

Information rights and Brexit

Frequently Asked Questions

What happens now that the UK has a withdrawal agreement?

Now that the UK has a Withdrawal Agreement with the EU, there will be a transition period until the end of 2020 to allow time to negotiate a new relationship with the EU. During the transition period the GDPR will continue to apply in the UK and you won't need to take any immediate action. You should continue to follow existing guidance on the GDPR.

What happens at the end of the transition period?

That depends on negotiations during the transition period.

The default position is the same as for a no-deal Brexit: the GDPR will be brought into UK law as the 'UK GDPR', but there may be time for further developments about how we deal with particular issues such as UK-EU transfers.

See our guidance on a no-deal Brexit for more information on the default position. We will keep the no-deal guidance on our website during transition and update it as necessary to reflect any developments.

Do we need a European representative during the transition period?

No, during the transition period you do not need to appoint a representative in the EEA. However, you may need to appoint a representative from the end of the transition period if you are offering goods or services to individuals in the EEA or monitoring the behavior of individuals in the EEA. For more information, read [Data protection if there's no Brexit deal – European representatives](#).

Will the GDPR still apply when we leave the EU?

The GDPR is an EU Regulation and, in principle, it will no longer apply to the UK from the end of the transition period. However, if you operate inside the UK, you will need to comply with UK data protection law. The government intends to incorporate the GDPR into UK data protection law from the end of the transition period – so in practice there will be little change to the core data protection principles, rights and obligations found in the GDPR.

The EU version of the GDPR may also still apply directly to you if you operate in Europe, offer goods or services to individuals in Europe, or monitor the behaviour of individuals in Europe.

The GDPR will still apply to any organisations in Europe who send you data, so you may need to help them decide how to transfer personal data to the UK in line with the GDPR.

The ICO will not be the regulator for any European-specific activities caught by the EU version of the GDPR, although we hope to continue working closely with European supervisory authorities.

For more information on how this affects your data protection obligations and what you need to do, read [Data Protection if there's a no-deal Brexit](#).

What will the UK data protection law be?

The Data Protection Act 2018 (DPA 2018), which currently supplements and tailors the GDPR within the UK, will continue to apply.

The provisions of the GDPR will be incorporated directly into UK law from the end of the transition period, to sit alongside the DPA 2018.

[New DP exit regulations](#) have been passed which will make technical amendments to the GDPR so that it works in a UK-only context from the end of the transition period.

What role will the ICO have?

The ICO will remain the independent supervisory body regarding the UK's data protection legislation.

During the transition period the ICO will engage in the co-operation and consistency mechanism under GDPR and continue to be a lead supervisory authority.

The UK government will continue to work towards maintaining close working relationships between the ICO and the EU supervisory authorities once the UK has left the EU.

Is the ICO's GDPR guidance still relevant?

Yes. We expect UK data protection law to be aligned with the GDPR, so you should continue to use our existing guidance. Following the approach in our guidance will help you comply now and after the end of the transitional period.

We will continue to keep our guidance under review and update it where necessary.

Can we still transfer data to and from Europe?

The government has said that transfers of data from the UK to the European Economic Area (EEA) will not be restricted. However, from the end of the transition period, GDPR transfer rules will apply to any data coming from the EEA into the UK. You need to consider what GDPR safeguards you can put in place to ensure that data can continue to flow into the UK.

For more information, read [Data Protection if there's a no-deal Brexit](#) and our [guidance on international transfers](#).

We have also produced an [interactive tool on using standard contractual clauses for transfers into the UK](#) to help you.

What about law enforcement processing?

The data protection regime set out in Part 3 of the DPA 2018 will still apply to competent authorities processing for law enforcement purposes. These rules derive from an EU directive, but are now set out in UK law and will continue to apply after the end of the transition period (with some minor technical changes to reflect our status outside the EU).

We expect transfers of data from the UK to the EU and Gibraltar will be able to continue for the time being on the basis of new UK adequacy regulations. For more information on how the transfers rules work, read the [international transfers page of our Guide to Law Enforcement processing](#).

At the end of the transition period, transfers of data from the EU to the UK will be subject to local transfer requirements in the sender's country. Your European partners may ask you to comply with additional safeguards. We suggest you contact your partners in the EU to discuss what they want to do to ensure that data can continue to flow into the UK.

For more information, read [Law enforcement processing – five steps to take](#) and [Data Protection if there's no Brexit deal – law enforcement processing](#).

Does PECR still apply?

Yes. The current PECR rules cover marketing, cookies and electronic communications. They derive from EU law but are set out in UK law. They will continue to apply after we exit the EU.

The EU is replacing the current e-privacy law with a new e-privacy Regulation (ePR). The new ePR is not yet agreed.

You can find more information on current PECR rules in our [Guide to PECR](#).

Does NIS still apply?

Yes. The NIS rules cover network and information systems. They derive from EU law but are set out in UK law. They will continue to apply after we exit the EU. You can find more information in our [Guide to NIS](#).

If you are a UK-based digital service provider offering services in the EU, from the end of the transition period you may need to appoint a representative in one of the EU member states in which you offer services. You will need to comply with the local NIS rules in that member state. If you also offer services in the UK, you will also need to continue to comply with the UK rules regarding your UK services.

Does eIDAS still apply?

The eIDAS regulation covers electronic ID and trust services. It is an EU regulation and will no longer apply in the UK after the end of the transition period. However, the government intends to incorporate the eIDAS rules into UK law from that date. In practice, if you are a UK trust service provider, you should assume that you will still need to comply with eIDAS rules.

For more information, see our [Guide to eIDAS](#).

If you offer trust services in the EU, you may also still need to comply with EU eIDAS law in other member states after the end of the transition period. The UK will no longer regulate that aspect of your services. But we intend to continue working closely with EU supervisory authorities.

Does FOIA still apply?

Yes. The Freedom of Information Act 2000 forms part of UK law and will continue to apply.

For more information, see our [Guide to freedom of information](#).

Do the EIR still apply?

Yes. The Environmental Information Regulations will continue to apply unless specifically repealed or amended. They derive from EU law, but are set out in UK law. The UK has also independently signed up to the underlying international treaty on access to environmental information (the Aarhus Convention).

For more information, see our [Guide to the EIR](#).

Will you be producing more guidance?

The core data protection principles, obligations and rights will remain the same. So, at this stage, we don't need to produce an entirely new range of guidance. However, some specific areas – chiefly in cross-border supervision and enforcement, and international transfers – are specifically affected. So we have recently produced the following guidance:

- [Data protection and no-deal Brexit for small businesses and organisations](#)
- [Law enforcement processing – five steps to take](#)
- [Data Protection if there's no Brexit deal](#)
- [Keep data flowing from the EEA to the UK – interactive tool](#)

We will also keep our Guide to Data Protection – and in particular our guidance on international transfers – under regular review, and update it to reflect the latest developments.

We will also regularly update these FAQs to reflect the queries we receive.

In the meantime, given that we expect UK data protection law to remain aligned with the GDPR, our [Guide to Data Protection](#) remains a good source of advice and guidance on how to comply with UK and EU data protection rules both now and after the transition period.

What happened to the 'Leaving the EU – 6 steps to take' guidance?

We have refocused our data protection guidance for a no-deal Brexit so that it better addresses the needs of small organisations. We've taken many of the key points from the '6 steps' guidance and included them in our new guidance for small organisations. In order to avoid any confusion we have removed the '6 steps' guidance from the ICO website.

For those organisations who have already read and taken action on the basis of the 6 steps guidance, don't worry – the content is still correct. However, we would also recommend that you regularly check our [data protection and Brexit page](#) for updates and new resources.