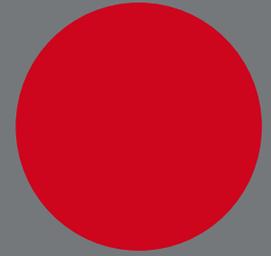


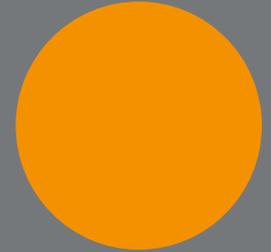
Commercially connected
September 2020



Impact



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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

Technology

Development	Summary	Supporting information	Impact
Coronavirus hub	For COVID-19 legal advice and updates, visit our coronavirus hub.	Coronavirus hub	
Coronavirus legislation and government guidance	Legislation and Government guidance on coronavirus is constantly being updated. Click on the links to access the latest information.	Legislation.gov.uk coronavirus landing page Gov.uk COVID-19 business support landing page	
CIGA temporary measures extended	The temporary measures under the Corporate Insolvency and Governance Act 2020 ("CIGA") which are designed to protect businesses from insolvency are being extended. See the general commercial section below for more details.		
Judgment in FCA test case on business interruption insurance and COVID-19	The High Court judgment in the test case brought by the FCA to seek clarity on the meaning and effect of certain business interruption insurance policy wordings in the context of COVID-19 has now been handed down. In summary it is fair to say it represents a victory for the policyholders. There will be a hearing in October 2020 at which the parties will make submissions to the Court regarding the appropriate declarations to be made in light of its findings. Insurers are very likely to seek permission to appeal the decision. If an appeal is granted it may be a leapfrog to the Supreme Court. Click on the link to read an Eversheds Sutherland briefing on the judgment.	Eversheds Sutherland briefing FCA webpage	
ASA statement on the depiction of COVID-19 protection measures in ads	<p>The Advertising Standards Authority has issued a statement on the depiction of COVID-19 protection measures in ads. Until further notice the ASA will use the following three principles when assessing complaints about ads that depict scenes or behaviours that go against current guidance on limiting the spread of COVID-19:</p> <ul style="list-style-type: none"> ads which discourage protective measures are likely to be irresponsible in all circumstances and a breach of the CAP Code; 	ASA statement	



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Development	Summary	Supporting information	Impact
	<ul style="list-style-type: none"> ads which are responsibly created and which make explicit reference to the existence of the pandemic must show depictions of social distancing and other protective measures in line with Government guidance at the time the ads were created; and ads which are responsibly created but which do not explicitly reference the existence of the pandemic are unlikely to need to depict protective measures. 		
European Council Recommendation on restrictions on free movement due to the pandemic	The European Commission has adopted a proposal for a Council Recommendation to ensure that any measures taken by Member States that restrict free movement due to the coronavirus pandemic are coordinated and clearly communicated at the EU level.	Press release	
European Commission baseline reports on actions taken to fight coronavirus disinformation	The European Commission has published its first baseline reports on the actions taken by the online platform signatories to its Code of Practice on Disinformation (Google, Facebook, Twitter, Microsoft, Mozilla and TikTok) to fight false and misleading coronavirus-related information. This action includes initiatives to promote and give visibility to authoritative content, to improve users' awareness, to detect and hamper manipulative behaviour and to limit advertising linked to coronavirus disinformation.	First baseline reports	

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Development	Summary	Supporting information	Impact
Brexit hub	For Brexit business and legal advice, visit our Brexit hub.	Brexit hub	
UK-EU negotiations	<p>The eighth round of negotiations on the future UK-EU relationship took place from 8 to 10 September. The statements issued by each party following this negotiation round reveal little real progress.</p> <p>The Prime Minister has stated that if there is to be an agreement this needs to be reached by 15 October in order for it to be in place by the end of 2020 and that "If we can't agree by then, then I do not see that there will be a free trade agreement between us, and we should both accept that and move on".</p>	UK Government statement European Commission statement Prime Minister's statement	
UK Internal Market Bill	The UK Government's new Internal Market Bill was introduced to the House of Commons this month, causing controversy both in the UK and in the EU. The Bill allows the Government to override parts of the Withdrawal Agreement with the EU and waive the UK's obligations to allow for the EU Customs Union rules to apply in Northern Ireland at the end of the Brexit transition period. Click on the link to read an Eversheds Sutherland briefing which explains in more detail what the Bill seeks to achieve and why it is so controversial.	Eversheds Sutherland briefing	
UK to follow WTO subsidy rules after Brexit transition period	The UK Government has said that following the end of the Brexit transition period the UK will follow WTO subsidy rules for goods, replacing EU state aid laws. It has committed to publishing guidance on this issue before the end of the year, as well as to consulting on whether the UK should introduce its own legislation in this area.	Press release	
UK Government guidance on placing manufactured goods on the market	<p>The UK Government has published guidance on placing manufactured goods on the market in Great Britain from 1 January 2021. Key points include:</p> <ul style="list-style-type: none"> in the UK CE marking is being replaced by the UKCA mark, but for certain products CE marking will be accepted in the UK 	Guidance on placing manufactured goods on the market in Great Britain	



