A photograph of a sailboat's deck and rigging, viewed from a low angle looking towards the bow. The boat has a white hull with red stripes and a wooden deck. A large white sail is visible on the left, and a red cover is on the right. The boat is on a blue sea under a clear blue sky.

UK LEGAL HIGHLIGHTS 2014 AND BEYOND

Welcome to our 2014 edition of UK Legal Highlights. This publication is a reminder of some of the most important and significant developments DLA Piper reported in 2014, along with some forthcoming developments to look out for in 2015 and beyond. For further information about DLA Piper, see our [website](#).

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BANKING AND FINANCIAL SERVICES



2014

- [Exchange International: financial services regulation newsletter: Issue 24](#) – October 2014
- [Material adverse change clauses](#) – October 2014
- [Global Financial Markets Insight: Issue 4](#) – Q3 2014
- [The new LMA intercreditor agreement](#) – June 2014
- [Ian Hannam: much needed clarity on market abuse?](#) June 2014
- [Exchange International: financial services regulation newsletter: Issue 22](#) – April 2014
- [Global Financial Markets Insight: Issue 3](#) – Q2 2014
- [DLA Piper launches European Acquisition Finance Debt Report 2014](#) – February 2014

2015 and beyond

EU reform of the audit market

The EU has published a Directive (2014/56/EU) and a Regulation ((EU) 537/2014) reforming the rules governing the statutory audit market. The Directive amends the existing Statutory Audit Directive (2006/43/EC) and the Regulation introduces specific requirements regarding the statutory audit of public-interest entities (PIEs).

The amending Directive and the Regulation entered into force on 16 June 2014 and both are expected to be implemented two years after publication on 17 June 2016, although some specific provisions will become applicable later.

The primary objective of the reforms is to increase the quality of statutory audit. The measures are designed to introduce stronger requirements for independence and greater diversity in the highly-concentrated statutory audit market. By way of example, amongst the changes to the rules governing the statutory audit market will be:

- the audit report is intended to be more informative for investors with more information included instead of a standardised opinion on the financial statements;
- creation of a single market for statutory audit services and introduction of a co-ordinated approach to the supervision of auditors in the EU;
- strengthening the sanctioning regime;
- prohibiting so-called 'big-four only' contractual clauses restricting companies' choice of an audit firm (this measure will apply from 17 June 2017); and
- introducing the mandatory rotation of statutory auditors and audit firms every 10 years for PIEs (this change is subject to specific and calibrated transitional periods to avoid a 'cliff-edge' effect on the audit market when the new rules apply).

The Department for Business, Innovation and Skills (BIS) published a consultation paper on 1 September 2014. The consultation has now closed and the Government's response is awaited. Alongside the BIS consultation, the Financial Reporting Council is consulting on the implications for accounting standards of the new legislative requirements.

As a result of the impending changes to the law relating to auditors, the Loan Market Association has amended the provisions relating to choice of auditor in its standard facility documentation to take account of this EU legislation.

COMPETITION

2014

- [Antitrust Matters](#) – November 2014
- [Antitrust Matters](#) – April 2014



CONSTRUCTION AND ENGINEERING

2014

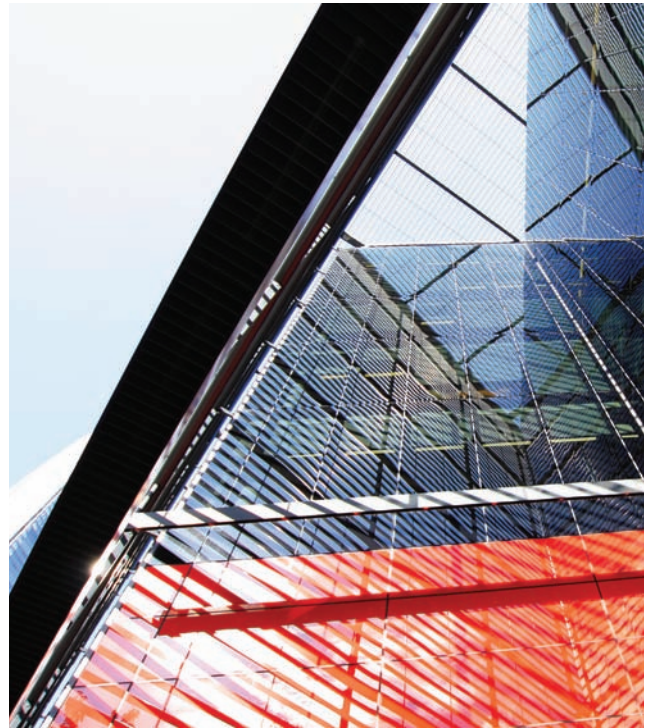
- **Obtaining bonds and collateral warranties** – November 2014
- **Caps on liability: how are they applied by the courts?** March 2014

2015 and beyond

Reform of the Construction (Design and Management) Regulations 2007 (CDM)

The construction industry employs approximately two million people in the UK. Despite considerable improvements in culture, processes and risk controls, it remains one of the most dangerous industries to work in. The resulting deaths, major accidents and cases of occupationally-caused or exacerbated ill health are largely preventable.

Several sets of health and safety regulations apply to construction work. However, the key set is the Construction (Design and Management) Regulations which defines a system of management roles and processes and prescribes a large number of practical health and safety precautions and welfare requirements for construction projects.



A consultation paper was published in 2014. New regulations that will replace CDM 2007 are expected within the new few weeks and to take effect in April.

CORPORATE



2014

- **Changes to the Listing Rules** – May 2014
- **Changes to the AIM Rules for companies** – May 2014
- **Transparency and trust: proposed company law changes** – April 2014

2015 and beyond

Company and business names

The Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014 have been passed and will come into effect on 31 January 2015. These reduce the list of sensitive words and expressions which companies, LLPs and businesses need approval to use in their name. 26 words have been deleted, including “Authority”, “European”, “Group”, “Holding”, “International”, “National” and “United Kingdom”.

Other regulations are going through Parliament to make further changes to company names and trading disclosure requirements. These:

- extend the list of characters that can be used in names;
- changes to the “same name” rules, including a reduction in the list of words to be disregarded when considering if one name is the “same as” another. Words proposed to be deleted include “Export”, “Group”, “Holdings”, “Imports”, “International” and “Services”; and
- amend the trading disclosures requirements, so that if at least six companies share an office, place or location, their registered names may be held and made available for inspection at that venue (rather than having to be displayed at all times).

