ADDLESHAW GODDARD

2018/19 Industrials Horizon Scanner: the year ahead at a glance

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- Land Registry – beneficial ownership/transparency consultation

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Fast moving sector themes…

Brexit	Robotics and Industry 4.0	Immigration updates	Sanctions	Competition law based damages claims
Outsourcing	Employment watch list	Logistics	Tax evasion	Payments ecosystem
Data and cyber security	Environment: heightened risk of fines	Supply chain vigilance	Health & Safety	The Industrial Strategy

Land registry – beneficial ownership/transparency consultation

The Department of Business, Energy and Industrial Strategy (BEIS) is seeking views on proposals to establish a register of the beneficial owners of overseas entities that either own UK property, or that engage in UK government procurement. The paper sets out the basic framework of the government's proposals, including that:

- All overseas legal entities that can hold property or that can bid on central government procurement contracts will be within the scope of the new regime;
- provisions similar to those under the existing PSC regime as regards to how to identify beneficial owners, what reasonable steps an entity should take to do so and the required particulars that must appear on the publicly available register will be applied;
- criminal sanctions will apply in respect of a number of failures to comply with the new regime; and
- overseas entities that own or wish to acquire UK property must supply beneficial ownership information to Companies House and apply for a registration number. Registration of the title to property (which will encompass freehold and some leasehold titles) will not be possible without having done so.

Impact

Overseas entities that own UK property or engage in UK government procurement should monitor these proposals. Once in force, it is envisaged that where they own or wish to acquire UK property they must supply beneficial ownership information to Companies House and apply for a registration number. Registration of title to property (which will encompass freehold and some leasehold titles) will not be possible without having done so.

Ban on microbeads

Following a consultation by the Department for Environment, Food and Rural Affairs (Defra) and the devolved administrations earlier this year that ended on **28 February 2017**, the government has decided to implement its proposals to ban the sale of cosmetic and personal care products that use rinse-off plastic microbeads. These changes have been made following increasing evidence that the tiny microbead plastics are damaging marine life, and may also pose a threat to human health. This ban continues the government's action in reducing plastic waste.

The legislation came into force on **1 October 2017**, with the effect that:

From **9 January 2018**, the manufacture of microbeads will be banned.

From **9 July 2018**, the sale of relevant products will be banned.

The ban applies to solid microplastic ingredients less than 5mm in size that are used as an ingredients in rinse-off cosmetics and personal care products, this includes items such as exfoliating scrubs, shower gels and toothpastes. For other products that fall under the "leave-on" category, such as sunscreen or makeup, it is yet to be determined whether they should be included in the ban. The cosmetics industry argues that this would be difficult and expensive as they would need to adapt 90% of their products. The Government has called for an expert committee to consider this issue. Businesses will need to carefully consider the formulations of their products to ensure microbeads are removed.

This development is important to other sectors as it is one of the first steps in the Government's process of cutting back on plastic waste. Campaigners have already begun to call for a ban on other micro-plastics, arguing for products to be produced with safer, non-toxic, durable alternatives. One example is glitter which is also made from plastic, and due to its small size it constitutes an ecological threat. This is particularly the case in oceans where it can end up being consumed by marine life, and consequently inside us when we consume seafood.

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Payment surcharges

The Consumer Rights (Payment Surcharges) Regulations 2012 bans charging surcharges to consumers based on their choice of payment method. The scope of this ban is increasing from **13 January 2018**.

From this point businesses will not be able to impose surcharges on consumers for using credit card/debit card/online transfer or direct debit, where both the seller and the consumer are using payment service providers in EEA member states. This will include banks, credit card companies and payment services businesses such as Paypal.

Excessive surcharges for use of payment methods in business to business transactions will also be prohibited from this point, so long as one of the parties' payment service providers is located in an EEA member state.

PSD2 – modernising payment rules

PSD2 will extend the scope of regulation to all international payments, introduce two new categories of third party payment services and require new customer authentication procedures. Implementing PSD2 requires a significant regulatory change programme for banks and payment service providers.

Legal Risk

PSD2 (or Directive 2015/2366) came into force on 12 January 2016 and must be implemented by all member states by **13 January 2018** (from when PSD1 or Directive 2007/64/EC is repealed).

PSD2 seeks not only to reflect technological change, but also to create a more level playing field by scaling back exemptions, promoting innovation and facilitating the access of new companies to the payments space. It also looks to provide greater transparency over charges and improvements to customer protection and to the security of payments.

Click here to see more about the emerging opportunities and technology around Payments.

Gender pay gap reporting deadline

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (**Regulations**) came into force on 6 April 2017, and first reports must be made no later than **4 April 2018.**

Acas and the GEO have published the final version of their guidance and there are a number of important changes between this and the draft version published in January, this can be found here. The Guidance has been extended to apply to public authorities who are covered by a separate, but near-identical, set of regulations.

The Government's gender pay gap results website shows the results employers so far who have bitten the bullet and decided to report their results now. A link to the website is here.

Taxation changes to termination payments

In July 2015 HM Revenue and Customs and HM Treasury launched a public consultation on the simplification of the tax and national insurance treatment of termination payments. On 10 August 2016, the Government published its response to the consultation, together with a second consultation on the amendments to the law which will be required to implement the planned changes on **6 April 2018**.

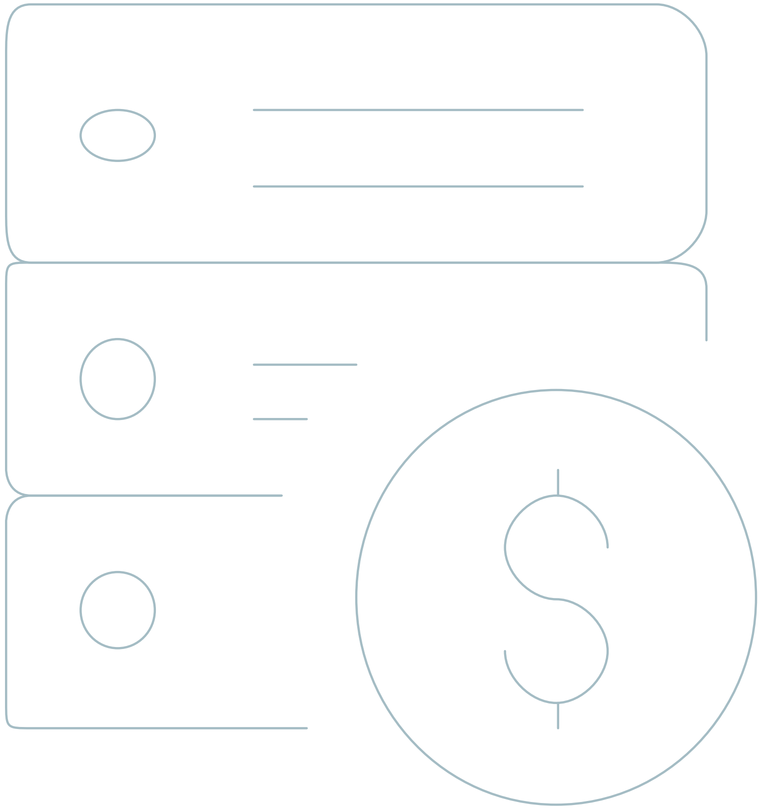
The changes include:

- Clarifying the scope of the exemption for termination payments to prevent manipulation, by making the tax and National Insurance contributions (NICs) and consequences of all post-employment payments consistent. This will mean that all types of payments in lieu of notice (PILONs) will be taxable and subject to Class 1 NICs
- Aligning the rules for income tax and employer NICs so that employer NICs will be payable on payments above £30,000 (which are currently only subject to income tax). The first £30,000 of any termination payment will remain exempt from income tax and the entirety of the payment will remain exempt from employee NICs (NB. The implementation of this particular reform will be introduced to Parliament in 2018 but will not come into force until April 2019)
- Removing foreign service relief
- Clarifying that the exemption for injury does not apply in cases of injured feelings

Pensions auto-enrolment: increase in minimum contribution rates

From **6 April 2018**, the minimum rate of pension contributions that must be paid to comply with automatic enrolment legislation will increase with the start of the "second transitional period" under the automatic enrolment regime.

Employers should consider whether their existing pension arrangements will still be compliant with auto-enrolment legislation from April 2018, and if not, consider what steps will need to be taken to ensure they are compliant by that date. Employers should consider the cost impact of any contribution increase, taking into account the impact of the National Living Wage .



OFGEM cutting embedded benefits

Ofgem is changing the charging regime to remove some of the advantages that generators connected to the electricity distribution, rather than the transmission, system currently enjoy.

These changes will affect all generators connected to the distribution network and will impact their profits as they will have to pay higher charges. This will impact those who have been able to benefit financially from having green energy policies.

These changes are due to come into place from **1 April 2018**.

The decision to make these changes is currently subject to a judicial review challenge by 8 embedded generators, and has been listed for trial in the Administrative Court on 25-27 April 2018. As things stand, Ofgem intends to proceed with implementation on 1st April, but that may be subject to change. AG is acting for a client supporting Ofgem in resisting the challenge.

Energy Efficiency Regulations (MEES)

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, stipulate that on or after **1 April 2018** a lease may not be granted at a commercial property if it has an EPC rating of F or G. From **1 April 2023**, no commercial property can continue to be let if it has an EPC rating of F or G, thus catching existing leases at that date. There are exemptions which can be claimed, and not all properties require an EPC. If the regulations are breached, however, the lease itself will not be void, but there are potential fines of up to £150,000. If exemptions are to be claimed, they will be entered on a public register.

Landlords will be assessing properties to ascertain whether they need improving and whether the cost will be the landlord's or tenant's responsibility. Landlords will be cautious about allowing alterations to property that may reduce an EPC rating.

