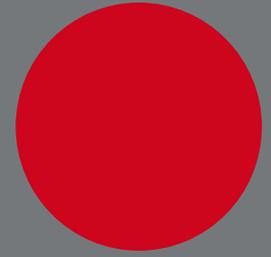


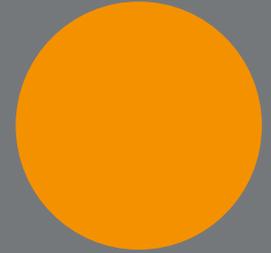
Commercially connected
July 2020



Impact



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Introduction

Welcome to the Eversheds Sutherland monthly commercial law update, covering both case law and regulatory development. *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.*

Click on your topic of interest below

Focus on
Coronavirus

Brexit

Commercial -
general

Consumer

Cyber security

Data protection
and privacy

IP

Public sector

Technology

Development	Summary	Supporting information	Impact
	For COVID-19 legal advice and updates, visit the Eversheds Sutherland Coronavirus hub.	Coronavirus legal hub	
General update	<p>Earlier this month, the Prime Minister announced that COVID-19 restrictions in England will be eased under plans for a “significant return to normality” by Christmas. Under the new guidelines, people may use public transport for journeys immediately, while advice for employers will change from 1 August. Companies will have more discretion to bring staff back to workplaces if it is safe to do so, but any plan for returning to work must ensure employees are safe and must not risk an infection spike. However, this must be seen in the context of how the pandemic develops on a weekly basis.</p> <p>Other developments are:</p> <ul style="list-style-type: none"> • face coverings mandatory in shops, supermarkets and transport hubs from 24 July • an additional coronavirus fund for the devolved administrations • new guidance for landlords, tenants and local authorities on renting • business events and conferences to be permitted from 1 October provided rates of infection remain at current levels • the sudden removal of the air bridge to Spain shows that planning international travel remains extremely uncertain • updated guidance for using public transport. See also a CBI paper setting out the initial steps businesses, the UK Government and transport operators will need to take to keep services running over the months ahead • new government guidance for businesses on how to recognise, contain and report incidents of COVID-19, including new links to a Public Health England website to use for reporting an outbreak 	<p>Government press release</p> <p>Government guidance on containing local outbreaks</p> <p>National COVID-19 surveillance reports</p> <p>CBI paper</p> <p>Government guidance on early outbreak management</p> <p>Public Health England website for reporting an outbreak</p>	



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New legislation relating to COVID-19	<p>There have been a variety of new statutory instruments issued in relation to the pandemic, including regulations introducing the mandatory wearing of face coverings in shops from 24 July, regulations relating to exemptions on quarantining on international travel and regulations that allow local lockdowns by giving local authorities the power to impose local restrictions.</p> <p>In addition, the Business and Planning Act 2020 has now received Royal Assent, having been fast tracked through Parliament. This includes several measures to help the economy such as:</p> <ul style="list-style-type: none"> • immediate but temporary changes to planning procedures to allow customers to be served outdoors and in relation to alcohol licensing, plus other permanent changes to planning law • Bounce Back loans to be facilitated by permanently disapplying the unfair relationship provisions in the Consumer Credit Act 1974 • immediate changes to HGV and PCV licensing to deal with the backlog of checks and tests. 	<p>Business and Planning Act 2020 Government page setting out all UK Coronavirus legislation</p>	
Competition relaxations	<p>The UK Government website includes a register of agreements relating to orders made under the Competition Act 1998 to relax UK competition rules for certain agreements which might normally be considered anti-competitive. So, for example, the register includes certain agreements notified to the regulator relating to supermarkets where they shared information on stock and shortages and co-ordinated assistance for vulnerable customers.</p>	<p>Register</p>	
Insurance cover	<p>In an ongoing High Court test case brought by the Financial Conduct Authority, an insurer has argued that business interruption insurance coverage for an incident or occurrence cannot stretch to pandemics as they are not one-off events, as well as arguing that cover did not apply if owners could access their premises, even if they could not use them. The case brings into sharp focus the problems businesses have encountered in assuming that business interruption coverage would protect them during the COVID-19 disruption and we await the judgment with interest.</p>		