The final regulations should also come into effect on 31 January 2015.

Register of people with significant control

The Small Business, Enterprise and Employment Bill proposes the introduction of a new publicly accessible central register of people with significant control (“PSC”) over UK companies (other than main market and AIM companies). PSCs are individuals who ultimately own or control more than 25% of the company’s shares or voting rights, or who otherwise exercise control over it or its management.

The public register will be maintained by Companies House, with companies required to provide the necessary information and update it at least every 12 months. Companies will have to maintain a register of PSCs as part of their statutory books (although private companies will have the option to dispense with this and simply ensure that the information held by Companies House is always kept up to date). Companies will be required to take reasonable steps to identify their PSCs and will be given rights to obtain information from third parties to help them do so.

The Bill is expected to be passed in March 2015. Secondary legislation and associated government guidance will follow, with the new requirements likely to come into force before the end of 2016.

Company house filings and corporate administration

The Government is proposing to simplify filing requirements at Companies House and private companies’ record keeping. Proposals include:

- the replacement of the annual return with a “check and confirm” system that gives companies greater flexibility in when they file a return at Companies House;
- removing the need for directors to consent to act and providing a new means of resolving disputes about directors’ appointments;
- simplifying statements of capital, so that they just have to state the aggregate amount unpaid on the company’s shares;
- enabling companies to elect to receive all correspondence and notices from Companies House electronically;
- enabling private companies to dispense with keeping their own statutory books if all the information is provided to and kept updated at Companies House; and
- reducing the strike off period down from approximately six months to three months.

Draft legislation has been included in the Small Business, Enterprise and Employment Bill, which is expected to be passed in March 2015. Secondary legislation will be required to implement the changes, which are likely to come into effect on a staggered basis before the end of 2016.

Corporate directors

The Small Business, Enterprise and Employment Bill includes proposals to prohibit the use of corporate directors (ie one company being a director of another), with limited exceptions. BIS is currently consulting on the extent of these exceptions. In summary, BIS is considering exceptions for the following:

- (a) companies listed on a UK or overseas regulated market and specified group members;
- (b) companies listed on other UK prescribed markets (such as AIM) and specified group members;
- (c) possibly, non-listed public companies, large non-listed public companies or just large non-listed public companies in a group, plus specified group members;

- (d) possibly, large private companies or just large private companies in a group, plus possibly specified group members; and
- (e) corporate trustees of pension funds.

Where an exception may extend to group members, BIS is seeking views on whether this should be limited to (i) dormant subsidiaries; (ii) wholly owned subsidiaries; (iii) subsidiaries or (iv) subsidiary undertakings. In relation to group members, it is proposing that the corporate director should be another member of the group whose directors are all natural persons.

The consultation closes on 8 January 2015.

The Bill is expected to be passed in March 2015, with implementation likely to be before the end of 2015 (with a 12 month grace period for existing corporate directors).

FTSE 350 company audits

The Competition Commission's October 2013 report into the large company audit market found changes were necessary. Its successor, the Competition & Markets

Authority, has made an order to implement some of those changes, including (a) a mandatory requirement to put the audit out to competitive tender at least every 10 years; (b) if the audit has not been put out to tender in the last five years, a requirement to state in the company's audit committee report the financial year in which the company intends to complete a competitive tender process and why this period is in the best interests of the members; and (c) measures to increase the role of the audit committee (eg only the audit committee may (i) agree audit fees and the scope of audit work, (ii) initiate and supervise tender processes, (iii) make recommendations for the appointment of auditors following a tender process, and (iv) authorise auditors to provide any non-audit services).

The order applies to companies from the date on which they enter the FTSE 100 or FTSE 250 index until the date on which they cease to be a FTSE 350 company. It comes into force on 1 January 2015 in relation to financial years beginning or on after that date.

CORPORATE CRIME

2014

- [Top ten tips for countering small bribes](#) – September 2014



DATA PROTECTION

2014

- [Big data, big privacy issues](#) – October 2014
- [Update on Google's right to be forgotten](#) – June 2014
- [European Parliament passes the Data Protection Regulation](#) – March 2014
- [EU Commissioner Reding introduces eight principles of data protection](#) – January 2014



2015 and beyond

New EU data protection framework

In January 2012 the European Commission published proposals for a reform of EU data protection law: draft General Protection Regulation (COM (12) 11 final) 25 January 2012. The European Parliament voted in plenary in favour of the proposals on 12 March 2014. The Regulation is now being debated by the Council, and although timescales are difficult to predict it is likely to be passed next year and in force by the end of 2017.

Proposed Model Clauses for transfer of personal data from EEA data processors to non-EEA sub-processors

The Article 29 Working Party has proposed a new set of draft Model Clauses. The next stage is to see to what extent they are/are not adopted by the European Commission.

EMPLOYMENT

2014

Be Aware: DLA Piper's flagship employment law website, regularly updated with our 'On the Horizon' employment law reform tracker with its handy traffic-light system that enables you to keep pace with the Government's proposals and progress for employment law reform. You can also view the current and future statutory rates and limits on the site. Don't forget you can ensure that you are fully up-to-date with the latest content on the Be Aware website by subscribing to the RSS feed.

- **Be Aware 2014 Review of the Year** – December 2014
- **Milestone date for the UK's working parents:**
1 December 2014
- **Holiday pay: the verdict** – November 2014

2015 and beyond

Collective redundancy consultation: ECJ hearing

The *USDAW v Ethel Austin Ltd and others* ("Woolworths") case (which will decide at what point a requirement to inform and consult with employees

in the case of collective redundancies is triggered) was referred to the ECJ on 22 January this year and heard on 20 November.

The *Woolworths* case, as it stands, changed the law on collective consultation in a redundancy situation involving 20 or more employees, when the EAT ruled that the words "at one establishment" in TULRCA 1992 are to be disregarded; thus where any 20 or more employees in a single business are made redundant it becomes incumbent upon the employer to inform and consult with employees in accordance with TULRCA 1992. After this ruling the Secretary of State for the Department of Business, Innovation and Skills (as a co-respondent) applied for, and was granted, permission to appeal. The Court of Appeal ruled that this was a matter for the ECJ and referred the case. The case was heard with the Northern Irish case of *Lyttle & ors v Bluebird UK* and a Spanish case *Rabal Canas*, which were also referred to the ECJ on a similar point.

