Summary: Intervention and Options1 RPC Opinion: Fit for purpose Cost of Preferred (or more likely) Option (in 2020 prices) Total Net Present Social Value Business Net Present Value Net Cost to Business per Year Business Impact Target	Title: DCMS - New Adequ IA No: RPC Reference No: Lead department or ager • Department for Dig Other departments or ag • Department for Inte	Impact Assessment (IA) Date: 19/04/2022 Stage: Development/Options Source of intervention: Domestic Type of measure: Secondary Contact for enquiries: data-adequacy-queries@oc		
Total Net Present Social ValueBusiness Net Present ValueNet Cost to Business per YearBusiness Impact Target Status	Summary: Intervent	ion and Options ¹		-
Total Net Present Social ValueBusiness Net Present ValueNet Cost to Business per YearBusiness Impact Target Status	C	ost of Preferred (or more li	kelv) Option (in 2020 prices)	
	Total Net Present Social	Business Net Present	Net Cost to Business per	Business Impact Target
	Value	Value	Year	Status
	NQ	NQ	NQ	N/A

What is the problem under consideration? Why is government action or intervention necessary?

- The free flow of data underpins our everyday activities and experiences as well as our modern economies. As a world leader in digital, the UK champions free trade and a rules-based international system. Enabling international data transfers requires the free and secure exchange across borders.
- The Data Protection Act 2018 includes provisions, which are set out in Sections 17A and 74A, that allow the UK to undertake assessments of countries' and jurisdictions' data protection legislation for the purpose of making data adequacy regulations for those countries.
- Data adequacy is a status granted by the UK to countries which provide high standards of protection for personal data. It is the most straightforward mechanism for transferring personal data overseas and can also provide greater certainty and confidence in the regulatory landscape of another country. When a country is found 'adequate', UK-based organisations can transfer personal data to that country without restriction. In practice this means organisations (of any size) will not be required to put in place contractual safeguards, which come at a cost to organisations (burden).
- A positive adequacy decision will also involve preserving trust and confidence that all citizens' data rights, when transferring personal data to those countries, will be upheld.
- There is no way in which the market itself, or any stakeholder(s), would be able to introduce their own country-wide adequacy decision. Whilst it is possible for businesses and organisations to put in place safeguards and contractual mechanisms to allow for the transfer of personal data, achieving the same intended outcome, an adequacy decision will relieve business and organisations of that burden. This will specifically benefit SMEs and the research sector. The policy should reduce transaction costs and information asymmetries due to the practical changes in compliance costs but also through the information signal that a country's data protection is adequate.

¹ Please see page 18 (following the methodology section) for an explanation as to why it is not possible to calculate the NPV.

- Adequacy of the EU and its Member States comes under a separate consideration; the policy under consideration in this IA looks at countries outside the EU, and the term Rest of World (RoW) in this context refers to non-EU countries.
- Reciprocal adequacy from another country does not require the UK to find that country or jurisdiction adequate.

What are the policy objectives of the action or intervention and the intended effects?

- The primary policy objective is to reduce barriers and burdens (cost and resource) to organisations transferring personal data internationally.
- The Government is committed to providing trust and confidence that all citizens' data rights are upheld when personal data is transferred to other countries.
- To significantly increase the number of 'adequate' countries, to which organisations and Government can transfer personal data.
- Promote global interoperability of data protection frameworks to offset the risk of deeper global fragmentation on data issues.
- Proactively influence the global narrative on international data transfers.

What policy options have been considered, including any alternatives to regulation?

- **Option 0** Do-nothing: would leave in place the status quo for UK organisations, with a requirement to put in place safeguards (such as International Data Transfer Agreements (IDTAs) when sending personal data to a third country or transfers under Article 49.
- **Option 1 Do-something:** adequacy decisions are made, reducing the requirement for SCCs. For the purposes of this umbrella IA, all non-red rated countries are assumed to be made adequate. There is significant uncertainty in this option both in timing and likelihood. However, this IA considers the *potential* and does not aim to prejudge the outcome of the assessment process.
- To transfer personal data to a non-adequate third country, UK-based organisations need to put in place costly and resource-intensive alternative transfer mechanisms (contractual clauses) along with derogations made under Article 49 of the Data Protection Act 2018. Adequacy regulations relieve businesses of this burden for transfers between the UK and that country.
- The UK has designed and implemented independent policies and processes for striking UK adequacy
 agreements, and is progressing work to deliver UK adequacy regulations in line with our global ambitions
 and commitment to high standards of data protection. <u>Doing so will provide both UK organisations and our
 international partners with a more straightforward and burden free approach for international data transfers
 </u>
- Note that the evidence presented here is based on the cost and use of Standard Contractual Clauses (SCCs), which were an EU GDPR mechanism transferred into UK law. From 21 March 2022, UK organisations are required to use the new, UK-specific IDTAs instead of SCCs. It is too early to know how these differ in cost and so the analysis assumes them to be a like-for-like regulatory replacement.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: tbd

