

GDPR vs GDP

An update on GDPR 2022

Mark Phillips, Information Security at GIDE UK

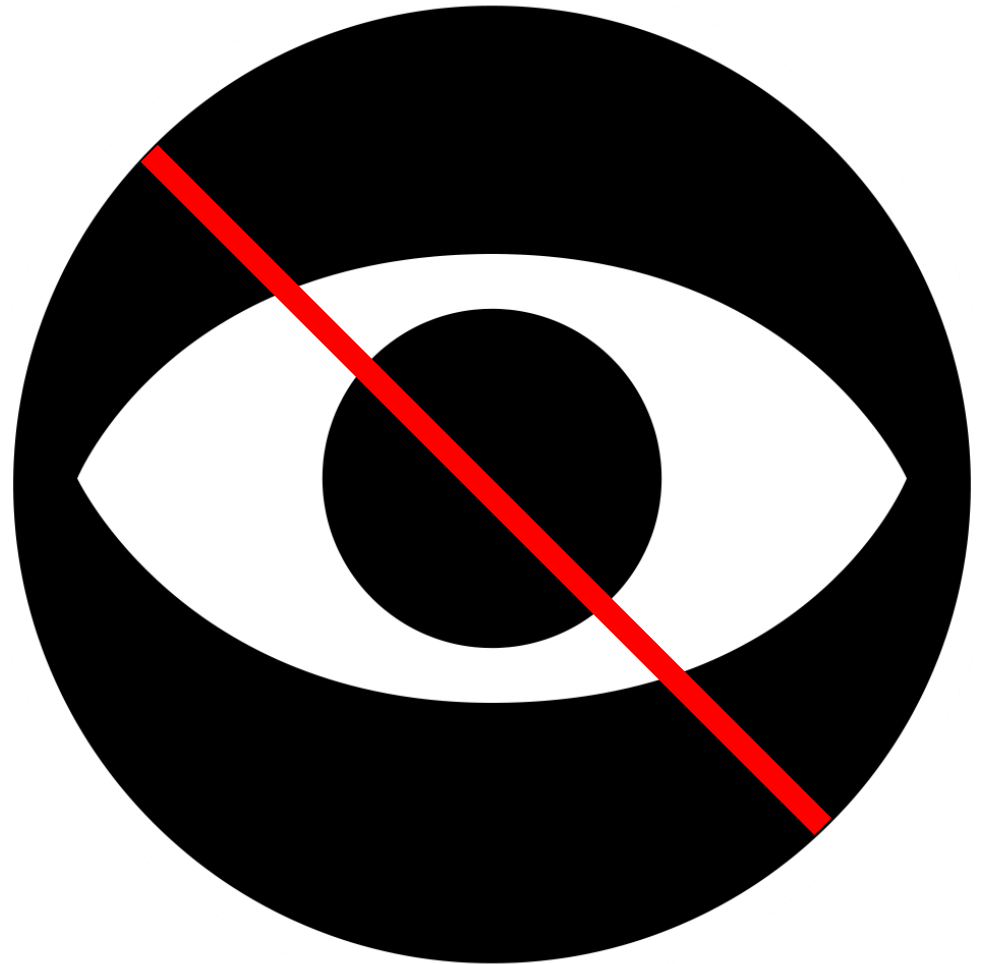
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Core principal

“The protection of natural persons in relation to the processing of personal data is a fundamental right.”

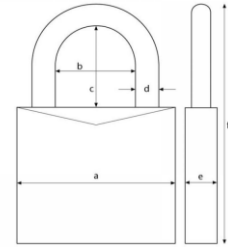
The sanctity of our personal information is fundamental among the rights of human beings and is crystallised as such in the General Data Protection Regulation (GDPR)



So where are we, right
now?



We know three things...

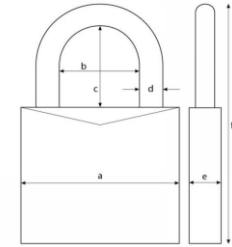


- The EU has agreed that the [UK data protection regime is 'adequate'](#), i.e. sufficiently aligned with that of the EU. However...
- Soon the ICO will issue new statutory requirements governing UK data transfers to 'third countries'.
- The UK Government appear eager to liberalise our data regime to the extent that it will probably diverge from the EU GDPR

How did we get here?