ENERGY

2014

- **Shifting focus for the solar PV market** – May 2014



ENVIRONMENT

2014

- [Carbon Matters](#) – Autumn 2014

2015 and beyond

[Review of Local Air Quality Management in England](#)

Defra consulted on a review of the Local Air Quality Management (LAQM) system during 2013. From the responses received, there were no clear favourites among the four options, with many calling for an amalgamation of the best elements of each option or putting forward alternatives. Defra has been exploring all alternatives with key delivery partners, the outcome of which will inform a second consultation on regulatory changes and guidance due for publication in late 2014/early 2015. Changes to the LAQM system are likely to be implemented in mid-late 2015.



GAMBLING

2014

- [High Court backs the Government over POC legislation](#) – October 2014
- [Gambling Commission launches far-reaching consultation on social responsibility](#) – August 2014
- [Commission recommends principles to Member States to promote effective protection of consumers](#) – July 2014
- [Detailed studies of the relationship between sport and gambling published](#) – May 2014



GOVERNMENT CONTRACTING

2014

- [Procurement Pulse: the draft Public Contracts Regulations 2015](#) – September 2014
- [Defence Reform Act 2014 and associated Regulations](#) – September 2014
- [Procurement Pulse: the Procurement Reform \(Scotland\) Act 2014](#) – June 2014

2015 and beyond

[EU Directive on the award of concessions contracts](#)

This Directive regulates procurement by public sector bodies and utilities of both service (exempt from current procurement rules) and works (currently subject to a light touch procurement regime) concessions. It introduces a “procedural guarantee” process intended to ensure that concession contracts are procured in accordance with the TFEU (Treaty on

the Functioning of the European Union) general principles of transparency, and ensuring equal treatment of tenderers. Enforcement of its terms will be subject to the existing Remedies Directive. The Directive came into force on 17 April 2014, and Member States have two years from that date to implement its provisions into national law.

The Cabinet Office consultation document on the transposition of Directive 2014/25 – the public sector Directive – was published on 19 September 2014, together with draft Public Contracts Regulations 2015. The document explains that the Cabinet Office will commence implementation of the concessions Directive, after it has finalised its approach to the Public Contracts Regulations. The consultation closed on 17 October 2014, and as at 30 November 2014, the Cabinet Office is still considering responses received.

EU public procurement (classical) Directive

This Directive is the result of a wholesale efficiency review of EU procurement law. The Directive introduces the Competitive Procedure with Negotiation (CPN), which replaces the negotiated procedure with advertisement, and the Innovation Partnership – intended to provide a route to market for any “product, service or works” which is still at R&D stage. Revised time scales and an enhanced role for the Prior Information Notice are intended to introduce efficiencies into the procurement process. New grounds for mandatory and discretionary exclusion of bidders, and an obligation on Member States to determine a maximum period for exclusion, will introduce fresh challenges to the prequalification process. The Directive codifies existing case law in areas such as public: public contracting, and contract change – listing those changes which will not constitute grounds for a further procurement process. It also sets out rules on best practice approaches to, for example, conflicts of interest and preliminary market engagement.

The Cabinet Office consultation document on the transposition of Directive 2014/25 – the public sector Directive – was published on 19 September 2014, together with draft Public Contracts Regulations 2015. The consultation set out the Government’s preferred approach to policy choices left open to Member States in the way they implement the Directive. The consultation closed on 17 October 2014, and as at 30 November 2014, the Cabinet Office is still considering responses received.

EU utilities procurement Directive

This Directive is the result of a wholesale efficiency review of EU procurement law. The Directive introduces the Competitive Dialogue into the rules regulating utilities procurement processes, and the Innovation Partnership – intended to provide a route to market for any “product, service or works” which is still at R&D stage. New grounds for mandatory and discretionary exclusion of bidders, and an obligation on Member States to determine a maximum period for exclusion will introduce new challenges to the prequalification process. The Directive codifies existing case law in areas such as public: public contracting, and contract change – listing those changes which will not constitute grounds for a further procurement process. It also sets out rules on best practice approaches to, for example, conflicts of interest and preliminary market engagement.

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HEALTH AND SAFETY

2014

- [Tougher penalties for corporate manslaughter and health and safety offences proposed](#) – November 2014
- [Sentencing Council proposes new fining regime for food safety and food hygiene offences](#) – November 2014
- [Noise surveillance](#) – August 2014
- [SHE Matters](#) – Summer 2014
- [Food and Hospitality Bites: Issue 1](#) – Spring 2014



HOSPITALITY AND LEISURE

2014

- [Food and Hospitality Bites: Issue 2](#) – Autumn 2014
- [Food and Hospitality Bites: Issue 1](#) – Spring 2014



INTELLECTUAL PROPERTY

2014

- [Bestwater: CJEU considers embedded links to copyright content \(again\)](#) – November 2014
- [No surprises as CJEU upholds website blocking injunctions](#) – April 2014
- [IPO guidance on copyright reforms](#) – April 2014
- [Svensson: when is it OK to link to third party content?](#) February 2014
- [Collective Rights Management Directive adopted by European Parliament](#) – February 2014
- [Greater protection against fake goods in EU as of 1 January 2014](#) – December 2013

2015 and beyond

Agreement on a Unified Patent Court

The EU is on the verge of introducing a unitary patent and a Unified Patent Court for the pan-European resolution of disputes of European and unitary patents. The Agreement on the Unified Patent Court was

signed by 25 Member States in February 2013. It will enter into force once ratified by at least 13 Member States, including the UK, France and Germany. It is anticipated that the unitary patent and UPC system could come into effect in 2016. The draft Rules of Procedure (now in the 17th draft) are almost complete and work continues apace as to the court facilities, IT support and appointment and training of judges. Progress on one critical factor however remains slow, namely that of the fees to be charged for the grant and renewal of unitary patents as well as for opting out of the UPC litigation system in the initial seven year transitional period. The amount of fees is of course a critical factor as, to be effective, they must be set at a level which is competitive to the fees charged by the European Patent Office in the case where a European patent is validated in say five or six EPC countries.

It is expected that the UK will ratify the UPC Agreement shortly before the next General Election in May 2015.

