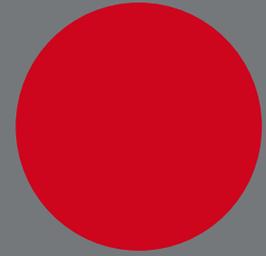


**Commercially connected
COVID-19 edition**

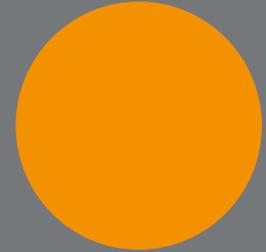
April 2020



Impact



Immediate



Impact in the near future



On the horizon

Introduction

Welcome to the Eversheds Sutherland monthly commercial law update, covering both case law and regulatory development. This month is a special COVID-19 edition. *This update is intended to give you a general overview of legal developments in certain areas. It is provided for information purposes only and is not intended to be comprehensive or to constitute advice on which you may rely.*

Click on your topic of interest below

Focus on
Coronavirus

Brexit

Commercial -
general

Consumer law

Cyber security

Data protection
and privacy law

IP

IT

Public sector

Development	Summary	Supporting information	Impact
<p>Summary of Coronavirus legal impact</p>	<p>In the general commercial sphere, April has seen:</p> <ul style="list-style-type: none"> the emergency regulations putting in place the lockdown extended to 7 May 2020 and also amended in England in respect of enforcement and when movement is permitted. There are different sets of these regulations for each constituent part of the UK. These set out which businesses must close and the prohibition on movement of people unless they have a reasonable excuse, with some examples of what is a reasonable excuse listed in the regulations a variety of other regulations relaxing specific regulatory requirements, mostly in the context of health and social care management but some relating to statutory obligations of public bodies new export controls on certain medical equipment a large amount of guidance from the UK Government, including on who they consider to be an essential worker able to continue sending their children to school or to access COVID-19 testing (with the parameters for who can be tested evolving on an almost daily basis as testing capability ramps up) new government backed financial support schemes, again rapidly evolving as new issues are thrown up by the lockdown on the economy the impact on commercial drafting, throwing up a variety of issues with the way that “familiar” clauses work in the face of a cross border emergency impacting on performance levels and supply chains 		



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On the horizon

Development	Summary	Supporting information	Impact
	<ul style="list-style-type: none"> increased concern on cybersecurity arrangements and protection of data with the sudden introduction of new ways of working governments across the world becoming increasingly interventionist in their attempts to control the outbreak and turning to the private sector to support their efforts. This in turn has shown a variety of problems with procurement of resources <p>From a competition perspective, both the European Commission and the UK Competition & Markets Authority have adopted guidance setting out when co-operation between competitors will be excluded from competition law due to the Coronavirus outbreak. Furthermore, the UK Government and the Commission have or are intending to adopt specific exclusions from the competition rules as a result of COVID-19.</p> <p>The data protection perspective can be summarised as follows: although there has been no new data protection <u>specific</u> legislation in the UK, there have been developments which raise data protection issues. These include:</p> <ul style="list-style-type: none"> the focus by the Government to develop new technologies and systems to facilitate health data sharing, tracing and testing. the Coronavirus Act 2020 contains provisions which could have privacy issues attached to them (for example, those relating to powers and restrictions in relation to gatherings and events, the circumstances where people may be infectious, the retention of fingerprints and DNA profiles and providing information relating to the potential disruption of food supply chains) the ICO's regulatory approach document which refers to a number of changes to the ways in which it will be handling its regulation and enforcement activity as a response to the Coronavirus outbreak the European Data Protection Board new guidelines on the processing of health data for COVID-19 research purposes 		



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Development	Summary	Supporting information	Impact
	<p>and on geolocation and tracing tools in response to COVID-19</p> <ul style="list-style-type: none"> a number of directions and notifications issued by the UK Government and NHS England instructing various bodies (NHS Digital, healthcare organisations, GPs, local authorities and arm's length bodies) to develop information systems for the collection of COVID-19 analysis data, to develop information and communication systems to aid the provision of COVID-19 related services and to share information and data in order to assist with attempts to control the outbreak. <p>This bulletin looks at these points in more detail where relevant to general commercial advice.</p>		
UK regulations on business closures etc amended	<p>There are now in force regulations correcting the original English lockdown regulations, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. Some amendments are corrections, others clarification and some deal with clarification of enforcement action. In a business context:</p> <ul style="list-style-type: none"> it is now a reasonable excuse for a person to leave or be outside their house to access all types of money service businesses added to the list of businesses that are exempt from closure are banks, building societies and various other businesses involved in the provision of finance including currency exchange offices. 	Health Protection (Coronavirus, Restrictions) (Amendment) (England) Regulations 2020	
Changes to insolvency law in the pipeline	<p>The UK Government has announced further new temporary measures to amend insolvency law – we still await the detail but as well as a suggested new statutory moratorium for struggling businesses, there are now proposals to protect commercial tenants by restricting the use of statutory demands and winding up orders. The announcement made over last weekend referred to “temporary new measures to safeguard the UK high street against aggressive debt recovery actions during the coronavirus pandemic” and that “statutory demands and winding up petitions issued to commercial tenants [were] to be temporarily voided”, landlords and investors being asked</p>	Government announcement	



