

GDPR & BREXIT



The UK Prime Minister Theresa May has announced that she will invoke Article 50 on 29 March 2017, commencing two years of negotiations on the terms of exit from the EU and future relations with the bloc.

According to the Rt Hon Matt Hancock MP (Minister of State for Digital and Culture, Department for Culture, Media and Sport) in (uncorrected) oral evidence to the [Lords Select Committee on 1 February 2017](#):

"Not only do we seek unhindered data flows but we want that to happen in an uninterrupted way—that is to say, on the morning on which we have left the European Union, it is very important that our data rules work, so that there is an uninterrupted system in place".

Any change to the UK Data Protection Act therefore *"needs to be in force **by May 2018**"* and the UK government *"will bring forward legislation in the next [parliamentary] session in order to put that into practice"*. Legislation is expected to be brought forward in June.

Isle of Man



The Council of Ministers' ["Programme For Government 2016-2021"](#) was approved by Tynwald in January 2017.

It stated that *"to give our businesses confidence that they can continue to trade in Europe"* domestic law should be equivalent in effect to the GDPR.

The Council of Ministers has committed to updating the Data Protection Act to *"Ensure the Island's legislative position is equivalent ... **by May 2018**"*.

Businesses should note the Council of Ministers' intentions with the expectation that changes to the Act will implement the provisions of the GDPR and start to plan accordingly.

Adequacy Decision

A Communication issued by the Commission to the European Parliament and the Council on 10 January 2017 - "Protection and exchange of personal data in a globalised world" – set out, amongst other things, the Commission's strategy with regard to adequacy decisions.

That [Communication](#) states:

"The adoption of an adequacy decision involves the establishment of a specific dialogue and close forms of cooperation with the concerned third country. Adequacy decisions are "living" documents that need to be closely monitored by the Commission and adapted in case of developments affecting the level of protection ensured by the third country in question. To that end, periodic reviews will be held, at least every four years, to address emerging issues and exchange best practices between close partners. This dynamic approach applies also to already existing adequacy decisions, adopted under the 1995 Directive, which will need to be

reviewed in case they no longer meet the applicable standard. The third countries concerned are therefore invited to inform the Commission of any relevant change in law and practice that has taken place since the adoption of the adequacy decision relating to them. This is essential to ensure the continuity of these decisions under the new rules of the reform."

In a letter dated 25 January 2017, the Commission commenced its review of the Island's adequacy decision.

Article 29 Working Party



Following the publication of the first three GDPR guidelines in December 2016, the Article 29 Working Party (WP29) has set its priorities for 2017. During the second semester, guidelines on consent, profiling and transparency will be produced.

These will appear on the [WP29's website](#) as and when they are released.

UK Information Commissioner's Office



GDPR grace period?

At the ICO's [Data Protection Practitioners' Conference](#), on 6 March, 2017, the question of a grace period was raised.

The [response](#) was a resounding NO... "You will not hear talk of grace periods from people at the ICO. That's not part of our regulatory strategy".

Businesses will have had two years to prepare and regulators will expect them to be compliant by **25 May 2018**.

Consent guidance

The definition of consent in the GDPR has changed to "*any freely given, specific, informed and **unambiguous indication** of the data subject's wishes by which he or she, **by a statement or by a clear affirmative action**, signifies agreement to the processing of personal data relating to him or her*".

New guidance on **consent** under GDPR is open for [consultation](#) until 31 March. Once that consultation has ended, the ICO intends to publish the guidance in May 2017.

Any reliance on consent to process personal data should be reviewed to ensure that it meets the new stricter requirements.

Information Governance Survey

An Information Governance Survey of UK councils has been carried out and the results are available on the ICO's [blog](#).

Those results identified key areas for improvement in preparation for GDPR:

- Adopt a privacy by design approach
- Have the right staff in place
- Do staff know what they need to know?

The [blog](#) provides helpful hints and tips which can be applied across most businesses as well government departments and bodies.

Electronic marketing and “consent”



The Island's Unsolicited Communications Regulations implement Article 13 of the [Privacy and Electronic Communications Directive, 2002/58/EC of the European Parliament](#) and reflect regulations 19 - 33 of the UK Privacy and Electronic Communications (EC Directive) Regulations 2003.

The EU is in the process of [modifying the e-Privacy Directive](#) and it is intended that a new e-Privacy Regulation will enter into force in May 2018 to coincide with the GDPR, ensuring that definitions, in particular **consent**, are consistent. It is likely that the Island's legislation will require updating to reflect the changes.

Businesses making marketing calls, or using email, sms, fax etc. for direct marketing, must consider whether individuals have given their **consent** to receive direct marketing in the context of the new legislative landscape.

GDPR Conference, Villa Marina, 10 May 2017



Due to demand, a limited number of additional spaces have been made available. If you would like to attend please contact us to check availability and request a booking form.

Find out more about the conference here: [GDPR Conference](#)

Get in touch

If you have questions about the GDPR, or would like to make comments about the content of any of our publications, please [contact us](#).