LITIGATION AND DISPUTE RESOLUTION

2014

- [Banking Disputes Quarterly](#) – November 2014
- [ABN Amro Bank NV v Bathurst Regional Council](#) – August 2014

Arbitration

- [International Arbitration Newsletter](#) – Q3 2014

2015 and beyond

EU Regulation 1215/2012 Brussels I Recast

Reform of the Brussels I Regulation on recognition and enforcement of foreign judgments will come into force in January 2015. In relation to recognition, this continues to be automatic but according to Art. 36.2 any interested party may request a resolution stating that no grounds of refusal are present in the instant case. In relation to enforcement, the exequatur will be abolished, meaning the removal of the procedure to declare a foreign judgment enforceable in another Member State. Declaration of enforceability will emanate from a court of the Member State of origin.

European Account Preservation Order: recovery of cross-border debts

An EU regulation which aims to make it easier to recover cross-border debts by enabling creditors to freeze some or all of the funds within any bank account held by a debtor located within the EU.

The Regulation entered into force on 18 July 2014 and will apply from 18 January 2017, with the exception of Article 50 (which deals with information to be provided by Member States) which will apply from 18 July 2016. The UK and Denmark are currently opted out. One of the reasons which prompted the UK to opt out of the legislation was the Government's concern that the freezing of funds, without the protections which would be required in England to obtain a similar freezing order, could have a detrimental impact on steps being taken to rescue financially distressed businesses.

Collective redress

The EU recommends that Member States should have in place a mechanism for private individuals and entities to seek collective redress to claim damages and cease infringements.

On 11 June 2013, the European Commission adopted a Proposal for a Directive on certain rules governing

actions for damages under national law for infringements of the competition law provisions of the Member States and of the EU and a Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under EU Law.

On 26 July 2013, the European Commission's Recommendation on common principles for injunctive and compensatory collective redress mechanisms was published in the Official Journal (OJ 2013 L201/60).

The Commission recommends that Member States should implement the principles set out in the Recommendation in national collective redress systems by 26 July 2015 at the latest. Member States are asked to provide annual statistics to the Commission. The Commission will assess the implementation of the Recommendation on the basis of practical experience by 26 July 2017 at the latest and consider whether further measures to consolidate and strengthen the approach reflected in the Recommendation should be proposed.

Aviation

2014

- [Case update: Dawson v Thomson Airways Limited](#) – June 2014
- [Out of the extraordinary: the Court of Appeal's judgment in Huzar v Jet2.com](#) – June 2014
- [The Montreal Convention 1999: the rock on which a claim for injury to feelings foundered](#) – March 2014



2015 and beyond

Use of the UK's existing airport capacity: call for evidence

In this discussion paper, the Airports Commission asked for feedback from stakeholders and members of the public on the issues affecting the use of the UK's existing airports capacity. The Airports Commission received 92 technical responses to the 'Use of the UK's existing airport capacity' consultation. These have been made available. A further 41 non-technical responses were received but have not been published. The Airports Commission will respond to the issues raised in this consultation in its final report, due by Summer 2015.

Insurance/Reinsurance

2014

- Follow the Settlements Clauses revisited – July 2014
- Re-reading the Riot Act (again): police liable for consequential losses under the Riot (Damages) Act 1886 – May 2014

2015 and beyond

Insurance Bill

A Bill to make new provision about insurance contracts; replacing the duty of disclosure with a duty to make a fair presentation, introducing proportionate remedies for breach of the duty to make a fair presentation, outlawing "basis of contract clauses", amending the law relating to breach of warranties, and clarifying the consequences of fraudulent claims. The Bill also fixes shortcomings in the Third Parties (Rights against Insurers) Act 2010 (which failed to take account of certain insolvency situations) thereby allowing it to become law after a hiatus of more than four years.

The Bill has been committed to a Special Public Bill Committee and is continuing to progress through Parliament.

LITIGATION AND DISPUTE RESOLUTION: SCOTLAND

2015 and beyond

Smith Commission: further devolution for Scotland

On 27 November 2014, the final report of the Smith Commission on further devolution of powers to the Scottish Parliament was published. The Heads of Agreement includes the following recommendations relating to competition policy and regulation.

- Competition policy. Scottish Ministers already have the ability to request that a UK regulatory body carry out a market study of their area of responsibility to examine particular competition issues arising in Scotland. Scottish Ministers will also have the power to require the Competition and Markets Authority (CMA) to carry out a full second phase market investigation (in the same way as UK Ministers), after such an initial study has been completed, in relation to particular competition issues arising in Scotland (see Practice note, Market investigations under the Enterprise Act 2002: Ministerial power to make references).
- Consumer protection. Consumer advocacy and advice will be devolved to the Scottish Parliament.

- Regulation of telecommunications and postal services. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for Ofcom with respect to its activities in Scotland. Scottish Ministers will have the power to appoint a Scottish member to the Ofcom Board who is capable of representing the interests of Scotland. Ofcom will lay its annual report



and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.

- Energy market regulation and renewables. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which Ofgem must have due regard. Ofgem will also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.



- Transport. The power will be devolved to the Scottish Government to allow public sector operators to bid for rail franchises funded and specified by Scottish Ministers.

The UK Government has undertaken to produce draft clauses implementing the consensus set out in this report. It has stated that it will publish those clauses by 25 January 2015.

Fatal Accident Inquiries legislation reform

The Scottish Government's consultation on proposals to reform Fatal Accident Inquiries legislation was published on 1 July 2014. The consultation sought views on proposals arising from recommendations made by Lord Cullen in his 2009 Review of Fatal Accident Inquiry legislation, which intend to help modernise the way in which fatal accident inquiries are handled in Scotland. The consultation invited views on the mandatory categories of FAIs, deaths abroad, delays, FAI accommodation, sheriffs' recommendations and legal aid. The consultation closed on 9 September 2014 and

58 responses were received: 50 from groups, including the legal profession, insurance industry, public bodies, local authorities and unions; and 8 from individuals. A report analysing 57 of these responses was published on 21 November 2014, which includes comments about impact. In response to the consultation, a prospective Bill on Fatal Accident Inquiries will be introduced by the Scottish Government during the current Parliamentary session.

Court reform

The Court Reform (Scotland) Act received Royal Assent on 11 November 2014. The headline reforms are detailed below.

The privative jurisdiction of the Sheriff Court in civil proceedings will increase from £5,000 to £100,000. This means any actions for under £100,000 in value must be raised in the Sheriff Court. The Bill initially sought to have the limit extended to £150,000.

Sheriffs will have power to grant interdicts which are enforceable out with the sheriffdom that granted the interdict.

A new post of summary sheriff will be created to hear low value civil cases as well as summary criminal matters.