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Development	Summary	Supporting information	Impact
	to work collaboratively with high street businesses unable to pay their bills. Confusingly in the Notes to Editors section of this announcement, the ban seemed to be extended to all statutory demands and winding petitions and not limited to not those based on unpaid rent.		
Relaxation of reporting time limits for modern slavery	The UK Government has issued guidance on modern slavery reporting during the Coronavirus outbreak, allowing businesses to delay publication of their modern slavery statements by up to six months.	Government guidance	
Who is an essential worker (and what does it mean to be an essential worker)?	None of the lockdown regulations for England contains a statutory definition of who is an essential worker. With the announcement this week of the roll out of testing for essential workers and their families, the UK Government is using this list to determine who is an essential worker for these purposes and possibly in the future for other purposes. Essential workers who are self-isolating can book an appointment themselves or an employer can refer their essential workers using a government referral portal where the employer would upload the full list of names and contact details of their self-isolating workers. There is separate guidance on essential workers for Scotland, Wales and Northern Ireland. In England, the list includes the following working in the private sector: <ul style="list-style-type: none"> • care home staff and those working in the health and social care supply chain (eg distributing medicine and equipment) • charities delivering critical frontline services • journalists and broadcasters covering the outbreak of providing public service broadcasting • transport workers • education and childcare workers • critical personnel in the production and distribution of food, drink and other essential goods • workers critical to the continuity of essential movement of goods 	list	



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Development	Summary	Supporting information	Impact
	<ul style="list-style-type: none"> utilities, communication and financial services staff including staff needed for essential financial services provision. This covers banks, financial market infrastructure, oil, gas, electricity and water sectors, information technology and data infrastructure sector and essential staff working in the civil nuclear, chemicals, telecoms, postal and delivery services, payment providers and waste disposal sectors. 		
Update on UK Government financial support	<ul style="list-style-type: none"> The quickest way to find out about what government financial support is available is to use a new government coronavirus business support finder tool, operating as one webpage where you can find all details of government support as these evolve. In particular, the Government financial support scheme for businesses has been expanded to cover businesses with a turnover of above £45 million. Businesses with an annual turnover of more than £45 million can apply for up to £25 million of finance and those with an annual turnover of more than £250 million can apply for up to £50 million. A new Future Fund for innovative businesses has also been announced. 	UK Government announcement	
Lifting the lockdown restrictions	As at the date of this bulletin, the UK Government has not issued any proposals on lifting the current lockdown in England. The European Commission has published a roadmap to lifting containment measures, which proposes a gradual approach, with the main criteria consisting of epidemiological considerations, health system capacity and appropriate monitoring capacity. The roadmap also addresses data sharing considerations and the creation of a framework for contact tracing and warning, through the use of mobile apps which respect data privacy. For more details on contact tracing, see our Data Protection and Privacy section.	A European roadmap to lifting coronavirus containment measures	
Updated UK Government guidance on trading internationally	Click on the link to read the UK Government's latest guidance to help those businesses whose international supply chains have been	UK Government guidance for businesses trading internationally	



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Development	Summary	Supporting information	Impact
	affected by the Coronavirus outbreak. This covers the financial support available to UK exporters.		
New WTO webpage	The World Trade Organisation has set up a dedicated webpage on the Coronavirus and world trade to help businesses track trade-related responses to the pandemic.	WTO webpage	
Deferral of IR35	The UK Government has announced deferral until April 2021 of the new rules on taxation of contractors in the private sector known as IR35 . Those appointing contractors now have a 12 month window in which to decide whether to re-evaluate their approach to engaging contractors to ensure compliance with the new rules. Although the rules have been delayed, HMRC has still issued guidance to help businesses prepare.	HMRC guidance—off-payroll working rules (IR35)	
Guidance on social distancing in the workplace	BEIS has published guidance on social distancing in the workplace with advice for different sectors on how social distancing and other measures might be implemented by employers in England to help protect their workforces and customers from coronavirus while still continuing to trade. The sectors considered by the guidance are running a pick-up or delivery service, working in people's homes, construction, manufacturing and processing, retail, logistics businesses, outdoor businesses, visiting farms for animal health and welfare, fishing or other short-term offshore work, cargo-shipping or other long-term offshore work, transport businesses and waste management businesses.	Social distancing in the workplace during coronavirus (COVID-19): sector guidance	
New export controls	The UK Government has updated their guidance for those wishing to export personal protective equipment as they will now temporarily need a licence to export this outside the EU, EFTA member states and certain other territories. This is because the UK has implemented a new EU regulation to ensure an adequacy of supply of vital equipment within the UK, the European Union, the EFTA member states (Iceland, Liechtenstein, Norway, Switzerland), and certain dependent and other territories. This came into force on 26 April 2020 and will initially last for 30 days, until 25 May 2020.	UK Government guidance Commission Implementing Regulation (EU) 2020/568	



