



Commercial Bulletin

March 2019

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

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Topics covered:

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Development	Summary	Links
Brexit		
<p>Current position (as at Wednesday 27 March)</p>	<p>On 20 March the Prime Minister wrote to European Council President Donald Tusk to request an extension of the Article 50 period until 30 June 2019.</p> <p>On 21 March the European Council responded to that letter, agreeing that:</p> <ul style="list-style-type: none"> if the Withdrawal Agreement is approved by the House of Commons by 29 March, the European Council agrees to an extension of the Article 50 period until 22 May 2019 if the Withdrawal Agreement is not so approved, the Council agrees to an extension until 12 April 2019 and the UK is required to indicate a way forward for consideration by the Council before this date <p>and reiterating that there can be no “opening” of the Withdrawal Agreement that was agreed between the EU and UK in November 2018.</p> <p>That position was confirmed in a formal decision of the European Council issued on 22 March and agreed by the UK. The decision also confirms that during the extension period the UK will remain a member state of the EU with all the consequent rights and obligations and that if the UK is still a member state on 23 – 26 May 2019 it will have to participate in European Parliament elections. In order to hold those elections it will have to give notice of the poll by 12 April, so effectively this means that the UK must decide by 12 April whether it is to leave the EU by 22 May or whether it will seek a longer extension period.</p> <p>On 25 March the government issued a draft statutory instrument which amends the definition of “Exit Day” currently contained in the European Union (Withdrawal) Act 2018 to reflect the Council decision.</p> <p>At the time of writing, it is unclear whether there will be a third “meaningful vote” on whether to approve the Withdrawal Agreement. Today, Wednesday 27 March, there will be a series of non-binding indicative votes, with the intention that MPs vote on a number of options to assess whether there is a Parliamentary majority for any one option.</p>	<p>PM's letter to Donald Tusk</p> <p>European Council's conclusions</p> <p>European Council decision</p> <p>The European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019</p>
<p>No deal Brexit: UK customs</p>	<p>The draft UK tariff that will apply on a no deal Brexit has been published. This will be implemented via The Customs Tariff (Establishment) (EU Exit) Regulations 2019, which in turn will be made under section 8 Taxation (Cross-border Trade) Act 2018. The tariff sets out the rules for classifying goods and determining the correct amount of import duty applicable to them. In line with</p>	<p>Tariff</p> <p>Tax Information and Impact Note</p> <p>Tariff quotas</p>

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	<p>the WTO Most Favoured Nation principle, these tariffs will apply to all trading partners with whom the UK has no alternative agreement (such as a free trade agreement).</p> <p>The government has also published a Tax Information and Impact Note for the UK Tariff 2019 which assesses the impact of the UK tariff. This explains that the majority of import duties will be set at 0% for a temporary period of up to 12 months, except for products deemed most sensitive to adjustment costs from international markets or important for strategic considerations. It is estimated that the 0% import duty will apply to approximately 87% of imports by value.</p> <p>The tariff rate quotas for certain imported goods have also been published and these will be given effect via The Customs (Tariff Rate Quotas) (EU Exit) Regulations 2019.</p> <p>Finally, various documents have been published that set out product duty rates and preferential rules of origin that will apply because of preferential agreements between the UK and third countries. These will be given effect by The Customs Tariff (Preferential Trade Agreement) (EU Exit) Regulations 2019.</p>	<p>Tariffs for preferential trade agreements</p>
<p>No deal Brexit: government guidance on avoiding a hard border in Northern Ireland</p>	<p>The government has announced that it will not introduce any new checks or controls on goods at the border between Northern Ireland and the Republic of Ireland and that the temporary import tariff that it has announced this month will not apply to goods crossing the border into Northern Ireland. The UK government will only apply measures strictly necessary to comply with international legal obligations, protect the biosecurity of Ireland or to avoid the highest risks to Northern Ireland businesses. However, it is stressed that these measures (or lack thereof) are only temporary.</p> <p>However, whether tariffs and checks will apply to goods crossing from Northern Ireland into the Republic of Ireland will be a matter for the EU.</p>	<p>Government guidance</p>
<p>Trade Remedies Investigations Directorate established</p>	<p>A temporary Trade Remedies Investigations Directorate has been established within the Department for International Trade. Trade remedies allow WTO members to protect domestic industry from harm caused by unfair trading practices such as dumping and subsidised imports or from injury caused by unforeseen surges in imports.</p> <p>The Directorate will administer trade remedies functions until the Trade Remedies Authority is established when the Trade Bill becomes law. The Directorate is established under The Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 and The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.</p>	<p>Press release</p>

