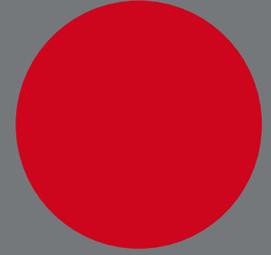


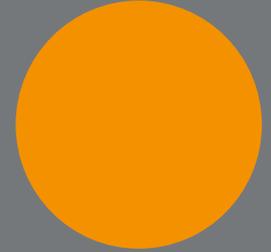
**Commercially connected**  
October 2020



**Impact**



**Immediate**



**Impact in the near future**



**On the horizon**

## Introduction

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

Technology

Development	Summary	Supporting information	Impact
	For COVID-19 client briefings, visit our coronavirus hub.	<a href="#">Coronavirus legal hub</a>	
Business assistance	There have been a variety of changes to <b>Government assistance</b> including an increased government contribution under the Job Support Scheme to support businesses affected by the pandemic, expanded grants for businesses in high alert areas and increased grants for the self-employed.	<a href="#">Government announcement</a>	
Three tier system of restrictions in England	<p>On 14 October 2020, three sets of regulations concerning local <b>COVID-19 alert levels</b> (currently set at medium, high and very high) came into force. Geographical areas determined to be at Local Alert Level Medium are to be subject to the national measures in place at the time of making the Regulations, representing the minimum level of restrictions in place across England. Geographical areas will be moved to Local Alert Level High, or Local Alert Level Very High, based on a rise in transmission rates of the virus and will be subject to regular review.</p> <p>The regulations will cease to have effect at the end of a 28-day period starting on 12 October 2020, unless they are approved by both Houses of Parliament. The Regulations provide that they will expire after six months from coming into force and must be regularly reviewed every 28 days with the first review being no later than 11 November 2020.</p> <p>The regulations are complex: not only is this a rapidly changing landscape in terms of which areas are subject to which restrictions but there is the possibility of further tiers of restrictions or regional differences within tiers being introduced.</p> <p>Scotland has different regulations and restrictions, as do Wales.</p>	<a href="#">Landing page for Coronavirus regulations</a>	
Business interruption insurance	The <b>Financial Conduct Authority</b> has updated its webpage on its business interruption insurance test case by publishing various court documents including the High Court declarations in the case of <b>FCA v</b>	<a href="#">FCA webpage</a>	



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	<p><b>Arch Insurance (UK) Ltd.</b> It has promised to publish a guide to the declarations for policyholders.</p> <p>The case is being appealed to the Supreme Court and so definitive judgment has yet to be seen.</p>		
Material adverse change clauses	<p>The case of <b>Travelport Ltd and others v Wex Inc</b> is an example of COVID-19 being used as an argument to avoid contractual obligations in the context of a material adverse change clause in a company purchase. The clause was complex with a large number of exceptions which were then subject to a further proviso relating to disproportionate effect. As with many similar clauses, the level of generality meant there was always going to be considerable scope for argument about when the clause was activated.</p> <p>The argument was that the effects of the pandemic gave rise to particular effects which had a disproportionate effect on the sellers on the basis that their particular business was more specialised than others in the same sector.</p> <p>The court made various points including:</p> <ul style="list-style-type: none"> <li>• there is no special principle of construction applicable to material adverse effect clauses</li> <li>• the court was prepared to look at US case law and academic writings in this context because of the dearth of English authority</li> <li>• the disproportionality analysis would be context and individual deal specific.</li> </ul>	<a href="#">Judgment</a>	

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Development	Summary	Supporting information	Impact
	For up to date Brexit client briefings, visit our Brexit hub.	<a href="#">Brexit hub</a>	
Progress on Brexit trade negotiations	As at the date of this bulletin, the trade negotiations have neither been definitively called off nor made definitive progress to warrant an announcement of what will be in place from 1 January 2021 or later. The deal that is hopefully being negotiated is a goods only deal and then only in respect of tariffs and quotas so that border checks and rules of origin will apply in any event. The whole of the services sector will be outside the deal. The wrinkle here will be whatever the UK is prepared to agree in terms of state aid and level playing field as any alignment or restrictions it agrees in those areas are likely to apply across goods and services. For example, although the UK Government has previously rejected any alignment with EU state aid rules and a role of the CJEU, it has instead previously proposed basing mutual commitments on the WTO Agreement on Subsidies and Countervailing Measures, extending them to cover both goods and services. This suggests that, even if the UK win the argument on state aid with the EU, some kind of restriction on state aid for both goods and services will be in the UK-EU deal.		
State aid: the future of UK subsidy policy	This is one of the most contentious issues of the UK-EU negotiations on trade. Click on the link to read a <b>House of Commons Library briefing paper</b> on future UK subsidy policy.	<a href="#">House of Commons Library briefing paper</a>	
Progress on UK Brexit legislation	Developments for UK domestic legislation include: <ul style="list-style-type: none"> <li>the introduction of the <b>Financial Services Bill</b> into the House of Commons. This is the legislation that will be used to make large scale amendments to the financial services regulatory framework</li> <li>progress on the <b>UK Internal Market Bill</b> through the House of Lords. This is the Bill that seeks to prevent the emergence</li> </ul>	<a href="#">House of Commons Library briefing on the Internal Markets Bill</a>	