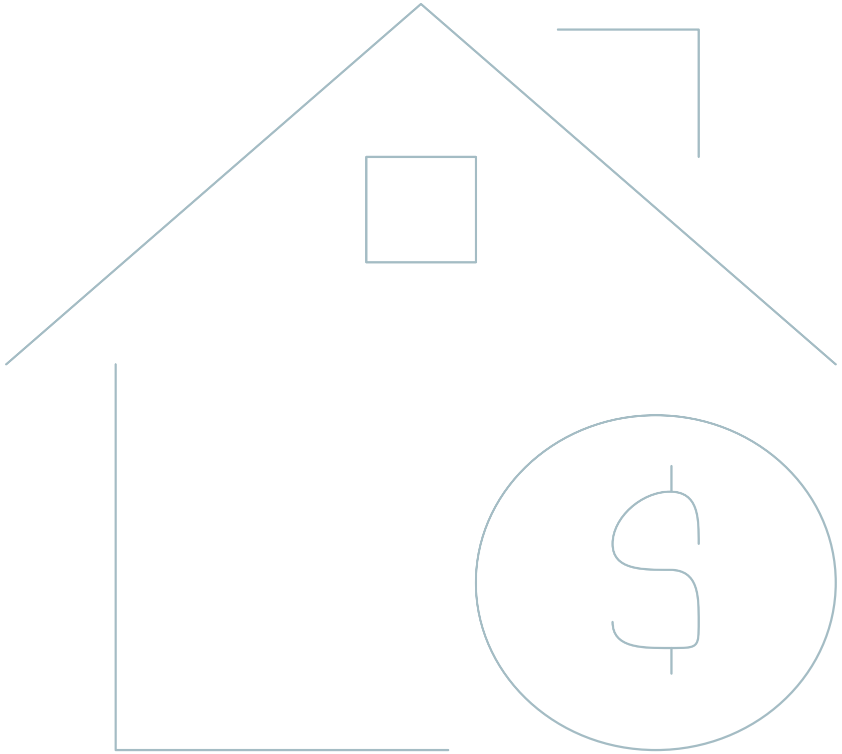
Tenants may be reluctant to be responsible for the cost of energy efficient improvements to property, although they will need to consider the issue from a landlord's perspective too if they plan to underlet.

Government Guidance on the regulations was issued in **February 2017**, but there is still a lack of clarity in terms of practical application of the legislation.

Stamp Duty Land Tax

The Stamp Duty Land Tax filing and payment window will be reduced from 30 days to 14 days, however the introduction has been delayed by one year until 2018/19, its implementation will not be before **April 2018**. The decision to delay is based on concerns from respondents to the consultation on the proposals. The consultation also invited general views on the Stamp Duty Land Tax filing and payment process.

In Wales from April 2018 a Land Transaction Tax will replace stamp duty land tax. Proposed tax rates and bands have now been announced and can be found here.



Personal Protective Equipment regulations

The new PPE Regulation (EU) 2016/425 was adopted on 12 February 2016 and published shortly thereafter in the Official Journal. A two year transitional period will now take place to allow member states to prepare for the change in law with UK regulations likely to come into force in **April 2018**. The former PPE Directive has been in place for over 20 years. The new legislation has been designed to guarantee consumer safety, ensure a level playing field throughout the PPE industry and to reflect the developments in technology which have taken place over the last two decades.

Key changes

- One of the main changes that will be brought in by the new regulation is the increased focus on the whole supply chain. The current regulations cover manufacturers only. However, in future, importers, distributers and retailers will also be required to ensure that PPE handled by them are fully compliant.
- Further, hearing protection will be reclassified from category 2 to category 3. Life jackets will also be subject to the same recategorisation which will ensure that these products are more stringently examined and monitored.
- EC Type examination certificates will now only be valid for a maximum of 5 years. This change will ensure that products are the subject of regular reviews and testing with the aim of discouraging certain manufacturers from introducing counterfeit products to the market.
- The introduction of the new legislation also means that all products currently certified to the old standards will need to be tested to the latest current standard.
- Distributors will be required to ensure that PPE is accompanied by instructions in a language, which can be understood by the end user in the country in which the product is to be made available.

The changes within the new legislation have been introduced with a view to ultimately enhance the protection and the health and safety of PPE users, and discourage manufacturers and importers who place non compliant products on the market. Furthermore, the new requirement to ensure compliance throughout the entire supply chain will result in equipment passing through 3 stages of testing which will ultimately result in a higher standard of PPE throughout the industry. It is important to remember that PPE Regulation is mandatory and that it is a legal requirement to comply. Failure to do so is a criminal offence.

Impact on clients

The introduction of the new PPE regulations will have far reaching effects throughout the industry. Businesses need to ensure they are fully compliant with the new regulations by **April 2018**. Anyone in the PPE industry, whether an importer, distributor, retailer or an employer providing PPE to its employees will be required to take appropriate action where necessary to ensure the new standards are met. For employers this may include a review of their current PPE policy and procedures and consideration of their current PPE suppliers. Failure to comply with the new regulations will be a criminal offence which could result in a prosecution and conviction. If convicted, companies can be subject to an unlimited fine.

National Living Wage and National Minimum Wage increases

The National Living and Minimum Wage rates will be increased on **1 April 2018** to the following:

- for 25 year olds + - from £7.50 per hour to £7.83 per hour
- for 21 to 24 year olds – from £7.05 per hour to £7.38 per hour
- for 18 to 20 year olds – from £5.60 per hour to £5.90 per hour
- for 16 to 17 year olds – from £4.05 per hour to £4.20 per hour
- for apprentices – from £3.50 per hour to £3.70 per hour

General Data Protection Regulation and e-Privacy Regulation

The **GDPR** is coming into force on **25 May 2018** - our key focus for 2018 will be on:

- the impact of the GDPR and what this means for data collection, data portability, underlying consent, data minimisation and data profiling and how we communicate with customers about their privacy rights
- what companies acting as data controllers need to do and correspondingly what companies who offer data processing services need to comply with GDPR and address the significant change in risk that GDPR represents (with maximum fines increasing from £500,000 to 4% of turnover or 20 million euros)
- contracts (both internal and external) are being drafted in a GDPR compliant manner to avoid the need for renegotiation in May
- providing training across the organisation to ensure that all employees have an awareness of data protection issues and understand their responsibilities under the GDPR

A draft of the **e-Privacy Regulation** (or EPR) was issued by the European Commission earlier this year. The EPR applies in addition to the GDPR in relation to the collection of metadata and content (for example tracking) and the conduct of telephone and e-marketing. The EPR is still to be finalised, but should be taken into account in respect of current or new e-marketing initiatives or projects involving tracking or location data. Key issues under the draft EPR include:

- it applies to all providers or electronic communications services – including WhatsApp, Facebook Messenger and Gmail – not just traditional telecoms operators
- consent is necessary to apply privacy invasive cookies – such as tracking cookies – on an individual's device. Such consent is subject to the higher GDPR standard of consent and can no longer be 'opt-out'
- a narrower version of the soft opt-in for marketing – which allows business to send e-mail marketing to existing customers – is retained in the current draft. Any other unsolicited e-marketing that might previously have been covered by the 'soft opt-in' is subject to 'opt-in' consent at a GDPR standard
- breaches for the EPR will be fined at the same level as GDPR breaches

The Department for Digital, Culture, Media and Sport released a "**statement of intent**" of its planned data protection reforms on **7 August 2017**. The Department and the ICO has previously confirmed that the GDPR will come into effect in the UK on 25 May 2018 despite Brexit, and that plan has not changed. The recent announcement **confirms the Government's plans to repeal the existing Data Protection Act 1998 and replace it with the GDPR** and new data protection legislation to accommodate those parts of the GDPR that allowed member states to make their own rules (such as the age of consent for social media use, and how we can use criminal convictions data). The draft bill is due to be published later this year.

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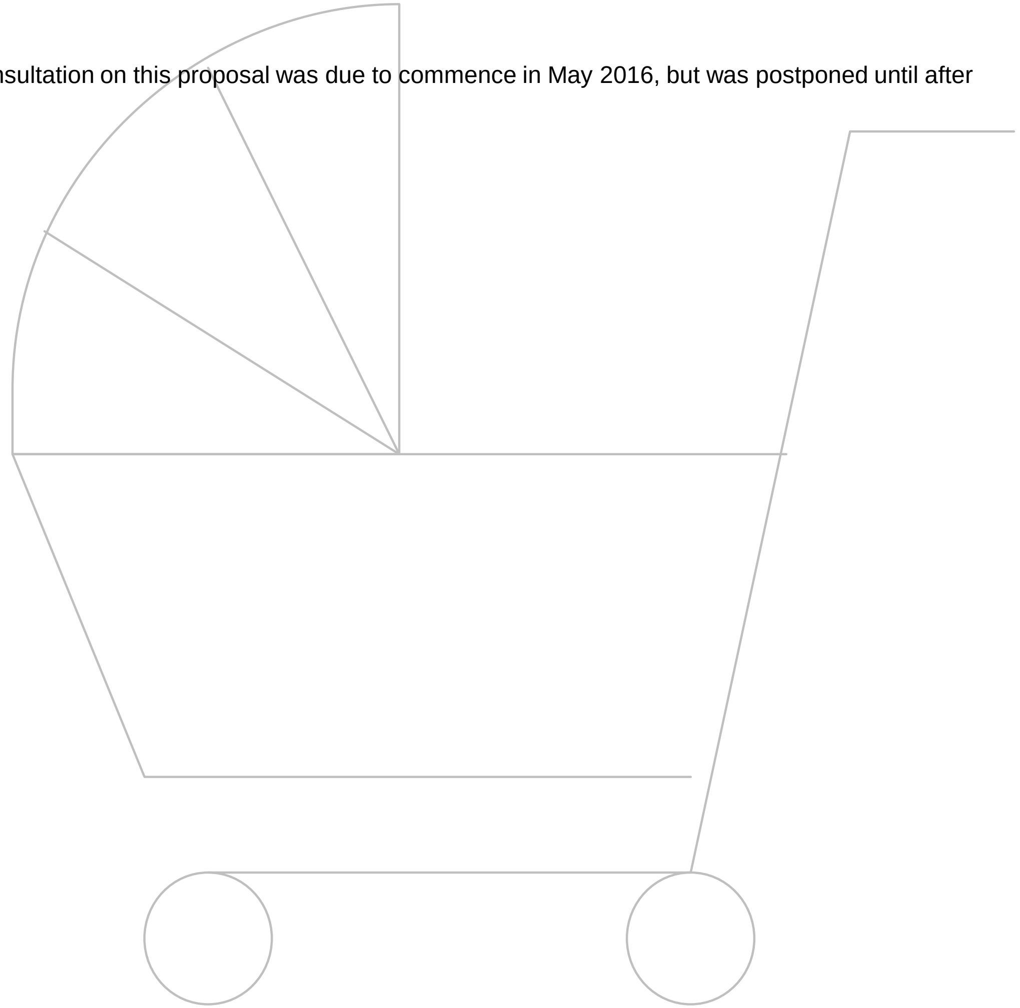
Grandparents’ leave

