



Greater Birmingham
Chambers
of Commerce



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Coventry & Warwickshire
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The Ultimate Business Network

Brexit Checklist

Transferring Data Intellectual Property & Public Procurement

January 2021

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End of Brexit Transition Checklist: Transferring Data, Intellectual Property & Public Procurement

Introduction:

The UK's transition period with the EU ended on the 31st December 2020. Since the first of January, the way that UK businesses trade with their counterparts in the EU (and some of the nations that the EU has existing trade deals with), employ EU citizens and comply with aspects of certain regulations such as GDPR, has changed. This checklist provides essential information and links to further guidance and support on **Transferring Data, Intellectual Property & Public Procurement**. Further checklists on a range of topics can be found at www.greaterbirminghamchambers.com/Brexit.

Key steps that all traders should take: Transferring Data

- Review data flows to establish where data is flowing between the European Economic Area (EEA) and the UK.
- Understand the legal structures and processes required to continue to transfer data between the EEA and UK
 - Carry out a Data Protection Impact Assessment (DPIA) to identify the risks to the rights of data subjects and to determine the technical safeguards that can be put in place to address this and demonstrate compliance with EU GDPR
 - Put in place new contracts that contain EU approved model clauses to remain compliant with EU GDPR and ensure that you can continue to receive data transfers (legally) from the EEA if the EU does not make an adequacy decision in regards to the UK
 - Appoint an EU representative to act on your behalf (regarding your obligations under EU GDPR)
 - Revisit (and update if needed) other aspects of compliance such as your privacy policy, and records of processing activities
 - Review your operations in the EEA and identify any EEA regulators you will need to interact with from January 2021 and consider contacting them
- Check to see if the other non-EEA countries (with an adequacy agreement with the EU) that you receive data from will continue to allow data to be transferred into the UK (once it is outside the EEA) without requiring a local mechanism to do so
- Check whether you are able to retain your existing EU domain names (if applicable)
- Seek support: many organisations are working through exactly the same challenges and questions you are, you may benefit from advice from:
 - Professional and legal advisors
 - Information Commissioner's Office (ICO)
 - Your industry body

Please see the final section of this document for more information on sources of support in the Greater Birmingham area.

End of Brexit Transition Checklist: Transferring Data

Below you will find an overview of the key areas that businesses should be aware of and further suggestions on steps to take. Please note: it aims to cover key areas for businesses but is not exhaustive.

Area	What is changing	Steps to take
GDPR	<p>From the 1 January 2021, EU GDPR will cease to apply to the UK. GDPR will be retained in UK data protection law as UK GDPR – a separate regime. There will be little change in practice to the fundamental principles, obligations and rights of UK organisations and data subjects under UK GDPR. However, in the future the UK will have the freedom to make changes to data protection law and diverge from EU regulations.</p>	
Cross Border Processing	<p>From 1 January 2021, there may be changes for UK firms currently carrying out cross border processing of personal data in the EEA under the One-Stop-Shop arrangements.</p> <p>The One-Stop-Shop enables companies carrying out the processing of personal data (within the EEA), that affects individuals in more than one EU/EEA state, to only have to deal with a single EEA data protection regulatory authority.</p> <p>After the end of the transition period, the UK regulator (ICO) will no longer be part of the One-Stop-Shop and therefore will be unable to regulate activities in relation to EU GDPR. UK businesses will have to deal with an EEA supervisory authority as well if they carry out activities in Europe that fall within EU GDPR.</p>	<p>Read this ICO guidance here</p> <p>Identify whether any of your processing of personal data involves cross border processing under EU GDPR</p> <p>Check that you are complying with both EU GDPR and UK GDPR</p> <p>Establish which EU/EEA regulator you will have to interact with and consider contacting them</p>
Personal Data	<p>UK firms receiving personal data from the EU may need to take action as a precaution to ensure they can continue to lawfully receive personal data from the EU. This is dependent on the verdict of the EU's data adequacy assessment of the UK.</p> <p>The UK and the EU have agreed a bridging mechanism that allows the</p>	<p>Read this gov.uk guidance here</p> <p>Ensure that your EU partners are aware of these potential changes and put in place SCCs if needed.</p>

	<p>continued free flow of personal data from the EU/EEA to the UK from the 1st January (for up to 6 months) until adequacy decisions come into effect.</p> <p>If the EU does not make an adequacy decision, firms can ensure a continuation of the free flow of data by putting in place appropriate safeguards such as Standard Contractual Clauses (SCC), Bespoke Clauses, Binding Corporate Rules (for intra group transfers) or Derogations with any EEA businesses they receive personal data from.</p> <p>Businesses that fail to comply could be subject to fines, enforcement actions and compensation claims.</p>	
<p>Local Representatives</p>	<p>UK firms processing personal data in the EEA (in relation to either offering goods or services or monitoring the behaviour of individuals located in the EEA), will need to appoint a representative based in the EEA, if they do not have a branch, office or other establishment based in an EU/EEA member state. EEA firms will require a UK local representative.</p> <p>Activities undertaken by UK companies in the EEA will need to comply with EU GDPR and European representatives are given authorisation to act on a company's behalf concerning compliance. Local representatives are also responsible for communicating with data subjects and EEA regulators.</p>	<p>Read this ICO guidance here</p> <p>Appoint a representative (in writing) in an EU/EEA member state where you offer goods or services</p> <p>Review and update your privacy notice to incorporate your representative's details</p>
<p>Domain names</p>	<p>You will be unable to register for (or renew) EU domain names if your organisation does not have an establishment in the EEA or you live outside the EEA and are not an EEA citizen.</p>	<p>Read this gov.uk guidance here</p> <p>Take steps to transfer your internet presence to another domain if you are no longer eligible.</p> <p>Consider developing a migration plan for services and functions that your .eu domain is linked to or supports</p>