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Development	Summary	Supporting information	Impact
Impact on payment services	Click on the link to read Eversheds Sutherland latest Payment Matters . One of the topics on which we report is UK Government and regulatory bodies' response to COVID-19 including guidance on contingency measures for the payment services industry. All in all, we can see that now more than ever regulators are focussing on consumer protection and ensuring that financial institutions respond appropriately to any COVID-19 related risks. Regulators in the payments space have also taken proactive decisions to delay various consultation processes and extend implementation deadlines to allow the redistribution of resources in financial institutions to those parts most heavily impacted by the pandemic, such as consumer finance.	Payment Matters no 45	

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Development	Summary	Supporting information	Impact
Progress on Brexit negotiations	<p>The second round of negotiations on the future UK-EU relationship occurred between 20 and 24 April but with what was described by both parties as limited and disappointing progress. Many have seen this as a sign that the transition period will be extended, but the UK Government remains clear that this is not on the table.</p> <p>The UK Government's view of this second round is that limited progress was made including:</p> <ul style="list-style-type: none"> • some promising convergence in the core areas of a free trade agreement, for example on goods and services trade, energy, transport, and civil nuclear co-operation. However, the detail of the EU's offer on goods trade falls well short of recent precedent in free trade agreements it has agreed with other countries • no progress made on level playing field and governance provisions until the EU drops its insistence on imposing conditions on the UK which are not found in the EU's other free trade agreements, and which do not take account of the UK's withdrawal from the EU. <p>According to the European Commission:</p> <ul style="list-style-type: none"> • there will be no ambitious trade deal without an ambitious level playing field on open and fair competition • the EU proposed a single framework for all areas of the future relationship, but the UK continues to insist on a number of separate agreements, each with their separate governance arrangements • on fisheries, the UK has not put forward a legal text. The EU will not agree to any future economic partnership that does not include a balanced, sustainable and long-term solution on fisheries. 	<p>BBC report</p> <p>EC press statement</p>	



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Development	Summary	Supporting information	Impact
Northern Ireland Protocol in the Withdrawal Agreement	<p>One issue that remains to be solved by the end of the Brexit transition period is that of the Irish border and how the UK will implement the Protocol for Northern Ireland by 31 December 2020. Under the Withdrawal Agreement it is the responsibility of the UK Government to ensure the Protocol is put in place by implementing new customs procedures for goods entering, exiting and transiting through Northern Ireland by that date.</p> <p>The EU has emphasised that any future trade agreement is conditional on the UK honouring these commitments but the situation is made more complicated as what is agreed in a free trade agreement may then affect the Protocol's arrangements. For example, if the UK and EU agree a zero-tariff deal, then the tariffs required under the Protocol (for goods at risk of entering the Single Market) will no longer need to be imposed.</p>	Withdrawal Agreement	
What are the rules for an extension of the transition period (should the UK Government change its mind)?	<p>Article 132 of the Withdrawal Agreement allows the Joint Committee of UK and EU representatives to extend the transition period if both the EU and the UK representatives on that Committee consent. If they do both consent:</p> <ul style="list-style-type: none"> • the extension can only be for up to 1 or 2 years; • the Joint Committee can only extend once and they have no power to agree to a further extension or to allow for an extension period longer than 2 years; • the decision has to be made before 1 July 2020. As extension will also require agreement about UK contributions to the EU budget during the extended period, that decision may well be required at least in principle some weeks before that deadline; <p>If the UK and EU run out of time as a result of the Coronavirus pandemic, the issue is then whether that deadline can be altered. This would require an amendment to the Withdrawal Agreement and the EU's view is that amending this would require agreement of all EU Member States and some of their national and regional parliaments. In the UK, an Act of Parliament would be required just for the UK to request an extension, not a problem with the UK</p>	Withdrawal Agreement	



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	Government's current majority but another factor in the timing of the decision to extend. The UK Government's position continues to be that they will not request an extension.		

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Development	Summary	Supporting information	Impact
Impact on outsourced services of remote working	<p>As the Coronavirus pandemic has forced many businesses to move their workforces to working from home or remotely, there has been a profound effect, notably on outsourcing providers. The Commercial team at Eversheds Sutherland have devised a work-from-home authorisation addendum document that provides a temporary framework to an outsourcing arrangement to ensure that all the outputs from oral discussions between clients and suppliers about their new working arrangements are set out and written up to ensure they are formalised and accurate. This is not designed to catch all the usual specifics, but instead act as a means for clients and suppliers to be able to continue with their contract obligations, in an efficient way during these unprecedented times.</p> <p>To view more information on our offering, click on the links.</p>	<p>Website LinkedIn Twitter</p>	
Transporting goods through France	<p>France has introduced a new, temporary requirement for anyone travelling to France or moving goods to France. Anyone seeking entry to and transit through France must complete a declaration form certifying their reason for travel and present documentation to the border authorities in support of the declaration. The notice stipulates that, for carriers of goods, this could be a certificate from the carrier's employer showing the intended delivery destination of the goods. Passengers will need to present the declaration and supporting documentation to the transport company prior to boarding as well as to the border authorities on arrival at the French border. UK hauliers carrying goods to the Continent via the Channel Tunnel will need to ensure that their drivers have completed the certificate before they arrive at the UK check-in.</p>	<p>notice</p>	
Legal regime governing jurisdiction	<p>The UK has deposited an application to accede to the Lugano Convention as part of its Brexit preparations. This does not mean that accession will automatically occur as the next stage is for all contracting states to the Lugano Convention to unanimously consent</p>	<p>For a copy of the notification of the UK's accession notice see here</p>	