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	<p>until 1 January 2022 (so long as the EU and UK requirements do not diverge during this period);</p> <ul style="list-style-type: none"> from 1 January 2021 authorised representatives and responsible persons based in the EU will no longer be recognised in Great Britain; and organisations that will be classified as an importer from 1 January 2021 will be subject to additional obligations. <p>It has also published guidance on placing manufactured goods on the EU market from 1 January 2021. Key points here include:</p> <ul style="list-style-type: none"> non-harmonised goods must meet the requirements of the first EU or EEA country in which they are placed on the market; any mandatory conformity assessment will have to be carried out by an EU-recognised conformity assessment body; and organisations may need to appoint an EU-recognised notified body (an organisation that assesses the conformity of products before they are placed on the market) and/or authorised representative or responsible person (these persons carry out certain tasks related to product safety). 	<p>Guidance on placing manufactured goods on the EU market</p>	
<p>Brexit SIs published this month</p>	<p>This month the following draft SIS likely to be of interest to commercial practitioners were published:</p> <ul style="list-style-type: none"> The Sanctions (EU Exit) (Consequential Provisions) (Amendment) Regulations 2020. These Regulations are made under the Sanctions and Anti-Money Laundering Act 2018 and are part of the establishment of the UK counter-terrorism sanctions framework that will replace its EU equivalent at the end of the Brexit transition period. The Consumer Protection (Enforcement) (Amendment etc) (EU Exit) Regulations 2020. These Regulations ensure the revocation of the EU CPC Regulation (on cooperation between national authorities responsible for the enforcement of consumer protection) at the end of the Brexit transition period and remedy deficiencies in retained EU law to allow the UK consumer collective redress regime to function effectively. 	<p>The Sanctions (EU Exit) (Consequential Provisions) (Amendment) Regulations 2020</p> <p>The Consumer Protection (Enforcement) (Amendment etc) (EU Exit) Regulations 2020</p>	



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Development	Summary	Supporting information	Impact
DIT launches trade advisory groups	The Department for International Trade has set up 11 new trade advisory groups on agri-food; automotive, aerospace and marine; British manufacturing and consumer goods; investment; life sciences; tech and telecoms; chemicals; financial services; professional advisory services; transport services and creative industries as part of a major new business engagement drive to support the UK's trade negotiations. The intention is that the groups' advice will be used to help inform the UK Government's negotiating position and "deliver key industry asks that benefit the whole UK".	Press release	
UK Government guidance on climate change requirements post transition	The UK Government has published updated guidance on meeting climate change requirements from 1 January 2021 (ie following the end of the Brexit transition period). The guidance has been updated to provide information for businesses placing energy-related products which are subject to Ecodesign and Energy Labelling regulations on the market from 1 January 2021.	Guidance	

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Development	Summary	Supporting information	Impact
Temporary measures under CIGA extended	<p>The temporary measures under the Corporate Insolvency and Governance Act 2020 ("CIGA") which are designed to protect businesses from insolvency are being extended:</p> <ul style="list-style-type: none"> the prohibition on presenting winding-up petitions based on statutory demands is being extended until 31 December 2020; the prohibition on presenting winding-up petitions and making winding-up orders based on other grounds, unless the Court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the debtor, is being extended until 31 December 2020; the temporary provisions and rules regarding standalone moratoriums are being extended until 30 March 2021; and the temporary exclusion of small entities from the effect of the restrictions on terminating supply contracts for insolvency is being extended until 30 March 2021. <p>The temporary suspension of liability for wrongful trading is not being extended. This ends on 30 September 2020.</p>	<p>The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020</p> <p>Press release</p>	
HMRC changes its approach to VAT on early termination payments	<p>HMRC has changed its approach to early termination payments. In essence it now treats payments made by a customer for early termination of a contract as part of the contract price, rather than a compensation payment, meaning that VAT is payable on that payment.</p>	<p>Revenue and Customs Brief 12 (2020): VAT early termination fees and compensation payments</p>	
UK Government issues response to consultation on supply chain transparency	<p>On 22 September 2020 the UK Government published the outcome of its consultation on transparency in supply chains which took place in the summer of 2019. The Government response contains the following commitments. Where these require amendments to the Modern Slavery Act 2015 ("MSA") these will be introduced when Parliamentary time allows:</p>	<p>Consultation outcome</p>	



