

Economic Note	Number: HO EN 0030
Title of regulatory proposal	The Data Protection (Law Enforcement) (Adequacy) (Bailiwick of Guernsey) Regulations 2023
Lead Department/Agency	Home Office
Expected date of implementation	28 July 2023
Origin	Domestic
Date	24/04/2023
Lead Departmental Contact	krisztina.katona@homeoffice.gov.uk
Departmental Assessment	GREEN

Rationale for intervention, objectives and intended effects

Section 74A (2) of the Data Protection Act 2018 establishes that personal data may be transferred overseas without the need for further safeguards or specific authorisation if the transfer is based on adequacy regulations. These regulations specify that the Bailiwick of Guernsey ensures an adequate level of protection of personal data for transfers to authorities in the Bailiwick of Guernsey who are subject to the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance 2018 (“the Ordinance”). This provides UK competent authorities a simple mechanism for transferring personal data to relevant authorities in the Bailiwick of Guernsey for law enforcement purposes and removes the need for UK competent authorities to put in place further safeguards to transfer such data. These Regulations ensure the transfer of data from the UK to the Bailiwick of Guernsey for law enforcement purposes is on firm legal footing and ensures this vital cross-border transfer continues with greater confidence in the protection of personal data by relevant authorities in the Bailiwick of Guernsey.

Policy options (including alternatives to regulation)

Option 1: Do nothing. UK authorities will have to continue to rely on appropriate safeguards or special circumstances (section 75 or 76) in the Data Protection Act 2018, prior to transferring data to relevant authorities.

Option 2: Make these Regulations to enable UK competent authorities to transfer data to relevant authorities in the Bailiwick of Guernsey without requiring any additional safeguards under Part 3 of the Data Protection Act 2018. **This is the Government’s preferred option.**

Costs and benefit summary

These Regulations are cost neutral on UK competent authorities as there are no familiarisation costs and no action is required to benefit from this Regulation. No additional costs or benefits are imposed on businesses or the public sector.

Risks

No analytical risks or unintended economic consequences have been identified relating to this instrument.

Total Cost £m PV	Transition Cost £m	Cost to Business £m	Total Benefit £m PV
NA	NA	NA	NA
NPSV (£m)	BNPV (£m)	EANDCB (£m)	BIT Score (£m)
NA	NA	NA	NA
Price Base Year	PV Base Year	Appraisal period	Transition period
NA	NA	4 years	NA

Departmental sign-off (SCS):	Krisztina Katona	Date: 26/05/2023
Chief Economist sign-off:	Tim Laken	Date: 02/06/2023
Better Regulation Unit sign-off:	Emma Kirk	Date: 06/06/2023

Evidence Base

A. Background

1. Part 3, Chapter V of the Data Protection Act 2018¹ restricts transfers of personal data to a third country² or international organisation unless the three conditions in subsections 73(2), 73(3) and 73(4) are met and if the personal data was originally obtained from an EU member state, then that member state has authorised the transfer.
2. Section 74A (2) establishes that personal data may be transferred overseas without the need for further safeguards or specific authorisation if the transfer is based on adequacy regulations. The Secretary of State for the Home Department (Home Secretary) 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 3 of the Data Protection Act 2018 (specifically section 74(A)) where the Home Secretary considers that it ensures an adequate level of protection of personal data.
3. Section 74A (4) of the Data Protection Act 2018 describes the elements that the Home Secretary must consider when making an assessment under Part 3 of the Data Protection Act 2018.

B. The policy issue and rationale for government intervention

4. In the absence of adequacy regulations, UK competent authorities are currently required to use appropriate safeguards under section 75 of the Data Protection Act 2018, or special circumstances under section 76 of that Act, to transfer personal data to the Bailiwick of Guernsey.
5. These Regulations provide UK competent authorities a simple mechanism for transferring personal data to relevant authorities in the Bailiwick of Guernsey for law enforcement purposes and remove the need for UK competent authorities to put in place further safeguards to transfer such data. These Regulations ensure the transfer of data from the UK to the Bailiwick of Guernsey for law enforcement purposes is on firm legal footing and ensures this vital cross-border transfer continues with greater confidence in the protection of personal data by relevant authorities in the Bailiwick of Guernsey.
6. These Regulations specify that the Bailiwick of Guernsey ensures an adequate level of protection for transfers of personal data from UK competent authorities³ to any relevant authority⁴ (for example, law enforcement authority) who is subject to the Ordinance.

