



## Commercially Connected: August 2019



Welcome to the Eversheds Sutherland monthly commercial law update, covering both case law and regulatory developments as well as progress on Brexit.

*This report 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.*

# Topics covered

Click on your topic of interest below:

[Brexit](#)

[Commercial –  
general](#)

[Consumer law](#)

[Cyber security](#)

[Data protection  
and privacy law](#)

[IP](#)

[Public sector](#)

[Focus on  
disruptive tech](#)



Development	Summary	Links
Political developments	<p>As at the date of publication of this bulletin, the UK Government's position remains that the UK will leave the EU on 31 October 2019 with or without a deal. This is the legal default position.</p> <p>On 28 August the Prime Minister requested that Parliament be suspended until Monday 14 October. Key dates are now:</p> <ul style="list-style-type: none"> <li>• 3 September: Parliament returns from recess</li> <li>• 4 September: Chancellor set to make Commons statement on spending plans</li> <li>• 9 September: scheduled debate relating to Northern Ireland</li> <li>• 10 September: Parliament suspended before party conferences</li> <li>• 14 October: Parliament returns for Queen's Speech setting out the new Government's legislative agenda</li> <li>• 17 October: EU Council meets, potentially to agree any new Brexit deal</li> <li>• 21 and 22 October: opportunity for Parliamentary debate on the Government's overall programme and approach to Brexit</li> <li>• 31 October: date of exit</li> </ul> <p>In the Prime Minister's letter of 28 August he said "Should I succeed in agreeing a deal with the EU, parliament will then have the opportunity to pass the bill required for ratification of the deal ahead of 31 October".</p> <p>Ros Kellaway, our Brexit lead and head of Competition, EU and Trade Group said: "A decision to prorogue Parliament in early September and to start a new parliamentary session in mid-October would frustrate any hope of effecting a change in the law for the exit date, currently 31 October. There simply wouldn't be time to get the legislation passed. Expect litigation – starting in Scotland. Expect renewed discussions about an immediate no confidence vote. Above all, expect a no deal exit".</p>	<p><a href="#">Prime Minister's letter of 28 August</a></p> <p><a href="#">LinkedIn</a></p> <p><a href="#">Twitter</a></p> <p><a href="#">The Guardian article</a></p>
Can Parliament stop a no deal Brexit?	<p>Click on the link for the Institute for Government's paper on Parliament's role and the limitations for Parliament to prevent a no deal Brexit before 31 October (published before the Prime Minister's decision to suspend Parliament). Their conclusions are:</p> <ul style="list-style-type: none"> <li>• it is very unlikely that the UK will be able to leave the EU with a deal on 31 October</li> <li>• MPs can express opposition to no deal but that alone will not prevent it</li> </ul>	<p><a href="#">Institute for Government paper</a></p>



Development	Summary	Links
	<ul style="list-style-type: none"> <li>• backbenchers have very few opportunities to legislate to stop no deal</li> <li>• a vote of no confidence would not necessarily stop no deal</li> <li>• there is little time to hold a general election before 31 October</li> <li>• a second referendum can only happen with government support.</li> </ul>	
Consequences of a no deal Brexit for business	Click on the link to read a House of Commons committee report on the consequences of a no deal Brexit for business.	<a href="#">Report</a>
Reminder of Brexit legislation	<p>The primary Brexit statute is the <b>European Union (Withdrawal) Act 2018</b> and the statutory instruments made under it. This is the legislation that repeals the European Communities Act 1972 (and therefore the EU treaties) and then transposes EU law into UK law at day 1 of Brexit. In addition, already on the statute book are:</p> <ul style="list-style-type: none"> <li>• The Taxation (Cross-border) Trade Act 2018</li> <li>• The Nuclear Safeguards Act 2018</li> <li>• The Sanctions and Anti-money Laundering Act 2018</li> <li>• The Haulage Permits and Trailer Registration Act 2018</li> <li>• Healthcare (European Economic Area and Switzerland Arrangements) Act 2019</li> </ul> <p>There are other bills relating to Brexit which have yet to reach the statute book:</p> <ul style="list-style-type: none"> <li>• The Trade Bill</li> <li>• The Agriculture Bill</li> <li>• The Fisheries Bill</li> <li>• The Immigration and Social Security Co-ordination (EU Withdrawal) Bill</li> <li>• The Financial Service (Implementation of Legislation) Bill</li> <li>• the bill required to approve any withdrawal deal between the UK and the EU</li> </ul> <p>Other than in relation to the last item, the UK Government has said that these bills do not need to be on the statute book for the UK to leave the EU on 31 October, but the result of them remaining as bills on exit day is that there is a policy vacuum in the areas that they cover.</p>	