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Development	Summary	Supporting information	Impact
	<ul style="list-style-type: none"> The areas that modern slavery statements (as required under Section 54 of the MSA) cover will be made compulsory rather than voluntary (as they are at present) and if an organisation has taken no steps within an area it will be required to clearly state this. The Government will also consider how reporting areas can be amended to incorporate some of the additional topics suggested by respondents to the consultation. Section 54 statements will have to be published on a Government-run reporting service. There will be a single reporting deadline of 30 September to cover a reporting period of 1 April to 31 March (rather than organisations reporting in line with their own financial year as is currently the case). Section 54 statements will have to state the date of Board (or equivalent) approval and Director (or equivalent) sign-off and statements that cover more than one entity in a group will have to name the entities covered. Section 54 of the MSA will be extended to public bodies within England and Wales with a budget threshold of £36 million. Scotland will consult separately on these proposals. <p>The Government plans to publish updated guidance later in 2020, including best practice approaches to reporting against the future required areas.</p> <p>The Government will also consider enforcement options in line with the proposed development of a Single Enforcement Body for employment rights. It says that a further update on this will be issued in due course.</p>		
European Commission evaluation of Vertical Agreements Block Exemption	The European Commission has published its evaluation of Regulation 330/2010, the Vertical Agreements Block Exemption Regulations, and its accompanying guidelines on vertical restraints. The block exemption is due to expire on 31 May 2022. Click on the link to read an Eversheds Sutherland briefing on this evaluation.	Eversheds Sutherland briefing	
Exclusion of rights under Contracts (Rights of Third Parties)	The principle of transferred loss is a limited exception to the general rule that a claimant can only recover loss that it has suffered itself. Under this principle a third party can recover loss that it has suffered	Judgment	



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Development	Summary	Supporting information	Impact
Act 1999 ousts claim under principle of transferred loss	<p>as a consequence of a contracting party's breach, but it only applies where the third party has no other remedy available to it. It has evolved to avoid a legal black hole where a contract breaker escapes financial accountability because its contractual counterparty does not suffer the relevant loss.</p> <p>In DR Jones Yeovil Ltd v Stepping Stone Group Ltd the High Court found that a third party was not entitled to rely on the principle of transferred loss, in part because the contract in question included a clause expressly excluding the application of the Contracts (Rights of Third Parties) Act 1999. That clause was sufficient to demonstrate that the contracting parties did not have a common intention to benefit the third party.</p>		
CVA (probably) not a contract for the purpose of the Contracts (Rights of Third Parties) Act 1999	The High Court has held that it is more likely than not that a CVA (company voluntary arrangement) is not a contract for the purposes of the Contracts (Rights of Third Parties) Act 1999. The effect of this finding was that the former administrators of a company were not entitled to use the Act to enforce the benefit of a release of liability clause in their favour contained in a CVA.	Judgment	
Meaning of "goodwill"	The High Court has held that in a commercial context the ordinary legal meaning of "goodwill" is the good name and public reputation of the business concerned. There was no reason for the Court to depart from the ordinary legal meaning when construing an exclusion clause in an SPA. If a contractual term is intended to have an unusual or technical meaning this should be spelt out in the contract.	Judgment	
DEFRA consultation on laws to tackle illegal deforestation	As part of its proposals to tackle climate change, the Department for Environment, Food & Rural Affairs has launched a consultation on a proposed new law to clamp down on illegal deforestation and protect rainforests. The proposed law would require large businesses operating in the UK to carry out due diligence on their supply chains in order to publish information to show where key commodities (such as rubber and palm oil) come from and that they were produced in line with local laws. Non-compliant businesses would be fined. The consultation closes on 5 October 2020.	Consultation	



