Year to come

English Law in 2020

With the UK’s trading arrangements with the EU still to be agreed, Brexit will continue to dominate the legal landscape during 2020. Along with corporate governance reform, developments in the regulation of the digital economy and evolving financial regulation, the pace of regulatory and legal change shows no sign of slowing.

**Brexit:**
The UK is due to leave the EU at 11.00pm on 31 January 2020. If the Withdrawal Agreement (WA) is ratified, the UK will enter a transition period during which the UK will for most purposes be treated as a member of the EU. The deadline for extending the transition period beyond the end of 2020 is 1 July 2020. Negotiations on new trading arrangements between the EU and UK as outlined in the Political Declaration will take place during the transition period.

Read more... [here and here](https://example.com).

**Corporate governance and stewardship:**
The FRC is expected to be replaced by a new regulator, ARGA (Audit, Reporting and Governance Authority). Institutional investors, asset managers and their service providers are encouraged to sign up to an updated and wider-reaching UK Stewardship Code from 1 January 2020.

Read more...

**Stakeholder, governance and pay disclosures:**
The 2018 Corporate Governance Code and new reporting regulations apply to financial years starting from 1 January 2019. Large UK companies and many group subsidiaries must report on directors’ decision-making and stakeholder engagement. Listed UK companies must also report on CEO/average UK worker pay ratios and variable pay outcomes. Large non-listed companies must report on their corporate governance arrangements and can choose to use the Wates Principles, finalised in December 2018.

Read more here and [here](https://example.com).

**Legal Professional Privilege:**
In January, the Court of Appeal is due to hear the Sports Direct case, which concerns important questions regarding the ability of regulators to obtain, from entities under investigation, documents attracting legal professional privilege belonging to others.

Read more...

**2020 review of Solvency II:**
During 2020, the European Commission will conduct a broad review of the EEA-wide framework for (re)insurers known as “Solvency II”. The Commission’s report is due by 1 January 2021 and is likely to include recommendations for change.

**Insurance business transfers:**
The Court of Appeal is expected to hear the Prudential Assurance Company case by November 2020. The appeal, and its outcome, will be of interest to insurers seeking to transfer policies, particularly where those policies include books of annuities.

Read more...

**Review of the EU Market Abuse Regulation:**
The European Commission will be conducting a review of the EU Market Abuse Regulation. An initial consultation by the European Securities and Markets Authority indicates that the review may cover extending the scope to Spot FX contracts, amending the definition of inside information and extending the restriction on dealings in closed periods.

Read more... [here and here](https://example.com).

**FCA Culture and conduct:**
The FCA Directory will go live in March 2020 for banks and insurers, and in December 2020 for all other SMCR firms. SMR will apply to benchmark administrators from 7 December 2020. The FCA will increase its supervisory focus on the Conduct Rules and will continue to build on the links between SMCR and firms’ culture.

Read more...

**CMA digital market study:**
The CMA is expected to publish its final report in relation to its ongoing market study into online platforms and the digital advertising market in the UK, by next July. The study will focus on whether online platforms like Facebook and Google have market power, the control of data and whether competition in digital advertising is distorted by market power. The CMA will also decide whether to initiate a market investigation into the sector by 2 January 2020.

Read more...
Cryptoassets:
FCA rules prohibiting the sale of cryptoassets to retail investors are expected to be published in Q1 2020. The EU is expected to complete its assessments looking at the opportunities and challenges raised by cryptoassets by April 2020.

Anti-money laundering:
More cryptoasset businesses will fall within the AML regime when the Fifth Anti-Money Laundering Directive (MLD5) enters into force in the UK on 10 January 2020.

Operational resilience:
The UK financial regulators are expected to finalise their proposed policies for supervising operational resilience. This will remain a top priority for the regulators who are likely to investigate senior managers for IT failures in parallel with investigations into their firms.

Pensions:
The migration to strong customer authentication under the revised Payment Services Directive (PSD2) is to be completed by the end of 2020.