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	<p>of regulatory divergence and barriers to trade within the UK when the powers to regulate trade between the 4 UK nations that are currently exercised at an EU level flow back to the UK government and devolved administrations. It also contains the contentious clause that would allow the UK Government to make regulations to disapply or modify the domestic effect of the agreed Northern Ireland Protocol within the UK-EU Withdrawal Agreement. The EU has commenced infringement proceedings against the UK in this respect but both the contentious part of this Bill and these proceedings may well be dropped if a satisfactory trade arrangement is finally negotiated</p> <ul style="list-style-type: none"> <li>the <b>Private International Law (Implementation of Agreements) Bill</b>: the gives the power to implement international agreements and is the legislation which will make the 2005 Hague Convention on Choice of Courts Agreements UK law (this Convention being the partial replacement in the UK of the current EU regimes on jurisdiction and which is reported on below)</li> <li>amendments to the <b>Environment Bill</b> relating to enforcement</li> <li>an increasing number of <b>Brexit statutory instruments</b> to ensure the UK statute book is ready for 1 January 2021.</li> </ul>		
Courts' powers to depart from retained EU case law	The UK Government has published draft <b>European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020</b> which extend the power to depart from retained EU case law from 1 January 2021 to specified appeal courts including the Court of Appeal, whereas previous proposals were to limit this power to the Supreme Court. The main reason for the UK Government adopting this approach is that it will allow retained EU case law to "evolve more quickly than otherwise might have been achieved" and to "allow more litigants to have sufficient ability to seek a change to retained EU case law where it adversely affects them".	<a href="#">Draft regulations</a>	
UK business preparedness: importing and exporting goods	<b>HMRC</b> has published new letters to VAT registered businesses about the action they need to take to be able to continue to trade with the	<a href="#">HMRC letters</a>	



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	<p>EU from 1 January 2021. It makes the point that a trade agreement with the UK and EU will not remove any of these requirements. To move goods between GB and the EU will require import and export declarations and the letters sets out what needs to be done. HMRC encourages the use of customs agents as for businesses who choose to do it themselves, they will need to purchase specialist software and licences to be able to interact with HMRC's systems.</p>		
UK Government preparedness	<p>Although there have been many announcements and initiatives from the UK Government to help businesses become ready for the end of the transition period (including publication of the <b>GB-EU Border Operating Model</b> which has been revised since its publication to provide additional information on how to move goods to and from the EU), the other side of the coin is whether the UK Government will be ready. The Treasury Committee has asked for clarification from the Treasury relating to customs preparedness for the arrangements from 1 January 2021 amid concerns that this will not be the case.</p> <p>In respect of Northern Ireland, the EU believes that the UK needs to substantially accelerate the work needed in respect of border control posts, VAT and the registration of Northern Irish trades for VAT under the Protocol.</p>	<p><a href="#">Treasury Committee letter</a>  <a href="#">UK Border Operating Model</a></p>	
Freeports	<p><b>HM Treasury</b> has published its response to a consultation on the UK Government's proposed freeports policy which proposes to create around ten freeports in the UK. The finalised policy and bidding process will be launched "in due course", and the UK Government recommends that potential bidding coalitions form now so that they are ready when the bidding process launches.</p> <p>Key points include:</p> <ul style="list-style-type: none"> <li>the Government will consider approving more than ten freeports if there are a large number of high-quality proposals. At least one freeport will be established in each of Wales, Scotland and Northern Ireland.</li> </ul>	<p><a href="#">House of Commons Library briefing paper on freeports</a>  <a href="#">Government announcement</a></p>	



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	<ul style="list-style-type: none"> <li>goods entering a freeport customs site will be eligible for duty deferral, duty exemption and duty inversion and benefit from simplified declaration procedures</li> <li>time-limited tax incentives will be used to encourage immediate inward investment into freeports, including in relation to business rates, capital allowances, SDLT on commercial land and property transactions, and employer national insurance contributions. However, specific R&amp;D incentives will not be offered.</li> <li>the Government will expand existing permitted development rights for seaports to align with similar rights for airports</li> <li>seed capital will be provided from the government to address infrastructure constraints relevant to freeports and their surrounding area.</li> <li>Freeports will have to adhere to the OECD Code of Conduct for Clean Free Trade Zones</li> </ul> <p>See also the linked <b>House of Commons Library briefing paper</b> on freeports.</p>		
Complying with REACH chemical regulations after 1 January 2021	The <b>UK Government</b> has updated its guidance on how to comply with <b>REACH</b> chemical regulations to add new guidance on grandfathering and how UK downstream users can notify the UK regulator.	<a href="#">Guidance</a>	
Government procurement after 1 January 2021	The <b>Department for International Trade</b> has announced that the <b>WTO's Government Procurement Agreement</b> Committee had confirmed that the UK can accede to this agreement (the <b>GPA</b> ) in its own right from 1 January 2021. This is the WTO agreement which aims to open up government procurement markets among its parties, although the extent to which each GPA party has agreed to be bound is set out in member-specific "coverage schedules". The Government has also issued updated guidance on bidding for overseas procurement opportunities from 1 January 2021.	<a href="#">WTO Government Procurement Agreement</a> <a href="#">UK Government guidance</a>	



