



Commercial bulletin

July 2019



Welcome to the Eversheds Sutherland monthly commercial bulletin 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](#)

[IT](#)

[Focus on
disruptive tech](#)

[Useful articles](#)



Development	Summary	Links
Where are we now?: as at the end of July 2019	<p>Boris Johnson, the new UK Prime Minister, has categorically stated that the UK will leave the EU on 31 October 2019 with “no ifs and no buts”. Whilst Mr Johnson has said that it is his aim for the UK to leave the EU with a deal, he has made it clear that he intends to renegotiate the terms of the Withdrawal Agreement negotiated by Prime Minister May and in particular that the Irish “backstop” must be removed.</p> <p>Given that Michel Barnier has made it clear that removing the backstop is unacceptable and that Jean-Claude Juncker has said that the Withdrawal Agreement is the only agreement possible, the prospect of a no deal Brexit seems increasingly likely.</p> <p>Michael Gove has been given the task of preparing the UK for a no deal Brexit and has said that planning for no deal is the government’s number one priority.</p> <p>The Institute for Government has issued a paper on preparing for a no deal Brexit. Its key findings are that with a no deal Brexit in sight the whole of government must shift onto a no-deal footing; peak readiness may have been and gone at 31 March 2019; whilst key Brexit bills are not needed for 31 October, a failure to pass these means that key policy areas will have EU law frozen into UK law as at 31 October and the government will have very limited powers to make changes; new legislation will be needed to introduce direct rule in Northern Ireland with effect from 31 October if the Executive has not been restored; and an emergency budget may be needed. The paper goes on to make it clear that exit day will mark the beginning and not the end of the Brexit process, as immediately following a no deal exit the UK will be stepping into the unknown: there is no such thing as “managed no deal”; it will be much harder and more complex to strike a deal with the EU post exit; no deal means losing deals with many other non-EU countries; a showdown in Parliament cannot be avoided; in the longer term Brexit will dominate Whitehall, the government will have to support struggling and failing businesses and the Union will come under unprecedented pressure.</p> <p>The CBI has also issued a report on no deal, finding that neither side is ready and putting forward 200 recommendations to help accelerate no deal preparations. There are recommendations for each of the UK and the EU, recommendations for joint action by the UK and EU and recommendations for business. These are set out with clear suggested timelines and are the result of extensive consultation with businesses and a comprehensive study of existing plans laid out by the UK government, EU Commission, member states and businesses.</p>	<p>Boris Johnson’s first speech as Prime Minister</p> <p>Michael Gove’s article on no deal</p> <p>Institute for Government report: Preparing Brexit: No Deal</p> <p>CBI report</p>
Legislative measures to prevent prorogation of Parliament	<p>The Northern Ireland (Executive Formation) Act 2019 received Royal Assent on 24 July. This Act contains measures designed to prevent the government from proroguing Parliament before exit day. It has been suggested that the government could use prorogation as a way of facilitating a no deal Brexit on 31 October; because Parliament</p>	<p>Northern Ireland (Executive Formation) Act 2019</p>



Development	Summary	Links
	<p>would be suspended it would not be able to debate policy or legislation or scrutinise government activity. In essence the Act aims to avoid this by requiring Parliament to sit at specified intervals between September and December 2019.</p> <p>Separately, a cross-party group of MPs has given notice to the Advocate General for Scotland of a proposed application to the Court of Session for judicial review, seeking a declaratory that prorogation of Parliament in order to effect a no deal Brexit would be ultra vires.</p>	
<p>Parliamentary scrutiny of treaties and other international agreements</p>	<p>Parliament's role in the scrutiny of treaties, as set out in the Constitutional Reform and Governance Act 2010, has come into sharp focus as a result of Brexit because the government will need to enter into a significant number of treaties, including complex trade treaties.</p> <p>On 30 April the House of Lords Constitution Committee published a report calling for reform of Parliamentary scrutiny of treaties. The government has now published its response to that report, largely rejecting any significant amendments to the current processes.</p> <p>Separately:</p> <ul style="list-style-type: none">) the House of Lords European Union Committee has published a report on scrutiny of international agreements, suggesting how current Parliamentary scrutiny procedures could be improved for the scrutiny of international agreements after Brexit; and) the House of Commons Public Administration and Constitutional Affairs Committee has launched an inquiry into Parliamentary scrutiny of international treaties and other agreements, which closes on 16 September 2019. This inquiry will examine the constitutional relationship between the government and Parliament in relation to treaties and other international agreements. 	<p>Government response to House of Lords Constitution Committee report</p> <p>House of Lords European Committee report</p> <p>PACAC inquiry</p>
<p>Inquiry into post-Brexit scrutiny of EU law and policy</p>	<p>The European Scrutiny Committee has launched an inquiry into post-Brexit Parliamentary scrutiny of EU law and policy, with a view to exploring how EU laws and policies may continue to affect the UK after exit day and what changes may be needed to the current system of scrutiny.</p>	<p>Inquiry</p>
<p>No deal Brexit: report on consequences of a no deal Brexit for UK business</p>	<p>The House of Commons Exiting the European Union Committee has published a report on the consequences of a no deal Brexit for UK business, concluding that no deal would be the most economically damaging outcome for UK business.</p>	<p>Report</p>



Development	Summary	Links
	<p>The report's conclusions include a clear statement that without a deal the UK could not rely on Article XXIV of the GATT to maintain current tariff-free trade arrangements with the EU, as some have suggested. This is because Article XXIV only applies in anticipation of a free trade agreement or customs union being entered into by two parties and it requires an agreement between those parties, a plan as to how the end state will be reached, and for this agreement to be notified to all WTO members.</p>	
<p>No deal Brexit: inquiry into impact on trade with non-EU countries</p>	<p>The International Trade Committee has launched an inquiry to examine how a no-deal Brexit would affect UK trade with non-EU countries.</p>	<p>Inquiry</p>
<p>No deal Brexit: Northern Ireland trade and investment data</p>	<p>The Northern Ireland Department for the Economy has published a data paper on Northern Ireland's trade and investment under no deal. The paper concludes that no deal would have a profound and long-lasting impact on Northern Ireland's economy and society, including a major reduction in Northern Ireland's exports to Ireland partly driven by the impact of EU tariffs and non-tariff barriers.</p>	<p>Paper</p>
<p>UK trade agreements</p>	<p>The Department for International Trade has published summaries of responses to its 2018 consultations on trade negotiations with the US, Australia and New Zealand and on potential accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Responses revealed significant support for free trade agreements in order to reduce tariffs with key markets and remove wider barriers to trade.</p> <p>The government intends that these consultations will inform its approach to the UK's future trade relationships. It intends to "swiftly" open trade negotiations after Brexit and intends to publish negotiating objectives and scoping assessments before negotiations start.</p> <p>The UK government has also updated its website pages on international trade agreements to reflect the current position on which countries the UK has signed trade agreements with and which are currently under negotiation.</p>	<p>Government press release on consultations</p> <p>UK trade agreement continuity</p>
<p>Brexit SIs published in July</p>	<p>SIs relating to Brexit published this month which are likely to be of interest to commercial practitioners include the following:</p> <ul style="list-style-type: none">) The REACH etc (Amendment etc) (EU Exit) (No. 3) Regulations 2019 amend the REACH etc (Amendment etc) (EU Regulations) 2019 by setting out new latest application dates and sunset dates for certain substances of very high concern.) The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019 dis-apply provisions on freedom of establishment and the free 	



