

Brexit Overview

Your Use of Data and Brexit

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The transition period in which the status quo has been maintained in relation to data protection law will come to an end on 31 December 2020. UK companies need to urgently plan to ensure compliance with the law relating to data protection and privacy particularly as regards cross border transfers. Despite the lack of clarity around the position following the end of the transition period, there are key data issues that can be addressed now. We can help you with the steps you need to take to mitigate the risks.

Key Issues

General Data Protection Regulation

A UK version of the GDPR will continue to apply in the UK following the end of the transition period. It will be materially the same as the current law, although certain definitions will be changed in light of the UK no longer being a part of the EU. If your business operates in the EU, or offers goods and services or monitors the behaviour of individuals in the EU, the EU GDPR will also apply to your business. Is your data usage GDPR compliant?

Appointing representatives

UK companies will need a representative in the EU, if they offer goods and services to, or monitor the behaviour of, individuals in the EEA. EU companies may also need a representative in the UK under the UK version of the GDPR. Have you considered how this would work in practice?

Data transfers and the UK's 'third country' status

At the end of the transition period, personal data cannot be transferred between the UK and the EEA unless safeguards are in place to protect that transfer. There may also be additional restrictions on other cross border transfers involving the UK. Have you considered how this will impact your business?

Key Issues

Adequate safeguards

Without an adequacy decision from the European Commission, transferring data from the EEA to the UK will be subject to your business having 'adequate safeguards' in place in respect of that transfer. It is currently unclear whether such an adequacy decision will be made in respect of the UK prior to the end of the transition period, or at all. Examples of adequate safeguards that may be relevant to you are:

- Binding Corporate Rules - an internal data code of conduct submitted for approval to a supervisory authority which allows data to be transferred within a multinational group.
- Standard Contractual Clauses - contractual clauses adopted by the European Commission incorporated into agreements between companies exporting data from the EEA and companies importing data in a third country.

Additional safeguards may also be required in respect of other transfers of data involving the UK, including from the UK to countries inside and outside the EEA or from a third country which the EU has deemed adequate to the UK (e.g. Canada, Guernsey). Have you considered whether these types of safeguards might work for you?

ePrivacy

A new EU ePrivacy Regulation is expected to come into force in the near future. It is unlikely to come into force before the end of the transition period, and therefore will not have direct effect in the UK but will in the EU. Have you considered how it will affect you if you market to individuals in the EU?



How We Can Help You

Initial planning

We will provide an overview of the key risks affecting your use of data and the preliminary action points you can take to prepare.

Risk analysis

We will help you assess your business needs and produce a risk register setting out the priority issues and action points.

Data usage assessment

We will carry out an assessment of your current use of data and develop a plan to meet the needs of your business.

Bespoke advice

We will provide advice on specific data projects like implementing adequate safeguards or carrying out a full data health check.

Ongoing support

We will provide continuing legal and project management support to help you adapt to legislative and policy changes at the end of the transition period.

Action Points

01**Assess how you and your corporate group handles data**

Assess your use of data. What transfers take place between the UK, the EEA and other third countries within your business? Are they within your group or to/ from third parties? How might this change at the end of the transition period?

02**Consider your options for “adequate safeguards”**

Consider the “adequate safeguards” available to you if there is no adequacy decision by the European Commission. Evaluate the benefit of each and, if appropriate, start to implement the most suitable safeguards.

03**Keep track of the relevant law**

Understand the impact of legislative change including changes to the Data Protection Act 2018 or implementation of the ePrivacy Regulation.

**For more information,
please contact:**

For further guides on the impact of Brexit please visit www.brownejacobson.com/brexit

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