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Development	Summary	Supporting information	Impact
Moving goods between Great Britain and Northern Ireland	The <b>UK Government</b> has launched a <b>new free support service</b> for businesses moving goods to and from Northern Ireland. From 1 January 2021, customs declarations as well as safety and security declarations will be needed for goods moving from Great Britain and Northern Ireland, although tariffs are not paid on trade within the UK. However, goods destined for Ireland and other EU member states will pay tariffs.	<a href="#">Trader Support Services</a>	
Progress on UK trade deals	Outside the UK-EU negotiations, the UK and Japan has signed the <b>UK-Japan Comprehensive Economic Partnership Agreement</b> . According to the UK Government, this new deal “goes beyond” the existing EU-Japan Economic Partnership Agreement and is viewed as a stepping stone towards the UK joining the Trans-Pacific Partnership which has 11 members. The UK-Japan deal covers both goods and services and comes into force on 1 January 2021.  The Government has also signed continuity trade agreements with Ukraine and Cote d’Ivoire.	<a href="#">UK Government landing page for UK Japan trade deal Treaty</a>	
UK Government guidance on food and drink labelling changes	Click on the link to read amended guidance on labelling for goods sold in the UK.	<a href="#">Guidance</a>	
UK Government guidance on e-commerce	The <b>Department for Culture, Media and Sports</b> has published updated guidance on the <b>applicability of the 2000 E-Commerce Directive</b> from 1 January (implemented in the UK by the <b>Electronic Commerce (EC Directive) Regulations 2002</b> ). This allows providers of information society services to operate in any EEA country, with compliance requirements limited to the relevant rules of the country where they are established. As this country of origin principle will not apply to UK based providers from 1 January, the guidance briefly runs through the consequences.	<a href="#">Guidance</a>	
UK Government guidance on cybersecurity requirements for digital service providers	The <b>Department for Culture, Media and Sport</b> has published revised versions of its guidance for UK digital service providers operating in the EU and its guidance for non-UK digital service providers operating in the UK to set out the arrangements they should have in place from 1 January 2021 to comply with the	<a href="#">Guidance for digital service providers</a> <a href="#">Guidance for non-digital service providers</a>	



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	<b>Network and Information Systems Regulations 2018</b> (which implemented the 2016 Cybersecurity or NIS Directive).		
UK Government guidance on employing EU citizens	Click on the link to read <b>UK Government guidance for employers</b> on employing EU, EEA and Swiss citizens, covering right to work checks, the EU Settlement Scheme and the UK's new immigration system	<a href="#">Guidance</a>	
UK Government guidance on telecoms	The <b>UK Government</b> has republished its guidance on how telecoms businesses will be impacted by the UK leaving the EU. The UK proposes to implement the <b>European Electronic Communications Code</b> , which reforms the EU legislative framework with effect from 21 December 2020 and has published the <b>draft Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020</b> to effect this. This Code repeals and replaces the four directives that made up the 2003 EU telecoms regulatory framework with effect from 21 December 2020. Provisions that derive from the Code will become retained EU law in the UK from 1 January 2021.  The UK Government's view is that there will not be significant impacts on how businesses operate under the telecoms regulatory framework and how consumers of telecoms services are protected from 1 January 2021. Their view is that UK telecom operators will continue to be able to provide cross-border telecoms services and operate within the EU, under the World Trade Organisation's General Agreement on Trade in Services.	<a href="#">Guidance</a>	
Maintaining environmental standards from 1 January 2021	The <b>Department for Environment, Food and Rural Affairs</b> has published brief guidance on upholding environmental standards (in waste, air quality, water, and protection of habitats and species) from 1 January 2021. The guidance explains: <ul style="list-style-type: none"> <li>existing EU environmental law operating in the UK, the UK's legal framework for enforcing domestic environmental legislation, environmental targets and permits issued by UK regulatory bodies will remain the same;</li> </ul>	<a href="#">Guidance</a>	



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	<ul style="list-style-type: none"> <li>legislation will remove references to EU legislation, transfer powers from EU institutions to UK institutions and make sure the UK meets international agreement obligations.</li> <li>the Government will establish the Office for Environmental Protection from 1 January 2021, to oversee compliance with environmental law and introduce interim measures before this body is fully operational.</li> </ul>		
UK Government guidance on .eu domain names	The <b>UK Government</b> has published a guidance note for holders of .eu domain name registrations on the effect of the end of the UK-EU transition period. Holders should check whether they will remain eligible to hold their domain name after 31 December 2020, what will happen to their registration if they do not and how to mitigate the effect of this. A holder might, for example, choose to transfer its internet presence to another top level domain such as .uk, .co.uk or .com, and should also develop a migration plan for services and functions supported by its .eu domain such as email addresses and virtual private networks. They may also need to consider whether any trade mark rights are affected by the loss of the domain name.	<a href="#">Guidance note</a>	