Development	Summary	Links
	<p>movement of services which would otherwise continue as directly effective rights in domestic law post exit day by virtue of section 4 of the European Union (Withdrawal) Act 2018.</p> <ul style="list-style-type: none"> <li data-bbox="645 379 1653 735">) The European Union (Withdrawal) Act 2019 (Commencement No. 3) Regulations 2019 provide for the commencement of the relevant duties and powers under paragraph 1 of Schedule 5 to the European Union (Withdrawal) Act 2018 to publish Brexit-related EU legislation and other relevant international agreements, thereby allowing the public to view online all EU legislation relevant to the UK exiting the EU. Following these Regulations coming into force, the National Archives have confirmed: (a) the launch of an EU Exit web archive, with the aim of providing a comprehensive archive of EU law as it stands on exit day; and (b) the addition of EU legislation to legislation.gov.uk, including a full timeline of changes to EU legislation pre-exit, with annotation. In the future this will also incorporate amendments made by UK legislation post-exit. <li data-bbox="645 746 1653 895">) The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals) (EU Exit) Regulations 2019 clarify how certain terms (including EU-related definitions) should be interpreted in domestic legislation on or after exit day and how non-ambulatory cross-references to EU legislation should be read where they relate to a time before exit day. <li data-bbox="645 906 1653 1054">) The Trade Remedies (Amendment) (EU Exit) Regulations 2019 make minor amendments to previously published trade remedies regulations, including to ensure that they work on all EU exit scenarios. Trade remedies are measures that protect domestic industry against injury caused by dumped or subsidised goods or unforeseen surges in imports. <li data-bbox="645 1066 1653 1190">) The Import and Export Licences (Amendment etc.) (EU Exit) Regulations 2019 amend retained EU regulations by making “operability fixes” to existing non-tariff trade provisions including a licence system for the import and export of certain agricultural products. 	
IPO guidance on exhaustion of intellectual property rights on a no deal Brexit	The IPO has published guidance on how a no deal Brexit would affect the exhaustion of intellectual property rights.	Guidance
European Commission: new President	Ursula von der Leyen has been elected as President of the next European Commission and is scheduled to take up office on 1 November 2019. Ms von der Leyen has said that she supports the withdrawal agreement as negotiated between the EU and the UK, but	



Development	Summary	Links
	<p>that she would support a further extension to the Article 50 withdrawal date if more time is required for a good reason.</p>	
<p>No-deal Brexit: EU Regulation on 2019 EU budget</p>	<p>Council Regulation (EU, Euratom) 2019/1197 on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the withdrawal of the United Kingdom from the Union has been published in the OJEU. This is part of the EU's measures to prepare for a no-deal Brexit and aims to ensure that UK and EU 27 entities affected by Brexit can continue to benefit from EU financing commitments entered into before the withdrawal date until 31 December 2019. This is contingent on the UK confirming that it will contribute to the financing of the EU budget, accept the necessary controls and audits for the EU programmes and actions and make the first payment to the EU budget for the period after withdrawal.</p>	<p>Regulation</p>
<p>.eu domain names post Brexit</p>	<p>The European Commission has published an updated notice to stakeholders about .eu domain names and Brexit. The change means that EU citizens resident in the UK will be entitled to keep .eu domain names post Brexit.</p>	<p>Notice to stakeholders</p>



Development	Summary	Links
Brexit and frustration	<p>The European Medicines Agency (“EMA”) has settled its dispute with the Canary Wharf group, in which it argued that Brexit would frustrate its 25 year lease of premises in Canary Wharf. In February the High Court held that Brexit was not a frustrating event and, prior to the settlement, the EMA intended to appeal this decision in the Court of Appeal.</p>	<p>EMA announcement</p>
Supreme Court confirms correct approach to the doctrine of severance	<p>In <i>Tillman v Egon Zehnder Ltd</i> the Supreme Court had to consider the scope of the doctrine of severance in the context of whether or not to uphold a post-employment non-compete covenant in an employment contract.</p> <p>Having extensively reviewed the authorities on severance, the Court approved the approach taken by the Court of Appeal in <i>Beckett Investment Management Group Ltd v Hall</i> [2007] and found that the correct test for whether a court is able to sever an unenforceable restraint is threefold:</p> <ul style="list-style-type: none">) the unenforceable provision must be capable of being removed without the necessity of adding to or modifying the wording of what remains (the “blue pencil test”);) the remaining (ie non-severed) terms must continue to be supported by adequate consideration; and) the removal of the unenforceable provision must not generate any major change in the overall effect of all the restraints in the contract. <p>This meant that wording contained within the non-compete covenant that was unreasonably broad and therefore unenforceable could be severed (applying the blue pencil test), leaving the remainder of the covenant in force.</p> <p>Although this case was decided in an employment law context, these tests will also apply when a court is deciding whether to sever an unenforceable term in a commercial contract.</p>	<p>Judgment</p>
Court of Appeal construction of an exceptions clause	<p>In <i>Classic Maritime Inc v Limbungan Makmur SDN BHD</i> and another a charterer sought to rely on a contractual clause that provided: “Neither ... nor the Charterers ... shall be Responsible for loss or damage to, or failure to supply, load, discharge or deliver the cargo resulting From:.....[specified events]....; always provided that any such events directly affect the performance of either party under This Charter Party” (emphasis added). The clause was headed “exceptions”, but it was noted that it shared many of the features of a force majeure clause.</p>	<p>Judgment</p>



