

Technology & Digital

To kick off the New Year, experts from our Technology & Digital Group give a flavour of developments to look out for in 2022. We publish a regular round-up of legal and non-legal tech-related news stories (see our latest edition [here](#)). If you would like to receive this and other similar updates direct to your inbox, including invites to our Technology & Digital events, please [click here](#) to sign up.

Data protection and e-privacy reform

Businesses awaiting the outcome of the Government's [consultation](#) will be keen to learn whether proposals to reduce regulatory burdens come to fruition, such as the introduction of a more flexible and risk-based accountability framework, and the extent to which the UK diverges from Europe as it continues to strike international trade deals in the wake of Brexit – potentially affecting its data adequacy status. In related news, we hope to see the final version of the ICO's international data transfer agreement and guidance. It will be interesting to see the direction of travel on all things data with a brand new Information Commissioner at the helm.

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What to
look out
for in
2022

Increased scrutiny of 'Big Tech'

“The era of self-regulation for big tech has come to an end. The companies are clearly responsible for services they have designed and profit from, and need to be held to account for the decisions they make”. These are the words of the chair of the joint committee which recently [completed its review](#) of the draft Online Safety Bill having heard evidence from, among others, Facebook whistleblower and algorithmic specialist Frances Haugen. The Bill is a significant piece of proposed legislation to make internet service providers responsible for what is

happening on their platforms. It is due to be put to Parliament for approval in 2022.

We also expect Big Tech to continue to face considerable scrutiny from competition/antitrust regulators around the world. In the UK, a new competition law regime for the most powerful digital firms, overseen by the Digital Markets Unit, is expected to be introduced in 2022. As we outlined [previously](#), the Government is proposing this will involve an enforceable code of conduct for firms with so-called Strategic Market Status and powers for the DMU to make pro-competitive interventions (or PCIs) where it can establish an adverse effect on competition, and to be able to fine firms up to 10% of their worldwide group turnover for breaches of the code of conduct or a PCI. A non-statutory DMU, established to prepare for the new regime, has [already indicated](#) that Apple and Google would meet the criteria for SMS in their respective mobile 'ecosystems' and that their conduct in this area should be dealt with through the DMU.

The digital supply chain

Digitalisation will play a key role as businesses use technologies such as automation, cloud and blockchain to address issues of supply chain resilience and visibility in light of the pandemic. In our recent [Made for Trade](#) report, we found that manufacturers are planning extensive tech investment but skills are holding them back; our [Factory of the Future microsite](#) aims to help manufacturers capitalise on technological revolution. Supply chain digitalisation will also be driven by firms' ESG ambitions: [click here](#) to find out more about our NetZero work and how we can help. You can also read about our supply chain contract health check services [here](#).

Regulation of AI

The Government is due to publish a White Paper in the first half of 2022 on a pro-innovation national position on governing and regulating AI. This is part of its [National AI Strategy](#) – a ten-year plan to make Britain a global AI superpower. We await the outcome of the [recent consultation](#) on specific aspects of how the copyright and patent system should deal with AI and also expect to hear more from the ICO on its AI and data protection risk toolkit.

Financial services

In financial services too, we expect to see the rise of technological solutions to help deal with questions around ESG and sustainability. The FCA's [recent TechSprint](#) focused exclusively on developing solutions to overcome challenges faced by regulators in monitoring ESG data and disclosures. The FCA also hosted two international regulatory roundtable sessions on the topic of GreenTech, which included discussing shared challenges and developing an innovation 'wishlist' to help accelerate regulators' efforts in this area. And in 2022 we will see the launch of a consultation by the Bank of England and HM Treasury setting out their assessment of the case for a UK central bank digital currency.

In our Made for Trade report **76%** of manufacturers we surveyed in 2021 planned to invest in operational technology but **63%** said a lack of in-house knowledge hindered tech investment.



Increased emphasis on cyber security...

We reported previously on the [warning](#) from the CEO of the National Cyber Security Centre that ransomware is the most immediate cyber security threat to UK business. The Government has since [announced](#) the launch of its [National Cyber Strategy 2022](#) and is calling on all parts of society to play their part. This includes prioritising cyber security in the workplace, boardrooms and digital supply chains. Further detail outlining Government action to improve business resilience and cyber security will be set out in a Cyber Security Regulation and Incentives Review. By 2025, major providers of digital services, including cloud, software, managed services and app stores, will be required to follow better standards of cyber security. We expect increased scrutiny of companies' policies and standards in this area.

...that will also impact consumers

On the subject of cyber, more detail is expected on the new security standards that manufacturers, importers and distributors of consumer connectable or 'smart' devices will be required to meet under proposed legislation that will continue through the Parliamentary stages in 2022. We already know about plans for a ban on the use of default passwords, a requirement for manufacturers to manage the reporting of security vulnerabilities, and a requirement for consumers to be told at the point of sale the minimum period of time that the product will receive security updates. The [Product Security and Telecommunications Infrastructure Bill](#) also aims to improve connectivity for individuals and businesses across the UK, including through changes to the Electronic Communications Code.

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Increased collaboration

Collaboration between governments, regulators and other bodies - nationally and globally - is an increasing trend which is set to continue in 2022 as they wrestle with managing the impacts of technology and protecting consumers and citizens, while promoting the benefits of innovation and the digital economy. The House of Lords Communications and Digital Committee recently published the [follow-up report](#) of its inquiry into digital regulation, saying that Parliament, regulators and Government must adapt their ways of working to keep pace with the digital world and its impact on citizens' lives.



Smart contracts and blockchain

The Law Commission expects to start a project in mid-2022 looking at the rules relating to conflict of laws (i.e. the area of law determining where disputes should be heard and what law applies) as they apply to emerging technology, including smart legal contracts and digital assets, and considering whether reform is required. This follows its welcome conclusion that [English law can accommodate smart legal contracts](#), although the difficulty of ascribing real-world locations to digital actions and digital objects was identified as one of the most significant challenges. We were interested to see the concept of a 'reasonable coder' – a theoretical person with knowledge and understanding of code – raised by the Law Commission as a way to deal with issues of interpretation of coded terms of a smart legal contract and await a first sighting of the test in 'the wild' in 2022.



Web3, NFTs and the metaverse

Further regulation is expected, although perhaps not in 2022, of blockchain-based technologies such as cryptocurrencies and NFTs. Recent excitement about inviting consumers into the metaverse will only speed up the rate at which these Web3 technologies take on mainstream adoption, yet black letter law still has catching up to do. The Law Commission [appears to be taking a keen interest](#) and we await publication of its consultation paper on 'digital assets' – expected during 2022 – to see whether a new, third category of personal property is needed beyond 'choses in action' or 'choses in possession' in order to create meaningful rules for ownership, custody and legal protections in relation to cryptoassets and digital files. NFTs will no doubt feature heavily in the news in 2022. As we move past 2021's 'jpeg summer' we are particularly excited to see what utility can be given to NFTs in the next 12 months and the use cases that spring up around that.

For more information, contact our experts



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