



ESTABLISHED  
**1987**

## UNITED KINGDOM REPORT

# PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

## Preparing for Brexit – EU to UK data export solutions needed

**Lore Leitner** looks at the implications of Brexit and the draft Withdrawal Agreement for data protection.

On 29 March 2019, the United Kingdom will leave the European Union. Even though the political withdrawal negotiations are ongoing, it is possible that the parties will not reach an agreement by the end of March 2019, and because of that, both the UK and EU government urge stakeholders to prepare for

all scenarios, including the “no deal” or “cliff edge” scenario.

At the moment, the UK and the EU have negotiated the terms of the UK’s withdrawal from the EU and these terms will be written down in the so-called “Withdrawal Agreement”.<sup>1</sup>

*Continued on p.3*

## How companies are adapting to the UK’s DP Act 2018

**Laura Linkomies** analyses responses to PL&B’s UK survey on compliance with the 2018 UK Data Protection Act.

PL&B conducted the survey during October to evaluate the challenges which companies have had with the new UK Data Protection Act, and where compliance was after four months with the new legislative regime.

We first asked how often organisations plan to contact individ-

uals to ensure their consent is still valid. Of the 58 respondents, who consisted of PL&B clients and contacts, nearly half said that they do not really rely on consent. Only 1.8% said that they would check consents every six months.

*Continued on p.5*

Issue 100

November 2018

### NEWS

- 1 - Preparing for Brexit – EU to UK data export solutions needed
- 2 - Comment  
EU adequacy in light of Brexit
- 15 - ICO gives evidence in Parliament on analytics and campaigning

### ANALYSIS

- 9 - Cookie consent and the GDPR
- 21 - DP Impact Assessments: The EDPB assesses the ICO

### LEGISLATION

- 12 - Law enforcement processing: The new regime and why it matters
- 18 - Isle of Man law follows GDPR

### MANAGEMENT

- 1 - How companies are adapting to the UK’s DP Act 2018
- 20 - Employee Data Subject Access Requests and proportionality

### FREEDOM OF INFORMATION

- 23 - Contractors may become subject to FOI provisions

### NEWS IN BRIEF

- 8 - ICO advises on encryption and passwords in online services
- 8 - Ofcom reports on Internet harms
- 11 - Government to set up Centre for Data Ethics and Innovation
- 14 - Morrisons held liable for actions of former employee
- 14 - ICO issues notice under GDPR to Canadian company
- 17 - ICO prosecution results in prison sentence
- 17 - Unsolicited callers to face fines up to £500,000
- 19 - Processing criminal records

## www.privacylaws.com

Subscribers can access the following:

- Back Issues since 2000
- Special Reports
- Materials from PL&B events
- Videos and audio recordings

See the back page or [www.privacylaws.com/subscription\\_info](http://www.privacylaws.com/subscription_info)

To check your type of subscription, contact [kan@privacylaws.com](mailto:kan@privacylaws.com) or telephone +44 (0)20 8868 9200.

**PL&B Services:** Publications • Conferences • Consulting • Recruitment  
Training • Compliance Audits • Privacy Officers Networks • Roundtables • Research

# UNITED KINGDOM report

ISSUE NO 100

NOVEMBER 2018

**PUBLISHER**

**Stewart H Dresner**  
stewart.dresner@privacylaws.com

**EDITOR**

**Laura Linkomies**  
laura.linkomies@privacylaws.com

**DEPUTY EDITOR**

**Tom Cooper**  
tom.cooper@privacylaws.com

**REPORT SUBSCRIPTIONS**

**K'an Thomas**  
kan@privacylaws.com

**CONTRIBUTORS**

**Lore Leitner**  
Wilson Sonsini Goodrich & Rosati (UK), LLP

**Rebecca Cousin, Rob Sumroy,  
Duncan Mykura and Natalie Donovan**  
Slaughter and May

**Rachel Quick and Martin Kelly**  
Home Office

**Andrew Peters**  
Squire Patton Boggs (UK) LLP

**Nicola Fulford and Louisa Williams**  
Hogan Lovells International LLP

**PUBLISHED BY**

Privacy Laws & Business, 2nd Floor,  
Monument House, 215 Marsh Road, Pinner,  
Middlesex HA5 5NE, United Kingdom

**Tel: +44 (0)20 8868 9200**

**Email: info@privacylaws.com**

**Website: www.privacylaws.com**

**Subscriptions:** The *Privacy Laws & Business* United Kingdom Report is produced six times a year and is available on an annual subscription basis only. Subscription details are at the back of this report.

Whilst every care is taken to provide accurate information, the publishers cannot accept liability for errors or omissions or for any advice given.

Design by ProCreative +44 (0)845 3003753

Printed by Rapidity Communications Ltd +44 (0)20 7689 8686

ISSN 2047-1479

**Copyright:** No part of this publication in whole or in part may be reproduced or transmitted in any form without the prior written permission of the publisher.