Development	Summary	Links
	<p>The Court of Appeal found that the charterer was not entitled to rely on this clause. This was because, although an event within the scope of the clause had occurred, the charterer would have defaulted on its contract obligations even if that event had not occurred as it was not ready and willing to perform. Therefore the charterer could not show that “but for” the occurrence of the excepted event it would have performed its contract obligations. Of particular note in the Court’s reasoning, is the finding that the phrases “resulting from” and “directly affect” (italicised above) point to a requirement for the relevant event to be causative of the failure in performance in order for the clause to apply.</p> <p>Although this decision was reached as a matter of construction of the relevant clause, it may have implications for the courts’ analysis of force majeure clauses. Wording making a causal connection between the occurrence of a force majeure event and a failure or delay in performance may come under close scrutiny to ascertain whether, in order for the affected party to rely on the clause, it must be able to demonstrate that “but for” the force majeure event it would have been able to perform in accordance with its contractual obligations.</p>	
<p>Draft rules for off-payroll working from April 2020 published</p>	<p>On 11 July the government published a summary of responses to its consultation on tackling non-compliance with IR35 (the off-payroll working rules) in the private sector, alongside draft legislation and accompanying explanatory documentation.</p> <p>By way of background, the IR35 rules ensure that people working through personal service companies (PSCs) who would have been employees if they had been engaged directly by the relevant client pay broadly the same income tax and national insurance contributions as if they were employed. The government has estimated that only 10% of people apply the rules properly leading to huge losses in tax revenue. The rules were reformed for the public sector in April 2017 and the government intends to reform them for the private sector with effect from April 2020.</p> <p>The key principles set out in the draft legislation (part of the Finance Bill 2019-20) are:</p> <ul style="list-style-type: none">) the new rules will apply to payments made on or after 6 April 2020, ie they will apply to payments under existing contracts that are made from that date, not only to payments made under contracts entered into from that date;) the new rules will apply where the client is a public authority or a medium or large private sector organisation. This means that: (a) small private sector organisations are exempt; and (b) where the new rules differ from the current rules for public authorities, the new rules will apply;) the client will be responsible for determining whether a worker has deemed employment status for the purpose of IR35 and for communicating that 	<p>Draft legislation and explanatory note</p> <p>Summary of responses and government response to consultation</p> <p>Eversheds Sutherland briefing</p>



Development	Summary	Links
	<p>determination, together with reasons, to its contractual counterparty and directly to the worker;</p> <ul style="list-style-type: none">) each party in the supply chain will be responsible for cascading that information to the next party in the chain;) there will be a statutory “status determination disagreement process”;) if it is determined that the worker is a deemed employee, the party responsible for deducting and accounting to HMRC for income tax and employee NICs, and for paying employer NICs, will be the party that pays the PSC (the “fee-payer”);) liability for those employment taxes will, however, rest with the client who will be deemed to be the fee-payer in certain circumstances, including during the period until it provides the status determination statement and reasons to its counterparty and the worker and if it fails to comply with its obligations under the status determination disagreement process; and) there will be additional anti-avoidance measures to enable HMRC to recover unpaid employment taxes from other parties in the supply chain, with the details to be set out in as yet unpublished PAYE regulations. <p>The consultation on the draft legislation runs until 5 September.</p> <p>The new rules will have a potentially significant administrative and financial impact on businesses that use PSCs in their supply chain. Click on the link to read an Eversheds Sutherland briefing which includes information on what businesses should be doing now to prepare for the changes.</p>	

Proposals to strengthen the Modern Slavery Act 2015

The final report on the independent review of the Modern Slavery Act 2015 (the “Act”) was laid before Parliament in May. The government has now published its response to that report.

In its response the government agrees that the supply chain transparency aspects of the Act should be strengthened. To that end it has launched a public consultation on proposed measures intended to increase transparency and compliance, improve reporting quality and extend the scope of the legislation, with the intention of making the necessary legislative changes as soon as Parliamentary time allows thereafter. The consultation includes questions on whether the section 54 reporting requirements should be strengthened by making the recommended six reporting areas mandatory and by removing the ability for an organisation to state that it has taken no steps to address its modern slavery risks. The consultation closes on 17 September 2019.

[Government response](#)
[Consultation on transparency in supply chains](#)



Development	Summary	Links
	<p>In addition, the government's response to the report states that it:</p> <ul style="list-style-type: none">) commits to revise the statutory guidance on transparency in supply chains following the consultation, including by adding a template section 54 statement, making it clear that organisations' due diligence activities need to extend beyond first and second tier suppliers and encouraging organisations to include details of specific due diligence steps they intend to take in the future;) has agreed to keep a list of organisations that are likely to fall within the scope of section 54 of the Act and has already identified approximately 17,000 affected organisation and written to the CEOs of those organisations with clear information to support effective reporting;) disagrees with the recommendation for a designated board member to be accountable for production of the section 54 statement, on the basis that this is a collective board responsibility;) accepts the recommendation that there should be a central registry of modern slavery statements, with the establishment of this registry being announced by the Prime Minister in June. Alongside this, the government proposes creating a single reporting deadline rather than keeping deadlines in line with the end of the relevant organisation's financial year (even though this was not a recommendation of the review committee). This proposal is also included in the consultation;) does not intend to mandate modern slavery reporting in company annual reports or to create an offence under the Company Directors Disqualification Act;) is carrying out an audit of compliance and non-compliant organisations risk being publicly named further to this audit, with the consultation seeking views on penalties for non-compliance; and) will be publishing its own modern slavery statement this year and from 2020/21 individual UK government ministerial departments will be responsible for publishing their own modern slavery statements on an annual basis. The consultation will also gather evidence to inform which other public sector organisations should be brought into scope. 	
Incoterms 2020	As reported in last month's bulletin, Incoterms 2020 will come into force on 1 January 2020. The International Chamber of Commerce has now announced that these will be published in September 2019. Once these are published, businesses will need to review them to ascertain whether existing contracts should be varied with effect from 1	ICC website



Development	Summary	Links
	<p>January 2020 to incorporate one of the 2020 Incoterms. It will, however, still be possible to trade using 2010 Incoterms. When referring to Incoterms in a contract it is essential to specify which version as well as which term applies.</p> <p>Alongside the launch of Incoterms 2020 the ICC also intends to facilitate trade by introducing “smartINCOS” using distributed ledger technology (blockchain). It describes these as “customisable, self-executing digital sales agreements, incorporating the new Incoterms® rules”.</p>	
<p>New EU Regulation on product safety</p>	<p>EU Regulation 2019/1020 on market surveillance and compliance of products was published in the OJEU on 25 June. The majority of the Regulation will apply from 16 July 2021, with certain provisions applying from 1 January 2021. The Regulation aims to strengthen the single market for goods through enhanced efforts to keep non-compliant products from being placed on the single market. It does this by:</p> <ul style="list-style-type: none">) consolidating the existing framework for market surveillance activities and for co-operation between market surveillance and customs authorities; and) creating a stronger framework for controls on products entering the single market. 	<p>Regulation</p>
<p>Groceries Code Adjudicator publishes annual report</p>	<p>The Groceries Code Adjudicator has published its annual report, setting out the key actions it has taken over the last year by reference to its statutory objectives.</p>	<p>GCA annual report and accounts</p>
<p>Administrative restoration of a company did not reverse termination of a contract for dissolution</p>	<p>In Bridgehouse (Bradford No.2) v BAE Systems Plc the High Court held that where a party exercised a contractual right to terminate a contract because the counterparty company had been struck off the Register of Companies, the later restoration of the counterparty to the Register of Companies did not invalidate or reverse the termination of the contract. This is despite Section 1028(1) of the Companies Act 2006 which provides that “the general effect of administrative restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register”. Previous case law indicates that this deeming provision is directed to the direct or automatic effects of removal from the register, as opposed to the secondary consequences.</p>	<p>Judgment</p>