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Development	Summary	Supporting information	Impact
European Commission sustainable products initiative	The European Commission has adopted an inception impact assessment roadmap on its sustainable products initiative. The aim of the initiative is to revise the Ecodesign Directive and propose additional legislative measures with the aim of making products placed on the EU market more sustainable. A feedback period is currently open and closes on 2 November 2020.	Sustainable products initiative	

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Development	Summary	Supporting information	Impact
Updated CMA guidance on COVID-19 and consumer contracts	On 28 August the CMA updated its guidance on COVID-19, consumer contracts, cancellations and refunds. Click on the link to read the current guidance.	Guidance	
CJEU decision on examination of unfair terms	The CJEU has held that when a national court examines whether a term in a consumer contract is unfair for the purpose of the Unfair Terms in Consumer Contracts Directive 93/13/EEC, it must take account of the degree of interaction between the term at issue and the other terms of that contract (or another contract on which it is dependant), having regard to their respective scope.	Judgment	
BEIS response to Smart Data Review consultation	<p>The Department for Business, Energy and Industrial Strategy (“BEIS”) has published a response to the Smart Data Review consultation of July 2019 which consulted on expanding Smart Data beyond banking. It defines Smart Data as the secure and consented sharing of customer data with authorised third-party providers who then use the data to provide innovative services for consumers and business, such as automatic switching and account management. Respondents to the consultation were in favour of the extension of Smart Data. BEIS states that next steps will include:</p> <ul style="list-style-type: none"> • primary legislation (when Parliamentary time allows) extending the Government’s powers to mandate participation in Smart Data initiatives, in respect of which BEIS has published an impact assessment on which comments are welcome; and • the launch of a cross-sectoral Smart Data working group to coordinate initiatives. 	Press release	

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<p>Call for views on amendments to the NIS Regulations</p>	<p>The UK Government has undertaken a call for views on proposed amendments to the Network and Information Systems Regulations 2018 ("NIS Regulations"). The purpose of the NIS Regulations is to improve the security of network and information systems which are critical to the provision of essential services and certain digital services, the disruption of which could cause significant harm. They apply to operators of essential services in the transport, energy, water, health and digital infrastructure sectors and to relevant digital service providers (including online marketplaces, online search engines and cloud computing services).</p> <p>This follows the post-implementation review of the NIS Regulations in May 2020 and is the Government's solution to dealing with the issues identified in that review. The areas in which reform is proposed include introducing an independent appeals mechanism, changing regulatory authorities' enforcement powers, expanded information sharing provisions, amendments to the designation thresholds and refining the application of penalties. The call for views closed on 25 September.</p>	<p>Call for views</p>	
<p>Response to call for evidence on digital identity</p>	<p>In July 2019 the UK Government issued a Call for Evidence on digital identity. It has now published its analysis of the responses to that Call for Evidence, framed in the context of the COVID-19 pandemic's role in accelerating the trend towards online services and processes which has meant that being able to prove an individual's identity digitally has become essential in order to facilitate a multitude of everyday tasks.</p> <p>As a result of the information obtained from the responses, the new Government Digital Identity Strategy Board has developed a set of principles to frame UK digital identity delivery and policy, namely privacy, transparency, inclusivity, interoperability, proportionality and good governance.</p> <p>The Government also states that it plans to update existing laws on identity checking to enable digital identity to be used as widely as possible and to consult on developing consumer protection legislation relating to</p>	<p>Consultation outcome</p>	



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	<p>digital identity and the appropriate privacy and technical standards for secure digital identities.</p> <p>The Government is also exploring how secure checks could be made against Government data and has launched the Document Checking Service Pilot scheme to give easier and safer access to digital services which require identity checks, such as online mortgage applications, financial services and recruitment onboarding.</p>		
<p>Response to Cyber Security Incentives and Regulation Call for Evidence</p>	<p>The UK Government has published a policy paper following its analysis of responses to its 2019 Call for Evidence on the core barriers organisations face in managing their cyber security risks.</p> <p>The responses to the Call for Evidence showed that barriers organisations face in managing cyber risk include inability (not knowing what to do or not having the right skills or resources), lack of commercial rationale to prioritise cyber risk management, a complex and insecure digital environment in which many business operations are based, a lack of incentives to support organisations to protect themselves online and insufficient regulation to compel organisations to better manage cyber risk.</p> <p>The Government states that next steps will include scoping and analysing policy options to both support organisations through the economic recovery from the COVID-19 pandemic and the longer term role of the UK's regulatory framework in helping achieve a better standard of cyber security across the economy. It will publish a policy statement and future policy recommendations, reflecting on the impact of guidance and the sufficiency of existing regulation including GDPR and the NIS Regulations and proposing policy interventions to support organisations in developing a compelling case for investment in cyber security and taking more responsibility and accountability for cyber risk management.</p>	<p>Policy paper</p>	
<p>NCSC and four other international cybersecurity bodies issue joint advisory note on technical approaches to uncovering and remediating malicious activity</p>	<p>The cybersecurity agencies in the USA, UK, Australia, Canada and New Zealand have published joint guidance on cybersecurity incidents ("Joint Cybersecurity Advisory - Technical Approaches to Uncovering and Remediating Malicious Activity" 1 September 2020) (the "Guidance").</p> <p>The Guidance outlines technical steps to take to identify and mitigate malicious activity. The aim of the Guidance is to provide overall advice to</p>	<p>Guidance Announcement</p>	



