

EXPLANATORY MEMORANDUM TO

THE DATA PROTECTION (ADEQUACY) (REPUBLIC OF KOREA) REGULATIONS 2022

2022 No. 1213

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Digital, Culture, Media and Sport (“DCMS”) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 These Regulations specify that the Republic of Korea ensures an adequate level of protection for transfers of personal data to anyone in the Republic of Korea who is subject to the Personal Information Protection Act (“the PIPA”), a Korean law. The effect of these Regulations is to allow such transfers of personal data, without a controller or processor being required to use appropriate safeguards or a derogation under Articles 46 or 49 of the United Kingdom General Data Protection Regulation (“the UK GDPR”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 These Regulations extend to England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 “As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required”.

6. Legislative Context

- 6.1 Chapter V of the UK GDPR restricts transfers of personal data to a third country¹ or international organisation unless done in accordance with Articles 45, 46 or 49 of the UK GDPR. The purpose of Chapter V is to ensure that the level of protection for data subjects provided by the UK GDPR is not undermined when their personal data is transferred overseas.
- 6.2 Article 45(1) of the UK GDPR establishes that personal data may be transferred overseas without the need for further safeguards or authorisation (for example, standard data protection clauses) if the transfer is based on adequacy regulations. The Secretary of State has the power to make adequacy regulations in respect of a third country, territory or sector within a third country or international organisations under Part 2 of the Data Protection Act 2018 (“the 2018 Act”) (specifically section 17A)

¹ A third country is a country other than the United Kingdom as defined in Article 4(27) of the UK GDPR.

where the Secretary of State considers that it ensures an adequate level of protection of personal data. The Secretary of State also has the power to make adequacy regulations under section 74A of the 2018 Act (in relation to transfers made under Part 3 of that Act) but that power is not being exercised in these Regulations. Article 45(2) of the UK GDPR describes the elements that the Secretary of State must consider when making an assessment under Part 2 of the 2018 Act.

7. Policy background

What is being done and why?

- 7.1 These Regulations specify that the Republic of Korea ensures an adequate level of protection of personal data for transfers to natural and legal persons in the Republic of Korea who are subject to the PIPA. These Regulations have been made because the Secretary of State, following an assessment by DCMS officials, considers that the Republic of Korea ensures an adequate level of protection of personal data, taking into account the elements set out in Article 45(2) of the UK GDPR. Controllers and processors can rely on these Regulations to transfer personal data freely, without further safeguards such as those set out in Articles 46 and 49 of the UK GDPR, to people in the Republic of Korea that are subject to the PIPA.
- 7.2 DCMS officials engaged with counterparts in the Republic of Korea to assess the Republic of Korea's data protection laws and practices and its domestic and international commitments to the protection of personal data. This assessment also included analysing other elements of the Republic of Korea's legal system, including the rule of law and respect for human rights, the practical implementation and oversight of specific relevant laws governing the protection of personal data, international and onward transfers, public authority access to personal data and the national security framework.
- 7.3 DCMS officials assessed the PIPA as the Republic of Korea's general and comprehensive data protection statute. The PIPA is supplemented by the Enforcement Decree of The Personal Information Protection Act ("PIPA Enforcement Decree"), which provides guidance on the interpretation of PIPA.
- 7.4 Alongside PIPA, DCMS officials also assessed additional data protection legislation in the Republic of Korea, namely:
 - The Supplementary Rules, adopted by the Personal Information Protection Commission ("the PIPC") which provides further obligations and guidance on the interpretation and application of the PIPA; and
 - The Use and Protection of Credit Information Act ("the CIA") and the Enforcement Decree of the Credit Information Use and Protection Act ("CIA Enforcement Decree") which provides specific rules applicable to specific organisations in the financial sector when they process personal credit information.
- 7.5 The PIPA applies to anyone who processes personal data in the Republic of Korea, except for certain processing activities. In addition to the PIPA, the CIA applies to specific organisations in the financial sector when they process personal credit information (which is a type of personal data). The CIA imposes specific data protection safeguards for data subjects in the Republic of Korea (for example, with regard to transparency and security), as well as generally regulating the specific circumstances in which personal credit information may be processed.

