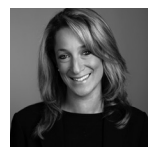
Europe's Digital Single Market strategy continues to produce a number of legislative developments in the media and telecoms sectors as well – these include a proposal for a new regulation to enable EU cross-border content portability as well as the continued review of: (i) the telecommunications regulatory framework; and (ii) the proposal for a revised Audiovisual Media Services Directive to regulate broadcasting across Europe. This is set against the back drop of various national and European regulatory initiatives to improve internet connectivity, drive investment in infrastructure and help address the rise in consumption of digital content.

Following the UK's vote to leave the EU, there is uncertainty around the exact methods by which the reciprocal benefits and protections currently afforded to the UK will be achieved in practice. This provides an added layer of complexity in this highly regulated area.



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**SPRING/SUMMER 2017**

**2.3 and 3.4 GHz spectrum auction:** The forthcoming 2.3 GHz and 3.4 GHz spectrum auction was originally expected to take place in early 2016, but was delayed due to market uncertainty. The spectrum bands are being made available for auction as part of the Public Sector Spectrum Release (PSSR) Programme which aims to make 500 MHz of spectrum below 5 GHz available for civil users by 2020.

In November 2016, Ofcom issued a consultation on competition issues and regulations relating to the auction. It will make available spectrum in the 2.3GHz band for immediate use and the 3.4GHz band is likely to become available in a couple of years' time as it is not currently supported by most mobile devices (it is expected to support the initial deployment of 5G mobile services).

The consultation closed on 30 January 2017 and Ofcom intends to proceed with the auction "as soon as practical" after publishing its final statement on the award. Ofcom's Annual Plan for 2017/2018 also confirms that the spectrum auction remains one of its priorities during this period.

**SUMMER 2017****Revised General Conditions of Entitlement to come into force:**

In August and December 2016 respectively, Ofcom published two consultations on proposed changes to the General Conditions of Entitlement that electronic communications providers have to comply with in the UK. The first consultation focused on network functioning, public payphones, directory information and telephone numbering, while the second consultation focused on consumer protection related issues, including contract and billing requirements, complaints handling, nuisance calls and rules on switching. As part of the review, Ofcom is seeking to make the rules clearer, more user-friendly, easier to comply with and simpler to enforce, as well as reducing compliance costs. The proposals aim to consolidate regulation and deregulate, where possible and appropriate to do so.

Ofcom is aiming to publish a final statement on the revised General Conditions "later in 2017".

**15 JUNE 2017**

**End of retail roaming charges in the EU:** In September 2013, the European Commission published its "Connected Continent" Regulation to reform the EU telecommunications regulatory framework. Among others, the Regulation included proposals for roaming and net neutrality.

*(continued overleaf)*

In June 2015, agreement was reached in negotiations on those two proposals and the Regulation entered into force in November 2015 and applied from 30 April 2016. It set out a new retail pricing regime for regulating roaming services so as to end retail roaming charges by 15 June 2017. Detailed rules have since been adopted by the European Parliament and Council of the EU to meet the 15 June 2017 deadline, namely: (i) a retail roaming fair use policy and related sustainability mechanisms; and (ii) maximum wholesale roaming charges (to protect telecommunications operators in the run up to abolishing the retail roaming charges).

## JUNE 2017

### Certain Digital Economy Act provisions to come into force:

The Digital Economy Act received Royal Assent on 27 April 2017. It was introduced in the House of Commons in July 2016 before being scrutinised and the House of Lords and has been the subject of much debate and amendment. It seeks to modernise the UK for enterprise through a range of measures – including improving access to digital communication services, supporting new digital industries and enhancing protections for citizens using those services.

The Act envisages staggered commencement dates for the broad range of areas that it covers and the next tranche of provisions will come into force towards the end of June 2017 (ie two months after it received Royal Assent) – these include measures relating to:

(i) further regulation of direct marketing – which then require the Information Commissioner to adopt a new statutory code of practice (although note the potential overlap with the ePrivacy Reform described below); and

(ii) a new Broadband Universal Service Obligation – which then require the Secretary of State to set out further detail in a “universal service order” informed by Ofcom’s technical analysis and with the aim of giving citizens the right to request a specified broadband connection.

The Act also incorporates the new Electronic Communications Code (see below).

## SEPTEMBER 2017

**EU-US Privacy Shield first annual review:** On 12 July 2016, the European Commission adopted an “adequacy decision” allowing for the transatlantic transfer of personal data from the EU to the



US in accordance with the framework and principles of the EU-US Privacy Shield (**Privacy Shield**). Two privacy advocacy groups have since filed actions in the European General Court to annul the adequacy decision, arguing that the Privacy Shield does not provide an adequate level of protection for EU citizens' rights under EU law where their data is transferred to the US. The European Parliament has also adopted a non-legislative resolution on the adequacy of the protection afforded by the Privacy Shield.

The first annual joint review into the Privacy Shield will be conducted by the Commission and the US Department of Commerce in September 2017, following which the Commission will issue a public report to the European Parliament and the Council of the EU.

