

Data Protection Update – Brexit Implications June 2021

This update keeps you informed about the latest government and ICO guidance on the implications of Brexit for data protection and market research.

The UK formally left the European Union (EU) on 31 December 2020 however the General Data Protection Regulation (GDPR) still applies in the UK.

The GDPR has been incorporated into UK law. So data protection requirements will remain largely the same although the UK will have the independence to keep them under review. The 'UK GDPR' (as it tends to be called) will sit alongside an amended version of the Data Protection Act (DPA) 2018.

What remains the same

The following data protection requirements did not change:

- Standard Contractual Clauses (SCCs) can still be used as they are recognised in UK law.
- Binding Corporate Rules (BCRs) authorised before 31 January 2020 can be used as they too are recognised.
- The extraterritorial scope of the data protection framework is maintained. So, if an organisation has processing activities in both the EU and UK, or is targeting customers or monitoring individuals in the EU from the UK (or vice versa), it will be subject to data protection requirements under both the EU and UK versions of the GDPR.
- Organisations do not necessarily need to appoint separate UK and EU Data Protection Officers (DPOs) within the UK and EU, provided that they can still perform their tasks effectively and remain easily accessible to the organisation's employees, regulators and data subjects.

Personal data transfers overseas

For information about the data protection requirements for transfers of personal data overseas please see the 'Data Adequacy & Data Transfers Overseas' update available on the BHBIA website: <https://www.bhbia.org.uk/guidelines-and-legislation/privacy-data>

What has changed

Brexit – Pharmacovigilance (PV)

In January 2021 the UK's role in the European Medicines Agency (EMA) ceased and the Medicines and Healthcare products Regulatory Agency (MHRA) took on the tasks previously performed by the EMA for medicines on the UK market. So the MHRA now has primary responsibility for PV activities in relation to UK Marketing Authorisations. UK based Marketing Authorisation Holders' drug safety departments will have to submit the PV data they need to forward, directly to the MHRA.

Advice to BHBIA members

If details of adverse events that include personal data (collected during the course of market research or data analysis) have to be transferred from or to the UK it is essential that the transfer is made by secure and legal means

Brexit – Lead Data Protection Authority

The ICO can no longer be a Lead Supervisory Authority (LSA) for EU GDPR purposes. If a UK organisation has appointed the ICO as its LSA, then to be able to continue to benefit from the 'one stop shop' approach, it will need to appoint a LSA in an EU Member State instead, if this is practical. An organisation that doesn't have a main or a single establishment within the EU cannot have a LSA or benefit from the one stop shop.

The one stop shop allows a single designated data protection authority to act as a central point for any cross-border data processing issues that require Data Protection Authority input.

Advice to BHBIA members

If this impacts your organisation, review and consider which LSA is most appropriate for you.

Brexit – Nominating a Representative

Organisations that offer goods and services to EU citizens or monitor the behaviour of EU citizens, but are based outside the EU and don't have an establishment within the EU, must nominate a representative within an EU member state (Article 27). This is different from the role of Data Protection Officer (DPO).

The arrangements set out in the UK-EU trade deal do not relieve businesses in either the UK or the EU of their obligation to appoint a representative.

Organisations that do not have an establishment within the EU will have to appoint an EU-based representative. This is *not* required if the data processing is carried out by a public

authority/body, or is occasional, does not include large scale processing of special category data and is unlikely to result in a risk to the rights and freedoms of natural persons.

Government guidance makes it clear that this requirement is expected to work both ways so controllers based outside of the UK need to appoint a representative in the UK.

This means organisations may have to deal with more than one supervisory Data Protection Authority (DPA): the ICO in the UK and an EU-based DPA.

For more information on appointing a representative please see the BHBIA's update on 'Brexit Implications - Nominating a Representative' <https://www.bhbia.org.uk/guidelines-and-legislation/privacy-data>

Advice to BHBIA members

Organisations meeting the criteria detailed above should appoint an EU representative if they do not have an EU establishment and update privacy notices so that they include their representative's identity and contact details.

Subject to change

The BHBIA's guidance is subject to change. We will do our best to keep members up to date but please monitor news from the ICO <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/01/statement-on-data-protection-and-brexit-implementation-what-you-need-to-do/>

Further Information

Market Research Society Brexit Hub <https://www.mrs.org.uk/standards/brexit-hub>
The MRS's '*Brexit and research: What's Next?*' is likely to be of particular interest.

Government Guidance: Using personal data in your business or other organisation during and after the transition period <https://www.gov.uk/guidance/using-personal-data-after-brexit>

Information Commissioner's Office: Data Protection at the end of the transition period <https://ico.org.uk/for-organisations/data-protection-at-the-end-of-the-transition-period/>

The BHBIA's Ethics & Compliance Committee is providing this guidance as general information for its members. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to any specific legal problems or matters. Whilst every reasonable effort is made to make sure the information is accurate, no responsibility for its accuracy or for any consequences of relying on it is assumed by the BHBIA.

British Healthcare Business Intelligence Association
Ground Floor, 4 Victoria Square, St. Albans, Herts AL1 3TF
t: 01727 896085 • admin@bhbia.org.uk • www.bhbia.org.uk

A Private Limited Company Registered in England and Wales No: 9244455