- 7.6 The principal supervisory authority for data protection in the Republic of Korea is the Personal Information Protection Commission (PIPC), which is a central administrative agency under the Prime Minister's Office and enforces the PIPA. In addition to the PIPC, the Financial Services Commission (FSC) regulates and enforces the data protection legislation within its respective authorised mandates: the CIA is mainly regulated and enforced by the FSC, although the PIPC enforces certain provisions against general corporations other than financial agencies and credit information businesses (which are subject to the supervision of the FSC). The PIPC and the FSC have demonstrated their independence and effective functioning as supervisory authorities empowered to address infringements of the data protection rules in the Republic of Korea. They have a strong record of proactive and efficient enforcement, and ensure that UK data subjects are afforded remedies in the event of any misuse of their personal data.
- 7.7 Transfers from persons in the Republic of Korea to other countries are strictly controlled by the PIPA, which imposes requirements which must be satisfied when transferring personal data overseas.
- 7.8 Under the Korean regime, any interference with privacy rights by Korean public authorities for public interest and national security purposes is limited to what is necessary and proportionate to achieving a legitimate aim, and effective protection against such interference exists.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.9 In the absence of adequacy regulations, UK controllers and processors are currently required to use appropriate safeguards or derogations under Articles 46 and 49 of the UK GDPR to transfer personal data to the Republic of Korea.

Why is it being changed?

- 7.10 These Regulations will provide UK controllers and processors with the most straightforward mechanism for transferring personal data to the Republic of Korea by removing the requirement for them to put in place further safeguards such as contractual agreements to transfer such data. These Regulations will also seek to provide greater certainty and confidence to wider society about the strong data protection standards and regulatory landscape in the Republic of Korea. It will make it easier for controllers and processors and therefore UK businesses to connect with Korean markets and attract investment as a result of the decision and reduce the current levels of resources required to transfer data to the Republic of Korea.

What will it now do?

- 7.11 These Regulations will allow UK controllers and processors to transfer personal data to people in the Republic of Korea subject to relevant Korean data protection laws without the need for further safeguards set out in Articles 46 and 49 of the UK GDPR.
- 7.12 The Regulations permit all transfers to persons subject to the PIPA. This includes transfers to persons in the Republic of Korea who may also be subject to the CIA in relation to personal credit information.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 These Regulations are not consolidation regulations.

10. Consultation outcome

10.1 In accordance with section 182(2) of the 2018 Act, the Secretary of State is required to consult with the Information Commissioner and such other persons as the Secretary of State considers appropriate before making regulations. The Information Commissioner has been formally consulted by the Secretary of State for their opinion on these Regulations.

11. Guidance

11.1 Relevant information that supports UK controllers and processors undertaking personal data transfers to the Republic of Korea in reliance of these Regulations will be made available on the Information Commissioner's Office website. To note, there are no familiarisation costs² for businesses or organisations and no action is required to benefit from this decision.

12. Impact

12.1 The impact on business, charities or voluntary bodies is an estimated total annual benefit to UK organisations of £14.8 million, following the combined removal of alternative transfer mechanisms (£11.0million) and increases in export trade (£3.8m). The net present value for the case of the Secretary of State making adequacy regulations in respect of the Republic of Korea has been calculated using 2022 prices and 2023 as its present value (when benefits/costs begin) with a 10-year appraisal period and 3.5% discount rate. The impact has been converted to 2019 prices and 2020 present value with a best estimate of having a total net present social value of £120.5m with a sensitivity range of between £114.8m and £154.7m. It is estimated that 7,107 businesses will be directly impacted by the change with 93% of those organisations categorised as small or micro.

12.2 The impact on the public sector has not been specifically assessed. The benefits will apply equally to public sector organisations. These Regulations will provide UK public sector controllers and processors with the most straightforward mechanism for transferring personal data to organisations in the Republic of Korea. This will be achieved through reduced administrative costs, for example those associated with government procurement. This will be achieved by removing the requirement to put in place standard data protection clauses. The department will carry out proportionate monitoring and evaluation activities throughout the next 3-5 years to determine the impact on both the public, private and third sectors.

12.3 A full Impact Assessment is submitted with this memorandum and published on the legislation.gov.uk website.

² Small familiarisation costs are estimated which represent the wage costs of reading any new guidance on what businesses are no longer required to do.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The effect of these Regulations is to remove barriers to transferring personal data to the Republic of Korea. Hence, SMEs will not be required to spend resources on appropriate safeguards to permit personal data flows, making UK SMEs one of the most significant beneficiaries of these Regulations.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that these Regulations must be monitored and kept under periodic review, at intervals of not more than four years.³ During this time, the Secretary of State may also amend or revoke these Regulations, and must do so if the Secretary of State becomes aware that the third country or sector therein no longer ensures an adequate level of protection.

15. Contact

- 15.1 Gayatri Lambotharan at the Department for Digital, Culture, Media and Sport, gayatri.lambotharan@dcms.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Morgane Donse, Deputy Director for International Data Unit, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Michelle Donelan, Secretary of State at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

³ Section 17B of the 2018 Act