



HERBERT  
SMITH  
FREEHILLS

For more information,  
please contact the  
relevant Herbert Smith  
Freehills partner  
referred to in the  
contact list or  
Simone Pearlman,  
head of legal  
knowledge on  
+44 (0) 20 7466 2021  
or email [simone.pearlman@hsf.com](mailto:simone.pearlman@hsf.com).

**OCTOBER 2016**

# 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

## 2016

- Boundary disputes to follow proposed new procedure
- Bridging pensions
- New version of IORP II

## OCTOBER

- Decision on airport expansion expected
- High Court to hear ClientEarth's judicial review challenge
- Housing and Planning Act 2016 commencement provisions
- Neighbourhood Planning Bill on compulsory purchase, planning conditions, neighbourhood planning
- New national minimum wage rates
- Pending appeal on FCA enforcement process
- Reforming the regime for appeals to the Court of Appeal
- The Energy Act 2016
- The Wales Bill
- Tax strategy statements
- UKCS 29th Offshore Licensing Round Deadline

## AUTUMN

- Commencement of Trade Union Act 2016
- Ofcom due to consult on the auction of 2.3 and 3.4 GHz spectrum
- Ofgem implementation of CMA remedies
- Revisions to UK competition regime
- UK merger control

## NOVEMBER

- Autumn Statement
- Morocco Climate Change Conference
- Third Energy shale gas planning consent judicial review

## DECEMBER

- Commission to propose new MREL framework
- Deadline to install meters under the Heat Network Regulations
- Electricity Capacity Market
- European Market Infrastructure Regulation (EMIR) – continued phase in of clearing obligation
- Finance Bill 2017
- First UK competition class action
- Implementation of EU Damages Directive
- Investigatory Powers Bill to come into force
- PRIIPs Regulation

## LATE 2016

- Amendments to the ePrivacy Directive to be proposed
- Community Infrastructure Levy reforms expected
- Government to consult on simplified energy and carbon reporting framework
- Government to ratify the Paris Agreement

## LATE 2016/EARLY 2017

- Invoice assignment clauses
- New Securitisation Regulation
- Prohibition on corporate directors

## 2016/2017

- Civil Courts Structure Review – implementation
- Financial statements
- Fixed recoverable costs
- Insolvency law - Small Business, Enterprise and Employment Act 2015
- Possible amendments to DBA Regulations
- Proposed amendments to the prospectus regime
- Prospectus Regulation to replace current Prospectus Directive
- Reforming the Civil Procedure Rules
- The Scotland Act

**2017**

- Changes to partnership legislation
- Governance and Directors' Remuneration
- Law Commission projects
- Proposals for Directive to amend the Shareholder Rights Directive
- Review of the Corporate Insolvency Framework
- Onshore transmission - Competitively Appointed Transmission Owners

**EARLY 2017**

- European Commission final e-commerce sector inquiry report
- Government to consult on introduction of foreign investment rules for critical infrastructure
- Ofgem review of embedded benefits

**JANUARY**

- Bonus buy-outs
- EU merger control
- European Account Preservation Order Regulation
- Hybrid mismatches
- New BBC Royal Charter to come into force
- New Environmental Permitting Regulations in force
- New Non-road Mobile Machinery regulation takes effect
- New Part R of the Building Regulations – high speed broadband access
- Non-financial reporting
- Regulatory information
- Regulatory Technical Standards Regulation on Article 8b of CRA III

**SPRING**

- Digital Economy Bill to receive Royal Assent
- Impact of Brexit on UPC and UP
- New Electronic Communications Code to receive Royal Assent
- Revised General Conditions of Entitlement to come into force

**MARCH**

- Early exit charges
- European Market Infrastructure Regulation – phase in of margin requirements for non-cleared derivatives
- Government to trigger Article 50 of the Treaty on European Union to start the Brexit process
- Pensions dashboard
- Support for renewable energy

**APRIL**

- Apprenticeship levy
- Corporation tax rate
- Defined benefit contracting-out
- Insolvency Rules 2016
- Lifetime ISA
- New Electricity System Operator incentives
- New obligation on larger employers to report gender pay gap
- New regime for tax deductibility of corporate interest expense
- Payment practices reporting
- Reform of the corporation tax loss regime
- Reform of the taxation of non-UK domiciled individuals
- Register of exemptions to be set up for properties with F and G rated Energy Performance Certificates
- Revaluation of business rates
- Salary-sacrifice schemes
- Secondary annuity market

**MAY**

- Assignment of leases and the Landlord and Tenant (Covenants) Act 1995
- Enterprise Act 2016 comes into force
- Environmental Impact Assessment Directive 2014

**JUNE**

- End of retail roaming charges in the EU
- MLD IV/WTR
- Recast Insolvency Regulation
- Register of beneficial ownership

## CALENDAR OF KEY ISSUES AT A GLANCE

### OCTOBER

- Financial markets test case pilot scheme

### DECEMBER

- Medium Combustion Plant Directive 2015 implementation due
- VAT reclaims by scheme sponsors on pension fund investment management expenses

### 2017/2018

- EU Circular Economy Package
- Signature and ratification of the EU-Singapore Free Trade Agreement
- Trans-Atlantic Trade Investment Partnership

### 2018

- Grandparental leave
- Senior Managers and Certification Regime

### JANUARY

- Basel III Securitisation Framework
- EU Benchmark Regulation
- Markets in Financial Instruments Directive (MiFID II)
- 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
- Inflationary indexing of the Lifetime Allowance
- Prohibition on letting properties with F and G rated EPCs
- Reform of the taxation of employment termination payments
- Replacement of SDLT in Wales
- Soft drinks industry levy

### MAY

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

### JUNE

- EU Trade Secrets Directive

### MID-2018

- Hydrocarbons and Mining Waste BREFs
- REACH deadline

### JULY

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

### SEPTEMBER

- Pilots of streamlined procedures for claims in the main business courts

### NOVEMBER

- Alignment of State Pension Age

### LATE 2018

- Amendments to the Audiovisual Media Services Directive expected



This guide identifies the key developments, trends and issues we expect to be on the legal agenda over the coming years. It is easy to navigate with developments set out in specific sectors, each with an introductory summary providing an overview of key issues across all areas.

## BREXIT

On 23 June 2016, a majority of voters in a Referendum on the UK's membership of the European Union (EU) voted for the UK to leave the EU. The outcome of the Referendum sent shockwaves through the world's financial markets and provoked political turmoil in the UK and Europe. It also raised many significant questions of concern to business.

Our [legal guide](#) offers a look at the opportunities and challenges presented by Brexit, viewed from a global perspective. Although when it came, the result was a surprise to many, experts at Herbert Smith Freehills had been preparing for this eventuality for more than a year in advance. Our teams throughout the world understand in detail not only the legal implications of Brexit but also what it means for business and how business may wish to strategise and plan for the possible outcomes. We are also keeping close to the developing thinking inside governments and regulators.



**Gavin Williams**  
Partner

T: +44 20 7466 2153  
[gavin.williams@hsf.com](mailto:gavin.williams@hsf.com)



**Dorothy Livingston**  
Consultant

T: +44 20 7466 2061  
[dorothy.livingston@hsf.com](mailto:dorothy.livingston@hsf.com)

**MARCH 2017**

**Government to trigger Article 50 of the Treaty on European Union to start the Brexit process:** The Prime Minister announced on 2 October 2016 that the Government would trigger Article 50 of the Treaty on European Union, which governs the process of negotiation of the terms of a Member State's withdrawal from the EU, before the end of March 2017, and that the next Queen's Speech will include a Great Repeal Bill to repeal prospectively the European Communities Act 1972.

The Government has made clear that it intends to serve the Article 50 notice without any prior Parliamentary approval, but this decision is subject to judicial review in proceedings due to commence later in October 2016. The outcome may affect the timing of both the notice and the legislation.

Once the Article 50 procedure has been triggered, the UK will remain a Member State of the EU during the notice period, which is set at two years (unless it were to be agreed with all 27 other Member States that its membership should cease sooner or continue for a longer period). At the end of the notice period, the UK will automatically leave the EU, even if the terms of leaving have not been agreed. The Government's announcement indicates that the UK's exit from the EU will take place around March 2019.

During the two-year notice period, negotiations will focus on the terms of the withdrawal of the UK from the EU. These discussions are also likely to deal to some extent (but almost certainly not comprehensively) with the future relationship between the EU and the UK. The detailed terms of the long-term future EU-UK relationship may not be dealt with until after the UK has left the EU at the end of the notice period, and could take many years – some commentators say up to 10 – to negotiate.

In parallel with the negotiations with the EU of the UK's terms of withdrawal, the Great Repeal Bill will provide the framework under which UK lawmakers will (during the same two-year notice period) need to review the elements of UK law which are derived from EU law and take decisions as to whether to retain, reform or repeal them. The Government has indicated that its initial plan is to preserve the application of EU law and then introduce changes over time. It will also need to consider additional transitional provisions where existing EU property rights (eg EU Trademarks) will cease to cover the UK, so as to ensure that rights in use in the UK retain recognition as national rights.

*(continued overleaf)*

Until the UK actually leaves the EU, the EU law-making process will continue as normal: current EU law will continue to apply in the UK, and EU laws which are due to be passed or transposed into national law during that period will continue to become part of UK law. The application of future EU laws in the UK is subject to the timing and terms of Brexit.





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](#).

## BANKING, RESTRUCTURING AND INSOLVENCY

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

In addition, the Government is likely to determine in the coming months and into 2017 whether any of the significant changes to the corporate insolvency regime, set out in its review of the Corporate Insolvency Framework, should be implemented.



**Will Nevin**  
Partner

T: +44 20 7466 2199  
[will.nevin@hsf.com](mailto:will.nevin@hsf.com)



**Kevin Pullen**  
Partner

T: +44 20 7466 2976  
[kevin.pullen@hsf.com](mailto:kevin.pullen@hsf.com)

**2016/2017**

**Insolvency law – Small Business, Enterprise and Employment Act 2015 (SBEE Act):** Under the SBEE Act (and related secondary legislation), further changes to insolvency law are expected to come into force which include the loosening of requirements to hold physical creditor meetings, the abolition of final creditor meetings and new procedures to enable creditors to opt out of receiving routine correspondence and office-holder reports (other than those relating to dividend payments). The changes were expected to come into force this October, but as at the time of writing, the necessary implementing secondary legislation is still awaited.