A brief timeline

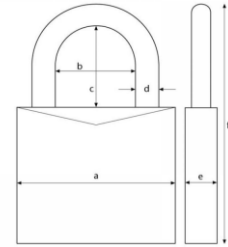
30th January 2020



UK deemed the EEA and other third countries ‘adequate’
This allows the ongoing transfer of data **FROM the UK** to those countries, which include:

- The 27 EU member states
- The EFTA states (Iceland, Norway and Liechtenstein)
- Adequate ‘third countries’ (Gibraltar, Andorra, Argentina, Faroe Islands, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay.
- Japanese private sector organisations and Canadian organisations covered by PIPEDA.

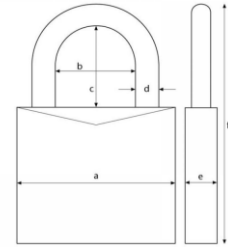
Jan 31st 2020 – June 30th 2021



Post-Brexit (Jan 31st 2020) the UK became a ‘third country’, de-coupled from [EU GDPR](#).

- Bridging arrangements were put in place, designed to smooth the transition to the new UK data protection regime enshrined in the DPA 2018 and [‘UK GDPR’](#)
- Began with the ‘transition period’ to Dec 31st 2020, during which, under the terms of the Withdrawal Agreement, data transfers were unchanged.
- Data transfers were then granted an additional 6 months of stasis, to 31/06/2021.

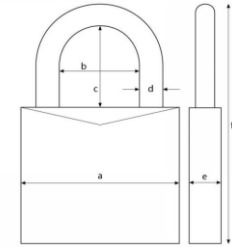
27th June 2021



On 27th June 2021 the EU published its new [Standard Contractual Clauses](#) (SCCs) governing the transfer of personal data from the EU to third countries – a.k.a. ‘restricted transfers’.

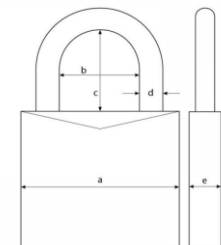
DON'T PANIC!

28th June 2021



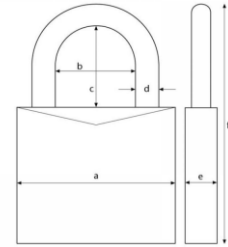
- On 28th June 2021 the [EU approved 2 adequacy agreements](#) recognising the UK data protection regime as sufficiently aligned with that of the EU to protect citizens' data and privacy
- Both decisions are will be reviewed after four years.
- This means that data can also continue to flow **TO the UK** from our list of EEA countries and from the additional 'adequate' third countries ([after some 'due diligence' being undertaken by the ICO - see final section](#)).
- Essentially, little has changed in terms of data flows

One caveat



- If you are based in the UK and do not have a formal presence in any other EU or EEA state, but you:
 - offer goods or services to individuals in the EEA and/or
 - monitor the behaviour of individuals in the EEA,
- then you still need to comply with the EU GDPR regarding this processing and [must appoint a representative in the EEA](#) so as to deal with EEA data subjects and/or authorities.

Beyond adequacy

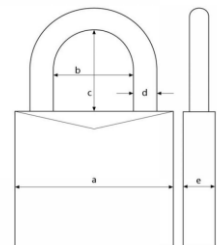


Transfers to third countries *beyond* the adequacy arrangements we've discussed – including to, for example, the USA – are called 'restricted transfers'.

They must be subject to ***additional measures*** (e.g. Standard Contractual Clauses) to assure that the protection afforded in their country of origin remains intact in the 'Third Country'

The measures must be risk assessed ('[transfer risk assessment](#)') to assure their effectiveness.

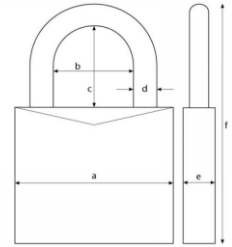
Additional measures



The most common ‘additional measure’ in the UK remains the use of the 2010 EU-approved ‘Standard Contractual Clauses’

(There are a range of other measures available for more sensitive data)

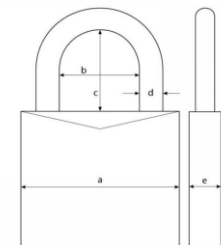
27th June 2021



“On 27th June 2021 the EU published new Standard Contractual Clauses (SCCs) governing the transfer of personal data from the EU to third countries – a.k.a. ‘restricted transfers’.”

