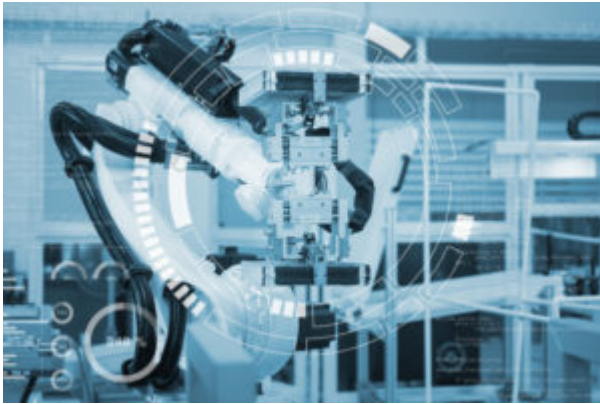


The MHRA Proposes to Extend the Period of Acceptance of CE Marked Medical Devices in Great Britain Beyond 30 June 2023



BACKGROUND

On 28 April 2023, the UK's medical devices regulator, the Medicines & Healthcare products Regulatory Agency (MHRA), announced its intention to extend the acceptance of CE marked medical devices in Great Britain (England, Scotland and Wales) beyond 30 June 2023.

Following the UK's departure from the EU, CE marked medical devices can currently be placed on the Great Britain market under the existing transitional arrangements until 30 June 2023. The proposed extension will support the ongoing safe supply of medical devices to Great Britain and ease the transition to the future regulatory framework for medical devices.

The government intends to introduce regulations in the future that will implement a substantial reform of the current regulatory framework for medical devices in the UK and is now aiming for core aspects of the UK's future regime for medical devices to apply from 1 July 2025.

PROPOSED EXTENSION TO TRANSITIONAL ARRANGEMENTS

The UK Medical Device Regulations 2002 (UK MDR) currently provide that the acceptance of CE marked medical devices on the Great Britain market will end on 30 June 2023. However, the MHRA intends to introduce legislation before 30 June 2023 which will provide that CE marked medical devices may be placed on the Great Britain market to the following timelines:

- General medical devices compliant with the EU medical devices directive (EU MDD) or EU active implantable medical devices directive (EU AIMDD) with a valid declaration and CE mark can be placed on the Great Britain market up until the sooner of (i) the expiry of the CE mark certificate or (ii) **30 June 2028**;
- In vitro diagnostic medical devices (IVDs) compliant with the EU in vitro diagnostic medical devices directive (EU IVDD) can be placed on the Great Britain market up until the sooner of (i) the expiry of the CE mark certificate or (ii) **30 June 2030**; and
- General medical devices, including custom-made devices, compliant with the EU medical devices regulation (EU MDR) and IVDs compliant with the EU in vitro diagnostic medical devices regulation (EU IVDR) can be placed on the Great Britain market up until **30 June 2030**.

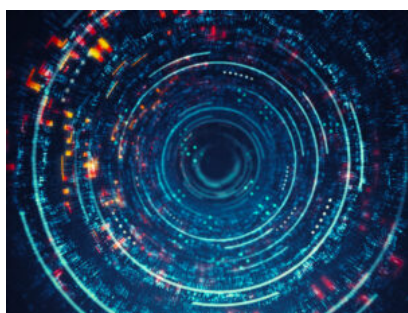
The above extensions will not include class I medical devices and general IVDs (for which the

conformity assessment under EU MDD or EU IVDD did not involve a notified body), which can only be placed on the Great Britain market if the involvement of a notified body would be required under the EU MDR or IVDR (i.e., if it is an up-classified device or a reusable surgical instrument Class I device). Similarly, the extensions will not include custom-made devices that are compliant with the EU MDD or EU AIMDD, which can no longer be placed on the Great Britain market.

WHAT HAPPENS NEXT?

The legislation to implement the proposed extension will now be considered by the UK Parliament, and final approval is expected before 30 June 2023.

[FDA Issues Artificial Intelligence/Machine Learning \(AI/ML\)-Enabled Device Software Functions Draft Guidance](#)



The U.S. Food and Drug Administration recently issued its **[draft guidance](#)** entitled “Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence/Machine Learning (AI/ML)-Enabled Device Software Functions.” The draft guidance follows the passage of the Food and Drug Omnibus Reform Act of 2022 (FDORA), which explicitly authorized the Agency to approve or clear Predetermined Change Control Plans (PCCPs).