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UK: Data becomes the focus as lockdown restrictions ease	As lockdown restrictions are relaxed throughout the UK, the NHS Test and Trace service is encouraging the public to share their contact details to reduce the spread of the coronavirus. The Department of Health and Social Care has issued new guidelines which set out best practice guidance for businesses operating in the hospitality and leisure sectors to collect and store information of their customers and visitors.	Press release Guidelines	
ICO publishes updated regulatory approach during COVID-19 period	The ICO has published updated guidance on its regulatory approach during the COVID-19 period, highlighting a continued emphasis on a measured regulatory response, taking into account the larger social and economic context.	Press release Guidance	
EDPS reproduces advice to EU institutions regarding teleworking in response to COVID-19	The European Data Protection Supervisor has reproduced the guidance which it provided EU institutions in their capacity as employers responding to teleworking, staff management, health data aspects and DSAR response during the COVID-19 pandemic. In particular, the Guidance highlights that these institutions must implement IT governance processes and adhere to them closely even if operational needs require quick decision-making. In relation to the usage of private devices for teleworking purposes, the guidance addresses the need for institutions to be mindful of the data minimisation principle. Crucially, the Guidance emphasises that the COVID-19 pandemic does not excuse the suspension of DSAR rights.	Guidance	

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	For Brexit business and legal advice, visit our Eversheds Sutherland Brexit hub.	Brexit hub	
Progress on UK-EU negotiations	<p>Following the latest and sixth round of negotiations, Michel Barnier issued a statement on the areas of progress (in respect of the institutional framework that will govern the future relationship, including its enforcement mechanisms, and transport and energy) and the main sticking points (the EU’s requirement for a level playing field and fisheries). M. Barnier’s view is that on the level playing field issues (by which he means not just state aid but the UK agreeing to common standards), the UK is refusing the commit to maintain high standards in any meaningful way and on state aid there has been no progress at all.</p> <p>The EU continues to link a trade deal free from tariffs and quotas to one that is also free from unfair competition and are clear that a less ambitious agreement on goods and services will not lead the EU to drop its level playing field demands. This is on the basis that the EU does not want to be undermined by a deregulating neighbour, whereas the UK’s position is to offer nothing that goes beyond what other major countries have offered in their trade agreements with the EU. For Northern Ireland, there has to be regulatory alignment with various EU rules whatever happens to the trade negotiations as this has already been agreed as part of the Withdrawal Agreement. There remain risks for goods that will be shipped onward to the EU but there remains very little clarity or guidance for businesses in this respect.</p> <p>The next full round of negotiations is scheduled for 17 August, with the EU indicating that agreement must be reached by October for a treaty to come into force on 1 January 2021.</p> <p>For further insights into the negotiations, please watch our live LinkedIn briefing, which also looks at the likely shape of any trade agreement that might be reached, with any likelihood of a comprehensive trade agreement being in place for the start of 2021 looking pretty challenging.</p> <p>For the services sector, the picture looks more difficult. The initial idea of the parties as set out in the 2019 Political Declaration of an ambitious far reaching services agreement beyond WTO commitments now looks unlikely as there will</p>	<p>Press statement</p> <p>Eversheds Sutherland live LinkedIn briefing</p>	



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	not be enough time to negotiate this by October, including in respect of mutual recognition of professional qualifications. An international road transport agreement is more likely as the EU's and UK's positions are more aligned.		
Goods: border controls	<p>On 13 July the UK Government issued its Border Operating Model to provide traders, logistics hubs and transporters with some information on the new procedures that will be needed for import and export of goods. These include exit and entry customs declarations from 1 January 2021 but with other requirements phased in over a six month period.</p> <p>The new Model does not cover Northern Ireland because of its special status under the Withdrawal Agreement. Guidance on Northern Irish customs procedures should be published shortly.</p> <p>The UK Government has launched a new campaign to prepare the UK for the end of the transition period, with a warning that businesses and individuals will need to take action regardless of the type of agreement reached with the EU. The campaign includes a checker tool to direct users to the necessary guidance and documentation they will need.</p>	Press release Transition checker tool	
UK trade tariffs from 1 January 2021	The UK Government has published a service allowing businesses to check tariffs that will apply to all imported goods from 1 January 2021. This sets out the previous tariff, the new tariff and what the change is	UK trade tariffs	
How the UK border will operate in the future	<p>The UK Government is consulting on its border strategy to 2025, looking at the steps exporting and importing businesses may have to take pre-departure, at the port of departure and at destination and asking them for input, including on the extent to which their supply chains are able to adapt if there is major disruption at the border (such as whether their supply chains are able to flex between different routes or modes of transport). The consultation identifies the following as proposed models:</p> <ul style="list-style-type: none"> • moving processes and infrastructure away from the actual border where possible • creating digitised borders • reducing the need for traders to provide the same information to different government departments. 	Consultation	