A Sheriff Appeal Court will be created to deal with civil appeals from the Sheriff Courts and summary criminal appeals from sheriff and justice of the peace courts. This new body will be staffed with Appeal Sheriffs made up of the Sheriffs Principal from the six Sheriffdoms in Scotland. It will be able to sit at any Sheriff Court in Scotland.

The Lord President may designate specialist sheriffs and specialist summary sheriffs in areas of law such as commercial law and personal injury.

A new three-month time limit and permission stage is introduced for bringing judicial reviews in the Court of Session.

A new 'Simple Procedure' for actions of £5,000 or less will be introduced to replace the Small Claims and Summary Cause procedures.

New procedures for bringing appeals to the Inner House of the Court of Session, and for some appeals to the UK Supreme Court are introduced. A single Inner House judge may grant leave to appeal, and some appeals to the UK Supreme Court will require the permission of the Inner House, or the Supreme Court if permission is refused by the Inner House.

Further regulations will be required to implement the reforms, however these are unlikely before Autumn 2015.

MANUFACTURING

2014

- [Making It Globally: our first manufacturing sector report which is based on interviews with senior decision makers at large UK manufacturers](#) – August 2014



MEDIA, SPORT AND ENTERTAINMENT

2014

- [FIFA to ban third-party ownership of players](#) – September 2014
- [Video Recordings Act 1984 \(Exempted Video Works\) Regulations 2014](#) – August 2014
- [UK Anti-Doping secure first lifetime ban](#) – August 2014
- [Amendments to Public Lending Right Scheme](#) – June 2014
- [Betting ban ratified by FA shareholders](#) – May 2014
- [Privacy damages awarded to Weller family](#) – April 2014
- [OFT principles for online and in-app games now in force](#) – April 2014
- [Video games tax credit finally receives state aid approval](#) – March 2014

- [New controls on alcohol sponsorship](#) – February 2014
- [BBFC issues new Classification Guidelines](#) – January 2014

2015 and beyond

Horserace Betting Levy

The results are awaited of the second of two consultations on the future of the Horserace Betting Levy. The first consultation, which is now closed, concerned the mechanics of extending the Levy to offshore remote betting operators. The second consultation, which closed on 5 November 2014, seeks views on the merits of reforming the existing Levy, or replacing the Levy with a bespoke statutory framework.

PENSIONS

2014

- [Pensions News](#) – October 2014
- [Pensions News](#) – September 2014
- [Pensions News](#) – August 2014
- [Pensions Alert: response to consultation on April 2015 DC reforms](#) – July 2014

2015 and beyond

Defined Contribution reform in April 2015

In the Budget 2014, far-reaching reform was announced which, from April 2015, will provide



members with complete flexibility as to how to access their DC pension savings once they reach the minimum pension age, which will initially be 55 but will rise to 57 in 2028 and thereafter track ten years below State Pension Age. The Government will also ensure that everyone able to take advantage of these flexibilities can access free and impartial guidance on their choices as they approach retirement.

A consultation on the detail of the proposals was published in March 2014 and the response followed on 21 July. Following a technical consultation on draft legislation, the Taxation of Pensions Bill (which contains the amendments required to the tax legislation to give effect to the reforms) was introduced to Parliament on 14 October 2014. Legislation in relation to the guidance guarantee is included in a separate Bill (the Pension Schemes Bill) which is also before Parliament.

The implementation date is 6 April 2015.

Charges in Defined Contribution schemes

From April 2015, a charge cap will be introduced on default funds of DC qualifying schemes, set at 0.75% of funds under management and covering all member-borne charges and deductions excluding transaction costs. A ban on consultancy charges in qualifying workplace personal pension schemes will also apply from April 2015.



Looking further ahead, a ban on member-borne commission payments, consultancy charges and Active Member Discounts in qualifying schemes is proposed to follow from April 2016.

Draft regulations were published for consultation in October 2014 and are expected to be laid before Parliament in early 2015. The date of implementation is 6 April 2015, with further dates to follow as noted above.



Defined Contribution governance standards

It is proposed that statutory governance standards will come into force in April 2015 which will apply to DC schemes and to schemes which provide DC benefits (although schemes where the only DC benefits are provided by Additional Voluntary Contributions will be excluded). The draft governance standards cover issues such as default arrangements, financial transactions, assessing value of costs and charges, and producing an annual statement signed off by the chair of trustees explaining compliance with these standards.

The Department for Work and Pensions published a consultation on the draft regulations on 17 October 2014. The consultation closed on 14 November and the DWP intends to lay the regulations before Parliament in early 2015.

The implementation date is 6 April 2015.

End of contracting-out

The Pensions Act 2014 contains provisions to abolish contracting-out in April 2016. This includes provision so that employers can change their scheme design without the consent of the trustees to adjust for the additional costs which will arise when contracting-out ceases. A consultation was published on 8 May on this amendment power and on regulations which will govern schemes that were previously contracted-out. The consultation closed on 2 July 2014.

The implementation date is 6 April 2016.

REAL ESTATE

2014

- [REALWORLD: instant answers to real estate questions 24/7](#)
- [Hilton on the hook: no release for guarantor](#) – September 2014
- [Real Estate Gazette: focus on logistics](#) – September 2014
- [Real Estate Gazette: focus on infrastructure](#) – May 2014
- [Student accommodation update: Legionella](#) – May 2014
- [Re-reading the Riot Act \(again\)](#) – May 2014
- [Money back – guaranteed?](#) – May 2014
- [Towards a greener future](#) – March 2014
- [Real estate European sustainability campaign](#) – March 2014
- [Life-cycle](#) – March 2014
- [Appeal Court re-writes rules relating to insolvent tenants](#) – February 2014 (NB in October 2014 the Supreme Court refused permission for this decision to be appealed)

2015 and beyond

Buildings with poor energy efficiency ratings to be unlettable

Section 49 of the Energy Act 2011, which is currently not in force, provides that from no later than 1 April 2018, it will be unlawful to rent out residential or business premises that do not reach a minimum energy efficiency standard. Although the detailed regulations have not yet been published, the Department for

Energy and Climate Change (DECC) has already indicated that the lowest acceptable EPC rating is likely to be E. Once this section comes into force, landlords will not be able to let lower rated premises until appropriate energy efficiency improvements have been made.

Fracking: drilling under properties

In response to the consultation on proposals for underground access for the extraction of gas, oil and geothermal energy, the Department of Energy and Climate Change (DECC) concluded that legislating to give drilling companies access to the subsoil more than 300 metres deep remains the right approach and that no issues have been identified that would mean the policy approach is not the best available solution. Relevant provisions have been included in the Infrastructure Bill currently before parliament.