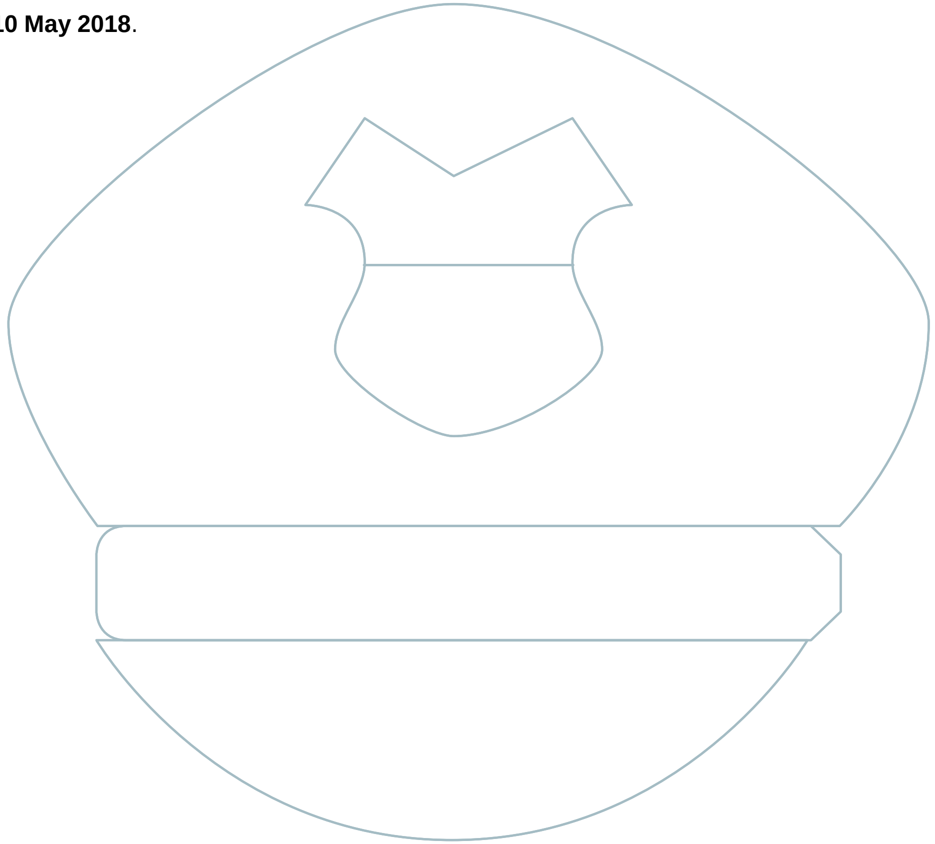
The Government has announced that they will extend shared parental leave and pay to working grandparents **by 2018**. A public consultation on this proposal was due to commence in May 2016, but was postponed until after the EU referendum. It is not yet clear when the consultation will commence.



Cyber security directive

New EU-wide legislation on cybersecurity is to be introduced, the Cyber Security 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, with such legislation to apply from **10 May 2018**.



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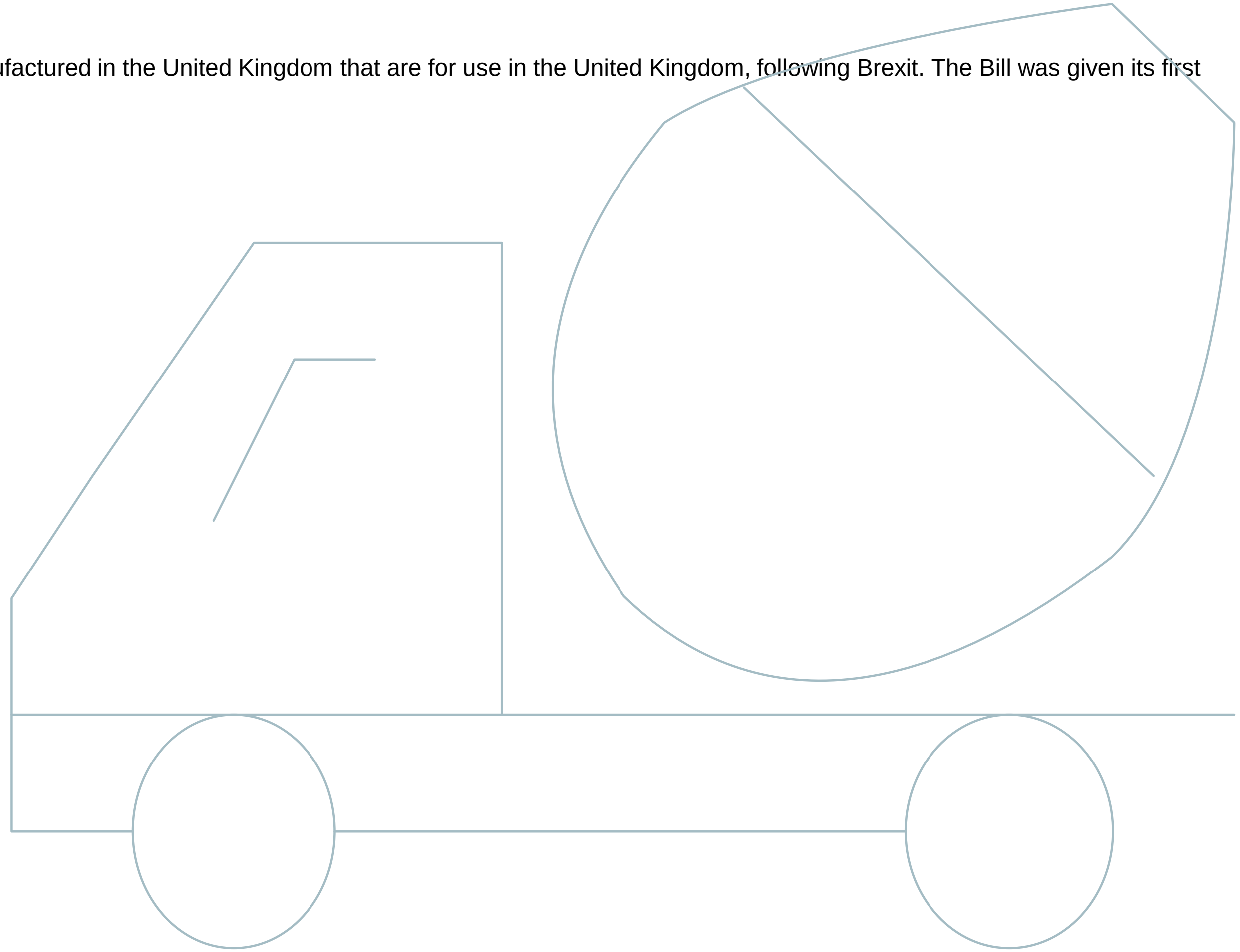
Manufacturing Goods (Trade) Bill

This Bill has been created with the purpose of removing restrictions on the production and sale of goods manufactured in the United Kingdom that are for use in the United Kingdom, following Brexit. The Bill was given its first reading and presented to Parliament on **Tuesday 5 September 2017**.

It is expected to have its second reading debate on **Friday 11 May 2018**.



Revaluation of business rates

HM Treasury is due to report back on its wide-ranging review of business rates which, as it states in the foreword to its terms of reference and discussion paper, is "in response to concerns from many business ratepayers that business rates are in need of reform to make them fit for purpose in a 21st century economy.”

The plans, set out in the Chancellor's Autumn Statement, to devolve the setting of business rates to local authorities have caused some concern that this might be the extent of the reform, but more, surely, is needed. Property Is of fundamental importance to those operating within the industrials sector, and requirements vary across subsectors. Industrial clients with large property portfolios (and therefore large business rates bills) will be hoping for something radical, for example basing the liability on economic output (as is the case in the French system, which is linked to business turnover) or on number of employees rather than purely on rateable value of properties. There is a clear disparity between contributions to business rates between those who operate purely online and those who operate purely as bricks and mortar players.

The new business rates are due in **April 2018** for change in basis of calculation of increase, and **2022** for revaluation frequency.

IFRS 16

The International Accounting Standards Board has created new accounting Standard IFRS 16—Leases, which revises the way in which companies account for leases. This change will affect listed groups in the UK because they are required to prepare their consolidated accounts using the IFRS standards. Where a company is bound by the IFRS standards, all leases (with some exceptions, such as leases for less than 12 months) will have to be included as assets and liabilities on the balance sheet - the current distinction between "finance leases" (which are shown on the balance sheet) and "operating leases" (which are merely disclosed in the notes to the accounts) will disappear.

IFRS 16 is effective **1 January 2019**. Early application is permitted for companies that also apply IFRS 15 Revenue from Contracts with Customers.

IASB changes to IFRIC 14 and IAS 19

The IASB (International Accounting Standards Board) is proposing to make changes to IFRIC 14 and IAS 19, the accounting standards which govern when a pension scheme surplus can be recognised in a company's accounts. Under these standards the accounts can only recognise a pension scheme surplus if there is an unconditional right to a refund of surplus under the scheme rules. The standards recognise that a right to a refund of surplus can arise in various circumstances, including assuming the gradual settlement of the scheme liabilities over time until all members have left the scheme. The IASB is proposing to change the wording so that in this scenario a right to a refund of surplus cannot be recognised if the trustees can wind up the scheme without company consent. The amendment wording also says that the amount of surplus recognised must not include amounts that other parties can use for other purposes that affect the benefits of scheme members. This would catch a trustee power to augment benefits without company consent.

It is expected that the final form amendments will be made in the first half of 2018, applying after **1 January 2019** with earlier application permitted.

Impact on clients

Organisations with a defined benefit pension scheme should check with their auditors whether the proposed changes will impact their accounts. In some circumstances, legal advice may be needed on the interpretation of a scheme's rules.

Trade Secrets Directive

A new European Directive introducing an EU-wide definition of "trade secret" and setting out rules on the unlawful acquisition, disclosure and use of trade secrets came into force in **June 2016**.