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	Consultation closes on 28 August 2020. This is an important opportunity for businesses trading cross border to have an input into border controls in the future.		
HMRC guidance for import/export of goods post 1 January 2021	HMRC has published guidance regarding the import and export of goods between Great Britain and the EU from 1 January 2021. In addition, there will be a new VAT regime from 1 January 2021 that will apply to overseas sellers selling goods in the Great Britain marketplace. These changes are not EU specific but will potentially affect all non-UK sellers and online marketplaces, the aim being to improve VAT collection on imported goods and take non-compliance by overseas sellers. It does not cover Northern Ireland.	HMRC guidance HMRC policy paper on VAT changes	
Getting ready: the EU side	<p>The European Commission has adopted a Communication: "Getting ready for changes: Communication on readiness at the end of the transition period between the EU and the UK", setting out a sector-by-sector overview addressing trade in goods and services (including financial, transport and audio-visual services), energy, travel, mobility, company law, civil law (jurisdiction clauses), data transfer and intellectual property, as well as the .eu domain name. It also discusses measures that the Commission believes national authorities, businesses and citizens should take in order to be ready for these changes.</p> <p>It is also reviewing and where necessary updating its sector-specific stakeholder preparedness notices that it published during the Article 50 negotiations with the UK, now called Readiness Notices.</p>	Communication: Getting ready for changes Readiness notices	
Chemicals export and import	<p>The European Commission has published a notice on export and import of certain hazardous chemicals after the end of the transition period pointing out that shipment of certain chemicals will have to comply with EU regulations. However, under the Northern Ireland Protocol of the Withdrawal Agreement, shipments of chemicals between Northern Ireland and the EU are not treated as EU imports or exports.</p> <p>A separate Commission notice provides information on the EU chemicals regime, REACH, after the transition period. Further information on the relevant EU regimes is provided on the European Chemicals Agency dedicated Brexit website.</p>	Notice on chemicals Notice on REACH ECHA Brexit website	



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New immigration system announced	From 1 January 2021, freedom of movement is ending as the UK adopts a points-based immigration system whereby EU and non-EU citizens will be treated equally when applying for visas from that date. Added to this, employers will need to apply to the Home Office to become an approved sponsor if they wish to recruit workers from outside the UK.	Government guidance	
European Commission issues notice on data protection and Brexit	The European Commission has published a notice to stakeholders regarding the withdrawal of the UK and EU rules on data protection. The notice reiterates that at the end of the transition period on 31 December 2020 any transfer of data to the UK not in accordance with Article 7(1) of the Withdrawal Agreement will be regarded as a transfer of personal data to a third country and that the UK will therefore need to comply with the EU rules regarding transfer of personal data to third countries.	Notice	
European Commission issues a Communication on the end of the Brexit transition period	The European Commission has issued a Communication which is intended to help EU businesses, national authorities and citizens prepare for the end of the Brexit transition period. With respect to data, the Communication states that during the current transition period, transfers of personal data between the EU and UK can continue but, from 1 January 2021, such transfers would have to comply with EU specific rules, in particular those set out in the GDPR or the Law Enforcement Directive. The Communication advises businesses and public administrations to take the necessary measures (e.g. safeguards such as binding corporate rules) to ensure data transfers comply with the UK Data Protection Act 2018.	Press release Communication	
EDPB issues note on Binding Corporate Rules to help organisations with International Transfers post-Brexit	The European Data Protection Board has issued an Information Note for groups of undertakings or enterprises who rely on Binding Corporate Rules and whose supervisory authority is the Information Commissioner's Office.	Information Note	
Consultations on regulating the UK internal market	The Department for Business, Energy and Industrial Strategy has published a White Paper on the UK internal market setting out the Government's proposed policy options for preserving access and regulatory harmonisation across the UK internal market, to 'protect the flow of goods and services across the UK after the end of transition period'. Central to this is the introduction of a 'Market Access Commitment' across the UK, supported by the	White Paper	



