



WHAT HAPPENS DURING THE TRANSITION PERIOD?

During the transition period, the EU General Data Protection Regulation 2016/679 (the “GDPR”) will continue to apply in Gibraltar.

Organisations should continue to follow existing guidance on the GDPR, given that it remains in place in Gibraltar until the end of the transition period.

Organisations should monitor the Information Commissioner’s website for any developments.



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DO ORGANISATIONS NEED A EUROPEAN REPRESENTATIVE?

During the transition period, data controllers based in Gibraltar **do not need to appoint a representative** in the European Economic Area (“EEA”).

They may however need to appoint a representative as of the end of the transition period if they are offering goods or services to individuals in the EEA or monitoring the behaviour of individuals in the EEA.

For more information, read section 3.1 of the Guidance Note “Getting ready for a “no-deal” Brexit” on our website.



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WILL THE GDPR APPLY FOLLOWING THE TRANSITION PERIOD?

In principle, the EU General Data Protection Regulation 2016/679 (“GDPR”) will no longer apply to Gibraltar as of the end of the transition period.

However, if an organisation operates within Gibraltar, they would need to comply with Gibraltar’s data protection laws. Gibraltar intends to maintain the GDPR’s high standards and to transpose the GDPR into Gibraltar law as of the end of the transition period.

Note, the GDPR may continue to apply directly to organisations if they operate in Europe e.g. offering goods or services to individuals in Europe or monitoring the behaviour of individuals in Europe. It will also still apply to any organisations in Europe that send personal data to organisations in Gibraltar.



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WHAT WILL GIBRALTAR'S DATA PROTECTION LAW BE?

The Data Protection Act 2004, which currently supplements and tailors the EU General Data Protection Regulation 2016/679 (the “GDPR”) within Gibraltar, will continue to apply.

The provisions of the GDPR will be incorporated directly into Gibraltar law as of the end of the transition period.

In essence, a “Gibraltar GDPR” will be implemented.



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WHAT ROLE WILL THE INFORMATION COMMISSIONER PLAY?

The Information Commissioner will remain the independent supervisory body responsible for ensuring compliance with Gibraltar's data protection legislation after the transition period.

During the transition period the Information Commissioner will continue to regulate the EU General Data Protection Regulation 2016/679 (the "GDPR"), as well as engage in the co-operation and consistency mechanisms under the GDPR where relevant in respect of cases involving cross border processing within the European Economic Area ("EEA").

Our existing guidance on the Lead Supervisory Authority, found on our website, provides further information on these co-operation and consistency mechanisms.



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WILL GUIDANCE PROVIDED IN RESPECT OF THE EU GENERAL DATA PROTECTION REGULATION 2016/679 (the “GDPR”) REMAIN RELEVANT?

Yes. Following the transition period, Gibraltar’s data protection law will essentially be aligned with the GDPR, so organisations should continue to use the Information Commissioner’s existing guidance.

The Information Commissioner will continue to keep all published guidance under review and update this where necessary.

For more information, refer to published guidance on our website.



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CAN ORGANISATIONS STILL TRANSFER DATA TO AND FROM THE EEA IF GIBRALTAR LEAVES THE EU WITHOUT A DEAL?

Personal data transfers from Gibraltar to the European Economic Area (“EEA”) or the UK will not be restricted.

Unless the EU Commission makes an adequacy decision in favour of Gibraltar under Article 45 of the EU General Data Protection Regulation 2016/679 (the “GDPR”), the rules on international transfers under Articles 46-49 of the GDPR will apply to any personal data coming from the EEA to Gibraltar.

Organisations will need to consider what safeguards, as required by the GDPR, can be put in place to ensure that personal data can continue to flow into Gibraltar following the transition period.

For more information, refer to published guidance on our website.



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WHAT ABOUT LAW ENFORCEMENT PROCESSING?

The data protection regime set out in Part III of the Data Protection Act 2004 will still apply to competent authorities processing personal data for law enforcement purposes.

These rules derive from an EU directive but are now set out in Gibraltar law and will continue to apply after the end of the transition period (with some minor technical changes to reflect our status outside the EU).

For more information, refer to published guidance on our website.



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<https://www.gra.gi/gdpr-12-data-protection-and-brexit-for-law-enforcement-processing>



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WHAT DOES ADEQUACY MEAN?

The EU General Data Protection Regulation 2016/679 (the “GDPR”), primarily applies to data controllers and data processors in the European Economic Area (“EEA”).

Once the transition period ends, Gibraltar will become a “third country”. The GDPR restricts transfers of personal data to third countries, unless personal data is protected in another way or an exception applies.

Adequacy decisions from the EU Commission under both the GDPR and Law Enforcement Directive are being sought, which, if secured by the end of the transition period, will allow for the free flow of personal data to Gibraltar from the EU to continue uninterrupted.



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The EU Commission has the power to determine whether a third country has an adequate level of data protection. The effect of an adequacy decision is that personal data can be sent from an EEA state to a third country without any further safeguards being necessary under the GDPR.

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DO THE COMMUNICATIONS (PERSONAL DATA AND PRIVACY) REGULATIONS 2006 STILL APPLY?

Yes. The current rules which cover marketing and electronic communications derive from EU law but are set out in Gibraltar law. They will continue to apply at the end of the transition period. The EU is however replacing the law with a new e-privacy regulation.

The Information Commissioner will continue to monitor developments in this area and shall advise and engage with HM Government of Gibraltar in accordance with a policy of alignment with EU law and/or maintaining and developing high data protection standards.



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