**6 APRIL 2017**

**Insolvency Rules 2016:** The Insolvency Rules 1986 (IR 1986) are expected to be replaced by the new Insolvency Rules 2016 (IR 2016) in April 2017. The IR 2016 are intended to simplify and modernise the IR 1986, principally by reducing certain procedural requirements and red tape. The draft IR 2016 are expected to be laid before Parliament in October and, subject to approval, commence on 6 April 2017.

**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:

- 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;
- 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 response on 28 September 2016 and has stated that it is continuing to review the proposals in light of the responses received.



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**CHAMBERS 2016**

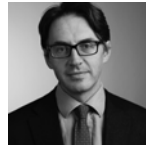
## COMPETITION, REGULATION AND TRADE

Proposals for new controls on the foreign ownership of critical infrastructure are expected, following the Government's announcement of a new legal framework for national security reviews of foreign investment in the wake of the Hinkley Point C new nuclear project. The timing and content of the proposals are not yet clear, but these may be published in early 2017. Private enforcement of competition law also continues to be firmly on the agenda. In December 2016 the Competition Appeal Tribunal will hear the first application to bring a damages claim under the UK's new competition opt-out class actions regime, the result of which will be watched closely. In further private enforcement reforms, by the end of December 2016 the UK and other Member States are required to implement the EU Directive on antitrust damages actions. Finally, further European Commission antitrust enforcement action in the e-commerce sector is likely, and the Commission is considering potential revisions to the EU merger control regime.



**Tim Briggs**  
Partner

T: +44 20 7466 2806  
[tim.briggs@hsf.com](mailto:tim.briggs@hsf.com)



**Stephen Wisking**  
Partner

T: +44 20 7466 2825  
[stephen.wisking@hsf.com](mailto:stephen.wisking@hsf.com)

**AUTUMN 2016**

**UK merger control:** Earlier this year the Competition and Markets Authority (CMA) published its review of aspects of its merger control procedures – the notification form (Merger Notice) and its use of initial enforcement orders (IEOs), requiring merger parties to “hold separate” their businesses pending the CMA’s review (which had both been subject to criticism in relation to the burdens these impose on business). As a result of this review the CMA plans to clarify and streamline certain aspects of the Merger Notice. It also plans to publish guidance on its policy and practice when granting derogations from the standard IEOs and consider amending the standard IEOs to include further exceptions. Its proposals are currently awaited.

**AUTUMN 2016**

**Revisions to UK competition regime:** In May 2016 the Government unexpectedly launched a consultation on further “refining” the UK competition system. The consultation proposed a number of changes to the markets, mergers and antitrust regimes. Whilst some of the changes are relatively minor and represent a sensible “tidying up” of some aspects of the regime, others are more significant, for example the proposal to shorten the timetable for market investigations (following the lengthy recent investigations in the energy and banking sectors), allowing the CMA to make changes to remedies imposed as a result of market investigations, and changing the number and make-up of CMA panel members for mergers and market investigations. An announcement on next steps is awaited.

**12 DECEMBER 2016**

**First UK competition class action:** Last year a new collective redress regime for competition law claims came into force, allowing claimants to bring an action on an “opt-out” basis, subject to certification from the Competition Appeal Tribunal (CAT). The first application for an opt-out claim was brought earlier this year (*Dorothy Gibson v Pride Mobility Products*) and the certification hearing will take place on 12 December 2016. The CAT’s approach to certification will have a significant impact on claimants’ (and litigation funders’) appetite to bring claims under the new regime, and also on the second application to be lodged – a claim for £14 billion against MasterCard on behalf of all UK consumers.

**27 DECEMBER 2016**

**Implementation of EU Damages Directive:** Member States have until 27 December 2016 to implement the EU Directive on antitrust damages actions, including provisions on document disclosure, limitation periods and joint and several liability. The UK Government has not yet responded to its January consultation on implementation, and it is not clear whether the Brexit vote has impacted its implementation plans in any way. It is unlikely that the Directive will impact the – already high – level of competition litigation in the UK, but a greater number of damages actions and settlements are likely in Member States where the private enforcement of competition law is currently limited.

**13 JANUARY 2017**

**EU merger control:** In October the European Commission launched a consultation evaluating and potentially revising the EU merger control regime. This includes consideration of further measures to streamline the regime following the 2013 “simplification” package, and changes to the system for referring transactions between EU Member States and the Commission. Significantly, it also considers a possible expansion of the scope of the EU Merger Regulation (EUMR) to cover transactions (for example in the digital or pharmaceutical sectors) where the target does not currently generate sufficient turnover to meet the EUMR thresholds, but which is highly valued and may become an important competitive force in the future. The consultation does not address the Commission’s previous proposals to extend the EUMR to cover non-controlling minority stakes. The consultation closes on 13 January 2017 and the Commission will then assess next steps.

**EARLY 2017**

**New controls on foreign investment in UK critical infrastructure:** In September the Government announced (in the wake of its approval for the Hinkley Point C new nuclear project) that it will introduce a new legal framework for foreign investment in critical infrastructure. This 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 merger control public interest regime. Little further detail is currently available, including what infrastructure and what level of control will be covered. The Government will be under pressure to clarify its position at an early stage in order to minimise any potentially negative impact on transactions in the infrastructure sector. See the entry in the energy and environment section below for further details.



**EARLY 2017**

**European Commission final e-commerce sector inquiry report:** The Commission launched its sector inquiry into e-commerce in May 2015, as part of its wider Digital Single Market strategy, to examine prevailing market trends and potential barriers to competition. It published its preliminary findings in September 2016, including evidence of widespread contractual restrictions affecting online sales (in particular of consumer goods, such as bans on the use of online marketplaces, restrictions on cross-border sales, and pricing restrictions). Some of the practices uncovered may give rise to serious competition law concerns. The final report is expected in early 2017 and the Commission is then likely to launch competition law enforcement actions against individual companies.

## CONSTRUCTION

On the regulatory front in construction, there will soon be another addition to the scope of Building Regulations with the introduction of a new Part R relating to access for high speed broadband facilities. In addition, 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) in autumn 2016 on a piecemeal basis, contract by contract. The main changes are to the payment, loss and expense claims procedure and insurance provisions.



**Nicholas Downing**  
Partner

T: +44 20 7466 2741  
[nicholas.downing@hsf.com](mailto:nicholas.downing@hsf.com)



**Tim Healey**  
Partner

T: +44 20 7466 2356  
[tim.healey@hsf.com](mailto:tim.healey@hsf.com)

**JANUARY 2017**

**New Part R of the Building Regulations - high speed broadband access:** The Government issued a consultation document in November 2015 on a proposed new Part R of the Building Regulations. This will implement targets set by the European Commission for providing access to high-speed broadband in new buildings and major renovations. This will be achieved by a requirement to enable access to “super-fast” broadband which means an access speed in excess of 24 Mbps.

The new Part R will require developers to ensure that all new buildings or major renovations will be constructed so as to ensure that the building is equipped with the necessary infrastructure to enable super-fast broadband to be accessed. Developers are free to decide the most appropriate way of fulfilling the regulatory requirement. There is no requirement for buildings actually to be connected to broadband, but only to provide infrastructure to enable easy connection.

The consultation has now closed. The Government states that it intends for the proposed Regulations to be in place in 2016 and come into force in January 2017. The Regulations will only apply to buildings for which a Building Regulations application has been submitted after 31 December 2016.

## CORPORATE

The final changes to the Companies Act 2006 to fulfil the coalition Government's "transparency and trust" agenda are expected to come into force in late 2016 and early 2017, including the prohibition on corporate directors. These may not be the final company law changes that we see in 2017, with the House of Commons Business, Innovation and Skills Select Committee having launched an inquiry on corporate governance and directors' remuneration. In particular, the inquiry will review directors' duties, executive pay and the composition of boards, including worker representation and gender balance in executive positions. This follows on from the Prime Minister's proposals in this area.

The list of reporting requirements for companies to deal with outside of the annual report continues to grow: in addition to the Modern Slavery Act reporting requirement which came into force earlier this year, companies will soon be required to report on their tax strategy, payment practices and gender pay gaps.



**Carol Shutkever**  
Partner

T: +44 20 7466 2013

[carol.shutkever@hsf.com](mailto:carol.shutkever@hsf.com)



**Gareth Sykes**

Senior associate and professional support lawyer

T: +44 20 7466 7631

[gareth.sykes@hsf.com](mailto:gareth.sykes@hsf.com)

**OCTOBER 2016**

**Tax strategy statements:** See the entry in the tax section below for further details.

**LATE 2016/EARLY 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) will be prohibited, subject to certain exceptions. The prohibition was expected to come into force in October 2016 (but it appears this timetable may have slipped) with 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.

**LATE 2016/EARLY 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 meant to be April 2016 but the timing remains unclear, with implementation possibly in April 2017.

**2016/2017**

**Proposed amendments to the prospectus regime:** In December 2015, the European Commission published a draft Regulation proposing amendments to the prospectus regime in the EU, primarily to simplify the regime to facilitate capital raising. Upon implementation, the Regulation would replace entirely the current EU Prospectus Directive regime. Most notably, the Regulation proposes that prospectuses could be made shorter or contain less generic or boilerplate disclosure (for example, in risk factors). In September 2016, the European Parliament adopted a number of amendments to the Commission's proposal. The Regulation could be finalised before the end of 2016 but may slip into 2017. It will be directly effective in Member States two years following publication in the EU Official Journal. See the entry in the debt capital markets, securitisation and derivatives section below for further details.

