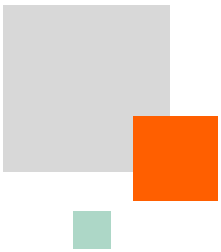
Sterling

Brexit Key Points

Post Deal

January 2021



Following the agreement of a Brexit deal last month, there are a number of key considerations employers must bear in mind in relation to data flows between the EU and the UK. While we will continue to keep clients updated with developments, we have highlighted some of those considerations below.

1. The final Brexit deal was concluded on 24th December, to take effect from 11pm on 31st December 2020. However, while the Brexit Deal dealt with many aspects of EU-UK relationships, it did not reach a conclusion on data flows between the EU and the UK. The UK Government incorporated the GDPR into UK law by the European Union (Withdrawal) Act 2018, as modified by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations. These laws, along with the Data Protection Act 2018, created the UK GDPR. The Brexit Deal states that, provided that the UK GDPR remains unchanged, data protection shall be subject to a further transition period for four months (which may be extended by an extra two months), unless an adequacy decision is reached before the conclusion of this period, or either party objects. This has created a "data bridge" between the UK and EU for up to six months from the date that the Brexit Deal came into force.

2. Therefore, no extra safeguards are needed to transfer personal data from the EU to the UK (the UK Government had already deemed the EU to be adequate, along with the other members of the EEA). However, the Brexit Deal clearly states that if the UK Government alters its data protection regime, the EU is within its rights to withdraw the data bridge. The Information Commissioner's Office (ICO) is recommending that all companies have a transfer mechanism to fall back on in the event that this happens: Sterling has therefore prepared standard contractual clauses (SCCs), a safeguard as recognised by Article 46 of the GDPR, for its clients. If you wish to sign a copy of these SCCs, please contact privacy@sterlingcheck.com.

3. During this transition period, the processing of all legacy personal data of non-UK data subjects that was subject to the EU GDPR when it was originally processed must continue to comply with the EU GDPR as it is now: any personal data processed in the UK after 11pm on 31st December 2020 will be subject to the UK GDPR. Sterling will continue to ensure that its privacy programme complies with all necessary legislation.

4. At the end of this extended period of the data bridge, the UK will either receive an adequacy decision or it will simply be treated as a third country whereby safeguards must be put in place before personal data is transferred from the EU to the UK. To receive an adequacy decision, the UK must be judged to have an "essentially equivalent" data protection as the EU: currently this is the case. If the UK changes its data protection laws, however, an adequacy decision may not be granted and SCCs must be put in place to transfer personal data from the EU to the UK.

5. Companies that are subject to the EU GDPR's requirement to maintain a representative in the EU can no longer rely on a UK company for that representation. Sterling has an office in the Netherlands which acts as its representative in the EU. If you are a Sterling client headquartered in the EEA and are currently contracted with Sterling in the UK, but would like to change your contracting entity to Sterling in the Netherlands, please contact privacy@sterlingcheck.cm and we will discuss amending your contract to reflect this.

6. Most of Sterling's EMEA clients use the Backcheck 2.0 platform which stores data in Canada. Brexit does not have an effect on this as the UK Government has recognised Canada as adequate in terms of data protection. Canada is also recognised as adequate by the EU, and so data flows will not be disrupted and no extra safeguards are needed. Any clients operating in the EU or the UK using US-based platforms such as ScreeningDirect or SterlingONE are encouraged to sign SCCs with Sterling's US entity to ensure adequate safeguards for transfers of data to the US. To obtain these SCCs, please contact privacy@sterlingcheck.com.

7. If you have any queries about the transfer of personal data post-Brexit, please contact privacy@sterlingcheck.com.