Development	Summary	Links
The status of retained EU law	Click on the link to read a <b>House of Commons Library research briefing</b> on the process of converting EU law into UK domestic law and how this law can subsequently be changed. Certain retained EU law is given the status of a new category of domestic law which is neither primary nor secondary legislation. It has its own new bespoke rules determining how it may be modified in the future.	<a href="#">Briefing</a>
Progress on Brexit statutory instruments	<p>The most recent number of <b>Brexit Sis</b> made under the <b>European Union (Withdrawal) Act 2018</b> that are needed to ensure the UK has a functioning statute book on exit day is Andrea Leadsom's statement (as Leader of the House) on 4 April that "almost all the Brexit SIs needed for exit day have been laid — around 515 of about 550". However, the likely number has increased, partly because of the extension to the UK's EU membership and partly to correct mistakes.</p> <p>The Hansard Society's latest headline number is that 567 Brexit SIs have been laid. On 27 June, Brexit Secretary Stephen Barclay was asked how many Brexit Sis "remain to be enacted in order for us to exit the EU in an orderly fashion on 31 October" and he said "in the region of 100".</p>	
Brexit and export/import of goods	<p>The UK Government has announced that over 8000 VAT registered businesses will be automatically allocated an Economic Operator Registration and Identification (EORI) number rather than having to apply for this number. A UK EORI number is needed for UK businesses to export to the EU after Brexit. VAT registered businesses will be contacted by HMRC with details of their automatically allocated EORI numbers but non-VAT registered businesses will still need to register to obtain the number.</p> <p>Traders importing goods from the EU will need to decide whether to apply for Transitional Simplified Procedures and guidance has been updated in this respect.</p> <p>The DIT has published new webpages collating guidance on trading under WTO Rules.</p>	<p><a href="#">Government announcement</a></p> <p><a href="#">Government guidance on exporting goods</a></p> <p><a href="#">Government guidance on simplified import procedures</a></p> <p><a href="#">Government guidance on trading under WTO Rules</a></p>
Brexit and free movement	The new <b>Home Secretary</b> has announced that on a no deal Brexit EU nationals' freedom of movement will end on 31 October 2019, whereas the previous Home Secretary had emphasised the importance of a temporary system for a transitional period. Click on the link for our client briefing setting out what has changed. For further information please contact Audrey Elliott of Eversheds Sutherland as this is an area that may be subject to further policy changes or at the very least further clarifications.	<a href="#">Client briefing</a>
EU Settlement Scheme	The <b>UK Government</b> has updated its guidance on the EU Settlement Scheme.	<a href="#">EU Settlement Scheme: employer toolkit</a>