**2016/2017**

**Financial statements:** The Financial Reporting Council (FRC) is consulting on removing the requirement for entities to notify shareholders of the intention to take advantage of the reduced disclosure framework set out in FRS 101 for individual financial statements. The FRC notes that shareholders in an ultimate parent entity receive consolidated financial statements of the group (which include full disclosures, usually in accordance with EU-adopted IFRS) in addition to the parent entity's individual financial statements. The consultation closes on 14 October 2016. If approved, the shareholder notification requirement would cease to apply for accounting periods beginning on or after 1 January 2016.

**1 JANUARY 2017**

**Non-financial reporting:** The Non-Financial and Diversity Reporting Directive (2014/95/EU) must be implemented into national law for financial periods beginning on or after 1 January 2017. The key new reporting requirements for annual reports are: (i) public-interest entities with 500+ employees will be required to include in their strategic report a statement relating to anti-corruption and bribery matters including a description of policies and the risks related to those matters; and (ii) listed companies will be required to include in their corporate governance statement a description of the board diversity policy applied with regard to aspects such as educational and professional backgrounds, and the results in the reporting period. The Government is expected to issue the response to its consultation paper on implementation shortly. The FCA has separately consulted (in its Quarterly Consultation Paper No. 13 CP16/17) on changes to the Transparency Rules (DTR 7) to reflect the board diversity disclosure requirements in the Directive.

**1 JANUARY 2017**

**Regulatory information:** The European Commission has published a Regulation relating to access to regulatory information published by issuers (broadly, inside information, information published pursuant to the Transparency Rules and information required to be published under Member State listing rules). The Regulation requires a European Electronic Access Point (EEAP) to be established to provide access to all published regulatory information via each Member State's existing storage service. To assist the functionality of the EEAP, it will be compulsory for issuers to have a legal entity identifier (LEI) number and each type of regulatory information must be classified into categories (eg annual financial reports, inside information, major shareholding notifications). The obligation to classify is on each Member State's storage service rather than the issuer, but it may lead to

changes to the way UK issuers are required to submit information to the National Storage Mechanism. The Regulation came into force on 20 September 2016, save for the LEI and classification requirements which apply from 1 January 2017.

**6 APRIL 2017**

**Payment practices reporting:** The SBEE Act gives the Secretary of State the power to make regulations requiring listed and large companies/LLPs to publish reports on their payment practices. The Government consulted on implementing regulations in early 2015, proposing that the report be six monthly, be submitted to a centrally hosted website, include standard payment terms and the proportion of invoices paid in 30 days or less, paid between 31 and 60 days and paid beyond 60 days. The Government recently confirmed that the obligation to report on payment practices will come into force on 6 April 2017, for financial years starting after that date. Draft legislation is expected this autumn, which will set out the details that are required in the report. The legislation will also be accompanied by guidance.

**APRIL 2017**

**Gender pay gap reporting:** See the entry in the employment and incentives section below for further details.

**26 JUNE 2017**

**Register of beneficial ownership:** The European Commission has approved a proposal to amend the Fourth Money Laundering Directive (MLD IV), including in relation to the disclosure of beneficial ownership information (see the entry in the financial services regulatory section below for further details). The MLD IV is due to be implemented by 26 June 2017, but the proposal advocates earlier implementation by 1 January 2017. UK incorporated companies and LLPs have, since 6 April 2016, been required to keep a register of people exercising significant control (PSCs), with the test for "significant control" including holding 25% of the shares or voting rights in the company. However, the Commission proposal proposes a threshold to 10% for "Passive Non-Financial Entities" (broadly, intermediaries). In September 2016, the Government issued a consultation paper on implementation of the MLD IV, including the beneficial ownership disclosure requirements, as well as the PSC regime more generally. This may result in a change in the UK's PSC register requirements.

**2017**

**Governance and Directors' Remuneration:** The House of Commons Business, Innovation and Skills Select Committee has launched an inquiry into corporate governance and directors' remuneration. Specific issues the Committee intends to consider include: (i) whether the roles of directors and non-executive directors are sufficiently clear and how the interests of shareholders and employees are best balanced; (ii) whether the current executive pay framework is effective and how executive pay should take into account a company's long-term performance; and (iii) how greater diversity of board membership should be achieved and if there should be employee representation on boards and/or remuneration committees. The Committee asks for written submissions by 26 October 2016. The inquiry also follows the proposals from the Prime Minister on corporate governance issues, including changes to the directors' remuneration regime (requiring an annual binding shareholder vote on pay and increased transparency around executive pay) and that employee representatives should sit on boards. These are, so far, only proposals and for the most part would require new primary legislation.

**2017**

**Proposals for Directive to amend the Shareholder Rights Directive:** The European Commission published a proposal for a Directive to amend the Shareholder Rights Directive in April 2014. The key aspects of the proposed amending Directive include: proposals on directors' remuneration reporting and voting requirements; a more onerous regime for related party transactions; 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 is expected to be finalised in 2017 and would need to be implemented through national legislation once approved.





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**CHAMBERS UK 2016,  
CORPORATE/M&A: HIGH END CAPABILITY**

## DEBT CAPITAL MARKETS, SECURITISATION AND DERIVATIVES

The next couple of years will see continued regulatory change in the capital markets space. 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 will be the replacement of the current Prospectus Directive with a new Prospectus Regulation.

On the structured side, proposals for consolidation and harmonisation of the regulatory framework for securitisation continue to move forwards. More generally, the capital regime applicable to interests in securitisation transactions is due to be overhauled in accordance with the Basel III Securitisation Framework.

Further progress is expected in implementation of the European Market Infrastructure Regulation (EMIR).

Further reform is also expected in the

capital regime applicable to banks and other financial institutions, with changes to the minimum requirement for eligible liabilities (MREL) framework applicable to European banks due to be proposed.



**Michael Poulton**  
Partner

T: +44 20 7466 2777  
[michael.poulton@hsf.com](mailto:michael.poulton@hsf.com)



**Amy Geddes**  
Partner

T: +44 20 7466 2541  
[amy.geddes@hsf.com](mailto:amy.geddes@hsf.com)

**21 DECEMBER 2016 TO  
21 DECEMBER 2018**

**European Market Infrastructure Regulation (EMIR) – continued phase in of clearing obligation:**

The obligation for various counterparty categories to clear eligible transactions through central counterparties (CCPs) will continue phasing-in throughout 2017 and beyond. The categories of derivative contracts currently subject to clearing include vanilla interest rate swaps in major currencies and credit default swaps linked to certain indices, with further categories expected to be subject to clearing on an on-going basis. This obligation applies to financial counterparties (banks, asset managers, regulated funds and investment firms) (FCs) and non-financial counterparties with derivative portfolios exceeding the relevant thresholds (NFC+) on a staggered basis, as follows:

- Category 1: qualifying CCP members (already subject to the existing clearing obligations and expected to be in the first phase of all future clearing obligations)
- Category 2: FCs and Alternative Investment Funds (AIFs) with derivative portfolios exceeding EUR 8 billion (subject to the first clearing obligation from 21 December 2016)
- Category 3: all other FCs and AIFs (subject to the first clearing obligation from 21 June 2017)
- Category 4: NFC+s (subject to the first clearing obligation from 21 December 2018)

Counterparties should note the obligation is retroactive, with the obligation to clear existing transactions entered into within certain periods prior to the clearing obligation coming into effect (the frontloading obligation). The clearing requirement will likely impose significant operational, liquidity and legal burdens on in-scope entities.

**31 DECEMBER 2016**

**Commission to propose new MREL framework:** The European Commission will publish a legislative proposal to amend the minimum requirement for eligible liabilities (MREL) framework applicable to European banks. The proposal will bring the MREL in line with principles for total loss absorbing capital (TLAC) published by the Financial Stability Board (FSB) in November 2015. The aim of the principles published by the FSB is to ensure that Global Systemically Important Banks have sufficient loss-absorbing capital available to enable authorities to resolve a failure of any such institution without creating systemic risk. The revision may impact banks' funding structures and the pricing of bank debt, and may require banks to issue substantial amounts of new debt.

**LATE 2016/EARLY 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) securitisation, 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 must now take place before the new Regulation can be published in the Official Journal. The European Parliament’s plenary vote on the proposals is scheduled for December 2016, but it may be pushed back until early 2017.

**2016/2017**

**Prospectus Regulation to replace current Prospectus Directive:** In 2015, the European Commission proposed a new prospectus regime. The key changes for debt capital markets are the proposals to remove the EUR 100,000 minimum denomination exemption and to unify the disclosure regime in regard to wholesale and retail bonds. However, we would expect wholesale debt issuers to rely on other exemptions to the publication of a prospectus; namely offers to qualified investors only and offers to less than 350 persons per Member State. It is expected that trilogue negotiations will begin shortly, with an aim to reach a political agreement by the end of 2016. The new Regulation would apply either 12 months or 24 months following publication in the EU Official Journal. See the entry in the corporate section above for further details.

**1 JANUARY 2017**

**Regulatory Technical Standards (RTS) Regulation on Article 8b of Credit Rating Agencies Regulation III (CRA III):** Article 8b of CRA III imposes reporting obligations on issuers, originators and sponsors of structured finance instrument (SFIs). The RTS Regulation (setting out technical standards in regard to these obligations) applies from 1 January 2017 to SFIs issued after the date of its entry into force where the issuer, originator or sponsor is established in the EU. However, the European Securities and Markets Authority (ESMA) has published an update stating that the proposed website which is to be set up to house the information will not be ready by 1 January 2017. ESMA expects the new securitisation legislation (see above) to provide further clarity on reporting obligations in relation to SFIs.

**1 MARCH 2017**

**European Market Infrastructure Regulation (EMIR) – phase in of margin requirements for non-cleared derivatives:** The final Regulatory Technical Standards (RTS) containing the requirements for posting of margin against non-cleared derivatives are expected to be published in October 2016 with first commencement from 1 March 2017. The requirements will involve financial counterparties (defined in EMIR to include banks, insurance companies, investment firms, pension funds and hedge funds) being obliged to post variation margin (VM) (margin to cover the daily changes in the value of the contract) on a daily basis and initial margin (IM) (an upfront posting of margin against possible losses on the contract). The RTS contain significant detail on the amount, type, frequency, operational and legal requirements which eligible entities must meet to comply with the RTS. The RTS requirements have staggered effect, with the first VM obligations expected to apply to all eligible entities from 1 March 2017 and the first IM obligations on a staggered basis thereafter, depending on entity size.