Development	Summary	Links
<p>First statutory report on Consumer Contracts Regulations 2013</p>	<p>The Department for Business, Energy & Industrial Strategy has published a statutory report on the implementation of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which follows a call for evidence that ran from March to May 2019. The Regulations implement most of the Consumer Rights Directive in the UK. The broad conclusion of the report is that the Regulations continue to meet the objectives for which they were established and that these objectives remain appropriate. Areas which require further consideration include: the challenges facing vulnerable consumers; how to ensure that terms and conditions are better understood by consumers; improving guidance; and the challenges of consistent enforcement of consumer protection legislation.</p> <p>The report does not include any proposals for policy or legislative change as it is intended that these will be set out in a White Paper on consumer policy to be published later this year. It is noted, however, that for so long as the UK is bound by EU law there is little scope to change the substantive content of the Regulations as the Directive which they implement is a maximum harmonisation measure.</p>	<p>Report</p>
<p>Online traders not obliged to give consumers contact telephone number</p>	<p>The Consumer Rights Directive 2011/83 (implemented in the UK by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) requires a trader to provide certain information to consumers before a contract is made. This information includes, at Article 6(1)(c), the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him effectively.</p> <p>The CJEU has held that Article 6(1)(c) does not require a trader to establish a telephone or fax line or create a new email address for customer contact and accordingly the trader only has to communicate a telephone number, fax number or email address to consumers where it already has that method for communicating with consumers. Traders are also not precluded from providing means of communication other than those listed in Article 6(1)(c), as the key objective of that Article is to provide a method of communication that is both direct and effective.</p> <p>This decision will be welcomed by consumer facing businesses as it means that businesses can develop their practices to use more modern means of communication. Modernisation of the contact information requirements of the Consumer Rights Directive is also part of the EU New Deal for Consumers package.</p>	<p>Judgment</p>
<p>Consumer Rights Act 2015 (Enforcement) (Amendment) Order 2019</p>	<p>The Consumer Rights Act 2015 (Enforcement) (Amendment) Order 2019 has been made. Its purpose is to:</p>	<p>Order</p>



Development	Summary	Links
	<ul style="list-style-type: none">) enable the Secretary of State, and the Office of Product Safety and Standards on his behalf, to investigate claims about unsafe consumer products that fall solely within the ambit of the General Product Safety Regulations 2005 (ie where there is no applicable sector specific product safety legislation); and) enable UK enforcement authorities to investigate claims about unsafe gas appliances and unsafe personal protective equipment. <p>This instrument continues the process of developing a national incident management capability in response to serious safety concerns over consumer products, as set out in the Strategy for the Office for Product Safety and Strategy published in August 2018.</p>	
<p>European Commission publishes guidance on Unfair Contract Terms Directive</p>	<p>The European Commission has published guidance on the Unfair Contract Terms Directive (which is implemented in the UK by the Consumer Rights Act 2015). The guidance seeks to provide clarity on the CJEU's interpretation of key provisions and concepts of the Directive. It should be noted, however, that as the Directive is a minimum harmonisation directive national laws may include stricter or more onerous terms than the Directive.</p> <p>Alongside the guidance the Commission has also published recommendations on how terms and conditions can be presented to consumers in a user-friendly and transparent way.</p>	<p>Guidance Recommendations</p>
<p>CMA launches digital markets strategy and market study into online platforms and digital advertising</p>	<p>The Competition and Markets Authority ("CMA") has launched a market study into online platforms and the digital advertising market in the UK.</p> <p>The CMA is looking at three broad potential sources of harm to consumers in connection with the market for digital advertising:</p> <ul style="list-style-type: none">) to what extent online platforms have market power in user-facing markets, and what impact this has on consumers;) whether consumers are able and willing to control how data about them is used and collected by online platforms; and) whether competition in the digital advertising market may be distorted by any market power held by platforms <p>Comments were due in by 30 July 2019, including from interested parties such as online platforms, advertisers, publishers, intermediaries within the ad tech stack, representative professional bodies, government and consumer groups.</p>	<p>CMA statement Statement of scope</p>



Development	Summary	Links
<p>Strategic steer to the CMA</p>	<p>The government issues a non-binding strategic steer to the Competition and Markets Authority (“CMA”) for each Parliament. This is intended to support the CMA in achieving its objectives and delivering benefits for consumers and the UK economy. As part of the government’s recent green paper consultation on modernising consumer markets the government asked for views on the new strategic steer.</p> <p>On 18 July the government issued the new strategic steer which provides, amongst other things, that the CMA should:</p> <ul style="list-style-type: none">) take timely action to improve competition in sectors which have a significant impact on productivity; make recommendations to help improve productivity where appropriate; work to minimise barriers to new businesses successfully entering markets and report publicly on competition issues affecting productivity;) “champion consumers” including by focusing on businesses and markets where there is clear potential for harm to consumers; tackling market failures; leading work with sector regulators to ensure a coordinated approach to the competition regime and making markets work well for vulnerable consumers;) make the most of the challenges and opportunities of the digital economy;) take action to tackle anti-competitive behaviour and unfair trading both before and after Brexit; and) be a prominent voice for consumers and improve public understanding of competition and consumer law; and make recommendations on regulatory, policy and legislative matters and their implications for competition and consumers. <p>The government commits to responding publicly to the CMA’s recommendations within 90 days and says that there will be a presumption that that the government will accept all the CMA’s published recommendations unless there are strong policy reasons not to do so.</p>	<p>Strategic Steer</p>