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Development	Summary	Supporting information	Impact
	<p>(the contracting states are not just EU member states but also Denmark, Iceland, Norway and Switzerland).</p> <p>The rationale for the UK acceding to the Lugano Convention is to replace the current EU wide jurisdiction regime known as Brussels Recast which will no longer apply to the UK at the end of the Brexit transition period. Previous proposals from the UK were to accede to another more limited convention governing jurisdiction, the Hague Convention, which had the advantage of not requiring the consent of all other contracting parties but the disadvantage of only covered exclusive jurisdiction clauses in certain commercial contracts. It may be that the UK Government will still accede to the Hague Convention in the future if unanimous consent for accession to Lugano is not forthcoming or because of delayed accession to Lugano (on the basis that the process of obtaining consent for the UK's accession to Lugano can take up to a year from the date of the notification and so may not take place before the end of the transition period on 31 December 2020).</p>		
What remedy is required to cure a material breach?	In the case of Bains v Arunvill Capital Ltd , the Court of Appeal looked at what was the correct moment in time to assess the scope of the remedy required for a material breach, deciding that this should be the date of service of the breach notice, not the earlier date of a refusal to perform. The consequence of this is that a refusal to perform a service will not be remedied by a simple withdrawal of the refusal.	Judgment	
Ofcom delays consultations	Ofcom has issued a statement on the actions it is taking in response to the Coronavirus pandemic. The statement confirms that with immediate effect all existing consultation deadlines have been suspended and new consultations put on hold. The statement also advises that Ofcom are in talks with the UK Government about the implementation of the European Electronic Communications Code .	Ofcom information on the coronavirus (Covid-19)	
Confidentiality	The case of Trailfinders Ltd v Travel Counsellors Ltd contains a round up of the existing law on breaches of confidence and reminds us that:	Judgment	



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Development	Summary	Supporting information	Impact
	<ul style="list-style-type: none"> • even if there are no express contract terms, the common law duty not to breach confidence still applies • arguing that the information is already available in the public domain is not a defence if the defendant did not attempt to source it from the public domain. 		
Demand guarantee or performance bond?	<p>In the case of Shanghai Shipyard Co Ltd v Reignwood International Investment (Group) Company Ltd, the court:</p> <ul style="list-style-type: none"> • construed a guarantee as a performance rather than a demand guarantee (if it was a demand guarantee, then the guarantor’s liability arose automatically simply by reason of the demand itself) • looked at whether the guarantor was entitled to refuse to pay out under the guarantee pending and subject to the outcome of arbitration proceedings between the beneficiary of the guarantee and the buyer whose obligations were being guaranteed. On the terms of the guarantee, the court decided that the guarantor was entitled to refuse to make payment under the guarantee pending arbitration, an important point for the beneficiary who found itself in the position of having to wait for the outcome of arbitration proceedings before being able to look to the guarantee. 	Judgment	

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Development	Summary	Supporting information	Impact
Unfair commercial practices during the Coronavirus outbreak	The Competition and Markets Authority has launched an online service through which businesses and consumers can report unfair practices related to COVID-19, such as unfair prices, misleading claims or problems with cancellation or refunds.	CMA online service	



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Development	Summary	Supporting information	Impact
<p>Direction given to the National Health Service and/or public health body</p>	<p>These directions enable the support and maintenance of cyber security of network and information systems held by or on behalf of the NHS or a public health body during the Coronavirus emergency. This power will last until 31 December 2020. The Secretary of State directs specified bodies and persons to consent to the disclosure to GCHQ of any information relating to the security of any network and information system held by or on behalf of the NHS or a public health body until 31st December 2020. We look at these directions in more detail in our Data Protection section.</p>	<p>Security of NHS and Public Health Services Digital Systems (Coronavirus) Directions 2020</p>	
<p>Reports of increased cyber risks during COVID-19 pandemic</p>	<p>Multiple agencies have reported recommendations on how to protect against the various increased cyber risks reported during the pandemic:</p> <ul style="list-style-type: none"> • The European Union Agency for Cyber Security published tips for cybersecurity when buying and selling online • UK’s National Cyber Security Centre (NCSC) and the US Department of Homeland Security Cybersecurity and Infrastructure Agency published a joint advisory statement against cyber criminals • In a blog post, the NCSC discussed the importance of backing up data securely • Interpol is emphasising the need for prevention and mitigation of increased ransomware attacks, with a list of steps which employees can take to help prevent ransomware attacks • Europol has issued a report highlighting the key cybercrime and disinformation activities which are on the rise as a result of the pandemic • The EU Parliament published recommendations for people to protect themselves better against coronavirus cyber-attacks. 	<p>Press release: European Union Agency for Cyber Security</p> <p>Press release: NCSC</p> <p>Blog post: NCSC</p> <p>Notice: Interpol</p> <p>Report: Europol</p> <p>Recommendations: EU Parliament</p>	