Data transfers under the microscope:
The CJEU will decide if Standard Contractual Clauses and the EU-U.S. Privacy Shield are valid. The loss of these key mechanisms would create serious problems when transferring personal data outside of the EU.

ePrivacy Regulation:
The EU institutions are still struggling to adopt the draft e-privacy Regulation. This Regulation is due to supplement the GDPR and includes, specific rules on the use of cookies and marketing via electronic communications. It was initially tabled in 2017 and has been heavily debated ever since. To break the deadlock, the new EU Commission recently indicated it might put forward a new draft. At this stage, next steps and content remain unclear.

Taxation of the digital economy:
The OECD has put forward proposals for the reform of the international tax system to address the tax challenges arising from the digital economy. Pending international agreement, jurisdictions may decide to impose unilateral measures. For example, the UK is expected to introduce its own 2% digital services tax to apply from April 2020.

BEPS 2.0:
The OECD is continuing to work on measures that would effectively impose a minimum level of tax as an additional weapon in the fight against so-called “base erosion and profit shifting”.

EU-wide tax disclosure rules:
EU-wide disclosure rules will take effect from July 2020 requiring advisers, other intermediaries and taxpayers to provide details of tax avoidance and certain other arrangements to the tax authorities.

SDLT surcharge for residential overseas investors:
In February 2019, the Government announced a consultation seeking views on the scope of a 1% SDLT surcharge on non-UK residents purchasing residential property in England and Northern Ireland. It is anticipated that draft legislation will be included in a future Finance Bill but timing is unclear.

Stronger Pensions Regulator Powers:
The Pension Schemes Bill includes a package of measures aimed at strengthening the powers of the Pensions Regulator, as well as some fundamental changes to the scheme funding regime. The Bill is expected to be re-introduced following the Conservative’s general election win.

Agency workers:
In April, the Swedish Derogation which allows employment agencies to avoid pay parity between agency workers and permanent employees will be abolished.

Off-payroll working reforms:
Major changes to employment tax will take effect in April when IR35 will cease to apply to workers supplying their services via personal services companies. Instead, large and medium sized companies engaging PSCs will assume responsibility for determining worker status for tax purposes.

Sustainable finance:
Climate risks and resilience are likely to be brought into the heart of financial decision-making. Climate-related financial disclosures could be made mandatory, with the Government announcing in its Green Strategy that it expects all listed companies to report climate risks by 2022. EU measures on ESG are likely to be phased in.

2020 Banking Package – implementing Basel III in the EU:
The EU is working on the next round of amendments to the Capital Requirements Regulation and Directive, aiming to present draft laws to implement Basel III standards in the second half of 2020.

SFTR:
The reporting obligation under the Securities Financing Transaction Regulation will be phased-in from April 2020.

EMIR:
Further changes will be phased in under the EMIR REFIT Regulation, including mandatory reporting by FCs for their NFC- counterparties. EMIR 2.2 will come into force early in 2020 with changes to EU CCP supervision and delegated legislation expected relating to the new “tiering” of third country CCPs, comparable compliance and fees.

Interest rate reform:
The transition from LIBOR to risk-free rates is expected to continue with a shift towards the practical implementation of new risk-free rate products. ISDA is expected to publish a supplement to the 2006 ISDA Definitions and a protocol to support amendment of legacy transactions.

AIFMD II:
The EU Commission is undertaking further analysis of the functioning of AIFMD following publication of its report in January 2019, and will publish the results identifying areas for reform in 2020.
2019 has seen a broad range of legal developments. The snapshots below provide an extensive review of English law (and key EU law developments) over the year with links to further information where available.

**Brexit:**
Hundreds of regulations have been passed to amend the UK’s statute book in case of a ‘no deal’ exit. In October, the UK Prime Minister agreed a revised Withdrawal Agreement and Political Declaration with the EU. The European Union (Withdrawal Agreement) Bill must be passed to implement the deal in UK law. The Government did not have a majority to secure the Bill’s passage. As a result, a general election was held on 12 December.
Read more... here, here and here.