Key steps that all traders should take: Intellectual Property

- Identify any necessary steps you will need to take to ensure the continued protection of your intellectual property rights in both the UK and the EU
 - Ensure that you file separate UK and EU applications when registering new trademarks and designs from January 2021
 - Consider carefully where to disclose your designs to ensure they have adequate protection in their most important market
 - Consider parallel trade and whether you would like this to continue if you own the rights for IP protected goods that are currently exported to the EEA
 - Seek the right holder's permission if you currently export IP protected goods on the parallel market and wish to continue doing so

End of Brexit Transition Checklist: Intellectual Property

Below you will find an overview of the key areas that businesses should be aware of and further suggestions on steps to take. Please note: it aims to cover key areas for businesses but is not exhaustive.

Area	What is changing	Steps to take
Intellectual Property	<p>From the 1 January 2021, you may need to take action to protect your intellectual property.</p> <p>International trade marks and designs designating the EU, EU Trade Marks (EUTM), Registered Community Designs (RCDs) and unregistered Community designs (UCDs) will no longer be valid in the UK. Businesses that have applications pending at the end of the transition period will have a period of nine months to apply for a UK equivalent.</p> <p>The UK will not remain a part of the EEA Intellectual Property Rights exhaustion regime and you may need to seek permission to export IP protected goods (on the UK market) to the EEA.</p> <p>There will also be changes to cross border copyright arrangements.</p>	<p>Read this gov.uk guidance here</p> <p>Apply for a UK equivalent if you have a pending application for a EUTM, RCD, UCD or an international trade mark/ design designating the EU.</p> <p>Check whether you export IP protected goods to the EEA and if needed contact the rights holder to get their permission to continue to do so.</p>

End of Brexit Transition Checklist: Public Sector Procurement

Key steps that all traders should take: Public Sector Procurement

- Ensure you are registered with the 'Find a Tender' service to view UK public procurement notices from January

End of Brexit Transition Checklist: Public Sector Procurement

Below you will find an overview of the key areas that businesses should be aware of in regards to public sector procurement and further suggestions on steps to take. Please note: it aims to cover key areas for businesses but is not exhaustive.

Area	What is changing	Steps to take
Public Procurement Notices	From 1 January 2021, UK contracting authorities will need to publish public sector contracts on the new e-notification service 'Find a Tender'. 'Find a Tender' will replace TED (Tenders Electronic Daily)	Read this gov.uk guidance here Use 'Find a Tender' to view UK public procurement notices from January
EU Procurement Opportunities	<p>From the 1 January 2021, UK businesses will still be able to bid for EU procurement opportunities but they will not have the same level of access to EU procurement markets.</p> <p>The UK has joined the World Trade Organization's Government Procurement Agreement (GPA) which sets out the types of EU procurement opportunities UK businesses will be able to bid for.</p> <p>The UK and the EU have agreed an extension of market access coverage that goes beyond the provisions set out in the GPA which includes the gas & heat distribution sector and services in the hospitality, telecoms, education and other business sectors.</p>	Read this gov.uk guidance here

Further Support for your Business:

There are a number of sources of support and funding to help businesses prepare for changes concerning intellectual property and importing data from the EU:

The Greater Birmingham Chambers of Commerce

The GBCC has teamed up with the West Midlands Combined Authority, Coventry & Warwickshire and the Black Country Chambers of Commerce to offer free support to local businesses through:

- Free webinars on a wide range of Brexit related topics (click [here](#))
- Briefing documents, further checklists and videos on a wide range of Brexit related topics (click [here](#))

Other GBCC support includes:

- Peer learning and private digital roundtables for GBCC members (contact your relationship manager for more information)
- Advocacy support, escalating unanswered questions and lobbying for members' interests (contact KBM@Birmingham-Chamber.com)

Information Commissioner's Office (ICO)

The ICO is the UK's independent body set up to uphold information rights. The ICO website contains further advice and guidance for businesses in regards to data protection and receiving personal data from the European Economic Area (EEA) after the end of the transition period. Find out more [here](#).

Intellectual Property Office

Businesses can contact the Intellectual Property Office with any queries relating to intellectual property. Find out more [here](#).

BEIS webinars

To support business preparations the Department for Business, Energy and Industrial Strategy is hosting free webinars on a range of topics including using personal data in your business after the transition period and changes to intellectual property from 1 January 2021. Find out more about upcoming and recording webinars [here](#).

Local Enterprise Partnership Growth Hubs

Growth Hubs offer funded businesses advice and support and programmes. The Greater Birmingham & Solihull LEP Growth Hub employs a team of expert Business Resilience Account Managers for supporting SMEs through the UK Transition (find out more [here](#)). The Stoke & Staffordshire Growth Hub provide tailored business advice through their qualified and accredited business advisory team (find out more [here](#)).