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ESG: environmental, social and governance and corporate reporting	The <b>Financial Reporting Council</b> has published a discussion paper setting out a number of proposals which the linked Eversheds Sutherland briefing discusses. The FRC proposes a network of interconnected reports centred around a Business Report. In terms of non-financial reporting (such as on ESG issues), the FRC supports calls for a single set of global standards to increase the comparability of non-financial information and envisages the introduction of a "Public Interest Report".	<a href="#">Client briefing on the future of corporate reporting</a>	
EU Regulation on Conflict Minerals	<p>This <b>EU Regulation</b> establishes an EU wide system for supply chain due diligence in order to curtail opportunities for armed groups and security forces to trade in certain metals and minerals so that the supply practices of those who import these into the EU is transparency, subject to a de minimis level of imports. Those who import these metals and minerals into the EU are subject to obligations to undertake supply chain due diligence and must keep documentation demonstrating their compliance, including results of independent third party audits. The products covered by this Regulation are components in many electronic, aerospace, car, medical and other products.</p> <p>This Regulation has been in force since July 2017 and applies through the EU without the need for individual member states to enact their own national law, but the obligations on importers only apply from 1 January 2021, which is the first day after the end of the Brexit transition period. According to the <b>European Union Withdrawal Act 2018</b>, this means that these obligations will not be transposed into UK law and so a UK importer of these minerals and metals into the UK will not have to comply, although any business which falls within the definition of "Union importer" and who imports into the EU will. For international groups, one set of disclosure obligations and the contractual clauses that support those obligations in their supply chains may mean it is easier to apply this across its group. This will</p>	<a href="#">Regulation</a> <a href="#">European Commission guidance on conflict areas</a> <a href="#">OECD Due Diligence Guidance</a>	



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	<p>also be the case for those companies subject to existing US rules which are summarised below.</p> <p>So far no UK statutory instruments have been issued in respect of this Regulation, which suggests that the UK Government is not intending to separately onshore this EU legislation into UK domestic law. Whether any level playing field provisions of a trade deal changes this situation remains to be seen.</p> <p>There are existing US rules requiring listed companies to disclose their use of conflict minerals that may also be relevant and which raise issues for groups with members in both the EU and the US. Certain products are "conflict" under the US rules if they are mined in a particular area whereas the EU Regulation takes a different approach: instead of particular areas being set out in the EU Regulation, it refers instead to any "conflict-affected and high risk areas", so that the "list" can evolve with both conflict and with corrupt states or those who violate international law. The onus is then on manufacturers and importers to analyse which areas are within scope.</p> <p>If an importer is within scope, the EU Regulation sets out a due diligence process based on the five steps in the <b>OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas</b> (although this is not the only way to comply with the EU Regulation).</p>		
UK annual report on modern slavery for 2020	The <b>UK Government</b> has published the <b>UK Annual Report on Modern Slavery 2020</b> , detailing the measures it has taken to combat modern slavery over the past 12 months. This is a retrospective report on measures taken but we still wait to see if the Government will carry through its promise to implement a number of proposed changes to current UK modern slavery legislation.	<a href="#">Report</a>	
Effect of a contractual variation clause	The case of <b>Strategic Advantage SPC v High Street Rooftop Holdings Ltd</b> concerned an attempt by a borrower to argue that variation of a loan agreement because the repayment terms had been varied by oral agreement or the lender was prevented from relying on the original contractual terms because of representations it had allegedly made. The court refused to give contractual effect to the supposed oral variation and instead pointed to the contractual	<a href="#">Judgment</a>	



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	<p>variation clause in the agreement which held that variations had to be in writing in order to be effective. Nor did the borrower win the argument on the representations on the basis of estoppel: the case demonstrates how difficult it will be to establish estoppel in these types of situations as none of the alleged representations (even if they were in fact made) would have constituted a sufficiently unequivocal representation that the variation to the agreement was valid notwithstanding its informality taking it outside the contract procedure for variations. The lesson is that variation clauses, as they will be enforced to preclude informal variations, need both to be followed and need to be clear and easy to follow.</p>		
<p>References to assignment: accrued rights or just future rights?</p>	<p>In the case of <b>Energy Works (Hull) Ltd v MW High Tech Projects UK Ltd</b>, the court construed a standard form contract which required the purchase to assign a subcontract on the happening of a particular eventuality. The issue was whether the reference to assigning the contract was a reference to an assignment of both accrued rights and claims and future rights and claims or just a reference to assignment of accrued rights, with the decision being that a general reference to assignment meant an assignment of both accrued and future rights. In effect, in order to separate out future and accrued rights from an assignment, the contract would need to say so expressly.</p>	<p><a href="#">Judgment</a></p>	
<p>Remoteness of damage principles in contract</p>	<p>The Privy Council decision in <b>Attorney General of the Virgin Islands v Global Water Associates</b> is a useful summary of the principles of remote of damages in contracts. In this case lost profits fell within the second limb of <b>Hadley v Baxendale</b> as indirect losses, rather than direct losses under limb 1 as the Privy Council held that the nature of the lost profits decided which limb they fell under, rather than assuming that lost profits are always direct losses.</p>	<p><a href="#">Judgment</a></p>	
<p>Deciding jurisdiction in cross border disputes</p>	<p>On 28 September 2020, the UK deposited a new instrument of accession to the <b>Hague Convention on Choice of Court Agreements 2005</b> to ensure UK commercial entities can take advantage of the protection of this Convention for exclusive jurisdiction clauses in certain international contracts from 1 January 2021.</p>	<p><a href="#">Instrument of accession</a></p>	



