

# BREXIT SURVIVAL GUIDE

**ADVERTISING  
ASSOCIATION**



**The UK is at a high risk of exiting the European Union on October 31st without a deal. No matter on which side of the debate your opinion lays, the UK's exit from the EU - with or without a deal - will have implications on businesses operating in the advertising industry, and with that in mind the UK's Advertising Association is urging businesses to get ready sooner rather than later.**

The industry association, whose purpose it is to promote the role, rights and responsibilities of the UK's adland - an industry worth £24 billion and employing more than 350,000 - has outlined four key areas of Brexit that any UK advertising and marketing services companies should be most aware of. These are the EU settlement scheme; EU, EEA and Swiss citizens staying longer than three months; data; and temporary exports. And these are what we'll be looking at on LBB. However, it's important to remember that every business model is different and you should make sure to check if you are affected in other ways as well.

## GETTING TO GRIPS WITH THE EU SETTLEMENT SCHEME

The EU settlement scheme has been open to the public since March 30th 2019 - when the UK was originally scheduled to leave the EU before two extensions were put in place. The idea behind the scheme is to allow EU citizens that are already living and working in the UK to stay in the country post-Brexit. EU, other EEA and Swiss citizens can apply by 30th June 2021 if the UK leaves the EU with a deal, or by December 31st 2020 if the UK leaves without a deal.

“The single most important preparation that a business can make is to ensure that it engages its EU staff early on and reassure them that there is a route to stay beyond Brexit,” says Konrad Shek, strategic policy adviser at the Advertising Association. This is especially true given the uncertainty over whether freedom of movement will end if the UK exits the EU without a deal.

Konrad also notes that, while the EU Settlement Scheme focuses more on the employee than the employer, there are some ways that businesses can help more directly than just offering encouragement to apply. “There is a lot of information and guidance on the GOV.UK website about the criteria for application,” he says, “but sometimes employers can show that they are concerned for their EU staff’s welfare and signpost them to the correct information.”

Completing the application has been made as simple as possible for people affected. The three key steps needed to be completed are proving their identity, showing that they live in the UK, and declaring any criminal convictions.

There have been critical reports of the scheme claiming that it is only available via an app that’s exclusively available on Android. This isn’t true. The Identity Document Check App is only available on Android but applying in this way is entirely optional - it’s just one of several ways people can verify their identity, including by post.

There are over 80 locations where applicants can have their passport scanned and verified across the UK. Assisted digital support is available at over 300 locations, supplemented by a network of over 65 tutors who provide in-home support, and there is also a dedicated telephone advice and support service for the Scheme.

During public testing of the EU Settlement Scheme 95% of applicants successfully used the app to prove their identity remotely, removing the need for them to submit their identity document to the Home Office for manual verification.

Currently, Apple iPhone users are not able to use their device to self-verify their identity using the App because it is the present policy of Apple not to allow any third-party access to the iPhone 'ID chip'. [However, the home secretary has confirmed that the App will be available on Apple devices later this year.](#)

Should you or any of your employees run into any issues during the settlement application, the Advertising Association suggests that you visit the [GOV.UK website](#) on the EUSS or ring the dedicated telephone advice service - dubbed the [EU Settlement Resolution Centre](#) - on 0300 123 7379 for more information.

Further information is available at the Advertising Association website – a special Brexit section can be visited [here](#).

# UNDERSTANDING EUROPEAN TEMPORARY LEAVE TO REMAIN

**While the risk of the UK leaving the European Union without a deal remains high, businesses are being encouraged to get to grips with measures the government has put in place to manage the impact.**

One such measure is the European Temporary Leave to Remain (ETLR). Under the event of a no-deal Brexit, the UK government has committed to ending Freedom of Movement. The impact of this will be that citizens from the EU, EEA and Switzerland will still be permitted to enter the UK VISA-free, but only for stays of up to three months. Anyone looking to stay in the country longer (but who hasn't been granted Settled Status, will need to apply for ETLR.

The government anticipates that whilst the process of applying to ETLR should take no longer than five days, businesses should not delay in beginning the process when the scheme opens.