We summarize some of the key takeaways from FDA’s draft guidance. Read the client alert **[here](#)**.

[The European Commission Proposes First Major Overhaul of the EU Medicines](#)

[Regulatory Framework in 20 Years](#)



On 26 April 2023, the European Commission published two legislative proposals - a new [Regulation 2023/0131](#) and a new [Directive 2023/0132](#) - to replace the current EU regulatory framework for all medicines (including those for rare diseases and for children).

The Directive contains all the requirements for authorisation, monitoring, labelling and regulatory protection, placing on the market and other regulatory procedures for all medicines authorised at the EU and national level. The Regulation sets specific rules (on top of the ones in the Directive) for medicines authorised at the EU level, in particular the most innovative ones.

The proposals aim to reduce costs, expedite the introduction of new medicines and prevent medicine shortages.

Read the key points in the client alert [here](#).

[FDA's Final Q&A Guidance on Risk-Based Monitoring of Clinical Trials Provides Additional Recommendations for Sponsors](#)



The U.S. Food and Drug Administration (FDA) recently finalized its guidance, "[A Risk-Based Approach to Monitoring of Clinical Investigations](#)" (the "2023 RBM Guidance") which follows up on the Agency's March 2019 draft guidance (the "Draft Guidance") of the same name and expands on (but does not supersede) the FDA's August 2013 guidance, "[Oversight of Clinical Investigations - A Risk-Based Approach to Monitoring](#)" (the "2013 RBM Guidance"), with new recommendations summarized below to aid sponsors in implementing an effective and efficient risk-based approach to monitoring both risks to participants and to data integrity throughout all stages of clinical investigations of human drug and biological products, medical devices, and combination

products.

(1) Approach: Identify, assess and re-assess risks. Create a plan to manage, mitigate, and/or eliminate those risks, including those risks that are newly identified or may not have been anticipated.

- Risk assessments should inform clinical trial protocol design, investigational plans, and monitoring plans and should be reevaluated and revised throughout the investigation. The monitoring plan should be comprehensive in highlighting identified risks, even those less likely to occur but that could have a significant impact on trial quality or subject safety, and should note how risks will be managed, mitigated, or eliminated.
- Consider how easily detectable the identified risks are, and the severity and consequences of those risks to human subject welfare and data quality if not detected and addressed.
- Assess systemic risks, as well as site-specific risks, and consider whether site-specific risks have the potential to become systemic risks.
- Determine an approach to on-site monitoring visits by taking into account the risks identified and the complexity and intensity of a clinical investigation. Monitoring activities should evolve based on risks identified during trials and should be proportionate to the risks to participants' rights or safety or to data integrity.
- Implement a centralized monitoring approach to help minimize missing data and protocol deviations in real-time, such as through the use of electronic data capture systems.
- The risk assessment should guide how and to what extent source data verification (SDV) will be utilized during on-site monitoring visits.
- Establish processes to ensure appropriate blinding is maintained. Identify and monitor deviations which could result in unintentional unblinding.
- Be prepared during an FDA inspection to furnish documentation of the sponsor's initial risk assessment, if requested.

(2) Content: Components of the monitoring plan should help explain how the sponsor intends to address the risks that could affect the investigation.

- Include the following components (in addition to those recommended in the 2013 RBM Guidance) in the monitoring plan:
 - Overall investigation design, including blinding and randomization procedures and processes for confirming randomization is performed according to the protocol and investigational plan
 - Sample plan(s), including rationale for, and approach to, identifying the records and data that will be monitored
 - Description of particular issues that would trigger immediate escalation
 - Approach for assessing and addressing a site issue that could escalate into a systemic issue that may warrant protocol or investigation plan changes
- Reference other clinical investigation management plans in the monitoring plan rather than repeating the information in the current monitoring plan to avoid inconsistencies.

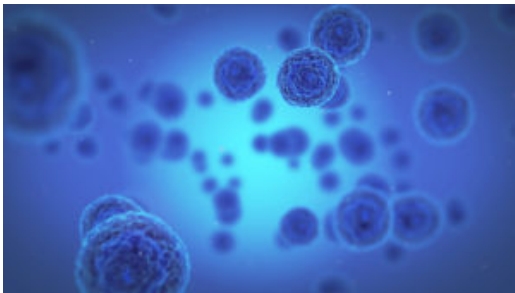
(3) Communicate: Promptly address and communicate monitoring results to the appropriate parties to mitigate and eliminate risk.

