

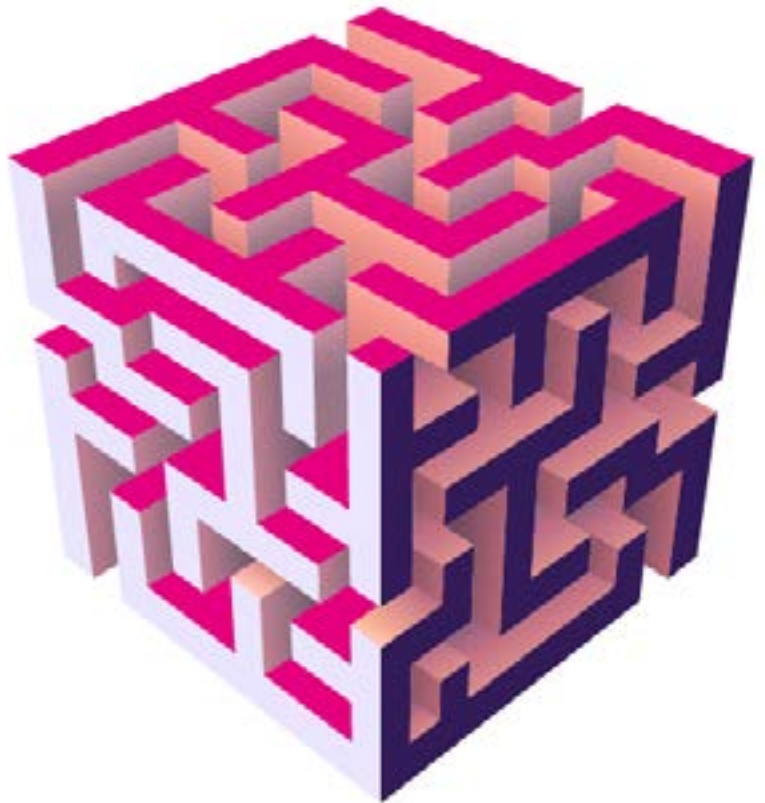
Regulatory update

March 2021

Welcome to the March edition of the Regulatory update, which pulls together recent developments from across the UK's regulators – to help you navigate the regulatory maze.

In a month that has seen the first step taken along the Government's lockdown roadmap, the regulators have been making strides too. The HSE has bolstered its ability to carry out more on-site inspections through hiring private firms for first time in history. The European Commission has issued draft adequacy decisions that will allow continued free flow of data between the UK and EU saving UK business an estimated £1-1.6bn in potential additional compliance costs. However, the SFO has suffered a significant loss at the Supreme Court with the landmark ruling that it cannot compel foreign companies with no presence in the UK to hand over documents held outside of the jurisdiction.

I hope you enjoy reading this latest update. Please do not hesitate to contact me, or your normal RPC contact, if you would like to discuss any of the topics highlighted or have any suggestions for areas you would like to see in future updates.



Gavin Reese
Partner, Head of Regulatory

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WHITE COLLAR CRIME

by Sam Tate

Supreme Court ruling decides that SFO cannot force foreign companies to hand over evidence held overseas

The Supreme Court unanimously agreed that the Serious Fraud Office (SFO) could not rely on a Section 2(3) of the Criminal Justice Act 1987 notice to compel foreign companies with no presence in the jurisdiction to hand over documents held outside of the jurisdiction.

As the SFO's tactics are brought into question again, lawyers

believe the decision may alter how companies under investigation cooperate with the SFO. Rather than seek leniency from the SFO, they may be more willing to go to court to resolve the situation.

Click [here](#) to read more.

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Fraud is now a national security threat, says Royal United Service Institute

The Royal United Services Institutes (RUSI) argues that police should be better resourced to work more closely with the private sector to prevent fraud. Such high levels of fraud, amounting to over £190bn a year, impact the UK's reputation as a place to do business and undermine the public's faith and trust in the system.

The RUSI express concerns that COVID has only increased the risk of fraud as life becomes more digitised and fraudsters show increased sophistication in their targeting tactics.

The RUSI argues that there is a responsibility vacuum which requires greater direction and data-sharing from the National Security Council, GCHQ and the National Crime Agency to resolve.

Click [here](#) to read more.

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Three City workers arrested after probe into bogus coronavirus bounce back loan claims

Three suspects were arrested by the National Crime Agency's (NCA) Complex Financial Crime team.

The bounce back loan scheme was introduced in May 2020 to give low-interest finance between £2,000 and £50,000 to small and medium sized companies.

