



Brexit and research: **No-deal Brexit**

This note is part of a series of Brexit notes for research practitioners on the implications of Brexit. It sets out the immediate measures that research practitioners are urged to adopt in view of No-deal Brexit.

MRS is providing this guidance as general information for research practitioners. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to any specific legal problems or matters.



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Overview

No-Deal Brexit: what should I do?

Given the fast approaching deadline of the exit of the UK from the EU, and the continuing uncertainty as to whether the UK will leave with or without a deal, it is extremely important that research practitioners act quickly and prepare their businesses for the immediate future.

MRS has prepared a number of guidance notes about Brexit – all available in the [MRS Brexit Hub](#)

This note is meant to highlight the most pressing issues and help practitioners understand the temporary measures needed in a No-Deal scenario.

In the framework of the “get ready for Brexit” campaign, the UK government has published a checklist for businesses and individuals. It is available here:

[GET READY FOR BREXIT](#)

MRS will continue to update the Brexit Hub regularly and as soon as new information is available.

For additional support MRS members and Company Partners can contact codeline@mrs.org.uk



1. International Transfers of Personal Data

☑ If you transfer personal data outside the UK, you will have to comply with the UK GDPR provision on international transfers.

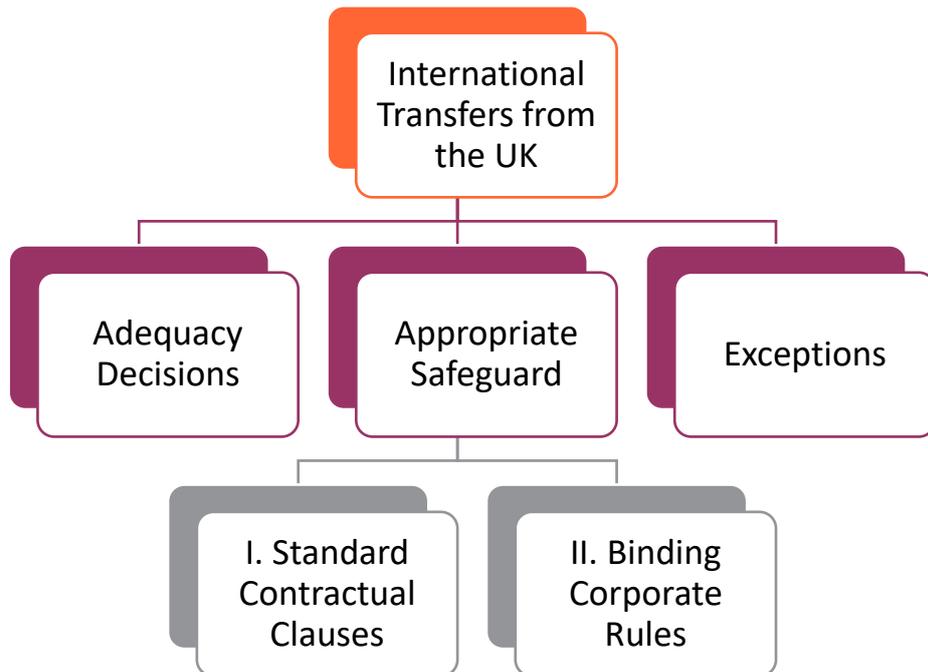
☑ If you receive personal data from the EEA, it is in your interest to cooperate with your EEA partners complying with the GDPR provisions on international transfers.

Further information can be found in:

- [MRS Brexit Hub](#) see in particular [Data transfers](#)
- [ICO guidance on international data transfers](#)
- [GOV.UK using personal data in your business or organisation if there's no Brexit deal](#)

International Transfers from the UK

In case of a No-Deal Brexit, the international transfer of personal data must be based on one of the following instruments: adequacy decision, an appropriate safeguard or an exception.



ICO notes:

- The UK is England, Scotland, Wales, and Northern Ireland. It does not include Crown dependencies or United Kingdom overseas territories, including Gibraltar.
- The UK government has stated that, on the UK's exit from the EU, transfers of data from the UK to the EEA will be permitted. It says it will keep this under review.
- The UK government will allow transfers to Gibraltar to continue.



Adequacy Decisions

Under UK law, for the time being, any international transfers of personal data are allowed if the destination country is covered by an adequacy decision.

The UK government intends to recognise the EU adequacy decisions which have been made by the European Commission.

Countries covered by adequacy decisions are:

Andorra, Argentina, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay.

EC website on Adequacy available [here](#)

US Privacy Shield: UK businesses will continue to be able to transfer personal data to US organisations participating in the Privacy Shield if those US organisations have updated their public commitment to comply with the Privacy Shield to expressly state that those commitments apply to transfers of personal data from the UK.

Privacy Shield website available [here](#)

Canada: The adequacy finding for Canada only covers data that is subject to Canada's Personal Information Protection and Electronic Documents Act (PIPEDA).

Canadian PIPEDA website available [here](#)

Japan: The adequacy finding for Japan only covers private sector organisations. Specific UK arrangements have now been confirmed in relation to the recent EU adequacy decision for Japan. This secures the necessary protections for UK data as well as EU data, so that data can continue to flow from the UK to Japan.