- Perform monitoring in accordance with the pre-established monitoring plan and address issues as the monitor identifies them, including escalation, if needed.
- Perform a root-cause analysis of issues and promptly implement corrective and preventive actions (CAPAs).
- Consider amendments or revisions to the protocol or the investigational plan.

- Communicate and document significant issues to the relevant parties involved at the sponsor and site level, which may also include institutional review boards, data monitoring committees, and/or regulatory agencies, such as the FDA.
- Provide reports of monitoring activities in a timely manner to the site and discuss the findings with the clinical investigator and site staff. Reports should follow the 2013 RBM Guidance.

While the FDA's regulations require sponsors to monitor the conduct and progress of their clinical investigations, there are no specifics on *how* sponsors are to conduct such monitoring. FDA's guidance provides helpful direction on clinical trial monitoring while recognizing that a monitoring approach should evolve over the course of a trial as risk assessments evolve. Sponsors with upcoming or ongoing clinical trials should consider FDA's recommendations in monitoring plan development and execution of monitoring activities throughout a trial.

The Long (Un)Winding Road Part 2: FDA's Final Transition Guidances for COVID-19 Devices



On March 24, 2023, the FDA's Center for Devices and Radiological Health announced the issuance of two much anticipated final guidances that describe the Agency's transition plans for medical devices that fall within certain COVID-19 enforcement policies or that were issued emergency use authorizations ("EUA"s):

- **[Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 \(COVID-19\) Public Health Emergency](#)** (the "Enforcement Policies Final Guidance")
- **[Transition Plan for Medical Devices Issued Emergency Use Authorizations \(EUAs\) Related to Coronavirus Disease 2019 \(COVID-19\)](#)** (the "EUA Transition Final Guidance")

The guidances follow the announcement in early 2023 that the Biden Administration plans to wind-down a number of pandemic-related programs and to allow the COVID-19 public health emergency ("PHE") declaration, which has been in effect since January 2020, to expire on May 11, 2023.

We summarize some of the key takeaways from FDA's finalized transition plans. Read the client alert [here](#).

US Artificial Intelligence Regulations: Watch List for 2023



Companies are developing, deploying, and interacting with artificial intelligence (AI) technologies more than ever. At Goodwin, we are keeping a close eye on any regulations that may affect companies operating in this cutting-edge space.

For companies operating in Europe, the landscape is governed by a number of in force and pending EU legislative acts, most notably the EU AI Act, which is expected to be passed later this year; it was covered in our prior client alert here: [EU Technology Regulation: Watch List for 2023 and Beyond](#). The United Kingdom has recently indicated that it may take a different approach, as discussed in our client alert on the proposed framework for AI regulation in the United Kingdom here: [Overview of the UK Government's AI White Paper](#).

For companies operating in the United States, the landscape of AI regulation remains less clear. To date, there has been no serious consideration of a US analog to the EU AI Act or any sweeping federal legislation to govern the use of AI, nor is there any substantial state legislation in force (although there are state privacy laws that may extend to AI systems that process certain types of personal data).

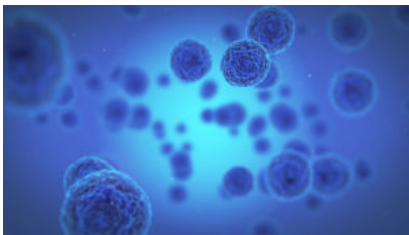
Read the client alert [here](#).

FDA Issues Guidance Document on Animal Studies for the Evaluation of Medical Devices



The U.S. Food and Drug Administration (FDA) recently issued [**General Considerations for Animal Studies Intended to Evaluate Medical Devices - Guidance for Industry and Food and Drug Administration Staff \(fda.gov\)**](#). Following a 2015 draft guidance and replacing a 2010 guidance focused on animal studies for cardiovascular devices, this guidance document identifies general considerations for animal studies intended to provide evidence of safety, including performance and handling, in device premarket submissions “when a suitable alternative to an animal study is not available.” Among other topics, the guidance provides recommendations related to personnel credentials, selecting an appropriate animal model, testing facility selection, and how to prepare an animal study report for premarket submissions to FDA. The Agency encourages sponsors with specific questions on an animal study, including the animal model selected, or compliance with FDA’s Good Laboratory Practice (GLP) regulations, or who seek to use a non-animal testing method, to request feedback from FDA through the Q-Submission process.