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	1 October 2020 was the passing of the deadline for the UK to be able to accede to the <b>Lugano Convention 2007</b> by 1 January 2021. Joining this Convention is the UK Government's preferred position but requires the consent of all EU member states. This does not mean to say that the UK will not be able to accede to this Convention later or that there might be some kind of work around if the UK and EU agree a deal in the next few weeks, but for now the working assumption is that this will <b>not</b> be the Convention governing and protecting contractual choice of jurisdiction clauses in English law agreements on 1 January 2021.		
Revised arbitration rules	Click on the link to read the revised International Chamber of Commerce 2021 Rules on Arbitration.	<a href="#">Rules</a>	
Product safety and blockchain	The <b>UK Office for Product Safety and Standards</b> has published a report on using distributed ledger technology for authenticating products in supply chains and whether technologies such as blockchain can help overcome delays, inefficiencies and fraud. The report assesses the use of such technologies in sectors where they have already been trialled. It summarises a set of problems that could potentially be solved by blockchain in tracking consumer products including: <ul style="list-style-type: none"> <li>• counterfeit protection</li> <li>• ethical and ecological sourcing</li> <li>• intellectual property protection</li> <li>• food and pharma safety and standards</li> </ul>	<a href="#">Report</a>	
EU Chemicals Sustainability Strategy	The <b>European Commission</b> has published a Communication: A Chemicals Strategy for Sustainability Towards a Toxic-Free Environment, as part of the European Green Deal announced in December 2019. The Strategy aims to make chemicals more sustainable and to increase the protection of human health and the environment against hazardous chemicals. This includes: <ul style="list-style-type: none"> <li>• prohibiting the use of the most harmful chemicals in consumer products unless they are proved to be essential for society.</li> <li>• ensuring that all chemicals are used sustainably.</li> </ul>	<a href="#">European Commission Communication</a>	



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	<p>The Strategy envisages that the REACH and Classification, Labelling and Packaging regimes will be revised to ensure sufficient information is provided on chemicals manufactured or imported into the EU and that substances of concern are quickly identified and phased-out in consumer products.</p> <p>The Strategy also sets out actions to make chemicals safe and sustainable by design.</p>		
When is a financial services provider obliged to stop fraudulent payments	<p>There have been a couple of recent hearings on what is known as the Quincecare duty (from a 1992 case which established that banks operating current accounts owe a duty to companies not to process a transaction where there are reasonable grounds to suspect the payment may be fraudulent). In light of technological developments and the speed of payment processing in the fintech sector, these cases are relevant to payment service providers as well as banks because of their reliance on speedy automated processes.</p> <p>The cases are <b>Stanford International Bank v HSBC</b> and <b>Hamblin v World First Ltd.</b></p>	<a href="#">Stanford judgment</a>	
The future of the Vertical Agreement Block Exemption	<p>The <b>European Commission</b> has published its initial impact assessment for potential revisions of the Vertical Agreement Block Exemption which will expire on 31 May 2022 and its accompanying guidelines. The assessment looks at possible changes in the areas of dual distribution, active sales restrictions,, indirect measures restricting online sales and most favoured nations obligations, with final date for feedback being 20 November 2020.</p>	<a href="#">Announcement</a>	

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CMA guidance on consumer contracts affected by COVID-19	As a reminder, as uncertainties continue over the nature and timing of future restrictions relating to COVID-19, businesses should be careful in their approach to their consumer customers when dealing with cancellation and refunds. In its latest guidance on the cancellation of consumer contracts and refunds, the <b>Competition and Markets Authority</b> has set out its expectations of businesses when consumer contracts are affected by COVID-19 restrictions, whether in or outside of the UK.	<a href="#">CMA Guidance</a>	
Right to withdraw for bespoke goods	The <b>ECJ</b> recently heard a referral in the case of <b>Mobel Kraft GmbH v ML</b> relating to the consumer protection law that does not allow a consumer a right to withdraw from distance contracts where goods have been made to the consumer's specification or personalised (in the UK the equivalent provision is <b>regulation 28 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013</b> ). The ECJ held that this exception applies irrespective of whether the trader has begun to make the goods.	<a href="#">Judgment</a>	
Cancelling distance contracts – how much does the consumer pay?	In the case of <b>EU v PE Digital GmbH</b> , the ECJ confirmed that, in principle, the calculation of the proportionate amount payable by a consumer on cancellation of a distance contract for services performed during the cancellation period at the request of the consumer must be based on the full price agreed in the contract.	<a href="#">C-641/19</a>	