STILL DON'T PANIC!

Hurrah for SCCs!



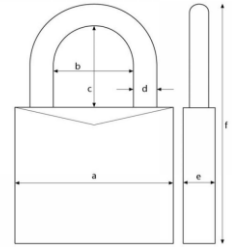
From the ICO – and current right now:

- 1) “EU SCCs entered into prior to the end of the (Brexit) transitional period continue to be valid for restricted transfers under the UK regime.
- 2) “For new restricted transfers, you can continue to use the EU SCCs (which were valid at the end of the transitional period).”

N.B. While using these pre-existing SCCs **verbatim** is fine, the ICO have created two helpful templates that put the EU texts into a UK context.

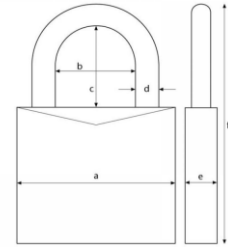
They come in two different flavours: [Controller to Controller](#) and [Controller to Processor](#), and are ready to use in these formats.

A good example, for now...



The SRA's consideration of their transfer of member data to a US processor for administrative purposes is a textbook case. For now it's OK precisely as it is, but some form of change must be expected. Let's look at how will this happen...

August 11th 2021



The [ICO launched a consultation](#) which proposed

- terminating use of the (current, temporary) 2001, 2004 and 2010 SCCs;
- introducing a new, UK-specific [International Data Transfer Agreement](#);
- the requirement for an accompanying [Transfer Risk Assessment](#); and
- changing existing U.K. guidance on data transfers, based on a range of interpretations of Article 3 and Chapter 5 of UK GDPR*.

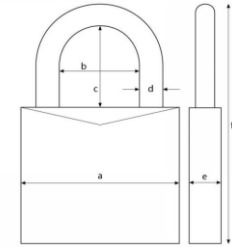
It also asked whether it would be helpful to draft and approve an addendum to the **new** EU standard contractual clauses so they could be used for transfers of personal data from the U.K to third countries.**

The consultation has concluded and the ICO is, presumably, processing the results.

* Article 3 covers territorial scope. Chapter 5 covers Third Countries

** This may mean either a choice between the IDTA and new SCC addendum, or that both will emerge as vehicles for validating restricted transfers, depending on circumstance

September 27th 2021



The EU operationalised its new Standard Contractual Clauses

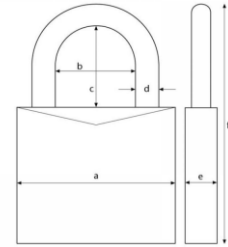
EU organisations will be changing the terms of their restricted transfers, but nothing much has changed in the UK pending the ICO's introduction of either or both of the IDTA and SCC addendum.

And now...

The spooky parallel timeline



9th September 2020



The government launched its [National Data Strategy](#), in which Oliver Dowden (then DCMS SoS) said:

“This strategy looks at how we can leverage existing UK strengths to boost the better use of data.

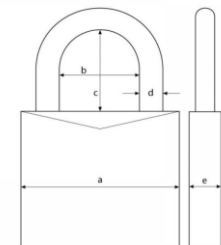
“Having left the European Union, we will take advantage of being an **independent, sovereign nation** to maximise those strengths domestically, and position ourselves internationally to influence the global approach to data sharing and use”.

NDS Objectives:

- Boosting productivity and trade
- Supporting new businesses and jobs
- Increasing the speed, efficiency and scope of scientific research*
- Driving better delivery of policy and public services
- Creating a fairer society for all

*See also Pulse '[The Government's failed data grab](#)'

The bottom line



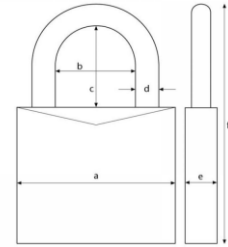
Oliver Dowden also said:

“The freedom to chart (our) own course could lead to an end to irritating cookie popups and **consent requests...**”

“Now that we have left the EU I’m determined to seize the opportunity by developing a world-leading data policy that will deliver **a Brexit dividend** for individuals and businesses across the UK.”