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UK accedes to GPA	<p>It has been agreed that the UK will join the WTO Agreement on Government Procurement (GPA) as an independent member on a no deal Brexit. There will be a short gap between Brexit and the UK's accession to the GPA to allow for completion of the necessary processes that allow a new GPA accession to become legally effective.</p>	<p>Press release Government guidance</p>
No deal Brexit: SIs published this month	<p>The following statutory instruments that will apply on a no deal Brexit were published this month. Note that this is only a selection of SIs that are likely to be of interest to commercial practitioners; it is not a comprehensive list of all SIs published.</p> <p>The Geo-Blocking Regulation (Revocation) (EU Exit) Regulations 2019 revoke the EU Geo-Blocking Regulation and associated UK regulations. In the event of a no deal Brexit the Geo-Blocking Regulation would lose important elements of reciprocity necessary for it to function effectively in the UK. Therefore, if it were not revoked UK traders would continue to have obligations to EU customers but UK customers would be unlikely to receive any of its benefits.</p> <p>The Network and Information Systems (Amendment etc.) (EU Exit) Regulations 2019 amend the NIS Regulations to remove the obligations on the regulatory authorities and the National Cyber Security Centre to liaise, cooperate and share information with the European Commission and authorities in EU member states. They also revoke (in the UK) EU Regulation 526/2013 which establishes and confers functions on ENISA, as this is an EU body.</p> <p>The Conformity Assessment (Mutual Recognition Agreements) Regulations 2019 provide recognition in UK legislation for conformity assessment (product safety compliance) against EU regulations that is carried out by bodies in third countries that have entered into a Mutual Recognition Agreement, or a trade agreement including provisions on conformity assessment, with the EU. Currently such countries are Australia, New Zealand, Canada, USA, Japan, Switzerland, Turkey, South Korea and Israel. Goods that are conformity assessed by bodies in these countries can still be placed on the UK market after Brexit.</p> <p>The Customs (Import Duty, Transit and Miscellaneous Amendments) (EU Exit) Regulations 2019 set out a range of temporary measures to enable trade to continue to flow on a no deal Brexit while maintaining essential customs procedures.</p> <p>The Customs (Managed Transition Procedure) (EU Exit) Regulations 2019 give HMRC a temporary 12 month power to issue a public notice to relax the</p>	

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	<p>requirement for certain traders importing or exporting certain goods into/from the EU to make a declaration by a certain time. These powers will only be invoked if HMRC believes it is necessary to do so in order to maintain smooth operation of the border.</p> <p>The draft Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019 amend retained EU law to set up an independent EORI system for the UK that will only apply to traders who are resident or operating in the UK after Brexit. Because the government is committed to avoiding a hard border between Northern Ireland and the Republic of Ireland the amendments contained in these Regulations will not apply to economic operators whose only customs activities consist of the trade in goods between Northern Ireland and the Republic of Ireland.</p> <p>The draft Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019 amend legislation on export control and enable the Secretary of State to control the export of strategic items from the UK, the brokering of such items and the provision of technical assistance related to the goods and technology. The strategic items affected include goods that could be used for capital punishment or torture, dual-use items (ie that can be used for both civil and military applications), firearms and ammunition.</p> <p>The Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) (Amendment and Revocation) (EU Exit) Order 2019 repeal changes which came into effect on 1 January with regard to determining where VAT is due on the supply of digital services such as apps, e-books and music downloads. This repeal reflects the fact that the UK will no longer be part of the EU VAT Mini One Stop Shop.</p> <p>The Value Added Tax (Input Tax) (Specified Supplies) (EU Exit) (No. 2) Regulations 2019 extend the existing VAT regime so that UK businesses will be able to reclaim VAT in relation to specified supplies made to customers in the EU in the same way that they can when making such supplies to customers outside the EU.</p> <p>The Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 allow for the continued protection in the UK of Registered Community Designs, Unregistered Community Designs and international trade mark and design right registrations with EU designations. They provide the mechanism for holders of Registered Community Designs to receive a “re-registered” UK design on exit day; for holders of Unregistered Community Designs to have the benefit of UK protection through the “continuing unregistered community design”; for supplementary unregistered design rights</p>	