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	Click the link to read the latest Eversheds Sutherland quarterly Privacy and Cybersecurity updates.	<a href="#">Update</a>	
UK Government guidance on cybersecurity requirements for digital service providers	As reported in our Brexit section, the <b>Department for Culture, Media and Sport</b> has published revised versions of its guidance for UK digital service providers operating in the EU and its guidance for non-UK digital service providers operating in the UK to set out the arrangements they should have in place from 1 January 2021 to comply with the <b>Network and Information Systems Regulations 2018</b> .	<a href="#">Guidance for digital service providers</a> <a href="#">Guidance for non-digital service providers</a>	
US Cybersecurity and Infrastructure Security Agency publishes guidance on preventing and responding to ransomware attacks	The <b>US Cybersecurity and Infrastructure Security Agency</b> and the <b>Multi-State Information Sharing and Analysis Center</b> have published a joint ransomware guide. The guide is designed to enable organisations to prevent and respond to ransomware attacks. The guide is designed mainly for IT professionals, but has relevance across organisations.	<a href="#">Press release</a> <a href="#">Guide</a>	
Insurance Europe announces responses to EC's consultation on the revision of NIS Directive	<b>Insurance Europe</b> has published its response to the European Commission's public consultation on the revision of the Cybersecurity or NIS Directive. In its view, the NIS Directive should not extend to the insurance industry in order to prevent the duplication of requirements; instead, the sector's cyber-resilience should be governed solely by the Commission's impending Digital Operational Resilience Act.	<a href="#">Press release</a> <a href="#">Response</a>	
Global Privacy Control: browser privacy standard announced	A group of companies have launched Global Privacy Control, a website and browser privacy standard. Users can download browsers and extensions from participating organisations; these browsers/extensions communicate the user's preference that their data is not sold or shared to participating publishers. The website is	<a href="#">Press release</a>	



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	in its initial stages – those involved are exploring how to widen participation in the tool.		
UK and others release International statement on end-to-end encryption and public safety	<p>The <b>Council of Europe</b> has issued its report on the digital measures which 55 participant countries of its Convention 108 have taken in combatting the spread of COVID-19.</p> <p>The Report looks at the digital contact tracing apps and other monitoring tools currently in use and identifies areas of improvement for consideration. The key focus is on transparency, coordination and interoperability of such systems.</p>	<p><a href="#">Press release</a></p> <p><a href="#">Report</a></p>	
Russian cyber-attacks against Olympic and Paralympic Games revealed	The <b>Russian military intelligence service</b> (the “GRU”) launched targeted cyber-attacks against officials and organisations connected to the 2020 Olympic and Paralympic Games. Dominic Raab, UK Foreign Secretary, revealed the attacks; Mr Raab also confirmed the extent of the GRU’s cyber-attacks against the 2018 Winter Olympic and Paralympic Games (where the GRU attempted to disguise itself as North Korean and Chinese hackers). Data-deletion malware was used by the GRU in an attempt to delete data, disable computers and networks, and therefore disrupt the Games.	<a href="#">Press release</a>	
Threat Landscape 2020 report published by ENISA	The <b>European Union Agency for Cybersecurity</b> has published the annual Threat Landscape report, detailing the main cyber threats faced between January 2019 and April 2020. The report highlights the change in the digital environment caused by the pandemic, and the resultant change in cyber threat. During the pandemic, there has been a rise in fake online shopping websites, fraudulent online merchants, and cyberbullying and sextortion incidents (with younger individuals particularly vulnerable). Phishing attacks have also increased, with Covid-19 used to theme the attacks. Most cyber-attacks are motivated by potential financial gain.	<p><a href="#">Report</a></p> <p><a href="#">Press release</a></p>	
NSA publishes list of top 25 security vulnerabilities	The <b>NSA</b> has published a list of 25 computer security vulnerabilities used by Chinese government hackers. These vulnerabilities are publicly known and can be addressed by patches; the vulnerabilities affect remote access gateways, internal servers, mobile device management, privilege escalations, Active Directory, network	<a href="#">Report</a>	



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	<p>equipment, and public-facing servers. The NSA's list highlights those vulnerability patches which should be prioritised by cybersecurity professionals. The exploitation of these vulnerabilities by Chinese 'state-sponsored cyber actors' can lead to the loss of sensitive information with a wide-ranging impact on US policy, plans, and competitive advantage</p>		

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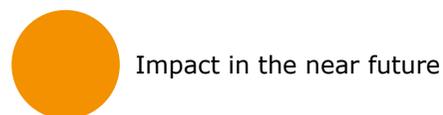


