



Horizon scanning – update January 2024

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

Contents

LSB preparing a project on rule of law and professional ethics	4
“Failure to prevent” fraud, false accounting and money laundering could become a criminal offence	6
Department of Trade and Industry’s review of whistleblowing laws.....	7
Independent Review of Legal Services Regulation led by Professor Stephen Mayson.....	11
Ministers have launched an expert industry working group to boost public confidence in e-signatures.....	13
Review of Human Rights Act 1998.....	19
Data Protection and Digital Information (No. 2) Bill.....	21
Retained EU Law (Revocation and Reform) Bill.....	28
Enhanced protection from redundancy.....	33

Horizon scanning						
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<p>LSB preparing a project on rule of law and professional ethics</p>	<p>Policy Rule of law</p>	<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 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</p>	<p>This is part of the LSB’s workstream for 2023/4</p>	<p>Keep a watching brief</p>	<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” <p>The LSB completed their call for evidence on the NDA tranche of work.¹</p>	<p>This project was quite heavily criticised by several of the professional bodies/regulators during the Justice Committee hearing in December 2023.</p>
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Horizon scanning						
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		<p>to uphold the rule of law, by regulated individuals and organisations</p> <p>Ensure that the role of lawyers in upholding the rule of law is embedded in workplace culture to facilitate professional ethical decision-making.</p>				

¹¹ [Misuse of non-disclosure agreements: Call for evidence - The Legal Services Board](#)

<p>“Failure to prevent” fraud, false accounting and money laundering could become a criminal offence</p>	<p>Legislative Government said in January 2023 that it intends 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</p>	<p>This could widen the criminal liability of notaries and others not only in the area of AML but also in relation to fraud and false accounting. Additionally, it creates new regulatory objectives under the Legal Services Act which directly apply to the Faculty Office.</p>	<p>Having been in train, now immediate</p>	<p>Give scrutiny to the law change</p>	<p>The Economic Crime and Corporate Transparency Act 2023 was given royal assent on the 5 July 2023.</p> <p>The new offence is contained in sections 119-206 (reproduced separately) but has not yet been commenced.</p>	<p>Now that the Bill has been made law, this new provision and indeed the Act as a whole deserves careful scrutiny. CPE for notaries on the new AML provisions of the Act will probably be required.</p>
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<p>Department of Trade and Industry's review of whistleblowing laws</p>	<p>Review which could shape future laws</p>	<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, employers and regulators.</p> <p>Whistleblowing refers to when a worker makes a disclosure of information which they reasonably believe shows wrongdoing or</p>	<p>The evidence gathering stage of the review will conclude in 2023.</p>	<p>Keep a watching brief</p>	<p>The review was launched on 23 February 2023.</p> <p>The terms of reference of the review were published in October 2023.²</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 prescribed persons respond to whistleblowing disclosures, including best practice.
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Horizon scanning						
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		<p>someone covering up wrongdoing. Workers who blow the whistle are entitled to protections, which were introduced through the Public Interest Disclosure Act 1998 (PIDA).</p> <p>For authorities tackling corruption, fraud and other economic crime, whistleblowing is</p>				

² [Review of the whistleblowing framework: terms of reference - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Horizon scanning						
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		<p>a crucial source of evidence, as these activities and their perpetrators can only be 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>				

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		Whistleblowing is a vital tool in tackling economic crime and unsafe working conditions, and the UK was one of the first countries in the world to develop a whistleblowing framework.				

<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 legal services and a system of compulsory dispute resolution for complaints</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>It is also implicit in the April 2022 paper that legal services legislation should be consolidated.</p>	<p>Keep a watching brief</p>	<p>The Solicitors Regulation Authority is consulting on how it intends on regulating licensed conveyancers. This closed on 22 November.</p> <p>A separate consultation run by CILEX addresses their case for re-delegating the regulation of its members to the SRA. This consultation ran 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>	
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		Note Professor Mayson's criticism in August 2022 of the LSB's ongoing competence programme			The outcome of these consultations have not yet been published.	

