



# Data Protection Act 2018

## 2018 CHAPTER 12

### PART 3

#### LAW ENFORCEMENT PROCESSING

### CHAPTER 5

#### TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES ETC

##### *General principles for transfers*

#### **[<sup>F1</sup>74A Transfers based on adequacy regulations**

- (1) The Secretary of State may by regulations specify any of the following which the Secretary of State considers ensures an adequate level of protection of personal data—
  - (a) a third country,
  - (b) a territory or one or more sectors within a third country,
  - (c) an international organisation, or
  - (d) a description of such a country, territory, sector or organisation.
- (2) For the purposes of this Part of this Act, a transfer of personal data to a third country or an international organisation is based on adequacy regulations if, at the time of the transfer, regulations made under this section are in force which specify, or specify a description which includes—
  - (a) in the case of a third country, the country or a relevant territory or sector within the country, and
  - (b) in the case of an international organisation, the organisation,and such a transfer does not require specific authorisation.
- (3) Regulations under this section may specify that the Secretary of State considers that an adequate level of protection of personal data is ensured only for a transfer specified

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Data Protection Act 2018, Section 74A is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

or described in the regulations and, if they do so, only such a transfer may rely on those regulations for the purposes of subsection (2).

(4) When assessing the adequacy of the level of protection for the purposes of this section or section 74B, the Secretary of State must, in particular, take account of—

- (a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation, which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data is transferred,
- (b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with data protection rules, including adequate enforcement powers, for assisting and advising data subjects in exercising their rights and for cooperation with the Commissioner, and
- (c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

(5) Regulations under this section—

- (a) where they relate to a third country, must specify their territorial and sectoral application;
- (b) where applicable, must specify the independent supervisory authority or authorities referred to in subsection (4)(b).

(6) Regulations under this section may, among other things—

- (a) provide that, in relation to a country, territory, sector, organisation or territory specified, or falling within a description specified, in the regulations, section 74B(1) has effect as if it required the reviews described there to be carried out at such shorter intervals as are specified in the regulations;
- (b) identify a transfer of personal data by any means, including by reference to the controller or processor, the recipient, the personal data transferred or the means by which the transfer is made or by reference to relevant legislation, lists or other documents, as they have effect from time to time;
- (c) confer a discretion on a person.

(7) Regulations under this section are subject to the negative resolution procedure.]

#### Textual Amendments

- F1** Ss. 74A, 74B inserted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 42** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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