**Shareholder Rights Directive II:**
Rules to encourage greater stewardship mean the FCA requires new disclosures from institutional investors and asset managers on their engagement with investee companies. New Europe-wide ‘say on pay’ rules and changes to the related party transaction regime for listed companies also entered UK law in June 2019.
Read more...

**Investment firms review:**
The Investment Firms Directive and Regulation, which overhaul the prudential and remuneration regimes that apply to investment firms, were finalised and published in the Official Journal in December.
Read more...

**EMIR:**
The EMIR REFIT Regulation saw changes to counterparty classification and reduction in the scope of the clearing obligation. A further temporary exemption from clearing for pension schemes and exemption from reporting for certain intra-group transactions were also granted.
Read more...

**Interest rate reform:**
2019 has seen significant developments on interest rate reform, with the development of market conventions, particularly in relation to SONIA FRNs and by the LMA’s publication of new draft compounded risk-free rate facilities agreements.
Read more...

**Data protection class actions:**
The Court of Appeal has allowed a representative (“opt-out”) action against Google to proceed. The claim has been made on behalf of 4 million iPhone users in the UK whose information was obtained via the “Safari Workaround”.
Read more...

**A global right to be forgotten:**
The CJEU has decided that the right to have search results removed from search engines, such as Google, does not automatically apply on a global basis but national data protection authorities can make global orders where warranted on the facts.
Read more...

**EU Copyright Directive:**
The Directive on Copyright in the Digital Single Market includes new rules to make certain online platforms responsible for the copyright infringements of their users - shifting the burden of policing the internet from content creators to platforms.
Read more... here and here.

**Significant GDPR fines:**
The Information Commissioner has announced her intention to fine BA £183m and Marriott £99m for breach of the EU General Data Protection Regulation after they suffered a cyber-attack.
Read more...

**CGT for non-resident investors disposing of UK property:**
From April 2019, non-resident investors became subject to UK tax on gains from disposals of both residential and commercial UK real estate.
Read more...

**State aid challenge to the UK CFC rules:**
The EU Commission has decided that an exemption from UK’s controlled foreign company rules is state aid in part. This could leave many multinationals with significant tax liabilities, unless the ensuing appeals are successful.
Read more...

**2019 highlights**
There has been no let-up in the volume of financial regulation during 2019 including both new regulation and changes to existing regimes and this is set to continue through 2020.

**2019 highlights**
Climate change and sustainable finance have been a focus in 2019 and 2020 will see further developments both in the UK and the EU.
**ISDA credit support annex:**

The Court of Appeal decided important questions of interpretation concerning the operation of an ISDA Credit Support Annex in a negative interest environment. 
[Read more...](#)

**Senior Managers & Certification Regime (SMCR):**

The SMCR has been extended to apply to nearly all FCA-regulated firms from 9 December 2019. 
[Read more...](#)

**Cryptoassets:**

The FCA’s final guidance on cryptoassets clarified how different types of cryptoassets are regulated in the UK. The regulatory treatment of global stablecoins has been thrown into the spotlight since June when Facebook announced plans to launch a new digital currency, Libra. Read more...[here](#) and [here](#).

**UK ring-fencing regime:**

The UK ring-fencing regime came into effect on 1 January 2019, requiring the largest UK banking groups and deposit takers to separate their retail banking services from their wholesale and investment banking services.