**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 a lack of incentives for good risk management. The new framework introduces criteria for simple, transparent and comparable (STC) securitisations. The framework is scheduled to come into effect on 1 January 2018 and will be implemented in the EU by the proposed STS framework set out in the draft Securitisation Regulation, and amendments to associated regulations governing capital charges (including Solvency II).

## DISPUTE RESOLUTION

Significant changes to procedures for obtaining permission to appeal have been introduced in October 2016 in an attempt to address the current backlog of cases in the Court of Appeal. The most controversial change is to remove the automatic right to an oral renewal of permission to appeal applications that have been refused on the documents. Many have expressed concerns that meritorious appeals may, as a result, be wrongly excluded at the permission stage.

Lord Justice Briggs's final report in his Civil Courts Structure Review was published in July 2016. Among the headline recommendations are proposals to create an Online Court, initially for money claims up to £25,000. The Government seems keen to implement this proposal, though the precise value threshold and timing are currently uncertain.



**Anna Pertoldi**

Partner

T: +44 20 7466 2399

[anna.pertoldi@hsf.com](mailto:anna.pertoldi@hsf.com)



**Maura McIntosh**

Professional support consultant

T: +44 20 7466 2608

[maura.mcintosh@hsf.com](mailto:maura.mcintosh@hsf.com)

**OCTOBER 2016**

**Reforming the regime for appeals to the Court of Appeal:** The procedural rules governing appeals to the Court of Appeal are amended and restructured with effect from 3 October 2016. Key changes include: removing the automatic right to an oral hearing when renewing an unsuccessful application for permission to appeal; and re-wording the test for permission on second appeals, to require “a real prospect of success” (in addition to an important point of principle or practice). The changes do not include raising the general threshold test for appeals from a “real” to a “substantial” prospect of success, as had recently been proposed, although it appears this change is still being considered. Click [here](#) to read more on our Litigation Notes blog.

**2016/2017**

**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. The timing is not, however, clear.

**2016/2017**

**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 “Transforming our justice system: summary of reforms and consultation”, published by the Ministry of Justice on 15 September, the Government stated its intention to extend the fixed recoverable costs regime to as many civil cases as possible. The senior judiciary will be developing proposals on which the Government will then consult. The timing is not clear.

**2016/2017**

**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. This proposal is at an early stage and it is not yet clear what changes might be made, or on what timescale.

**2016/2017**

**Possible amendments to DBA Regulations:** Damages-based agreements, or DBAs, have been permitted since April 2013, but to date have not been widely used in commercial cases. This has been attributed, in large part, to the prohibition on “hybrid” arrangements, where a lawyer could combine a DBA with some other form of retainer. In autumn 2014 the Government requested that the Civil Justice Council (CJC) review the regulations to consider possible improvements, but ruled out the introduction of hybrid arrangements. The CJC working group report and recommendations were published on 2 September 2015. The timing of any amendments is uncertain. Click [here](#) to read more on our Litigation Notes blog.

**JANUARY 2017**

**European Account Preservation Order (EAPO) Regulation:** A new EU Regulation came into force in July 2014 establishing a procedure to facilitate cross-border debt recovery in civil and commercial matters (Regulation (EU) 655/2014). Under the new procedure, in cross-border cases, a creditor will be able to obtain an EAPO which effectively freezes the debtor's funds in an EU bank account up to a specified amount. The main provisions will not, however, apply until January 2017. As things stand, the Regulation does not apply to the UK and Denmark, which have opted out.

**1 OCTOBER 2017**

**Financial markets test case pilot scheme:** A specialist Financial List was introduced in the High Court on 1 October 2015 to deal with financial markets claims for more than £50 million, or which require particular expertise or raise issues of general importance in the financial markets. On the same date, a test case scheme was launched to deal with claims that raise issues of general importance to the financial markets in relation to which immediately relevant authoritative English law guidance is needed. The pilot is intended to run for a two-year period, until 1 October 2017. Click [here](#) to read more on our Litigation Notes blog.

**2017/2018**

**Signature and ratification of the EU-Singapore Free Trade Agreement (EUSFTA):** This agreement is seen as a stepping stone for the EU towards entering into a trade deal with the whole ASEAN region. The agreement was finalised and initialled by the EU and Singapore last year and covers important issues of trade, intellectual property rights, investment protection and investor state dispute settlement. The Court of Justice of the European Union is currently considering the extent of the EU's competence to sign the agreement on behalf of the Member States. Once this has been determined, the ratification process will commence. This is unlikely to begin before 2017. There



are a number of uncertainties surrounding the EUSFTA in light of Brexit, and the extent to which the UK will be bound by and benefit from the treaty is yet to be determined.

**2017/2018**

**Trans-Atlantic Trade Investment Partnership:** The Trans-Atlantic Trade Investment Partnership (TTIP) is a proposed deal between the EU and the US, two of the world's largest economies, which is intended to remove trade barriers, create wealth and promote investment. The TTIP has been hugely controversial, particularly in Europe. Current indications suggest that a deal may not be possible, with comments from the French and German governments to that effect. If agreement were to be reached, the UK's role in the treaty is uncertain given Brexit.

**30 SEPTEMBER 2018**

**Pilots of streamlined procedures for claims in the main business courts:** Two pilot schemes were introduced on 1 October 2015 for claims in the Rolls Building courts (including the Commercial Court, the Chancery Division and the Technology and Construction Court). The "Shorter Trials Scheme" sets out an abbreviated procedure aimed at delivering judgment within about a year of issuing proceedings. Cases are managed by docketed judges and the maximum trial length is four days. The "Flexible Trials Scheme" allows parties, by agreement, to adapt trial procedure (including disclosure, evidence and submissions at trial) to suit their particular case. The pilots are intended to run for a two-year period, until 1 October 2017. The pilots have recently been extended to 30 September 2018. Click [here](#) to read more on our Litigation Notes blog.

## EMPLOYMENT AND INCENTIVES

One of the more significant developments over the next year is the introduction of gender pay gap reporting obligations on employers with at least 250 employees. Companies will be obliged to take a data snapshot in April 2017 and publish the data by April 2018. Organisations may wish to undertake a data analytics exercise on a privileged basis now, so measures can be taken to address pay disparities before the data must be published.

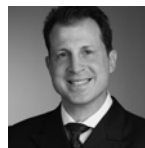
Also on the horizon are changes to the rules around industrial action pursuant to the Trade Union Act, reform of the tax regime for termination payments from April 2018, and potential changes to the employment tribunal fee regime. The Government has also announced that it will consult on whether victims of caste discrimination require further protection, and there are also outstanding consultations in the area of public sector exit payments (not covered by this timeline).

The Prime Minister has indicated she intends to consult on measures to crack down on excessive corporate pay and poor corporate governance, and give employees and customers representation on company boards.

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 the implementation of the EU Trade Secrets Directive.



**Peter Frost**  
Partner  
T: +44 20 7466 2325  
[peter.frost@hsf.com](mailto:peter.frost@hsf.com)



**Andrew Taggart**  
Partner  
T: +44 20 7466 2434  
[andrew.taggart@hsf.com](mailto:andrew.taggart@hsf.com)

**AUTUMN 2016/  
SPRING 2017**

**Commencement of Trade Union Act 2016:** The Act provides for: increased ballot thresholds; a six month limit on a strike mandate, after which another ballot is required (can be increased to nine months if the employer agrees); doubling of the amount of notice of a strike to be given to an employer to 14 days; more stringent requirements for unions to supervise picketing; more specific requirements for the wording of the ballot paper; and changes to arrangements concerning political funding contributions and, in the public sector, facility time and check-off. A response to the consultation on allowing employers to hire agency staff to provide cover for industrial action is still awaited. Further information is available [here](#).

**OCTOBER 2016/  
APRIL 2017**

**New national minimum wage rates:** The national minimum wage rates will increase in October 2016, with the rate for workers aged 21 to 24 to increase to £6.95 an hour. The rate for those aged 25 and over (the national living wage) will not increase in October 2016, but all of the rates will then be uprated in parallel from April 2017.

**1 JANUARY 2017**

**Bonus buy-outs:** On 26 September 2016 the Prudential Regulation Authority (PRA) published a policy statement on remuneration, focussing on buy-out awards granted to employees who move between banks, building societies and PRA-designated investment firms, including UK branches of non-EEA headquartered firms. The new rules, which will apply to buy-outs agreed from 1 January 2017, require that firms are unable to agree buy-outs unless they have received a remuneration statement from their new employee (prepared by the former employer) setting out the details of foregone deferred remuneration, and then must operate malus and clawback on buy-out amounts where the foregone deferred remuneration would have been subject to malus or clawback by the previous employer.

**APRIL 2017**

**Apprenticeship levy:** The Government plans to introduce a levy on large employers to help fund three million new apprenticeships in April 2017. The levy will support all post-16 apprenticeships in England, and will provide funding that each employer can use to meet their individual needs. See the entry in the tax section below for further details.

**APRIL 2017**

**New obligation on larger employers to report gender pay gap:** Gender Pay Gap Information Regulations 2016 have been published in draft and are expected to be commenced in April 2017. It is *(continued overleaf)*

expected that private and voluntary sector employers with 250 or more “relevant employees” will have to take a snapshot of pay data on 5 April 2017 (and every subsequent anniversary) and publish it within 12 months (ie the first data must be published by 4 April 2018). Publication of pay information may well increase the risk of equal pay claims or reputational damage and larger employers may wish to audit their position and consider taking action to address disparity ahead of the requirement coming into force. Further detail is available [here](#).

#### APRIL 2017

**Salary-sacrifice schemes:** HMRC plans to restrict the use of salary sacrifice for the provision of benefits in kind (with certain exceptions) with effect from April 2017, making them chargeable to income tax and employer National Insurance Contributions (NICs).