REAL ESTATE: SCOTLAND

2014

- [Land and Buildings Transaction Tax: residential and non-residential property](#) – October 2014
- [New Scottish property transaction tax](#) – October 2014
- [Community right to buy to be extended to urban areas](#) – July 2014
- [Property owners encouraged to act now to preserve real burdens](#) – July 2014

2015 and beyond

Land and buildings transaction tax

LBTT is designed to replace UK Stamp Duty Land Tax (SDLT) in Scotland with a land transaction tax that has a progressive structure which will be collected by Revenue Scotland (a body created under the Revenue Scotland and Tax Powers Act 2014 which is likely to come into force in late 2014). It is expected to apply to land transactions taking place on or after 1 April 2015. The draft budget published on 9 October, and likely to be



approved by Parliament due to the SNP's majority, proposes that the progressive tax will be charged:

- For residential transactions at nil rate up to £135,000; on the amount between £135,001 – £250,000 at 2%; on the amount between £250,001 – £1,000,000 at 10%; and the amount over £1,000,000 at 12%.
- For non-residential transactions at nil rate up to £150,000; on the amount between £150,001 – £350,000 at 3%, on the amount over £350,000 at 4.5%.
- For non-residential leases at nil rate up to £150,000 and 1% on amounts over that.

The budget details that the proposed rates and bands for non-residential transactions ensure parity with the rest of the UK and ensure that Scotland remains a competitive and attractive location for business, by maintaining a nil rate threshold of £150,000 and reducing the tax charge for the majority of transactions below £2,000,000, relative to SDLT and ensuring that 95 per cent of taxpayers are no worse off than under SDLT.

The Finance Committee invited written evidence on the proposed bands and rates' potential impact on the Scottish property market and the wider economy as a whole (closing date 24 October 2014) and there have been concerns, by organisations such as the Scottish Property Federation, that commercial and property sales at the upper end of the market may be affected by the additional tax burden over SDLT.

The Land and Buildings Transaction Tax (Scotland) Act 2013 (Commencement No.1) Order 2014 provides for the sections covering Ministerial powers to make subordinate legislation to come into force on 7 November 2014.

The Government has consulted on subordinate legislation including the draft orders and regulations on: Application to defer payment; Taxation of Licences to occupy property; Multiple dwellings purchase relief; Crofting community right to buy relief; Acquisitions relief; and Charities relief. Responses were critical of the disparity with the rest of the UK of the multiple dwellings purchase relief.

The Government also consulted on a proposed sub-sale relief. A sub-sale is where party A contracts to sell a property to party B and party B sells it to party C before completing with party A. Under SDLT a relief can apply to the first transaction to avoid doubling the tax charged. The Scottish Government sought views as to whether sub-sale LBTT payments should be refunded where significant development has been completed within five years (with one interim refund permitted for completed parts). The majority of respondents were critical of or concerned about paying up front and the lack of parity with the rest of the UK in this respect, the exclusion of certain categories of development from the benefit, the definition of "significant development" being linked to the need for planning permission, the five year deadline, the use of a Local Authority Completion Certificate as the only means of verifying completion, and, whilst an interim relief was welcomed, it was observed that definitions of partial completion could be unfair, and applications would place an additional burden on developers and Revenue Scotland.

It is the intention of the Scottish Government to include legislation to broaden the scope of the LBTT Act to cover extensions and variations of leases which were originally subject to UK Stamp Duty and UK Stamp Duty Land Tax. It is intended that informal consultation on these draft orders and regulations will take place with the members of the Leases Working Group.

LBTT will apply from 1 April 2015.

20 year security rule exemptions

Under powers in the Housing (Scotland) Act 2014 provisions, the Scottish Government is consulting on exempting certain Scottish Government schemes from the '20 Year Security Rule' where standard securities over private dwellinghouses may be redeemed after 20 years which can be a restriction on shared equity and equity release schemes: The Help to Buy (Scotland) Scheme; Homestake; Open Market Shared Equity Scheme; New Supply Shared Equity Scheme; and The Help to Adapt Scheme. The consultation closes on 2 January 2015.

Energy performance of non-domestic buildings

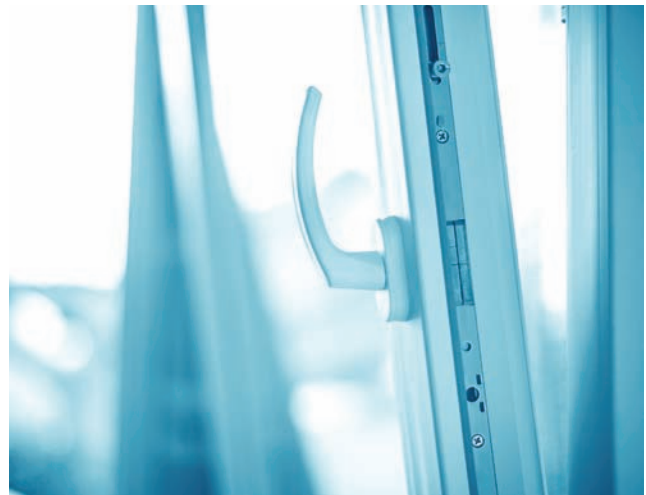
Section 63 of the Climate Change (Scotland) Act 2009 has the scope to ultimately mandate physical energy performance improvements to existing non-domestic buildings. The Scottish Government consulted at the beginning of 2013 on the form of the regulations, and issued a response in April 2014. The section 63 regulations will now be finalised together with supporting guidance on the basis of the draft regulations. It is intended that both regulations and supporting guidance will be published in early 2015 and brought into force in Autumn 2015. This will allow around seven months for property owners to prepare for the changes.

Scottish landfill tax

Scottish Landfill Tax will replace UK Landfill Tax from 1 April 2015 with a proposed rate (set in the Scottish Government's draft budget 2015-16 announced on 9 October) of £82.60 per tonne at the standard rate and £2.60 per tonne at the lower rate (the UK rate from 1 April 2014 was £80 and £2.50 per tonne). Related legislation includes The Revenue Scotland and Tax Powers Bill (RSTP) which is likely to come into force in late 2014. Draft subordinate legislation was consulted on (closing date 31 July 2014) which included

agreement on lists of materials subject to a lower rate of tax, taxable landfill site activities, exemptions for site restoration, weighing of water in waste, credit for bad debt and proposals relating to the funding mechanism and operational structure of the Scottish Landfill Communities Fund.