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	principles of mutual recognition and non-discrimination, and enshrined in UK law via a new Internal Market Bill, which would need to be passed by 31 December 2020. The consultation closes on 13 August 2020.		
Eu and UK domains	<p>EURid has announced that, from 2 September 2020, EEA and not just EU citizens will be able to register .eu and its variant scripts domain names regardless of where they live in the world.</p> <p>Nominet has launched a new policy consultation on expiring .uk domain names, to explore a more transparent process for informing registrars and the wider public when an expired domain name will be made available for re-registration and whether there should be a different method for releasing highly desired, expired domain names which are contested. Consultation closes 14 August 2020.</p>		
Departing from EU retained law after 1 January 2021	In what we might see as an indication of the direction of travel of the current UK Government, the Ministry of Justice has issued a consultation on the departure from retained EU case law by UK courts and tribunals. It outlines the UK Government's proposals to extend powers under section 6 of the European Union (Withdrawal) Act 2018 to courts less senior than the Supreme Court to be able to depart from retained EU case law after the end of the transition period. Consultation closes on 13 August 2020.	Consultation	

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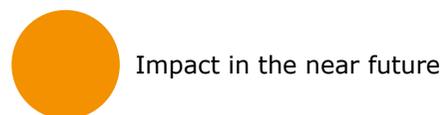


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New insolvency legislation: impact on commercial contracts	Click on the link to watch an Eversheds Sutherland Podcast on the Corporate Insolvency and Governance Act 2020 with contributions from partners in our restructuring, commercial and real estate teams.	Client podcast	
Two cases on incorrect execution	Click on the link to read an Eversheds Sutherland client briefing on two recent cases where documents were incorrectly executed as deeds and the impact this had on their enforceability. The first related to whether an agreement that was meant to have been executed as a deed but was in fact incorrectly executed could take effect as a contract and the second looked at the unsafe practice of appending pre-signed signature pages to deeds.	Client briefing	
New sanctions regulations	The Global Human Rights Sanctions Regulations 2020 came into force on 6 July 2020. The purposes of the Regulations are to deter and provide accountability for activities which would amount to a serious violation of an individual's right to life, right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and right to be free from slavery. For the first time, individuals can be sanctioned for human rights breaches rather than on the more traditional grounds of compliance with international obligations or for the prevention of terrorism. This widens the scope from the existing sanctions regime and is the UK imposing sanctions as a national entity, rather than as part of the UN or EU.	Regulations	
FCA updates outsourcing guidance for end of Brexit transition	The Financial Conduct Authority has updated its webpage on UK firms considering how the end of the Brexit transition period may impact on their business and customers, including expanding its section on outsourcing.	FCA webpage	



Development	Summary	Supporting information	Impact
Guidelines on outsourcing to cloud service providers	<p>The Financial Conduct Authority has notified the European Insurance and Occupational Pensions Authority (EIOPA) that its final guidelines on outsourcing to cloud service providers for insurance and reinsurance undertakings are not applicable to regulated activities within the UK's jurisdiction, as they will enter into force on 1 January 2021.</p> <p>EIOPA published its final guidance on outsourcing to cloud service providers in February 2020. The FCA says it will continue to apply its own FG16/5 guidance for firms outsourcing to the cloud and other third-party IT services in the UK but will keep it under review and, where appropriate, consult on updating it to ensure it remains consistent with relevant international standards.</p>	EIOPA guidelines on outsourcing to cloud service providers	
Good faith and exercising contractual rights	<p>In Essex County Council v UBB Waste (Essex) Ltd, the Court found that Essex County Council was entitled to terminate a PFI contract where the contractor was unable to pass acceptance tests, notwithstanding an implied duty of good faith. The judgment concluded:</p> <ul style="list-style-type: none"> the PFI contract was a relational contract and so was subject to an implied duty to act in good faith. It provides guidance for determining whether a party has acted in good faith, with the test being whether the conduct would be regarded as 'commercially unacceptable' by reasonable and honest people there is no general principle that all rights of termination must be exercised within a reasonable time after such right arises (in this case the gap in time was over two years, although the Council may have lost its right by waiver had it not been for continuing breaches by its counterparty) <p>UBB had argued that the Council was in breach of the implied duty of good faith for a number of reasons, including a failure to agree to changes to both the contract itself and the acceptance tests which would have enabled the waste facility it had agreed to provide to pass the commissioning period. The judge dismissed this argument on the basis that no contractual duty of good faith could possibly stretch to requiring the Council to renegotiate key environmental standards at</p>	Judgment	