<p>Ministers have launched an expert industry working group to boost public confidence in e-signatures.</p>	<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</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</p>	<p>Keep a watching brief</p> <p>The best practice 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 IWG's Final Report was published in February 2023. Its recommendations are contained in column 3.</p>	<p>May have an impact on guidance the Faculty Office gives around eg remote notarisation and will effect practice 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>
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		<p>to look into best practice in this area.</p> <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</p>	<p>recommendations 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 			

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		<p>transactions and how best to protect signatories from fraud.</p> <p>This has led to, amongst other initiatives, the formation of the 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</p>	<ul style="list-style-type: none"> Self-certification involving ICO/DSIT or another government body working as a moderator that: <ol style="list-style-type: none"> develops a set of signing platform 'basic performance standards'; publishes the standards on a 'dedicated/go-to' webpage that is easily locatable for prospective platform users; invites signing platforms to confirm whether 			

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		(Disclosure of Information) (Identity Verification Services) Regulations 2023, the Electronic Trade Documents Bill	they meet the standards; (4) publishes a list of signing platforms that submit self-certifications on a go-to webpage; (5) confirms listings annually. • Work towards uniformity of approach to e-signing and online identification by way of an international standard or mutual recognition • Government consideration of			

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			<p>wholesale adoption of e-signatures for all purposes, and investigation into modernising any area where wet ink signatures are mandated</p> <ul style="list-style-type: none"> • Review by the Law Commission of the law of deeds with a view to the abolition of at least some of their current requirements • A review of the law of statutory declarations • The establishment by 			

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			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 keep abreast of developments as they occur.			

<p>Review of Human Rights Act 1998</p>	<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>(c) improving access to justice;</p> <p>(g) increasing public understanding of the citizen's legal rights and duties;</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>	<p>2-5 years</p>	<p>Keep a watching brief</p>	<p>Bill of Rights withdrawn on 27 June 2023.</p>	<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 compatible with the Convention rights (see paragraph 2 of Schedule 5, which</p>
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						<p>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).</p>

<p>Data Protection and Digital Information (No. 2) Bill</p>	<p>Legislative change</p>	<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</p>	<p>The Bill was introduced into Parliament on 8 March 2023 and replaced an earlier (No 1) Bill which has been withdrawn.</p>	<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>	<p>This is a new Bill, replacing an earlier one, but apparently substantially the same. It is now at the Committee Stage in the House of Lords.</p>	<p>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 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</p>
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		<p>memorandum states 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</p>				<p>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 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</p>

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		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;				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 services meet certain criteria - standards and technical specifications - to allow for interoperability across the UK economy.

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		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 the implementation of agreements on sharing information for law enforcement				

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		<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 enforcement</p>				

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<p>Retained EU Law (Revocation and Reform) Bill</p>	<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</p>	<p>Under the proposals by end of 2023 all retained EU law will be repealed unless enacted in UK law before then.</p>	<p>Keep a watching brief and ask the Societies or the Advisory Board whether the Bill is likely to have any unintended consequences for notaries?</p>	<p>Became law on 29 June 2023.</p>	
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		<p>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>				

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		(c) Facilitate domestic courts 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				

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		<p>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 legislation (RDEUL) to be interpreted and applied consistently with domestic legislation;</p> <p>(h) Downgrade the status of RDEUL for the purpose of</p>				

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		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.				

<p>Enhanced protection from redundancy</p>	<p>The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 have been laid before Parliament.</p> <p>These extend the period of special protection from redundancy for employees who are on maternity leave, adoption leave or those on shared parental leave. It brings the</p>	<p>This is likely to only affect notaries working in firms (i.e., scrivener notaries). This provides enhanced employee protections and this may be beneficial for improving the diversity of the profession (and preventing attrition associated with taking parental leave).</p>	<p>The extension of the protected period, to cover a period of time after leave has been taken, will apply to any maternity and adoption leave ending on, or after, 6 April 2024. This will also apply to any shared parental leave starting on, or after, 6 April 2024</p>	<p>No action required – monitor for any implications.</p>	<p>Act has received royal assent – effect of the Act likely will not come in until after 6 April 2024 when potential claims may begin to arise.</p>	
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	Protection from Redundancy (Pregnancy and Family Leave) Act 2023 into operation.					