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Development	Summary	Supporting information	Impact
	<p>In particular, it cautioned against fake messages re-directing to malicious websites, unauthorised credential requests or non-existent package delivery notifications.</p>		
<p>ENISA publishes a tool to map international security standards to interdependencies' indicators and approaches for secure software</p>	<p>ENISA has published:</p> <ul style="list-style-type: none"> • a tool to map international security standards to interdependencies' indicators, particularly ISO IEC 27002, COBIT 5, the NIS Cooperation Group security measures, and NIST's Cybersecurity Framework. The tool contributes to the NIS Directive's objective for a common and converged level of security in network and information systems at EU level • a new report, "Advancing Software Security in the EU", on approaches for secure software development and maintenance, which also highlights aspects to be considered under the EU cybersecurity certification framework. 	<p>Tool Report</p>	

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Development	Summary	Supporting information	Impact
<p>Relaxation of certain rules and guidance on regulatory approach to assist in data compliance in response to COVID-19</p>	<p>In response to the COVID-19 outbreak, there have been a number of relaxations and further guidance to help individuals and businesses, including:</p> <ul style="list-style-type: none"> The ICO launched a new information hub to help individuals and organisations navigate data protection law compliance and rights during the COVID-19 pandemic. The ICO will add new information to the hub as and when it is produced during the continuation of the pandemic. The UK Government have temporarily amended data subject access request (DSAR) guidelines to minimise delays. Specifically, the guidelines have been amended so that electronic scanned ID documents will be valid for DSARs submitted by email. However, DSARs that are made by post will still need to be accompanied by hardcopy original ID documents. The ICO published a statement setting out its regulatory approach during the COVID-19 pandemic, noting that the crisis has caused staff and operating capacity shortages, extreme pressures on many public bodies and acute financial pressures which are impacting organisations’ finances and cashflows. In summary, the ICO will take into account the impact of the pandemic insofar as it affects organisations’ data protection compliance efforts – including in respect of data security breaches, subject access requests and freedom of information requests. However, it will take a strong regulatory approach against any organisation breaching data protection laws to take advantage of the crisis. The document will be kept under review as the situation progresses. The First-Tier Tribunal General Regulatory Chamber (Information Rights) has issued a general stay of all 	<p>ICO coronavirus hub Press release Press statement Regulatory approach Notice Extension</p>	



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Development	Summary	Supporting information	Impact
	<p>proceedings under section 48 of the Data Protection Act 1998, section 162 of the DPA 2018 and section 57 of the Freedom of Information Act 2000 (including proceedings under that section as modified under regulation 18 of the Environmental Information Regulations 2004) until 28 May 2020. This is an extension of the stay on proceedings which was originally until 29 April 2020. The extension will be reviewed again in 28 days.</p> <ul style="list-style-type: none"> The stay does not apply to cases with specific directions issued on or after 1 April, and parties may apply to the Tribunal, with reasons and on notice to the Information Commissioner, for the Directions to be amended, suspended or set aside or for further Directions in relation to those proceedings. 		
<p>Coronavirus Act 2020 and directions issued by NHS England and the Secretary of State relating to COVID-19</p>	<ul style="list-style-type: none"> The Coronavirus Act 2020 which came into force on 25 March 2020 deals mainly with health and social care measures, but with some notable provisions relating to privacy and information. Although it does not contain data protection specific provisions, there are provisions which extend governmental powers in the name of national security and affect individuals' freedoms as they relate to gatherings and events, the circumstances where they may be infectious, and the retention of fingerprints and DNA profiles. There are also provisions which give the UK Government powers to require people to provide information relating to the potential disruption of food supply chains. Although the Act states that personal data cannot be processed if such processing would breach applicable data protection laws, the Act includes an exception to the effect that in deciding whether the data protection laws would be breached, the food supply chain information provision powers granted by the Act can be taken into account. NHS England have published a direction which instructs NHS Digital to develop information systems for the collection of COVID-19 analysis data. The direction also requires NHS 	<p>Act House of Commons Library briefing NHS England direction Secretary of State direction Secretary of State notifications</p>	



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	<p>Digital to develop information and communication systems to aid the provision of COVID-19 related services.</p> <ul style="list-style-type: none"> In light of this, the Secretary of State has also issued a direction to NHS Digital which mirrors the direction given by NHS England. In its direction, the Secretary of State explains the meaning of "COVID-19 purpose". The Secretary of State has published four notifications to healthcare organisations, GPs, local authorities and arm's length bodies. The notifications urge them all to share information and data in order to assist with attempts to control the outbreak, again for a "COVID-19 purpose" which is given a broad definition. 		
<p>Contact tracing (1): guidance on the use of apps in response to COVID-19</p>	<p>In response to COVID-19 and the collection of health data through mobile apps, various data protection authorities across the EU have issued guidance on the compatibility with data protection principles.</p> <ul style="list-style-type: none"> The EU Commission has had discussions with European telecommunications companies and the Global System for Mobile Communications Association ("GSMA") relating to whether anonymised smartphone location data can be used for modelling and predicting the spread of the virus. Internal Market Commissioner, Thierry Breton, has stated that such data can be used in a manner compliant with the GDPR and e-Privacy legislation The European Commission recommends a common 'toolbox' for the use of apps and data to address how member states will monitor the COVID-19 crisis The recommendation recognises the key role which digital technologies and the data they contain have in ensuring people remain connected, informing the public and generally combatting the COVID-19 crisis. To improve the ability of such technologies, the Commission suggests a coordinated approach to support authorities (mainly in the health sector and policy makers) so that they have sufficient, accurate data to map the development of the crisis. This will involve having 	<p>Announcement Recommendation Toolbox Letter OECD Report Biometrics Commissioner statement</p>	