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	the heart of the contract or to give up its contractual right to hold UBB to the parties' bargain.		
Reflective loss and creditors' claims	In Sevilleja v Marex Financial Ltd , the Supreme Court held that the rule against reflective loss does not apply to a company's creditors. The general expansion over the past 20 years of the rule against reflective loss, which bars parties who have suffered loss through a reduction in value of their interest in a company from claiming directly against the wrongdoer (since the company should pursue such claims), has now been reversed.	Judgment	
Late payment	The UK Government has published its response to the BEIS Committee's inquiry into the collapse of Thomas Cook . Matters commented on covered audit reform, pension contributions, directors' bonuses and service contracts and board diversity. Of particular interest to commercial was the Government's statement that they did not agree with the Committee's recommendation for introducing a statutory 30 day limit for paying suppliers, stating that a one size fits all approach was not the best way to deliver change.	Press release Government response to the Committee's conclusions and recommendations: BEIS Committee Inquiry into Thomas Cook	

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Consumer collective proceedings in the EU	<p>The Council of the EU has published the text for the Collective Redress Directive which is intended to better facilitate collective proceedings for European consumers, whether seeking damages or injunctions. It will require each Member State to ensure that its domestic procedural laws for collective redress meet the minimum standards set out in the Directive but, as these are minimum standards, it is open to each Member State to have collective proceedings/class action mechanisms which go beyond those set out in the directive.</p> <p>The Directive applies only to claims brought on behalf of consumers and not to claims on behalf of legal persons. In addition, it applies only to claims for breaches of the specific regulations and laws listed in its Annex 1 and not to all consumer claims.</p> <p>The next steps are for the Council and the European Parliament to agree the final form of the directive. Once finalised, Member States will have 24 months to transpose the text into their domestic law and then a further six months to bring the provisions into force.</p> <p>There is no requirement for the UK to implement this Directive, although the UK Government has previously indicated that it was willing to stay aligned with the EU on consumer issues.</p>	Text of directive: collective redress directive	
ICO, CMA and Ofcom announce joint taskforce for effective online services for consumers and businesses in UK	The CMA, ICO and Ofcom have jointly announced the formation of the Digital Regulation Cooperation Forum aimed at fostering regulatory coordination in online services.	Joint statement ICO press release CMA press release	
Consumers able to waive rights in respect of unfair terms	The European Court of Justice has ruled in XZ v Ibercaja Banco SA that it is possible for a potentially unfair term to be the subject of a novation agreement between a seller/supplier and a consumer, and that a consumer is able to waive their right under the Unfair Terms in Consumer Contracts Directive to rely on the non-binding nature of an	Judgment	



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	unfair term, provided such a waiver was a result of the consumer's free and informed consent. However, a consumer cannot waive their rights under this directive in respect of future disputes.		

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Removing Huawei 5G kit	The UK Government has announced in the House of Commons that Huawei 5G kit must be removed from the UK by 2027 and that UK mobile providers will be banned from buying new Huawei 5G equipment after 31 December of this year. This follows sanctions imposed by the US but because these US sanctions only affect future equipment, the UK government believes there is no security justification for removing 2G, 3G or 4G equipment supplied by Huawei.	BBC report	
Revising the NIS Directive	The European Commission has launched a consultation on the revision of the Directive on security of network and information systems to reflect developments in cybersecurity. The consultation will be open until 2 October 2020.	Consultation	
First cybersecurity certification scheme	The European Union Agency for Cybersecurity (ENISA) has launched a consultation for the first candidate cybersecurity certification scheme, named the Common Criteria based European cybersecurity certification scheme. The consultation closes 31 July 2020. The scheme aims to further enhance the criteria and conditions required for ICT products to ensure they can be used safely and securely. While the UK Government plans to repeal the Cybersecurity Act (which is the EU legislation under which these certification schemes are given authority), it is expected to enter into negotiations with the EU to ensure that UK-issued cybersecurity certificates serve the same purpose in EU markets as EU-issued certificates and vice versa.	public consultation Press release	
UK Finance issues white paper on cyber incident response plans in financial services	UK Finance has published a white paper on cyber incidents response plans in financial service.	White paper	