If they're successful, they can then remain in the UK for a further 36 months. After that 36 month period, the government plans to have a new system in place. The specifics of that system remain unclear, however Konrad explains that the government "is consulting on an Australian-style points system".

If an application for the ETLR is unsuccessful, Konrad explains that "you may be able to have the decision reviewed and this will be clarified in the letter that you receive upon rejection, with further information given on what to do next. The Government also provided information on how to apply for an administrative review of an application". You can read this information [here](#).

Irish citizens do not need to apply for ETLR. The Common Travel Area Arrangements that are already in place between Ireland and the UK will continue even in the event of a no-deal Brexit.

Post no-deal Brexit, an employee who successfully applies for ETLR may also want to bring their family with them into the country. In this situation, family members will need to apply separately for ETLR and there is no way that the government can guarantee a successful application.

Applications for ETLR will open only after the UK leaves the EU without a deal. Until then, says Konrad, "EU Settlement Scheme is the only option available to individuals who want

to apply, and we would encourage companies to begin the process of applications as soon as possible". The deadline for applications for the Settled Status is December 31st 2020.

Should you or any of your employees run into any issues during the application, the Advertising Association suggests that you visit the [GOV.UK website](#) or ring the dedicated telephone advice service - dubbed the [EU Settlement Resolution Centre](#) - on 0300 123 7379 for more information.

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# YOUR POST-BREXIT DATA CHEAT SHEET

**As anyone who has wrestled with implementing GDPR in May 2018 will know, the European Union has a particularly stringent take on how businesses should handle personal data. So, will Brexit mean that British businesses can breathe a sigh and go back to their devil-may-care ways? Or will GDPR compliance mean that your company is all ready to work with EU clients without feeling the effect of Brexit?**

No - on both counts. To make sure that your business's data practice is fully ready for Brexit you'll need to make sure that your business still abides by both the EU's General Data Protection Regulations (GDPR) and the UK's Data Protection Act 2018 (DPA 2018) – and you may need to put extra measures in place too.

If the UK leaves the EU on October 31st, it will no longer be automatically considered 'data adequate' by the EU. This has implications for the 'flow' of personal data between the European Economic Area (EEA) and the UK. The UK has already said that it will allow personal data to flow to the EU – but the EU has, as yet, not made a similar commitment around EU personal data flowing to the UK.

So. What does all of this mean for your business? Here are the tools and rules you need to check out to make sure you face as little data disruption as possible.

## 1. Sorry, There's No Avoiding It

You don't have to be a digital agency handling terabytes of consumers' personal info - issues around data compliance impact all businesses. According to the Information Commissioner's Office (ICO) personal data is: "information that relates to an individual. That individual must be identified or identifiable either directly or indirectly from one or more identifiers or from factors specific to the individual."

So not just mailing lists and research, but employee information too. That means it's an issue that doesn't just apply to digital agencies processing huge swathes of info. "If there is any transfer of personal data, regardless if it be a small volume or large volume, it is subject to GDPR," says Konrad Shek, strategic policy adviser.

## 2. ... But There Are Work Arouds

The EU may not have decreed the UK data adequate but that doesn't mean that your data flow needs to grind to a halt. There are certain recognised safeguards that you can adopt –

the most pertinent being [Standard Contractual Clauses \(SCCs\)](#).

“They are invaluable and we recommend looking closely at the guidance on the ICO website,” says Konrad Shek.

Don't let the legalese put you off, these are seriously handy. A set of standard contractual terms that can be incorporated into wider contracts that cover the terms of business. Even better, if you're a small or medium sized organisation, the ICO ([ico.org.uk](http://ico.org.uk)) has created a tool on their website that help you figure out if SCCs are right for you – and templates to help you generate your own SCCs. Remember, while you can incorporate an SCC into a contract do not alter or modify it because that will render it no longer effective.

If you're a multinational company with offices in the UK and EEA countries and you want to share data, you'll need to put 'Binding Corporate Rules' in place. You can find out more about them [here](#).

When it comes to data transferred between the EU and the US, the US has established the US Privacy Shield framework. If you send data to a US Privacy Shield organisation, the Privacy Shield participant will need to update their public commitment to specifically reference the UK, in addition to the EU. There is further information on the US government's [Privacy Shield website](#).