Development	Summary	Links
New guidance on geoblocking	<p><b>BEIS</b> has issued new guidance on geoblocking of online content after Brexit. This new guidance repeats previous stated positions but in the following terms:</p> <ul style="list-style-type: none"> <li>traders from the UK, EU and other non EU countries will no longer be obliged to comply with the EU Geoblocking Regulation for customers based in the UK and they will not be prohibited from discriminating between EU customers and UK customers. This means that a trader can redirect UK and EU customers to different versions of a website or offer different terms of access</li> <li>traders who are already complying with the UK Geoblocking Regulation prior to Brexit will not need to take any additional steps to continue to comply with the EU Geoblocking Regulation after Brexit as they will be free to continue to treat UK and EU customers as they did when the UK Geoblocking Regulation applied</li> <li>UK traders who wish to continue to sell goods and services into the EU will continue to be bound by the EU Geoblocking Regulation when dealing with customers in different EU countries (so for example a UK trader will not be able to discriminate between a French and a German customer)</li> </ul>	<p><a href="#">Government guidance on geoblocking</a></p>
Updated guidance from Ministry of Justice for lawyers	<p>The <b>Ministry of Justice</b> has published updated guidance for lawyers and legal services business owners. For owners, the guidance covers what actions need to be taken respect of ownership interests in the EU, EEA and EFTA and for lawyers with qualifications from the EU, EEA or EFTA. The guidance states that there will be no change to the way EU, EEA and Swiss citizens prove their right to work until 1 January 2021.</p>	<p><a href="#">Guidance for EU lawyers in the UK</a></p> <p><a href="#">Guidance for legal services business owners</a></p>
Updated guidance on public procurement	<p>The <b>Cabinet Office</b> has reissued its guidance on public procurement to provide information on public procurement policy and changes to public procurement rules and procedures. The guidance covers how to submit notices and how to access the new UK e-notification service after Brexit. Suppliers who wish to access contract opportunities from the EU will continue to do so via OJEU/Tenders Electronic Daily.</p> <p>For procurements in progress on exit day, follow the link to <b>Policy Notice 02/19</b>.</p> <p>The public procurement regulations in the UK will remain broadly unchanged after Brexit. For procurements that have commenced <b>before</b> the UK leaves the EU (for example, they have been advertised in the OJEU already), contracting authorities will need to comply with the new regulations from that point, for example by posting subsequent contract award notices on the new UK eNotification service instead of OJEU TED. However, the effect of the former rules will be preserved in some circumstances to maintain fairness throughout the procurement. Contracting authorities which</p>	<p><a href="#">Cabinet Office guidance Policy Notice 02/19</a></p>



Development	Summary	Links
	commence their procurements <b>after</b> the UK leaves the EU will need to follow the amended regulations.	
Revised guidance on structuring business	<b>BEIS</b> has published new guidance on the subject of how cross border business operations and European specific corporate entities would be affected if there is a no-deal Brexit. The guidance is aimed at UK citizens who currently own, manage or direct a company registered in the EU, businesses who are legal entities operating across the UK-EU border and businesses who have taken the form of a European specific entity.	<a href="#">Government guidance</a>
Updated guidance on consumer law post Brexit	<b>BEIS</b> has published new guidance on consumer rights to cover changes to rules on selling to the EU, cross border enforcement and dispute resolution. There is also additional separate guidance on textile and footwear labelling after Brexit. As with the new Government's general approach to no deal Brexit guidance, it is extremely brief: "You will need to check the rules of the countries you are selling into".	<a href="#">Government guidance</a>
Government guidance on financial services and a no deal Brexit	Click on the link for access to updated high level <b>Government guidance</b> on financial services for UK residents, for EEA citizens and for financial institutions.	<a href="#">Government guidance</a>
Free ports	The <b>Department for International Trade (DIT)</b> has announced membership of a <b>Freeports Advisory Panel</b> which will advise the government on the establishment of freeports in the UK after the country leaves the EU (with Teesport currently proposed as one of the first). Freeports are designed to be free of checks and paperwork and include customs and tax benefits which aim to reduce costs and bureaucracy. Ports and airports in the UK will be invited to bid to become one of up to 10 freeports, with details of the bidding process yet to be announced.	<a href="#">Announcement</a>
Free trade agreements - update	<p><b>DIT</b> has published a services of high level summaries of trade agreements being put in place to replicate or rollover existing trade agreements that the UK currently participates in through its membership of the EU. The summaries set out what each agreement covers (eg whether it applies zero rate tariffs to particular products) and what each say on customs co-operation and rules of origin. It has also issued a policy paper on the UK's trade relationship with Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama).</p> <p>DIT has also announced that the UK and South Korea will sign a new trade deal that duplicates "as far as possible" the effects of the current EU-South Korea trade deal. They have also issued a new webpage where you can find out which new trade agreements will be in place for a no deal Brexit.</p>	<a href="#">Policy paper</a> <a href="#">Press release</a> <a href="#">Government guidance on trade agreements</a>



