

How to navigate data protection developments in the UK and EU: what's next?

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Background | Key Data Protection Developments

From end of Brexit
transition period



A new **UK data protection regime – the UK GDPR**
(applicable since the end of 2020)



The **'grace period' or 'bridge'**
in **EU-UK trade deal** for data
transfers to the UK



The **possibility of two European Commission adequacy decisions** in respect
of EU to UK transfers



The possibility of a **new EU-US Privacy Shield** (or other
developments in transatlantic
data transfers)



The European Commission's
**pending update to EU Standard Contractual
Clauses**



New **transitional provisions for international data transfers from the UK** (this
time, in UK domestic law)



'Separation' period in the EU
Withdrawal Agreement to deal
with so-called **'legacy data'**



UK GDPR: Why is this important?

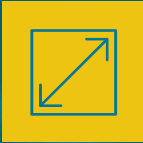
New UK GDPR:

EU GDPR was retained in UK law by the EU (Withdrawal) Act 2018, but needed to be adapted to work properly

Amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

While it mostly replicates EU GDPR, **many obligations may now apply in duplicate**





Practical implications of complying with both regimes



From 1 January 2021

- Need to include detail on international transfers from UK separately to EEA in **privacy notices**
- May need to appoint **EEA or UK Representatives**
- Cannot rely on ICO as **lead supervisory authority** for EEA processing



No more “One-Stop -Shop” for UK

- **EU GDPR** previously facilitated **cooperation between supervisory authorities**
- **Potential exposure to dual enforcement (and dual penalties)** in the EEA and the UK



“Grace period”/“bridge” for EU-UK data flows



EU-UK Trade & Cooperation Agreement (Article FINPROV.10A) allows **EEA/EU-UK transfers to continue** on a temporary basis



Not an adequacy decision – instead, transfers from the EEA/EU to the UK shall not be considered to be transfers of personal data to a third country under EU law



Bridge ends at the end of April 2021, though extendable until the end of June 2021 (unless UK adequacy procedure concludes sooner)



In practice, the bridge delayed need for businesses to meet one of the EU GDPR criteria for international transfers



Draft EU Adequacy Decisions

The European Commission has formally started the adequacy procedure with publication of **two draft adequacy decisions**

The draft decisions will now be scrutinised by the **European Data Protection Board**, which will issue a **non-binding opinion** (currently expected in April)

Comitology procedure applies involving consultation with **representatives of the EU Member States**





International Transfers from the UK



UK to EEA

- UK has deemed the EEA states to offer an **adequate level of data protection**
- Transfers can continue without need to meet another UK GDPR criteria for undertaking international transfers
- Other UK GDPR requirements should still be met



UK to other countries

- Transitional provisions in UK Data Protection Act 2018 (Part 3, Schedule. 21)
- Retain previous EU:
 - findings on adequacy; and
 - Standard Contractual Clauses (SCCs)
 - NB: Position will become more complicated once EU adopts new SCCs, which will not automatically be applicable in UK law
- **Rules also apply to intragroup transfers**



EU/UK Withdrawal Agreement and Separation

Separation provisions

In absence of adequacy decision, EU GDPR continues to apply for processing of personal data of individuals outside the UK if:

- Personal data processed in UK under EU law before end of Brexit transition period; or
- Processed in the UK after end of the Brexit transition period on basis of Withdrawal Agreement



Draft EU Standard Contractual Clauses (SCCs)

The European Commission has published **draft EU SCCs** to replace the existing EU SCCs

European Commission has **consulted** and now subject to comitology procedure. Some changes to content proposed are possible

The final EU SCCs are **expected to be adopted early this year**

Remember, these **will not automatically apply in the UK** – it remains to be seen whether the UK will propose similar SCCs



KEY CHANGES INCLUDE

- Additional options:
 - processor-processor
 - processor-controller
- Repeal of existing SCCs, with 1-year grace period
- Content aimed at *Schrems II* compliance
- Possibility for accession of additional parties



EU-US Privacy Shield: What's next?

Case C-311/18, *Data Protection Commissioner v Facebook Ireland and Maximillian Schrems* ("**Schrems II**") invalidated the EU-US Privacy Shield

US and EU lawmakers considering **potential options** for transatlantic data flows

Could there be **another Privacy Shield**?

UK regime now separate, so any EU-US developments would not have direct impact on transatlantic data flows from UK to US, but may influence future developments.



Thank you for listening!

**ANY
QUESTIONS?**



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