Development	Summary	Links
NCSC cyber security guidance for SMEs	The National Cyber Security Centre has published guidance to help SMEs respond to and recover from a cyber incident.	Guidance
Reform of Cyber Essentials Scheme	<p>The National Cyber Security Centre has announced changes to the UK Cyber Essentials Scheme. Changes include:</p> <ul style="list-style-type: none">) a new partnership model with just one accreditation body (rather than the current five) which will take over operation of the scheme at the end of March 2020;) defining and implementing a consistent minimum standard of expertise for everyone involved in operating the scheme;) from next year, Cyber Essentials certificates will be issued with a 12 month expiry date in order to require organisations to re-certify annually; and) once the scheme has transitioned fully to the new partner, other changes will be introduced including the introduction of advisory services, introduction of ways to measure what difference the implementation of Cyber Essentials is having on the cyber security health of the UK, development of more effective feedback mechanisms, considering whether levels in addition to the current levels of Cyber Essentials and Cyber Essentials Plus are required, making it easier to understand what a certificate covers and the exploration of innovative automated technical solutions to deliver certification services. 	Blog post
Enhanced security measures for telecoms sector	The government has announced plans to introduce legislation to improve security across the UK's telecoms sector, including in new 5G and full fibre broadband services.	Press release
NCSC publishes second Active Cyber Defence report	<p>The National Cyber Security Centre has published its second report examining how its Active Cyber Defence ("ACD") programme is improving the security of the UK public sector and the wider UK cyber ecosystem. The report concludes that the programme, which aims to mitigate the harm caused by cyber-attacks against the UK, has had a positive impact, but that there is still room for improvement.</p> <p>The report assesses developments in the following ACD programme services:</p> <ul style="list-style-type: none">) takedown service - removing malicious content from the internet;) mail check - helping domain owners understand and control abuse of their email domains; 	Report Blog post



Development	Summary	Links
	<ul style="list-style-type: none">) domain discovery - helping system owners understand what internet domains they have registered;) web check - proactively scanning websites for vulnerabilities and issues;) protective Domain Name System - protecting the public sector at scale from harmful internet threats;) routing and signalling - protecting the protocols that route internet traffic;) host-based capability - understanding public sector IT;) vulnerability disclosure platform - streamlining the report process for vulnerabilities in government services; and) suspicious email incubator - building a service to help the public report suspicious internet incidents and activity and automatically taking protective action. 	
<p>FSB launches survey on response to and recovery from cyber incidents</p>	<p>The Financial Stability Board (“FSB”) has launched a survey of industry practices in the financial and non-financial industry sectors on response to, and recovery from, cyber incidents. Responses are requested by 28 August 2019.</p> <p>The FSB is developing a toolkit of effective practices to support financial institutions in their cyber response and recovery efforts. The survey aims to collect information on industry practices on response and recovery of critical services, including restoration of data integrity following a cyber incident that could have an impact on financial stability.</p> <p>The FSB notes that the survey is a key element of the FSB’s outreach strategy with external stakeholders to gather views on effective practices relating to financial institutions’ response to, and recovery from, a cyber incident. The development of the toolkit will also be informed by a review of publicly available documents on how firms have responded to and recovered from past cyber incidents, and a stocktake of relevant publicly released guidance issued by national authorities and international organisations.</p>	<p>Press statement Survey</p>
<p>Europol and Eurojust “Common challenges in combating cybercrime” report</p>	<p>Europol and Eurojust have published a report summarising the key developments and challenges in combating cybercrime from both a law enforcement and a judicial perspective. The report is informed by operational and practical experience, joint deliberations and expert input. It identifies five key areas of focus (as noted in the press release):</p>	<p>Report Press release</p>



Development	Summary	Links
	<ul style="list-style-type: none">) Loss of data: electronic data is the key to successful investigations in all the cybercrime areas, but the possibilities to obtain such data have been significantly limited.) Loss of location: recent trends have led to a situation in which law enforcement may no longer establish the physical location of the perpetrator, the criminal infrastructure or electronic evidence.) Challenges associated with national legal frameworks: the differences in domestic legal frameworks in EU Member States often prove to be serious impediments to international cybercrime investigations.) Obstacles to international cooperation: in an international context, no common legal framework exists for the expedited sharing of evidence (as does exist for the preservation of evidence). There is also a clear need for a better mechanism for cross-border communication and the swift exchange of information.) Challenges of public-private partnerships: cooperation with the private sector is vital for combating cybercrime, yet no standardised rules of engagement are in place, and investigations can thus be hampered. 	
<p>World Economic Forum “Incentivising responsible and secure innovation” report</p>	<p>The World Economic Forum’s (“WEF”) report “Incentivising responsible and secure innovation” focuses on why and how investors in technology-driven companies should embed cyber risk management and cybersecurity into their investment decisions.</p> <p>The WEF suggests that by ensuring cybersecurity from the outset – including features like security-by-design and security-by-default – investors can increase the likelihood of company success in the long term, promote more durable technology and improve overall cyber resilience.</p> <p>The report includes commentary around the need for greater awareness and a standard approach, the development of a cybersecurity due diligence framework, and new incentive structures to facilitate a balance between time to market and improved security.</p>	<p>WEF report Press release</p>
<p>New investment in cyber security</p>	<p>The government has announced that major businesses including Google and Microsoft are backing the UK to become a world leader in tackling the most damaging cyber security threats. Up to £117,000,000 expected private industry investment will be combined with £70,000,000 government investment through its modern Industrial Strategy to develop new technologies.</p>	<p>Press release</p>



Development	Summary	Links
<p>New ePrivacy Regulation draft</p>	<p>The newly instated Finnish Presidency of the Council of the EU has released updated consolidated draft texts of the proposed ePrivacy Regulation ("Regulation"), dated 12 July 2019 and 26 July 2019.</p> <p>By way of reminder, the Regulation aims to reinforce trust and security in the EU's Digital Single Market and complete the EU's framework for data protection and the confidentiality of electronic communications. It is a draft legislative instrument planned to replace the existing Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426.</p> <p>The current draft text provides:</p> <ul style="list-style-type: none">) an extended scope to cover internet based electronic communication services (so-called "over the top" services) as well as traditional communications services;) a GDPR standard of consent applicable to activities covered;) new lawful grounds for processing communications data;) new rules on the uses of cookies, tracking technologies and the sending of unsolicited marketing communications; and) enhanced obligations around privacy by design and by default. <p>Failure to comply with the Regulation will have GDPR-style ramifications - including fines of up to 2% global annual turnover, or even 4% for certain breaches.</p> <p>Organisations should monitor progress of the draft Regulation and assess its relevance to any direct marketing activities and/or tracking technologies. Note that it is possible that the Regulation may not become law in the UK, if its date of application falls outside any agreed transition period or if the UK leaves the EU without a deal before that date. However, the UK will be incentivised to adopt the Regulation or comparable rules in order to, among other things, secure an adequacy decision from the EU in respect of data transfers.</p>	<p>Draft text (12 July 2019)</p> <p>Draft text (26 July 2019)</p>
<p>New guidance on cookies from ICO</p>	<p>On 3 July the Information Commissioner's Office ("ICO") published its revised guidance on the use of cookies. The guidance examines the use of cookies and similar technologies (including device fingerprinting identifiers) in detail and explains, among other things, that:</p> <ul style="list-style-type: none">) unless an exemption applies, any use of cookies requires the provision of clear and comprehensive information - which means you must provide the same kind of information to users as you would when processing their personal data. The 	<p>Guidance</p> <p>Blog post</p>