The Landfill Tax (Scotland) Act 2014 (Commencement No.1) Order 2014 provides for the sections covering Ministerial powers to make subordinate legislation to come into force on 7 November 2014.



RESTRUCTURING

2014

- [Global Insight: Issue 11](#) – Q3 2014
- [Global Insight: Issue 10](#) – Q2 2014
- [Global Insight: Issue 9](#) – Q1 2014

2015 and beyond

New Insolvency Rules

The Government proposes to replace the current Insolvency Rules 1986 with an entirely new statutory instrument. The Rules have been amended so many times that their numbering appears cumbersome. Over time, discrepancies between provisions affecting different insolvency regimes (which one might expect to be consistent) have arisen. Consequently much of the work will be cosmetic, for example introducing defined terms to be used throughout the Rules, putting all provisions concerning the convening and conduct of creditors' meetings into one section (rather than having separate provisions for meetings for each of liquidation, receivership, administration etc). However the Government will also be taking the

opportunity to introduce the secondary legislation required to effect the changes which it proposes to make in response to its Red Tape Challenge, notably to permit use of websites to replace letters being sent to creditors and provisions to promote electronic communications with creditors.

Draft rules were issued for consultation between 26 September 2013 and 24 January 2014.

The draft revealed many areas for improvement, with some consultation responses running to over 50 pages.

The next step will be for the Government's Insolvency Service to issue a report summarising the responses it received during the consultation period.

It is currently anticipated that the final form of the revised draft rules will be released in October 2015, with a view to them coming into force in April 2016. However as they will prompt extensive amendments to standard forms, letters and documents used by all insolvency professionals, it is likely that the Government will be urged to delay bringing the rules into force until October 2016.

The Government's response to the Rules consultation is expected to have been released by 1 January 2015.

Proposals to enable individuals to apply online to make themselves bankrupt

The Enterprise and Regulatory Reform Act 2013 (Section 71 and Schedule 18) proposes to replace the current, court-based procedure for individuals to apply for a bankruptcy order to be made against them (known as Debtors' Own Petitions) with a new, online application process. Courts would no longer have to deal with debtors' own petitions. Instead the Government's Insolvency Service proposes to appoint new, specialist adjudicators to consider them.

The secondary legislation required to bring the proposals into force is likely to comprise part of the proposed new Insolvency Rules which are not expected to be released until 2015, with a view to them coming into force in 2016.

Reform of EC Regulation on Insolvency Proceedings

The EC Regulation on Insolvency Proceedings was introduced in 2002 to remove formalities surrounding the recognition and enforcement of insolvency

proceedings in Europe. It applies to all European Member States except Denmark. Following the ten year anniversary of the Regulation, the European Commission has consulted widely with a view to its reform. Revised text was agreed in December 2014 and is due to be adopted in early 2015. Its provisions will come into force 24 months after adoption.

Key changes include:

- a requirement for all EC insolvency proceedings to be advertised on a searchable register accessible via the EC's e-portal;
- scope for pre-insolvency and hybrid proceedings to be brought within the ambit of the Regulation;
- measures intended to reduce incentives for insolvency and bankruptcy forum shopping within Europe; and
- rules to facilitate cooperation between courts and the coordination of insolvency proceedings of cross border groups of companies.

RETAIL

2015 and beyond

Scotland: tobacco and electronic cigarettes consultation

The Scottish Government is consulting on banning smoking in cars, on NHS grounds and in children's outdoor areas, and applying current tobacco-related restrictions to e-cigarettes, such as age restrictions, vending machines, advertising and use in public places. The consultation closes on 2 January 2015. This continues to be an important issue in the rest of the UK and we expect further developments.



TAX



2014

- [VAT tips and traps on cross border supplies](#) – November 2014
- [Cross border supplies of services made to VAT grouped branches: Skandia America Corp](#) – September 2014
- [VAT Alert: K OY \(C-219/13\)](#) – September 2014
- [How the Government is going about collecting tax upfront](#) – August 2014
- [Common Reporting Standard](#) – August 2014

2015 and beyond

OECD Base Erosion and Profit Shifting Project

In February 2013, the OECD published a report summarising its findings in relation to 'base erosion and profit shifting' (BEPS). The OECD followed this up in July 2013 with a BEPS Action Plan comprising of 15 actions to tackle the issues covered by the BEPS report. The issues are wide ranging and include the taxation of the digital economy, the effects of hybrid mismatch instruments, CFC rules, interest deductions, harmful tax practices, preferential intellectual property regimes, transparency (including country by country reporting) and substance, tax treaty abuse, permanent establishment status, transfer pricing, aggressive tax planning, dispute resolution mechanics and the development of a multilateral instrument. The project has apparent political backing from the G20 and countries may develop their own unilateral rules to

protect against BEPS pending final guidance/proposals from the OECD in this long-term project. The OECD is publishing discussion drafts on these issues (and publishing comments received) on an on-going basis. In September 2014 it published its first seven 'deliverables' relating to its action plan. This first set of deliverables related to: (i) the Digital Economy; (ii) Developing a Multilateral Instrument to Modify Bilateral Tax Treaties; (iii) Countering Harmful Tax Practices; (iv) Neutralising the effects of Hybrid Mismatch arrangements; (v) Preventing the granting of treaty benefits in inappropriate circumstances; (vi) Guidance on Transfer Pricing Aspects of Intangibles; and (vii) Guidance on Transfer Pricing Documentation and Country-by-Country Reporting. Further deliverables are scheduled for September 2015 and December 2015.

Internationally mobile employees and taxation of shares and share options

Legislation in schedule 7 to the Finance Act 2014 includes various amendments to the law governing the taxation of employment-related securities and securities options in relation to internationally mobile employees. The legislation refers to "securities income", meaning income arising from employment-related securities or options, and which falls under Part 7 of the Income Tax (Earnings and Pensions) Act 2003. A major change brought in by the new legislation will be to tax employees in relation to securities options granted and also restricted shares awarded before becoming resident in the UK. Currently these are usually outside the scope of UK income tax.

The new rules on the taxation of internationally mobile employees will take effect from 6 April 2015.

HMRC is consulting on the associated national insurance treatment of employment-related securities held by internationally mobile employees with a view to, so far as possible, bring the income tax and national insurance treatment into line with one another; complete alignment would not be possible due to bi-lateral social security agreements and European Union law.