Development	Summary	Links
Brexit statutory instruments	<p>The most significant statutory instrument issued this month is the <a href="#">European Union (Withdrawal) Act 2018 (Commencement No 4) Regulations 2019 no 1198</a> which repeals the European Treaties with effect from exit day. These regulations are made and so the repeal will, on current plans, take place on 31 October 2019. However, there remains the possibility that the definition of “exit day” that applies to these regulations and this Act can be amended by another statutory instrument at a later stage should the UK and EU be able to agree an extension to the UK’s exit date.</p> <p>Other instruments issued include the draft <a href="#">Import and Export Licences (Amendment etc) (EU Exit) Regulations 2019</a>, relating to licensing of imports and exports of agriculture produce and amending EU retained law to refer to UK rather than EU authorities.</p>	



Development	Summary	Links
<p>Update on good faith in commercial contracts</p>	<p>In April we reported on a case that implied a duty of good faith into a commercial contract, with the result that a party may be potentially restricted in the way it acted in exercising contractual rights. That case was <b>Alan Bates and Others v Post Office Limited</b> where the judge decided that there was an established category of contracts in English law called “relational” contracts where there is implied an obligation of good faith, not implied as an individual term necessary to make sense of the arrangement but as incidental to the nature of the contract. We now have another case looking at the argument of whether an obligation to act in good faith should be implied: <b>SDI Retail Services Limited v The Rangers Football Club Limited</b>. Click on the link to read our client briefing on this case and what appears to be two differing approaches to when a duty to act in good faith will be implied into a commercial contract.</p>	<p><a href="#">Client briefing</a></p>
<p>Contractual duties of confidentiality and public interest disclosures</p>	<p>The central issue of the case of <b>Saab v Dangate Consulting Ltd</b> was how to balance confidentiality and the public interest defence that would apply to allow a person under a duty of confidentiality to disclose confidential information. The issue arose out of a professional retainer to investigate allegations of money laundering within the claimant’s business and that retainer contained express duties of confidentiality. When the defendants made disclosures of information obtained during their investigation to foreign regulators, the judge found that they had no public interest defence as they had made such broad disclosures (amounting to a “document dump”) that it could not be said that each and every disclosure was necessary in the public interest.</p>	<p><a href="#">Judgment</a></p>



Development	Summary	Links
<p>Contract summary template for electronic communications services</p>	<p>The <b>European Commission</b> has published a draft contract summary templates as required by <b>Directive 2018/1972</b> establishing the <b>European Electronic Communications Code</b>. The idea is that this summary is to be made available to all consumers by providers of electronic communication services. It sets out the main terms of the service offer in a form that enables consumers to more easily compare different service providers.</p> <p>Click on the link to read an Eversheds Sutherland briefing on the consultation on UK implementation of the European Electronic Communications Code.</p>	<p><a href="#">Consultation</a></p> <p><a href="#">Draft regulation setting out the contract summary template</a></p> <p><a href="#">Eversheds Sutherland briefing</a></p>
<p>Guidance on improving consumer understanding of terms</p>	<p><b>BEIS</b> has published guidance for businesses on how to improve customer understanding of their online terms and privacy policies. It presents techniques available to businesses to increase customer engagement with, and understanding of such terms and policies, with the most effective suggested techniques being:</p> <ul style="list-style-type: none"> <li>• displaying key terms as frequently asked questions.</li> <li>• using icons to illustrate key terms.</li> <li>• using a scrollable text box for terms instead of requiring a click to view them.</li> <li>• providing information in short chunks at the right time.</li> <li>• using illustrations and comics.</li> <li>• telling customers how long it will take to read a policy and when it is their last chance to read information before they make a decision.</li> </ul>	<p><a href="#">Guidance</a></p>
<p>EU Guidance on improving customer understanding of terms</p>	<p>The <b>European Commission</b> has also published guidance on how businesses can improve customer understanding of the mandatory information that businesses must provide. Their guide includes mock-up of different webpages showing the different stages of a consumer's online transaction and showing the types of information that could be displayed at each stage.</p>	<p><a href="#">European Commission guide</a></p>
<p>Retail sale of knives</p>	<p><b>Draft statutory guidance</b> has been issued by the <b>Home Office</b> for consultation relating to the <b>Offensive Weapons Act 2019</b>. This will apply to retailers selling bladed items online and well as obligations on delivery companies as well. Consultation ends 9 October 2019.</p> <p>Online retailers who sell articles with blades or sharp points will need to take into account this guidance in due course and may wish to respond to the consultation. The draft guidance sets out what has to be done as a minimum by an online retailer in order to have a defence to certain offences relating to these types of articles, including having</p>	<p><a href="#">Consultation</a></p>