[**The Long \(Un\)Winding Road: FDA Maps Out How the End of the Public Health Emergency Will Impact its COVID-19 Policies**](#)



Since the beginning of the COVID-19 pandemic, the United States Food and Drug Administration (“FDA”) has issued more than eighty (80) guidance documents describing flexibilities that would be available to manufacturers of medical devices, drugs and biological products, and foods during the public health emergency. Several of these guidance documents have been modified, updated, or withdrawn as circumstances have changed, and on March 13, 2023, the FDA issued a [**notice**](#) in the Federal Register that outlines how it intends to unwind a large swath of COVID-19-related guidance documents that are still in effect. FDA sorted seventy-two (72) COVID-19-related guidances into several categories, based on how long and in what form they will continue to be in effect after the expiration of the public health emergency declaration, which is expected on May 11, 2023.

Read the client alert [here](#).

[HHS to Create New Potential Medicare Pricing Models for Cell and Gene Therapy, Drugs Subject to Accelerated FDA Approval, and “High-Value” Generics](#)



On February 14, 2023, the U.S. Department of Health and Human Services (HHS) published a [report](#) identifying three models that the Center for Medicare & Medicaid Services' (CMS) Center for Medicare & Medicaid Innovation (CMMI) will test to try to improve the affordability and accessibility of prescription drugs. The report responds to the state of prescription drug costs and access in America, as well as the widespread changes introduced by the Inflation Reduction Act of 2022 and President Biden's [Executive Order 14087](#) (October 2022), both intended to help lower prescription drug costs for Americans. The three selected models will test the feasibility of methods to: (i) offer generic prescription drugs at \$2 or less for Medicare patients; (ii) reduce Medicaid costs for novel cell and gene therapies through outcomes-based agreements with manufacturers on a multistate level; and (iii) improve the safety and efficacy of drugs approved through the FDA's Accelerated Approval Program by aligning payment methods with stakeholders' incentives. More detail on these three models is expected, and Goodwin attorneys will continue to monitor for additional guidance and any opportunities for public comment.

Read the client alert [here](#).

[Leveraging Investigator-Initiated Trials in Rare Disease Drug Development](#)

Investigators interested in rare disease treatment development have the opportunity to approach drug and biologic developers to obtain investigational drug supply for trials in which the investigators, typically at academic institutions, act as sponsor-investigators. Similarly, companies open to extending their product development pipelines can look to investigator-initiated trials as a mechanism to better understand the overall safety profile for their product candidates while exploring the potential therapeutic utility of their product candidates in diseases where unmet medical needs remain. So often, those needs exist in rare diseases where populations are small and investment returns are difficult to project. Drug developers deciding whether to supply investigational products to sponsor-investigators looking to explore therapeutic potential in areas of their research interests should evaluate what level of involvement to exercise over the investigator-

initiated trial. We highlight some of these considerations below.

Company Considerations for Level of Involvement in Investigator-Initiated Trials

- **Availability of resources to support the trial**
 - Amount of investigational product
 - Funding for conduct of trial
 - Other trial support (e.g., administrative, monitoring plan, data management, regulatory submission assistance, training, recruitment, etc.)
- **Relationship-building between Company and Investigator and Investigator's Institution**
 - Establish a relationship that may lead to future collaboration opportunities for Company-sponsored trials
- **Opportunity to utilize trial data to support additional Company INDs, to evaluate potential for expanding product indications (in the case of approved products), etc.**
- **Desire to have:**
 - Input on proposed trial design and later amendments thereto
 - Access, where possible, to emerging data
 - Ability to publish data from the trial
 - Ownership rights in the trial data
 - Inventorship and other intellectual property rights that may arise from the trial
 - Termination rights



Ultimately, drug developers hold the decision-making power over whether to allow investigator-initiated research for their product candidates. Thereafter, the contracting process around the setup of an investigator-initiated trial and clinical supply agreement provides drug developers the opportunity to negotiate their level of involvement in the research of their candidates. In negotiating the setup of investigator-initiated research supply, drug developers often balance their support of research into what are often unmet needs with limited company resources, limited supply that may be available and any potential risks that may flow from trial learnings in the proposed disease space. As an upside, investigator-initiated trials afford developers the opportunity to extend their research reach and product development pipelines, so any interest by investigators to conduct research with industry candidates warrants consideration.