



Horizon scanning – update October 2023

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 October 2023	Comments
LSB preparing a project on rule of law and professional ethics	Policy Rule of law	<p>The stated outcomes of this project are to:</p> <p>Work in partnership with key stakeholders to debate and gain consensus in respect of the range and types of conduct that may not be consistent with upholding the rule of law and make these</p>	This is part of the LSB's workstream for 2023/4	Keep a watching brief	<p>According to Matthew Hill's blogpost of September 2023 the focus seems to be threefold:</p> <ol style="list-style-type: none"> 1. misuse of non-disclosure agreements (NDAs), 2. strategic lawsuits against public participation (SLAPPs) and 3. "implementation of the proposed new Economic Crime Objective" 	

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 October 2023	Comments
		<p>clear to the sector.</p> <p>Ensure that regulators adapt their regulatory infrastructure to address any weaknesses in regulation, to clarify, support and incentivise professional ethical practices to uphold the rule of law, by regulated individuals and organisations</p>				

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 October 2023	Comments
		Ensure that the role of lawyers in upholding the rule of law is embedded in workplace culture to facilitate professional ethical decision-making.				
“Failure to prevent” fraud, false accounting and money laundering	Legislative Government said in January 2023 that it intends	This could widen the criminal liability of notaries and others not only	Unknown at this stage	Keep a watching brief	The proposed new offence is set out in Lords Amendment 151 ¹ . The Bill is now at a late stage, having passed all	Once the Bill is made law, this new provision deserves careful scrutiny.

¹ <https://bills.parliament.uk/bills/3339>

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 October 2023	Comments
could become a criminal offence	to include a strict liability corporate "failure to prevent" offence for fraud, false accounting and money laundering into the Economic Crime and Corporate Transparency Bill (the "Bill") that is currently being debated	in the area of AML but also in relation to fraud and false accounting			three stages in both Houses.	

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 October 2023	Comments
Department of Trade and Industry's review of whistleblowing laws	Review which could shape future laws	<p>The review will gather evidence on the effectiveness of the current regime in enabling workers to speak up about wrongdoing and protect those who do so.</p> <p>The review will seek views and evidence from whistleblowers, key charities,</p>	The evidence gathering stage of the review will conclude in Autumn 2023.	Keep a watching brief	<p>The review was launched on 23 February 2023.</p> <p>There is no update as of October 2023.</p>	<p>This review will cover central topics, key to the whistleblowing framework:</p> <ul style="list-style-type: none"> • who is covered by whistleblowing protections. • the availability of information and guidance for whistleblowing purposes (both on gov.uk and that provided by employers). • how employers and

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 October 2023	Comments
		<p>employers and regulators.</p> <p>Whistleblowing refers to when a worker makes a disclosure of information which they reasonably believe shows wrongdoing or someone covering up wrongdoing. Workers who blow the whistle are entitled to protections,</p>				<p>prescribed persons respond to whistleblowing disclosures, including best practice.</p>

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 October 2023	Comments
		<p>which were introduced through the Public Interest Disclosure Act 1998 (PIDA).</p> <p>For authorities tackling corruption, fraud and other economic crime, whistleblowing is a crucial source of evidence, as these activities and their perpetrators can only be</p>				

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 October 2023	Comments
		<p>exposed by insiders.</p> <p>It also provides a route for employees to report unsafe working conditions and wrongdoing across all sectors.</p> <p>Business Minister Kevin Hollinrake said:</p> <p>Whistleblowing is a vital tool in tackling economic crime and</p>				

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 October 2023	Comments
		unsafe working conditions, and the UK was one of the first countries in the world to develop a whistleblowing framework.				
Independent Review of Legal Services Regulation led by Professor Stephen Mayson - see <u>here</u>	Policy and research proposals which could shape future legal services legislation	Possible single legal regulator (although Prof. Mayson has suggested that notaries be outside of this)	Likely 5-10 years but only if Government take up proposals. If they did there would need to be a Green Paper, White Paper,	Keep a watching brief	The Solicitors Regulation Authority is <u>consulting</u> on how it intends on regulating licensed conveyancers. This closes on 22 November. A separate consultation run by CILEX addresses	

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 October 2023	Comments
	Impinges on all regulatory objectives	<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 legal services and a system of</p>	<p>widespread consultation and primary legislation.</p> <p>Supplementary report on this was published by Prof. Mayson on 21 April 2022</p> <p>It is also implicit in the April 2022 paper that legal services legislation should be consolidated.</p>		<p>their case for re-delegating the regulation of its members to the SRA. This consultation runs until 5 November.</p> <p>If both regulators agree to proceed with re-delegation after the current consultations, the Legal Services Board would need to agree to the relevant changes to both organisations' regulatory arrangements.</p>	

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 October 2023	Comments
		<p>compulsory dispute resolution for complaints</p> <p>Note Professor Mayson's criticism in August 2022 of the LSB's ongoing competence programme</p>				
Ministers have launched an expert industry working group	Policy (a)protecting and promoting the public interest;	The Ministry of Justice (MoJ) set up the group following a recommendation from the Law Commission. It will	In 2019, the Law Commission reported that while e-signatures are legally valid for most purposes, there is	<p>Keep a watching brief</p> <p>The best practice</p>	The IWG's Final Report was published in February 2023. Its recommendations are contained in column 3.	May have an impact on guidance the Faculty Office gives around eg remote notarisation and will effect practice

