Notes from the Chair

By Maria Lim

Please give a warm welcome to the first issue of our e-newsletter “Scottish RAIN (Records and Information Management News)”. A quick thank you to Peter the originator of our working title and of course Heather Jack for suggesting. I did think the title is weather appropriate too….

Since this is your newsletter email us at Scotland@irms.org.uk to let us know if you like our working title or if you have alternative suggestions.

We intend to issue this every quarter, our next one is scheduled for January 2020. To be able to keep this going we need content to share from you about your challenges, successes, job posting, events, bragging messages about you, your team, your boss, your projects, your organisation etc…

Those of you who are interested in actively supporting IRMS Scotland, whether it be as Committee Member, event sponsorship, provision of event venue, or anything else …, please contact me directly @ Scotland@irms.org.uk.

“Tell us what you think about our e-newsletter title (Scottish RAIN) and/or send in your suggestions, email Scotland@irms.org.uk.”
Pondering on Brexit

By Heather Jack, HJBS Ltd and Claire Boyle-Records Manager, Historic Environment Scotland

Note: The views and opinions in this article are those of the authors, and not necessarily the views and opinions of the IRMS.

“What the Brexit’s going on? the impact of a no-deal Brexit on information governance”

So, you and your organisation have been working hard, planning for an elegant withdrawal from the EU, taking account of ICO, legal and government guidance. It was hard work but you’ve got there ..... mmmm, maybe not. In risk management terms, while the impact of a no-deal Brexit would for some, if not many, be high, the likelihood has gone from low to almost certain. In this article we consider what the impact of a no-deal Brexit on IG would be and what we can do about it.

The good news

- Environmental Information (Scotland) Regulations 2004 and the Privacy and Electronic Communications Regulations 2003 don’t change. These pieces of legislation are derived from EU directives, rather than regulations and as such have been fully enacted into UK law\(^1\)
- The Freedom of Information (Scotland) Act 2002 doesn’t change, other than the potential change of wording required for section 38, the personal data exemption. This would also apply to regulation 11 of EIR\(^2\)
- Public Records (Scotland) Act 2011 doesn’t change, although Element 9 may require updated evidence to be submitted to the Keeper

“The main impact of a No-Deal Brexit, or indeed of any Brexit, is undoubtedly on Data Protection.”
The main impact of a No-Deal Brexit, or indeed of any Brexit, is undoubtedly on Data Protection.

...... and that’s the bad news

While there would still be uncertainty about the impact on data protection in the result of a negotiated deal, it would depend on the nature of the deal reached between the UK government and the EU. What is certain is that a negotiated deal would include provisions for data protection and a transition period for organisations to put in place any required changes to their processes, contracts and agreements. Many organisations will have been planning as far as they could on the assumption that we would leave with these provisions in place, however with no-deal looking more likely, that planning will now need to be re-done in much more depth.

The impact of a no-deal Brexit is, in some ways at least, far more certain, and it’s not good news:

- If we leave with no-deal, the UK will not have an adequacy decision in place. We will automatically become an “unsecure third-country”, putting significant onus on the data controller to ensure the protection of the personal data and making it harder for EU countries to pass personal information back to us. This will have an impact on many organisations that rely on the flow of personal data to and from the EU for business.
- It could take the UK years to gain an adequacy decision; there would be no jumping the queue in front of the countries already lined up and waiting.
- Given that a key reason for leaving the EU was ”taking back control” of our laws, it is ironic that when we leave we will go from being accountable to one regulatory body, the UK Information Commissioner’s Office, to being accountable to the ICO and the equivalent body in each of the EU27 countries with which the UK exchanges personal data.
- This means that even if we change the data protection law in the UK, and reduce fines or relax the legislation; the UK will still be subject to the stricter conditions of the GDPR and the larger fines. In the worst cases, organisations could be subject to fines from both the ICO, as an independent authority, and the EU equivalent.

These are just some of the known impacts of leaving the EU with no deal. There are undoubtedly more that can be predicted, and even more that can’t but that doesn’t mean there are no positives to be had.

The silver lining

Many IG professionals have found GDPR fatigue to be an obstacle to properly embedding privacy in organisational culture. We now have the opportunity to engage with colleagues to look at processes and procedures that are currently in place and improve them, perhaps focusing on the things that were highlighted in May 2018 when GDPR came into force, that we haven’t had the time, resource or organisational appetite to revisit.

What should we be doing now?

We do need to revisit any existing Brexit withdrawal plans that are already in place, update them and take relevant action, based on risk-assessment of the impact of a no-deal Brexit on your organisation. Take account of the fact that by 31st October we will know whether or not it will be a no-deal Brexit, so, in your risk assessment, ensure you focus on identifying only those actions that will either require little effort or will mitigate against the highest time-dependent risks.
Actions should be informed by the latest advice most relevant to your organisation. Here is a short list of recommended sources to get you started:

<table>
<thead>
<tr>
<th>Description</th>
<th>Link</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICO interactive tool to help small to medium organisations decide whether standard contractual clauses (SCCs) can help them maintain the flow of data, and if so, help with selecting, understanding &amp; completing the right SCCs.</td>
<td><a href="https://ico.org.uk/for-organisations/data-protection-and-brexit/keep-data-flowing-from-the-eea-to-the-uk-interactive-tool/">https://ico.org.uk/for-organisations/data-protection-and-brexit/keep-data-flowing-from-the-eea-to-the-uk-interactive-tool/</a></td>
</tr>
<tr>
<td>UK Government search tool for finding relevant Govt guidance, providing a range of search criteria you can select to refine your search.</td>
<td><a href="https://www.gov.uk/find-eu-exit-guidance-business">https://www.gov.uk/find-eu-exit-guidance-business</a></td>
</tr>
<tr>
<td>DLPiper’s guidance on a no-deal Brexit: &amp; impact on data protection law. Sections 1-4 consider the position in a no-deal Brexit scenario, while section 5 looks at the position in a deal scenario, where the UK leaves on the basis of the EU/UK Withdrawal Agreement.</td>
<td><a href="https://www.dlapiper.com/en/uk/insights/publications/2019/04/no-deal-brexit/data-protection/">https://www.dlapiper.com/en/uk/insights/publications/2019/04/no-deal-brexit/data-protection/</a></td>
</tr>
</tbody>
</table>

More importantly, keep calm and carry on preparing, **DEAL OR NO DEAL 😊**

Thanks to Claire Boyle, Records Manager at Historic Environment Scotland, and Heather Jack of HJBS Ltd for preparing this article.

2 http://www.itspublicknowledge.info/Law/FOIISA-EIRsGuidance/section38/Section38.aspx
3 https://gdpr-info.eu/issues/third-countries/
4 Douwe Korff, The Data Protection Implications Of A "No-Deal Brexit"
5 Douwe Korff, The Data Protection Implications Of A "No-Deal Brexit"
6 http://www.voteleavetakecontrol.org/briefing_control.html

Tell us what you think about this article email Scotland@irms.org.uk
Conference Contributions Still Open

The IRMS Annual Conference is a great event for students, new entrants to the profession and seasoned practitioners of all persuasions - any sector, any size of organisation. Do you want to raise your profile and network with your peers? If you have a burning topic you are passionate about or just a grain of an idea, but are a wee bit scared about submitting a proposal to speak at conference, Heather Jack* will be happy to share her experiences- warts and all - or just listen and support you. Go on - you’ve got nothing to lose and an ideal opportunity for personal development, raising your professional profile and engaging directly with your peers.

Deadline for your contributions is Monday 14 Oct, here is the link to submissions www.irmsconference.org.uk/call.

*If you need any help in discussing or reviewing your submissions please contact Scotland@irms.org.uk

Our Events

28 November (Thursday) 0900-1600 - IM Continuous Improvement in M365 (In collaboration with HPE Pointnext Services)

Jury’s Inn, Union Square, Aberdeen City Centre

Initial Agenda

- IM on M365
- Transformation Journey of Migration
- Office 365 - Embrace the Chaos - Department for International Development (DFID)
  - Amanda MacGregor - Acting Head of Knowledge and Information Management (KIM) Team
  - Julie Gray - KIM Team Leader and Web Development Manager
- Intelligent Communications through- Teams
- Analytics on M365

We will email members when event registration opens on Tuesday 8 Oct.
Upcoming Scotland IG Training

This four-day course is aligned to the requirements of the Public Records (Scotland) Act and will run on 13-14 January and 17-18 February 2020 in central Glasgow.
For more information: https://www.infogov.scot/scottish-public-sector-rm

Tkm Consulting: BCS and SQA certificated Data Protection courses
Tkm offers a range of data protection qualifications including professional certificates from the BCS and courses certificated by the SQA.
For more information on scheduled courses in Glasgow, Edinburgh and Perth: http://www.tkmtraining.co.uk/data-protection-training.html

ActNow
ActNow offer a range of FOISA, EIRS and Data Protection training courses in Glasgow and Edinburgh and have just launched a new 1-day course - Public Records (Scotland) Act: the new records management plans.
For more information - https://www.actnow.org.uk/courses/ and filter by location.

PDP
PDP offer a range of FOISA, DP & Records Management courses in Glasgow and Edinburgh. For more information – https://www.pdptraining.com/ and filter by city

SCVO: Data Protection for voluntary sector organisations
The SCVO have launched a new series of ‘Introduction to data protection and GDPR’ training courses open to all voluntary sector organisations.
For more information - https://scvo.org.uk/events?q=GDPR&course_type=&month=&location=

GDPR / FOI Courses
Course start at 10am, finish at 4pm and include lunch and course materials, as well as access to template policies, guidance and useful links via the 2040 website (specific materials vary from course to course)
Edinburgh: 5 minutes from Waverley Train Station in the Old Town
For more information - https://2040training.co.uk/gdprcourses/

2040 Training Data Sharing Masterclass
This practical plain English masterclass takes place in Edinburgh, 25th November 2019 + Birmingham, 13th December 2019 + Manchester, 6th January 2020 + London, 13th January 2020
For more information - https://2040training.co.uk/gdprcourses/
**Legal Action**

**Freedom of Information extension of coverage consultation - have your say**
This consultation will help the Scottish Government to understand whether there is a need to extend the Freedom of Information (Scotland) Act 2002 to further entities by making an order under section 5 of the Act. It focuses on organisations that provide services on behalf of the public sector that are not currently subject to the FOI legislation. The public consultation opened on 30th August 2019 and you have until 22 November 2019 to send your response. [https://consult.gov.scot/constitution-and-cabinet/freedom-of-information-extension-of-coverage/](https://consult.gov.scot/constitution-and-cabinet/freedom-of-information-extension-of-coverage/)

**Post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002**
September has been a busy month for the Scottish Parliament’s Public Audit and Post-legislative Scrutiny Committee (PAPLS) which is undertaking post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002.

For more information including
- the second SPICe briefing, which includes global right to information data, published in September
- the minutes, papers and official report of the oral evidence session which took place on 19th September,