The Directive prohibits the acquisition of a trade secret through unlawful access to materials or other conduct which is contrary to "honest commercial practices" (a term that is not defined in the Directive); the use or disclosure of a trade secret where this would breach any contractual or other duty, or where the trade secret was acquired unlawfully; and the exploitation of goods produced using the trade secret where the user (for example, a subsequent employer) knew or ought to have known that the trade secret was acquired unlawfully. The Directive also includes enforcement measures, procedures and civil remedies, including interim injunctions and precautionary seizure of infringing goods. The proposal also covers the preservation of confidentiality during the litigation process.

This Directive must be implemented by member states by **9 June 2018**. Note, though, that the Directive largely reflects current law in the UK and is unlikely to lead to significant legislative changes.

Unitary Patent (UP) scheme

The UP will allow uniform patent protection for inventions throughout the Europe. It is an EU-wide single patent granted centrally by the European Patent Office (EPO), effective in all EU member states except Spain, Poland and Croatia. The Unified Patent Court enables, for the first time, pan -European court decisions on the infringement and validity of the new UP and European bundle patents granted by the EPO. At present the cost of applying for and maintaining a European patent across the EU is around €159,000 over 20 years. This will fall to €35,500 under the new plans.

Businesses with existing patent portfolios or inventions in the pipeline should be considering a review of their patent strategy. Advantages of the UP include a reduction in the overall patent application cost, and enforcement through a single court rather than litigation in separate national Courts. Disadvantages are possible exposure to a pan European injunction, and the fact that an invalidity decision could lead to revocation of the patent in 28 countries.

Planned entry into force **Summer 2018**.

New Master Trust authorisation regime

From **1 October 2018** the new master trust authorisation regime will come into force, requiring a master trust (broadly, an occupational pension scheme for unconnected employers providing money purchase benefits) to be authorised by the Pensions Regulator. Existing master trust schemes will have 6 months to apply for authorisation.

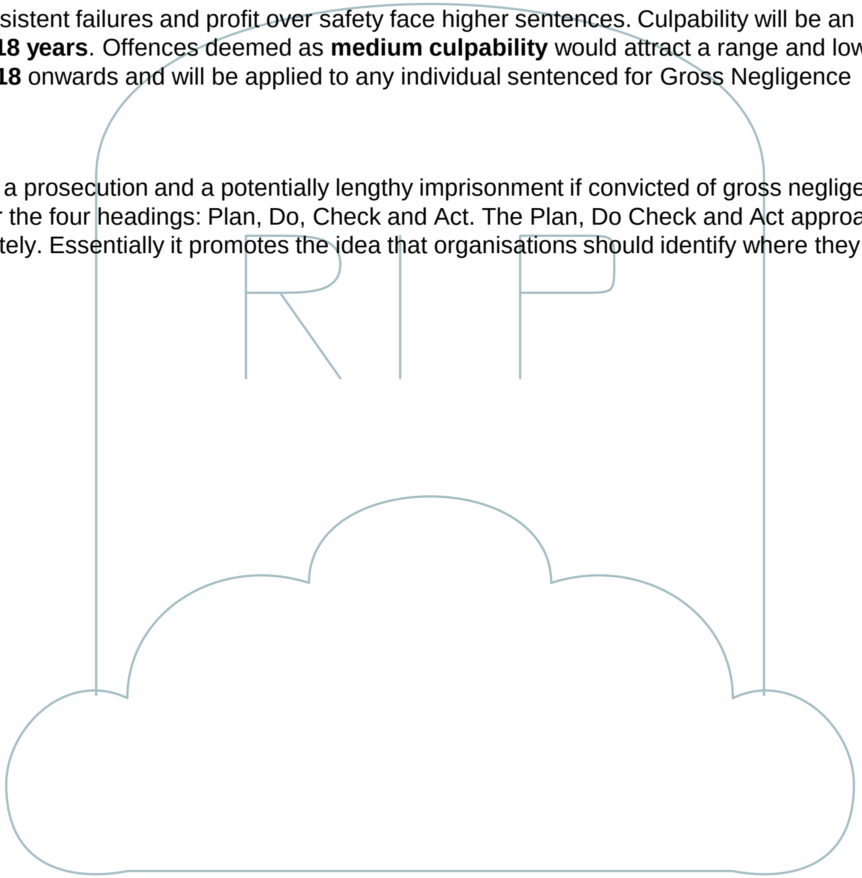
The Government ran a consultation from November 2017 - 12 January 2018 seeking views on draft regulations for the authorisation and supervisory regime for master trust schemes. The Government responded to the consultation on the 19 March 2018.

On **27 March 2018**, the Pensions Regulator launched a consultation on a draft code of practice which sets out its expectations in relation to the new authorisation and supervisory regime. The consultation closes on **the 8 May 2018**.

Proposed new sentencing guidelines for Gross Negligence Manslaughter

New sentencing guidelines have been proposed for jail terms for offences of gross negligence manslaughter. Gross negligence manslaughter is the most serious offence an individual can be convicted of in relation to a death caused by a health and safety breach. The new guidelines will see offenders who show a flagrant disregard for safety due to cost cutting, persistent failures and profit over safety face higher sentences. Culpability will be an important factor and those placed in the '**very high culpability**' bracket would face a **jail term of 12 years with an available range of 10 – 18 years**. Offences deemed as **medium culpability** would attract a range and low culpability **1-4 years**. The consultation closed on **10 October 2017**. The new guidelines are expected to be implemented from **December 2018** onwards and will be applied to any individual sentenced for Gross Negligence Manslaughter after that date.

The increased sentencing powers should be viewed by businesses as a stark reminder that individuals within organisations are vulnerable to a prosecution and a potentially lengthy imprisonment if convicted of gross negligence manslaughter. Directors and Senior Managers within organisations should ensure that there is effective leadership of health and safety under the four headings: Plan, Do, Check and Act. The Plan, Do Check and Act approach helps organisations to consider health and safety management as an integral part of management as a whole rather than looking at it separately. Essentially it promotes the idea that organisations should identify where they are and where they want to be in terms of health and safety, implements plans and check and review performance.



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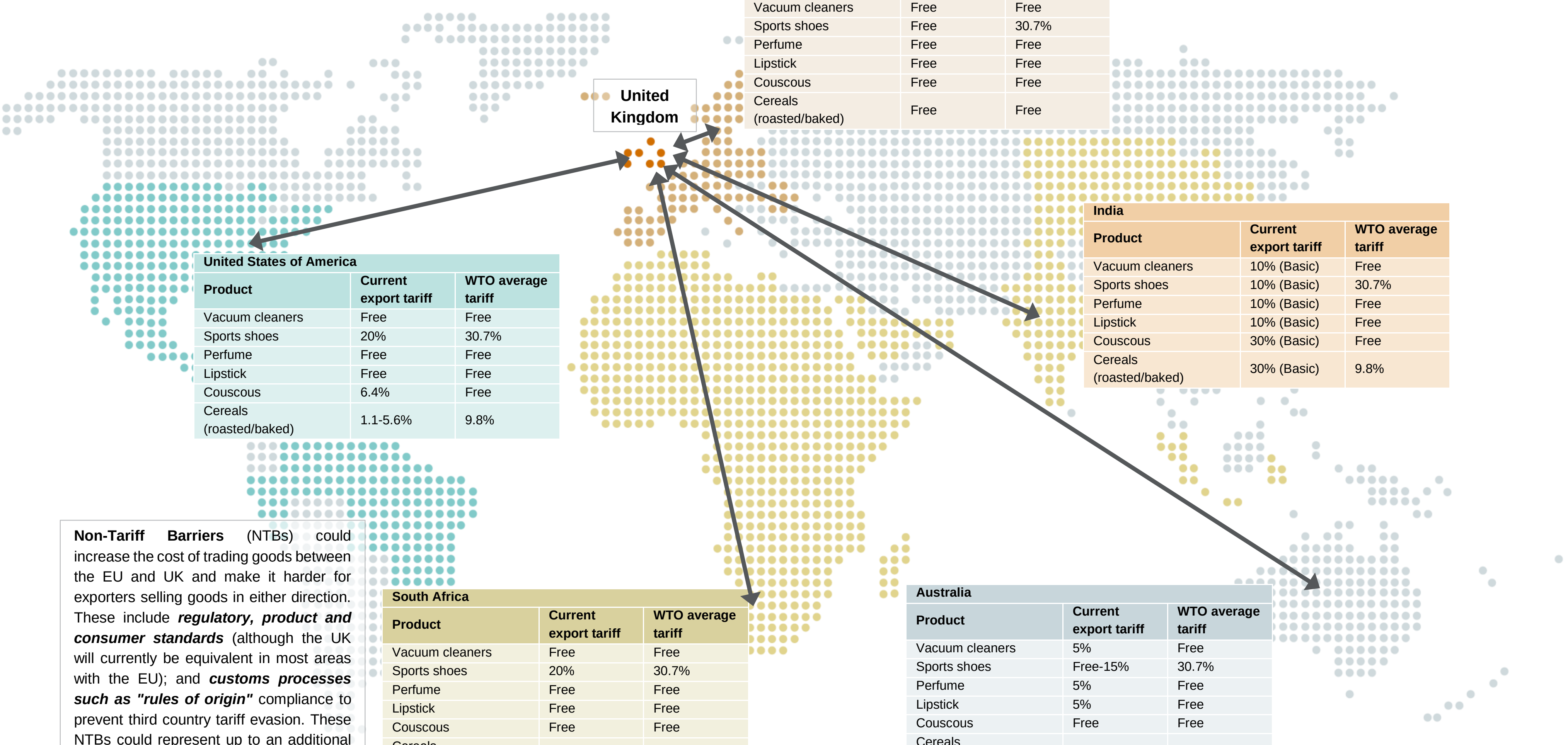
Brexit Tariff Tracker 2017

Brexit

2018 will be a critical year as we start to get to the detail of what kind of Brexit we will get. Meanwhile, the UK Government will be positioning itself as the kind of trading nation it wants to be. We will continue to monitor how Brexit and any other changes to the European landscape will affect Industrials businesses. Our tracker covers the key impacts of Brexit in the sector, which you can access here.

Our **tariffs map** here considers how the cost of trading goods could change Post Brexit, if the UK has to rely on WTO tariffs. If there are any particular product categories or territories that you want to track please let us know, we will happily work with you to create your own tariff map.