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	<p>which mirror the scope and duration of the Unregistered Community Design to be conferred in the UK for designs disclosed after Brexit; and for rights holders with an existing international registration designating the EU for a trade mark or design to have a new, separate and equivalent UK right granted to them that will come into force on Brexit.</p>	
<p>.eu domain names on a no deal Brexit</p>	<p>The government has issued updated guidance on .eu domain name registrations in the event of a no deal Brexit. This replaces previous guidance and reflects the information published by the EU on this topic.</p>	<p>Guidance</p>
<p>Brexit and IP</p>	<p>The EU IPO has created a new page on its website to help holders of EU trade marks and Community registered designs to prepare for a no deal Brexit.</p> <p>The government guidance on the status of international agreements on a no deal Brexit has an IP page which is kept updated.</p> <p>The government has issued guidance on changes to supplementary protection certificates and patent law on a no deal Brexit and updated guidance on changes to trade mark law on a no deal Brexit.</p> <p>The UK IPO has announced the numbering systems that will apply in respect of the new UK designs and UK trade marks that will be registered in respect of all Registered Community Designs, International Designs and International Trade Marks that are currently registered in the EU.</p>	<p>EU IPO website</p> <p>Government guidance on IP international agreements on a no deal Brexit</p> <p>Guidance on changes to SPC and patent law</p> <p>Guidance on changes to trade mark law</p> <p>IPO guidance on numbering (1)</p> <p>IPO guidance on numbering (2)</p>
<p>New guidance for local authorities on the flow of personal data from the UK to the EEA</p>	<p>The government has published new guidance for local authorities on the flow of personal data from the UK to the EEA that collates stakeholder and sector guidance on Brexit, focusing on preparing for the no-deal Brexit scenario.</p>	<p>Guidance</p>
<p>No deal Brexit: EU preparations</p>	<p>As part of the European Commission's implementation of its Contingency Action Plan, the Council has formally adopted 11 Regulations that aim to mitigate the most severe consequences of a no deal Brexit. These Regulations are of a temporary nature and have been adopted unilaterally by the EU, although in some instances reciprocity from the UK is required. They cover areas including social security coordination, fisheries, transport and dual-use items.</p> <p>Click on the link to access a government page which links in turn to guidance on providing services to EEA and EFTA countries on a no deal Brexit. This provides access to EEA and EFTA country guides allowing you to check national regulations that may apply, be it in terms of:</p> <ul style="list-style-type: none"> • whether the particular service is regulated in that country 	<p>Press release on 11 Regulations</p> <p>Guidance on providing services to EEA and EFTA countries after Brexit</p>

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	<ul style="list-style-type: none"> any restrictions on owning, managing or directing a company registered in that country business travel and visa requirements recognition of professional qualifications. <p>It also links to whether or not any particular EEA state has published particular local legislation to deal with a no deal scenario. Many of the links are in local languages but the home pages are at least a starting point to assess what may be needed.</p>	

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Brexit

Click on the link to access the Eversheds Sutherland Brexit legal resources hub which contains a wealth of information on Brexit including:

- a Brexit preparedness tracker which provides a quick overview of the current position in relation to legislative preparations for Brexit in the jurisdictions of France, Germany, Ireland, Luxemburg and the Netherlands; and
- a recording of the recent webinar by Ros Kellaway "This deal, no deal, no Brexit – Parliament (finally) votes".

[Brexit resources](#)

Commercial - general

Court of Appeal considers Contracts (Rights of Third Parties) Act 1999

In **Chudley & others v Clydesdale Bank plc (trading as Yorkshire Bank)** the Court of Appeal considered the application of the Contracts (Rights of Third Parties) Act 1999. The Court held that:

- determining whether a third party is expressly identified in a contract as a member of a class (for the purpose of Section 1(3)) is a matter of contract construction; and
- the same contract term can satisfy both the identification requirement of Section 1(3) and the requirement of Section 1(1)(b) that a contract term must purport to confer a benefit on the third party.

The appellant investors were therefore entitled to enforce the benefit of a contract entered into by an investment company and a bank which required the bank to set up a segregated client account. This was because the reference to the client account served both to identify a class of persons which included the investors and to confer a benefit on them.