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on international trade and investment?	Yes			
	Micro	Small	Medium	Large
Are any of these organisations in scope? Yes			Yes	Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		Traded: N/A		t raded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible:

Summary: Analysis & Evidence

Description:

FULL ECONOMIC ASSESSMENT

	Base				Period	Net Benefit (Present Value (PV)) (£m)			
Year 20	20	Year 20	020	Years N/A	5	Low:	High:	Best Estimate:	NQ

COSTS (£m)	Total Tra	nsition	Average Annual	Total Cost			
```	(Constant Price)	Years	(excl. Transition) (Constant Price)	(Present Value)			
Low							
High							
Best Estimate	£0		£0	£0			
Description and scale of key monetised costs by 'main affected groups'							
The 'main affected grou	ips' are:						
a) UK organisations tha UK;	at currently send perso	onal data	to countries that do not have an	adequacy decision from the			
<ul> <li>b) UK organisations for a barrier to sending pers</li> </ul>		egal com	plexity of putting in place the nec	essary mechanisms present			
c) data subjects who wi	Il have their personal c	lata trans	sferred abroad.				
A positive adequacy dee	cision by the UK Gove	rnment <b>d</b>	loes not lead to any cost to UK	businesses.			
Other key non-moneti	sed costs by 'main a	ffected g	jroups'				
Small familiaris	ation costs for busines	ses in de	etermining what requirements add	equacy removes.			
BENEFITS (£m)	Total Tra	nsition	Average Annual	Total Benefit			
	(Constant Price)	Years	(excl. Transition) (Constant Price)	(Present Value)			
Low			£0.44bn N				
High			£0.52bn	NQ			
Best Estimate			£0.45bn	NQ			
Description and scale	of key monetised be	nefits by	/ 'main affected groups'				
The objective of a positi							

- Allow the free flow of personal data between the UK and an adequate country.
- Level competition and competitiveness (e.g. by reducing compliance costs, most acutely felt by UK SMEs).
- Opening up a more global marketplace to UK organisations (e.g. for outsourcing or research collaboration) and for indirect benefits for UK consumers.

Along with our core objectives to:

- Reduce barriers and burdens to businesses, governments, and other organisations transferring personal data freely and safely overseas.
- Provide trust and confidence that individuals' data protection rights are upheld around the world.
- Promote global interoperability of data protection frameworks to offset the risk of deeper global fragmentation on data issues.

• Proactively influence the global narrative on government access to data.

Flows of (personal) data across borders underpin almost all economic activity. DCMS estimates that in 2020, 86% of the UK's services exports to the RoW (excluding EU) are data-enabled (£145.7bn), and that 81% of the UK's services imports from the RoW are data-enabled (£74.3bn)². An adequacy decision provides a more straightforward means of legally transferring personal data between the UK and another country, which should support an increase in data flows and therefore growth in the trade that depends on these flows.

The benefit presented here is an estimate of the potential benefit if all countries are found adequate. It is not possible to accurately estimate the likely proportion that is actually realisable, given that not all countries may be found adequate. However, a 'data protection RAG score' has been applied to each country as part of the gatekeeping and prioritisation work, and countries that scored red have been excluded from the estimates of suppressed trade.

The benefits to the main affected groups (see cost section above) are 1) the removal of ongoing compliance costs incurred by group (a) in relation to the country found adequate; and 2) the removal of this as a trade barrier to group (b) resulting in additional data-driven export revenue. Benefit (1) has been estimated as the cost of a Standard Contractual Clause (SCC), at around £360m per year. Benefit (2) has been estimated as suppressed trade, at around £90m a year. Thus, the total potential benefit is estimated at up to £450m per year. Sensitivity analysis on the amount of suppressed trade estimates a benefit between £80-£160m representing a total benefit of between £440m-£520m per year.

It is not possible to calculate an Net Present Value (NPV) as this is not a single decision with a benefit that accrues, but many decisions that will be made over a number of years, many of which have yet-to-be-estimated individual benefit values. Similarly, the order in which countries are assessed is not fixed, and overall timings are too indeterminate to be able to place the realisation of benefits along a timeline for the purposes of discounting and providing a ten-year assessment of the benefits. See page 18 for more detail.

