

# READY FOR THE FUTURE ISSUE 3

“33% of businesses we surveyed want to explore new markets beyond the EU.\*”

A PASSION  
FOR PEOPLE

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S O L I C I T O R S

# - what does it mean for your employee data?

On 25 May 2018 the General Data Protection Regulation (GDPR) comes into force and applies to any entity that handles personal data on EU citizens, including employee data. As the UK will soon introduce a new Data Protection Act which echoes the GDPR, Brexit will not mean your organisation should ignore the GDPR. Given the breadth of personal employee data which HR departments handle, it is imperative to get it right.

Rather than view GDPR as yet another legislative hoop to jump through, HR departments should use it as an opportunity to revisit existing data policies and procedures to check that they are fit for purpose.

## 1 Know your data

The starting point for GDPR compliance is knowing what data your organisation holds. Undertaking a data audit and mapping data flows across your organisation will not only help to increase awareness of where and how employee details are held, it could identify a more effective way of processing it. Remember to include contractors and agency staff - for example, you may need to consider how you receive and store CVs.

## 2 Do you know what data you currently retain and for how long?

The HR team should consider carefully how long it needs to retain any data - for example, are historic HR records for former employees needed for legal reasons? If data is no longer needed, it must be securely destroyed. Employers who have a high volume of seasonal employees, who they contact when needed, may need to consider how they retain this data.

## 3 Don't just rely on consent as the legal basis for processing employee data

Under GDPR, while consent is still a legal basis for processing data, the thrust of the new regime is that consent should not necessarily be the first option. Within an employment law context, it would be more appropriate to rely on other lawful purposes for processing, such as it being necessary for the performance of the employment contract, or necessary for the purposes of the organisation's legitimate interests - these do not override the freedoms of the data subject. For example, the employee's rights would not be overridden by payroll being processed by a third party.

## 4 Update your privacy notice

To ensure GDPR compliance, an organisation should have a clearly worded data protection and privacy notice. This enables people to understand the personal data (information) held about employees, workers and job applicants as well as:

- How data will be collected and stored
- How the organisation will use the data and if information is to be shared during employment and after the employment ends
- How long the information will be held for
- The rights of data subjects (see below)
- Details of the right to complain to the regulator (the ICO).

## 5 Understand data subject rights

An employee (or data subject) has nine rights under the GDPR, including the right to access the data held by the organisation and to ascertain who this information is shared with. HR departments should prepare for being able to respond to such requests without undue delay, and within the new 30 day period, although this period maybe be extended for a further two months where providing a response is particularly complex.

Ensuring data is kept up to date in the case of a subject access request will be critical, particularly for those employers who outsource some services or enable employees to update personal data remotely.

The new regulations also give employees the right to have incorrect or irrelevant data deleted and errors corrected. When they leave they can request to be 'forgotten' officially, although there may still be data which the former employer is permitted to retain (for example, to defend any legal proceedings).

## 6 Do you share employees' data with a third party?

Many smaller organisations outsource payroll and most will share employee data with a pensions or other benefit provider. Do you know how they are handling your employees' data - is it transferred securely? Under GDPR it would be prudent to review the contracts that you have in place and ensure that your employees also know how and why you share their data with the third party. Such contracts should be carefully reviewed, as third party data processors may seek to impose unreasonable conditions on the employer or limit their own liability.

If you want to know what your business needs to do now:



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For small and micro businesses, our sister company Eagle HR knows what you should do.

# Your journey to compliance



## 1. Lack of knowledge

The GDPR is a huge piece of legislation and it can be difficult to know where to start. Clients have found that our 'Introduction to GDPR' sessions have helped them to begin their compliance journey, with bite-sized presentations demystifying some of the key principles of the GDPR, including the new rules around consent, establishing a lawful basis for processing data and the rights of data subjects.

## 2. Awareness of issues

We like to work face to face with clients to get a really good understanding of how GDPR affects them. A starting point is often meeting clients in their offices, or via Skype, and examining their data collection process in detail. This allows us to help clients with their crucial data mapping exercise, and they can ask us questions to improve their knowledge and practice.