The NCA believes the three suspects used false data and

documents to make over £6 million in bogus claims. The suspects have been released pending investigation.

Click [here](#) to read more.

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TAX

by Adam Craggs

Taxpayers permitted to make late elections to spread Loan Charge payments

HMRC has issued a statement of practice explaining how taxpayers who are subject to the Loan Charge can make a late election to spread their outstanding disguised remuneration loan balance evenly across three tax years (2018/19, 2019/20 and 2020/21).

As of 1 January 2021, HMRC will only accept late elections where the circumstances were beyond the taxpayer's control, including

if the taxpayer was prevented from making the election before 1 January 2021 due to illness or any other good reason and nobody else could have made the election on their behalf.

Click [here](#) to read more.

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HMRC commences interest rate review

Following the 2019 independent review into the loan charge which recommended, amongst other things, that HMRC review its interest rates policy, HMRC has announced that it will commence a review into how it will continue to set interest rates and charge and pay interest in the future on underpaid/overpaid tax. The review will also look at how HMRC has improved its communication with

taxpayers who have incurred interest over several years and the steps it will take to continue its contact with such taxpayers.

Click [here](#) to read more.

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Proposed changes to Follower Notices penalties

HMRC has begun a consultation and published draft legislation regarding penalties for failing to take corrective action in response to Follower Notices. The legislation proposes a reduction in the penalty rate from 50% to 30% of the "denied advantage". However, a new penalty of 20% of the "denied advantage" will apply if an existing penalty is charged and the First-tier Tribunal either strikes out the taxpayer's substantive appeal on the grounds that there

is no reasonable prospect of success, or if there has been an abuse of process, or if it makes a statement that the taxpayer was unreasonable in bringing or conducting the appeal.

Click [here](#) to read more.

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HMRC chooses to ignore decisions on retrospective penalties

HMRC has published guidance in the form of a Stamp Taxes Newsletter in which it confirms its view that notices imposing daily late filing penalties can be retrospective and do not need to be issued in advance of the date from which the penalty is payable. HMRC states that there is no statutory requirement to file notices prospectively under paragraph 4 of Schedule 55 to FA 2009. This view is contrary to that expressed by the First-tier Tribunal in Advantage Business Finance Ltd [2019] UKFTT 30 and Heacham v HMRC [2020] UKFTT 406, which HMRC did not appeal.

Given the uncertainty HMRC's position creates, it is to be hoped that this issue will be considered by the Upper Tribunal in order to provide some much-needed certainty to taxpayers.

Click [here](#) to read more.

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HEALTH, SAFETY & ENVIRONMENTAL

by Gavin Reese

Food Standards Agency reminds CBD industry of deadline for submitting novel food applications

CBD products are not currently authorised in England & Wales. Those wishing to continue selling their products in England & Wales must make their novel food application ahead of the 31 March 2021 deadline.

to remove CBD products which do not meet the safety criteria for novel food regulations from sale.

Click [here](#) to read more.

From 1 April 2021, the Food Standards Agency will advise business

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Health and Safety Executive hires private firms to carry out site inspections for first time in history

To bolster its workforce during the pandemic, the Health and Safety Executive (HSE) has awarded two contracts to firms worth £7 million.

The contracts have been awarded after a decade long decline in the HSE's budget which has seen inspector numbers drop from 1,342 in April 2010 to 1,059 in 2020.

The firms have been hired to carry out spot-check visits to workplaces. It has enabled the HSE to focus on more complex COVID-19 work in addition to its investigation responsibilities.

Click [here](#) to read more.

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The Joint Unit for Waste Crime celebrates a successful first year tackling waste crime

Bringing together environmental regulators and law enforcement agencies, the Joint Unit for Waste Crime taskforce is tackling waste crime that costs the UK economy approximately £600 million a year.

licenses to transport and dispose of the waste.

Despite the pandemic, the taskforce has had a successful year cracking down on criminals and gangs who commit serious and organised waste crime. Such offences are often carried out by gangs and individuals who operate bogus waste services, accepting payments for disposal without the proper means or

The taskforce is currently carrying out over 20 operations across the UK. Some of its recent successes includes arresting over 29 people in connection with waste and metal crime.

Click [here](#) to read more.

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Government calls for evidence on modernising UK product safety framework

Last week, Business Minister Paul Scully laid out plans to review and modernise the UK's product safety framework. The Office for Product Safety and Standards, the government's product safety body, is now calling for evidence from manufacturers, distributors and consumers on their views.

