

EXPLANATORY MEMORANDUM TO
THE FRAMEWORK FOR THE FREE FLOW OF NON-PERSONAL DATA
(REVOCAATION) (EU EXIT) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This Statutory Instrument will repeal the EU Regulation on a framework for the free flow of non-personal data in the European Union¹, which came into force in May 2019]

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EU Regulation on a framework for the free flow of non-personal data in the European Union is concerned with reducing public sector data localisation mandates for *non-personal* data. Data localisation mandates, broadly speaking, mean that commercial organisations are obliged to store data in a territory - as a condition of doing business in that jurisdiction. Unjustified localisation mandates are considered protectionist, in terms of global trade. Additionally, it encourages the development of codes of conduct, making data portability and provider switching less onerous. The effects of the regulation mean that HMG is obliged to establish a ‘single point of contact’ with responsibility to:
- Notify the Commission if the UK wishes to introduce a mandate for non-personal data localisation (or make a change to any existing policies)
 - Assist other EU States in terms of data localisation queries / potential infringements
 - Provide business information and promote the codes of conduct (The ICO has published portability guidance [here](#))
 - Engage with the EU Commission to report justified exemptions

Why is it being changed?

- 2.3 If the regulation is not repealed, the obligations would continue to apply to the UK government in a one-sided manner.

What will it now do?

- 2.4 Repealing the Regulation will mean that inappropriate obligations (given that we are no longer an EU Member State) will not exist for the UK.

¹ REGULATION (EU) 2018/1807 on a framework for the free flow of non-personal data in the European Union

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 The instrument is being laid for sifting by the Sifting Committees. There are no matters of special interest.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is UK wide.
4.2 The territorial application of this instrument is UK wide.

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 The instrument is being made to revoke an existing European Union Regulation that, if left in place, would result in inappropriate obligations in UK domestic law once the Transition Period has ended on 31 December 2020. Whilst all the Devolved Authorities emphatically agree that the rationale for the repeal is sound, the Welsh Government is of the view that the subject matter of the instrument falls within their legislative competence and have informed us that they will notify the Senedd using a Standing Order 30C. HMG disputes this view and has the vires to make this instrument.

7. Policy background

What is being done and why?

- 7.1 In close cooperation with all the Devolved Authorities the legislation will revoke HMG obligations provided for by the EU Regulation - the framework for the free flow of non-personal data in the European Union. It should be noted, however, that there are minimal impacts (for HMG or business) if the Regulation is **not** revoked - and the regulation revocation will not come into force, in any case, until 2021. This will mean (minimal) inappropriate obligations for HMG for a short period.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Not applicable. The regulation is being revoked in its entirety.

10. Consultation outcome

10.1 There was no public consultation associated with this repeal - as the existing legislative effects are minimal (either for HMG; business or citizens). The Devolved Authorities were consulted informally - and agree with the policy rationale for the repeal of the European Regulation.

11. Guidance

11.1 Repealing the Regulation will have a limited impact in the public sphere - and we do not believe there is a need for associated guidance. We will, however, announce the repeal in due course on GOV.UK.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it is unlikely there will be any commercial impact on UK business if the Regulation is repealed. The effects relate to Government obligations - for example, through no longer having a duty to provide a “single point of contact”. We therefore project the Equivalent Annual Net Direct Cost to Business to be negligible (well below +/-£5 million).

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Rebecca Stewart at the Department for Digital, Culture, Media and Sport - 07713 391154 / rebecca.stewart@dcms.gov.uk - can be contacted with any queries regarding the instrument.

15.2 Jenny Hall, Deputy Director for the International Data Unit, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Whittingdale, Minister for Media and Data, at the Department for Digital, Culture, Media and Sport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Minister for Media and Data, John Whittingdale has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Framework for the Free Flow of Non-Personal Data (Revocation) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: this legislation does not fall within the categories for which use of the affirmative procedure is required under the Withdrawal Act, i.e., transfer an EU legislative function to a UK body, relate to fees, create or widen the scope of a criminal offence, create or amend a power to legislate. The instrument is being made to repeal an existing European Union Regulation that, if left in place, would result in inappropriate obligations in UK domestic law once the Transition Period has ended on 31 December 2020.

2. Appropriateness statement

- 2.1 The Minister for Media and Data, John Whittingdale has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Framework for the Free Flow of Non-Personal Data (Revocation) (EU Exit) Regulations 2021 does no more than is appropriate”.

- 2.2 This is the case because the Instrument repeals an EU Regulation that, if left in place, would result in inappropriate obligations in UK domestic law once the Transition Period has ended on 31 December 2020.

3. Good reasons

- 3.1 The Minister for Media and Data, John Whittingdale has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are that if this EU regulation was left in place, the UK would retain obligations that would not be inappropriate.

4. Equalities

- 4.1 The Minister for Media and Data, John Whittingdale has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.