



DEBATE PACK

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Exiting the European Union and data protection

Commons Chamber, Thursday 12 October 2017

A general debate on Exiting the European Union and data protection is scheduled for Thursday 12 October 2017.

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The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

1. Introduction

The EU data protection framework

The main piece of EU data protection law is the [1995 Data Protection Directive](#). The Directive was implemented into UK law by the *Data Protection Act 1998*. The 1998 Act provides the legal framework for data protection in the UK.

A [2008 Council Framework Decision](#) applies to the processing of personal data in police and judicial cooperation in criminal matters. This was transposed into UK law by the *Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014*.

The [EU's Charter of Fundamental Rights and Freedoms](#) is also now central to EU data protection law, with a number of cases relying on Charter Article 8 in preference to other EU data protection provisions.

Since 1995, digital technology has profoundly changed the way data is collected, accessed and used. In addition, Member States have implemented the 1995 rules differently, resulting in divergences in enforcement. In January 2012, the European Commission therefore proposed a new legislative framework for data protection. In its now finalised form, this has two elements:

- The [General Data Protection Regulation](#) ("GDPR")
- The [Police and Criminal Justice Directive](#) ("PCJ Directive", also known as the "Law Enforcement Directive")

The GDPR will apply in the UK from 25 May 2018.

The PCJ Directive must be transposed into national law by 6 May 2018.

Third countries

Under the EU's data protection framework, any country other than the EU and EEA Member States is classed as a "third country".

Personal data can only be transferred to a third country when an adequate level of protection is guaranteed. One option is for the European Commission to make an ["adequacy decision"](#) so that data can flow from EU/EEA Member States to third countries (or one or more specific sectors in those countries). Other options include [binding corporate rules](#) and [standard contractual clauses](#).

Data protection after Brexit

On leaving the EU and EEA, the UK would become a third country.

The Government has stressed that it wants to maintain the unhindered flow of data between the UK and the EU after Brexit. In a July 2017

[report](#), the Lords Select Committee on the European Union said it was “struck by the lack of detail on how the Government plans to deliver this outcome”. The Committee recommended that the Government should seek adequacy decisions as “the least burdensome and most comprehensive platform for sharing data with the EU” after Brexit. It warned of a “cliff-edge” if transitional arrangements did not allow for continuity of data sharing.

Some business leaders have also [expressed concern](#) at what will happen after Brexit.

In an August 2017 [position paper](#), the Government said that it “wanted to explore a UK-EU model for exchanging and protecting personal data that could build on the existing adequacy model.”

The [Data Protection Bill \[HL\] 2017-19](#) will bring the GDPR and PCJ Directive into UK law and, according to the Government, “ensure that the UK is prepared for the future after we have left the EU”.

However, the Government proposes to exclude the Charter of Fundamental Rights from ‘EU retained law’ after Brexit. Instead, underlying rights and principles will be carried forward and will be substitute reference points in pre-Brexit case-law referring to the Charter.

This raises a number of questions for data protection. For instance:

- How could EU data protection law be read so as to replace references to Article 8 of the Charter with references to other data protection law?
- How would the UK continue close cooperation with the EU on exchanging data, when compliance with the Charter is likely to be required in practice to ensure regulatory equivalence?

For further discussion of the above issues, see the Library’s Briefing Paper, [Brexit and data protection](#).

2. Press material and blogs

EU Law Analysis

[Brexit and data protection: the tale of the Data Protection Bill and UK-EU data transfers](#)

26 September 2017

Information Commissioner

[Statement on the Data Protection Bill](#)

14 September 2017

Open Rights Group

[Data Protection Bill must give privacy groups right to lodge complaints](#)

14 September 2017

City AM

[CBI warns of cliff edge for £240bn data economy](#)

13 September 2017

Labour Party

[Labour welcome that the Government have finally understood that our current data protection legislation needs updating](#)

7 August 2017

Liberal Democrats

[The Government is trying to claim credit for EU rules](#)

7 August 2017

Independent

[Brexit: business and security risks of leaving EU data sharing scheme 'not on Tories' radar', experts warn](#)

3 June 2017

3. Parliamentary Business

3.1 Debates

[UK and EU Relations](#)

HL Debate 12 September 2017 c2348-84

[European Union \(Withdrawal\) Bill](#)

HC Deb 11 September 2017 c476-7 [Extract]

Vicky Ford:

In last year's referendum I and many others warned of the risk of uncertainty. That risk has not gone away, but we can work together to reduce it, which is why the Bill is needed. Businesses need legal certainty to trade, create jobs and generate taxes, and the laws that govern our businesses are important. For the past 40 years or so, many of those laws have been agreed at European level. In my time in the European Parliament, I saw how those laws often cover important areas: consumer rights, copyright, product safety, even counterfeit medicines and data protection.