#### APRIL 2018

**Changes to taxation of termination payments:** HMRC plans include treating all payments in respect of notice as earnings subject to income tax, employer 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). The foreign service exemption will be abolished, except in relation to seafarers and legislation will be amended to clarify that payments for injury to feelings in connection with termination will be taxable. 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. On Brexit, the Regulation would no longer apply but it seems likely that new domestic legislation would be implemented to replicate the Regulation or something similar. Compliance with high standards of data protection law will continue to be important for European trade and to ensure that the UK meets adequacy standards in order to be allowed to have personal data from Europe transfer to the UK. Employers should therefore consider the implications for their processing of employee data and prepare for compliance in 2018. 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 is likely to be before the terms of Brexit are agreed and, therefore, technically the UK should implement the Directive. However, given the amount of legislation the Government will likely be implementing due to Brexit, it is possible the Directive may not be implemented at that point. In the future the Government may wish to implement 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.

## ENERGY AND ENVIRONMENT

Subject to certain grace periods, the Renewable Obligation Certificates (ROC) scheme will close to new applicants in March 2017. This signals the end of what was once the main support scheme for renewable energy generation. It will be replaced by the Contracts for Difference scheme, and there has been a flurry of activity both from the UK Government (publishing guidance and consultation) and developers as they try and get renewable energy projects developed to benefit from the ROC scheme. It is likely that this activity will continue until the scheme closes in 2017.

The Government will be reviewing its approach to the ownership and control of critical infrastructure to address the national security implications of foreign ownership. Such a shift could impact transactions in the energy sector where the asset being sold is considered "critical infrastructure" (a term which has not yet been defined).

On 1 October 2016, most of the oil and gas provisions in the Energy Act 2016 came into force, including provisions that formally transferred certain functions of the Secretary of State to the Oil and Gas Authority (OGA) and more generally broadened the existing regulatory powers held by the OGA.

Nothing has yet been made public on Government thinking regarding the implications of Brexit for the UK's environmental regulatory regime specifically. Organisations operating in the UK remain bound by laws already applicable within the UK, with some additional EU-derived regulations to be brought into UK law in the short term, to implement for example the 2015 Medium Combustion Plant Directive and revisions to the Environmental Impact Assessment rules.

Air quality has returned to the environmental limelight. ClientEarth's successful case against the Government for breach of EU air quality legislation resulted in the Government hurriedly issuing a national plan to address nitrous oxide levels in UK cities. A renewed legal challenge by ClientEarth against the plan on the basis that is insufficient is due to be heard in October 2016.



**Anna Howell**  
Partner  
T: +44 20 7466 2764  
[anna.howell@hsf.com](mailto:anna.howell@hsf.com)



**Julie Vaughan**  
Senior associate  
T: +44 20 7466 2745  
[julie.vaughan@hsf.com](mailto:julie.vaughan@hsf.com)

**18 OCTOBER 2016**

**High Court to hear ClientEarth's judicial review challenge:** In April 2015, in a challenge brought by ClientEarth, the Supreme Court held that the Government had failed to observe limits for nitrogen dioxide emissions under the EU 2008 Ambient Air Quality Directive and it ordered a plan to be issued by December 2015 on how the UK would achieve compliance in the shortest time possible. This latest judicial review challenge concerns the adequacy of that plan. The plan provides for the introduction of Low Emissions Zones in five UK cities but few other mandatory measures.

**26 OCTOBER 2016**

**UKCS 29th Offshore Licensing Round Deadline:** In July 2016 the OGA launched the 29th Offshore Licensing Round with more than 1,200 blocks on offer to support the OGA's objective of maximising economic recovery from the UKCS. Companies have until 14:00 on 26 October 2016 to apply for the blocks on offer. Click [here](#) for further detail.

**OCTOBER 2016**

**The Energy Act 2016:** On 1 October 2016, most of the oil and gas provisions in the Energy Act 2016 came into force. These include provisions regarding the formal transfer of certain functions of the Secretary of State to the Oil and Gas Authority (OGA) – the new independent regulator of the UK Continental Shelf (UKCS) oil industry; provisions empowering the OGA to resolve disputes and attend certain meetings between industry players, and also to impose sanctions, in support of its objective to deliver “maximum economic recovery” (MER); and provisions regarding infrastructure and decommissioning. The provisions regarding the OGA's power to request certain information and samples are not yet in force. The text of the Act can be found [here](#).

**OCTOBER 2016**

**The Wales Bill:** This Bill provides for the devolution of various powers to the Welsh Government and, if enacted in its current form, will amend the Petroleum Act 1998 to give the Welsh Ministers control over the licensing of onshore oil and gas extraction underlying Wales. Details regarding the Bill can be found [here](#).

**OCTOBER 2016**

**Decision on airport expansion expected:** A Cabinet committee chaired by the Prime Minister will make a decision on whether to allow a third runway at Heathrow Airport, or whether to instead support alternative options to expand airport capacity in the south-east by October 2016. This delay followed a Parliamentary

*(continued overleaf)*

report from the Environmental Audit Committee stating that approval of a third runway should not be granted unless the airport demonstrated it could meet key environmental conditions on climate change, air quality and noise. Further environmental studies have been conducted and the results of these are expected to be taken into account by the Government in reaching its decision. An attempt to bring a judicial review challenge against a decision to allow the runway to go ahead would appear likely.

#### AUTUMN 2016

**Ofgem implementation of CMA remedies:** Following the Competition and Markets Authority's (CMA) report on the energy market, Ofgem has grouped the CMA's recommendations into five high level objectives: (i) regulation for effective competition; (ii) prompting greater consumer engagement; (iii) protecting and empowering those on non-standard meters; (iv) building industry systems and governance for the future; and (v) a robust and independent regulator. Ofgem intends to publish a more detailed plan for implementing these recommendations in the autumn, is considering an implementation workshop in late autumn and has set out a timeline of milestones and associated activities which extends through 2017 to implement the recommendations.

Find the Ofgem response to the CMA report and the Implementation Strategy [here](#).

#### 22 NOVEMBER 2016

**Third Energy shale gas planning consent judicial review:** The High Court will hear a judicial review challenge against North Yorkshire County Council's decision to grant planning consent to Third Energy to hydraulically fracture for shale gas at its Kirby Misperton site. The grounds for challenge include an omission by the Council to properly take into account climate change impacts.

#### NOVEMBER 2016

**Morocco Climate Change Conference:** The 22nd Conference of the Parties (COP 22) to the United Nations Framework Convention on Climate Change (UNFCCC) will be held in Morocco in November 2016. The focus will be the progress made in response to the Paris Agreement made in December 2015, which is expected to be a catalyst for investment globally in infrastructure to aid the transition to a low carbon economy. In particular detail is yet to be worked out on the market mechanism under the Paris Agreement designed to facilitate investment in emissions reduction projects. Click [here](#) to read our e-bulletin on the outcome of the Paris Agreement.



**DECEMBER 2016**

**Electricity Capacity Market:** The Government will buy the following electricity capacity in upcoming Capacity Market auctions: (i) the third four-year ahead auction is due to take place in December 2016 for delivery of 52GW in 2020/2021; ii) a supplementary capacity auction is to take place in January 2017 for delivery of 53.8GW in 2017/2018; and iii) a second Transitional Arrangements auction is to take place in March 2017 for 300MW of turn-down Demand Side Response in 2017/2018.

**LATE 2016**

**Government to ratify the Paris Agreement:** In a speech to the United Nations General Assembly, the Prime Minister announced that the UK will officially ratify the Paris Agreement before the end of 2016. The Agreement came into force in October 2016 following its ratification by the EU, taking the number of parties over the threshold of 55 countries representing 55% of global emissions. The US, China and India have also ratified.

**LATE 2016**

**Government to consult on simplified energy and carbon reporting framework:** The 2016 Budget announced that the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme will be abolished with effect from 2019, with a corresponding rise in the climate change levy (CCL). The Budget also confirmed that there would be further consultation on a new and simplified reporting framework in late 2016. Based on proposals in the September 2015 consultation on reforming the business energy efficiency tax landscape, this is expected to include consolidation of various energy efficiency and carbon reduction reporting schemes into a single reporting framework, possibly based on the Energy Savings Opportunity Scheme. Click [here](#) to read our bulletin on the September 2015 consultation.

**2016/2017**

**The Scotland Act:** Sections 47 to 49 of the Scotland Act 2016 will amend the Petroleum Act 1998 to give the Scottish Ministers – instead of the OGA – control over the licensing of onshore oil and gas extraction underlying Scotland. Although the Act received Royal Assent on 12 May 2016, the sections referred to above are not in force, as the relevant commencement regulations have not yet been passed. It is worth noting that this development does not impact the offshore regime, and the fiscal regime remains a matter for central government. The text of the Act can be found [here](#).

**EARLY 2017**

**Government to consult on introduction of foreign investment rules for critical infrastructure:** In the context of giving the go-ahead for the Hinkley Point C new nuclear project, the Government announced its intention to reform its approach to the ownership and control of critical infrastructure to ensure that the implications of foreign ownership are scrutinised for the purposes of national security. There are few details about the proposed reforms, but they 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 Enterprise Act 2002 public interest regime. The term “critical infrastructure” has not been defined. A formal consultation on the proposed changes is expected in early 2017. See the entry in the competition, regulation and trade section above for further details.

**EARLY 2017**

**Ofgem review of embedded benefits:** In a letter dated 29 July 2016, Ofgem sought views on its concerns that the current transmission charging arrangements for embedded generation prevent a level playing field between small embedded generation and large embedded and transmission connected generation. Ofgem cites the size and increasing rate of the Transmission Network Use of System demand residual as a particular concern, given that it may distort the market by encouraging investment in smaller embedded generation, leading to an inefficient generation mix. The consultation is now closed and a decision from Ofgem on the proposals is expected in early 2017 with implementation expected between April 2018 and April 2020. The Ofgem letter setting out its concerns is available [here](#).