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 October 2023	Comments
to boost public confidence in e-signatures.	<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>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>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>advice from the final report about how e-signatures can be deployed securely could be disseminated to notaries</p> <p>Consider whether a new chapter in the Code of Practice may be required</p>	<p>The Electronic Trade Documents Act 2023 came into force on 20 July 2023.</p>	<p>matters particularly when notarising and legalising electronic documents.</p> <p>A spin-off may be a Law Commission review into the law of deeds.</p>

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 October 2023	Comments
		<p>It will look at safeguards for video-witnessing of deeds, best practice guidance for 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>This has led to, amongst other initiatives, the formation of the</p>	<p>for future analysis and reform.</p> <p>The final report contained the following proposals:</p> <ul style="list-style-type: none"> • Enhanced certification through the role of the ICO and a review of the National Cyber Security Centre ("NCSC") Technical Assurance Principles initiative • Self-certification involving ICO/DSIT or another government body 			

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 October 2023	Comments
		UK's own digital identity and attributes trust framework, the EU's digital identity wallet, the Government's publication of its Consultation on draft Digital Government (Disclosure of Information) (Identity Verification Services) Regulations 2023, the Electronic Trade Documents Act 2023. The ETDA gives electronic equivalents of paper trade documents the	working as a moderator that: (1) develops a set of signing platform 'basic performance standards'; (2) publishes the standards on a 'dedicated/go-to' webpage that is easily locatable for prospective platform users; (3) invites signing platforms to confirm whether they meet the standards; (4) publishes a list of signing platforms that submit self-certifications on a go-to webpage;			

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 October 2023	Comments
		<p>“same legal treatment, effects and functionality” as their paper equivalents.</p>	<p>(5) confirms listings annually.</p> <ul style="list-style-type: none"> • Work towards uniformity of approach to e-signing and online identification by way of an international standard or mutual recognition • Government consideration of wholesale adoption of e-signatures for all purposes, and investigation into modernising any area where wet ink signatures are mandated • Review by the Law Commission 			

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 October 2023	Comments
			of the law of deeds with a view to the abolition of at least some of their current requirements <ul style="list-style-type: none"> • A review of the law of statutory declarations • The establishment by Government, or a suitable Department, of a standing body similar to the Industry Working Group, comprising both legal, industry and academic membership that is able to focus solely on these issues and to 			

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 October 2023	Comments
			keep abreast of developments as they occur.			
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	Bill of Rights withdrawn on 27 June 2023.	<p>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 meaning and effect of Convention rights for the purposes of domestic law (see section 3(1)); (b) that courts are no longer required to read and give effect to legislation, so far as possible, in a way which is</p>

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 October 2023	Comments
	(c)improving access to justice; (g)increasing public understanding of the citizen's legal rights and duties;					compatible with the Convention rights (see paragraph 2 of Schedule 5, which repeals section 3 of the Human Rights Act 1998); (c) that courts must give the greatest possible weight to the principle that, in a Parliamentary democracy, decisions about the balance 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 (No. 2) Bill	Legislative change	Data protection law substantively impacts the way in which notaries may collect and process their	The Bill was introduced into Parliament on 8 March 2023 and replaced an earlier (No 1) Bill	Keep a watching brief and be ready to produce	This is a new Bill, replacing an earlier one, but apparently substantially the same. It is now at Report Stage	In relation to client verification, the Bill would “increase trust in and acceptance of digital identities across the UK to help make identity

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 October 2023	Comments
		<p>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 that the legislation would</p>	<p>which has been withdrawn.</p>	<p>guidance to the profession if the Bill becomes law.</p> <p>Consider mandating CPE in data protection should the law be passed.</p>	<p>in the House of Commons.</p>	<p>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 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</p>

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 October 2023	Comments
		<p>“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</p>				<p>introduces an exemption for material which 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. The eIDAS Regulation requires that such trust</p>

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 October 2023	Comments
		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 public service delivery; to make provision for				services meet certain criteria - standards and technical specifications - to allow for interoperability across the UK economy.

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 October 2023	Comments
		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 enforcement				

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 October 2023	Comments
		<p>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>				

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 October 2023	Comments
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</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?	Became law on 29 June 2023.	

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 October 2023	Comments
		<p>Brexit Report published in January 2022 and the Government's announcement of the 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</p>				

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 October 2023	Comments
		departing from retained case law; (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; (e) Repeal directly effective EU law rights and obligations in UK law by the end of 2023; (f) Abolish general principles of EU law in UK law by the end of 2023;				

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 October 2023	Comments
		(g) Establish a new priority rule requiring retained direct EU 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.				

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 October 2023	Comments
Artificial Intelligence (Regulation and Workers' Rights) Bill	Legislative change (bill)	<p>Regulation of how AI may be used in employment contexts. Bill seeks to forge a people-focused and rights-based approach which will guarantee that workers are protected in all decisions made by employers and the Government.</p> <p>This may impact the use of AI by the notarial profession and their support staff. It may have broader implications which need to be reflected in the Code of</p>	The Bill was introduced on 18 May 2023.	Keep an eye on the progress of the Bill.	The 1 st reading in the Commons has occurred. Second reading is scheduled for 24 November.	As a private members bill it is unlikely to become law. However, such private bills can sometimes be picked up by Government policy and later be incorporated into law. The Government's response to this bill will be worthy of watching.

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 October 2023	Comments
		Practice for Notaries.				
Power of Attorneys Act 2023	Legislative change	May reduce work available to notaries. The Act allows Chartered Legal Executives to also certify PoA.	Royal assent occurred on 18 September.	Monitor area.	Act received Royal Assent in September 2023.	