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<p>Consultation on enhancing security of smart products</p>	<p>The UK Government has published information and is seeking views on proposals for a new law that would enhance security requirements for smart devices to ensure consumer smart products sold in the UK comply with three requirements:</p> <ul style="list-style-type: none"> • device passwords must be unique and not resettable to a universal factory setting • manufacturers must give a public point of contact for individuals to report vulnerability and • information must be given to consumers concerning the minimum length of time for which the device will receive security updates. <p>The deadline for submitting views is 6 September 2020.</p>	<p>Policy paper</p>	
<p>European Union Agency for Network and Cybersecurity Annual Report on Trust Services Security Incidents 2019</p>	<p>The European Union Agency for Network and Cybersecurity (“ENISA”) has published its Annual Report on Trust Services Security Incidents in 2019.</p>	<p>Press release Annual report</p>	

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Eversheds Sutherland Update published	Click on the link to read Eversheds Sutherland’s quarterly Privacy and Cybersecurity updates.	Update	
Transfers of data to the US: CJEU strikes down EU-US Privacy Shield Framework in Schrems II decision	The CJEU has issued its highly anticipated decision in Case C-311/18 Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems and intervening parties , known as Schrems II. Click on the link to read our briefings on this case and our guidance for affected businesses. In summary, the CJEU held that the EU-US Privacy Shield was invalid as well as complicating the use of standard contractual clauses as a mechanism for exporting personal data.	Eversheds Sutherland Statement Eversheds Sutherland briefing Judgment	
European Commission releases statements on Schrems II case	The Vice-President of the European Commission for Values and Transparency and the Commissioner for Justice have issued joint statements on the Schrems II judgment. Vice-President Jourová welcomed the CJEU’s decision as confirmation that the protection of European Citizens’ data is absolutely fundamental. To support this, Vice-President Jourová stated that it is important to have a broad toolbox for international data transfers which can ensure a high level of data protection. In addition, Vice-President Jourová confirmed that the European Commission would be working more closely with its American counterparts to ensure safe transatlantic data transfers. Commissioner Reynders also welcomed the Schrems II decision and highlighted that the way forward was to modernise the Standard Contractual Clauses as soon as possible.	Statements	
European Data Protection Board issues FAQs on implications of the Schrems II case	The European Data Protection Board has issued FAQs on the invalidation of the Privacy Shield and the implications for the Standard Contractual Clauses.	EDPB FAQs	
ICO issues initial statements following Schrems II decision	In the ICO’s statement on 27 July following the Schrems II decision and FAQs from the European Data Protection Board , it advises companies to:	ICO’s most recent statement in response to Schrems II and EDPB guidelines (27 July 2020)	



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	<p>“...take stock of the international transfers you make and react promptly as guidance and advice becomes available.</p> <p>The EDPB has recommended that you must conduct a risk assessment as to whether SCCs provide enough protection within the local legal framework, whether the transfer is to the US or elsewhere. The receiver of the data may be able to assist you with this.”</p>	ICO's first statement in response to Schrems II (16 July 2020)	
Microsoft issues statement on EU-US data flows following Schrems II decision	Following the Schrems II decision invalidating the EU-US Privacy Shield Framework, Microsoft has issued a press release noting the impact of the decision on its cross-border data flows. Microsoft stated that (in its view) affected organisations can continue to utilise Microsoft services in compliance with EU law due to overlapping protections providing by the Standard Contractual Clauses.	Press release	
ICO issues initial guidance on track and trace scheme	<p>The ICO has issued a simple 5-step guide catered to businesses which are re-opening and collecting customers' information for purposes of contact tracing schemes. ICO advises business to do the following:</p> <ul style="list-style-type: none"> • Ask for only what's needed • Be transparent with customers • Carefully store the data • Don't use it for other purposes • Erase it in line with government guidance 	Press release Guidance	
European Data Protection Board releases report on the use of Data Protection Impact Assessments (DPIA)	The European Data Protection Board has issued a report on the use of Data Protection Impact Assessments by European institutions, agencies and other bodies.	Press release Report	
EDPS publishes checklists for data protection	The European Data Protection Supervisor has published a useful infographic covering areas such as the distinction between processors, controllers and joint controllers and respective duties, requirements of a processing agreement, powers of the EDPS and data transfers and Brexit.	Flowcharts and Checklists on Data Protection	
UK Home appoints Sir Brian Leveson as Investigatory Powers Commissioner under UK-US Data Access Agreement	Sir Brian Leveson has been appointed as Investigatory Powers Commissioner to exercise oversight over UK's use of the UK-US Data Access Agreement due to come into force later this year. The Agreement allows UK authorities to request electronic data necessary	Press release	



