



**DATA  
PROTECTION  
AND BREXIT:**  
PREPARING FOR  
NO DEAL



# DATA PROTECTION LAW WILL CHANGE ON THE UK'S EXIT FROM THE EU


All organisations that process information about identifiable individuals (personal data) must ensure that their operations can continue lawfully after Brexit. Most organisations will process some personal data, whether it relates to customers, members of the public or even their own employees. The exact changes depend on how the UK leaves the EU. The original withdrawal agreement included a 21-month transition period to give organisations time to adjust to the new rules. Leaving without any form of agreement (a so-called no-deal Brexit) means the rules change immediately. This may be as early as 31 October 2019, or by the end of any extended period agreed with the EU.

The main piece of legislation affecting data protection is the General Data Protection Regulation (GDPR). The GDPR is a piece of European legislation which will cease to apply in the UK on exit from the EU. However the GDPR will continue to apply in the EU. In the UK, it will be replaced with a UK version of the GDPR (the UK GDPR) which is intended to largely replicate the rules in the GDPR. Accordingly, most of the rules will stay the same.

This short guide summarises some of the key issues for organisations and suggestions for next steps. It is not definitive advice and you may need to take professional advice. What you will need to do is heavily fact-dependent and will need to be supported by an audit or similar assessment of your data processing in areas likely to be affected. We suggest businesses look at UK regulatory (ICO) guidance in this area for further guidance. Our data protection experts work with businesses and organisations to help them navigate these issues.



Contact us at **[gdpr@blakemorgan.co.uk](mailto:gdpr@blakemorgan.co.uk)**  
for specific advice and support.


## FOR MOST ORGANISATIONS, THE MAIN ISSUES WILL BE:

Issue	How it might affect you	What you should do now
 <p><b>Law and jurisdictional issues</b></p>	<p>The GDPR has a wide territorial scope and may continue to apply to some UK-based organisations. This will apply to you if:</p> <ul style="list-style-type: none"> <li>You have an office or other establishment in the rest of the EU. The GDPR will continue to apply to any data processing carried out in the context of the EU establishment.</li> <li>You have no formal presence within the EEA, but you offer goods and services to individuals in the rest of the EEA, or monitor the behaviour of individuals based in the EEA. The GDPR will continue to apply to those processing activities.</li> </ul>	<p>You need to check whether these rules will apply to you. You may need to comply with two separate regimes – the UK GDPR and the GDPR.</p>
	<p>If you offer goods and services to individuals in the rest of the EEA, or monitor the behaviour of individuals based in the EEA, you may need to appoint a representative to act on your behalf in the EU. The representative could be an individual or a company.</p>	<p>You need to determine whether you need to appoint a representative in the EEA. You will need to include details of the representative in your privacy notices.</p>
	<p>If you carry out cross-border processing (i.e. processing personal data in the context of activities in various EU countries), or your processing substantially affects individuals in other EU countries, you will need to consider who is your lead supervisory authority. This means that you deal with one supervisory authority in the EEA in relation to complaints or data breaches.</p>	<p>Brexit will affect these rules. You may have a lead supervisory authority in another jurisdiction, in addition to UK processing being overseen by the ICO. You should consider this before it is needed (for example, in a data breach situation, you will need to know who to notify).</p>
	<p>If you are not a UK-based organisation but have an office or other establishment in the UK, or you do not have an establishment in the UK but you offer goods and services to individuals in the UK, or monitor the behaviour of individuals based in the UK, then the UK GDPR may also apply to you.</p>	<p>You need to check whether these rules will apply to you and what the implications will be.</p>



## FOR MOST ORGANISATIONS, THE MAIN ISSUES WILL BE:

Issue	How it might affect you	What you should do now
 <p><b>Data transfers</b></p>	The GDPR contains complex rules around sending personal data outside the European Economic Area (EEA). Following a no-deal Brexit, the UK will be outside the EEA.	As a priority, you should identify where your personal data comes from, where it is sent to, and who may have access to it. This will include your service providers (such as payroll providers or marketing agencies) and IT suppliers.
	Any organisation based elsewhere within the EEA that sends personal data to the UK will face new restrictions	You may need to put in place additional contractual arrangements to allow these transfers to continue – this may also be influenced by any relevant regulatory requirements in the EEA state concerned.
	If your business stores or hosts personal data outside the UK, or allows access to such data from outside the UK, you may be affected.	You may need to put in place additional contractual arrangements to allow these transfers to continue.
 <p><b>Documenting your data processing activities</b></p>	The GDPR (and in future the UK GDPR) include the principle of accountability. This means that organisations need to demonstrate their compliance with the legislation.	You should document the decisions you have made in preparation for Brexit.
	The changes set out above may need to be reflected in your record of processing activities and privacy notices	You should consider what updates, if any, you need to make to your existing documents such as privacy notices.



For further information on how  
we can help your business remain  
compliant, please contact

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