



Horizon scanning – update December 2022

This monitoring update paper is for Faculty Office staff and committees – it should not be used outside the organisation.

This document is held by the Deputy Registrar and updated quarterly and provided to the Master's Quarterly Council.

Status key:

Purple – implications of issue yet to be analysed

Red – highly serious issue for the Faculty Office requiring action

Amber – potentially serious issue which might require action

Green – low importance issue or action taken

Horizon scanning						
Potential threat, risk, emerging issue or opportunity	Type of issue (eg legislative change) and regulatory objectives that relate	Implications	Timeframe under which such implications might arise	Proposed action	Status as at December 2022	Comments
<p>Independent Review of Legal Services Regulation led by Professor Stephen Mayson</p> <p>- see here</p>	<p>Policy and research proposals which could shape future legal services legislation</p> <p>Impinges on all regulatory objectives</p>	<p>Possible single legal regulator (although Prof. Mayson has suggested that notaries be outside of this)</p> <p>Regulation by activity instead of title</p> <p>Extend the scope of regulation to non-lawyers and unregulated services</p> <p>Create “single point of entry for regulation, registration and complaints” about</p>	<p>Likely 5-10 years but only if Government take up proposals. If they did there would need to be a Green Paper, White Paper, widespread consultation and primary legislation.</p> <p>Supplementary report on this was published by Prof. Mayson on 21 April 2022</p>	<p>Keep a watching brief</p>	<p>No update but note Professor Mayson’s criticism in August 2022 of the LSB’s ongoing competence programme</p>	<p>It is also implicit in the April 2022 paper that legal services legislation should be consolidated.</p>

		legal services and a system of compulsory dispute resolution for complaints				
Ministers have launched an expert industry working group to boost public confidence in e-signatures.	<p>Policy</p> <p>(a)protecting and promoting the public interest;</p> <p>(d)protecting and promoting the interests of consumers;</p> <p>(e)promoting competition in the provision of services</p> <p>(h)promoting and maintaining adherence to the professional principles</p>	<p>The Ministry of Justice (MoJ) set up the group following a recommendation from the Law Commission. It will be chaired by Mr Justice Fraser, under the oversight of Lord Justice Birss, and assisted by Professor Sarah Green of the Law Commission alongside legal and industry experts. Its remit is to improve standards, reliability and security in e-signatures and other digital means of legally executing documents, and to look into best practice in this area.</p> <p>It will look at safeguards for video-witnessing of deeds, best practice guidance for</p>	<p>In 2019, the Law Commission reported that while e-signatures are legally valid for most purposes, there is a lack of clarity and confidence around their use.</p> <p>Their interim report was published in February 2022, which sets out their analysis of the current situation in England and Wales; identifies simple best practice guidance based on existing technology, including for vulnerable individuals; and makes recommendations</p>	<p>Keep a watching brief</p> <p>The best practice advice from the interim report about how e-signatures can be deployed securely could be disseminated to notaries</p>	<p>No update but note that Michael Lightowler is on the group.</p>	<p>May have an impact on guidance the Faculty Office gives around eg remote notarisation</p>

		<p>e-signatures particularly where vulnerable adults execute documents electronically, consider the challenges involved in cross-border transactions and how best to protect signatories from fraud.</p>	<p>for future analysis and reform.</p> <p>In the next phase of its work, the Group will focus on its remaining Terms of Reference, namely to consider the challenges arising from the use of electronic signatures in cross-border transactions and how to address them, and how best to use electronic signatures so as to optimise their benefits when set against the risk of fraud.</p>			
<p><i>Right Reverend, Nicholas Baines, Lord Bishop of Leeds and another v Dixon Coles and Gill (a firm) and others; Guide Dogs for the Blind</i></p>	<p>Case law concerning insurance cover for professional wrongdoing</p> <p>(a)protecting and promoting the public interest;</p>	<p>The cases concern an errant solicitor (who was also a notary) who raided her firm's client account and stole client monies.</p> <p>Initially the insurance paid out to the victims was to be aggregated on the basis that they arose out of a series of related acts or omissions and therefore only £2 million</p>	Current	Factor into the work on minimum insurance term and keep a watching brief on the SRA's minimum terms	No update. Recommend that this this is removed and potentially replaced with a general item on insurance.	

<p><i>Association and others v Box and others</i> [2021] EWCA Civ 1211</p> <p><i>Dixon Coles and Gill (a firm) v Right Reverend, Nicholas Baines, Bishop of Leeds and another</i> [2021] EWCA Civ 1097</p>		<p>was to be available to be paid out</p> <p>There was also the issue of whose money is stolen as when the money is in a mixed account it is not so obvious whose money has been stolen each time there is a theft</p> <p>In the first case it was held that the insurer could not aggregate the claims and therefore their liability was not limited to £2 million</p> <p>In the second case it was found that the innocent partners of the errant solicitor were entitled to rely upon a defence of limitation as they were not party to or privy to the fraud. They therefore escaped personal liability.</p> <p>The implication for clients of notaries from the cases is that the minimum insurance cover may not provide adequate recompense if</p>				
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		<p>the insurer is able to aggregate multiple claims. However, in the circumstances of the case the court held that the insurance cover was not to be limited to £2 million</p> <p>If the Faculty Office were to address these issues it would need to institute minimum insurance terms which address the issue of aggregation</p>				
Review of Human Rights Act 1998	<p>Potential legislative change</p> <p>(a)protecting and promoting the public interest;</p> <p>(b)supporting the constitutional principle of the rule of law;</p>	<p>Human rights law has a pervasive influence on the way in which public authorities are able to behave</p> <p>The Faculty Office may be a “public authority” in certain of its functions for the purpose of enforcing the Convention rights</p>	2-5 years	Keep a watching brief	An Act of Parliament entitled Bill of Rights was introduced to Parliament on 22 June 2022 but legislation has stalled.	According to section 1 of the Bill, it clarifies and re-balances the relationship between courts in the United Kingdom, the European Court of Human Rights and Parliament by ensuring— (a) that it is the Supreme Court (and not the European Court of Human Rights) that determines the