**1 JANUARY 2017**

**New Non-road Mobile Machinery regulation takes effect:** The Non-Road Mobile Machinery (NRMM) Regulation, which sets pollution limits for off-road engines such as tractors, excavators and lawn mowers, will replace an earlier Directive and includes limits for particulate matter (PM) and gaseous emissions, such as nitrogen oxides (NOx), depending on engine power and use. Data published earlier by the Commission showed that NRMM engines are responsible for 15% of all nitrous oxide emissions in the EU and 5% of particulate pollution. The Regulation also contains procedures for engine manufacturers to follow in order to obtain approval for their engines, without which their products cannot be placed on the EU market.

**JANUARY 2017**

**New Environmental Permitting Regulations in force:** It is anticipated that the proposed Environmental Permitting (England and Wales) Regulations 2016, intended to be laid before Parliament later this year,

will take effect at the start of 2017. The Regulations will consolidate numerous amendments to the current Regulations rather than introducing new policy. The Government has indicated that, for England, there will not be a wider policy review of the Regulations until 2019.

### 31 MARCH 2017

**Support for renewable energy:** Save for grace period allowances, the scheme for Renewable Obligation Certificates (ROCs) will close to new applicants at the end of March 2017 pursuant to the Renewables Obligation Closure Order 2014. From this point, new applicants will only be entitled to support for renewable energy generation through the Contract for Difference (CfD) mechanism. The scheme closed to solar PV (above 5 megawatts) on 1 April 2015. Further details on the scheme's closure can be found on the Ofgem website [here](#).

Northern Ireland closed the Northern Ireland Renewables Obligation (NIRO) to new small scale onshore wind (up to 5MW) on 30 June 2016 (subject to grace periods) under the Renewables Obligation Closure (No.2) Order (Northern Ireland) 2016.

### APRIL 2017

**New Electricity System Operator incentives:** The current electricity System Operator (SO) incentives scheme, which is designed to encourage National Grid to operate the electricity transmission system in an efficient and effective manner, ends on 31 March 2017. Ofgem has launched a [consultation](#) to review the SO incentives scheme to ensure that it reflects the changing nature of UK's electricity system and the SO's role within it. Ofgem's preferred option is to maintain the current incentive framework but to implement changes where there could be benefits to consumers. The conclusions of this review are expected in spring/summer 2018.

### 16 MAY 2017

**Environmental Impact Assessment (EIA) Directive 2014:** Member States are required to implement revisions to the EIA Directive adopted in 2014 by 16 May 2017. Amongst other things, the revised Directive adds to the assessment criteria required for screening and assessing project risks. The Scottish and Welsh Governments launched consultations on proposed amendments to introduce the revisions into devolved legislation. Those consultations will close on 31 October 2016 and 11 November 2016 respectively. A UK Government consultation in respect of English law changes is likely.

**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.

**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's latest consultation on tender models and market offering closed in September 2016 and the response is awaited. Ofgem expects to be in a position to run the first onshore transmission tender in mid to late 2017. See details of the consultation process on Ofgem's website [here](#).

**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. 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).

**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. Information has been sought beyond the EU, with a first draft of the BREF not expected before 2017. 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.

**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 UKCS 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](#).

## 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 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 II (MiFID II).



**Karen Anderson**  
Partner

T: +44 20 7466 2404

[karen.anderson@hsf.com](mailto:karen.anderson@hsf.com)



**Clive Cunningham**  
Partner

T: +44 20 7466 2278

[clive.cunningham@hsf.com](mailto:clive.cunningham@hsf.com)

**OCTOBER 2016**

**Pending appeal on FCA enforcement process:** UK Supreme Court expected to rule on third party rights in FCA enforcement proceedings (*FCA v Macris* [2015] EWCA Civ 490).

**31 DECEMBER 2016**

**PRIIPs Regulation:** The [Regulation](#) on key information documents (KIDs) for packaged retail and insurance-based investment products (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. The PRIIPs Regulation is due to apply from 31 December 2016. However, the European Parliament and Council have called on the European Commission to delay the application of the PRIIPs Regulation as some Level 2 technical standards have not yet been agreed.

**26 JUNE 2017**

**MLD IV/WTR:** The fourth Money Laundering Directive ([MLD IV](#)) and Wire Transfer Regulation ([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.

**3 JANUARY 2018**

**Markets in Financial Instruments Directive (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

*(continued overleaf)*

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. In the UK, the FCA has gathered views on the [FCA guidance](#) in this area in preparation for the implementation of PSD2. HM Treasury is expected to consult on the UK transposition of PSD2 shortly.

### 2018

**Senior Managers and Certification Regime (SMCR):** The SMCR started to apply to individuals working in UK banks, building societies, credit unions, 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.



**Paul Lewis**  
Partner

T: +44 20 7466 2138  
[paul.lewis@hsf.com](mailto:paul.lewis@hsf.com)



**Geoffrey Maddock**  
Partner

T: +44 20 7466 2067  
[geoffrey.maddock@hsf.com](mailto:geoffrey.maddock@hsf.com)

**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 2018**

**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.

# INTELLECTUAL PROPERTY

As we mentioned in our last edition, the advent of the Unified Patent Court (UPC) and unitary patent right across the EU (UP) has been one of the most anticipated developments in intellectual property in recent years. Brexit may cause the new patent system to be delayed, however.



**Sebastian Moore**  
Partner

T: +44 20 7466 2801

[sebastian.moore@hsf.com](mailto:sebastian.moore@hsf.com)



**Rachel Montagnon**  
Professional support consultant

T: +44 20 7466 2217

[rachel.montagnon@hsf.com](mailto:rachel.montagnon@hsf.com)

**SPRING 2017**

**Impact of Brexit on UPC and UP:** Spring 2017 was the previously expected start date for the UPC. The result of the Brexit referendum has caused a pause in progress since, on the basis of the current draft, the UPC Agreement cannot come into force without ratification by the UK whilst the UK is still a member of the EU. Thirteen States must ratify including the UK, France and Germany. The Netherlands ratified in September 2016 taking the total ratifications to 11 (including one of the mandatory ones, France). It is not clear whether the UK will ratify whilst still an EU member to allow the UPC to be established and then withdraw on Brexit, or seek to negotiate participation in the UPC in any event.

Herbert Smith Freehills (as part of a consortium of 20 law firms, the Chartered Institute of Patent Attorneys (CIPA) and the IP Federation (IPFed)) has funded an opinion from leading counsel; see our article on this opinion [here](#). Although the opinion presents the theoretical possibility of the UK being part of the UP/UPC system post-Brexit, it is difficult to see how this would work politically as the agreement would need to be reopened and the UK Government would be required to recognise the primacy of EU law and the jurisdiction of the Court of Justice of the European Union (CJEU) in matters covered by the agreement. Even if these barriers could be overcome the CJEU might still object to a non-EU state being party to the UPC.

The view of industry generally seems to be that the UPC will be more attractive with the UK in it than not. The loss of the UK is unlikely to prevent the UPC proceeding in the longer term; at most, non-ratification by the UK would delay it until the UK has actually left the EU or until the other Member States modify the agreement so that the UK's ratification is no longer a pre-requisite.

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.

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 commentary on IP in a post-Brexit Europe: [Brexit and IP - Business as usual?](#) and [Brexit: What now for UPC and IP in the UK and across Europe?](#)

## PENSIONS

Following a quiet Queen's Speech, during which no mention was made of the word "pensions", we expect an equally quiet six months from a legislative perspective. Few changes (aside from those already contained within the Finance Act 2016) are due and there is little on the horizon from a European perspective, particularly given the removal of insurance-style "capital adequacy" requirements from the IORP II Directive. The real key date for the future 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; and whilst little of substance can realistically be done until the terms of the UK's exit from the EU become clearer, advance planning is essential if schemes and their trustees are to comply with the new (and significantly more stringent) regime.



**Alison Brown**  
Partner

T: +44 20 7466 2427

[alison.brown@hsf.com](mailto:alison.brown@hsf.com)



**Daniel Schaffer**  
Partner

T: +44 20 7466 2003

[daniel.schaffer@hsf.com](mailto:daniel.schaffer@hsf.com)

**2016**

**Bridging pensions:** The tax rules on bridging pensions are due to be aligned with Department for Work and Pensions (DWP) legislation in order that, from a tax perspective, such pensions can properly continue until a member's pension age under the new single-tier state pension introduced as of April 2016. The relevant provisions in the Finance Act are anticipated to be brought into force, with retrospective effect to 6 April 2016, during the fourth quarter of 2016.

**2016**

**New version of IORP II:** The revised "Institutions for Occupational Retirement Provision" Directive is now anticipated to be finalised by the end of 2016. The purposes of the recast Directive include improving the governance and transparency of retirement funds, promoting cross-border activity and aiding long-term investment.

Notably there are no solvency requirements for defined benefit pension schemes, as had been proposed in earlier drafts of the Directive. But more generally, the extent of its application to the UK is uncertain; with the European Parliament meeting later this year to approve the Directive, the two-year deadline for its implementation into domestic legislation is then likely to elide with the UK's exit from the EU.

**LATE 2016/EARLY 2017**

**Prohibition on corporate directors:** See the entry in the corporate section above for further details.

**MARCH 2017**

**Early exit charges:** Target date for the introduction of legislation placing a duty on the Financial Conduct Authority (FCA) to cap excessive early exit charges for members of contract-based arrangements who seek to access the "pension freedoms" which came into effect in April 2015. The FCA's consultation exercise, carried out during summer 2016, proposed a cap of 1% in relation to existing arrangements and 0% for new ones. The DWP has similarly indicated its intention to introduce the same level of cap for occupational pension schemes, at or around the same time that the FCA cap comes into force; although enabling provisions were not, contrary to expectations, introduced into the recent Finance Act prior to it receiving Royal Assent.

**MARCH 2017**

**Pensions dashboard:** Anticipated launch date of the prototype version of HM Treasury's online "pensions dashboard", a platform which will  
(continued overleaf)

allow savers to view the value of all their pensions savings in one place (as well as acting as a portal via which individuals can track down “lost” pension pots with previous employers).

#### 5 APRIL 2017

**DB contracting-out:** The abolition of contracting-out on a defined benefit (DB) basis has led to a “disconnect” in many schemes’ Guaranteed Minimum Pension (GMP) rules, which requires GMPs to be inflation-proofed as from the end of a member’s contracted-out service (ie 5 April 2016 for a member still earning benefits under a formerly contracted-out scheme) rather than the date on which he or she subsequently leaves pensionable service.