There is concern that the current product safety regime has not kept pace with the developing technology and consumer buying habits, and significant reform is required to ensure product safety regulations remain fit for the future. The rapid growth of online shopping and huge increase in internet connected devices are just two of the trends making the responsibility for product safety ever more complex. Furthermore, innovation such artificial intelligence and machine learning are leading to situations where, through software updates, products and their safety implications can continually change over their lifetimes.

Mr Scully was keen to highlight that in introducing better product safety regulation, a key objective will also be "stimulating growth, innovation and competition in the UK, whilst attracting

new investment, enabling businesses to grow dynamically, and maintaining high standards".

The call for evidence, which will be open until 3 June 2021, seeks views on the longer-term approach to product safety including how an updated framework can:

- take account of new risks and opportunities, so it delivers both safe outcomes and supports business growth and innovation;
- respond quickly to new and emerging threats and opportunities for product safety, including digital technologies and new ways of supplying products;
- support regulators and business to be open and transparent about product safety so consumers can make informed decisions.

Click [here](#) to read more.

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DATA

by Jon Bartley

EU Issues Draft UK Adequacy Decision

The European Commission has published two draft data adequacy decisions in respect of data transfers to the UK.

Following its exit from the EU the UK became a “third country” under European data protection legislation. Data transfers are permitted to continue freely until 30 June 2021 at the latest under the terms of the EU-UK Trade and Cooperation Agreement but, after this date, unless the UK has been declared an “adequate” third country by the EU Commission, any transfers of personal data to the UK from the EU will need to comply with a mechanism or derogation under the EU General Data Protection Regulation (EU GDPR).

An adequacy decision would declare that the UK is able to provide a similar level of data protection as set out in EU GDPR and would help to ensure that UK businesses and organisations can continue to receive personal data from the EU and EEA without additional compliance measures and costs. Some commentators have put

the cost of compliance to UK companies if the UK fails to obtain an adequacy decision at between GBP 1 and 1.6 billion.

Fortunately, on 19 February 2021, the Commission issued a draft adequacy decision under the EU GDPR. The UK Government has welcomed the Commission’s decision and is now urging the EU to complete the technical approval process swiftly to provide certainty to UK and EU businesses and avoid disruption come June. If approved, the adequacy decision will last for four years, during which time the EU will monitor any indications that the UK is no longer ensuring adequate protection for personal data (e.g. due to a divergence from EU laws) and will have the power to revoke the adequacy decision.

Click [here](#) to read more.

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ICO Launches Data Analytics Toolkit

The ICO has launched a toolkit for organisations that are considering using data analytics on personal data. The new toolkit which can be found [here](#), takes organisations through key data protection points which they should consider from the outset of any project which involves personal data and data analytics. This toolkit is by no means a comprehensive analysis of every factor that an organisation will need to consider, instead it is designed to be a starting point. The toolkit is not to be viewed as a full pathway to absolute compliance with data protection law.

The toolkit will ask a series of questions which are separated into four themes; lawfulness, accountability and governance, the data protection principles, and data subject rights. After all questions have been answered, a bespoke report will be created that suggests practical actions that an organisation can take

and provides links to additional guidance to help improve data protection compliance for that particular organisation. The toolkit is also anonymous and answers provided are not visible to or retained by the ICO.

The toolkit is part of the ICO’s AI priority work and is designed to assist organisations navigate the challenges that AI systems may pose on individual rights.

Click [here](#) to read more.

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EDPB issues draft data breach notification guidelines

The European Data Protection Board (EDPB) issued the draft [Guidelines on Examples regarding data breach notification \(01/2021\)](#), which supplements the older [WP 29 guidance](#) on data breach notifications from October 2017 and enriches it with more practical recommendations. The new draft EDPB Guidelines, which were open for consultation until 2 March, seek to provide data controllers with guidelines on how to deal with data breaches and what are the factors they should take into account when assessing the risk caused by a data breach, as this assessment in turn influences the need to notify the relevant Supervisory Authority and/or the affected individuals.

By utilising the experience that Supervisory Authorities have acquired since the introduction of the GDPR in May 2018, the EDPB outlines categories of common data breach cases, such as

ransomware attacks, data exfiltration attacks, internal human risks, lost or stolen devices and paper documents, incorrect recipients of post or e-mail and social engineering (e.g. identity theft). For each of these categories, the Guidelines include examples of good and bad practices and prior measures that the controllers should put in place to prevent or mitigate the impact of the data breach, but also guidance on what should inform the risk assessment of data controllers should the breach happen.

Click [here](#) to read more.