© 2018 Privacy Laws & Business



## EU adequacy in light of Brexit

As there is still no firm decision on which form of Brexit the country will take, companies involved with international data transfers are in limbo. Digital Minister, Margot James MP, recently told the House of Commons' European Committee that the government is optimistic on an adequacy decision and that it will not require the usual length of time, and could be made during a 21-month transition period. Now the draft Withdrawal Agreement confirms that the EU will start assessing the UK for adequacy, aiming at a decision by 2020. Read more about the challenges that Brexit brings on p.1.

However, the government is still offering advice on a potential no deal. The Department for Digital, Culture, Media and Sport has issued guidance on various issues including data flows. Without an adequacy decision, companies operating in the UK will need to adopt standard contractual clauses, the government says.

The *PL&B* survey on the UK DP Act 2018 reveals that just over half of respondents said that they are taking measures to prepare for a possible no-deal situation with regard to Brexit and data transfers. In the absence of an EU adequacy decision, just over a quarter (27%) of the respondents said that their organisation would resort to moving personal data of non-UK residents away from the UK (p.1).

In this issue, we have a contribution from the Home Office. The authors state that organisations in the UK need to understand the Law Enforcement Directive as implemented in the UK Data Protection Act to fully understand the new legislative framework (p.12). Other topics include ICO and European Data Protection Board guidance on Data Protection Impact Assessments (p.21), the ICO investigation on political influencing and data analytics (p.15), the Isle of Man's new DP regime (p.18) and how to deal with Employee Data Subject Access Requests (p.20). Last but not least, our correspondents look at how the GDPR has affected cookie compliance (p.9).

The GDPR is now better understood but challenges remain. Join us on 28 November in London for a peer-to-peer discussion on GDPR implementation, together with a session with the ICO policy lead on certification and codes of practice and a contrasting perspective from the Netherlands. See [www.privacylaws.com/events](http://www.privacylaws.com/events)

Laura Linkomies, Editor

PRIVACY LAWS & BUSINESS

## Contribute to PL&B reports

Do you wish to contribute to *PL&B UK Report*? Please contact Laura Linkomies, Editor (tel: +44 (0)20 8868 9200 or email: [laura.linkomies@privacylaws.com](mailto:laura.linkomies@privacylaws.com)) to discuss your idea, or offer to be interviewed about your organisation's data protection/Freedom of Information work.

## Join the Privacy Laws & Business community

The *PL&B United Kingdom Report*, published six times a year, covers the Data Protection Act 1998, the Freedom of Information Act 2000, Environmental Information Regulations 2004 and Privacy and Electronic Communications Regulations 2003.

### PL&B's United Kingdom Report will help you to:

Stay informed of data protection legislative developments.

Learn from others' experience through case studies and analysis.

Incorporate compliance solutions into your business strategy.

Learn about future government/ICO plans.

Understand laws, regulations, court and tribunal decisions and what they will mean to you.

Be alert to future privacy and data protection law issues that will affect your organisation's compliance.

### Included in your subscription:

#### 1. Online search functionality

Search for the most relevant content from all *PL&B* publications and events. You can then click straight through from the search results into the PDF documents.

#### 2. Electronic Access

We will email you the PDF edition which you can also access via the *PL&B* website. You may also choose to receive one printed copy.

#### 3. E-Mail Updates

E-mail updates keep you regularly informed of the latest developments in Data Protection, Freedom of Information and related laws.

#### 4. Back Issues

Access all the *PL&B UK Report* back issues since the year 2000.

#### 5. Events Documentation

Access UK events documentation such as Roundtables with the UK Information Commissioner and *PL&B Annual International Conferences*, in July, Cambridge.

#### 6. Helpline Enquiry Service

Contact the *PL&B* team with questions such as the current status of legislation, and sources for specific texts. This service does not offer legal advice or provide consultancy.

**To Subscribe: [www.privacylaws.com/subscribe](http://www.privacylaws.com/subscribe)**

“ I particularly like the short and concise nature of the *Privacy Laws & Business Reports*. I never leave home without a copy, and value the printed copies, as I like to read them whilst on my daily train journey into work. ”

**Steve Wright, Data Privacy & InfoSec Officer, John Lewis Partnership**

## Subscription Fees

### Single User Access

UK Edition **£440 + VAT\***

International Edition **£550 + VAT\***

UK & International Combined Edition **£880 + VAT\***

\* VAT only applies to UK based subscribers

### Multi User Access

Discounts for 2-10 users. Enterprise licence for 11+ users.

### Subscription Discounts

Introductory 50% discount. Use code HPSUB (first year only) for DPAs, public sector, charities, academic institutions and small and medium companies.

Discounts for 2-year (10%) and 3-year (15%) subscriptions

### International Postage (outside UK):

Individual International or UK Edition

Rest of Europe = £22, Outside Europe = £30

Combined International and UK Editions

Rest of Europe = £44, Outside Europe = £60

## Satisfaction Guarantee

If you are dissatisfied with the *Report* in any way, the unexpired portion of your subscription will be repaid.

*Privacy Laws & Business* also publishes the International Report.

**[www.privacylaws.com/int](http://www.privacylaws.com/int)**