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	Click the link to read quarterly Privacy and Cybersecurity updates.	<a href="#">Update</a>	
ICO opens consultation on draft statutory guidance on the ICO's powers and how fines are calculated	The <b>ICO</b> has opened a public consultation on its draft statutory guidance, in line with the <b>Data Protection Act 2018</b> , detailing the ICO's powers and how fines are calculated. The consultation will close at 5pm on 12 November 2020.	<a href="#">Press release</a> <a href="#">Draft guidance</a> <a href="#">Consultation</a>	
European Data Protection Board issues guidance on DPIAs for large scale processing	The <b>EDPS</b> has stated that there are two factors to determine whether the processing of individuals' data was considered "large scale" processing: (1) the proportion of the relevant population; and (2) the nature of the personal data being processed. These factors are cumulative in suggesting a DPIA should be carried out.	<a href="#">Newsletter</a> <a href="#">Consultation</a> <a href="#">Guidance</a>	
New UK Government guidance relating to data protection and data flows for Brexit	Various government departments and the ICO have published updated guidance to assist businesses in preparing for the end of the transition period by setting out steps they need to take regarding data protection and data flows within the EU/EEA following 31 December 2020.	<a href="#">Updated Guidance</a>	
Irish DPC issues guidance on employer vehicle tracking	The <b>Irish Data Protection Commission</b> has issued guidance on employer vehicle tracking. It states the requirement for employees to have a reasonable expectation of privacy in the workplace and highlights the risk that employee in-vehicle tracking may interfere with employees' privacy and data protection rights.	<a href="#">Guidance</a>	



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H&M subject to €35 million fine for storing extensive details on employees	H&M have been fined €35 million for monitoring their employees' private lives. The data could be accessed by up to 50 managers and was used to profile employees when making decisions about their employment.		
CJEU issues Privacy International judgment	The <b>CJEU</b> has issued judgment in the case of <b>Privacy International</b> , and in the joined cases. The judgment states that member states cannot carry out unlimited mass surveillance of phone and internet data. It was decided that where a member state is facing a serious threat to national security, the member state may order electronic communications services providers to retain traffic data and location data. The period of such general and indiscriminate retention must be limited to what is strictly necessary. Individuals suspected of involvement in terror activities can be subject to real-time surveillance of traffic data and phone data.	<a href="#">Press release</a> <a href="#">Judgment</a> <a href="#">Joined cases judgment</a>	
DCMS confident that the UK will obtain an adequacy decision before end of transition period	The <b>Department for Culture, Media and Sport</b> is 'confident' that the EU will complete the data adequacy assessment of the UK and issue decisions before 31 December 2020. In updated guidance, the DCMS has stated that if adequacy decisions have not been made before the end of the transition period, organisations must use alternative transfer mechanisms to ensure the legal transfer of data to the UK. The DCMS has recommended most organisations should use SCCs.	<a href="#">Guidance</a>	
High Court dismisses claim against Lloyds Bank for alleged failure to respond to DSARs	The High Court has issued judgment in <b>Lees v Lloyds Bank Plc</b> . It found that Lloyds provided an adequate response to each DSAR requested of it and, even if Lloyds had not responded to each DSAR, the Court has discretion whether or not to make an order, and suggested that there are 'good reasons' to decline to exercise that discretion in favour of a claimant who makes 'numerous and repetitive DSARs which is abusive', and who appears to have used the DSARs to obtain documents (rather than personal data) to be used to assist the claimant in another litigation.	<a href="#">Judgment</a> <a href="#">Guidance</a>	



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EU interoperability gateway for COVID-19 tracing apps goes live	<p>An EU-wide gateway for contact tracing apps has launched, following a successful pilot phase; the national apps from Germany, Ireland and Italy are the first to be linked through the service. The gateway is designed to allow national tracing apps to interact with apps from other Member States; The gateway can work with 20 apps – it is expected that the next update will link the apps from the Czech Republic, Denmark, Latvia and Spain. The gateway means users will only need to install one app, which will then work across participating Member States. Data exchanged is kept to a minimum – only arbitrary identifiers will be transferred between national apps. Information is pseudonymised, encrypted, and kept only as long as necessary to track infections. Individuals cannot be identified, nor can their location or movement be tracked. The gateway will be operated from the Commission’s data centre in Luxembourg.</p>	<p><a href="#">Press release</a></p>	
ICO publishes detailed guidance on subject access requests	<p>The <b>ICO</b> has published detailed guidance to assist organisations in dealing with a subject access request. The ICO’s guidance focuses on the following issues:</p> <ul style="list-style-type: none"> <li>• Feedback suggested that seeking clarification on requests did not give an organisation enough time to respond. The ICO has now stated that in certain circumstances, the clock can be stopped whilst requesters clarify their request</li> <li>• Additional guidance to assist in classifying a request as ‘manifestly excessive’</li> <li>• Updated guidance on what costs can be taken into account by organisations charging an admin fee for excessive, unfounded or repeat requests</li> </ul> <p>A suite of further resources will follow, including a simplified SAR guide to assist small businesses.</p>	<p><a href="#">Guidance</a> <a href="#">Blog</a></p>	



