

# Brexit and International Data Transfers

This frequently asked questions (FAQ) document is designed to address concerns from customers regarding VMware's data transfer strategy in light of Brexit, and specifically the use of binding corporate rules (BCRs) and standard contractual clauses (SCCs).

Further information about VMware's existing BCRs for Processors may be found in our [External FAQs on BCRs](#).

Q. How does Brexit affect data protection law?

A. Data protection law in the UK will remain substantially the same following Brexit. The GDPR has been incorporated into domestic legislation and continues to apply. The main differences concern international transfers from the EEA to the UK and BCRs, which is the focus of these FAQs.

Q. How does Brexit affect international data transfers from the European Economic Area (EEA) to the UK?

A. The EU-UK Trade and Cooperation Agreement (TCA) was reached on 24 December 2020 and applied from 1 January 2021. As part of the TCA, the EU agreed a six month extension period during which the UK is not considered a third country for data transfer purposes. This means that personal data can flow freely from the EEA to the UK as it currently does. The stated aim of the extension period is to allow the European Commission to assess the UK for 'adequacy' status. The EU commission has published written draft approval, which although it may be challenged, is expected to be granted within the extension period. If the UK is found to be adequate, there will be no restrictions of transfers of personal data and so no specific data transfer mechanism needs to be in place for the transfer of data from the EEA to the UK.

Q. How does Brexit affect VMware's existing BCRs?

A. VMware currently has BCRs in place to legitimise transfers of personal data of its customers from the EEA when it acts as their data processor (EU BCRs). These remain valid for all transfers from the EEA; further information can be found in our [External FAQs on BCRs](#). Following the end of the Brexit transition period, VMware is required to have a new set of BCRs to specifically legitimise transfers from the UK to non-EU/EEA jurisdictions (UK BCRs).

Q. Does VMware have UK BCRs in place?

A. The UK data protection regulator, the Information Commissioner's Office (ICO), has stated that UK BCRs must be in place by 30 June 2021. VMware is currently working towards implementing UK BCRs far ahead of the deadline. VMware has communicated to the ICO that it is drafting UK BCRs and will submit its updated application and supporting documentation shortly. Once VMware's application has been submitted, the ICO is obliged under the TCA to respond to the application "without undue delay".

Q. What will be the difference between the EU BCRs and UK BCRs?

A. The UK BCRs will be largely identical to the EU BCRs. VMware's substantive obligations and the level of protection that it provides to personal data of its customers will not change.

The UK BCRs will be necessarily different to recognise the fact that the UK is no longer in the EEA. In practice, the principal changes involve updating references to "the EEA" to refer to "the UK" and references to "a supervisory authority" to refer to "the ICO". Further, under VMware's UK BCRs, the data controller will be VMware UK Limited, (a UK-based entity), rather than VMware International Unlimited Company (an Irish-based entity), which is the data controller under VMware's existing EU BCRs.

Q. What if approval for the UK BCRs is not given?

A. VMware is in a position to adhere to all of the ICO's requirements. The conditions of the UK's six month extension period under the TCA include a stipulation that it will not digress from the provisions of the GDPR. As a result, VMware is not expecting the ICO to demand any substantive changes in its UK BCRs. Further, VMware's EU BCRs were recently updated and approved by its lead data protection regulator in December 2020 so the minor changes required are being made to a state of the art set of documents.

In light of this, VMware is not expecting to have any difficulty in securing approval for its UK BCRs from the ICO. VMware has a large privacy team and is well placed to deal with any issues that may arise.

Q.Are Standard Contractual Clauses (SCCs) for UK customers needed whilst VMware awaits approval for its UK BCRs?

A. The ICO has not directly instructed EU BCR holders to execute SCCs with all UK customers in the meantime, however they have since issued an indirect reminder for valid transfer mechanisms to be in place. This requirement is being monitored closely and kept under regular review

VMware acted as soon as it was notified by the ICO and it is currently prioritising BCR updates to submit its application as quickly as possible. VMware is in regular contact with the ICO regarding its application and intends to submit its application in April 2021, far in advance of the ICO's June 2021 deadline.

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