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ADVERTISING

by Oliver Bray

Advertising Standards Authority reviews gender stereotyping and guidance

A year after its implementation, the Advertising Standards Agency (ASA) has reviewed a new rule prohibiting advertisements that include gender stereotypes that are likely to cause harm, serious or widespread offence.

In its review, the ASA concluded that the rule has met its objectives and the rule's wording should be retained. However, it acknowledges that the rule's scope has caused some uncertainty. To clarify, the ASA makes it clear that the rule is also intended to apply to cases concerning sexualisation, objectification and body image where gender stereotypes come into play.

The ASA will continue monitoring the rule to assess how it affects

currently untested guidance including:

- Advertisements that feature pressured conformity to idealised gender-stereotypical body shapes;
- Advertisements aimed at children;
- Advertisements aimed at vulnerable groups; and
- Advertisements that mock people for not conforming to gender stereotypes.

Click [here](#) to read more.

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Committee of Advertising Practice releases new guidance on buy now, pay later services

The Committee of Advertising Practice (CAP) has published new guidance on the increasingly popular services that allow payments to be deferred for a short time.

The guidance is designed to ensure advertisers promoting this service are not misleading the consumer. The guidance also provides clarity on how advertisers can ensure consumers understand that the service offered is a type of debt, in particular that they understand the consequences of late payment fees, such as the impact on credit score.

Advertisers have until 2 March 2021 to adjust to the new guidance.

Click [here](#) to read more.

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INSURANCE & FINANCIAL SERVICES

by Jonathon Cary and Matthew Griffith

UK/EU Free Trade Agreement: impact on financial services firms

The enactment of the free trade agreement has provided some certainty for firms engaging in UK/EU cross-border financial services. However, some aspects of the regulatory arrangements have not yet been agreed and will need to be addressed by the UK and EU in the first quarter of the year.

Of particular relevance to financial services firms are the following points:

- The agreement does not provide passporting rights like those in the EU single market. UK and EU firms will require local authorisation;

- The agreement does not address regulatory cooperation in financial services;
- The agreement does not address equivalence decisions

Therefore, while the agreement sheds some light on the impact on financial services, there are still myriad issues to be decided and resolved.

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Consumer Credit Act: the case for reform

The Finance & Leasing Association, representing leasing companies and lenders across the UK, is pushing for modernisation of the Consumer Credit Act (CCA).

It proposes a simplification of the consumer credit landscape, through a twin-track approach of Financial Conduct Authority rules and the Financial Services and Markets Act. This would allow these schemes to be applied in a more flexible and responsive

manner, leading to enhanced consumer protection.

It is proposed that this will facilitate the delivery of innovation through offering new market entrants more consumer choice.

Click [here](#) to read more.

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UN report emphasis importance of climate change in insurance risk assessments

The United Nations (UN) has collaborated with 22 major insurance firms to produce a report, which suggests that the insurance industry must put climate change at the heart of insurance risk assessments. The report, which forms part of the UN's Environment Programme's Principles for Sustainable Insurance Initiative, found that the level of analytical sophistication varied significantly across the industry.

The report argues that climate change, while presenting clear downwards risks, also presents positive opportunities to develop

new insurance products to address the changing risk landscape. The report noted that it was making "ground-breaking, yet still preliminary" progress in developing a methodology to assess climate change-related litigation risk.

Click [here](#) to read more.

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PROFESSIONAL SERVICES

by Graham Reid and Robert Morris

Professional services firms must check tax advice work for money-laundering obligations

Both solicitor and accountancy firms alike should review their current processes and controls in view of the Solicitors Regulatory Authority's (SRA) recent guidance on the definition of "Tax Advisers" in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs).

This definition was widened with the 5th EU Money Laundering Directive coming into force at the beginning of last year. The SRA has urged firms to check if any tax advice work they carry out falls under this expanded definition for money-laundering purposes. The guidance makes clear just how easy it is to slide into giving tax advice for the purposes of the MLRs, even if firms would not typically regard themselves as a tax adviser. As a result, legal and accountancy professionals may unknowingly fail to comply

with regulations when they have inadvertently fallen under the expanded definition.

The SRA has set out this guidance to help firms determine whether or not they will fall within the scope of the regulations, what reporting steps they need to take and the compliance obligations they will be subject to. On a practical note, those who might become subject to the MLRs in the course of a matter/project will need to do Customer Due Diligence (CDD) at the outset if tax advice is even a remote possibility, as it is unlikely to be a practical option to do CDD half way through.

Click [here](#) to find out more.

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FRC runs consultation regarding transition into ARGA

The Financial Reporting Council (FRC) has published its proposed strategy for 2021/22 for consultation, which includes its proposed transition into the Audit, Reporting and Governance Authority (ARGA).