Development	Summary	Links
	in place an age verification system and marking the delivery package with certain instructions and information.	



Development	Summary	Links
<p>Strong customer authentication</p>	<p>The <b>Financial Conduct Authority</b> has agreed a plan to allow the payments and e-commerce industry extra time to implement strong customer authentication. The legal deadline for compliance remains 14 September 2019 but the FCA has said it will not take enforcement action against firms simply because they do not meet the relevant requirements of the new EU rules under the <b>2015 Payment Services Directive</b> from 14 September. The FCA has now agreed an 18 month window for providers to implement this but the decision not to take enforcement action is limited to the application of strong customer authentication to card-not-present e-commerce transactions and only where there is evidence that firms have taken the necessary steps to comply with the agreed industry plan on implementation. After 14 March 2021, failure to comply with the requirements for strong customer authentication will be subject to full FCA supervisory and enforcement action.</p> <p>This follows from the European Banking Authority’s Opinion on implementation of strong customer authentication – see our client briefing Payment Matters no 42 for more information.</p>	<p><a href="#">FCA press release</a>  <a href="#">FCA Dear CEO Letter</a></p> <p><a href="#">Payment Matters No 42</a></p>
<p>First privacy information management Standard issued</p>	<p>The <b>International Organization for Standardization</b> has released the world’s first International Standard on the subject of privacy information management: ISO/IEC 27701. This has been designed ‘to help organisations manage privacy information and meet regulatory requirements’ and it specifies the requirements for establishing, implementing, maintaining and continually improving a privacy-specific information security management system. Formerly referred to as ISO/IEC 27552 during its development, it builds on <a href="#">ISO/IEC 27001</a>, to provide extra requirements for personal data.</p>	<p><a href="#">ISO/IEC 27701</a></p>
<p>Eversheds Sutherland client briefings</p>	<p>Click on the links to read briefings from members of our Cybersecurity team on:</p> <ul style="list-style-type: none"> <li>• draft guidelines for insurers on outsourcing to cloud service providers (and these guidelines are intended to work alongside data protection legislation and any other regulatory guidance)</li> <li>• operational resiliency for financial institutions and how the regulatory landscape is evolving</li> </ul>	<p><a href="#">EIOPA guidance on cloud outsourcing</a></p> <p><a href="#">Operational resiliency for financial institutions</a></p>
<p>Association of British Insurers calls for ICO to reveal cyber data</p>	<p>The Association of British Insurers has repeated its call for the ICO to share anonymised cyber breach data publicly available, to enable insurers price risk more accurately and manage exposure more effectively by feeding that data directly into their modelling.</p>	<p><a href="#">ABI statement</a></p>



Development	Summary	Links
US privacy and cybersecurity legislative mid-year review	Our US colleagues have written a briefing summarising legislative developments in the US and outlining upcoming cybersecurity laws and enforcement activity.	<a href="#">Eversheds Sutherland US article for Law Journal Newsletters</a>