The (perhaps surprising) outcome of this case highlights why when drafting contracts it is best practice to include a term making it clear that the parties do

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<p>Court of Appeal holds that liquidated damages for delay not payable where contract terminated before completion achieved</p>	<p>not intend to confer a benefit on any third party under the Contracts (Rights of Third Parties) Act 1999. Where the parties do intend to confer a benefit on a third party, both the description of the third party and the precise scope of the benefit should be tightly drafted.</p> <p>In Triple Point Technology, Inc v PTT Public Company Ltd the Court of Appeal held that a liquidated damages clause in a contract for the supply of a software system was not triggered. The customer had terminated the contract before completion was achieved, but the clause only contemplated that liquidated damages would be payable during the period of delay in completion up to the date of actual completion. Therefore it did not apply at all where the contract was terminated without completion being achieved. The customer's remedy for the delay was a claim for general damages.</p> <p>This case highlights the importance of thinking through the various scenarios that could arise in a breach situation and ensuring that the contract includes appropriate remedies for each.</p>	<p>Judgment Eversheds Sutherland briefing</p>
<p>High Court upholds default interest rate and finds it is not an unenforceable penalty</p>	<p>In Cargill International Trade PTE Ltd v Uttam Galva Steels Limited the High Court held that a default interest rate of 1 month LIBOR plus 12% was not an unenforceable penalty. Following the Supreme Court judgment in <i>Cavendish Square Holding BT v Makdessi</i>, the Court found that: (1) the creditor had a legitimate interest in ensuring that the debtor repaid the money advanced within the contractual timescales; and (2) the default interest rate was commercially justified and was therefore not disproportionate, exorbitant or unconscionable in relation to that legitimate interest because, amongst other things, a defaulting debtor is a higher credit risk and the rate was fixed to reflect the creditor's assessment of that creditworthiness, the rate was the commercial norm for comparable companies in the relevant market and the parties were sophisticated parties who had freely negotiated and agreed the relevant contracts.</p>	<p>Judgment</p>
<p>Reform of off-payroll working rules for the private sector</p>	<p>The government has issued a consultation on the implementation of the reform of the off-payroll working rules.</p> <p>The off-payroll working rules, usually referred to as IR35, ensure that individuals who work like employees pay broadly the same income tax and national insurance contributions ("NICs") as employees regardless of the structure they work through. Typically this applies to individuals who work through personal service companies ("PSCs"). The rules were reformed for the public sector in April 2017 so that: (1) liability for determining status transferred from the PSC to the entity to whom services are provided; and (2) liability for</p>	<p>Consultation Eversheds Sutherland briefing</p>

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	<p>accounting for NICs and employment tax transferred from the PSC to the entity responsible for paying the PSC. Following consultation the government now intends to extend the public sector rules to the private sector, but for medium sized and large businesses only. The changes will be introduced from 6 April 2020.</p> <p>The current consultation provides further details on the proposed changes. It sets out the definition for small businesses that will be excluded from the regime, proposes duties to communicate the IR35 determination with reasons, and suggests an approach to tax liability which means that business users of off-payroll workers could ultimately be liable for unpaid tax and NICs. The consultation closes on 28 May 2019.</p>	
<p>Measures to tackle late payments</p>	<p>The government has published its response to the December 2018 BEIS Committee report "small businesses and productivity". Some of the recommendations contained in that report related to ways of tackling late payments. Whilst the government agrees that the late payment issue needs to be tackled, its response does not set out specific measures but refers instead to the BEIS call for evidence on tackling late payment which closed on 29 November 2018 and in respect of which the government says it will publish a response "in due course".</p> <p>Separately, in his Spring Statement the Chancellor of the Exchequer announced that the government will require company Audit Committees to review payment practices and report on them in their annual accounts, with further details to be announced in due course.</p>	<p>Government response</p> <p>Spring statement</p>
<p>House of Lords report on the Bribery Act 2010</p>	<p>The House of Lords Select Committee on the Bribery Act 2010 has published a post-legislative scrutiny report. The report concludes that:</p> <ul style="list-style-type: none"> the Bribery Act 2010 is an excellent piece of legislation and the section 7 offence of failure to prevent bribery by an associated person is particularly effective the Ministry of Justice guidance is less successful in providing SMEs with the information and advice they need to enable them to decide on a formal anti-bribery policy there has been criticism about lack of co-operation between enforcement agencies, the slow pace of investigations and the failure to provide updates on progress of cases 	<p>Report</p> <p>Eversheds Sutherland briefing</p>

