



ESTABLISHED
1987

UNITED KINGDOM REPORT

PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

Brexit: What now for the UK's data protection position?

Theresa May, Prime Minister, suffered a crushing Parliamentary defeat to her deal for withdrawing from the EU before surviving a "no confidence motion" the next day. By **Lauren Webb** and **Richard Nicholas** of Browne Jacobson LLP.

In the hubbub and drama of UK politics (John Bercow's call for "Order" above the din of the voting chamber, the "ooooh" of the politicians as the votes were read out) it's easy to forget that – failing another solution – events triggered in

2016 mean that on 29 March the UK will be outside the European Union.

What does that mean for data protection law in the UK? In particular what about cross border arrangements?

Continued on p.3

Preparing to deal with a data breach – the role of the DPO

Mark Sherwood-Edwards of *This is DPO* discusses how to prepare for, and recover from, a data breach.

Data Protection Officers (DPOs) have a major role to play in relation to preventing and minimising the impact of data breaches in their organisations. This is true even if you don't have a particularly strong IT background: you can still ask the awkward questions which lead to discussions, increased

awareness and, with a bit of luck, improvement in the organisation's breach-related capabilities.

The recent high-profile breaches have increased consumers' and organisations' awareness of breaches. From May to December 2018, the

Continued on p.5

Issue 101

January 2019

NEWS

- 1 - **Brexit: What now for the UK's data protection position?**
- 2 - **Comment**
Which data protection law will apply after Brexit?
- 20 - **Vendors and experts meet at Data Protection World Forum**

ANALYSIS

- 16 - **Clinical trials under the GDPR: What should sponsors consider?**

MANAGEMENT

- 1 - **Preparing to deal with a data breach – the role of the DPO**
- 8 - **Maintaining momentum for the GDPR and the UK's DP Act**
- 11 - **Pre-Brexit steps for EU-US Privacy Shield participants**
- 12 - **Data Protection training – in search of the holy grail**
- 18 - **Finding the data protection 'sweet spot'**
- 22 - **Events Diary**

FREEDOM OF INFORMATION

- 23 - **ICO consults on its proposed Freedom of Information strategy**

NEWS IN BRIEF

- 14 - **ICO fines SCL Elections £15,000**
- 14 - **Jersey's DPA appoints four non-executive directors**
- 14 - **Scotland's GP surgeries assigned DPOs**
- 15 - **ICO speaks out on regulating Internet harms**
- 15 - **Competition authorities should challenge Facebook, says MP**
- 23 - **ICO to revise its Direct Marketing Code**
- 23 - **Data ethics centre up and running**

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

To check your type of subscription, contact 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 101

JANUARY 2019

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

Alison Deighton and Jenai Nissim
HelloDPO

Mark Sherwood-Edwards
This is DPO

Frances Stocks Allen and Gail E. Crawford
Latham & Watkins

Robert Waixel
Anglia Ruskin University

Lauren Webb and Richard Nicholas
Browne Jacobson LLP

Dylan Balbirnie and Paul Kavanagh
Dechert 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.



© 2019 Privacy Laws & Business



Which data protection law will apply after Brexit?

If the UK finds a way to sign off on a Withdrawal Agreement, the future is relatively straightforward: the GDPR has been implemented by the UK Data Protection Act 2018 and the UK would seek an adequacy determination from the EU. What makes businesses worried is the possibility of a no-deal, which would require organisations to carefully consider alternative transfer mechanisms to maintain data flows (pp. 1 and 11).

The EU is firmly of the view that the ball is now in the UK's court, so the UK has to take the initiative to open negotiations when Parliament can achieve a majority on one plan or another. The problem with no-deal is that there would most likely be no transitional period. The proposed Withdrawal Agreement would, on the other hand, provide for a transitional period, and for data protection, nothing would radically change until the end of 2020.

Now that the law in the UK is fairly settled, this current issue brings you a wealth of management advice. Company-wide compliance can only be ensured by comprehensive data protection training. Read on p.12 what the options are and the pros and cons of different methods. Preparing for, and learning how to contain a data breach is something every organisation should consider (pp.1 and 10). The GDPR provides for certifications and codes of conduct. The ICO wants codes to be realistic, concrete and provide practical solutions for data protection issues in each specific sector, not just replicate the GDPR. Read on p.8 about the latest UK and European developments in this field. And lastly, have you considered that an opt-in regime for direct marketing results in consents that are of better quality (p.18)?

Whilst UK companies are holding their breath with regard to Brexit, the outside world continues to tackle other data protection questions. Stewart Dresner and I will attend the CPDP conference in Brussels at the end of this month, and in our moderating and chairing roles engage with other current data protection themes.

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) 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

“ 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, formerly Data Privacy & InfoSec Officer, John Lewis Partnership

Subscription Fees

Single User Access

UK Edition **£450 + VAT***

International Edition **£560 + VAT***

UK & International Combined Edition **£900 + VAT***

* VAT only applies to UK based subscribers

Multi User Access

Discounts for Multiple User licence (up to 10) and Enterprise licence (unlimited users).

Subscription Discounts

Introductory discount (first year): 30% off for DPAs, public sector, charities, academic institutions, use code SUB30; 20% off for other organisations, use code SUB20.

Discounts for 2 and 3 year subscriptions

International Postage (outside UK):

Individual International or UK Edition

Rest of Europe = £25, Outside Europe = £35

Combined International and UK Editions

Rest of Europe = £50, Outside Europe = £70

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