However, the plans come with an increased cost for funders with a budget increase of £6.8million proposed, with £1.9million provided for audit firm supervision. Most of the costs will go into staffing as a result of an anticipated increase in headcount by 56 in 2021 and 59 in 2022. The budget also assumes a further two-year

transition period for the transformation into ARGA.

The FRC provides that by maintaining momentum on the proposed transition, the organisation will be ready to become ARGA as soon as legislation permits. The consultation remains open until 12 March 2021.

Click [here](#) to read more.

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Institute and Faculty of Actuaries releases first Thematic Review Report focussed on pensions

The Institute and Faculty of Actuaries (IFoA) has been carrying out regular Thematic Reviews looking at particular topics relevant to actuaries. It has released its first Report, Pensions: actuarial factors used to calculate benefits in UK pension schemes.

In March 2020, IFoA launched the review by asking scheme actuaries to submit examples of actuarial advice on two key actuarial factors: transfer values and commutation rates. 63 individual scheme actuaries from 19 organisations agreed to take part and have their work scrutinised.

While the overall standard of advice was high, the review found that commutation rates are often well below transfer values. This may lead to poor value for members. The review recommends that actuaries improve the quality of their advice by following existing actuarial standards fully.

Click [here](#) to read more.

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Updated guidance for companies and auditors to ensure flow of high quality financial information

The Financial Reporting Council (FRC) and Financial Conduct Authority (FCA) have released updated guidance for companies and auditors to ensure high quality information continues to flow to users to support decision making.

With the busiest time of the year for finalising company accounts approaching, companies must ensure that users of financial information continue to receive high quality information throughout this period. The effects of COVID-19 must also be considered, particularly remote working, travel restrictions, home schooling and an uncertain economic outlook.

The guidance encourages auditors and preparers to make use of available flexibilities when preparing to publish their financial accounts.

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NAVIGATING THE MAZE

From the world's largest financial, corporate and professional services firms, to highly successful entrepreneurs and individuals, many turn to our specialist Regulatory team to navigate the maze. They do this because they know we don't sit on the fence, we work with our clients to ask the tough questions and challenge conventions; ensuring they continue to thrive in a rapidly evolving regulatory world.

From helping to implement robust compliance strategies to conducting investigations and defending against enforcement proceedings, our multidisciplinary team can be relied on to add value, provide ideas and deliver a complete regulatory service whatever challenges you face, now and in the future.

- **White collar crime and investigations:** The burden of facing a regulatory or criminal investigation can be significant. We defend clients under investigation for regulatory breaches, corruption including; breaches of financial sanctions, false accounting, insider dealing and market misconduct.
- **Anti-bribery and corruption:** Our team works closely with clients to implement robust, cost effective anti-bribery programmes in line with international standards, and to manage risks and responses when things go wrong.
- **Anti-money laundering:** AML continues to be one of the most significant regulatory risks to firms. We help clients from implementing effective AML processes and controls to defending clients under investigation of breaches.
- **Data protection:** Protecting the data you hold has never before been so essential to your business. We regularly advise on data regulations, including GDPR, relating to subject access requests, data handling, sharing and processing, breaches, and training strategies.
- **Product liability and compliance:** Our Products team have the expertise you needed if you are faced with product recall or class actions.
- **Health, safety and environmental:** our expert team can support you whether you are shoring up your health, safety and environmental protocols, or facing an investigation in respect of an incident.
- **Tax investigations and dispute resolution:** Our dedicated tax dispute lawyers provide a comprehensive service covering pre-emptive advice on a wide range of risk issues, tax investigations and litigation before the tax tribunals and higher courts.
- **Insurance and financial services:** Our specialist lawyers advise on regulation, business and financial crime and compliance, including both contentious and non-contentious matters to ensure our clients avoid the pitfalls.
- **Competition and anti-trust:** No business can afford to ignore competition law. We help clients through all issues including; compliance, investigations, merger control, cartels and litigation.
- **Dawn raids:** A dawn raid situation can be extremely stressful – and if you get it wrong, the repercussions can be severe. Our experienced team can provide an immediate response to help you on the ground, as well as in the all-important preparation for the possibility of a dawn raid.
- **Professional practices:** Our team combines sector knowledge with regulatory expertise to provide comprehensive support and advice for professional services firms, covering all aspects of their regulated business.
- **Advertising and marketing:** Some of the world's largest corporates rely on us to keep their brand communications above board, from advertising standards to consumer regulation we help clients to simplify the complex.



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