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	<p>a common approach for modelling and mapping the evolution of the virus, by using anonymised and aggregated location data</p> <ul style="list-style-type: none"> The EDPB has published a letter providing its views on the European Commission’s draft guidance in relation to apps which are being developed to help fight against COVID-19 In the letter the EDPB highlights that there is no single solution that can be applied to all such apps, and factors such as the impact on individual’s health must be considered when looking at any technical solutions, in order to minimise any interference with individuals private life. The letter focuses particularly on those apps which are used for contact tracing and warning individuals of potential infection The Organisation for Economic Co-operation and Development (“OECD”) has published a report on the privacy and data implications of these track and trace applications In particular, the OECD highlights that the digital technologies that are currently being used have differing data protection and privacy ramifications The Biometrics Commissioner (“BC”) has published a statement on the use of symptom tracking applications, digital contact tracing applications and digital immunity certificates <p>The BC states that the use of tracking applications is a form of surveillance usually associated with a policing purpose, and explains that the such technology should only be used when it is in the public interest to do so. In light of this, the BC suggests that such surveillance should be time limited (i.e. only during the pandemic) and that emergency legislation should be passed in order to regulate this</p>		
<p>Contact tracing (2): ICO publishes opinion on Apple and Google’s joint Contact Tracing Framework initiative</p>	<p>The ICO has published a formal opinion which considers the design of Google and Apple’s joint initiative, the Contact Tracing Framework (“CTF”). The CTF aims to utilise Bluetooth technology in order to assist governments and public health authorities with stopping the spread of COVID-19.</p>	<p>Opinion</p>	



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Development	Summary	Supporting information	Impact
	<p>In the opinion, the ICO states that it considers the CTF to be in line with the principles of data protection by design and default, and that it is satisfied that only the minimum amount of required data will be collected.</p> <p>In addition, the ICO points out that, although Apple and Google's platforms will facilitate the development of the technology, each individual app designer will be a controller of data and therefore responsible for complying with the law. This is due to a risk that the data protection by design and default principles may not apply to contact tracing applications.</p>		
<p>Contact tracing (3) EDPB adopts guidelines on health data processing for research purposes and on geolocation and tracing tools in response to COVID-19</p>	<p>In response to the outbreak of COVID-19, the EDPB has adopted the following guidelines:</p> <ol style="list-style-type: none"> Guidelines on the processing of health data for COVID-19 research purposes <p>The guidelines highlight the provisions in the GDPR which allow for the processing of health data, including sensitive personal data, when being used for the purpose of scientific research. The guidelines also consider the potential issues surrounding cross-border transfers of health data in the context of medical research.</p> <ol style="list-style-type: none"> Guidelines on geolocation and tracing tools in response to COVID-19 <p>These guidelines outline the appropriate and proportionate use of such technology, which includes using them to model the spread of the virus, and contact tracing, which enables individuals to identify when they have been in close contact with someone who tests positive. The guidelines state that such use is acceptable under the GDPR and ePrivacy Directive provided the data is anonymised and used to prevent the spread of COVID-19.</p>	<p>Guidelines on health data for COVID-19 research</p> <p>Guidelines on COVID-19 related geolocation and tracing tools</p>	
<p>Contact tracing (4) Council of Europe releases statement on data protection and coronavirus</p>	<p>The Council of Europe has published a statement on data protection and COVID-19. Part of the statement underlines that data protection rights are not incompatible with epidemiologic monitoring, because anonymised data is not in scope of data protection law, and that the</p>	<p>Press release Statement</p>	



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	<p>use of aggregate location data to signal gatherings infringing confinement requirements or to indicate movements of persons traveling away from a severely impacted area would not be prevented by data protection requirements.</p> <p>The statement expresses that where restrictions are applied, they must be taken solely on a provisional basis and only for a period of time explicitly limited to the state of emergency. Specific safeguards should be put in place and reassurances should be given that full protection are afforded to personal data once the state of emergency is lifted.</p>		
<p>Contact tracing (5) ICO publishes blog post on privacy considerations in light of COVID-19</p>	<p>The ICO has published a blog post which discusses the privacy implications of new technologies which are being considered to help combat COVID-19, focussing on location data used in contact-tracing applications.</p> <p>In the post, the ICO highlights the importance of undertaking a privacy impact assessment in order to demonstrate how privacy is built into the technology. The ICO also states that information on how data is being used and processed should be readily available for people using the apps, and the requirement to only collect and use personal data in a manner that is proportionate to the COVID-19 emergency.</p>	<p>Blog post</p>	
<p>Task Force for Relations with the United Kingdom: draft text of Agreement on the New Partnership with UK affirms commitment to data protection</p>	<p>The Task Force for Relations with the United Kingdom published a Draft Text of the Agreement on the New Partnership between the European Commission and the United Kingdom.</p> <p>The draft agreement documents the parties' commitment to ensuring a high level of data protection and collaboration to promote high international standards and highlights that the parties are also committed to ensuring cross-border data flows to facilitate trade in the digital economy.</p> <p>Moreover, the draft agreement outlines that each party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data.</p>	<p>Draft text</p>	