Development	Summary	Links
	<p>information must include the types of cookies you intend to use, and the purposes for which you intend to use them;</p> <ul style="list-style-type: none">) you cannot rely on implied consent for cookies. Any non-essential cookies, including third party cookies used for the purposes of online advertising or web analytics, require prior consent to the GDPR standard;) analytics cookies are not "strictly necessary" because they are not part of the functionality that the user requests when they use the relevant online service;) users must be provided with free choice; consent should not be bundled up as a condition of service unless it is necessary for that service. In its blog post, the ICO acknowledges there are some differing opinions as well as practical considerations around the use of partial cookie walls and confirms it will be seeking further submissions and opinions on this point from interested parties; and) legitimate interests cannot be relied on for the setting of cookies - PECR always requires consent for cookies, unless an exemption applies. <p>In its accompanying blog post, the ICO warns that cookie compliance "will be an increasing regulatory priority for the ICO in the future" but that "any future action would be proportionate and risk-based". Organisations are recommended to start working towards compliance now, by undertaking a cookie audit and documenting decisions.</p>	

CJEU rules that website operator can be joint controller re personal data transmitted to Facebook via "Like" button

In Case C-40/17 Fashion ID GmbH & Co. KG v Verbraucherzentrale NRW eV, the Court of Justice for the European Union has ruled that the operator of a website that features a Facebook "Like" button can be a controller jointly with Facebook in respect of the collection and transmission to Facebook of personal data of visitors to its website. However, the website operator cannot be considered to be a controller in respect of the operations involving data processing carried out by Facebook after that data has been transmitted.

The Court further confirmed that, as a joint controller, the website operator is required to comply with its data protection compliance responsibilities, including (among others): to provide specific information to the individuals whose personal data is being processed, and to ensure that it has a lawful basis for the processing that it is (jointly) determining occurs.

The background is that a German clothes retailer embedded a Facebook "Like" button on its website, which facilitated the transmission of the website visitor's personal data to Facebook Ireland. The transmission occurred as a result of the website including the button, without the visitor being aware of the transmission, and regardless of whether

[Press release](#)

[Judgment](#)



Development	Summary	Links
	<p>the visitor was a member of Facebook or had clicked on the “Like” button. A German consumer protection group brought an action against the retailer in 2015, citing that Fashion ID had failed to comply with certain requirements under the former Data Protection Directive 95/46/EC.</p> <p>This case concerned the Facebook “Like” button but the judgment applies to other social media plugin technologies. Organisations should consider auditing their websites to ensure that they are deploying social media plugin technology in a compliant manner.</p>	
<p>ICO annual report 2018-19</p>	<p>The ICO has published its 2018-19 report. The report notes the following highlights:</p> <ul style="list-style-type: none">) the ICO’s helpline, chat and written advice services received 471,224 contacts in 2018-19, a 66% increase from 2017/18 (283,727 contacts);) data protection complaints received by the ICO increased from 21,019 in 2017/18 to 41,661 in 2018/19;) preparation of statutory codes focusing on age appropriate design, data sharing, direct marketing, and data protection and journalism;) using new powers of inspection - issuing 11 assessment notices in conjunction with its investigations into data analytics for political purposes, political parties, data brokers, credit reference agencies and others; and) issuing warnings and reprimands across a range of sectors including health, central government, criminal justice, education, retail and finance. 	<p>ICO statement</p>
<p>ICO blog: Live facial recognition technology – data protection law applies</p>	<p>The Information Commissioner has published a blog post on live facial recognition (“LFR”) technology. The blog post explains how extensive use of LFR represents the widespread processing of biometric data of thousands of people as they go about their daily lives.</p> <p>The ICO is conducting an investigation, monitoring the trials carried out by the police deploying this technology. The Commissioner highlights the case - R (Bridges) v Chief Constable of South Wales Police (“SWP”) – which involves a member of the public who has concerns that his image may have been captured on LFR from a police van while he was out shopping in Cardiff city centre. He has brought the case, to ask the courts to decide whether the use of facial recognition in this way by SWP is lawful.</p>	<p>ICO blog post</p>
<p>EDPB twelfth plenary 9-10 July</p>	<p>The EDPB convened for their twelfth plenary on 9-10 July. Following the meeting, the EDPB published the following:</p> <ul style="list-style-type: none">) Draft video surveillance guidelines 	<p>EDPB agenda</p> <p>Draft video surveillance guidelines</p>



Development	Summary	Links
	<ul style="list-style-type: none">) EPDB-EDPS joint response to the LIBE Committee on the impact of the US Cloud Act on the European legal framework for personal data protection) Opinion on Standard Contractual Clauses for processors under Article 28(8) submitted by the Danish supervisory authority) Opinion on draft accreditation requirements for a code of conduct monitoring body pursuant to Article 41 GDPR submitted by the Austrian supervisory authority) Opinion on the competence of a supervisory authority in case of a change in circumstances relating to the main or single establishment) Joint Opinion on processing of patients' data and role of European Commission within eHealth Digital Services Infrastructure) Opinion on the draft DPIA list of the Cyprus supervisory authority pursuant to Article 35(4)) Opinions on Art 35.5 lists (DPIA exemption) submitted by France, Spain and the Czech Republic) Recommendation on EDPS list pursuant to Art 39.4 Regulation 2018/1725 (DPIA list) 	<p>EPDB-EDPS joint response to the LIBE Committee on the impact of the US Cloud Act on the European legal framework for personal data protection and Annex</p> <p>Opinion on Danish DPA Art 28(8) SCCs</p> <p>Opinion on Austrian DPA draft accreditation requirements for a code of conduct monitoring body pursuant to article 41 GDPR</p> <p>Opinion on the competence of a supervisory authority in case of change in circumstances relating to main or single establishment</p> <p>Joint Opinion on processing of patients' data and role of European Commission within eHealth Digital Services Infrastructure</p> <p>Opinion on the draft DPIA list of the Cyprus supervisory authority pursuant to Article 35(4)</p> <p>Opinions on Art 35.5 lists (DPIA exemption) submitted to the Board by France, Spain and the Czech Republic</p> <p>Recommendation on EDPS list</p>

Centre for Data Ethics and Innovation interim reports on reviews into online targeting and bias in algorithmic decision-making

The Centre for Data Ethics and Innovation ("CDEI") (an independent advisory body, led by a board of experts, set up and tasked by the UK government to investigate and advise on how we maximise the benefits of data-driven technologies) has published two interim reports on its major reviews into online targeting and bias in algorithmic decision-making.