Europe		
Product	**Current export tariff**	**WTO average tariff**
Vacuum cleaners	Free	Free
Sports shoes	Free	30.7%
Perfume	Free	Free
Lipstick	Free	Free
Couscous	Free	Free
Cereals (roasted/baked)	Free	Free

India		
Product	**Current export tariff**	**WTO average tariff**
Vacuum cleaners	10% (Basic)	Free
Sports shoes	10% (Basic)	30.7%
Perfume	10% (Basic)	Free
Lipstick	10% (Basic)	Free
Couscous	30% (Basic)	Free
Cereals (roasted/baked)	30% (Basic)	9.8%

United States of America		
Product	**Current export tariff**	**WTO average tariff**
Vacuum cleaners	Free	Free
Sports shoes	20%	30.7%
Perfume	Free	Free
Lipstick	Free	Free
Couscous	6.4%	Free
Cereals (roasted/baked)	1.1-5.6%	9.8%

Non-Tariff Barriers (NTBs) could increase the cost of trading goods between the EU and UK and make it harder for exporters selling goods in either direction. These include ***regulatory, product and consumer standards*** (although the UK will currently be equivalent in most areas with the EU); and ***customs processes such as "rules of origin"*** compliance to prevent third country tariff evasion. These NTBs could represent up to an additional cost of 15% in some circumstances.

South Africa		
Product	**Current export tariff**	**WTO average tariff**
Vacuum cleaners	Free	Free
Sports shoes	20%	30.7%
Perfume	Free	Free
Lipstick	Free	Free
Couscous	Free	Free
Cereals (roasted/baked)	Free	9.8%

Australia		
Product	**Current export tariff**	**WTO average tariff**
Vacuum cleaners	5%	Free
Sports shoes	Free-15%	30.7%
Perfume	5%	Free
Lipstick	5%	Free
Couscous	Free	Free
Cereals (roasted/baked)	5%	9.8%

Brexit: predicted immigration developments in 2018

Article 50 was triggered by the Government in March 2017 and the UK has until **March 2019** to negotiate and agree Brexit terms. The impact of Brexit on the free movement of people is one of the most significant issues for employers.

Some clarity was provided on 8 December 2017, when the UK and the EU published the joint report on progress during phase 1 of negotiations under Article 50 (the Joint Report). Subject to final agreement of the Brexit terms, the Joint Report confirmed that EU citizens will be free to live and work in the UK, and UK citizens will be free to live and work in other EU countries, on the current basis until the date that the UK leaves the EU.

There will be a two year period after the UK's withdrawal during which EEA nationals will be required to register their status in the UK. For those who already have the right of permanent residence they will swap that status for a new "settled status" in the UK.

The Joint Statement confirms earlier government statements that the process will be "short, simple and user friendly" and there will be a principle of "evidential flexibility". However, we do not yet know what the process will involve.

EEA nationals living and working in the UK, and their non-EEA family members, who have not yet applied for a registration card or a card evidencing their right to permanent residence, should consider whether to apply now for their cards, so that they can take advantage of simply being able to "swap" their status once the UK leaves the EU. An individual whose situation is complex may be best applying now because, if there was a problem with their application, they would still be able to rely on the current right of free movement to remain in the UK in order to resolve the problem. In comparison it is not currently clear whether, if an application were refused after the UK had left the EU, remaining in the UK would be possible for that individual.

The following key publications are due in 2018:

- **Immigration Bill** - In the 2017 Queen's Speech, a new Immigration Bill was announced. This is due to be introduced to Parliament in 2018. A white paper was due to be published in late Autumn 2017, but this is yet to be released. The Bill will determine how and when the existing EU free movement regime will be terminated. The Bill should both enact the agreement in the Joint Report and encompass further developments agreed in the next phase of negotiations.

- **MAC report** - In July 2017, the government commissioned the Migration Advisory Committee (MAC) to produce a report assessing the impact of Brexit on the UK labour market and how the UK's immigration system should be aligned with a modern industrial strategy. To determine this, it will look at: (1) current EEA migration trends; (2) assessing the impact of immigration on the competitiveness of the UK market; and (3) evaluating the economic and social costs and benefits of migration. This report will be published by **September 2018**. It will provide evidence-based advice and recommendations to the Government to assist it in determining its strategy on immigration in Brexit negotiations.

- **Immigration Rules** - Amber Rudd confirmed in October 2017 that the Immigration Rules will be updated and simplified following a review by the Law Commission. They are also likely to be reviewed to incorporate the post-Brexit system. Whilst the government has not provided a date for this update, **we expect the revised Rules to be published in 2018**.

Further immigration updates for 2018

Annual certificate of sponsorship (CoS) renewal process 2018

April's deadline for the CoS renewal process is fast approaching and employers should look ahead to consider allocations of certificates of sponsorship for 6 April 2018 – 5 April 2019. Employers with Tier 2 Sponsor Licenses will have received an email from the Home Office informing them that they are now able to apply to renew their allocations of Tier 2 (General) unrestricted CoS and Tier 2 (ICT) CoS. Current allocations will expire on 6 April 2018 and any unused certificates will be withdrawn. Most employers will need to apply for new certificates. However, some employers will be notified that their certificates will be automatically re-allocated based on their CoS allowance from last year.

Employers should consider how many certificates they will need next year in the following categories:

- Unrestricted certificates for existing employees sponsored under Tier 2 who will need to extend their visa/ leave to remain between 6 April 2018 and 5 April 2019.
- Unrestricted certificates for new hires who are:
- non-EEA nationals whose salary will be in excess of £159,600;
- non-EEA nationals whose role would be a "high value inward investment post";
- non-EEA nationals who already have leave to remain in the UK (other than under Tier 4) and will require sponsorship; and
- Croatian nationals who require worker authorisation.
- Intra-company transfer, where an employer also has a Tier 2 (ICT) Licence.

Employers should aim to give as much detail as possible to justify the number of certificates requested. It is also advisable to request the maximum number of certificates that are realistically needed, since applying for additional certificates later in the year can be time consuming or have an additional cost if the priority service is used. Note that the renewal process does not apply to restricted CoS – these are applied for on an individual basis as and when they are required.

Increased numbers of applications for restricted CoS

Restricted CoS are allocated to migrants sponsored in any role other than those listed above under the "unrestricted certificates" categories. Restricted CoS are subject to an annual limit. In December 2017 and January 2018, the number of applications for restricted CoS allocations was exceeded. This meant that applications which would ordinarily meet the requirements were refused and a higher salary threshold was applied. The average salary required for a successful application rose to £55,000 and £46,000 respectively – a drastic jump from previous months where an average of £21,000 was required. The number of available CoS to be allocated reduces significantly in the months leading to April, when the annual number of restricted CoS allocations will reset. Until this point, it is likely that demand will continue to outweigh allocations every month.

Further immigration updates for 2018

Updated Tier 2 guidance

On 11 January 2018, the Home Office published an updated version of its Tier 2 and 5 guidance for sponsors. The key changes in relation to Tier 2 sponsorship are:

- reporting duty– sponsors must report to the Home Office within 10 working days if the size of its business changes from small to large or vice versa (paragraph 15.2);
- a sponsor will no longer be able to add a branch if it is B rated or it is unable to offer a genuine vacancy (paragraph 5.2, 18.12);
- a sponsor will no longer be able to add any tiers to its licence if it is suspended or downgraded to a B rating (paragraph 11.8, 18.12);
- a migrant cannot apply to extend their stay in the same tier and category more than 3 months before the day that their current leave expires (paragraph 39.22); and
- clarification that the term "similar protection to TUPE" (in the context of the sponsorship duties relating to mergers, takeovers and other corporate restructures) does not include "ad hoc arrangements" but does include provisions such as the Cabinet Office Staff Transfers in the Public Sector Statement of Practice and section 23 of the Public Bodies Act 2011.

Data and cyber security

In the age of technology, we all use data. Industrials, by its diverse, technical and goods-based nature, is a sector particularly affected by data regulations.

Employee and customer data is a key asset and monetising such data can give your business a real competitive advantage. However, the legal landscape of data is complex and is undergoing considerable change within the new General Data Regulation (GDPR) – for more information on this please click here.

- Breaches involving the loss of customer information from hacking or leaking increased from **19 in 2015/16 to 38 in 2016/17**. Since the report, there have been a number of high profile data breaches of a similar nature, including Uber's data breach (which occurred in October 2016 but was only reported in November 2017), affecting 2.7 million user accounts in the UK. Data breaches such as this highlight the risks to personal data which can arise as a result of malicious hacks. Organisations should have in place a procedure for managing personal data which is lost in this manner, with early engagement with the ICO advised as part of any mitigation efforts.

- The Wannacry and Petya global cybersecurity attacks have highlighted how easy it is for hackers to gain access to valuable personal and confidential business information and hold this to ransom. The increase in global-scale cybersecurity attacks is a trend that is expected to increase. The consequences of these attacks go beyond legal ramifications, with affected organisations having to rebuild trust with individual's whose data was hacked. Data protection security strategy and solutions are a critical focus for the year, and will be for years to come. The increased liability for any data breach brought about by the GDPR brings this even more sharply into focus.

Profiling under the GDPR

Profiling is a form of automated processing of personal data where such personal data is used to analyse and evaluate aspects of a person's behaviour, which can be for the purposes of determining their likely interests, personal preferences or consumer behaviour. Profiling has many commercial applications and is often used to better segment markets to allow for more targeted and effective marketing, ensuring the advertised products or services are appropriate to the needs of the consumer. However, as profiling can pose risk to an individual's rights and freedoms by undermining an individual's ability to make their own decisions on their consumer activity, certain safeguards have been put in place to monitor the use of profiling.

The GDPR introduces new provisions aimed at addressing the risks associated with profiling. Together with an individual's more general rights under the GDPR, the individual being profiled has a right to be informed of the profiling, which includes being informed of the fact that their personal data is being profiled; being given meaningful information regarding the logic involved in the profiling; and given an explanation setting out the significance and envisaged consequences of the processing.

Failure to comply with the provisions of the GDPR when undertaking the profiling of personal data is a breach of the GDPR, and any organisation in breach of the GDPR may be subject to enforcement action by the ICO.

Outsourcing

In today's economic environment global businesses want more for less, and there is a constant goal to be more efficient and add value. The answer to these problems can often be to outsource. When this is done correctly you do not merely gain the provider of a service, but also a partner who is an industry leader that offers improved and consistent performance levels, drives innovation through new technology, and scales requirements up or down to meet business needs.