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Insurance Europe publishes its response to EDPB's guidelines on connected vehicles	<p>Insurance Europe has published its response to the European Data Protection Board's draft Guidelines 1/2020 on Processing Personal Data in the Context of Connected Vehicles and Mobility Related Applications which is currently under public consultation.</p> <p>The response calls for several clarifications to be made. In particular, for the guidelines to be revised to reflect a better understanding of insurance telematics and recognise the equal footing of all legal bases under GDPR that will allow insurers to access and process data from connected vehicles.</p> <p>Additionally, it proposes the guidelines to adopt greater flexibility in insurer's access to raw data to allow them to provide innovative telematics products.</p>	Press release Response	
IAB Europe publishes its transparency guide for advertising supply chain	<p>The Interactive Advertising Bureau Europe released its updated Transparency Guide for the Digital Advertising Supply Chain.</p> <p>The aim of the guide is to improve transparency in the digital advertising supply chain in specific areas of data, cost and inventory source. The guide also provides questions for key stakeholders to bear in mind at different stages of the supply chain, particularly in relation to the provision of consent under the GDPR, cookies usage and consent management providers.</p> <p>In addition to the guide, IAB Europe hosted a webinar which provided a deep dive into the guide.</p>	Press release Guide Webinar slides Webinar recording	
European Commission seeks GDPR feedback	<p>Two years after its implementation, the European Commission has called for feedback on the General Data Protection Regulation (GDPR). The initiative will report on how the GDPR is being implemented, while also covering:</p> <ul style="list-style-type: none"> international transfers of personal data to countries outside the EU; and collaboration methods between national data protection authorities. 	European Commission roadmap	



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ENISA thoughts on the move to electronic signatures	<p>The ENISA has provided useful guidance on the use of developed trust services and the shift to such services following the implementation of the eIDAS Regulation.</p> <p>The eIDAS Regulation allowed trust services to be used for access to online services or for use in electronic transactions. The five main types of trust service are: signatures, seals, time stamps, registered delivery services and website authentication certificates.</p> <p>This guidance looks at the specific formats for electronic signatures and how we can create, verify and validate them, focusing on those which are used widely across member states including XML, PDF or CMS.</p> <p>ENISA is set to hold a Trust Services Forum in September 2020 alongside the European Commission to focus on the issues related to trust services.</p>	Guidance	

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Impact of COVID-19 on IP practice	<p>The current circumstances have led to new initiatives such as new consortia developments and pledges as well as patent pools in order to share IP to develop treatment and manufacturing key equipment.</p> <p>For example, the Ventilator Challenge UK Consortium is a group of businesses which has come together to produce ventilators for the UK. Consortia such as these may adopt the patent pool model (where multiple patent owners in a particular technology field agree to licence their patents to one another and/or third parties on standardised or reasonable terms). The Cabinet Office has released a minute stating that the Cabinet Office will give indemnities both against IP infringement in respect of the designs, and against product liability claims against the manufacturers of certain rapidly manufactured ventilators. For details on the extent of the indemnities, click on the link to the Cabinet Office minutes</p> <p>Other initiatives are being proposed, such as the Open COVID Pledge, where a group of scientists are making their intellectual property available for use free of charge for the sole purpose of ending the Coronavirus pandemic and for a period limited to one year after the WHO announces that the pandemic has ended. The group is encouraging other rights holders to implement the same pledge through a formal licence agreement, with the hope that the limited duration of the licence will encourage other rights holders to sign up.</p> <p>The UK Government has launched a £500 million investment plan (the Future Fund) of matched funding to bolster the UK's most innovative start-ups (including technology and healthcare companies). To be eligible, companies must have raised at least £250,000 from private investors in the past five years. Smaller businesses can seek loans or grants from the UK's innovation agency, Innovate UK, through which the Government has also made £750 million available.</p>	<p>VentilatorChallengeUK Consortium</p> <p>Open COVID Pledge</p> <p>Cabinet Office minutes</p>	 



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No UK involvement in the Unified Patent Court	Following reports that the UK Government has suggested it would not be seeking involvement in the Unitary Patent and Unified Patent Court systems, the Intellectual Property Minister has confirmed that the Government will not be seeking the UK's continued participation in the Unitary Patent and Unified Patent Court.	Minister's letter	
New initiatives on domain names	<p>Nominet (the registrar for the .uk domain) has announced initiatives to tackle the threat of cyber criminals using public and private sector names to lure internet users to their site or to open malicious links via phishing activities. The initiatives include:</p> <p>phishing: Nominet operates Domain Watch which combines manual and automated checks to help it to identify which new domain name applications are likely to be used for phishing. Those applications which look suspicious on these checks are suspended until the registrant provides Nominet with evidence of good intentions regarding use of the domain name;</p> <p>landing pages: any visitor to a suspended domain would see an error message instead of being able to access the website. Nominet will introduce a 12 month pilot system for linking/redirecting visitors from suspended domains to secure pages containing law enforcement information, such as consumer advice for potential victims of the sale of counterfeit goods;</p> <p>extending suspension period for domains suspected of being associated with criminal activity to 24 months;</p> <p>no drop list yet: for now, Nominet will not be creating a drop list, that is a publicly accessible database of dates and times when non-renewed domains are to become available to register but may consult later regarding alternative release mechanisms for highly desirable domains.</p>	Nominet announcement	 
European protection for domain name users	The European Registry for Internet Domains has implemented new measures to protect end-users from domain name misuse during the Coronavirus pandemic. This includes increased due diligence on registration data for both existing and new domain names that contain keywords relating to the pandemic. If such words are detected, registrants will be required to validate their data and submit a	EURid sets out extraordinary measures on .eu domain names in response to COVID-19	



