

Statutory Document No. 2019/0139



*Data Protection Act 2018*

## **DATA PROTECTION (WITHDRAWAL FROM THE EU) (U.K. AND GIBRALTAR) REGULATIONS 2019**

*Approved by Tynwald:*

*Coming into Operation: In accordance with regulation 2*

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The Council of Ministers makes the following Regulations under section 5 of the Data Protection Act 2018 and regulation 68(3) of the GDPR and LED Implementing Regulations 2018.

### **1 Title**

These Regulations are the Data Protection (Withdrawal from the EU) (U.K. and Gibraltar) Regulations 2019.

### **2 Commencement**

(1) If approved by Tynwald, these Regulations come into operation on Exit Day.

This is subject to paragraphs (2) and (3).

(2) These Regulations will only come into operation if, as at the time when the United Kingdom (and, by extension, Gibraltar also) ceases to be a Member State, the European Commission has not issued an adequacy decision in respect of —

(a) either the United Kingdom or Gibraltar; or

(b) both the United Kingdom and Gibraltar.

(3) In the circumstance described —

(a) in paragraph (2)(a), these Regulations come into operation only with regard to the jurisdiction in respect of which an adequacy decision has not been issued; or

(b) in paragraph (2)(b), these Regulations come into operation with regard to both jurisdictions.

### **3 Interpretation**

(1) In these Regulations —

“**applied GDPR**” must be construed in accordance with regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>1</sup>;

“**adequacy decision**” means a decision issued under Article 45 of the GDPR;

“**controller**” must be construed in accordance with Article 4(7) of the applied GDPR;

“**Exit Day**” means the date on which the United Kingdom (and, by extension, Gibraltar also) ceases to be a Member State;

“**GDPR**” must be construed in accordance with regulation 5(1) of the GDPR and LED Implementing Regulations 2018;

“**Member State**” means a Member State of the European Union;

“**personal data**” must be construed in accordance with Article 4(1) of the applied GDPR;

“**processor**” must be construed in accordance with Article 4(8) of the applied GDPR.

- (2) A reference in these Regulations to personal data being transferred must be construed as a reference to a transfer that conforms to the description specified in regulation 5(a).

#### 4 Construction

To avoid doubt, any retained EU law is to be construed and have effect subject to these Regulations.

#### 5 Scope of these Regulations

These Regulations apply only to a transfer of personal data —

- (a) from a controller or processor in the Island to a controller or processor in the United Kingdom or in Gibraltar; and
- (b) which takes place after the United Kingdom (and, by extension, Gibraltar also) has ceased to be a Member State.

#### 6 Deemed membership of EU as of Exit Day

- (1) Paragraph (2) applies to every enactment that falls within the scope of “**data protection legislation**” as that term is defined in regulation 5(1) of the GDPR and LED Implementing Regulations 2018.
- (2) As of Exit Day —
  - (a) in the circumstance described in regulation 2(3)(a), the jurisdiction with regard to which these Regulations come into operation is deemed to be a Member State; or

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<sup>1</sup> SD No. 2018/0145

- (b) in the circumstance described in regulation 2(3)(b), both the United Kingdom and Gibraltar are deemed to be Member States, for the purposes of “**data protection legislation**”.

## 7 Expiry

- (1) In paragraph (2), “**the relevant jurisdiction**” means the jurisdiction with regard to which these Regulations come into operation in accordance with regulation 2(3)(a).
- (2) If these Regulations come into operation —
- (a) in accordance with regulation 2(3)(a), they expire when an adequacy decision is issued in respect of the relevant jurisdiction; or
- (b) in accordance with regulation 2(3)(b), they expire —
- (i) with regard only to the jurisdiction in respect of which an adequacy decision is issued (where such a decision is issued after Exit Day in respect of either the United Kingdom or Gibraltar); or
- (ii) simultaneously for both the United Kingdom and Gibraltar (where, after Exit Day, adequacy decisions are simultaneously issued in respect of both those jurisdictions).
- (3) In the circumstances described in paragraph (2)(b)(i), if an adequacy decision is subsequently issued in respect of the jurisdiction for which these Regulations remain in operation, these Regulations expire immediately upon that adequacy decision being issued.