5 April 2017 marks the end of trustees’ one-year period for utilising statutory modification powers to amend scheme rules and ensure that the revaluation requirements apply only on cessation of pensionable service and not, if earlier, when contracted-out service ceased.

#### 6 APRIL 2017

**Lifetime ISA:** Introduction of the Lifetime ISA for adults under the age of 40, into which individuals will be able to contribute up to £4,000 annually and receive a 25% bonus from the Government.

#### APRIL 2017

**Secondary annuity market:** Expected date for introduction of the secondary annuity market, pursuant to which holders of annuities will be able to sell them for a cash sum to authorised third parties or surrender them back to the life office by which they were issued. The Government’s stated aim in developing the proposed market has been to extend, to holders of annuity products issued prior to the introduction of “pension freedoms” in April 2015, the same ability (to take their entire fund as a cash lump sum) enjoyed since that time by members of defined contribution arrangements.

#### 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 sensitive personal data. Specific points to note include the extension of liability to data processors; increased fines (of up to EUR 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

*(continued overleaf)*

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.

#### 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.



“They bring vast experience, with relevant experts in related fields, and are highly capable when talking pensions to non pension experts. They recognise the commercial realities we face”

**CHAMBERS 2016**

## REAL ESTATE AND PLANNING

No key legal development dominates the real estate horizon for the next few years. Energy efficiency measures continue to be important and under review and the progress of some potential changes of law, such as to partnership legislation and the simplification of the law of easements, will be watched with interest. The new Neighbourhood Planning Bill and the Housing and Planning Act 2016 introduce a range of measures to improve the planning system and increase housing supply while the Community Infrastructure Levy regime is likely to be reformed, following a report by an independent panel.



**Donald Rowlands**  
Partner

T: +44 20 7466 2287

[donald.rowlands@hsf.com](mailto:donald.rowlands@hsf.com)



**Matthew White**  
Partner

T: +44 20 7466 2461

[matthew.white@hsf.com](mailto:matthew.white@hsf.com)

**OCTOBER 2016**

**Neighbourhood Planning Bill on compulsory purchase, planning conditions, neighbourhood planning:** The Bill sets out changes to the compulsory purchase regime, introducing a new power to obtain temporary possession of land. The Bill also introduces restrictions on the use of pre-commencement conditions in planning permissions and provides for strengthening the neighbourhood planning process. Two related consultations were published alongside the Bill in September 2016.

The Bill was originally expected to include provisions to put the National Infrastructure Commission on a statutory footing (as announced in the Queen's speech), however, these were omitted. Read our [blog post](#) on this topic on Real Estate Development Notes.

**OCTOBER 2016**

**Housing and Planning Act 2016 commencement provisions:** The Housing and Planning Act 2016 received royal assent on 12 May and certain provisions came into force on 1 October 2016 (including on neighbourhood planning and intervention by the Secretary of State in local plan making) and others are due to come into force on 31 October 2016 (self-build and custom housing). Further provisions amending the compulsory purchase procedure, including the general vesting declarations process, are due to come into force later in the year.

The Act introduces measures such as automatic planning permission on brownfield sites, Starter Homes requirements and a new procedure for overriding easements and other rights. Further detail on many of the provisions is awaited. Read our [blog posts](#) on this topic on Real Estate Development Notes.

**31 DECEMBER 2016**

**Deadline to install meters under the Heat Network Regulations:**

By this date, landlords, developers or managing agents of multi-let buildings who supply heating, cooling or hot water to a final customer via a communal heating system (or a district heat network) must perform viability assessments regarding the installation of individual heat meters. Provided it is cost effective and technically feasible to do so they must also, by this deadline, install individual meters to measure the consumption of heating, cooling and hot water by each final customer. Where individual meters are not viable, heat cost allocators should be installed with hot water meters.

LATE 2016

**Community Infrastructure Levy (CIL) reforms expected:** Following the independent Review Panel's report to Government on reforming the CIL regime, we are still waiting for the report to be made public and for the Government's response. The Panel were considering the overarching question of whether CIL is meeting its objectives of providing a faster, fairer, more certain and transparent means of funding infrastructure through developer contributions. Further amendments to the CIL Regulations are expected. Read our [blog post](#) on this topic on Real Estate Development Notes.

LATE 2016

**Government to consult on simplified energy and carbon reporting framework:** See the entry in the energy and environment section above for further details.

2016

**Boundary disputes to follow proposed new procedure:** A private member's Bill entitled "Property Boundaries (Resolution of Disputes) Bill" is due to have its second reading in the House of Lords on a date to be announced. The Bill sets out a new compulsory statutory procedure to be followed, supported by a Code of Practice, to guide disputing parties and surveyors appointed by them, to settle claims relating to the positioning of boundaries on neighbouring land.

1 APRIL 2017

**Register of exemptions to be set up for properties with F and G rated Energy Performance Certificates (EPCs):** New regulations are now in force, which prohibit, from 1 April 2018, the granting of new leases or renewal leases of commercial properties in England and Wales which are rated F or G on their EPCs (see below). Landlords who consider that an exemption applies under these regulations are still able to let F and G rated properties, but will need to lodge an exemption on a centralised exemptions register. This register was expected in 2016, but the date from which landlords may register an exemption is now 1 April 2017 for non-domestic private rented properties and 1 October 2017 for domestic private rented properties.

1 APRIL 2017

**Revaluation of business rates:** Business rates are calculated by applying a national multiplier to a property's rateable value. The multiplier increases in line with inflation each year. All rateable values for England and Wales will be revised with effect from 1 April 2017, when new rating lists come into effect following a countrywide revaluation by the Valuation Office Agency. This will result in many businesses facing substantial

increases, particularly those in the south-east of England. Although transitional relief will be available to smooth the increases or decreases in rates payable the current proposals will not apply to increases in the first year in respect of rateable values exceeding £100,000 until a threshold of 45% is reached, which will in some cases lead to increases in rates payable of up to 80%. Decreases will be capped at 4.1% in the first year, meaning that businesses that have been subject to excessive rates liabilities for some years will have to wait several years before seeing a real benefit of any reduction in rateable value. Rates mitigation measures, such as interlinking stairways in larger premises to obtain quantum discounts, are expected to become more prevalent.

#### SPRING 2017

#### Electronic Communications Code as part of the Digital Economy

**Bill:** See the entry in the technology, media and telecommunications section below for further details.

#### 8 MAY 2017

#### Assignment of leases and the Landlord and Tenant (Covenants)

**Act 1995: *EMI Group Limited v O&H Q1 Limited*** will be heard by the Court of Appeal by 8 May 2017. The case centres around whether, under the Act, a new lease can be assigned by a tenant to its existing guarantor. The High Court ruled that this was prohibited by the Act, making the assignment void by operation of law, the assignor tenant remained liable for the performance of its covenants and the guarantor continued to guarantee the tenant's obligations. The High Court ruling limits group restructuring opportunities and reinforces the importance of due diligence on a sale or acquisition to check that a new tenancy has not at any stage been the subject of an assignment directly to a guarantor.

#### 2017

**Changes to partnership legislation:** HM Treasury have completed a consultation process on proposals to change UK limited partnership legislation. If enacted, a new form of corporate vehicle, a "private fund limited partnership" (PFLP), would be created. Unlike the current position where a limited partner faces the potential loss of limited liability for the debts and obligations of the partnership if it takes part in the management of the limited partnership business, it is proposed that a non-exhaustive "white list" of key activities and decisions could be taken by a limited partner in a PFLP. Other changes may improve investor privacy and simplify registration requirements. The proposed legislation is quite likely to be enacted some time in 2017. Click [here](#) for our e-bulletin.

**2017**

**Law Commission projects:** It was announced in 2016 that the Government would bring forward proposals to respond to the Law Commission's recommendations and a draft Law of Property Bill to modernise and simplify the law relating to easements, covenants and *profits à prendre*. It is unclear when, if at all, the Government will respond to other Law Commission recommendations such as the simplification of the law relating to rights of light, the introduction of a new statutory scheme of conservation covenants (which would enable landowners to enter long-lasting, enforceable covenants for conservation purposes) and the abolition of the current law of forfeiture and replacement with a modern statutory scheme for the termination of tenancies on the ground of tenant default.

**1 APRIL 2018**

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

Regulations are now in force which prohibit the granting of new leases or renewal leases of commercial properties in England and Wales on or after 1 April 2018 which are rated F or G on their EPCs. Before such properties can be let, cost effective energy efficiency improvements must be performed so that the property attains an EPC rating of E or above. Where this cannot be achieved, an exemption must be obtained. From 1 April 2023, the Regulations will apply to all leases, including those already in existence. Click [here](#) to read our blog post on Real Estate Development Notes.

**APRIL 2018**

**Replacement of SDLT in Wales:** The Welsh Government introduced a Bill into the Welsh National Assembly in September 2016 which will mean that stamp duty land tax (SDLT) is replaced with land transaction tax (LTT) in Wales from April 2018. The Bill is expected to receive Royal Assent in spring 2017.





We have launched a new [Real Estate Development](#) blog which you can access at any time for the latest news in property development. Or you can subscribe to receive email notifications as new posts are added.

# TAX

A number of significant changes are expected in the months ahead, many of which are aimed at tackling tax avoidance and aggressive tax planning and stem from recommendations of the OECD's Base Erosion and Profit Shifting project. These include a new regime governing the deductibility of corporate interest expense and the introduction of rules to counter hybrid mismatch arrangements.

The Autumn Statement in November 2016 will also see new Chancellor of the Exchequer, Philip Hammond, outline the shape of future UK tax policy in the light of the vote to leave to the EU.