## 3. How does this affect me?

We help clients with data mapping to assess what data they collect, how they collect it, and how they process it. Our in-depth, report based on the results, sets out exactly what they need to do in order to comply with GDPR. It is impossible to do everything at once, so we always work with our clients to identify the priority action points and develop a manageable timetable to achieving compliance.

## 4. Ready to act

We recently helped a large recruitment agency to ensure that its data collection mechanisms for candidates were compliant. One of the trickiest aspects was assessing how the agency could continue to use pre-existing data that it had held for a number of years. To help our client implement organisational and technical change, we prepared an in-depth guidance document detailing exactly what they could and couldn't do with that data, and suggestions for how they might incorporate GDPR-compliant processing into their day to day business.

## 5. Long term change

We act for a software house who provide software as a service to a range of clients from start-ups to multinational corporations. Increasingly our client has been asked to sign their customer's own GDPR data processing clauses - these terms are often unbalanced and ask for unlimited liability.

To avoid having to accept overly onerous, often irrelevant, standard GDPR terms from their customers, our client wanted something that they could propose, on their own terms, which actually reflected the way they provided services (and processed data).

We drafted a set of balanced plain English GDPR-compliant clauses, supported by a covering note explaining the commerciality and practicality of the terms. We drafted the terms so that they could be used either to vary terms with existing customers, or as standard terms for new customers. To find out how we can help:



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## What's your passion?

By Richard Morgan  
(Partner) - defence and security expert

Six years ago I was asked to establish our Hereford office and very quickly realised that this was a defence and security hub. I was excited by the opportunities for our clients and the need for them to be introduced to one another, so I began to act as a facilitator and developed the Herefordshire Defence & Security Group.

This culminated in the hugely successful inaugural 2017 Defence and Security Expo held in Hereford. I'm incredibly proud of the local companies we have in this region who are able to work internationally and help to pull the spotlight to the Midlands.

I was delighted for the team and for the businesses who have developed core cutting edge technologies in the region, when HCR were asked to support and host 3CDSE in 2018 - it will be five times larger than last year and is being held at the Three Counties Showground in May.



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“ 33% ”

of HR leaders are concerned about data privacy and GDPR.\*\* 99

Read 'GDPR - what does it mean for your employee data?' to find out more.

# Impact of BREXIT on the health and social care sector

The provision of health and social care is a subject that is relevant to us all – we have heard that staff shortages result in operations being cancelled or that there are inadequate cover levels in nursing homes.

Most NHS staff in England are British – but around 139,000 of 1.2 million staff report themselves to be non-British. Of these, around 62,000 are nationals of other EU countries. Since Brexit, the health and social care sector has been significantly affected by the uncertainty for EU employees.

The EU's free movement policy led to large increases in European staff in the NHS, the number of Portuguese nurses rose from 210 to 3,388 and Spanish nurses from 406 to 4,107. Both these nationalities saw a reduction in numbers after Brexit. Our infographic illustrates some of the pre and post Brexit figures.

The solution to staff shortages seems relatively simple: immigration restrictions on low paid workers in the health sector could be relaxed after Brexit. The Government is responding to the recruitment and retention challenge so that by increasing the number of nurses in training the UK will be able to meet any potential shortfall in staffing levels.

The impact of tightening immigration rules is not limited to the NHS; around a fifth of care-workers currently employed in UK care homes were born outside the UK.

## What can employers do?

EU nationals will need to understand the impact of Brexit on their immigration status, and employers who rely on EU nationals will need to review and protect the stability of their business.

To do this employers would be well advised to consider supporting and encouraging early applications for permanent residence from those employees who

qualify, because Home Office queues are getting longer by the day. If employers are unable to retain their foreign employees, their only other option is to find creative ways to attract UK workers into the health and social care sector by offering training, career progression, or re-skilling existing staff. These measures may also help retain workers in a sector already struggling with funding cuts and tight margins.