#### Other key non-monetised benefits by 'main affected groups'

Only the direct impacts have been monetised. Reducing barriers to trade in jurisdictions found adequate is likely to ead to benefits along the supply chain in both the UK and the other countries. Adequacy increases access to data by both businesses and other organisations, which has the potential for wider, non-monetisable social benefits, which are difficult to quantify, including diplomatic benefits.

#### Key assumptions/sensitivities/risks

**Discount rate (%)** 

NA

- Suppressed demand is based on the estimated impact on trade from EU Exit modelling, and assumes that
  the current suppression for the non-adequate RoW is the same as would be experienced by the UK were it
  to have left the EU without adequacy. This is because there is no evidence to suggest that the barrier to
  trade with the RoW acts in a different way than it does with respect to EU trade. This is to say, the cost of
  alternative transfer mechanisms that forms this barrier is assumed to be the same in each case, and so the
  same types of businesses are prevented from trading for the same reasons and to the same extent.
- The proportion of Rest of World (RoW) trade that depends on data flows is based on a survey carried out in November 2020 to January 2021 in which UK businesses were asked if they use SCCs and trade with non-EU countries.
- Whilst it was possible to exclude red-rated countries from the suppressed trade estimate, due to a lack of detailed, country-level data on data-dependency, these are included in the SCC cost element.
- The current amount of trade is based on 2020 ONS trade statistics.
- The SCC cost is based on survey work carried out in 2019 in which businesses were asked how much time they spent implementing SCCs, and applying ONS data on administrator salaries.

#### **BUSINESS ASSESSMENT (Option 1)**

Direct impact on business (Equivalent Annual) £m:						Business s only) £m:	-	Target	(qualifying
Costs: NQ	Benefits:NQ	Net:	NQ	provi	oron	o onij) ≈ini	Νų		

² Note that these figures have reduced during the COVID-19 pandemic. However, this is likely due to the overall decline in global economic activity rather than a decrease in dependency on data transfers.

# 1 Policy Rationale:

## Introduction

- 1. This Impact Assessment is an 'umbrella' IA and is intended to set out the policy and process for assessing the 'adequacy' of a large number of countries' (or other defined jurisdiction, territory or international organisation) data protection regime, and the benefits estimation methodology. It does not itself form part of a decision. Rather, each country, if deemed to be adequate, will require separate regulations to be laid in Parliament to update the Data Protection Act 2018 to include that country as an adequate country under the legislation. Therefore, 'individual country IAs' will be submitted in each case as necessary, which will be much shorter documents setting out the specifics of that determination. Most individual country assessments will not meet the threshold necessary for submission of an IA to the RPC. Countries are being assessed in a priority order which means the majority of the total benefits relate to a relatively small number of larger economies that will be assessed first.
- 2. This IA estimates the *potential* benefits if all non red-rated countries were made adequate. These benefits are the reduction in compliance costs from putting in place standard data protection clauses, such as EU Standard Contractual Clauses (SCCs) or the International Data Transfer Agreement (IDTA)³, and an estimate of the potential increase in trade as a result. Wider impacts and qualitative benefits are also explored. A full discussion of the methodology of estimation is detailed below. We will continue to refine methods to estimate benefits and costs of adequacy decisions for future individual country level IAs and will update this Umbrella IA periodically.
- 3. In today's Digital Age, the world's opportunities have never been closer or more accessible. Our social lives and our livelihoods are experienced online like never before. This exchange, and the opportunities that it brings, is fuelled by flows of data.
- 4. International data transfers help drive international commerce, trade and development and underpin modern day business transactions and financial institutions. They also support international cooperation, including for international trade, vital research and innovation activity and upholding law enforcement and national security. For example, real-time and collaborative data-sharing between international law enforcement and security agency partners supports cooperation at countries' borders and helps keep the public safe.