One of the main reasons why industrials businesses outsource is to cut costs, thus enabling a focus on core business functions and solving capacity issues. Businesses use outsourcing to drive transformational change and improve business results.

Documenting agreed deals with outsourcers is one of the challenges that businesses face, especially ensuring the legal terms and conditions dovetail neatly with the commercial schedule. At AG we collaborate with technical IT consultants to document the commercial schedules including service descriptions, transition plans and service level mechanisms.

Robotics and Industry 4.0

Industry 4.0 is widely known as the fourth industrial revolution, and is defined by the use of advanced technology such as AI, autonomous production, data collection and big data analytics to make a more efficient manufacturing process. Traditionally, the robotics found in factories would have a single, fixed function and would need to be operated by a skilled human worker, however the Industry 4.0 machines are flexible and collaborative, effectively removing the need for a skilled worker. The focus of Industry 4.0 is the digital transformation of industrial markets and will allow companies to make estimated cost reductions of around 3.6% per annum over the next five years. In order to keep up with the rate of development, companies will need to invest in robust technology and data analytics systems.

European manufacturers are at the forefront of the Industry 4.0 movement, with 65% of countries with an above-average number of industrial robots per 10,000 employees within the EU. Countries such as Germany and Sweden are at the top of this list, whilst the UK currently lags behind. British companies are investing more into robotics, but at the moment there are a lack of robotics manufacturers in the UK. However, this may develop as part of the Government's industrial strategy has included a £17.3 million worth of research on artificial intelligence and robotics.

As the Industry 4.0 technology is developed, it will become more cost effective, efficient and widely available, which will slowly mean they become more standard within factories. This will undoubtedly lead to industrial growth and a more streamlined manufacturing process.

Whether you are looking to disrupt an established market, or you have a project to replace legacy systems, we have the know-how to help you achieve your goals by procuring the right technologies, to connect systems and use data so you can drive productivity and efficiencies.

There has recently been a substantial increase in the number of software vendors seeking to maximise revenue from large corporates, by arguing that interconnection of systems and databases, and use of robotics, significantly increases the number of indirect users of that vendors software. The result of this are claims for large license fees, which are an important issue for industrials businesses to consider for future developments of their IT estate.

Employment watch list

Holiday pay: worker denied the right to take paid leave was entitled to a payment in lieu of accrued leave for whole period that the right to take paid leave was denied, potentially up to 13 years

In *King v The Sash Window Workshop* the ECJ ruled that workers who are denied the right to take paid annual leave are entitled to bring claims in respect of accrued but untaken leave. There is no requirement on them to take the leave on an unpaid basis in order to bring a claim. Further, the right to paid annual leave for such workers accrues and carries over without limitation. They were said to be in a different position to sick workers who are absent for several consecutive holiday years. In sick worker cases the ECJ had previously permitted a limitation on the carry over of annual leave (in *KHS v Schulte* a 15-month carry over period was held to be lawful). This balanced the need to protect the worker's entitlements and the risk to the employer that a worker could accumulate a large amount of leave and the consequent difficulties in organising work around this. However, in *King*, the ECJ said that the derogation must be *"limited to what is strictly necessary to safeguard the interests which that derogation protects"*. In a case where an employer has failed to provide payment for annual leave the protection of the employer's interests was not *"strictly necessary"* and employers that do not allow their workers to exercise their right to paid annual leave must *"bear the consequences"*. This meant that there should be no limitation on the right to accumulate and carry over paid annual leave rights for workers in this position.

Impact?

This case has a number of important implications for employers:

- **Workers who do not take their annual leave at all because it is underpaid:** the ECJ said that failing to pay a worker for a period of annual leave would be incompatible with the purpose of the right to paid annual leave under the Working Time Directive and that such workers could carry over their annual leave entitlements without limitation. However, they actually went further and said: *"…any practice or omission of an employer that may potentially deter a worker from taking his annual leave is equally incompatible with the purpose of the right to paid annual leave"*. This is a potentially crucial point for employers who have not yet adjusted holiday pay to include variable payments such as overtime and commission. A worker could argue that the practice of excluding such items from holiday pay deterred them from taking their annual leave. In such circumstances, the employer could find that the worker has the right to accrue and carry over their unpaid annual leave rights without limitation until the point of termination. However, it is not clear exactly how such losses would be calculated in practice (as the worker would have continued to work and be paid).

- **Workers who take their annual leave despite it being unpaid or underpaid:** the second issue concerns workers who elect to take their annual leave, despite it being unpaid or being underpaid (e.g. if it does not include elements of variable pay), and then bring a claim for an historic series of such non-payments or underpayments. Workers in this position would need to bring a claim for unlawful deductions from wages under s.23 of the Employment Rights Act 1996. After the *Bear Scotland* decision, the Deduction from Wages (Limitation) Regulations 2014 (**2014 Regulations**) introduced a 2-year limitation on such claims. Further, where there is a gap of more than 3 months between any two separate deductions (as there often will be between periods of holiday), the series of deductions is broken. In light of the ECJ's comments that the right to paid annual leave cannot be interpreted *"restrictively"* it arguably follows that the 2-year limitation in the 2014 Regulations and the "3-month gap rule" are is incompatible with the WTD. This may lead to future challenges before the Tribunals.

- **Risk of claims from wrongly-classified workers*:*** third, the decision will also be of particular concern to employers who purport to engage people on a self-employed basis who may, in reality, have worker status and be entitled to paid annual leave. Clearly, this could be an issue for businesses operating in the "gig economy", but it could also affect mainstream businesses who engage self-employed contractors. Employers should carefully assess their contractor relationships and assess the risk of their having worker status.

Employment watch list

Worker status cases: Uber drivers are workers but Deliveroo riders are not

In *Uber BV, Uber London Limited and Uber Britannia v Aslam & Ors*, the EAT has upheld an Employment Tribunal decision that, when the Uber app is switched on, Uber taxi drivers are workers for the purposes of their claims under the Employment Rights Act 1996, Working Time Regulations 1998 and National Minimum Wage Act 1998. Potentially costly pensions auto-enrolment obligations will also apply if relevant earnings thresholds are reached. Uber have confirmed they will appeal the decision. However, their application for a "leapfrog" appeal to the Supreme Court was rejected, meaning the next hearing will be before the Court of Appeal.

In *Independent Workers' Union of Great Britain v RooFoods Limited t/a Deliveroo,* in the context of an application for statutory trade union recognition, the Central Arbitration Committee (**CAC**) had to consider whether delivery riders engaged by Deliveroo were workers. If they were not, the application would fail. The CAC concluded that the riders were not workers on the basis that there was a genuine, almost unfettered right of substitution. This meant that there was no requirement to perform the work personally and the worker test had not been satisfied.

Impact?

In several other 'gig economy' cases before the courts this year, other workers such as cycle couriers and plumbers who were said to be self-employed have also been successful in arguing that they are workers for the purposes of the Employment Rights Act 1996, endowing them with a host of employment rights. In light of this general direction of travel, the EAT's latest decision in *Uber* is perhaps fairly unsurprising. The *Deliveroo* decision bucks the trend, but it seems clear that the differentiating factor was the presence of a genuine and largely unfettered right of substitution. Whilst this created other risks for Deliveroo, it meant that the personal service requirement had not been met. Another gig economy case, *Pimlico Plumbers v Smith*, will be heard by the Supreme Court on 20 - 21 February 2018 and some general guidance regarding worker vs. self-employed status may be offered.

Employment watch list

Taking up the baton from the Taylor Review? Select Committees publish joint report and draft bill outlining a new framework for modern employment

In July 2017, the Taylor Review on Modern Working Practices (the Taylor Review) was published. It made wide-ranging recommendations for the reform of working practices in the United Kingdom. The primary purpose of the Taylor Review was to consider what changes to the legal and regulatory frameworks were needed to protect workers in the modern labour market. In particular, consideration was given to what was needed to protect those working in business models built around flexible work on digital platforms (commonly known as the "gig economy"). Although the proposals contained in the Taylor Review were far-reaching, the reforms which grabbed the headlines were those affecting employment status and atypical working. You can read our full analysis of the implications of the Taylor Review for employers here. The Government is due to publish its response to the Taylor Review in early 2018.

On 20 November 2017, the House of Commons Work and Pensions and Business, Energy and Industrial Strategy Select Committees published a joint report entitled *"A framework for modern employment"*. The report develops some of the recommendations made in the Taylor Review on Modern Working Practices and annexes a draft bill covering the reforms that it proposes the Government take forward. The reforms it champions include:

- introducing clearer statutory definitions of employment status
- removal of the personal service requirement from the definition of worker
- introducing a "worker by default" approach in Tribunal disputes
- providing all employees and workers with a written statement of their employment status and associated rights within 7 days of beginning work

You can read our full summary of the report here.

Employment watch list

Parental Bereavement: proposals for new statutory right to leave and pay published

Draft legislation has been published which would give bereaved parents a statutory right to paid time off work from 2020. The legislation is a Private Members' Bill introduced by Conservative MP, Kevin Hollinrake. Although Private Members' Bills don't typically make their way onto the statute books, it is expected that this Bill will do so given that it has Government support. Whilst many employers would allow employees in this sad situation to take compassionate leave on a discretionary basis, this approach is not universal. Where an employer does not offer discretionary compassionate leave, the statutory rights of bereaved parents are fairly limited. This legislation would create a new statutory right for bereaved parents to take paid leave from work following the death of a child.

Under the proposals, parents who lose a child below the age of 18 (including a still birth after 24 weeks) would be given the following rights:

- **Right to leave:** employees would have a "Day 1" right to 2 weeks' leave. Where more than one child dies, the employee would be entitled to take separate periods of leave for each child. The bereavement leave must be taken within 56 days of the child's death. The right to bereavement leave will be a stand-alone right and would not affect an employee's right to take other forms of leave.
- **Right to pay:** employees who have at least 26 weeks' service will also be entitled to receive 2 weeks' statutory pay at the **lower** of either the prescribed rate or 90% of their average earnings. Employers will be able to recover some or all of this payment from the Government.
- **Protection from detriment or dismissal:** employees will be protected from detriment, redundancy and dismissal as a result of taking bereavement leave.

Impact?