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	<ul style="list-style-type: none"> the Committee is satisfied that deferred prosecution agreements are not seen as an “easy way out” 	
Law Commission project on smart contracts paused	The Law Commission has announced that it is pausing its project on smart contracts to avoid potential duplication with other initiatives.	Announcement
Home Office guidance on modern slavery statements	The Home Office has issued guidance on identifying whether an organisation needs to publish a modern slavery statement and best practice on producing a statement.	Guidance
EU Regulation on mutual recognition of goods	<p>The EU Environment Council has adopted a regulation on the mutual recognition of goods lawfully marketed in another state. This principle means that a member state may not prohibit the sale of products which are already lawfully marketed in another member state, save for restrictions which are justified on legitimate public interest grounds.</p> <p>The new regulation will clarify the scope of the mutual recognition principle, introduce a mutual recognition declaration, establish a problem solving mechanism and improve administrative cooperation and information exchange through product contact points.</p>	Regulation
Commission Decision on RAPEX system	The European Commission has adopted Decision 2019/417/EU laying down new guidelines for the management of the RAPEX system, which enables the rapid exchange of information between the member states and the Commission in respect of consumer products posing a serious risk to the health and safety of consumers (under the General Product Safety Directive) and professional products covered by EU harmonisation legislation (under Regulation 765/2008/EC).	Decision
Consumer law		
AG opinion on contact information provided to consumers before conclusion of a distance contract	Under Article 6(1)(c) of the Consumer Rights Directive, which is implemented in the UK by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, a trader is required to provide certain contact information to consumers before a distance contract is made. An Attorney General opinion has concluded that the list of means of communication set out in that Article is not exhaustive and that traders may also use other means of communication, provided that they actually offer consumers a choice of what means to use to ensure rapid contact and efficient communication and that the information regarding those means of communication is provided in a clear and	Judgment

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	comprehensible manner. If this opinion is followed by the CJEU it will provide welcome flexibility for traders.	
Call for evidence on the Consumer Contract Regulations 2013	The Department for Business, Energy and Industrial Strategy has issued a call for evidence on the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which implement most of the provisions of the Consumer Rights Directive. The purpose of the call for evidence is to inform the government's review of the legislation and whether its objectives have been achieved. The call for evidence closes on 1 May 2019.	Call for evidence
CMA proposals for reform to improve consumer protection	<p>The CMA has launched a series of proposals to bolster competition and put consumers at the heart of the CMA's work. Proposals include:</p> <ul style="list-style-type: none"> • a new statutory duty on the CMA, and courts applying competition and consumer laws, to treat the economic interest of consumers and their protection from detriment as paramount • a new statutory duty on the CMA to conduct its investigations quickly, supported by powers to take action against firms supplying misleading or false information • empowering the CMA to decide whether consumer protection law has been broken, declare the fact publicly, direct businesses to bring infringements to an end (on an interim or final basis) and impose fines, thereby bringing the CMA's powers to enforce consumer law into line with its competition law powers • a statutory responsibility to address the adverse effect on the consumer in all aspects of the CMA's markets work 	Press release
CMA guidance for online hotel booking companies	The CMA has published a series of principles to help online hotel booking companies to change their practices in order to conform with consumer law, focusing on failure to disclose the effect of payments on search results; misleading reference prices; misleading presentation of prices and misleading popularity and availability statements. The CMA has stated that online hotel booking companies that don't comply with consumer law by 1 September 2019 risk enforcement action by the CMA.	Principles
Loyalty Penalty Working Group set up	The CMA has published the terms of reference of the Loyalty Penalty Working Group, which will oversee the implementation of recommendations made by the CMA in its response to the loyalty penalty super-complaint from Citizens Advice. A loyalty penalty is where firms penalise existing customers by charging them higher prices than new customers.	Terms of reference

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<p>Digital Competition Expert Panel report published</p>	<p>The Digital Competition Expert Panel, which was appointed by HM Treasury to examine competition in the digital economy, has published a report. The strategic recommendations contained in the report include:</p> <ul style="list-style-type: none"> • the establishment of a new digital markets unit tasked with securing competition, innovation and beneficial outcomes for consumers and businesses. That unit should establish a digital platform code of competitive conduct based on a set of core principles; pursue personal data mobility and systems with open standards where these will deliver greater competition and innovation; and use data openness as a tool to promote competition where necessary and proportionate • the update of merger policy in digital markets • the CMA’s enforcement tools against anti-competitive conduct should be updated and effectively used • the monitoring of how use of machine learning algorithms and AI evolves to ensure it doesn’t lead to anti-competitive activity or consumer detriment • the CMA should conduct a market study into the digital advertising market • the government should engage internationally on the recommendations it chooses to adopt 	<p>Report</p>
<p>Data protection, privacy and cyber-security</p>		
<p>Latest draft ePrivacy Regulations</p>	<p>The latest draft of the proposed ePrivacy Regulation was released on 22 February by the Romanian Presidency of the Council of the European Union.</p>	<p>Latest draft</p>
<p>AG opinion on cookies and consent</p>	<p>In case Planet49 GmbH v Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband e.V. the Advocate General Szpunar gave an opinion, which echoes the long-held interpretation that pre-ticked boxes do not amount to valid consent for cookies. Notable comments include:</p> <p>“The activity a user pursues on the internet (reading a webpage, participating in a lottery, watching a video, etc.) and the giving of consent cannot form part of the same act.”</p>	<p>Opinion</p>