- 5. The pandemic also forced us to share data quickly, efficiently and responsibly for the public good and improve coronavirus treatment methods. On a more personal note, data transfers enable us to stay emotionally and socially connected to one another. We are determined to use these lessons to capitalise on the potential of data flows.

### **Data Adequacy**

6. Data adequacy is a status granted by the UK to countries which provide high standards of protection

³ From 21 March 2022, the ICO's IDTA took effect as a replacement for the EU SCCs. Transitional Provisions also entered into force on 21 March 2022, disapplying Paragraph 7 of Part 3 in Schedule 21 of the Data Protection Act 2018, to the extent necessary to give effect to the following: Contracts concluded on or before 21 September 2022 on the basis of any Transitional Standard Clauses shall continue to provide appropriate safeguards for the purpose of Article 46(1) of the UK GDPR until 21 March 2024, provided that the processing operations that are the subject matter of the contract remain unchanged and reliance on those clauses ensures that the transfer of personal data is subject to appropriate safeguards. For the purposes of this analysis, the old SCCs and the IDTAs are treated as equivalent in terms of how they function and how much they cost to implement. DCMS is currently undertaking an evaluation of the change to verify this assumption.

for personal data. It is the most straightforward mechanism for transferring personal data and can also provide greater certainty and confidence in the regulatory landscape of another country. When a country is found 'adequate', UK-based organisations can transfer personal data to that country without restriction.

- 7. A two-step process was undertaken in identifying priority countries for adequacy decisions (more detail given in the 'description of options considered' section below):
  - a. **Gatekeeping:** deciding whether to commence an adequacy assessment. Looking at a range of policy factors including a third country's trade and diplomatic relationship with the UK, together with an initial, high-level overview of the data protection rules and independent regulators/bodies who oversee compliance. This exercise generates a RAG rating for each country. Red-rated countries are excluded from the trade benefits analysis.
  - b. **Assessment:** collection and analysis of information relating to the level of data protection in another country, systematically looking at the third country's data protection laws and practices making use of external expertise and country partners.
- The first set of priority countries for UK Adequacy were announced on 26 August 2021. Top tier priority partners are: Australia, Colombia, Dubai International Financial Centre, Republic of Korea, Singapore and the United States of America. Technical work to assess the adequacy of these partners is already underway. Longer term priority partners are: Brazil, India, Indonesia, and Kenya.
- 9. Adequacy is about ensuring that the level of protection under the UK GDPR and Data Protection Act 2018 is not undermined when personal data is transferred to a third country. Adequacy assessments take into account, amongst other things, the rule of law, respect for human rights and fundamental freedoms, and the existence and effective functioning of a regulator in the third country. Adequacy assessments consider the overall effect of a third country's data protection laws, implementation, enforcement, and supervision.
- 10. In addition to prioritising work towards new adequacy partnerships, we already have over 40 adequacy arrangements such as with the 30 EU/EEA Member States, Japan, Canada, Switzerland, and New Zealand.
- 11. Some countries have similar processes to define the UK as adequate, some use other mechanisms and others have no ability to do so. The ability for countries to reciprocate a data adequacy designation is part of the assessment. Our analysis is conducted on the basis of no reciprocation counterfactual, the benefits in the event of reciprocation have not been monetised.

### Legislation

- 12. Following the end of the Transition Period of the UK Exit from the European Union on 31 December 2020, sections 17A and 74A of the Data Protection Act 2018 conferred powers on the Secretary of State to make UK Data Adequacy Regulations, in relation to general and law enforcement processing respectively.
- 13. This legislation empowers the Secretary of State to assess countries (in part or in full) and territories or sectors within countries for adequacy. Sectoral adequacy decisions may be important if country-wide adequacy is not appropriate.