The Bill had its second reading on 20 October 2017, however, the new rights are not expected to come into force until 2020. Although this is some way away, there are a number of steps that employers can take now to prepare for the change:

- **Bereavement policies:** if you don't have a bereavement policy in place, it would be sensible to put one in place to outline the entitlement to the new right and the process for applying for the leave. If you already have a bereavement policy in place, it would be worth thinking about whether any changes will be needed to dovetail with the new rules.
- **Enhancement of rights:** consideration should be given to whether you will enhance the statutory rules, for example by: allowing leave to be taken for the death of a child over the age of 18; permitting a period of leave greater than 2 weeks; and/or paying full pay for some or all of the leave period.
- **Other support you can offer:** consideration should be given to what other support mechanisms you can put in place for employees in this difficult situation. ACAS has published Managing Bereavement in the Workplace – a good practice guide, which contains many useful suggestions on how employers can support employees through bereavement.

Employment watch list

Employment Tribunals: scheme to reimburse Tribunal fees introduced

The Supreme Court quashed the Employment Tribunal fees regime in July 2017. You can read our report on the Supreme Court's decision here. In October 2017, the Ministry of Justice has launched a pilot scheme to reimburse fees paid. The scheme has now been fully rolled out. Applicants will be eligible for a full refund of the fees they have paid, together with interest at the rate of 0.5%, calculated from the date of the original payment up to the refund date

The scheme covers both claimants and respondents who paid fees, and also extends to respondents who had to pay a claimant's fees by way of a costs order (although evidence of this will be required). However, the scheme does **not** extend to respondents who paid the value of the claimant's fees to the claimant as part of a settlement agreement. In that scenario, the claimant would be entitled to reclaim their fees and will double recover.

Environment: heightened risk of fines

Manufacturers, distributors, importers and retailers – often grouped together as 'producers' in environmental regulation – need to ensure they are fully aware of the obligations they face under environmental law. The industrial sectors are among the most heavily regulated. The environmental impacts of production processes and the entire life cycle of any product are key considerations for all industrials businesses. Non-compliance can have direct impacts on the ability to pitch for and win contracts, on insurance and, of course on reputation. Furthermore, with **recent changes to the severity of fines that can be imposed for environmental offences**, the situation is now reaching a critical point. It has been made very clear that the level of fines to be imposed must be "…*sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to improve regulatory compliance*." Some of the key areas of environmental regulation that businesses need to be aware of, include:

- **WEEE (waste electrical and electronic equipment) Regulations** – these impose obligations on manufacturers, importers, distributors and retailers of electrical and electronic equipment. Your specific obligations depend on your place in the supply chain but include: financing the collection, treatment, recovery and disposal of WEEE; ensuring products are correctly labelled; and, providing appropriate information to customers.
- **Batteries Regulations** – the Regulations impose similar obligations to those outlined in the WEEE Regulations, but the type of battery involved will affect the producer's' obligations.
- **Packaging Regulations** – companies meeting the thresholds (annually handling 50 tonnes or more of packaging and a turnover of £2m or more) must recover and recycle specific percentages of packaging they 'handle' – this includes a variety of packaging such as that around products sold by retailers and packaging imported into the UK. Compliance is usually achieved via membership of a compliance scheme.
- **CLP (Classification, Labelling and Packaging of substances and mixtures) Regulation** – this requires the vast majority of chemical substances and mixtures to be classified and then labelled appropriately, identifying the hazards associated with them. Information must also be provided as to how to avoid those hazards and packaging must be compliant, including the use of child-resistant closures and tactile warnings. Obligations fall throughout the supply chain and apply to both hazardous and seemingly harmless substances. A wide range of products are caught by CLP from cleaning products to printer cartridges and scented items (including some toys).
- **REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation** – the aim of this Regulation is to provide a high level of protection for both the environment and human health. Manufacturers and importers have significant obligations in respect of the assessment of risks posed and the registration of substances (if there is no registration, substances must be removed from the market). However, REACH also provides for Restriction on the use of certain substances (e.g. nickel and lead) and others must be specifically authorised for a particular use in order to be lawfully used.

What are the impacts?

- Each of these regulations impose **obligations throughout the supply chain**. It is often assumed that the manufacturer of a product is the one who must ensure the environmental obligations are met. However, this is not the case: every actor in the supply chain, including importers, distributors and retailers, has some level of obligation.
- Where a company, say, is importing a product into the UK from China, while the manufacturer has to comply with local regulations, the importer must check that product complies with REACH and CLP. The importer cannot just rely on the Chinese manufacturer's word and should verify test reports provided by the manufacturer (which may include the importer carrying out its own testing). A subsequent retailer of that product must also carry out its own due diligence to ensure compliance before placing that product on the EU market. Both distributors and retailers can face criminal prosecutions if they are found to be making non-compliant products available both from a B2B and B2C perspective, or if they have failed to participate in the relevant producer compliance scheme. The potential implications are significant. Now that all fines for environmental offences are unlimited, these are being pushed ever higher by the Courts. In addition, negative PR will result from publication of the details of all prosecutions on the 'news' sections of regulators' websites. Other enforcement action taken can also be viewed via on-line public registers.

What next?

Regulatory regimes continue to expand and overlap, making the application of the law and best practice invariably complex. The effect of Brexit on both those parts of UK domestic law which originate from EU legislation, and directly effective EU legislation, could add further complication and uncertainty.

Over the next 12 months or so we are likely to see the introduction of a 'reward and return' scheme for plastic bottles and probably other drinks containers. Defra's call for evidence closed on 20 November 2017, so further details should be published in early 2018, once the Voluntary and Economics Incentives Working Group has provided its advice to Ministers.

However, the recently announced ban by China on imports of plastic waste could have huge implications for such a scheme. Currently there appear to be insufficient plastic recycling facilities within the UK to handle such extra volumes of plastic waste.

Logistics

E-commerce has revolutionised the way we shop. We are seeing changes that impact footfall into physical stores, in July 2017 high streets saw a 2.1% drop in footfall, whilst shopping centres saw 1.3%, according to figures released by the British Retail Consortium. As a result the logistics behind our changing shopping habits continue to be impacted and change rapidly.

Getting logistics arrangements correct is key for industrials businesses and will ensure that you stay efficient and cost-effective. As global economic dynamics change, consumer demands evolve and the requirements of distribution change accordingly. High demand for state-of-the-art logistics centres (from big-box to central hubs) and providers of innovative last mile solutions provides substantial opportunities for a wide range of investors, developers and providers.

In order to be efficient industrials businesses must understand the pros and cons of decisions such as hub models versus direct routes, 3PL versus 4PL, and open book versus unit pricing.

Companies within the industrials sector need to fine tune their logistics process to handle concerns such as the potential high value of the items they are moving, and the subsequent risk and insurance for those products, as well as the time critical nature of some of the deliveries they will need to make.

Our recent report highlights that the UK needs more than 18m sq ft of new warehouse space a year, but currently only 3.5m sq ft is set to be built. A shortage of space in warehouses could lead to rising rents, pushing up prices for consumers. City-based distribution centres are in demand the most due to their place in facilitating services such as one-hour delivery.

- Our report emphasises a future drive towards sharing infrastructure and networks in order for companies to keep up with consumer expectations and ensure the sustainability of e-commerce. Click here to read our report.

Supply chain vigilance

Increased scrutiny from consumers, competitors, customers, activists and the media means that businesses need to pay extra attention to the composition and behaviour of their supply chain. A successful supply chain strategy gives companies a competitive advantage, and requires a clear procurement strategy, decisive negotiation, straightforward contracts and a well-organised approach to contract management.

Focusing solely on first tier suppliers is no longer sufficient. During 2018, many businesses will be required to publish their second supply chain transparency statement under section 54 of the Modern Slavery Act 2015. In Autumn 2017, the Government updated its guidance, with no major changes. The Government did, though, emphasise that businesses are required to publish a statement every year and encouraged businesses to keep historic statements from previous years online, in order for the public to better monitor the progress made by a business over time. In addition, the guidance notes that businesses "should aim" to include information about the six areas which are listed in the legislation as being areas that businesses "may" wish to comment on. Those areas are:

- the organisation's structure, its business and its supply chains.
- Its polices in relation to modern slavery and human trafficking.
- Its due diligence process in relation to modern slavery and human trafficking.
- details of any risk assessments the business has carried out.
- Its effectiveness in ensuring that modern slavery and human trafficking is not taking place in its business or supply chains.
- training on modern slavery and human trafficking that it has given to its staff.

Commentary on the first year of statements has highlighted the huge difference between the very best and the very worst. At one extreme, there are businesses who have yet to publish a statement, and at the other, some businesses whose statements demonstrate strength and depth in terms of both commitment and action. Meanwhile, activists and the press remain eager to uncover reports of appalling exploitation both in the UK abroad. It is increasingly clear that businesses (particularly those in higher risk sectors) must ensure they have full sight of where in their supply chains the key risks lie, and to have clear plans in place to tackle those risks.

More broadly, the UK Government's supply chain transparency law is part of a wider trend in which large businesses are expected to be a part of the solution to a number of social issues.

Sanctions

Companies should continue to be aware of how international sanctions measures may apply to their activities. Increasingly, governments are using complex sanctions programmes to apply pressure on regimes that threaten peace and stability in the international community, and these change frequently in light of political developments.

Sanctions measures are often complex and far-reaching, requiring companies to adopt thorough KYC processes to ensure compliance, even if they are not dealing directly with sanctioned countries. Enforcement authorities in the US in particular have been very active in prosecuting sanctions violations, and imposed considerable fines on manufacturers and exporters based in the United States and overseas during 2017. This included a $1.2 billion fine being imposed on a Chinese telecoms company found to have exported US-origin goods to Iran and North Korea, as well as several individuals being prosecuted for sanctions violations relating to Iran. There also remains significant uncertainty on US foreign policy, particularly in relation to Iran and Russia.

In the UK, the Office for Financial Sanctions Implementation (OFSI) was granted new powers in April 2017 to impose significant civil penalties for sanctions breaches, in addition to existing criminal penalties. We understand that in recent months OFSI has been investigating a large number of cases and we expect to see increased enforcement action during 2018. Meanwhile, the UK is taking steps to put in place a new legal framework for sanctions as a result of Brexit. It has also recently introduced a new Magnitsky-style sanctions regime applying to foreign officials involved in large scale corruption or human rights violations.

To find out more please see our brochure on international trade, which can be found here.