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Development	Summary	Supporting information	Impact
	<p>organisations on cybersecurity attacks and to improve their response to, and investigation of, such incidents.</p> <p>Suggested best practice includes taking steps to avoid tipping off the party responsible for the cyber-attack, as well as collecting data and logs for analysis. The Guidance also provides details of common mis-steps when responding to an attack.</p>		
<p>European Commission project ANASTACIA develops new privacy and security framework for cyber-physical systems</p>	<p>The European Commission has announced that its project entitled 'ANASTACIA' has developed a new privacy and security arrangement for cyber-physical systems ("CPSs") based on the Internet of Things ("IoT") and virtualised cloud architectures.</p> <p>The ANASTACIA security and privacy framework addresses the complex IoT infrastructure and its different security vulnerabilities. Its methodologies and tools are aimed at ensuring that systems are secure and trustworthy. The Commission notes that it will also assist in raising awareness of cybersecurity attacks and privacy concerns.</p>	<p>Press release Project</p>	
<p>SRA publishes a thematic review of cybersecurity</p>	<p>In order to learn more about the experience and impact of cybercrime on the legal profession, the Solicitors Regulation Authority ("SRA") surveyed 40 law firms, who all reported that they and/or their clients had been targeted by cybercriminals over the previous three years.</p> <p>The report states that the knowledge and behaviour of law firm staff is the biggest security against cybercrime. Conversely most firms (60%) believed that, if not acting appropriately, staff can be a law firm's greatest cyber vulnerability. The report's survey includes details of the types of attacks experienced, the protective measures that were used (and those which were not), mitigating steps employed and the effects of being targeted by cybercriminals.</p> <p>Although aimed at the legal profession, the details and lessons are of wider implication and especially of interest to organisations highly dependent on their human capital and particularly those in technology / highly regulated sectors.</p>	<p>Report</p>	



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Development	Summary	Supporting information	Impact
Update	Click on the link to read our quarterly Privacy and Cybersecurity updates.	Update	
ICO publishes guidance on businesses required to collect customer details for track and trace	<p>The Information Commissioner’s Office (“ICO”) has issued guidance for businesses which, by law, have to collect customer details for the purposes of track and trace.</p> <p>The ICO sets out that this should be a simple process with 5 steps to consider:</p> <ul style="list-style-type: none"> (1) only the specific information required by Government guidance should be collected; (2) businesses should be “clear, open and honest” about how the personal data collected will be used; (3) data should be kept secure; (4) data shouldn’t be used for purposes other than track and trace; and (5) personal data should be erased or disposed of in line with Government guidelines (usually after 21 days). <p>The ICO also notes that use of a contact tracing app should not be made mandatory by businesses.</p>	<p>Press release</p> <p>Guidance</p>	
EDPS issues advice to EU institutions and authorities on body temperature checks	<p>The European Data Protection Supervisor (“EDPS”) has issued advice to EU institutions, bodies, offices and agencies (“EUIs”) about the use of body temperature checks in the fight against COVID-19.</p> <p>The EDPS commented that some use of temperature checks risks violating individuals’ privacy and has advised EUIs to collect only the minimum amount of data required. The EDPS also commented that body temperature checks carried out on a mandatory basis should not be solely undertaken by software, but should be supplemented by human intervention. In addition, and given the ever-changing nature of the pandemic, the necessity and proportionality of use of temperature checks should be kept under constant review.</p>	Press release	