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Guidelines on Data Protection by Design & Default adopted by EDPB	The <b>European Data Protection Board</b> has adopted <b>Guidelines on Data Protection by Design &amp; Default</b> during its 40 <sup>th</sup> plenary session. The Guidelines are focused on the obligation in Article 25 GDPR of Data Protection by Design and by Default.	<a href="#">Press release</a>	

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UK Government guidance on .eu domain names	The <b>UK Government</b> has published a guidance note for holders of .eu domain name registrations on the effect of the end of the UK-EU transition period. This replaces previous guidance drafted before the withdrawal agreement was made. The guidance explains that holders should check whether they will remain eligible to hold their domain name after 31 December, what will happen to their registration if they do not and how to mitigate the effect of this. A holder might, for example, choose to transfer its internet presence to another top level domain such as .uk, .co.uk or .com, and should also develop a migration plan for services and functions supported by its .eu domain such as email addresses and virtual private networks. They may also need to consider whether any trade mark rights are affected by the loss of the domain name.	<a href="#">Guidance note</a>	
EURid issues first Brexit notice	<b>EURid</b> has emailed all UK registrants of the .eu domain name to notify them that, as of 1 January 2021, they will no longer be eligible to hold a .eu domain name, unless they can demonstrate their compliance with the .eu regulatory framework. In order to so demonstrate, registrants will need to update their registration data before 31 December 2020.		
Patents and artificial intelligence	The case of <b>Stephen L Thaler v C-G of Patents, Designs and Trade Marks</b> looked at various issues regarding artificial intelligence including whether the concept of “inventor” could be extended beyond people to things under the Patents Act 1977. It dismissed a patent application by an individual in respect of a machine created invention on the ground that an inventor had to be a natural person. The individual had submitted the application in his own name but made clear that he was not the inventor but that he had acquired the right of grant of the patents by owning the machine.	<a href="#">Judgment</a>	



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<p>IPO consultation for IP enforcement</p>	<p>The <b>Intellectual Property Office</b> has published what it describes as an informal call for evidence seeking views on the cost and effectiveness of judicial processes when protecting IP rights in the UK. The consultation closes on 2 November 2020.</p>	<p><a href="#">call for evidence</a></p>	
<p>Updated Manual of Patent Practice</p>	<p>The <b>Intellectual Property Office</b> has published the most recent update to its Manual of Patent Practice, effective from 1 October 2020.</p>	<p><a href="#">Manual of Patent Practice</a></p>	



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Study on open source software	<p>The <b>European Commission</b> has publicised an initial study and a survey that it has commissioned on the impact of open-source software and hardware in the EU economy. Input is sought from interested parties such as experts, government officials, those involved in open-source and businesses that have an interest in this field.</p> <p>The study, due to be finalised by the beginning of 2021, will contain policy recommendations for the best use of open-source.</p>	<a href="#">Study</a>	
EU Commission launches 2021 work programme	<p>The <b>European Commission</b> has launched its 2021 work programme, which includes making Europe 'fit for the digital age', through a focus on the right to privacy and connectivity, freedom of speech, free flow of data and cybersecurity. The programme includes a legislative agenda which will cover AI and the European e-ID.</p>	<p><a href="#">Press release</a></p> <p><a href="#">Work programme</a></p>	
European Parliament recommendations on AI rules	<p>The <b>European Parliament</b> has published recommendations on what AI rules should include with the focus on three areas: ethics, liability and intellectual property rights. The European Commission's legislative proposal is expected early next year and these recommendations will feed into that.</p> <p>In the context of the legal framework for ethical principles, the recommendations are that future laws should follow various guiding principles, including: a human-centric and human-made AI; safety, transparency and accountability; safeguards against bias and discrimination; right to redress; social and environmental responsibility; and respect for privacy and data protection. High-risk AI technologies, such as those with self-learning capacities, should be designed to allow for human oversight at any time. If a functionality is used that would result in a serious breach of ethical principles and could be dangerous, the self-learning capacities should be disabled and full human control should be restored.</p>	<a href="#">Recommendations</a>	



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	<p>The European Parliament says that there should be a civil liability framework, with strict liability for those operating high-risk AI which results in damage. The rules should apply to physical or virtual AI activity that harms or damages life, health, physical integrity, property, or that causes significant immaterial harm if it results in “verifiable economic loss”. While high-risk AI technologies are still rare, MEPs believe that their operators should hold insurance similar to that used for motor vehicles.</p> <p>In the context of intellectual property, the recommendations are to distinguish between AI-assisted human creations and AI-generated creations. AI should not have legal personality and consequently, ownership of intellectual property rights should only be granted to humans.</p>		
<p>Amended rules on video sharing platforms, TV and video on demand</p>	<p>The UK <b>Audiovisual Media Services Regulations 2020</b> have been made, implementing amendments to the Audiovisual Media Services Directive. They amend the regulatory framework for broadcast television and on-demand programme services and introduce regulation for video-sharing platforms. Most of the provisions come into force on 1 November 2020.</p>	<p><a href="#">Regulations</a></p>	

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