In my constituency of Chelmsford there are about 2,000 jobs in the insurance sector. The UK is home to the world's largest insurance market, and we provide insurance for airline crashes, cyber-attacks and even to clear up after the horrific hurricane that is raging across the Atlantic today. Our insurance companies can offset such risks by re-insuring with others in the industry, and the industry is governed by the European regulations. Our companies do not want to scrap their rulebook, and the Bill will enable those rules to be moved into UK law; it will help avoid a legal vacuum, which is important. Many laws cannot be directly copied across; technical changes are needed, and Ministers need the powers to make those technical decisions.

The Bill is not perfect; there are many areas where decisions are not technical and policy decisions will need to be made. In the insurance sector we see that the devil is in the detail. Article 16 of the insurance distribution directive says that European insurers can only redistribute their risk to others that are regulated in the EU. We cannot just cut and paste that into our rulebook, as it would cut us out of our own market. Dealing with such examples is not straightforward; policy decisions are needed, and they could affect real jobs. The companies concerned want to be consulted, as will regulators in other countries, and such decisions deserve proper scrutiny.

Other sectors also have concerns. The Bill exempts the charter of fundamental rights, but the tech sector points out that article 8 of the charter is crucial because it underpins data protection laws, which enable the free flow of data. TheCityUK asks what is happening to the level 2 decisions, which are important in implementing much of our

financial services law and many of which will arrive only after the date of exit. The consumer organisation Which? points out that EU directives provide not only consumer protection, but product standards and the networks for sharing information on things such as dangerous toys and dodgy electrical goods. What is to happen to those after Brexit?

It is important that stakeholders can raise their concerns, and significant decisions deserve to be properly debated. The statutory instrument mechanism does not give confidence to stakeholders or future trading partners that issues will be properly scrutinised. Some 3,500 statutory instruments are laid before this House every year, yet only eight have been annulled since world war two. The rest of the world is watching us. As a British Conservative, I have spent years working with Ministers, championing the cause of better regulation; we have told legislators all across the EU that before they change laws they should consult those who will be affected, address the impact and make sure that decisions are not just taken behind closed doors. Now is not the time to drop the ball on that at home, because if we are to get deep trading partnerships with Europe and other parts of the world, we need to retain their trust. Where decisions have an impact on other countries, our future trading partners need to know that we are open to listening to their suggestions.

[Digital Understanding](#)

HL Deb 7 September 2017 c2110-50

3.2 Parliamentary Questions

[Data Protection: EU Law](#)

Asked by: Jim Cunningham

To ask the Secretary of State for Digital, Culture, Media and Sport, what assessment her Department has made of the potential economic effect of the absence of a data adequacy agreement with the EU when the UK leaves the EU.

Answered by: Matt Hancock | Department for Digital, Culture, Media and Sport

As part of the Government's EU exit negotiations, we are committed to securing a deal on continued free flows of data between the EU and the UK, which provides for ongoing stability and certainty for both businesses, public authorities and individuals. The Government has recently published a paper outlining its vision for a future partnership on the exchange and protection of personal data with the EU. That paper can be found here:

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

11 September 2017 | Written question | 8887

[Data Protection: EU Law](#)

Asked by: Darren Jones

To ask the Secretary of State for Digital, Culture, Media and Sport, what assessment she has made of the potential effect of the UK operating only as a member of the WTO on the UK's preparations for complying with the General Data Protection Regulation; and what key differences exist between the (a) WTO rules in respect of the digital sector and (b) those rules that exist by being a member of the EU.

Answered by: Matt Hancock | Department for Digital, Culture, Media and Sport

The General Data Protection Regulation will apply to EU member states, including the UK, from 25 May 2018.

The Government is committed to ensuring the highest level of data protection for UK citizens now and in the future. To that end, the Data Protection Bill, as announced in the Queen's Speech, will be introduced to Parliament in due course.

19 July 2017 | Written question | 4230

4. Organisations and further reading

House of Commons Library

[Brexit and data protection](#), Commons Library Briefing Paper 07838, 10 October 2017

House of Lords European Union Committee

[Brexit: the EU data protection package](#), HL Paper 7, 18 July 2017

Government

Department for Digital, Culture, Media and Sport (DCMS):

- [Data Protection Bill \[HL\] 2017-19](#) and [Explanatory Notes](#) and [Impact Assessment](#)
- Press release on the Bill, [Data laws to be made fit for digital age](#), 14 September 2017
- [Factsheets](#) on the Bill
- [Statement of intent](#) on the Bill (August 2017)
- [Call for views on the General Data Protection Regulation derogations](#) (April 2017), [consultation webpage](#) and [responses](#) (July 2017)

Department for Exiting the European Union:

- [The exchange and protection of personal data: a future partnership paper](#), August 2017

European Commission

- [Position paper transmitted to EU27 on the Use of Data and Protection of Information Obtained or Processed before the Withdrawal Date](#), September 2017
- [Webpages on the reform of EU data protection rules](#)

Information Commissioner's Office

[Webpages](#) on data protection reform (include guidance and a "myth busting" blog on the GDPR)

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