1. Appropriate Safeguards

I. Standard Contractual Clauses

The most convenient appropriate safeguard is the use of standard contractual clauses.

The UK government intends to recognise European Commission-approved standard contractual clauses as providing an appropriate safeguard for restricted transfers from the UK.

The ICO has prepared template contracts, available as a fill in document, which you can use:

Controller to Controller

<https://ico.org.uk/media/for-organisations/forms/2553982/ico-guidance-controller-to-controller.docx>

Controller to Processor

<https://ico.org.uk/media/for-organisations/forms/2553983/ico-guidance-controller-to-processor.docx>

In addition, the ICO has also prepared a contract builder tool to automatically generate and complete SCCs available here: <https://ico.org.uk/for-organisations/data-protection-and-brexit/keep-data-flowing-from-the-eea-to-the-uk-interactive-tool/>



Standard Contractual Clauses – EEA¹ to UK

Any EEA commercial and public organisation wishing to transfer personal data to the UK in the event of a no deal Brexit will have to use of Standard Data Protection Clauses approved by the European Commission.

You will have to include these clauses in your contracts with EEA partners.

Three sets of Standard Data Protection Clauses are currently available:

- EEA controller to third country (e.g. UK) controller, 2 sets are available:
 - [2001/497/EC](#)
 - [2004/915/EC](#)
- EEA controller to third country (e.g. UK) processor
 - [2010/87/EU](#)

It is important to note that the Standard Data Protection Clauses may not be modified and must be signed as provided. However, these contracts may be included in a wider contract and additional clauses might be added provided that they do not contradict, directly or indirectly, the Standard Data Protection Clauses adopted by the European Commission.

Considering the timeframe, the Standard Data Protection Clauses is a ready-to-use instrument.

Further information can be found in:

- [MRS Brexit Hub](#) see in particular [Standard Contractual Clauses](#)

¹ Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.



Binding Corporate Rules

For restricted transfers from the UK but within a corporate group or to a group of overseas service providers, another convenient method of providing an appropriate safeguard is binding corporate rules.

☑ ICO notes: The UK government will recognise binding corporate rules authorised under the EU process before the exit date as ensuring appropriate safeguards for transfers from the UK. On that basis, if on exit date binding corporate rules within an organisation are in place covering the UK sender of data and the receiver (wherever located), the personal data may be sent. EEA binding corporate rules might need to be updated, so that the UK is listed as a third country outside the EEA.

It is very important that you keep on checking the websites of the [UK ICO](#) and of the [European Commission](#) for further updated information.



Exceptions

The GDPR also provides a set of derogations for specific situations, in the absence of an adequacy decision or appropriate safeguards.

But – the protection of the fundamental right to respect for private life at EU level requires that exceptions from and limitations on the protection of personal data should apply only in so far as is strictly necessary.

Exceptions are:

- Individual's explicit consent to restricted transfer: a valid consent is specific, informed (please see [GDPR In Brief No.5 on Informed Consent](#)) including all information related to the identity of the receiver, the reasons for the transfer, the kind of data transferred and the risks involved in a transfer to a country which is not deemed to provide adequate data protection. Consent must be obtained for every time the transfer occurs.
- The transfer is necessary for the performance of a contract between the data subject and the controller or for the performance of a contract concluded in the interest of the data subject.

In all these cases the transfer might take place only if it is occasional, necessary, not repetitive and concerns only a limited number of data subjects.

Exceptions must be interpreted restrictively. They must be documented in the processing activities. They must be communicated to the ICO.



2. Appointment of EU Representative

If you:

- Are based in the UK
- Do not have an office located in the EEA
- Monitor the behaviour of individuals located in the EEA

You

- Will have to appoint an EU representative, which will act as a liaison with EU data subjects and maintain records of processing which must be made available to the data protection authority (DPA).

The representative can be an individual, company or organisation established in the EEA. They must be capable of communicating with data subjects and co-operating with data protection authorities.

It is appropriate to appoint the EU representative in the Member State where the majority of your data subjects are located.

A processor cannot also serve as a representative for a controller so if you are the controller for a research project and you have appointed a processor in an EU Member State to carry out research services on your behalf then they cannot act as your EU representative.

Include the details of your representative in your privacy notice.

Failure to appoint an EU representative, where required, could result in a GDPR fine.

Further information can be found in:

- [ICO European representatives](#)



3. EU Settlement Scheme (Settled and Pre-Settled Status)

Ask your employees to check if they need to apply to the EU Settlement Scheme.

Your employees may not be able to continue living or working in the UK as they do now, if they do not apply to the scheme.

EEA and Swiss employees who have been in the UK for five years can be granted settled status. Those who have not accumulated five years continuous residence in the UK before 31 December 2020, will be granted 'pre-settled status'

In case of a No-Deal Brexit, the scheme is only opened to those already living in the UK.

Deadline for application is 31 December 2020.

The application is available here: [Apply to the EU Settlement Scheme \(settled and pre-settled status\)](#)

Guidance is available [in 26 languages](#)

Further information can be found in:

- [MRS Brexit Hub](#) see in particular: [Immigration Update](#)
- GOV.UK [Stay in the UK after it leaves the EU \('settled status'\): step by step](#)