The report on the review into online targeting reveals that the CDEI's work to date has led to the following insights:

[Interim report on review into online targeting](#)

[Interim report on review into bias in algorithmic decision-making](#)



Development	Summary	Links
	<ul style="list-style-type: none">) people’s attitudes towards targeting change when they understand more of how it works and how pervasive it is - while people recognise the benefits of online targeting, most seem to agree that there are some forms of targeting which make them uncomfortable, and that changes are needed to the way targeting is practised and overseen;) any changes to oversight mechanisms need to take into account how responsibility should be split between different actors, how to make the most of market incentives, voluntary regulation and empowering users, and how to enable effective monitoring and enforcement; and) potential solutions could include stronger regulations, greater transparency and visibility of how targeting operates, giving individuals stronger controls or rights over how data about them is used. <p>The report on the review into bias in algorithmic decision-making summarises that:</p> <ul style="list-style-type: none">) the tension between the need to create algorithms which are blind to protected characteristics, while also checking for bias against those same characteristics, creates a challenge for organisations seeking to use data responsibly;) new approaches to identifying and mitigating bias are required - specific tools are already starting to be developed but there is limited understanding of the full range of tools and approaches available (current and potential) and what constitutes best practice, which makes it difficult for organisations that want to mitigate bias in their decision-making processes to know how to proceed and which tools and techniques they should use; and) effective human accountability for the use and performance of algorithmic tools will be critical and tools must be used as part of a system of governance that is demonstrably trustworthy - this may require new functions and actors, such as third party auditors, to independently verify claims made by organisations about how their algorithms operate. The CDEI will take a sector approach to test their hypotheses and explore what is required to operationalise ethical approaches in practice. 	
<p>ICO launches updated data sharing code of practice for consultation</p>	<p>The ICO has launched a consultation on its updated data sharing code of practice. The consultation closes on 9 September 2019.</p> <p>The updated code replaces a 2011 code, as required under the Data Protection Act 2018. The code explains changes to data protection legislation where relevant to data sharing.</p>	<p>Consultation</p> <p>Eversheds Sutherland briefing</p>



Development	Summary	Links
	<p>For a summary of the draft code, read our briefing accessed via the links column.</p>	
<p>ICO's new access to information strategy</p>	<p>The ICO has published a new access to information strategy entitled 'Openness by Design'.</p> <p>The strategy aims to increase the impact of the ICO's regulation of access to information legislation, ie: the Freedom of Information Act 2000, the Environmental Information Regulations 2004, SI 2004/3391 and the Re-use of Public Sector Information Regulations 2015, SI 2015/1415.</p> <p>The ICO will encourage public authorities to comply with the law regulated by the ICO in the first instance, reducing the need for people to complain to the ICO. Where required, the ICO will take enforcement action and make use of its powers.</p>	<p>Press release</p> <p>Strategy document</p>
<p>European Commission reflects on GDPR implementation and refers Greece and Spain to the Court for not transposing Data Protection Law Enforcement Directive</p>	<p>In a report entitled "Data protection rules as a trust-enabler in the EU and beyond – taking stock", the European Commission reflects on the GDPR's first year of implementation and sets out steps to strengthen the data protection rules and their application. The report concludes that most Member States have set up the legal framework required by the GDPR, and that the new system of strengthening the enforcement of data protection rights and rules is falling into place. Organisations are developing a compliance culture, citizens are becoming more aware of their rights and convergence towards high international data protection standards is progressing.</p> <p>In addition, the European Commission has referred Greece and Spain to the Court of Justice of the EU for failing to transpose the Data Protection Law Enforcement Directive, which was required to be transposed into national law by 6 May 2018.</p>	<p>Report and accompanying press release</p> <p>Press release (Greece and Spain)</p>
<p>Government consults on new plans to make online identity verification safer</p>	<p>The Government has launched a call for evidence, seeking views on how to improve the ways people and organisations can digitally verify identities.</p> <p>According to the corresponding press release, the call for evidence will explore the role of government and the private sector in the development of digital identities – the way people prove they are who they say they are using digital technology – and seek views on how to achieve higher levels of trust between the public and organisations checking their identities.</p> <p>The proposals aim to help make verification methods quicker, easier and more secure – in particular, to reduce the opportunity for fraud.</p> <p>The consultation closes on 15 September 2019.</p>	<p>Press release</p> <p>Consultation</p>



Development	Summary	Links
<p>Government guide on how to help customers better understand contractual terms and privacy policies</p>	<p>The Department for Business, Energy & Industrial Strategy (“BEIS”) has published a guide for businesses on how to help customers better understand contractual terms and privacy policies.</p> <p>The guide looks at various techniques for improving consumers’ understanding of contractual terms, conditions and privacy policies while focusing on methods offering low-cost and scalable solutions. Techniques found to be particularly effective at improving understanding, include:</p> <ul style="list-style-type: none">) displaying key terms as frequently asked questions;) using icons to illustrate key terms;) showing customers your terms within a scrollable text box instead of requiring a click to view them;) providing information in short chunks at the right time; and) using illustrations and comics. <p>The literature review, which accompanies the guide, summarises existing evidence on techniques to increase consumer engagement with, and understanding of, online contractual terms and privacy policies. In addition, a technical report details the six experiments conducted by the Behavioural Insights Team (the company engaged by BEIS to conduct the research) for the study.</p>	<p>Best practice guide</p> <p>Literature review</p> <p>Technical report</p> <p>Press release</p>
<p>ICO selects first participants for data protection sandbox</p>	<p>The ICO has published details of the first participants to its data protection sandbox initiative.</p> <p>The sandbox is a new ICO service which supports organisations developing innovative products and services using personal data with a clear public benefit. According to the ICO, “participants will be able to draw on the ICO’s expertise and advice on data protection by design, mitigating risks as they test their innovations, while ensuring that appropriate protections and safeguards are in place”.</p> <p>The first projects to take part in the sandbox involve the use of biometrics to speed up airport passenger journeys, innovations in crime prevention and technological advances in the health sector.</p> <p>The ICO has said previously that it hopes to treat the sandbox projects “as use-cases to anticipate change and develop public guidance and resources on compliance, and potentially to feed into the development of codes of conduct in particular sectors where future regulatory provision may be required”.</p>	<p>Press release</p>



