

UK seeks to shore up ICO powers post-Brexit

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The UK government has proposed requiring overseas digital service providers to designate a local representative after the country leaves the EU in a bid to maintain its data watchdog's authority.

The UK's Department for Digital, Culture, Media & Sport opened a consultation on the UK's proposed approach to the regulation of non-UK established digital service providers on 16 April.

Digital service providers are currently regulated by the EU-derived Network and Information Systems (NIS) Directive, which requires providers who are not established in the EU to designate a representative who can be accountable to a local authority.

The directive requires the representative to be located in an EU country where the provider conducts business. The UK government transposed it into local law on 10 May 2018 via the Network and Information Systems Regulations 2018.

The UK's post-Brexit third-country status will require digital service providers to designate an EU-based representative. But there is currently no reciprocal obligation for EU-based providers to do the same in the UK, thereby curtailing the enforcement powers of the Information Commissioner's Office where they are concerned, according to the government.

This proposed addition would require providers to designate a local representative once the UK has left the EU to tackle this imbalance of regulatory power.

The consultation follows the DCMS' December guidance, which [said](#) that it will require data controllers based outside of the UK to appoint a representative within the country after Brexit.

Jon Baines at Mishcon de Reya in London said that this was not an unexpected move from the government and that it should not meet a great deal of resistance.

“Although the sanction regime under the NIS regulations is potentially serious, it is procedurally quite complex and lengthy, requiring the serving ... of an enforcement notice before any penalty can be imposed.”

“For this reason, and because no such sanctions have yet been imposed, the regulations have not gained a great deal of prominence. If enforcement turns out to be robust, this might change,” Baines said.

The consultation will close on 11 June.