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	<p>Although directed at EUIs, the guidance provides some insight into the EU's approach to privacy in the context of the ongoing COVID-19 pandemic.</p>		
<p>Testing underway for European Commission's new interoperability gateway service to link national contact tracing apps</p>	<p>The European Commission has announced that a group of EU member states (the Czech Republic, Denmark, Germany, Ireland, Italy and Latvia) has started testing the Commission's new interoperability gateway service for contact tracing and warning apps.</p> <p>The service links national coronavirus contact tracing and warning apps across the EU in order to facilitate the management and containment of coronavirus outbreaks and break the transmission chain of the virus.</p> <p>Using one app, users will be able to report test results or receive alerts, even if they travel abroad. The gateway will exchange minimised, encrypted and pseudonymised data, which will only be retained for the period required for tracing purposes.</p> <p>The Commission reports that, after testing, the service will start to be operational in October.</p>	<p>Press release</p>	
<p>Data protection and Brexit: doubts as to whether any adequacy decision between the UK and the EU will be agreed</p>	<p>Following the seventh round of Brexit negotiations, the EU's Head of UK Task Force and lead negotiator Michel Barnier issued a statement which noted that the parties have yet to reach a consensus on the necessary guarantees to protect citizens' fundamental rights and personal data.</p> <p>EU officials are considering the UK's data protection regime to decide whether or not EU data can be transferred to the UK after Brexit under an adequacy decision.</p> <p>If the UK decides to follow a more relaxed data protection regime than provided for by GDPR and the EU's law enforcement directive, EU personal data may be at risk when transferred to the UK. The newly-announced UK 'national data strategy' has exacerbated concerns as to the UK's approach to data protection from 1 January 2021, as it indicates a move away from GDPR. There are further concerns that the UK-US data transfer agreement could lead to the data of EU citizens not being adequately protected if transferred onwards from the UK to the US.</p>	<p>Statement News article News article</p>	



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	In making a final decision on adequacy, the EU will require an opinion from the EDPB and the agreement of the member states.		
UKTF issues draft Brexit Agreement	<p>The Task Force for Relations with the United Kingdom (“UKTF”) has issued the Amended Draft Text of the Brexit agreement and its annexures (the “Draft Text”) (published 14 August 2020).</p> <p>Specifically the Draft Text addresses law enforcement and judicial cooperation in relation to the prevention, detection, investigation and prosecution of criminal offences, money laundering and terrorist financing between the UK and EU member states, institutions, bodies, offices and agencies.</p> <p>The Draft Text also considers how personal data will be protected, in particular where personal data is processed wholly or partly by automated means. The Draft Text also considers the automated transfer of DNA profiles, fingerprint data, vehicle registration information and in relation to passenger name records.</p>	Draft text	
European Parliament publishes Paper summarising <i>Schrems II</i> and its implications	The European Parliament has published a paper in which it summarises the outcome of the CJEU judgment in <i>Schrems II</i> . The paper also explores the implications of the judgment as well as first reactions by commentators and data protection authorities.	Paper	
EDPB creates task forces in aftermath of the <i>Schrems II</i> judgment	<p>The EDPB has created two task forces in the light of <i>Schrems II</i> to:</p> <ol style="list-style-type: none"> 1. review various complaints received; and 2. prepare recommendations to assist controllers and processors to meet their duty to identify and implement supplementary measures to protect personal data when transferring it to third countries. 	Press release	
US government releases White Paper on the implications of <i>Schrems II</i>	<p>The US Government has released a White Paper in response to the <i>Schrems II</i> decision which invalidated the EU-US Privacy Shield mechanism for the transfer of personal data from the EU to the US.</p> <p>The White Paper counters the <i>Schrems II</i> ruling by explaining how limited data is of interest to US intelligence and by describing the safeguards in place in the US to protect personal data, the limits of the reach of US</p>	White Paper	