## Is there anything else to consider?

Recruitment and retention appear to be the immediate issues for the health and social care sector, but the impact of Brexit will be much broader. For example, how will we continue to access treatment in EU countries when we go on holiday after Brexit is one area that will affect many of us – currently we just need to have an up-to-date European Health Insurance Card.

Regulation is another area where the impact of Brexit will feel very real. At the moment the EU countries have a harmonized regulatory regime for medicines; this could well change once we leave the EU and we may end up with a separate vetting procedure for EU-sourced drugs.

In many important areas, the Government will need to clarify whether its intention is to repeal EU regulations and replace them with UK-drafted alternatives or to continue to abide by them. To find out more:



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## Getting ready for the future



By coming to an event hosted by our sector experts

- Three Counties Defence and Security Expo 2018 (3CDSE) – this year, our theme is innovation, with a focus on cyber-security, hardware and vehicles, UAV and counter-UAV technology, communications and military procurement. The event is unique amongst defence and security expos, in that it offers business to business networking with key decision-makers. This event includes a day-long programme of expert speakers, workshops and a major exhibition. Find out more at <https://www.3cdse.co.uk/>
- Employment law and Brexit – do you know what your responsibilities are as an employer? Find out what you need to know at our breakfast briefings at <http://bit.ly/R2WChelt>

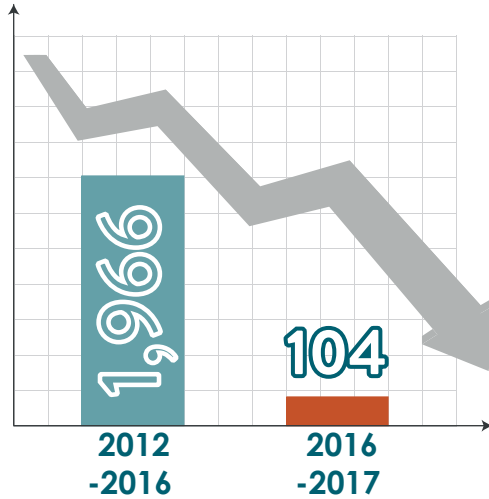
# Health and Social



Care



In adult social care,  
**90,000**  
of the 1.3m workers  
came from elsewhere  
in EU.



An average of 1,966 nurses and midwives from Spain registered to work for the NHS in the UK, every year between 2012 and 2016. That number fell by

**95%**

to just 104 people between October 2016 and September 2017.

**69%**

The rise in the number of EU nationals leaving nursing jobs in Britain since Brexit.



Approx 60,000 of the 1.2m NHS workforce are from EU countries [10,000 doctors, 20,000 nurses and health visitors].



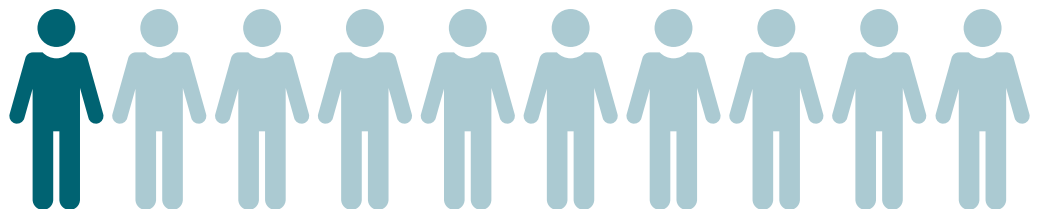
Currently 52,000 nurses are in training to meet the skills gap – this will increase the number of qualified nurses by

**2,200**  
per year from 2019.

The number of nurses and midwives coming to work in Britain from Europe has plunged by 89% since the UK voted to leave the EU.

\*\*\*

**89%**



**Want to find out more?**

Call us on 0845 900 7830

Email [campaigns@hcrlaw.com](mailto:campaigns@hcrlaw.com)

We'd love to have a chat.

**Quotes:**

\* HCR survey conducted August 2017

\*\* IDC Executive Brief, Cloud, Compliance and the Case for HR Transformation to Support Your HCM Strategy, 2017

\*\*\* Infographic Sources <http://bit.ly/R4TF3SourceLinks>

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