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	<p>"for the purposes of the application of Articles 5(3) and 2(f) of Directive 2002/58 in conjunction with Article 2(h) of Directive 95/46 it makes no difference whether the information stored or accessed constitutes personal data."</p>	
<p>Court of Appeal holds that government's collection and storage of data from an individual's public statements did not infringe privacy</p>	<p>In R (Butt) v Secretary of State for the Home Department, the court agreed that the government's collection and storage of data from an individual's public statements did not infringe privacy and did not constitute unauthorised covert directed surveillance under the Regulation of Investigatory Powers Act 2000.</p>	<p>Judgment</p>
<p>ICO conducts raids on businesses suspected of making nuisance calls</p>	<p>The ICO searched two addresses as part of an investigation into businesses suspected of making live and automated nuisance calls. Following a year-long investigation, two teams of ICO enforcement officers executed search warrants at offices in Brighton and Birmingham on Tuesday 12 March. The businesses are suspected of making millions of calls to UK landline and mobile numbers. The ICO has received nearly 600 complaints about the businesses. The calls mainly concerned road traffic accidents, personal injury claims, and insurance for household goods. People who received the calls were unable to identify who the calls were from or opt out of them.</p>	<p>Press release</p>
<p>FCA publication provides insights on cyber resilience good practice</p>	<p>The Financial Conduct Authority (FCA) has published a document bringing together industry insights on cyber resilience. Part of the FCA's role is to help firms become more resilient to cyber-attacks, so reducing the risk and frequency of disruption. The FCA says the publication may be particularly relevant for small and medium-sized firms, but encourages all firms to consider whether these insights may be useful to them.</p>	<p>Report</p>
<p>Proposed EU legislation on cybersecurity</p>	<p>The European Parliament has adopted the EU Cybersecurity Act. It establishes the first EU-wide cybersecurity certification scheme to ensure that certified products, processes and services sold in EU countries meet cybersecurity standards. It also reinforces the mandate of the EU Agency for Cybersecurity (ENISA), upgrading this to a permanent EU Cybersecurity Agency, so as to better support member states in tackling cybersecurity threats and attacks. The next step in this Act becoming law is for the European Council to approve it. It is expected that the Council will formally adopt the Act without discussion, following which the Act will be published in the OJEU before entering into force.</p>	<p>Press release</p>
<p>Proposed EU measures to enhance cybersecurity</p>	<p>The EU is stepping up its capacity to protect Europe against cyber threats by creating a new structure to pool and network its expertise in cybersecurity</p>	<p>Press release</p>

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	<p>research, technology and industrial development. The Council has granted the presidency a mandate to start talks with the European Parliament on:</p> <ul style="list-style-type: none"> • establishing a top knowledge base for cybersecurity, the “European Cybersecurity Industrial, Technology and Research Centre”, which will enhance coordination of research and innovation in cybersecurity; and • setting up a Network of National Coordination Centres with technological expertise in cybersecurity. <p>The intention is that these structures will help secure the digital single market and increase the EU's autonomy in the area of cybersecurity.</p>	
EU Law Enforcement Emergency Response Protocol	The Council of the EU has adopted a protocol which will support EU law enforcement authorities in providing an immediate response to major cross-border cyber-attacks.	Press release
ENISA study on privacy standards for information security	The EU Agency for Cybersecurity (ENISA) has published a study which provides insights into the state-of-the-art of privacy standards in the information security context by mapping existing standards available and standardisation initiatives alike.	Press release
Security and privacy considerations in autonomous agents	The EU Agency for Cybersecurity (ENISA) has released a report which discusses the main security and privacy considerations of AI technology used in autonomous agents in the modern society, such as unauthorised autonomous systems, hijacking and misuse transparency and accountability, pervasiveness, retention and opacity of processing. The report also provides a set of recommendations for relevant stakeholders and policy makers, including on supporting the adoption of security and Privacy By Design principles, developing a collaborative approach on the identification and exchange of best practices, endorsing existing initiatives on the protection of human rights through the establishment of appropriate ethical conditions related to autonomous agents, and establishing a relevant framework for policy development, emerging technologies and new application areas.	Report
Government “Cyber Governance Health Check” report	The Government’s 2018 “Cyber Governance Health Check” report examines the UK’s FTSE 350 companies’ approach to cybersecurity and finds that boards at many of those companies still haven’t grasped the severity of the impact that a cyber-attack can have on their business.	Report
European Telecommunications Standards Institute industry	The European Telecommunications Standards Institute (ETSI) Technical Committee on Cyber-Security has issued the ETSI industry standard on	Industry standard