	<p>(c)improving access to justice;</p> <p>(g)increasing public understanding of the citizen's legal rights and duties;</p>					<p>meaning and effect of Convention rights for the purposes of domestic law (see section 3(1));</p> <p>(b) that courts are no longer required to read and give effect to legislation, so far as possible, in a way which is compatible with the Convention rights (see paragraph 2 of Schedule 5, which repeals section 3 of the Human Rights Act 1998);</p> <p>(c) that courts must give the greatest possible weight to the principle that, in a Parliamentary democracy, decisions about the balance</p>
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						between different policy aims, different Convention rights and Convention rights of different persons are properly made by Parliament (see section 7).
Data Protection and Digital Information Bill		<p>Data protection law substantively impacts the way in which notaries may collect and process their client's personal data.</p> <p>This Bill would amend the current Data Protection Act 2018 which itself implemented GDPR.</p> <p>To an extent it could be seen to be watering down the strict technical requirements of GDPR but not radically. There will also be new requirements not contained in GDPR. The explanatory memorandum states</p>	The Bill was introduced into Parliament on 18 July 2022 and could become law by the end of 2022.	<p>Keep a watching brief and be ready to produce guidance to the profession if the Bill becomes law.</p> <p>Consider mandating CPE in data protection should the law be passed.</p>	Bill appears to have stalled.	In relation to client verification, the Bill would "increase trust in and acceptance of digital identities across the UK to help make identity proofing easier, cheaper and more secure. and to enable a trusted digital identity market to develop in the UK for those that choose to use it to prove things about

		<p>that the legislation would “update and simplify the UK’s data protection framework with a view to reducing burdens on organisations while maintaining high data protection standards.”</p> <p>It is a Bill to make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about access to customer data and business data; to make provision about privacy and electronic communications; to make provision about services for the provision of electronic signatures, electronic seals and other trust services; to make provision about the disclosure of information to improve</p>				<p>themselves, for example when starting a new job or moving house. To do this, the Bill would establish a regulatory framework for the provision of digital identity verification services in the UK and enable public authorities to disclose personal information to trusted digital identity providers for the purpose of identity and eligibility verification.”</p> <p>Clause 10 inserts a new section 45A into the DPA 2018 which explicitly introduces an exemption for material which</p>
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		<p>public service delivery; to make provision for the implementation of agreements on sharing information for law enforcement purposes; to make provision about the keeping and maintenance of registers of births and deaths; to make provision about information standards for health and social care; to establish the Information Commission; to make provision about oversight of biometric data; and for connected purposes.</p>				<p>is subject to legal professional privilege.</p> <p>The eIDAS Regulation would be amended by the Bill. The eIDAS Regulation sets out the legal framework and specifications for trust service products and services in the UK. This system supports the validation of electronic transactions. 'Trust services' include services specifically relating to electronic signatures, electronic seals, timestamps, electronic delivery services, and website authentication.</p>
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						The eIDAS Regulation requires that such trust services meet certain criteria - standards and technical specifications - to allow for interoperability across the UK economy.
Retained EU Law (Revocation and Reform) Bill	<p>Potential legislative change</p> <p>Could impinge on all of the regulatory objectives.</p>	<p>The purpose of the Retained EU Law (Revocation and Reform) Bill is to provide the Government with all the required provisions that allow for the amendment of retained EU law (REUL) and remove the special features it has in the UK legal system. These reforms were announced in the Queen's speech in May 2022.</p> <p>The Bill will give effect to policies that were set out in the Benefits of Brexit Report published in January 2022 and the Government's announcement of the</p>	Under the proposals by end of 2023 all retained EU law will be repealed unless enacted in UK law before then.	Keep a watching brief and ask the Societies or the Advisory Board whether the Bill is likely to have any unintended consequences for notaries?	New – Bill introduced September 2023	

		<p>review into the substance and status of REUL in September 2021.</p> <p>To achieve this, the Bill will:</p> <p>(a) Repeal or assimilate REUL, within a defined scope, by the end of 2023</p> <p>(b) Repeal the principle of supremacy of EU law from UK law by the end of 2023;</p> <p>(c) Facilitate domestic courts departing from retained case law;</p> <p>(d) Provide a mechanism for UK government and devolved administration law officers to intervene in cases regarding retained case law, or refer them to an appeal court, where relevant;</p> <p>(e) Repeal directly effective EU law rights and obligations in UK law by the end of 2023;</p> <p>(f) Abolish general principles of EU law in UK law by the end of 2023;</p> <p>(g) Establish a new priority rule requiring retained direct EU</p>				
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		legislation (RDEUL) to be interpreted and applied consistently with domestic legislation; (h) Downgrade the status of RDEUL for the purpose of amending it more easily; (i) Create a suite of powers that allow REUL to be revoked or replaced, restated or updated and removed or amended to reduce burdens.				
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