**MADE 13 MARCH 2019**

**W GREENHOW**  
*Chief Secretary*

*EXPLANATORY NOTE*

*(This note is not part of the Regulations)*

These Regulations make provision for unhindered transfers of personal data to continue from the Island to the United Kingdom, as well as from the Island to Gibraltar. Their objective is to ensure that there is a basis in the law of the Island for such transfers to take place after those jurisdictions have withdrawn from the European Union.

As of Exit Day, both the United Kingdom and Gibraltar will technically be third countries and each of them will therefore be required to have been issued with an adequacy decision in order to be eligible to receive transfers of personal data from Member States, adequate third countries and adequate international organisations. This requirement is imposed by Chapter V of the GDPR.

There is a distinct possibility that the assessment that must precede the making of an adequacy decision will not have been completed in respect of either jurisdiction by Exit Day. Should this materialise, there will be no GDPR-compliant basis for personal data to be transferred to those jurisdictions from Member States, adequate third countries (such as the Island) or adequate international organisations.

The United Kingdom is in the process of negotiating with the European Union a solution to this problem for both itself and Gibraltar. Such a solution is aimed at enabling those jurisdictions to send personal data to Member States, adequate third countries and adequate international organisations without falling foul of the GDPR. However, whatever such solution is ultimately agreed on will not have any impact on the law of the Island and therefore will not provide a domestic legal basis for the transfers in question. These Regulations are therefore intended to provide that domestic a legal basis in the interim between Exit Day and the issuing of adequacy decisions to the United Kingdom and Gibraltar (should that materialise).

The solution set out in these Regulations stipulates that the Island's data protection legislation will deem the United Kingdom and Gibraltar to be Member States during the period in question. This solution will be redundant once adequacy decisions are issued for both those jurisdictions. Accordingly, these Regulations will expire upon that event materialising.

It is considered that this approach is justified as the United Kingdom and Gibraltar are currently, as Member States, bound by the GDPR. Whilst they will cease to be Member States as of Exit Day, it is expected that there will be no material change to their data protection laws immediately after Exit Day. This expectation is unaffected by whether or not those jurisdictions' withdrawal from the EU is subject to a Withdrawal Agreement.

In light of the anticipated constancy of their data protection laws for the foreseeable future immediately after Exit Day, it is virtually certain that the United Kingdom and

Gibraltar will receive adequacy decisions in due course. It is the timing of this that will be affected by whether or not there is a Withdrawal Agreement: if there is no Agreement, the issuing of adequacy decisions is expected sooner than if there is an Agreement. Regardless, the uninterrupted continuation of unhindered transfers of personal data between the Island and both of those jurisdictions will continue to be of vital importance to all jurisdictions concerned.

Accordingly, deeming the United Kingdom and Gibraltar to be Member States until adequacy decisions are issued to them will serve the important purpose of allowing the Island to continue to transfer personal data to the United Kingdom and Gibraltar after Exit Day in exactly the same way as it did before Exit Day. This will be for so long as it takes for the European Commission to issue adequacy decisions to the United Kingdom and Gibraltar. Once adequacy decisions are issued to them, they will be adequate third countries and transfers of data to them will be legal on that basis, so there will no longer be any need for them to be deemed to be Member States.

In acknowledgement of the possibility that an adequacy decision may be issued in respect of one of the jurisdictions in question but not in respect of the other, it is expressly provided that these Regulations will only come into operation for whichever jurisdiction has not received an adequacy decision as of Exit Day. If that jurisdiction subsequently receives an adequacy decision, these Regulations will immediately expire.

Provision is also made for the eventuality of these Regulations coming into operation for both jurisdictions, followed by one jurisdiction subsequently receiving an adequacy decision while the other jurisdiction does not. These Regulations will in that event expire for the jurisdiction that has received the adequacy decision and will remain in operation for the jurisdiction that has not. Should the latter jurisdiction subsequently receive an adequacy decision, these Regulations will thereupon immediately expire.