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	statement confirming that their domain name was registered in 'good faith' within seven calendar days.		
Designs on the internet	EUIPO has published new criteria for assessing disclosure of designs on the internet. This includes a link to a table setting out the implementation date of the common practice in national offices, with most offices having an implementation date of 1 April 2020 or 1 July 2020.	CP10 Common Practice EUIPO press release (1 April 2020)	 
Updated Manual of Patent Practice	The UK Intellectual Property Office has published the most recent update to its Manual of Patent Practice , effective from 1 April 2020.	IPO, Manual of Patent Practice (1 April 2020)	
UK IPO services update	The UK Intellectual Property Office has published a revised update on its services for the Coronavirus outbreak. This states the "interrupted days" period will be extended and confirms the suspension of posting out documents and notifications. This means that any deadlines for patents, supplementary protection certificates, trade marks and designs, and applications for those rights that fall on an interrupted day will be extended until the IPO notifies the end of the interrupted days period. The IPO will next review the position on 7 May 2020.	update	
European Commission platform for sharing COVID-19 data	The European Commission has launched a European COVID-19 data platform for researches, the aim being to bring together relevant datasets (eg DNA sequences, protein structures, data from pre-clinical research and clinical trials) for sharing and analysis in an effort to accelerate coronavirus research. This is one of 10 priority actions of the first "ERAvsCorona" Action Plan, with other actions focussing on co-ordination of funding, extending large EU-wide clinical trials, increasing support to innovative companies and supporting a pan-EU Hackathon at the end of April to mobilise European innovators and civil society.	Platform	 

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Reminder of the SCL adjudication scheme	The SCL Adjudication Scheme introduced last year is a procedure which can operate virtually to resolve certain technology contract disputes, with a maximum period of three calendar months for the Adjudicator to make a decision. The scheme's rules can either be incorporated into contracts or the parties may agree to refer disputes to the scheme on an ad hoc basis.	SCL website for the SCL adjudication scheme	
Data protection guidance on contact tracing apps	Read our Data Protection section for 5 entries relating to the development of contact tracing apps. This includes guidance published by the European Commission on apps supporting the fight against COVID-19 in relation to data protection, setting out features and requirements which apps should meet in order to ensure compliance with the General Data Protection Regulation and the ePrivacy Directive. This is not legally binding and only addresses voluntary apps rather than mandatory apps or those aimed at enforcing quarantine requirements.	Guidance	

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Public sector guidance on the Coronavirus outbreak's impact on service provision	<p>The Infrastructure and Projects Authority has published guidance on PFI/PF2 contracts and how to support vital service provision during the Coronavirus outbreak. This should be read alongside the Procurement Policy Notes published by the Cabinet Office, particularly PPN 02/20 which covers force majeure relief. This guidance states:</p> <ul style="list-style-type: none"> • PFI contractors should consider themselves to be part of the public sector response to the current COVID-19 emergency • PFI contracting counterparties should co-operate to ensure the continued delivery of public services (and that the COVID-19 emergency is not, and is not to be, regarded as an event of force majeure) • PFI contractors should ensure contingency plans are up-to-date and have been reviewed and discussed with contracting authorities to enable continuity of full services as far as possible to respond to the emergency and maintain vital public services, particularly across the NHS • Contracting authorities should work closely with PFI contractors to use all available options to maintain public services during the emergency period. This will include maintaining unitary charge payments, revising contract requirements (including necessary changes to the scope of contracts) and moderating payment and performance mechanisms where appropriate. 	<p>Infrastructure and Projects Authority guidance PPN 02/20</p>	
EU guidance on public procurement during the Coronavirus outbreak	<p>The European Commission has published guidance on using the public procurement framework in the emergency situation related to the Coronavirus outbreak. This explains the options available under the existing EU public procurement framework for the purchase of</p>	<p>European Commission communication</p>	



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	<p>supplies, services and works that are necessary to address the pandemic.</p> <p>The communication states that the EU directives on procurement do not constrain procurements in cases of extreme urgency. In particular, the negotiated procedure without publication allows public buyers to acquire supplies and services "as quickly as is technically or physically feasible" with direct negotiations with potential contractors, no publication requirements, no time limits or other procedural requirements.</p> <p>The communication suggests other practical steps that public buyers might consider in order to accelerate procurement processes, and explains how an open or restricted procedure under Article 26(2) of the public procurement directive can be employed to satisfy public buyers' needs to acquire supplies and services quickly.</p>		

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