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	for law enforcement purposes directly from US telecommunications companies through a court approved order. Agencies utilising its Agreement powers are required to adhere to and maintain high standards of data protection. Sir Brian Leveson's role is therefore to exercise oversight over UK authorities' proper exercise of Agreement powers.		
EDPB releases updated guidelines on the criteria for the right to be forgotten	The European Data Protection Board has released its finalised guidance 5/2019 on the criteria of the Right to be Forgotten in the search engine cases under the General Data Protection Regulation, GDPR .	Announcement Guidelines	
European Commission's new Implementing Decision to enhance contact-tracing technology	The European Commission has decided to adopt a new Implementing Decision which would establish a "voluntary gateway service" to improve the interoperability of contact-tracing and warning mobile apps. This service intends to build on the interoperability guidelines, technical specifications agreed by the Member States, the principles of the EU toolbox and EU guidelines on data protection for mobile applications. For example, it allows for the sharing of pseudonymised information obtained by national contact-tracing apps in a safe way between Member States.	Press release	
UK Information Commissioner's Office comments on Age Appropriate Design Code	The Deputy Commissioner of the UK Information Commissioner's Office has commented on the proposed Age Appropriate Design Code.	Press release	
EDPB announces outcome of its 34th plenary session	Following its 34th plenary session, the European Data Protection Board has made an announcement summarising the outcome of the session, including its statement on the Schrems II case and on its guidelines on the second Payment Services Directive.	Announcement	
UK Government admits failure to carry out DPIA on COVID-19 Test & Trace Programme	In a letter responding to the Open Rights Group, the UK Government has admitted that it did not undertake a Data Protection Impact Assessment before launching its COVID-19 NHS Test & Trace Programme .	Letter	
Data protection authorities write open letter to video	The data protection authorities in Canada, Switzerland, the UK, Hong Kong, Gibraltar and Australia have come together to publish an open	Letter	



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teleconferencing companies on privacy concerns	letter to the companies that provide teleconferencing services outlining their privacy concerns relating to this technology.		
EDPB launches consultation on the relationship between the Second Payment Services Directive and GDPR	The European Data Protection Board has announced that it has set up a public consultation its guidelines on the interplay of the Second Payment Directive and the GDPR. The end date for the consultation is 14 September 2020.	Consultation	
ICO issues first two Regulatory Sandbox reports	The UK Information Commissioner's Office has issued the first two reports from its Regulatory Sandbox. It states that these reports by JISC and Heathrow Airport Ltd show that the sandbox aim, to combine data protection with 'real life' innovative solutions', can be achieved.	ICO Blogpost	
Australia and UK ICOs jointly investigate the use of 'scraped' data	The Office of the Australian Information Commissioner and the UK's Information Commissioner's Office have combined to launch a joint investigation into a leading technology company's facial recognition software. Together they are reviewing the company's handling of personal data, particularly in respect of the use of 'scraped' data and an individual's biometrics. The company's facial recognition app allows social media users to upload photos of an individual and match it with other photos from the internet which the company has taken from other social medial sites and web pages.	Press release	

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On the horizon

Development	Summary	Supporting information	Impact
UK withdrawal from Unified Patent Court	On 20 July 2020, the UK formally began its withdrawal from the Unified Patent Court system . This is on the basis that the UK no longer wishes to be a party to a system with a court that applies EU law and is bound by the CJEU. The withdrawal will take effect immediately and so allow the other participating states to finalise the future of the Unified Patent Court system.	UPC Statement	
Software and copyright: protection of design or of functionality	The case of Oysterware Ltd v Intentor Ltd looked at a claim for infringement of copyright in the design of a software product, deciding that there were triable issues as to the product's originality and whether copyright subsisted in the design or whether what the claimant was really trying to do was no more than protect the functionality of the software, protection which was outside the scope of copyright protection.	Judgment	
Supplementary protection certificate waivers	The UK Government has published its response to the consultation on the supplementary protection certificate (SPC) waiver: no deal legislation. The consultation closed last year and sought views on proposals to fix issues in SPC law in the event of a 'no deal' EU exit. The government's response sets out its intended changes to the SPC waiver legislation. The changes will ensure that the legislation continues to work as UK law after the end of the transition period on 31 December 2020.	Response	
Liability for user uploaded content online	An opinion of an Advocate General has been published concerning the liability of online platform operators when users illegally upload copyright protected works, given in connection with the cases Frank Peterson v Google LLC, YouTube LLC, YouTube Inc., Google Germany GmbH and Elsevier Inc v Cyando AG. The opinion was that, under current EU law, online platform operators are not directly liable for the illegal uploading of protected works by the users of those platforms.	Opinion	



