

The Information Commissioner's Office – Written evidence (PBS0053)

1. The Information Commissioner has responsibility for promoting and enforcing the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA18), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR); the Privacy and Electronic Communications Regulations 2003 (PECR); the INSPIRE Regulations; eIDAS Regulations; Re-use of Public Sector Information Regulations; and the NIS Regulations.
2. The Information Commissioner is independent of government and upholds information rights in the public interest, promoting transparency and accountability by public bodies and organisations and protecting individuals' privacy and information access rights.
3. The Information Commissioner's Office (ICO) welcomes the opportunity to respond to the Committee's inquiry into the future UK-EU relationship on professional and business services.

Regulatory cooperation between the UK and EU

4. Data is a key part of the UK and EU's infrastructure and it is important to continue the regulatory cooperation already established between the UK and EU on data protection. The ICO will continue to be a practical regulator that advocates the real world value of high data protection standards to both organisations and the public, not just in the UK but globally.
5. There is a long term need to ensure high global standards of data protection, with practical interoperability and convergence between data protection regimes, to ensure data can be used safely and securely in today's globalised world. This can provide the public with trust and confidence in how their data will be handled, wherever it flows globally.
6. The Information Commissioner has provided global leadership - she is the Chair of the Global Privacy Assembly - the global network of data protection regulators; the ICO Co-Chairs the Common Thread Network of Commonwealth DPAs; and a Deputy Commissioner Chairs the OECD Data Governance and Privacy Working Group. Through these roles we are well positioned to promote consistency of approaches and effective regulatory cooperation globally.
7. The Information Commissioner is keen to build better regulatory cooperation that shares best practice and practical assistance where this is appropriate. We recognise that fundamental data protection issues do not stop at national borders - issues such as the protection of children online and the use of artificial intelligence -and therefore we aspire to work with other regulators in the EU and globally to address these issues.

Implications if there were no reciprocal data adequacy arrangements in place between the EU and UK by the end of the transition period

8. The European Commission is currently assessing the UK for a data protection adequacy decision and the Government is leading the UK's involvement in that process. The Prime Minister told Parliament that the UK views this process as a technical one and "confirmatory of the reality that the UK will be operating the same regulatory frameworks as the EU at the point of exit".¹ The Information Commissioner continues to provide expert guidance and advice to HMG, to feed into the process as appropriate.
9. The UK Government has legislated (Retained Regulation (EU) 2016/679 (UK GDPR)) for transfers of personal data from the UK to the European Economic Area (EEA) and countries already in receipt of an EU adequacy decision to be unrestricted.
10. In the event that an adequacy decision is not made in respect of the UK by the end of the transition period, the transfer of personal data from the EU to the UK will need to be covered by an alternative transfer mechanism listed in the GDPR or the Law Enforcement Directive (LED).
11. Given the horizontal nature of data in both the commercial and law enforcement spheres a wide range of organisations could be affected if they transfer personal data to the EU. The ICO will continue to engage with the UK Government on communications to businesses. The ICO approach stresses a practical risk based approach to ensuring effective protections are in place and recognising the context in which organisations currently operate in.
12. The extensive planning that took place for no deal in 2019 can be built upon. The ICO has already published extensive guidance for [businesses and organisations](#), [police forces and other law enforcement authorities](#) and [small and medium-sized businesses and organisations](#) on the various alternative transfer mechanisms available in the event of no adequacy decision and how these organisations and businesses can ensure data continues to flow between the EU and the UK.
13. We have also created an [interactive web tool](#) aimed at small and medium-sized businesses and organisations in particular, to create standard contractual clauses based on the existing EU model clauses. Standard contractual clauses are currently one of the more widely used alternative mechanisms used by businesses.
14. We will also continue to provide helpful and practical guidance to businesses and organisations to ensure the flow of data as appropriate.
15. I hope this information is helpful. We would be happy to discuss further if that would be of use to the Committee.

July 2020

¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-02-03/HCWS86/>