Countries proposed by HMG for priority UK adequacy agreements include: Australia, Brazil, Colombia, The Dubai International Finance Centre, India, Indonesia, Kenya, The Republic of Korea, Singapore and the USA.

10th September 2021

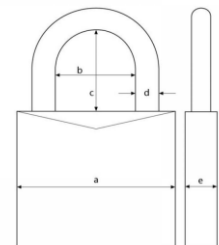


HMG launched their “[Data: A New Direction](#)” data reform consultation, with a view to further liberalising the UK GDPR by:

- easing or modifying some of the clauses
- consolidating some of the recitals (‘scenarios’) into law ‘for clarity’
- ‘reducing barriers and burdens’

A key statement is “The government recognises that different jurisdictions operate different data protection regimes, which reflect the specific values and priorities of their societies.”

GDPR...or GDP

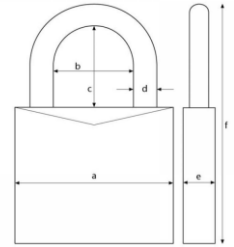


From the consultation:

“Our initial economic analysis shows that our reform package will have a net direct monetised benefit of £1.04 billion over 10 years...

“...even after accounting for potential costs incurred through any future changes to the UK’s EU adequacy decisions.”

Administrative Data Research UK response

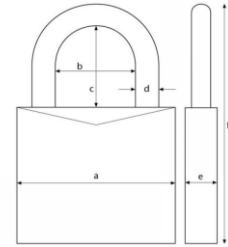


ADR UK is an ESRC programme funded ‘...to transform the way researchers access the UK’s wealth of public sector data to enable better informed policy decisions that improve people’s lives.’ They said:

“Given the importance of data protection to all of us, it is critical that the Government clearly and unambiguously sets out how its proposals would deliver for people, not just for businesses and society as a whole ([full response here](#)).

Many other responses are [available from Google](#). They vary from the mildly supportive (e.g. [TechUK](#)) to the fiercely critical (e.g. [OpenRightsGroup](#)).

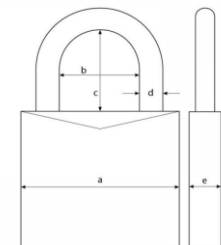
My view



1) The realisation of the proposals of the National Data Strategy will very likely move UK GDPR away from EU GDPR and may call into question our future adequacy.

2) We should very carefully watch the future [constituency and constitution of the ICO](#): its present impartiality in committing to a data strategy that works for the nation, its citizens and business will come under duress.

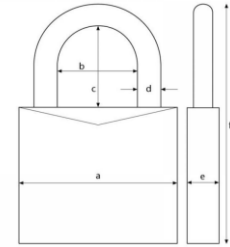
To conclude:



“A final comment on the government’s aspiration to have a bonfire of regulations is that companies with a trading footprint across the globe will also, if the UK develops different standards, be required to meet EU standards in any event, thereby increasing the burden, not reducing it.”

[David McIntosh, Prospect Law.](#)

BREAKING NEWS...



On the evening before this presentation, the ICO quietly [issued a statement](#) that the DCMS had laid the “International data transfer agreement (IDTA), addendum and provisions” – as discussed in the presentation – before parliament.

[The ICO also says](#) “If no objections are raised, **they come into force on 21 March 2022**”.

As predicted in the presentation, data exporters **will be able to use the IDTA or the Addendum** as a transfer tool to comply with Article 46 of the UK GDPR when making restricted transfers.

About GIDE

For over 25 years we've worked with government, LAs and some of the largest social and market research organisations. We've securely delivered tens of thousands of data collection and reporting projects, from very small to some of the largest and most complex around.

Perhaps you've heard of the School Performance Tables? Or the national Pupil Eligibility Checking service? Or maybe the UK Resilience Capability Survey? Yes, we did those.

Government trusts us. Industry trusts us.

You can trust us too.

If you'd like to discuss your project with us contact robert@gide.net

If you have any questions about GDPR contact mark.phillips@gide.net

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