

Law enforcement processing: Five steps to take

Data protection now the transition period for leaving the EU has ended.

1

Continue to comply

Continue to comply with Part 3 of the DPA 2018, and follow current ICO guidance on law enforcement processing.

2

Transfers to the UK

Review your data flows and identify where you receive data from the EU. Talk to your European partners about whether they need you to put any additional safeguards in place to ensure data can continue to flow.

3

Transfers from the UK

Review your data flows and identify where you transfer data to the EU, so that you can document the new basis for those transfers.

4

Documentation

Review your privacy information, internal records and logs to identify any details that will need updating after the end of the transition period.

5

Organisational awareness

Make sure key people in your organisation are aware of these issues. Include these steps in any planning, and keep up to date with the latest guidance.

Introduction

This checklist highlights five steps law enforcement authorities can take for data protection compliance now the transition period for leaving the EU has ended.

This guidance is for 'competent authorities' processing personal data for law enforcement purposes under Part 3 of the Data Protection Act 2018 (DPA 2018). If you are not sure if this applies to you, read our [guidance on which data protection regime applies](#).

If you are not a competent authority, or you are a competent authority processing for non-law enforcement purposes (eg your HR records), read our [separate guidance on UK GDPR at the end of the transition period](#).

If you are a UK competent authority, you won't need to change much in terms of your day-to-day domestic processing. The relevant law enforcement processing regime in Part 3 of the DPA2018 continues to apply.

However, you may need to ensure 'appropriate safeguards' are in place to maintain any data flows to you from the EU. You may also need to review your documentation for transferring data to the EU.

You can use this checklist to help work out whether you will be affected by the end of the transition period, and take steps to prepare.

1 | Continue to comply

You should continue to comply with Part 3 of the DPA 2018, and follow [current ICO guidance on law enforcement processing](#).

The Brexit transition period ended on 31 December 2020. As part of the new trade deal, the EU has agreed to delay transfer restrictions for at least four months, which can be extended to six months (known as the bridge). On 19 February 2021 the [European Commission published its draft decisions](#) on the UK's adequacy under the EU's [General Data Protection Regulation](#) (EU GDPR) and [Law Enforcement Directive](#) (LED). In both cases, the European Commission has found the UK to be adequate.

The draft decisions will now be considered by the [European Data Protection Board](#) (EDPB) and a committee of the 27 EU Member Governments. If the committee approves the draft decisions, then the European Commission can formally adopt them as legal adequacy decisions. In the absence of the adoption of the LED adequacy decision at the end of the bridge, law enforcement transfers from the European Economic Area (EEA) to the UK will need to comply with LED transfer restrictions. If you receive personal data from the EEA, we recommend you put alternative safeguards in place before the end of April, if you haven't done so already. Please continue to monitor the ICO website over the transition period for further updates.

This means the first and most important step is to ensure you continue to comply with the principles, rights and obligations set out in Part 3. Our current guidance remains relevant and can help you comply. We will continue to review and update it regularly to reflect any changes or developments in practice.

2 | Transfers to the UK

Review your data flows and identify where you receive data from the EU. Talk to your European partners about whether they want you to put any additional safeguards in place to ensure data can continue to flow.

If the bridge ends without adequacy, we will become a 'third country' for EU data protection purposes. If you receive personal data from a law enforcement partner in the EU, this means the sender will need to comply with the transfer

provisions under their national data protection law (which are likely to be similar to those in Part 3 of the DPA 2018).

If the EU adopts the draft LED adequacy decision, there will be no need for specific safeguards. However, if the bridge ends without an adequacy decision, the EU sender will need to make sure other appropriate safeguards are in place – probably through a contract or other binding legal instrument, or by making their own assessment of appropriate safeguards. The sender can take into account the protection provided by the DPA 2018 itself when making this assessment.

If you receive personal data from other types of organisations in the EU or EEA who are subject to the UK GDPR, the sender will need to comply with the transfer provisions of the UK GDPR. You may want to consider putting standard contractual clauses (SCCs) in place to ensure adequate safeguards in these cases. We have produced [an interactive tool to help you use the SCCs](#).

3 | Transfers from the UK

Review your data flows and identify where you transfer data to the EU, so that you can document the new basis for those transfers.

Transfers from the UK to the EU

There is a transitional adequacy decision in place to cover transfers to EEA states, Switzerland and Gibraltar.

This means you can continue to send personal data from the UK to your law enforcement partners in the EU, as long as you can show the transfer is necessary for law enforcement purposes. You can also transfer personal data to non-law enforcement bodies in the EU if you can meet some additional conditions, but you will need to notify the ICO.

For more information, see our [guidance on international transfers for competent authorities](#), bearing in mind that EU countries are now third countries, as the transition period for leaving the EU has ended.

Transfers from the UK to countries outside the EU

Rules on transfers to other countries outside the EU remain the same in practice. At this stage you don't need to take any specific additional steps.

For more information on the rules on transfers outside the EU, see our [guidance on international transfers for competent authorities](#). We will keep this updated to reflect the technical changes to the UK rules (in particular on new UK adequacy regulations) at the end of the transition period.

4 | Documentation

Review your privacy information, internal processing records and logs to identify any details that will need updating now the transition period has ended.

The requirements for [privacy notices](#), [documentation](#) and [logging](#) are unlikely to change. But you need to review what you say about international transfers and make sure it includes details of transfers to the EU. You may also need to identify any references to EU law, EU membership or other EU terminology, and be ready to make changes to reflect the UK's status outside the EU by the end of the transition period.

You may also need to review existing data protection impact assessments, if they involve data transfers between the UK and EU.

5 | Organisational awareness

Make sure key people in your organisation are aware of these issues. Include these steps in any end of transition period planning, and keep up to date with the latest guidance.

Key people in your organisation need to be aware of the ongoing importance of data protection compliance, as well as specific implications for data flows. If you have significant data transfers to and from the EU, you can plan ahead. You may find it more difficult to ensure continuity if you leave your preparations until the last minute.

We will keep this guidance under review and update it if anything changes, or more details become available. We will also update our [Guide to Law Enforcement Processing](#) at the end of the transition period to reflect the amendments to the DPA 2018.