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standard on internet-connected consumer devices	internet-connected consumer devices. The standard is based on the UK government's Code of Practice which was launched in October 2018 and provided guidance for consumers on how they can help set up and manage their smart devices to improve their safety and protect their personal information.	
Investigation into bias in the use of algorithms in criminal justice	The Centre for Data Ethics and Innovation will be partnering with the Cabinet Office's Racial Disparity Unit to explore the potential for bias in the use of algorithms in crime and justice, financial services, recruitment and local government.	Press release
New AI advisory committee	Lord Burnett of Maldon, the current Lord Chief Justice, has set up a new AI Advisory to provide the senior judiciary with guidance on: (i) the likely impact of developments in AI on the Judiciary and the court system; (ii) ways of ensuring that judges are sufficiently trained on AI and its impact; and (iii) the most pressing legal, ethical, policy, cultural and economic effects of AI.	Press release
ICO calls for participants in the development of its auditing framework for AI	Simon McDougall (ICO's Executive Director for Technology Policy and Innovation) announced that the ICO will be developing a framework for auditing the use of personal data in AI and invited organisations to participate in the development process. In addition to its audit function, the framework will also provide guidance to assist organisations to develop and apply AI in compliance with data protection law, including information on assessing and managing the data protection risks of AI applications. The ICO expects to publish a formal consultation paper on the subject by January 2020 and for the final AI auditing framework and associated guidance to be published by spring 2020.	Blog post
National Data Guardian empowered to publish guidance on processing of health and social care data	The Health and Social Care (National Data Guardian) Act 2018 (Commencement) Regulations 2019 were made on 14 March 2019, and they will bring the Health and Social Care (National Data Guardian) Act 2018 (HSCNDGA 2018) into force on 1 April 2019. The HSCNDGA 2018 empowers the National Data Guardian for Health and Social Care (Data Guardian) to publish guidance about the processing of health and adult social care data in England.	Regulations
Adtech developments	The Information Commissioner's Office (ICO) commissioned research which has been published in partnership with Ofcom as a very interesting report on consumers' attitudes towards and awareness of personal data used in online advertising. According to Ofcom: " <i>Advertising technology – known as "adtech" – refers to the different types of analytics and digital tools used to direct online advertising to individual people and audiences. It relies on collecting information</i>	ICO and Ofcom report Adtech Fact Finding Forum summary report

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	<p><i>about how individuals use the internet, such as search and browsing histories, and personal information, such as gender and year of birth, to decide which specific adverts are presented to a particular person. Websites also use adtech to sell advertising space in real-time.”</i> The research finds that 54% of participants would rather see relevant online adverts. But while 63% of people initially thought it acceptable for websites to display adverts, in return for the website being free to access, this fell to 36% once it was explained how personal data might be used to target adverts.</p> <p>The ICO also published a summary report of their Adtech Fact Finding Forum held on 6 March.</p>	
European Data Protection Board 8 th plenary	<p>On 12-13 March, the European Data Protection Board (EDPB) convened for their 8th plenary. The key outcomes from the plenary were:</p> <ul style="list-style-type: none">• Opinion on the interplay between the ePrivacy Directive and GDPR – the opinion seeks to address whether the fact that the processing of personal data triggers the material scope of both the GDPR and the ePrivacy Directive limits the competences, tasks and powers of data protection authorities under the GDPR. The EDPB opines that data protection authorities are competent to enforce the GDPR. The mere fact that a subset of the processing falls within the scope of the ePrivacy directive does not limit the competence of data protection authorities under the GDPR.• Statement on ePrivacy Regulation – in this short statement the EDPB calls on the EU legislators to intensify efforts towards the adoption of an ePrivacy Regulation.• Two opinions on national DPIA lists (Spain and Iceland).• Statement on use of personal data in political campaigns – the EDPB highlights a number of key points to be taken into consideration when political parties process personal data in the course of electoral activities.	<p>Press release</p> <p>Opinion on ePrivacy Directive and GDPR interplay</p> <p>ePrivacy Regulation statement</p> <p>Spain DPIA list</p> <p>Iceland DPIA list</p> <p>Statement on political campaigns</p>
European Commission welcomes provisional agreement to better protect whistleblowers	The European Parliament and the member states have reached a provisional agreement on rules that will guarantee a high level of protection for whistleblowers who report breaches of EU law. The rules cover anti-money laundering and corporate taxation, data protection, protection of the EU's financial interests, food and product safety and environmental protection and nuclear safety.	<p>Press release</p>