**Payments:**

HM Treasury announced a long-term review into the future of the UK’s payments landscape, whilst the Payment Services Regulator focused on opening up access to payments data. The Bank of England continued the migration to a common global messaging standard for UK payments, known as ISO 20022. 
[Read more...](#)

**CMA issues unwinding orders:**

For the first time, the CMA ordered the reversal of post-completion integration steps in two acquisitions. This required parties in Tobii/Smartbox and Bottomline/Experian to unwind steps taken to integrate businesses pending the CMA’s merger control decisions. 
[Read more...](#)

**Antitrust interim measures:**

For the first time in almost 20 years, the European Commission has imposed interim measures in an antitrust investigation. The interim measures prevent the continuation of alleged anti-competitive behaviour. 
[Read more...](#)

**Investment funds:**

The EU made changes to the way investment funds can be marketed under AIFMD and UCITS to take effect in 2021, and delayed the application of the PRIIPs KID to UCITS. 
[Read more...](#)

**Pay for shared parental leave:**

In *Ali v Capita Customer Services*, the Court of Appeal held that failure to offer enhanced shared parental pay at the same rate as maternity pay was neither discriminatory nor a breach of equal pay laws. 
[Read more... here](#) and [here](#).

**Parent company liability:**

In *Vedanta*, the Supreme Court made important observations on parent company liability in negligence for the activities of subsidiaries. 
[Read more...](#)

**New judgments convention:**

The Hague Conference on Private International Law concluded the final text of a new convention designed to promote the recognition and enforcement of court judgments. 
[Read more...](#)

**EU Securitisation Regulation:**

The Regulation, which consolidated existing risk retention, disclosure and due diligence requirements and established a new regime for simple, transparent and standardised (STS) securitisations, applies to securitisations which closed on or after 1 January 2019.

**Prospectus Regulation:**

The Prospectus Regulation became applicable in its entirety on 21 July 2019, repealing the Prospectus Directive and overhauling the pan-European prospectus regime. 
[Read more...](#)

**EU updates bank prudential rules:**

Adopting important changes to the EU rules on the prudential regulation of banks and on bank resolution, CRR2, CRDV, BRRD2 and SRMR2 were published in the Official Journal in June. 
[Read more... here](#) and [here](#).

**Supervision of internationally active insurance groups:**

In November 2019, the International Association of Insurance Supervisors adopted requirements on the supervision of “Internationally Active Insurance Groups”, alongside a new capital standard that will apply to such groups. 
[Read more...](#)

**Serious Fraud Office guidance for corporates under investigation:**

The guidance outlines what companies can do to assist the SFO in its investigations in order to be seen as cooperating, a key consideration in the SFO’s charging decisions. 
[Read more...](#)

**Overseas entities register:**

In July 2019, the Government clarified its approach to the planned new register of beneficial ownership of UK property and confirmed both that pre-clearance will not be necessary and that voting thresholds will be set at 25%. 

**Sustainability linked loan principles:**

In March 2019, the LMA, APLMA and LTSA, published the Sustainability Linked Loan Principles. 
[Read more...](#)

**Green Finance Strategy:**

In July, the Government launched its first Green Finance Strategy which set out plans to increase investment in sustainable projects and infrastructure. In October, the Financial Reporting Council launched a revised UK Stewardship Code establishing a benchmark for stewardship. In Europe, political agreement was reached on the Disclosure and Carbon Benchmarks Regulations. 
[Read more...](#)

**Implied duties of good faith:**

The courts have given conflicting views on when a contract will be “relational” and so subject to an implied duty of good faith. The law remains in flux. 
[Read more...](#)

**Post-termination restrictive covenants:**

The Supreme Court resolved the uncertainty on severing words from restrictive covenants in *Egon Zehnder v Tillman*. The new test for severance is whether words can be deleted without generating any major changes in the overall effect of the restriction. 
[Read more...](#)

**Clarification of the parties’ intentions test in rectification claims:**

In *FSHC Holdings Ltd*, the Court of Appeal clarified the test for determining the intentions of the parties in an application for rectification of a deed based upon an alleged common mistake. 
[Read more...](#)
What now?
Your contacts

We hope that you have found this guide useful.
Please get in touch with your usual Linklaters contact, if you would like to discuss any of these matters further.