Tax evasion

The new corporate offences of failure to prevent facilitation of tax evasion (FTE offences) came into force on **30 September 2017**. All partnerships, limited liability partnerships and companies should now be working on their prevention procedures and ideally a risk assessment and plan of action to put in place reasonable prevention procedures should now be in place. By way of recap from 30 September, if someone in (or associated with) your organisation facilitates tax evasion and you do not have reasonable prevention procedures in place, **your organisation could be faced with unlimited fines**, not to mention reputational damage. These are strict liability offences – no criminal intent, knowledge, collusion or coordination is required. In addition, unlike the Bribery Act, there is no requirement that any person intended to obtain or retain business.

The Criminal Finances Act 2017 has two FTE offences which impose criminal liability on a 'relevant body' where it has failed to prevent the criminal facilitation of tax evasion by a 'person associated' with the 'relevant body'. This is supported by HMRC guidance centering around six core principles that should inform your prevention procedures. The principles are strongly reminiscent of the Bribery Act regime but with subtle differences, for example, "adequate" prevention procedure becomes "such prevention procedures as was reasonable in all the circumstances to expect".

Final Guidance

HMRC published its final guidance at the start of September which has not altered materially since the draft guidance was published last year. There are a couple of clarifications worth noting:

- the risk assessment must be documented and all elements (not just customer facing roles) must be included in such assessment.
- it is now clear from the guidance that an overseas organisation having only part of its business in the UK will be caught by both FTE offences
- if the risk assessment means that your organisation is classified as high risk then to the extent it operates overseas and in the UK, it is insufficient to only introduce prevention procedures in the UK .

HMRC Guidance can be found here.

A number of industry bodies have or are in the process of publishing further guidance tailored for their members.

Although HMRC indicated that it did not expect all reasonable procedures to be place immediately from 30 September, it should not be forgotten that HMRC made it clear that they expected there to be rapid implementation focusing the major risks and priorities after 30 September.

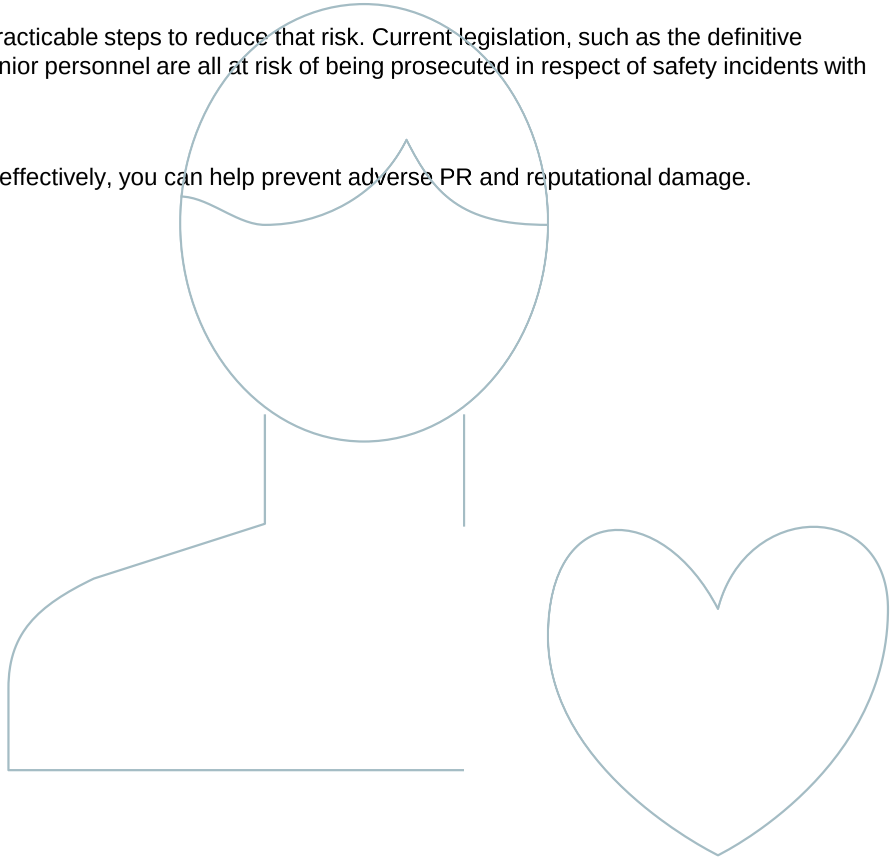
Health & Safety

Since the introduction of definitive sentencing guidelines for health and safety (H&S), corporate manslaughter, and food safety cases, fines of over £1 million have become the norm.

Across all sectors businesses have a moral and legal responsibility for H&S and a failure to meet obligations can have catastrophic consequences as well as result in a high fine.

Even the best precautions cannot remove all risk, but with directors potentially having personal exposure, no business can afford not to take all practicable steps to reduce that risk. Current legislation, such as the definitive sentencing guidelines introduced in February 2016, means no one is immune when the worst happens. Companies, individual employees and senior personnel are all at risk of being prosecuted in respect of safety incidents with severe potential penalties.

By protecting the interests of your employees, you can reinforce your reputation as a supportive employer. By handling accidents sensitively and effectively, you can help prevent adverse PR and reputational damage.



The Industrial Strategy

The Government published a Green Paper called “Building our Industrial Strategy” in January 2017, which sets out their approach in addressing the long-term challenges to the UK economy. Their aim is to improve economic growth in the UK by building on the country’s current strengths. This will be achieved by investing in science, research and innovation; developing skills through building a new system of technical education; upgrading infrastructure; supporting businesses; improving procurement; encouraging trade; delivering affordable energy; and cultivating competitive sectors.

Following the publication of the Green Paper an independent industrial strategy commission was set up to keep track of the Government’s plan as it matures, and to make sure that it has a consistent application over a long period that aims to do something for everywhere in the country. A key aim of the commission is to use the strategy to tackle the north-south divide by using the funds to address the regional imbalances in infrastructure.

As part of the Industrial Strategy the Government is investing £4.7 billion in research and development over the next four years to support UK businesses overcome the biggest core industrial challenges. One area that will be receiving the funding is manufacturing and materials of the future, to help develop new materials that are light-weight and affordable, which will be of particular use within the aerospace, automotive and other advanced manufacturing sectors. In addition, the fund money will be used to help projects to progress the next generation of control systems needed to ensure that the UK is a key player in the driverless cars industry. The money will also be used to improve the productivity of industry and public services, innovations using AI and robotic systems.

A white paper is due to be written by the end of the year which will be influenced by this earlier paper.

Competition law based damages claims

Over recent years we have seen a marked increase in the number of private damages proceedings in the High Court and the Competition Appeal Tribunal (CAT), claiming for losses suffered as a result of competition law breaches. AG are acting as co-counsel on behalf of the Road Haulage Association in a planned action that will see collective proceedings brought against truck manufacturers to recover damages resulting from a 14-year cartel. This presents an opportunity for industrials businesses who may have been affected.

The action

In July 2016, truck manufacturers DAF, Daimler (Mercedes), Iveco, MAN and Volvo/Renault all admitted to having participated in a 14-year illegal price-fixing cartel, between 1997 and 2011. Scania was later also found to have participated in the cartel. Collectively, the truck manufacturers were fined more than €3.8 billion, the largest ever fines imposed by the European Commission in this type of case. The RHA has set up a website on which truck operators can register their interest and sign up. So far over 2,300 operators have signed up, representing an estimated 160,000 trucks sold or leased during the cartel period.

We have been appointed to work in collaboration with transport and logistics law firm Backhouse Jones and barristers from Exchange Chambers and Brick Court Chambers to act on behalf of the RHA.

We will be asking the Competition Appeal Tribunal's permission for the RHA to bring the claim as a representative on behalf of the truck operators. If we are successful this will be a benchmark and ground-breaking case in private enforcement group action cases, the previous two attempts to bring collective proceedings having failed at the first hurdle.

Who might be affected?

This will affect any business who has purchased or leased medium or heavy trucks from DAF, Daimler (Mercedes), Iveco, MAN, Scania and Volvo/Renault or any other truck manufacturer since 1997. Anyone who has owned or operated trucks that may be affected by the price fixing is invited to join the claim.

Early indications are that compensation could be in the region of £6,000 per truck on average across different truck sizes depending on when the truck was purchased or leased.

Payments Ecosystem Development and Strategy

The development of multiple payment methodologies has been a key component of the development of multi / omni – channel retailing – increasing speeds of transacting have moved from PayPal to contactless payments to "One Click" payment journeys. The distinction between the in store (bricks and mortar), on-line and in-app experiences are becoming increasingly blurred with customers ordering on-line, confirming and paying in-app and then picking up in store. Added to this is the richness of the data available to companies if they can capture the entirety of the data available to them during the check-out flow.

The expectation is that the next 18 months will be key for developing and exploiting alternative payment methodologies that will define the way that consumers pay for goods and services over the next five years. In this context we think that the **key themes** this year will be as follows:

Frictionless Payments

As payments become smoother and more efficient the ultimate aim will be to ensure that a customer can pay without interruption or excessive intervention. One of the key challenges here will be the introduction of **Strong Customer Authentication (SCA)** and the challenges that will present to businesses will be similar to the issues that arose when 3D secure was introduced and companies had to change the way that they viewed risk.

POS Finance

We anticipate a significant increase in the availability of customers to be able to seek immediate POS finance for their purchase and there are already products on the market place that enable customers to do this in a seamless way. Companies will need to ensure that they continue to control the customer data and that their payments companies do not take over the relationship with the customer.

Non-card based payments

The traditional cards / cheque / cash paradigm has largely disappeared. The costs inherent in those methodologies means that companies are increasingly looking for cheaper and more direct methods of payments. We anticipate that direct to bank payments and invoicing will become increasingly important and that the use of more traditional payment methodologies will decrease. We would also anticipate a decline in the direct currency conversion revenue that many have enjoyed as app based FX pre-paid cards allow customers to obtain spot rates on currency and avoid paying any margin at POS.

Multiple Source Payments

While the ability to reliably accept cryptocurrency may be some way off what the explosion in interest in alternative sources of "money" points to is an increasing awareness of the charges inherent in payments and how it is now possible to achieve quick and efficient payments with little or no charges to the seller or the customer. Equally a customer may wish to use multiple funding sources when making a payment and the ability to achieve this effectively and automatically will also be a key development this year.

Click here to see more about digital opportunities and here for information about PSD2.