Development	Summary	Links
Data protection implications of using social media plugin technologies	We reported last month on a case relating to the use of the Facebook “like” button and when that and similar social media plugin technologies could make a website’s integration of such technologies into a data controller for the purposes of data protection legislation. Click on the link to read our briefing on this case.	<a href="#">Eversheds Sutherland client briefing</a>
New High Court List for data protection claims	<p>The Civil Procedure Rules have been updated to include a new Part 53 CPR, which requires all High Court data protection claims issued after 1 October 2019 to be issued in the new Media and Communications List of the High Court. Two new Practice Directions have also been published, along with a corresponding Pre-Action Protocol which sets out what should be included in the Letter of Claim for data protection cases.</p> <p>Notably, the new Practice Direction 53B specifies the following in respect of data protection claims:</p> <ul style="list-style-type: none"> <li>• in any claim for breach of any data protection legislation the claimant must specify in the particulars of claim</li> <li>• the legislation and the provision that the claimant alleges the defendant has breached</li> <li>• any specific data or acts of processing to which the claim relates</li> <li>• the specific acts or omissions said to amount to such a breach, and the claimant’s grounds for that allegation and</li> <li>• the remedies which the claimant seeks.</li> </ul>	<a href="#">Civil Procedure Rules website</a> <a href="#">Civil Procedure (Amendment No. 3) Rules 2019 schedule</a> <a href="#">Practice Directions 53A and 53B</a> <a href="#">Pre-Action Protocol for Media and Communication Claims</a>
Online child protection code update	In a blog post, the Information Commissioner has provided an update on the development of a new code of practice to protect children online. The ICO has received 450 written responses to the consultation which took place from 12 April to 31 May 2019. The final code is due to be delivered before 23 November 2019. In her blog, the Commissioner emphasised the ICO wants “providers to set their privacy settings to ‘high’ as a default, and to have strategies in place for how children’s data is handled”.	<a href="#">Blog post</a> <a href="#">Draft "Age appropriate design: a code of practice for online services" for consultation</a>
ICO issues draft framework code of practice for the use of personal data in political campaigning	Following an initial call for views late last year, the ICO has released a draft code of practice for the use of personal data in political campaigning. The code does not introduce new requirements for campaigners but aims to explain and clarify current data protection and electronic marketing laws as they apply to political campaigning. It is hoped that the code will provide practical guidance and useful examples on ways campaigners can comply with their obligations whilst carrying out common political campaigning activities. In its statement, the ICO noted that the code “has the potential	<a href="#">Consultation details</a> <a href="#">Draft framework code</a> <a href="#">BBC article</a>



Development	Summary	Links
	to become a statutory code of practice if the relevant legislation is introduced". The consultation closes on 4 October 2019.	
Safeguarding personal data in automated artificial intelligence systems	<p>Another blog post in the ICO's ongoing call for input on developing its framework for auditing artificial intelligence ("AI"), outlines some of the key safeguards organisations should implement when using solely automated AI systems to make decisions with significant impacts on data subjects. The blog post draws on guidance issued by the European Data Protection Board ("EDPB") on automated individual decision-making and profiling under GDPR.</p> <p>In order to help address the risks that machine learning systems pose to people's data protection rights, the ICO recommends that organisations should:</p> <ul style="list-style-type: none"> <li>• consider the system requirements necessary to support a meaningful human review from the design phase. Particularly, the interpretability requirements and effective user-interface design to support human reviews and interventions;</li> <li>• design and deliver appropriate training and support for human reviewers; and</li> <li>• give staff the appropriate authority, incentives and support to address or escalate data subjects' concerns and, if necessary, override the AI system's decision.</li> </ul> <p>In addition, organisations should consider:</p> <ul style="list-style-type: none"> <li>• the need for a data protection impact assessment before using solely automated systems to make decisions with legal or significant effects on data subjects;</li> <li>• safeguards for solely automated AI systems to be designed holistically and with the data subject in mind;</li> <li>• that the information about the logic of a system and explanations of decisions should give data subjects the necessary context to decide whether, and on what grounds, they would like to request human intervention;</li> <li>• the process for data subjects to exercise their rights should be simple and user friendly; and</li> <li>• monitoring and analysing whether and how data subjects exercise their rights in relation to automated decisions and amend their systems and processes accordingly.</li> </ul>	<p><a href="#">ICO blog post</a></p>