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European Data Protection Board overview report on GDPR implementation	The EDPB has published an overview report on the implementation of the GDPR and the roles and means of the national supervisory authorities.	Report
European Data Protection Supervisor annual report	The European Data Protection Supervisor (EDPS) released his 2018 Annual Report, which provides an insight into all EDPS activities in 2018.	Press release
Public authorities' compliance with consultation requirements under GDPR	DCMS has released guidance to help public authorities comply with Article 36(4) GDPR (the requirement for public authorities in the UK to consult with the ICO on any proposals for legislative or statutory measures they are developing which involve the processing of personal data).	Guidance
Regulation strengthening the security of EU citizens' ID cards and residence documents	On 19 February 2019, representatives of the Romanian Presidency of the Council and the European Parliament reached informal triologue agreement on a proposal for a Regulation strengthening the security of EU citizens' ID cards and residence documents issued to EU citizens and their non-EU family members exercising their right of free movement.	Press release
Public sector		
New outsourcing playbook for government departments	The government has published an outsourcing playbook and associated guidance notes which outline 11 new policies aimed at assisting central government departments responsible for outsourcing projects. This was created in the context of the collapse of Carillion and is intended to capture best practice in outsourcing and ultimately safeguard the continuity of critical public services.	Outsourcing playbook
Procurement policy notes	The Cabinet Office has published: <ul style="list-style-type: none"> procurement policy note 01/09 on applying exclusion in public procurement, managing conflicts of interest and whistleblowing; and procurement policy note 02/19 on preparing for Brexit, stressing that the public procurement regime will remain broadly unchanged but that in the event of a no deal Brexit notices will need to be sent to the new UK e-notification service instead of OJEU/TED. 	Procurement policy note 01/09 Procurement policy note 02/19
Core terms to the Public Sector Contract updated	The Crown Commercial Service has updated the core terms to the Public Sector Contract (the standard template for framework contracts for common goods and services) and ancillary documents.	Core terms

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Review into AI and public sector standards	The Committee on Standards in Public Life has announced a review into AI and its impact on standards across the public sector, looking at whether existing frameworks and regulations are sufficient to ensure that high standards of conduct are upheld as technologically assisted decision-making is adopted more widely across the public sector.	Press release
Focus on		
House of Lords Committee report on regulating the digital world	<p>The House of Lords Select Committee on Communications has published a report on “regulating in a digital world”. The Committee notes that regulation of the digital world has not kept pace with the role of that world in our lives and that the digital world is dominated by a few very large companies.</p> <p>The report makes two key findings. First, there should be an agreed set of 10 principles to regulate the internet, namely:</p> <ul style="list-style-type: none"> • parity, ie the same level of protection to be provided online as offline • accountability • transparency • openness – to innovation and competition • privacy • ethical design • recognition of childhood • respect for human rights and equality in order to safeguard the freedoms of expression and information online • education and awareness-raising • democratic accountability, proportionality and evidence-based approach. <p>Secondly, there should be a new Digital Authority to oversee regulation of the internet. The Committee found that currently over a dozen regulators have a remit covering the digital world but there is no overall regulation, meaning that regulation is fragmented and there are both overlaps and gaps in coverage. A key gap is the lack of an internet content regulator. A new Digital Authority would assess and coordinate existing regulators and make recommendations on</p>	Press release

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	filling gaps in coverage. The report envisages that the Digital Authority would report to a joint committee of both Houses Of Parliament.	

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