

BREXIT IN BRIEF | DATA PROTECTION

At 11:00pm on 29th March 2019, the United Kingdom will leave the European Union unless the Article 50 period is extended, the United Kingdom revokes its Article 50 notice, or a withdrawal agreement is agreed and concluded between the United Kingdom and the European Union providing for a later withdrawal date. Below is a brief overview of the potential implications in respect of data protection within the United Kingdom and the European Union.

HOW MIGHT I BE AFFECTED?

- ❖ The EU General Data Protection Regulation (GDPR) is expected to be transposed into UK legislation on the day of Brexit which, in conjunction with the Data Protection Act 2018, will ensure that the UK's data protection laws are likely to match those of the EU for the immediate future. However, the government has suggested that Brexit will allow scrutiny and amendment of data protection law within the UK if required or desired.
- ❖ Post-Brexit, it is likely that the UK will require an adequacy finding to continue to freely transfer data outside of the UK within the EU as it will most likely be deemed a "third country" by the EU in respect of transfers of personal data. In the absence of an adequacy finding, UK businesses will likely be required to develop binding corporate rules or enter into model clauses to do business and transfer data within the EU which will create additional burdens on UK businesses transferring data.
- ❖ It is likely that the EU-US Privacy Shield and EU-US Umbrella Agreement (which facilitate transfers of data to and from the US) will cease to apply to the UK post-Brexit.

WHAT IF THERE IS NO DEAL?

- ❖ In the event of a no-deal Brexit, it is likely that the current data protection regulations will continue to apply (as above) but UK businesses are likely to face increased barriers and burdens in respect of the transfer of data outside of the UK pending agreements between the UK and other jurisdictions.

WHAT SHOULD I BE DOING?

- ❖ Review your data processes focussing on any transfers of data outside of the UK.
- ❖ Review your commercial contracts to ensure they provide for binding corporate rules and/or model clauses in the event the UK does not receive an adequacy finding.

If you would like further information or advice in respect of the potential implications of Brexit, please contact Piers Larbey at piers@fletcherday.co.uk or on 020 7870 3870.