Development	Summary	Links
<p>Data Protection Act 2018 (Commencement No. 2) Regulations 2019 SI 2019/1188 made</p>	<p>The Regulations bring into force the remaining provisions of Part 4 of the Data Protection Act 2018, which relates to data processing by the Intelligence Services, so far as they were not already in force. The provisions will come into force in the UK on 16 September 2019. The provisions are s93, ss102-105 and s108 of the DPA 2018.</p>	<p><a href="#">Legislation</a></p>
<p>ICO investigates Kings Cross use of facial recognition</p>	<p>The Information Commissioner issued a statement in response to reports on the use of facial recognition technology in the Kings Cross area. The Commissioner notes that this type of technology is a “priority area for the ICO and when necessary, we will not hesitate to use our investigative and enforcement powers to protect people’s legal rights”. The ICO has launched an investigation following the concerns reported in the media – the investigation will require the relevant organisations to submit detailed information about how this technology is used and the ICO will also conduct an on-site inspection of the system to assess its compliance.</p> <p>The Commissioner highlighted her concerns over the growing use of facial recognition technology in a <a href="#">blog post</a> earlier this summer in relation to ongoing trials of the technology being conducted by various police forces.</p>	<p><a href="#">ICO statement</a> <a href="#">BBC article</a></p>
<p>The European Commission is reportedly planning to implement a regulation of facial recognition</p>	<p>The Financial Times has reported that “according to senior officials”, the European Commission is planning regulation that will give EU citizens explicit rights over the use of their facial recognition data. The aim would reportedly be to limit “indiscriminate use of facial recognition technology” by companies and public authorities. The regulation would give European citizens the powers to “know when [facial recognition] data is used”.</p> <p>Ursula von der Leyen, the incoming President of the European Commission, has said she will unveil legislation within her first 100 days in office that will provide a “co-ordinated European approach on the human and ethical implications of artificial intelligence.”</p>	<p><a href="#">Financial Times article</a></p>
<p>ICO updates guidance on individuals’ rights</p>	<p>The ICO has updated their guidance on how to calculate the time limit for responding to requests (in relation to individual rights to bring its approach in line with that taken across the EU and adopted by the EDPB. The effect is that the timescale for responding to individuals’ requests (including subject access requests) is one calendar month from the <b>day of receipt of the request</b>, not the day after receipt.</p> <p>In addition, the ICO has added guidance on the meaning of “manifestly unfounded or excessive” in relation to requests from individuals to exercise their rights.</p>	<p><a href="#">Eversheds Sutherland briefing</a> <a href="#">ICO statement</a> <a href="#">What’s New section of ICO guidance</a></p>



Development	Summary	Links
First “motion” trade mark registered in the UK	The UK’s first multimedia motion trade mark has been registered by the <b>Intellectual Property Office</b> following changes to UK trade mark law implemented in January 2019. The ‘motion’ mark is the first moving, hologram or sound trade mark using a multimedia file, which has been registered under the new regulations—prior to this submissions were required under UK law to be illustrated graphically.	<a href="#">IPO press release</a>