¹ <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

² A third country is a country or territory outside the United Kingdom as defined by section 33 of the Data Protection Act 2018.

³ Competent authority means (a) a person specified or described in Schedule 7 of the Data Protection Act 2018, and (b) any other person if and to the extent that the person has statutory functions for any of the law enforcement purposes.

⁴ Relevant authority means any person based in a third country that has (in that country) functions comparable to those of a competent authority.

C. Policy objectives and intended effects

7. These Regulations specify that the Bailiwick of Guernsey ensures an adequate level of protection for transfers of personal data from UK competent authorities to any relevant authority who is subject to the Ordinance. 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 special circumstances under section 75 or 76 of the Data Protection Act 2018.

D. Policy options considered, non-regulatory options, implementation date

8. Two options have been considered:

Option 1: Do nothing. Under this option UK competent authorities will have to continue to rely on appropriate safeguards or special circumstances, under section 75 or 76 of the Data Protection Act 2018, prior to transferring data to relevant authorities in the Bailiwick of Guernsey.

Option 2: Make these Regulations to enable UK competent authorities to transfer data to relevant authorities in the Bailiwick of Guernsey without requiring any additional safeguards under Part 3 of the Data Protection Act 2018. **This is the Government's preferred option.**

E. Appraisal

Costs

9. There are no additional costs associated with these Regulations as UK competent authorities currently make transfers to relevant authorities in the Bailiwick of Guernsey.

Benefits

10. Through these Regulations, UK competent authorities can transfer personal data to the Bailiwick of Guernsey under a law enforcement adequacy finding of the Home Secretary. This adequacy finding specifies that the Home Secretary considers that the Bailiwick of Guernsey provides an adequate level of protection of personal data. UK competent authorities do not need to rely on any alternative transfer mechanism in Part 3 of the Data Protection Act 2018 such as appropriate safeguards under section 75 or special circumstances under section 76. This will ensure a simple and consistent transfer mechanism is being used by all UK competent authorities when transferring personal data to relevant authorities in the Bailiwick of Guernsey for law enforcement purposes.

Value for money metrics

- 11. As there are no monetised costs or benefits associated with this Regulation, no Value for Money metrics have been applied.

Small and Micro Business Assessment (SaMBA)

- 12. No impacts on small or medium sized businesses have been identified. No SaMBA is required.

F. Risks and unintended consequences

- 13. No analytical risks or unintended economic consequences have been identified relating to this Regulation.

G. Monitoring and evaluation

- 14. As per section 74B of the Data Protection Act 2018 the UK will continue to monitor developments in law and practice to ensure that the Bailiwick of Guernsey continues to maintain an adequate level of protection. The Home Secretary may also amend or revoke these Regulations and must do so if the Home Secretary becomes aware that the third country or sector therein no longer ensures an adequate level of protection.

Specific Impact Test Checklist

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p>These Regulations do not introduce any new data transfers between the UK and the Bailiwick of Guernsey. These Regulations simply make the process for transferring data to the Bailiwick easier and simpler for UK competent authorities as these Regulations are being made following an assessment of the relevant data protection frameworks in the Bailiwick of Guernsey, UK competent authorities do not have to consider any additional safeguards such as those in sections 75 or 76 of the Data Protection Act 2018. Therefore, we do not consider that these Regulations will introduce any inequalities.</p> <p>Furthermore, we consider that it is unlikely that it will lead to discrimination, harassment or victimisation of any individuals belonging to a particular protected characteristic.</p> <p>The Home Office do not consider that these Regulations will have any significant impacts regarding the need to foster good relations or advance equality of opportunity between people who share a protected characteristic and people who do not: the policy is neutral in this regard.</p> <p>The SRO has agreed these findings.</p>	<p>Yes</p>