Development	Summary	Links
New digital services tax	<p>From April 2020 the government will be introducing a new Digital Services Tax, via the Finance Bill 2019-20. This will comprise a 2% tax on the revenues of search engines, social media platforms and online marketplaces which derive value from UK users. The tax will apply to groups which have a worldwide revenue of more than £500,000,000 from digital activities, provided that more than £25,000,000 of those revenues are derived from UK users.</p>	<p>Draft legislation and explanatory notes Eversheds Sutherland briefing</p>
Transparency obligations for online platforms	<p>Regulation EU 2019/1150 on promoting fairness and transparency for business users of online intermediation services was published in the OJEU on 11 July. It enters into force on the 20th day following publication and will apply from 12 July 2020.</p> <p>The Regulation is part of the Digital Single Market Strategy. It sets out a legal framework for online intermediation services providers (such as online market places, online software application stores, online social media) and online search engines to use transparent terms and conditions for business users and to provide redress if those terms and conditions are violated. The aim is that this will encourage competition between platforms and empower business users to take better informed decisions and to effectively resolve disputes.</p>	<p>Regulation</p>
House of Commons Select Committee response to Online Harms White Paper	<p>The House of Commons Digital, Culture, Media and Sport Committee has published a report on the government White Paper on Online Harms which was published in April. The report states that the Committee was pleased that the White Paper took up two of its key recommendations, namely the establishment of an independent regulator for online harms and the requirement for social media companies to comply with a duty of care. However, the Committee is concerned that there is a significant gap between its recommendations and the White Paper with regard to electoral interference and online political advertising. The report therefore includes the following:</p> <ul style="list-style-type: none">) it calls on the government to introduce legislation to protect against online electoral interference within the next six months; and) it demands a statutory veto over the appointment and dismissal of the chief executive of a new online harms regulator. <p>The Committee noted that in a separate paper, Elizabeth Denham (the Information Commissioner) also expressed surprise and disappointment that the White Paper did not contain more on electoral interference and transparency in political advertising.</p>	<p>Report ICO response to white paper Government White Paper on Online Harms</p>



Development	Summary	Links
<p>European Insurance and Occupational Pension Authority consultation on cloud outsourcing</p>	<p>The European Insurance and Occupational Pension Authority ("EIOPA") has launched a consultation on guidelines on outsourcing to cloud service providers which takes into account recent guidance on outsourcing published by the European Banking Authority. The guidelines will provide advice to market participants on how the outsourcing provisions of the Solvency II Directive 2009/138/EC, Commission Delegated Regulation (EU) 2015/35 and EIOPA's Guidelines on System of Governance need to be applied in relation to outsourcing to cloud service providers. The consultation closes on 30 September 2019.</p> <p>The guidelines cover the following:</p> <ul style="list-style-type: none">) criteria to distinguish whether cloud services should be considered within the scope of outsourcing;) principles and elements of governance of cloud outsourcing including documentation requirements and list of information part of the notification to supervisory authorities;) pre-outsourcing analysis, including materiality assessment, risk assessment and due diligence on the service providers;) contractual requirements;) management of access and audit rights; security of data and systems; sub-outsourcing, monitoring and oversight of cloud outsourcing and exit strategies; and) principle based instructions for the national supervisory authorities on the supervision of cloud outsourcing arrangements including, where applicable, at group level. 	<p>EIOPA press statement</p> <p>Consultation paper</p>
<p>Consultation on implementation of Audiovisual Media Services Directive</p>	<p>The Department for Digital, Culture, Media and Sport has published a consultation on implementing the new rules on video sharing platforms which are set out in the Audiovisual Media Services Directive 2018/1808 (which amends Directive 2010/13) and must be implemented by Member States by 19 September 2020. These rules will bring video sharing platforms (likely to include social media sites and live streaming services) into scope of the Audiovisual Directive, requiring platforms to take appropriate measures to protect children from harmful content, protect the general public from illegal content and content that incites violence or hatred and to respect certain obligations around commercial consultations.</p>	<p>Consultation</p>



Development	Summary	Links
	<p>Previously the government had intended to implement these requirements through the regulatory framework proposed in the Online Harms White Paper, but it has now decided to take an interim approach ahead of that framework coming into force.</p> <p>The consultation closes on 17 September 2019.</p>	
Impact of Brexit on NIS Regulations	<p>Following a consultation from April to June 2019, the government has confirmed that there will be an amendment to the NIS Regulations which will come into effect on the 20th day after the UK withdraws from the EU. This amendment will require non-UK based digital service providers (“DSPs”) that offer services in the UK to nominate a UK representative within a period of three months of the amendment coming into force or, if later, within three months after the date on which the DSP comes within the scope of the NIS Regulations. Such non-UK based DSPs will be required to comply with the UK NIS Regulations.</p>	<p>Consultation outcome announcement</p>



Development	Summary	Links
<p>Pilot phase of European ethics guidelines for trustworthy AI launched, together with key recommendations</p>	<p>In April the European Commission’s High Level Expert Group on AI (“HLEG”) published ethics guidelines for trustworthy AI which provide guidance on how to ensure that an AI system is lawful, ethical and robust at all stages of its development, deployment and use.</p> <p>On 26 June the European Commission launched the pilot phase of these ethics guidelines. During this phase organisations will be able to test the assessment list that helps organisations to implement the guidelines and see how robust it is in practice. An online survey to provide feedback on the assessment list is open until 1 December 2019. It is intended that the feedback, together with information gathered through interviews with both public and private sector participants, will inform a revised version of the assessment list which will be published in early 2020.</p> <p>Also on 26 June the HLEG presented to the European Commission a list of 33 recommendations that it believes will help AI have a major impact on citizens, businesses, administrations and academia. These recommendations call on EU and national policymakers to:</p> <ul style="list-style-type: none">) empower and protect humans and society;) take up a tailored approach to the AI market;) secure a single European market for trustworthy AI;) enable AI ecosystems through sectoral multi-stakeholder alliances;) foster the European data economy;) exploit the multi-faceted role of the public sector;) strengthen and unite Europe’s research capabilities;) nurture education to the fourth power;) adopt a risk-based governance approach to AI and ensure an appropriate regulatory framework;) stimulate an open and lucrative investment environment; and) embrace a holistic way of working. 	<p>European Commission landing page</p>
<p>Call to develop network of AI Excellence Centres</p>	<p>The European Commission has launched a call to develop a European Network of AI Excellence Centres. Proposals to finance projects can be submitted until 13 November 2019.</p>	<p>European Commission news story</p>



Development	Summary	Links
	New decisions on the admissibility of cookies	
	Recommendation on the protection of health-related data	
	The regulatory positions of OTT - a global view	
	What are the potential benefits of OTT?	
	Electronic invoicing in public procurement	
	Reform of EU copyright law creates additional rights for rightholders in the digital age	
	Case comment: Amey Highways Limited v West Sussex County Council	
	The rise of AI and robotics in retail - is it forging ahead of the law?	
	Eversheds Sutherland response to UK Jurisdiction Taskforce consultation on cryptoassets, distributed ledger technology and smart contracts	
	Stepping into the breach: managing cyber risks with insurance	
	Payment matters 42	
	ICO issues the long awaited data sharing code of practice for consultation	
	Irish data protection commissioner issues guidance on CCTV for controllers	

For further information, please contact:



Sara Ellis
Principal Associate PSL
T: +44 121 232 1062
M: +44 7827 954 720
saraellis@eversheds-sutherland.com



Claire Stewart
Principal Associate PSL
T: +44 20 7919 4856
M: +44 7867 155 050
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

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.

BIR_COMM\1724124\2