In addition, the [ICO has published guidance for organisations about international data transfers](#).

### 3. You Might Need Data Representatives

If your business is UK-based and is involved in the transfer of personal data from the EEA but does not have an office in any other EU country will need to appoint a data representative in the main country in which they are transferring data from. This is for local data protection authorities to liaise with in the event of a data breach.

Your data representative may be an individual, or a company or organisation established in the EEA, and must be able to represent you in respect of your obligations under the EU GDPR (it could, for example, be a law firm, consultancy or private company). In practice the easiest way to appoint a representative may be under a simple service contract.

Equally any non-UK business that's handling UK personal data on a large scale will need to [appoint their own data representative based in the UK](#).



#### 4. One Stop Shop?

UK businesses processing personal data of customers and clients in other EEA countries have, to date, been able to use the UK's ICO as a 'one stop shop' point of contact as their lead Data Protection Authority. Depending on the set up of your operations, you might not be able to continue to rely solely on the ICO in this way after Brexit. So head to the ICO website and review your operations to establish what steps your specific business needs to take. There's a full run down [here](#).

#### 5. Support and Useful Links

Regularly check the [GOV.UK website](#) for updates. The ICO has a [page dedicated to Brexit](#) that covers the implications for data protection and data transfers in more detail and its [SCC tool](#) provides template contracts. If you need more information about your obligations and what you need to do to comply, we recommend seeking legal advice.

In the meantime, please visit [adassoc.org.uk/policy-areas-category/brexit/](https://adassoc.org.uk/policy-areas-category/brexit/) for more information.

## YOUR GUIDE TO TEMPORARY EXPORTS AFTER A NO-DEAL BREXIT

**Amid continuing uncertainty over the UK's withdrawal from the European Union, many British companies in advertising will be anxious to understand how border controls will work post-Brexit. Under "temporary export" rules, transporting expensive equipment over the border between the UK and the EU could well pose difficulties.**

This will be a particular concern for advertising production, as transporting high value equipment for filming is considered a temporary export. At the moment there is no restriction on the temporary export of goods within the EU, unless it belongs to a controlled or sensitive category group (for example weapons or drugs). But after the UK leaves the EU, this may no longer be the case.

Companies should assess what they have planned around the time of the UK's proposed exit from the EU and prepare for an abrupt change in how temporary exports work. Konrad Shek, strategic policy advisor for the Advertising Association says companies should ensure they "plan ahead and review contingencies. You may want to review activities planned on and around November 1st."

Without a deal all temporary export rules with the EU will revert to the way countries outside of the EU interact with member states. "The UK will be like a third country like the rest of the world," says Konrad.

One option is going through each country's individual customs procedures, which may mean applying for a temporary import bond to avoid having to pay import taxes.

But the more straightforward route for a company to temporarily export goods to the EU is through applying for an [ATA Carnet](#). These documents can be used in 78 countries (), including all EU and EEA member states.

An ATA Carnet allows movement of the goods shown on the Carnet as many times as required within a 12-month period to any destination applied for.

There is a caveat though: each country has its own rules about what goods you can bring in with an ATA Carnet so you will still need to check with the issuer in the country you're exporting to.

You can apply for an ATA Carnet either online or by post and if you're using a freight forwarder, they will usually fill this in for you. They are issued by Chambers of Commerce similar issuing associations that are approved by the customs authorities in the country where they operate.

In the UK ATA carnets for goods to be temporarily exported from the UK can be bought from the [London Chamber of Commerce and Industry](#) and its offices around the country.

The same will likely apply for imports from the EU to the UK. Companies that plan to bring equipment or goods to the UK may need to apply for an ATA Carnet from the country they're exporting from.

Should you have any queries about how temporary exports will work after a no-deal Brexit, the Advertising Association advises that you regularly check the GOV.UK website for updates. If you need more information about your obligations and what you need to do to comply, the Association recommends seeking legal advice.

Further information is available at the Advertising Association website – a special Brexit section can be visited [here](#).

If any UK business is looking to increase its trading with international territories via export of advertising services, you can learn more about the Advertising Association's new UK Advertising Export Group [here](#).

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