evolve north

Preparing for Brexit
What you need to do now

Introduction
The Information Commissioner's Office has recently reiterated its message to businesses to "prepare for all scenarios" in light of the possibility that the UK leaves the European Union with no deal.

Personal information has been able to flow freely between organisations in the UK and EEA without any specific measures due to the fact that there is a common set of rules for processing data under the EU General Data Protection Regulation. This two-way free flow of personal information will no longer be the case if the UK leaves the EU without any additional agreement that specifically provides for the continued flow of personal data.

Regardless of Brexit, businesses will need to consider if they are currently transferring personal data to countries outside the EU, but Brexit brings in the additional complication that once the UK leaves Europe, additional measures will be needed to assure data transfers into the UK.

Does this apply to us?
Any UK business who operates within the EEA and sends personal data outside the UK or receives personal data from a country within the EEA will be affected. In addition, it will also affect businesses operating outside the UK if they are offering goods or services to individuals in the UK or monitoring the behaviour of individuals within the UK (with the exception of organisations that only transfer personal data from or to consumers).

What does this mean in practice?
After Brexit, the UK Government intends to allow data to flow from the UK to EU countries. However, transfers of personal data from the EEA to the UK will be affected. Moving forward, any transfers of personal data from an EU country into the UK or from the UK/EU to a "third country" e.g. one outside of the EU will need an additional safeguard implemented around this transfer.

The GDPR details a a number of possible safeguards that would provide adequate assurances around data transfers, although some of these such as Codes of Conduct and Certification Mechanisms are still under development. The main methods of assurance currently available to organisations are:

- Adequacy Decision
- Binding Corporate Rules
- Standard Data Protection Clauses / Contractual Clauses adopted by the ICO
- Enforceable Instrument / Administrative Agreement between public bodies

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The majority of businesses will be relying on one of the following three options:

Transfers Based on an Adequacy Decision

A number of countries have been identified as "adequate" by the EU Commission in terms of offering appropriate protection of personal data under their current Data Protection laws. Full findings of adequacy are in place for Andorra, Argentina, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay. In addition, the Commission has made partial findings of adequacy about Japan, Canada and the USA, where the findings only relate to certain types of transfer or data (e.g. for the USA it only covers personal data transfers covered by the EU-US Privacy Shield framework).

Transfers Based on Binding Corporate Rules

Binding Corporate Rules are an internal code of conduct operating within a multinational group, which allows restricted transfers of personal data from the group's EU entities to non-EU group entities. It usually relates to a corporate group or a group of undertakings or enterprises engaged in a joint economic activity, such as franchises or joint ventures and BCRs must be submitted for approval to an EU supervisory authority in an EU country where one of the companies is based.

Standard Contractual Clauses

Businesses can make a restricted transfer if they and the receiver have entered into a contract incorporating standard Data Protection clauses adopted by the Commission - known as 'standard contractual clauses' or 'model clauses'. The ICO currently provide standard contractual clauses that should be used in their entirety without amendment (although additional business-related clauses can be added if they do not contradict with the standard clauses). In addition, the ICO has produced template contracts that can be generated from their website.

Exceptions

There are a number of potential exceptions that will allow international transfers to take place outside the safeguards detailed above, but the majority of these are just for occasional transfers. More details on these can be found on the ICO website.

What should we do next?

It is important for all businesses to fully understand what personal data they hold, what organisations this data is being shared with, and where they are located.
Once this has been carried out, your business can assess which, if any, additional safeguards may need to be implemented to gain the necessary assurance needed around these data flows. The final step will then be to prioritise and implement additional assurances as soon as possible to ensure that these data flows are protected now and after Brexit.

How Evolve North can help

If you would like any help in reviewing your current data transfers and assessing and implementing any additional safeguards around these data flows, or in understanding any other implications of processing data in Europe, please contact us on **01748 905 002** or email **info@evolvenorth.com**