Immediate impact



Impact in the near future



On the horizon

Development	Summary	Supporting information	Impact
	The EU aims to address this issue further with new rules under the Digital Services Act in due course, so this opinion relates only to the state of EU law now and not as it will be next year.		
Email, telephone and IP addresses not “addresses” under EU Enforcement Directive	The ECJ has ruled that the Enforcement Directive’s requirement that certain information must be provided in proceedings concerning infringement of an intellectual property right does not cover email, telephone and IP addresses. This was a reference from a German court whether the relevant provision of this Directive meant that for a user who has uploaded files which infringe an intellectual property right, the email, telephone number and IP address used to upload those files and the IP address used when the user’s account was last access had to be provided.	Constantin Film v YouTube	

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Immediate impact



Impact in the near future



On the horizon

Development	Summary	Supporting information	Impact
Updates to Model Services Contract	The Cabinet Office and the Government Legal Department have issued new versions of the Government Model Services Contract including new clauses to bring the Model Services Contract into line with Procurement Policy Note 04/19 on payment approaches in the procurement of major public contracts, which came into effect on 1 September 2019.	Model Services Contract	



Immediate impact



Impact in the near future



On the horizon

Development	Summary	Supporting information	Impact
Electronic Communications Code	The UK Government has set out its plans on implementing the European Electronic Communications Code, which is the revised telecoms regulatory framework for the EU. Member states, and the UK, have until 21 December 2020 to implement the provisions in domestic law. It will adopt a 'copy out' approach of the Code, amending UK legislation where needed to ensure consistency with the minimum requirements of the Code.	UK Government response	
EU platform to business regulation in effect	<p>Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services and corporate website users of online search engines (the Platform-to-business Regulation or P2B Regulation) has direct effect in EU Member States from 12 July 2020. It applies to online intermediation services and online search engines. For the P2B Regulation to apply, the businesses using the services must be established in the EU and must be, through their use of the services, offering goods or services to consumers in the EU. If this is the case, the platform terms and conditions must be easy to understand and made available at all times, including pre-contract and they must contain certain prescribed information, although obligations on search engines are more limited.</p> <p>This EU regulation is retained EU law in the UK and will continue to apply on and after 1 January 2021. The Online Intermediation Services for Business Users (Amendment) (EU Exit) Regulations 2020 have been issued in draft, to ensure that the P2B Regulation functions correctly in domestic law from 1 January 2021.</p>	Regulation	
eCommerce Directive guidance	The Department for Digital, Culture, Media & Sport has published guidance on how online service providers should prepare for the eCommerce Directive ceasing to be applicable in the UK after 31 December 2020.	Guidance	



Immediate impact



Impact in the near future



On the horizon

Development	Summary	Supporting information	Impact
Fintechs and COVID-19	Click on the link to read an Eversheds Sutherland client briefing on what the fintech sector can expect post COVID-19.	Client briefing	
European guidelines on audio-visual law	The European Commission has adopted guidelines to help Member States with the implementation of the revised Audiovisual Media Services Directive which establishes new rules on video-sharing platforms and the promotion of European works.	Press release	
Video-sharing platform regulation	Ofcom has launched a call for evidence on video-sharing platform (VSP) regulation. From autumn 2020, Ofcom will be given new powers to regulate UK-established VSPs, which includes ensuring there are appropriate measures in place to protect young people from potentially harmful content and protecting all users from illegal content and incitement to hatred and violence, as well as meeting advertising standards.		
EU Artificial Intelligence group publishes list of trustworthy AI	The European Commission's High Level Expert Group on Artificial Intelligence has published its list of trustworthy artificial intelligence. The list also includes a checklist to assist those developing AI with implementing principles in practice and aims to prevent users from being exposed to unnecessary risks.	Press Release List	

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Immediate impact



Impact in the near future



On the horizon

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