Development	Summary	Links
Implications of failure to commence procurement proceedings	<p>In the case of <b>Royal Cornwall Hospitals NHS Trust v Cornwall Council</b> 2019 EWHC 2211 the court struck out a late claim which should have been commenced within the statutory time limit of 30 days. As well as looking at the policy considerations for commencing procurement challenges promptly, the court also held that economic operators who decide not to participate in public procurement exercises may not be owed enforceable duties by contracting authorities, as the procurement regime imposes enforceable duties in procurement exercises only in respect of those who wish to participate</p>	<p><a href="#">Judgment</a></p>
Appointment of Brexit leads	<p>The <b>Ministry of Housing, Communities and Local Government</b> has announced that councils should each appoint a Brexit lead to work with central government to oversee preparation for Brexit, with additional funding of £20 million being made available for Brexit preparations.</p>	<p><a href="#">Announcement</a></p>
EU guidance on third country bidders	<p>The <b>European Commission</b> has published guidance on the participation of third country bidders in the EU procurement market, described as part of a package of initiatives to ensure fair competition and a level playing field in public procurement markets. It is also the first deliverable of the ten actions set out in an earlier communication on EU-China relations. In the context of global markets, the Commission states that public buyers in the EU need to be equipped with the right tools and knowledge to deal with bidders from countries outside of the EU.</p> <p>The guidance is intended to provide practical advice to public buyers in the EU member states and to help them identify which third country bidders have secured access to the EU procurement market. The guidance also aims to raise awareness of the different measures that may be taken in relation to abnormally low-priced offers, as well as measures to ensure that third country bidders respect the same quality as EU bidders in areas such as security, social, labour and environmental standards.</p> <p>The guidance also reminds public authorities that they may ask the Commission to assess a project's compatibility with EU public procurement rules before taking important steps, for example, launching a call for tender (the "ex-ante assessment" mechanism). This may cover advice on an abnormally low price or on quality-based design of procurements.</p>	<p><a href="#">Guidance</a></p>



Development	Summary	Links
<p>Regulation of crypto assets</p>	<p>The <b>Financial Conduct Authority</b> has published its <b>final guidance</b> on the types of crypto assets which fall within its regulatory framework. Generally, crypto assets are categorised as exchange tokens, security tokens or utility tokens and the guidance set out where tokens are likely to be regulated specified investments, e-money under the E-Money Regulations, captured under the Payment Services Regulations or outside FCA regulation. The final guidance provides detail as to when tokens might be classified as e-money and provides a distinction between (a) security tokens and e-money tokens, which can be caught by regulation and (b) exchange tokens and utility tokens which should usually fall outside regulation.</p> <p>Click on the link to read an Eversheds Sutherland briefing on the latest legal developments on crypto-assets and blockchain technology in financial services, including a look at the FCA final guidance</p>	<p><a href="#">FCA Policy Statement 19/22</a>  <a href="#">Eversheds Sutherland client briefing</a></p>
<p>ICO publishes guidance on data minimisation and privacy-preserving techniques in AI systems</p>	<p>The ICO has published guidance from its Research Fellow in Artificial Intelligence and its Technology Policy Advisor, discussing techniques organisations can use to comply with data minimisation requirements when adopting AI systems. The article discusses how organisations using AI systems that require large amount of data can ensure that any personal data is adequate, relevant and limited to what is necessary for the purposes for which it is processed.</p> <p>The guidance explains how data is used in Machine Learning in two phases, the Training and Inference phases, and provides techniques for data minimisation in both phases, including feature selection, converting personal data into less “human readable” formats and anonymisation.</p>	<p><a href="#">ICO blog post</a></p>

For further information, please contact:



**Sara Ellis**

*Principal Associate PSL*

**T:** +44 121 232 1062

**M:** +44 7827 954 720

[saraellis@eversheds-sutherland.com](mailto:saraellis@eversheds-sutherland.com)



**Claire Stewart**

*Principal Associate PSL*

**T:** +44 20 7919 4856

**M:** +44 7867 155 050

[clairestewart@eversheds-sutherland.com](mailto:clairestewart@eversheds-sutherland.com)



**Lizzie Charlton**

*Senior Associate PSL (Data Protection & Privacy)*

**T:** +44 20 7919 0826

**M:** +44 7827 230 131

[lizziecharlton@eversheds-sutherland.com](mailto:lizziecharlton@eversheds-sutherland.com)

**eversheds-sutherland.com**

© Eversheds Sutherland 2019. All rights reserved.

Eversheds Sutherland (International) LLP and Eversheds Sutherland (US) LLP are part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit [www.eversheds-sutherland.com](http://www.eversheds-sutherland.com).

LON\_LIB1\21097666\1