**LATE 2017/  
EARLY 2018**

#### **New Electronic Communications Code to come into force:**

The Electronic Communications Code (**the Code**) governs the rights of communications operators to access public and private land for the installation of communications apparatus.

The existing Code has long been criticised. Following consultation in February 2015, the Department of Culture Media and Sport published its proposed reform of the Code in May 2016. The proposals sought to modernise regulation to support the rollout of digital communications infrastructure and reflect changes in digital communications since the Code was first established in 1984. The Digital Economy Act received Royal Assent on 27 April 2017 and incorporates the Government's proposals along with a new Code to replace the existing one. It now remains for the Secretary of State to appoint regulations to commence the new Code, the timing of which is currently unclear.

In the meantime, in March 2017 Ofcom launched a related consultation publishing guidance documents, including a Code of Practice to accompany the new Code. Stakeholders have until 2 June 2017 to respond.

**EARLY 2018**

**New EU content portability regime to apply:** As part of its Digital Single Market Strategy, in December 2015 the European Commission proposed a new regulation to enable cross-border content portability. The proposal will allow EU citizens to make full use of their paid online content services wherever they are in the EU. It is the first in a series of measures to modernise the existing EU copyright framework.

The Commission, European Parliament and European Union Member States informally agreed the proposal on 7 February 2017 and it was subsequently endorsed by the Permanent Representatives Committee on 15 February 2017. Once the agreed text has been formally confirmed by the Council of the EU and the European Parliament, and the Regulation has been adopted, service providers will have a nine month period to prepare for and ensure compliance with the rules before they become directly applicable throughout the EU in early 2018.

#### 1 APRIL 2018

**New measures implemented following WLA market review:** In March 2015, Ofcom launched a Strategic Review of Digital Communications, acknowledging that there have been a number of significant market developments since its previous review in 2003-2005. One of its main tools to deliver the strategy is Ofcom's wholesale local access (WLA) market review which it launched in May 2016.

As part of its market review, on 31 March 2017, Ofcom published two separate consultations: (i) one setting out its broad approach to remedies and proposals for access products BT will be required to provide; and (ii) a second covering new measures to address quality of service issues on BT's fixed access network. Stakeholders have until 9 June 2017 to respond, following which Ofcom is expected to publish a statement early next year and implement any new measures from 1 April 2018.

On 11 April 2017, Ofcom launched a third consultation forming part of the review which set out its proposals for duct and pole access.

#### SPRING 2018

**Reform of EU telecommunications framework to be approved:** In May 2015, as part of its Digital Single Market Strategy, the European Commission published proposals to reform the EU telecommunications regulatory framework. Following a series of consultations in 2015, the Commission published further proposals to reform the EU legislation in September 2016, with the aim of improving internet connectivity across the EU. The proposals include: a directive setting out a European Electronic Communications Code, to replace the existing four key telecommunication directives; a regulation to increase the powers designated to the Body of European Regulators for Electronic Communications; and an action plan for the development of 5G in Europe.



The European Telecommunications Council held a policy debate on the proposal in December 2017. Whilst timing is unclear, it seems unlikely that the regulatory aspects of the reform will be finalised and approved earlier than spring 2018.

**10 MAY 2018**

**Cyber Security Directive to be implemented into national law:** The EU Network and Information Security Directive (known as the Cyber Security Directive) was published in the Official Journal in July 2016. The Directive requires certain “operators of essential services” to adopt risk management practices and report major security incidents on their core services to the appropriate national authority.

Member States have until 9 May 2018 to adopt appropriate national legislation to comply with the Directive, and such legislation will apply from 10 May 2018. By 9 November 2018, for each sector and subsector referred to in the Directive, Member States are also required to identify the “operators of essential services” with an establishment in their territory. For further information, please see our bulletin, available [here](#).

**25 MAY 2018**

**EU General Data Protection Regulation to apply:** The European Commission published its first draft of the EU General Data Protection Regulation (**the GDPR**) in January 2012, a comprehensive reform of the current existing EU regime. The reform was designed to give citizens more control and protection over their personal data. In April 2016, the final text of the GDPR was formally approved.

The GDPR was then published in the Official Journal and entered into force on 25 May 2016. There is now a two year implementation period before the GDPR comes into effect, meaning that organisations will have until 25 May 2018 to prepare for the new rules to apply.

In the meantime, guidance is starting to come through from the Article 29 Working Party and the UK data protection authority, the Information Commissioner’s Office, with more set to follow.

**25 MAY 2018**

**ePrivacy Regulation to apply:** In April 2016, as part of its Digital Single Market Strategy, the European Commission launched a consultation on the Privacy and Electronic Communications Directive (**ePrivacy Directive**) which deals with the processing of personal data and protection of privacy in the electronic communications sector, covering issues such as email marketing.

On 10 January 2017, the Commission then published its new legislative proposal, which took the form of a draft regulation (**the ePrivacy Regulation**). The proposal intends to: (i) replace the existing ePrivacy Directive; (ii) bring the e-privacy framework up to date with technological and market reality; and (iii) align with the incoming GDPR (see entry above) – for further information see our bulletin available [here](#).