Amendments to 'Parent/Subsidiary Directive' and tax avoidance arrangements

In November 2013 the EU Commission published a proposal to amend Council Directive 2011/96/EU (the 'Parent/Subsidiary Directive') in two respects: (i) the denial of tax exemption for a distribution of profit paid under a hybrid loan arrangement, ie, where the

payment is tax deductible for the subsidiary payer; and (ii) the introduction of an anti-abuse rule to prevent groups from claiming the benefit of the Directive where there are artificial arrangements used for tax avoidance purposes.

On 6 May 2014, the Economic and Financial Affairs Council held a meeting to discuss the proposed amendments but failed to reach an agreement. A compromise proposal was published after that meeting and was considered by the Economic and Financial Affairs Council on 20 June 2014. At the 20 June meeting, a political agreement was reached on the amendment targetting 'hybrid' loans; the amendment seeks to ensure that distributions are not exempt from tax in the parent to the extent that they are tax deductible in the subsidiary. The Council agreed to split this amendment from the second part of the Commission's original proposal described above which involved the introduction of an anti-abuse rule into the Directive. The anti-abuse clause is however still being proposed by the Commission presidency and is awaiting scrutiny by the EU Parliament. Member States

have until 31 December 2015 to transpose the anti-hybridity amendment into national law. The UK already has domestic law provisions that deny the benefit of the dividend exemption in Part 9A Corporation Tax Act 2009 in certain situations where the distribution is deductible in a territory outside the UK.



TAX: SCOTLAND

2014

- [Scotland votes no: what does a “no” vote mean for businesses from a tax perspective?](#) – September 2014

2015 and beyond

Revenue Scotland and tax powers

The Revenue Scotland and Tax Powers Act received Royal Assent on 24 September 2014. It makes provision to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes etc. Applications for the Revenue Scotland Board closed in July and the Board is expected to be appointed in late 2014.

The devolved taxes (landfill and land and buildings transactions) rates were announced in the draft budget on 9 October. A consultation paper provides a brief overview of each of the powers which the Government intends to exercise together with drafts of the relevant SSIs. A further consultation on Scottish Tax Tribunal Rules has also been published. Comments on both consultations are requested by Friday 9 January 2015, after when the SSIs will be finalised and laid before the

Scottish Parliament in February 2015. If approved they will come into force on 1 April 2015. However comments were requested on the draft Scottish Tax Tribunals (Eligibility for Appointment) Regulations 2014 by Friday 31 October, as the intention was to lay these regulations before the Scottish Parliament in November to facilitate the appointment of members of the Scottish Tax Tribunals.



The Revenue Scotland and Tax Powers Act 2014 (Commencement No.1) Order 2014 provides for certain sections, including those containing Ministerial powers to make subordinate legislation, to come into force on 7 November 2014.

The Draft Revenue Scotland and Tax Powers Act 2014 (Consequential Provisions and Modifications) Order 2014 makes provision about the collection and management of devolved taxes and comes into force on the same day as s.2 of the main act.

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Scottish landfill tax

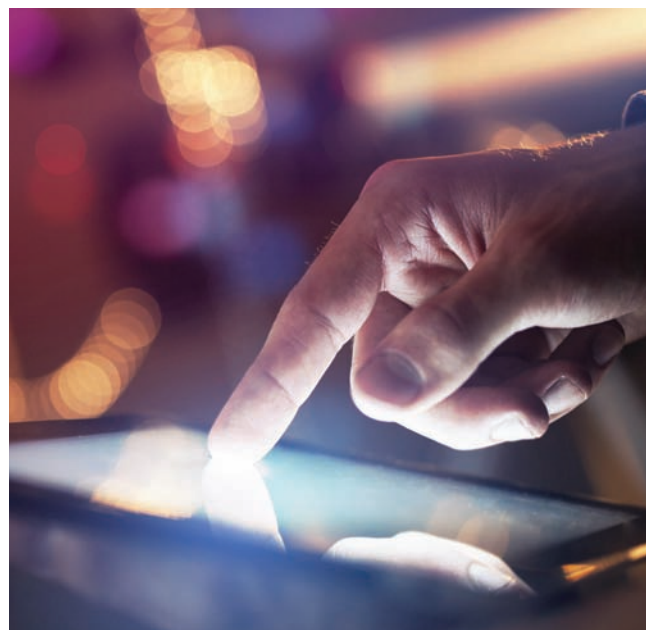
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TECHNOLOGY, SOURCING AND COMMERCIAL

2014

- [Good faith: a new era for English law?](#) November 2014
- [Significant changes to the UK mobile sector: the consultation on partial non-spots](#) – November 2014
- [Holiday pay verdict: the implications for outsourcing](#) – November 2014
- [Regulators warn financial sector about IT risks](#) – September 2014
- [UK Government consults on mandatory supply of IT services to insolvent customers](#) – July 2014
- [European Commission launches SLA guidelines in association with DLA Piper](#) – June 2014
- [Friday the 13th: unlucky for consumer businesses? Contract \(Information, Cancellation and Additional Charges\) Regulations 2013 come into force](#) – June 2014



2015 and beyond

Consumer Rights Bill

This Bill is continuing to progress. It is anticipated that legislation may come into force in October 2015.

Scotland: execution of contracts

The Legal Writings (Counterparts and Delivery) (Scotland) Bill implements recommendations contained in the Scottish Law Commission Report Review of Contract Law, Report on Formation of Contract: Execution in Counterpart. Parties will be able to get their documents legally signed and exchanged without meeting at the same place, and documents created on paper can be delivered electronically to make them binding. The Bill is currently at Stage 1 in the Scottish Parliament.

The Finance committee sent a questionnaire out in August. The Delegated Powers and Legislative Reform Committee issued a separate call for written evidence in July, took oral evidence in October. Ten written submissions were received which broadly expressed a positive view on the Bill's proposals. Some technical drafting comments were made and the Faculty of Advocates commented that the proposals could lead to

parties executing different versions of documents either due to error or fraud and was sceptical that the proposals will, in themselves, attract businesses to Scotland which do not otherwise have a connection with Scotland. However, the Committee issued a report supporting the Bill's general principles.



This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. **DLA Piper UK LLP** and **DLA Piper SCOTLAND LLP** will accept no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please speak to your **DLA Piper** contact on 08700 111 111.

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