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	surveillance law in relation to personal data, the oversight in place to ensure compliance and the legal redress available.		
New legal solution proposed for transfers of personal data outside the EU following <i>Schrems II</i>	<p>The EU Cloud Code of Conduct Assembly (the "Assembly"), which consists of cloud service providers ("CSPs") and small and medium-sized companies, has announced that a proposed legal solution is currently being developed which would facilitate the transfer of personal data outside the EU in the wake of the <i>Schrems II</i> decision.</p> <p>If approved by data protection authorities, this solution could be an alternative to the EU-US Privacy Shield, which was recently invalidated following the <i>Schrems II</i> case.</p> <p>The Assembly has invited interested CSPs and cloud-users to contribute to the development of the proposal.</p>	Press release	
The Department for Digital, Culture, Media & Sport seeks feedback on the representative action provisions of the Data Protection Act 2018	<p>The Department for Digital, Culture, Media & Sport ("DDCMS") has issued a consultation document (the "Consultation"), seeking feedback from individuals and organisations on the operation of the 'representative action' provisions of the General Data Protection Regulation (EU) 2016/679 ("GDPR") and the Data Protection Act 2018 ("DPA").</p> <p>The representative action provisions allow individuals to appoint relevant non-profit organisations as their representatives to take action on their behalf when their data protection rights have been infringed.</p> <p>By launching the Consultation, the DDCMS is seeking information on how the provisions are operating in practice and the impact they have had on data subjects, particularly children and non-profit businesses, as well as on organisations against whom representative actions have been taken. The Consultation also seeks views on the introduction of new provisions which would allow non-profits and children's rights organisations to represent individuals despite not having their authorisation to do so (eg representative actions on behalf of children or vulnerable adults). It is of note that such 'representative' actions are a means of bringing so-called privacy 'class' actions ie litigation claims for a large group of affected data subjects together.</p> <p>The closing date for responses is 22 October 2020.</p>	Consultation	



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Development	Summary	Supporting information	Impact
UK National Data Strategy launched	<p>The Digital Secretary has published a National Data Strategy (“NDS”) designed to support the use of data in the UK, particularly to drive the recovery from the Covid-19 pandemic.</p> <p>The Government’s five ‘priority missions’ are stated as: (1) unlocking the value of data across the economy; (2) securing a pro-growth and trusted data regime; (3) transforming government’s use of data to drive efficiency and improve public services; (4) ensuring the security and resilience of the infrastructure on which data relies; and (5) championing the international flow of data.</p> <p>A public consultation on the NDS will be open until 2 December 2020.</p>	<p>Press release</p> <p>Strategy</p> <p>Consultation</p>	
UK Government updates Data Ethics Framework	<p>The UK Government has updated its Data Ethics Framework (the “Framework”), which provides guidance to stakeholders in the public sector on ethical considerations when dealing with data.</p> <p>The Framework is designed to be a reference document to be consulted at all stages of a new project, particularly when any changes are made which will have an impact on data.</p> <p>The updated version of the Framework contains three overarching principles (transparency, accountability and fairness) and five action points to be implemented, aimed at ensuring issues of ethics in relation to data are considered and addressed. There is also a self-assessment questionnaire.</p> <p>The Government has invited comments and examples of case studies where the Framework has been used.</p>	<p>Blog</p>	
ICO issues report on Business Innovation Privacy Hub	<p>The ICO has issued a report (the “Report”) on its Business Innovation Privacy Hub (the “Innovation Hub”) which was set up in November 2018 to collaborate with other UK regulators to promote data protection considerations and compliance in the drafting and application of business regulation and thereby provide expert data protection support to a broader range of sectors developing innovative goods and services.</p> <p>The Report discusses the role and objectives of the Innovation Hub (which the ICO has decided to retain on a permanent basis post its initial funding period), outlines the promotion of privacy by design and by default as key</p>	<p>Report</p> <p>Blog post</p>	



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	to the ICO's approach to good data protection practice, provides examples of case studies where the Innovation Hub has been used in practice, as well as providing a list of 'top ten tips for innovators' (also published by the ICO as a blog) to help businesses develop new products at the same time as adopting good data protection standards.		
Accountability Framework launched by ICO	<p>The ICO has launched the beta version of its Accountability Framework (the "Framework") to assist organisations to manage their accountability obligations under data protection legislation. The Framework is divided into ten categories, and includes a self-assessment tool to allow organisations to assess how well they are meeting their accountability obligations.</p> <p>A survey on the Framework has been opened, and will close on 2 November 2020.</p>	Press release Framework Survey	
ICO's Age Appropriate Design Code comes into force	<p>The Age Appropriate Design Code (the "Code") was issued by the ICO on 12 August 2020 and came into force on 2 September 2020.</p> <p>The Code, noted as being the first of its kind, sets out 15 flexible standards of age appropriate design that organisations should adopt to ensure their services sufficiently protect and safeguard children's personal data and process children's personal data fairly.</p>	Code	
The Law Society publishes a report on blockchain – legal and regulatory guidance	<p>In conjunction with the Tech London Advocates ("TLA"), the Law Society has produced guidance for lawyers (the "Report") on issues to be aware of when advising on distributed ledger technologies ("DLT") and in the use of such technology in legal services.</p> <p>The Report includes an analysis of issues around DLT and recommendations and approaches to best practice, including in relation to data protection, data governance, intellectual property, commercialisation and dispute resolution.</p>	Press release	
DMA publishes guidance on using purchased marketing lists	The Data & Marketing Association ("DMA") has released an article which discusses challenges relating to the use of purchased marketing lists and sets out steps for organisations to follow (which have a common theme of transparency) to enable them to remain compliant with GDPR and the DMA Code.	Article	