**Howard Murray**  
Partner

T: +44 20 7466 2124

[howard.murray@hsf.com](mailto:howard.murray@hsf.com)



**Isaac Zailer**  
Partner

T: +44 20 7466 2464

[isaac.zailer@hsf.com](mailto:isaac.zailer@hsf.com)

**OCTOBER 2016**

**Tax strategy statements:** The Finance Act 2016 introduces an obligation to publish an annual “tax strategy” in relation to UK taxation on certain very large groups, companies, partnerships and UK permanent establishments (PEs) of foreign entities. The threshold requirements for reporting are met if the group or single relevant entity (company, PE or partnership) has either a turnover of more than £200 million or a balance sheet of over £2 billion (in the case of a group, these tests are based on the turnover and balance sheet of the UK members only) or, in the case of groups, if they fall within the country-by-country reporting requirements. The tax strategy must set out information relating to UK taxation including the approach to risk management and governance arrangements, the attitude towards tax planning and the level of risk in relation to UK tax that the group or company is prepared to accept. The requirement applies to all financial years beginning on or after 15 September 2016. The strategy must be published before the end of each financial year and must be published on the internet.

**23 NOVEMBER 2016**

**Autumn Statement:** The Chancellor of the Exchequer will present his first Autumn Statement to Parliament. The Autumn Statement is based on the latest forecasts from the Office for Budget Responsibility for the economy and public finances.

**5 DECEMBER 2016**

**Finance Bill 2017:** Draft clauses to be included in Finance Bill 2017 will be published on 5 December 2016, with the consultation period running until 30 January 2017. It is likely that draft legislation on the changes to the tax deductibility of corporate interest expense and reform of the corporation tax loss regime will be included (see below).

**1 JANUARY 2017**

**Hybrid mismatches:** New legislation will be introduced to counteract tax avoidance through the use of hybrid mismatches. The new measures are aimed at arrangements that exploit a difference in the tax treatment of an entity or instrument under the laws of two or more jurisdictions to produce a mismatch in the tax treatment of a payment made under the arrangement, having the effect of lowering the aggregate tax burden of the parties involved. The legislation will apply to payments made on or after 1 January 2017. Further explanatory guidance is expected to be published by HMRC towards the end of 2016.

**1 APRIL 2017**

**Corporation tax rate:** The rate of corporation tax will reduce from 20% to 19% for the financial year commencing 1 April 2017, and will reduce further to 17% for the financial year commencing 1 April 2020.

**1 APRIL 2017**

**Reform of the corporation tax loss regime:** As announced at Budget 2017, the corporation tax loss relief regime will be modernised and simplified. The key changes will be: (1) increased flexibility for carried forward losses: corporation tax losses arising from 1 April 2017 may be carried forward and set against profits from other income streams/different activities within the same group and against the profits of other companies within the same group; and (2) a restriction on the amount of profits relievable by carried forward losses: from 1 April 2017, the amount of profits against which carried forward losses can be set will be restricted to 50%, subject to an annual allowance of £5 million per group. Draft legislation is expected in December 2016.

**1 APRIL 2017**

**New regime for tax deductibility of corporate interest expense:** Following recommendations made by the OECD as part of its Base Erosion and Profit Shifting project, the UK's rules governing tax deductibility of corporate interest expense will be overhauled from 1 April 2017. The broad aim of the new regime is that an entity's net interest deductions should be directly linked to the taxable income generated by its economic activities. Key to the new regime is the limitation of an entity's net interest deductions to a fixed ratio of 30% of its profit, measured using EBITDA based on tax figures. It is intended that a group ratio rule operates alongside this, allowing entities exceeding the fixed ratio to deduct interest expense up to its group's ratio of net third party interest to group EBITDA if that is higher. Draft legislation is expected in December 2016.

**6 APRIL 2017**

**Apprenticeship levy:** From 6 April 2017, employers operating in the UK will be subject to the new Apprenticeship levy, to be charged at a rate of 0.5% of an employer's pay bill. Employers will receive an annual allowance of £15,000 to offset against their levy payment, which means that employers will only pay the levy if their pay bill exceeds £3 million in a given year. See also the entry in the employment and incentives section above for further details.

**6 APRIL 2017**

**Reform of the taxation of non-UK domiciled individuals (“non-doms”):** A number of changes to the taxation of non-doms will be introduced from 6 April 2017, including the introduction of deemed UK domicile status for non-doms who have been UK resident for 15 out of the previous 20 tax years. Additionally, shares in offshore closely held companies that have an interest in UK residential property will no longer be considered “excluded property” for UK inheritance tax purposes where the shares are owned by a non-UK domiciled individual or an offshore trust.

**APRIL 2018**

**Soft drinks industry levy:** The new soft drinks industry levy (also known as the “sugar tax”) will be introduced from April 2018. The Government is currently consulting on the design of the new levy. It is proposed that there will be a main rate for drinks with a sugar content above 5 grams/100ml and a higher rate where this exceeds 8 grams/100ml.

**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. See the entry in the employment and incentives section above for further details.

## TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS

In the highly regulated TMT and data sectors, we have continued to see unprecedented activity in data regulation. In the last six months, the new EU General Data Protection Regulation has come into force (albeit with a two year lead time before it will actually apply), the Network and Information Security Directive (the so-called Cyber Security Directive) has been agreed, and the new EU/US Privacy Shield (for transatlantic transfers of personal data) has been adopted. 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), and unresolved stakeholder concerns regarding the Privacy Shield.

Europe's Digital Single Market strategy has also produced a number of consultations and legislative proposals in the telecoms and media sectors, including a review of the entire telecommunications regulatory framework and a 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.

The uncertainty following the UK's vote to leave the EU also provides an added layer of complexity in this highly regulated area.



**Nick Pantlin**

Partner

T: +44 20 7466 2570

[nick.pantlin@hsf.com](mailto:nick.pantlin@hsf.com)



**Miriam Everett**

Professional support consultant

T: +44 20 7466 2378

[miriam.everett@hsf.com](mailto:miriam.everett@hsf.com)

**AUTUMN 2016****Ofcom due to consult on the auction of 2.3 and 3.4 GHz spectrum:**

In autumn 2016, Ofcom is expected to publish a consultation on the competition measures and design for the proposed auction of 2.3 and 3.4 GHz spectrum bands, being made available as part of the Public Sector Spectrum Release (PSSR) Programme. The PSSR Programme aims to make 500 MHz of spectrum below 5 GHz available for civil users by 2020. The spectrum auction was originally scheduled to take place in early 2016, but was delayed due to market uncertainty surrounding the proposed acquisition of Telefonica UK Limited by Hutchison 3G UK Limited.

Ofcom's Annual Plan for 2016/2017 also confirms that the spectrum auction remains one of its priorities over 2016 and 2017.

**31 DECEMBER 2016**

**Investigatory Powers Bill to come into force:** In May 2016, the Queen's Speech re-iterated the Government's plans for a new Investigatory Powers Bill to provide a framework to govern investigatory powers by law enforcement and the security and intelligence agencies. The Bill aims to modernise the law for a digital age and provide police, security and intelligence agencies with the power to protect the public from security threats.

The Government has said that the legislation needs to be in force by 31 December 2016. For further information, please see our bulletin, available [here](#).

**LATE 2016**

**Amendments to the ePrivacy Directive to be proposed:** In April 2016, as part of its Digital Single Market Strategy, the European Commission launched a public consultation on the Privacy and Electronic Communications Directive (the ePrivacy Directive) which deals with the processing of personal data and the protection of privacy in the electronic communications sector, covering issues such as email marketing. The consultation sought to build and modernise the ePrivacy framework for a digital age.

A full report of the consultation responses will be published in autumn 2016 and a new legislative proposal is expected by the end of 2016 taking into account those responses.

**1 JANUARY 2017**

**New BBC Royal Charter to come into force:** The BBC Royal Charter, the constitutional basis for the BBC, sets out its public purposes, guarantees its independence, and outlines the duties of the Trust and Executive Board.

With the current Charter expiring in December 2016, the Department for Culture, Media and Sport published a new draft BBC Royal Charter and BBC Framework Agreement in September 2016. The proposed Charter and Framework Agreement will undergo parliamentary debates during autumn 2016 and the Government will then present the finalised documents to the Privy Council, to come into force on 1 January 2017. The BBC will continue to work under its current arrangements until Ofcom and the new BBC board take on new governance roles in April 2017.

**SPRING 2017**

**Digital Economy Bill to receive Royal Assent:** The Digital Economy Bill seeks to improve internet connectivity and protections for internet users through a range of measures, including: a new Electronic Communications Code (see below); further regulation of direct marketing through a new Direct Marketing Code (although note the potential overlap with the ePrivacy Directive amendments described above); and introduction of a new Broadband Universal Service Obligation, which aims to give citizens the legal right to request a specified broadband connection.

The Bill had its second reading in the House of Commons on 13 September 2016. The House of Commons will now consider it in a Public Bill Committee scheduled for October 2016, with the aim of receiving Royal Assent by the end of spring 2017.

**SPRING 2017**

**New Electronic Communications Code to receive Royal Assent:** 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 intend 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 proposed Digital Economy Bill (see above) incorporates the Government's proposals along with a new draft Code to replace the existing one, with the aim of receiving Royal Assent by the end of spring 2017.

#### SPRING 2017

**Revised General Conditions of Entitlement to come into force:** On 2 August 2016, Ofcom published the first part of its consultation on the General Conditions of Entitlement that communications providers have to comply with in the UK. The review covers conditions falling within the categories of network functioning, public payphones, directory information and telephone numbering. As part of the review, Ofcom is seeking to make the rules clearer, more user-friendly, simpler to enforce and reduce compliance costs. Proposals aim to consolidate regulation and deregulate where appropriate to do so. Ofcom plans to consult on the remaining conditions, which mainly deal with consumer protection issues, later in 2016, with the aim of publishing a final statement (together with the revised final conditions) in spring 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.

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. The Commission has since set out further proposals addressing wholesale roaming charges and a fair use policy, to protect telecommunications operators in the run up to abolishing the retail roaming charges.

#### SPRING 2018

**Reform of EU telecommunications framework to be approved:** In May 2015, as part of its Digital Single Market Strategy, the 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,

*(continued overleaf)*

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.

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, after over four years of debate, 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.

**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 will be considered by the EU Council Of Ministers and the European Parliament before being agreed. 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 before late 2018.

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