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**Security of Network and Information Systems**

Guidance for digital service providers established in the UK in a ‘no deal’ EU Exit scenario

**December 2018**

**Department for Digital, Culture, Media and Sport**

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# Overview

Delivering the deal negotiated with the EU remains the government’s top priority. This has not changed. However, the government must prepare for every eventuality, including a no deal scenario.

For 2 years, the government has been implementing a significant programme of work to ensure that the UK is prepared to leave the EU on 29 March 2019.

It has always been the case that as we get nearer to that date, preparations for a no deal scenario would have to be accelerated. We must ensure plans are in place should they need to be relied upon.

In the event of a ‘no deal’ departure from the EU, relevant digital service providers (RDSP) that provide services into the EU market must designate a representative in one of the Member States in which they offer services. RDSP is defined later in this guidance.

# Current situation (before 29 March 2019)

The European Parliament adopted the Security of Network and Information Systems Directive ([NIS Directive](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L1148&from=EN)) on 6 July 2016. The NIS Directive provides legal measures to boost the overall level of network and information system security in the EU. It applies to operators of essential services and RDSPs. This guidance refers only to RDSPs.

The government incorporated the NIS Directive into national law via the Network and Information Systems Regulations 2018 ([NIS Regulations](http://www.legislation.gov.uk/uksi/2018/506/made)) on 10 May 2018. The Information Commissioner’s Office (ICO) is the competent authority in charge of regulating RDSPs in the UK. Under the NIS Regulations, RDSPs are required to register with the ICO, and have appropriate and proportionate security measures in place to manage risks to the network and information systems that support their service. RDSPs are also required to notify incidents to the ICO, where those incidents have a substantial impact on the provision of their service. Further details can be found on the [ICO website](https://ico.org.uk/for-organisations/the-guide-to-nis/digital-service-providers/).

Under the NIS Directive, a digital service provider that is not established in the EU, but offers digital services (see definition below) within the EU, must designate a representative in the EU. The representative must be established in one of the EU Member States where the services are offered, and the digital service provider will be deemed to be under the jurisdiction of the EU Member State where that representative is established.

Under the current arrangements, a relevant digital service provider (RDSP) based in the UK and providing services in another EU Member State does not need to designate a representative in that EU Member State.

# Who is affected

You will be affected if you are a digital service provider that:

1. has 50 or more staff, or a turnover of more than €10m per year, or a balance sheet total of more than €10m per year; and
2. has its main establishment in the UK; and
3. you offer services in the EU.

Digital service providers with fewer than 50 staff, and a turnover or balance sheet of less than €10 million a year are **exempt** from the NIS Directive (micro and small enterprises). More information and detail on these three criteria is also set out below.

A digital service provider is anyone who provides one or more of these three types of digital service:

* Online marketplaces: digital services that allow consumers and/or traders to conclude online sales or service contracts with traders either on the online marketplace website or on a trader’s website that uses computing services provided by the online marketplace.
* Online search engines: digital services that allow users to perform searches of, in principle, all websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input and returns links in which information related to the requested content can be found.
* Cloud computing services: digital services that enable access to a scalable and elastic pool of shareable computing resources.

More detailed descriptions of digital services can be found in the [ICO Guide to NIS](https://ico.org.uk/for-organisations/the-guide-to-nis/key-concepts-and-definitions/), the text of the [NIS Directive](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L1148&from=EN), the Commission [Implementing Regulation](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018R0151&from=EN) on Art 16(8) of NIS Directive, and the [government response](https://www.gov.uk/government/consultations/consultation-on-the-security-of-network-and-information-systems-directive) to the targeted consultation for digital service providers.

In the domestic NIS Regulations, digital service providers who are based in the UK (i.e. have a head office in the UK) or who are based outside the UK but have designated a representative in the UK are known as “relevant digital service providers” (RDSPs).

A digital services provider under the EU NIS Directive covers both RDSPs and other digital service providers offering services within the EU. They may be based either within or outside the EU country in which they are offering services.

The ‘main establishment’ of a digital service provider corresponds to the place where the company has its head office. If you would like more clarification on any of these terms, please contact the ICO.

A digital service provider ‘offers services’ within the EU if it is apparent that it offers, or is planning to offer, digital services to persons in one or more EU Member States. A digital service provider plans to offer services within the EU if:

* the digital service provider uses a language generally used in one or more EU Member States;
* the digital service providers uses a currency generally used in one or more EU Member States;
* customers have the possibility to order services in a language generally used in one or more EU Member States; and
* the digital service provider mentions customers or users who are in the EU.

# Implications for relevant digital service providers (RDSPs) established in the UK

In the unlikely event of a ‘no deal’ departure from the EU, RDSPs established in the UK that offer services in one or more EU countries must designate a representative in one of the EU Member States where they offer services. There is only an obligation to have one representative in the EU, even in circumstances where digital services are offered in more than one Member State.

To get more information on how to designate a representative in an EU Member State, you will need to contact the competent authority for DSPs in that EU Member State. You can find the relevant contact details [here](https://ec.europa.eu/digital-single-market/en/state-play-transposition-nis-directive). If you have any questions on how to designate a representative, please contact DCMS at [nis@culture.gov.uk](mailto:nis@culture.gov.uk)*.*

On exit from the EU in March 2019 in the event of a ‘no deal’, you will need to take the following steps if you are a RDSP established in the UK:

Step 1

* Ascertain whether your ‘main establishment’ is in the UK.
  + If your main establishment is in the UK, you must register with the ICO (if you have not already done so) and comply with the NIS Regulations.
  + If your main establishment is not in the UK, but it is in an EU Member State, you must comply with the law in that EU Member State.

Step 2

* If your main establishment is in the UK, find out whether you offer services within the EU. If you offer services within the EU, you must designate a representative in one of the EU Member States where you offer services.
  + When you designate the representative, you must comply with the law in that EU Member State.
  + Your representative will act on your behalf, and it should be possible for the competent authorities (i.e. the ICO in the UK) and/or the computer security incident response teams (i.e. the equivalent of NCSC in the UK) of the relevant EU Member State to contact the representative.
  + You should designate the representative in writing by a formal process set by the relevant EU Member State authority, stating that the representative will act on your behalf to fulfil your to fulfil any legal requirements that arise under the law of that EU Member State, including incident reporting.

If a RDSP designates a representative in an EU Member State, it will be under the jurisdiction of the Member State where the representative is established when offering services within the EU. The RDSP would be subject to UK law, when offering services in the UK, if its main establishment is in the UK.

Step 3

* Inform the ICO if
  + you have designated a representative in an EU Member State;
  + you have to comply with equivalent legislation in another country; or
  + you have network and information systems located outside the UK.

# Further information

For further information, please visit the following websites:

[European Commission Notice to Stakeholders](https://ec.europa.eu/digital-single-market/en/news/withdrawal-united-kingdom-and-eu-rules-fields-security-network)

[Security of Network and Information Systems Directive](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.194.01.0001.01.ENG&toc=OJ:L:2016:194:TOC)

[Commission Implementing Regulation pursuant Art 16(8) of NIS Directive](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018R0151&from=EN)

N[etwork and Information Systems Regulations 2018](https://www.legislation.gov.uk/uksi/2018/506/made)

[The Information Commissioner’s Office Guide to the NIS Regulations](https://ico.org.uk/for-organisations/the-guide-to-nis/)

[The Information Commissioner’s Office guidance on no deal EU Exit](https://ico.org.uk/for-organisations/data-protection-and-brexit/data-protection-if-there-s-no-brexit-deal/)

# Point of contact

For any questions on this guidance, please contact nis@culture.gov.uk*.*