

UK Government's future partnership paper

| exchange and protection of personal data



Summary of UK Government's Future Partnership Paper *The exchange and protection of personal data*

This paper sets out the UK's proposals on the movement of data and how it can continue to be transferred without disruption.

Data Flow

Data flows are important for the UK and the EU economies and for wider cooperation, including on law enforcement matters.

The UK is a significant player in global data flows. Estimates suggest that around 43 per cent of all large EU digital companies are started in the UK and that three quarters of the UK's cross-border data flows are with EU countries. The UK has an economy dominated by service sectors in which data and data flows are increasingly vital.

Sharing personal data is also essential for wider cooperation that helps in the fight against crime and terrorism. The sharing of personal data is crucial to the EU's ongoing work across the continent to protect citizens, in which the UK plays an integral role.

Any disruption in cross-border data flows would therefore be economically costly to both the UK and the EU. After the UK leaves the EU, new arrangements to govern the continued free flow of personal data between the EU and the UK will be needed.

The UK hopes to explore a UK-EU model for exchanging and protecting personal data, which could build on the existing adequacy model, by providing sufficient stability for businesses, public authorities and individuals, and enabling the UK's Information Commissioner's Office (ICO) and partner EU regulators to maintain effective regulatory cooperation and dialogue for the benefit of those living and working in the UK and the EU after the UK's withdrawal.

While personal data flows support both the UK and EU economies and the UK's wider cooperation with the EU, effective protections must be in place to ensure that data relating to individuals ('personal data') is handled appropriately and properly protected against any misuse, including when this data is transferred to another country.

Data Protection

Well-designed, strong data protection standards go hand in hand with supporting innovative uses of data.

The UK has strong domestic personal data protection standards, set out in the Data Protection Act (DPA) 1998. The UK's new Data Protection Bill, which will repeal and replace the DPA 1998. At the point of exit from the EU, the UK's domestic data protection rules will be aligned with the EU data protection framework.

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Recent technological advances have led to increases in the amount of personal data being processed and transferred, including across borders. Over time this has necessitated the development of more robust rules to:

- protect personal data from being stolen or disclosed without authorisation;
- prevent personal data from being misused by those who have access to it; and
- keep personal data accurate, particularly where automatic decisions are being taken which have an impact on people, such as those concerning pensions, insurance, or creditworthiness.

In the UK, it has long been established that personal information should be protected in certain contexts, and the UK's Data Protection Act 1984 was in place before the EU legislated in this area. When the UK updated its data protection law to implement the EU Data Protection Directive 1995 (the 1995 Directive), it extended the rights and obligations beyond the minimum required by EU law.

The EU data protection framework

The EU has recently updated its existing data protection framework (the 1995 Directive), in the form of a new General Data Protection Regulation (GDPR). This covers general processing of personal data within the scope of EU law, and a separate Data Protection Directive (DPD) relating to personal data being processed for law enforcement purposes. The GDPR and DPD were adopted in 2016 and are due to come into force in May 2018 (replacing the 1995 Directive), before the UK leaves the EU. The new rules strengthen rights and empower individuals by giving them more control over their personal data.

The EU data protection framework includes mechanisms governing data flows between Member States and third countries.

- All European Economic Area (EEA) states are directly party to the GDPR. For this reason, data can be transferred freely between EEA states without the need for businesses and public authorities to satisfy themselves in each case that the relevant national data protection safeguards are sufficient.
- For non-EEA countries, the EU data protection framework includes provisions allowing the Commission to decide that a third country's data protection framework is 'adequate', which allows data to flow freely between the EEA and those third countries. Alternatives to adequacy are also available under the EU framework, but these can be more costly and onerous for businesses and public authorities, and are more limited in their application.

The GDPR will apply to processing of personal data that takes place in third countries outside of the EEA if it is related to the offering of goods or services to individuals in the EEA, or monitoring their behaviour. As such, UK businesses and public authorities may still be required to meet GDPR standards for their processing of EEA personal data following the date of withdrawal.

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The Government has announced its plans for a new UK Data Protection Bill which will replace the DPA 1998. This will ensure that the UK's framework is aligned with the updated EU legal framework at the date of withdrawal.

The Council of Europe's Data Protection Convention (Convention 108) is a source of high level data protection principles currently being modernised, in part to bring it more in to line with the new EU data protection framework. Its high-level approach is likely to remain the same, although it is expected that there will be increased specificity in some provisions. The UK's data protection standards will remain fully aligned with the revised Convention 108.

Outline of UK objectives

The UK recognises the need for an appropriate balance to be maintained between individuals' right to privacy and control over their own data, the ability of individuals, companies and other organisations to share data to create services which consumers value, and the ability of law enforcement bodies to protect citizens from crime and terrorism.

It is the UK's ambition to remain a global leader on data protection, by promoting both the flow of data internationally and appropriate high levels of data protection rules. The UK wants to continue to work closely with the EU towards stronger global standards and for exchanging and protecting personal data, that:

- maintains the free flow of personal data between the UK and the EU;
- offers sufficient stability and confidence for businesses, public authorities and individuals;
- provides for ongoing regulatory cooperation between the EU and the UK on current and future data protection issues;
- continues to protect the privacy of individuals;
- respects UK sovereignty, including the UK's ability to protect the security of its citizens and its ability to maintain and develop its position as a leader in data protection;
- does not impose unnecessary additional costs to business; and
- is based on objective consideration of evidence.

This could build on the existing adequacy model.

A UK-EU model for exchanging and protecting personal data between the UK and the EU, and beyond

A UK-EU model for exchanging and protecting personal data should recognise that the UK is compliant with EU data protection law and wider global data protection standards, and that the UK will introduce a Data Protection Bill which will implement the GDPR and the DPD. In light of this the UK and the EU could productively build on the existing adequacy model in two key respects:

Regulatory co-operation

After the UK's withdrawal, regulatory cooperation between the UK and the EU on a range of issues will be essential, including data protection – not least because the GDPR will continue to apply to UK businesses offering goods or services to individuals in the EEA.

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A continued role for the Information Commissioner's Office will support cross-border business and activity between the UK and the EU by promoting a common understanding of the regulatory challenges and issues faced by businesses, the public sector and individuals.

Certainty and stability

The UK's data protection law fully implements the EU framework, and this will remain the case on exit from the EU. On this basis, the Government believes it would be in the interest of both the UK and EU to agree early to mutually recognise each other's data protection frameworks as a basis for the continued free flows of data between the EU (and other EU adequate countries) and the UK, until such time as new and more permanent arrangements come into force.

As well as ensuring that data flows between the UK and the EU can continue freely, the UK also wants to make sure that flows of data between the UK and third countries with existing EU adequacy decisions can continue on the same basis after the UK's withdrawal, given such transfers could conceivably include EU data.

Conclusion

Given that the UK will be compliant with EU data protection law and wider global data protection standards on exit, and given the important role of continued regulatory cooperation as part of a future economic relationship, the UK believes that a UK-EU model for exchanging and protecting personal data could provide for regulatory cooperation and ongoing certainty for businesses and public authorities. This could build on the existing adequacy model.

The UK's data protection law will fully implement the most up-to-date EU framework, and this will remain the case at the point of the UK's withdrawal from the EU. On this basis, the Government believes it would be in the interest of both the UK and EU to agree early in the process to mutually recognise each other's data protection frameworks as a basis for the continued free flows of data between the EU (and other EU adequate countries) and UK from the point of exit until such time as new and more permanent arrangements come into force.

Full paper:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639853/The_exchange_and_protection_of_personal_data.pdf