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	Notably, the article expresses disagreement with the ICO's view (expressed in the ICO's draft Direct Marketing Code) that consent is a 'better' lawful basis for processing personal data for direct marketing purposes than legitimate interests.		
EDPB adopts guidelines regarding the targeting of social media users	The EDPB has adopted guidelines on targeting social media users, which provide guidance on the roles and responsibilities of the social media provider and the targeted individual. The guidelines are open for consultation until 19 October 2020.	Press release Guidelines and Consultation	
EDPB opens consultation on Guidelines 07/2020 – the concepts of controller and processor in the GDPR	<p>The EDPB has opened a public consultation on its draft Guidelines 07/2020 on the concepts of controller and processor in the GDPR.</p> <p>The guidelines are aimed at providing practical guidance on the different concepts of controller and processor in the GDPR, as well as the consequences of each designation.</p> <p>The consultation will end on 19 October 2020.</p>	Press release Guidelines Response form	

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Code of Practice on Disinformation	<p>The European Commission has published its assessment of the implementation and effectiveness of its voluntary Code of Practice on Disinformation during the first 12 months of its operation. Whilst the assessment concludes that the Code has brought positive outcomes, in particular by increasing the accountability of online platforms in countering disinformation within the EU, it also identifies a number of shortcomings. The shortcomings are largely a result of the self-regulatory nature of the Code and include the absence of clear procedures, precise commitments, structured cooperation and established standards against which performance in this area can be measured.</p>	<p>Press release</p>	
Responses to consultation on Digital Services Act package	<p>The CMA has published its response to the European Commission consultation on its Digital Services Act package, setting out its support for the proposals. The aims of the proposals are:</p> <ul style="list-style-type: none"> • the modernisation of the E-commerce Directive (including with regard to the role and obligations of online intermediaries and a more effective governance system to ensure the enforcement of rules and the respect of fundamental rights); • a levelling of the playing field in European digital markets, which are currently dominated by a few large online platforms which act as gatekeepers (including addressing market imbalance and ensuring that the EU single market for digital services remains competitive and open to innovation); and • a possible new competition tool to deal with structural competition problems across markets which cannot be tackled effectively on the basis of the current competition rules. <p>BEREC (the Body of European Regulators for Electronic Communications) has also published its response to the consultation, recommending the adoption of a dedicated ex-ante regulatory</p>	<p>CMA response BEREC press release</p>	



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	framework for digital platforms with significant intermediation power in order to ensure that competition and innovation are encouraged and end-users' rights protected.		
Law Commission consultation on reform of communications offences	The Law Commission is consulting on a reform of the communications offences contained in the Malicious Communications Act 1988 and the Communications Act 2003 in order to protect victims from harmful online behaviour, including via social media. This consultation addresses the criminal liability of individuals who engage in such behaviour, not the liability of online platforms. The consultation closes on 18 December 2020.	Consultation	
Law Commission announces projects on smart contracts and digital assets	<p>The Law Commission has announced that it has begun work on two new projects:</p> <ul style="list-style-type: none"> analysing the law relating to smart contracts to identify any gaps in that law and reforms to ensure that the law can meet the growth in use of smart contracts; and analysing the law on digital assets to ensure that it is capable of accommodating electronic documents, cryptoassets and other digital assets in a way that allows them to realise their potential. <p>This work was previously paused pending the outcome of the LawTech Delivery Panel's work in this area, which resulted in the Legal Statement on the Status of Cryptoassets and Smart Contracts. It is now intended that the Law Commission projects will build upon the topics covered in that Statement.</p>	Law Commission announcement	
Report on Ethics of Connected and Automated Vehicles published	The European Commission has published a report on Ethics of Connected and Automated Vehicles, outlining 20 recommendations on road safety, privacy, fairness, AI explainability and responsibility for the development and deployment of connected and automated vehicles.	Press release and report	
UK and US to cooperate on AI R&D	The UK and the US have signed a Declaration on Cooperation in AI Research and Development.	Declaration	



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