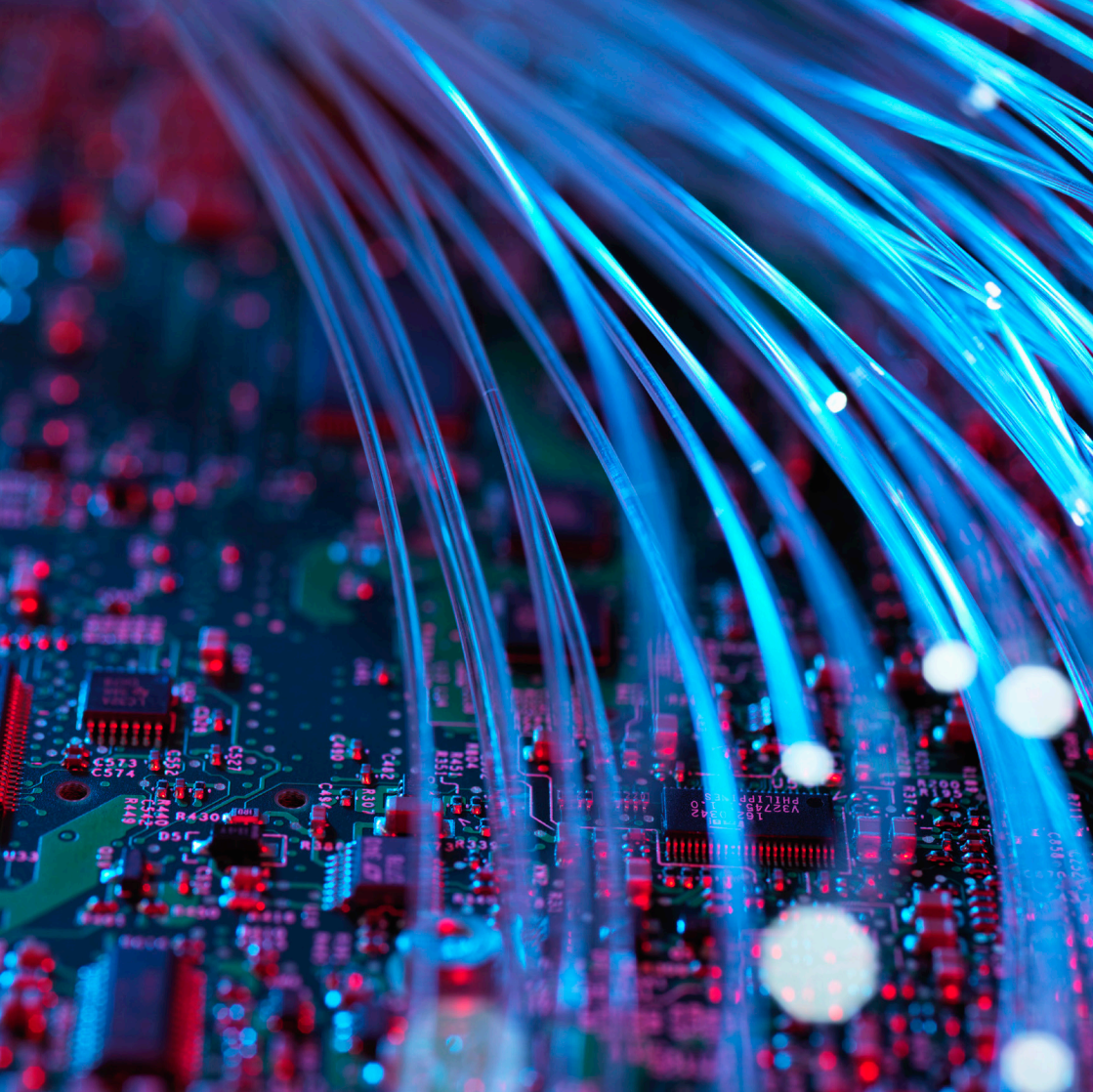
The Commission provides for the ePrivacy Regulation to apply from 25 May 2018, along with the GDPR – a challenging timeframe given the need for approval from the European Parliament and the Council of the EU and the potential for criticism from European stakeholders.

**LATE 2018**

**Amendments to the Audiovisual Media Services Directive expected:** As part of its Digital Single Market Strategy and following extensive consultation in 2015, in May 2016 the European Commission adopted new legislative amendments to the Audiovisual Media Services Directive. The proposals seek to modernise the Directive to reflect “market, consumption and technological changes”, largely arising from convergence between television and internet services and the increase in on-demand content consumption.

The proposals are currently being considered by the Council of the EU and the European Parliament before being agreed. The Commission has called for the proposals to be adopted swiftly. Once the final form of amendments is adopted, each Member State is likely to have 12 months to implement it. It is therefore unlikely that any changes will be effective at a national level before late 2018.





“Each member of the team understood and rose to every challenge we - and the other side - threw at them. Truly impressive.”

**CHAMBERS UK 2017**

# NOTES











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