**Annex 1:**

**UK BCR Requirements Table - transitioning an existing EU BCR to UK BCR**

The UK left the EU on the 31 January 2020 and the transition period is due to end on 31 December 2020. From 1 January 2021, organisations can no longer rely on their EU BCRs (Controller and Processor) as an appropriate safeguard for international data transfers from the UK.

If holders of EU BCRs require a UK version of their BCRs in order to continue transferring data, organisations must produce a standalone UK version of their BCRs. The table and list below set out the expected minimum mandatory changes from the current EU BCRs for a UK BCR, together with additional information required by the Information Commissioner to assess the UK BCR.

In addition to the elements outlined in the table below, any inclusion of a UK entity within the definition of EEA entities should be removed. Where previously the UK was included in references to EEA applicable law, these should also be removed. These changes should be reflected in both BCRs for controllers (“BCR-C”) and BCR for processors (“BCR-P”).

In the specific case of BCR-P, consideration may need to be given to re-wording the Service Level Agreement (“SLA”) between Controllers and Processors as a result of the end of the transition period.

References in the table below to the criteria correspond to existing EDPB WP256 and WP257 publications. References to GDPR correspond to the UK GDPR (as amended).

| **Criteria for a UK BCR required changes from EU BCR**  | **In the BCRs** | **In the application form**  | **Text of reference** | **Comments** | **Reference to application form / UK BCRs [for organisations to complete]** |
| --- | --- | --- | --- | --- | --- |
| **1. BINDING NATURE** |
| 1.2 An explanation of how the rules are made binding on the BCR members of the Group of undertakings / enterprises and also the employees. | NO  | YES  | Art. 47.1.a and 47.2.c UK GDPR | * Duty of the Group of undertakings / enterprises to arrange internal matters in order to ensure that the BCRs will be binding throughout the UK, e.g. replace any reference to the ‘BCR applicant in the EEA’ with the ‘BCR applicant in the UK’.
* In the legal instrument used to make the BCR binding, replace any reference to the ‘contract law (in the EEA)’ to ‘contract law in the UK’.
* Request the group of undertakings / enterprises to amend/update all the documents linked to the BCR,
* especially the chosen legally binding measures (e.g. IGA).
 |  |
| **EXTERNALLY**  |
| 1.3 The creation of third-party beneficiary rights for data subjects including the possibility to lodge a complaint before the Information Commissioner and before the UK courts.  | YES | YES | Art. 47.1.b and 47.2.c, 47.2.e UK GDPR  | * The BCRs must confer the right to lodge a complaint with the Information Commissioner. References to lodging a complaint with any competent SAs in the EEA should be removed.

 * Replace any reference to EEA based courts with UK Courts, including with respect to rights that are enforceable directly against the processor, and rights that are enforceable against the processor when the data subject is not able to bring a claim against the controller.
 |  |
| 1.4 Responsibility towards the controller  | YES (applicable only to BCR-P).  | YES (applicable to BCR-P only)  |  | * Ensure that the service agreement used to make the BCR-P binding towards the controller is signed, on the side of the Group of undertakings / enterprises acting as processor, by a BCR member in the UK.
* Ensure that the controller is entitled to enforce the BCR-P against at least one BCR member in the UK (i.e. either the UK headquarters, a BCR member with delegated data protection responsibilities in the UK, or the UK exporter).
 |  |
| 1.5 The UK headquarters, UK member with delegated data protection responsibilities or the data exporter accepts liability for paying compensation and to remedy breaches of the BCRs  | YES | YES | Art. 47.2.f UK GDPR  | * The BCR member accepting liability for any violations of the BCRs by other BCR members outside of the UK, must be established in the UK.
 |  |
| 1.6 The burden of proof lies with the company not the individual.  | YES | YES | Art. 47.2.f UK GDPR | * Ensure that the BCR member that has accepted liability under the BCRs carries the burden to prove that the BCR member established outside the UK is not liable for any violation of the rules which has resulted in the data subject claiming damages.
 |  |
| 1.7. The company has sufficient assets.  | NO | YES | Art. 47.2.f UK GDPR  | * Provide confirmation of whether the entity accepting liability in the UK has sufficient financial means (or confirmation of an insurance) to cover any damages.
* Where more than one exporting entity in the UK is accepting liability, provide confirmation that all have sufficient financial means (or confirmation of an insurance) to cover any damages.
 |  |
| **2. EFFECTIVENESS**  |
| 2.2 The existence of a complaint handling process for the BCRs.  | YES | YES  | Art. 47.2.i and Art 12.3. UK GDPR | * Ensure that any reference to lodging a complaint with a Supervisory Authority or competent SA in the EEA is replaced with the Information Commissioner, pursuant to Art. 77 UK GDPR.
* Ensure that any reference to the ‘competent courts’ or ‘national jurisdiction’ will be based in the UK pursuant to Art.79 UK GDPR (see section 180 of the DPA 2018).
 |  |
| 2.3. The existence of an audit programme covering the BCRs.  | YES | YES | Art. 47.2.j; Art 47.2.l and Art. 38.3 UK GDPR  | * Ensure that the Information Commissioner has the authority/power to carry out a data protection audit of any BCR or have access to the results of any audit of the BCRs.
* Ensure any reference to the BCR Lead SA is replaced with the Information Commissioner.
 |  |
| **3. COOPERATION DUTY**  |
| 3.1. A duty to cooperate with the Information Commissioner. | YES | YES | Art. 47.2.l. UK GDPR | * There should be a duty to cooperate with the Information Commissioner. This should replace any duty to cooperate with SAs based in the EEA.
 |  |
| 3.2 A duty to cooperate with the controller. | YES (applicable only to BCR-P).  | YES  |  | * There should be a duty to cooperate with the controller in relation to any enquiry or investigation from the Information Commissioner.
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| **4. DESCRIPTION OF PROCESSING AND DATA FLOWS** |
| 4.1. A description of the material scope of the BCRs (nature of data transferred, type of data subjects, countries).  | YES | YES | Art. 47.2.b UK GDPR | * Add EEA countries to the list of third countries to which personal data will be transferred (if applicable) and remove EEA entities from the list of exporters.
 |  |
| 4.2. A statement of the geographical scope of the BCRs. | YES | YES | Art. 47.2.a UK GDPR | * Add EEA countries to the list of third countries and remove EEA entities from the list of exporters.
 |  |
| **5. MECHANISMS FOR REPORTING AND RECORDING CHANGES** |
| 5.1. A process for updating the BCRs.  | YES | YES | Art. 47.2.k UK GDPR  | * Replace any reference to the BCR Lead SA (in the EEA) with the Information Commissioner.
 |  |
| **6. DATA PROTECTION SAFEGUARDS** |
| 6.1.2. Accountability and other tools. | YES | YES | Art. 47.2.d and Art. 30 UK GDPR | * Replace any reference to SAs with the Information Commissioner.
 |  |
| 6.3. A need to be transparent where national legislation prevents the group from complying with the BCRs. | YES | NO | Art. 47.2.m UK GDPR | * Ensure that the reporting duty will be made to the Information Commissioner.
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| **Additional Information*** Application form - redline version showing track changes
* Existing EU BCR - redline version showing tracked changes and clean standalone copy
* Completed Requirements Table
* Documentary evidence in support of binding mechanism specified in Section 2 above
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