14. To give legal effect to a decision to specify a country as 'adequate', the Secretary of State must make regulations and lay these in Parliament. Once laid in Parliament, the UK Adequacy Regulations will be subject to the 'negative resolution' procedure.

### **Review of Adequacy**

15. UK Adequacy Regulations will be monitored and kept under periodic review. The Secretary of State can amend or revoke UK Adequacy Regulations. All UK Adequacy Regulations reflect a decision made by the UK Government that can be challenged in domestic courts by way of judicial review.

## The Role of the Information Commissioner's Office

- 16. The Information Commissioner's Office (ICO) is the UK's independent data protection regulator, and has responsibility amongst other things for advising UK data controllers on compliance with UK data protection law. This includes the provision of guidance on legal bases for international data transfers.
- 17. Under a Memorandum of Understanding between the ICO and DCMS, the working cooperation will see the ICO provide comments and advice during the Gatekeeping and Assessment phases. The ICO will also provide its view on the assessment prior to the Secretary of State's final decision on making adequacy regulations. As an independent regulator the ICO will give its opinion on the adequacy assessment process to Parliament.

# 2. Problem Under Consideration

- 18. Through adequacy the UK makes the case for removing unnecessary barriers to data flows. In absence of adequacy, businesses are required to put in safeguards and undertake compliance activities that add compliance and legal costs to trade (in economic terms, transaction costs). When costs are prohibitive, businesses may choose not to send data or trade internationally. Similarly, the uncertainty and complexities of engaging with legal tools for uncertain profits might discourage businesses from beginning to trade. These requirements can be seen as a non-tariff barrier to trade. Assessment of business-level productivity data in the UK shows that even when controlling for business characteristics, traders have higher productivity than those that do not, which may indicate barriers are restricting businesses, especially the smallest in productivity growth⁴.
- 19. Of those businesses that do not currently send or receive data outside the UK, 92% state they currently do not have a need, 28% state they do not have the resources to share data internationally whilst 18% are concerned about the legal risks or uncertainty of transferring data internationally⁵. These indicate a significant proportion of businesses do not currently think they have a business case to expand to sending data and trading internationally. They also state the direct financial burden (compliance) and legal costs and risks as barriers that the policy would alleviate. As well as the direct change in legal and compliance costs, the decisions may be seen as an information signal or nudge by the government, noting the assessment process has deemed a country adequate and therefore behaviourally open up trading with new countries as an option. This impact is likely more the case for small and medium enterprises where barriers are proportionally higher.
- 20. Securing and enhancing inbound flows of data to the UK, through seeking reciprocal arrangements for the transfer of data with adequate countries will bring new opportunities for innovation, collaboration and trade, especially in data-intensive sectors like scientific research, financial services, and artificial intelligence. The greatest benefits of international data flows will be realised

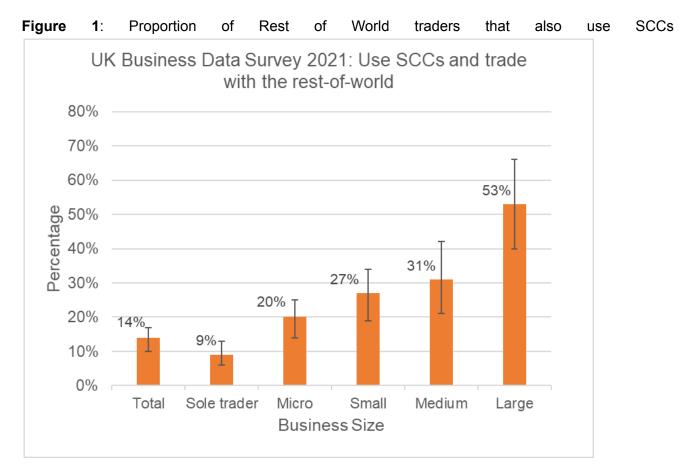
⁴ Business-level labour productivity measures from the Annual Business Survey, UK: 1998 to 2019, ONS 2022

⁵ UK Business Data Survey 2021, DCMS

when data can flow freely and securely in both directions. These are the areas that are taken into consideration during the Gatekeeping phase in establishing a priority country for assessment.

- 21. In addition the UK will want to shape global thinking and promote the benefits of the secure, international exchange of data, including finding solutions to address the barriers to cross-border data transfers.
- 22. Our international strategy also explores ways in which we can use data as a strategic asset in the global arena and improve data-sharing and innovation with our international partners. We want to shape global thinking and promote the benefits of the secure international exchange of data that will be integral to future growth and prosperity.
- 23. Collaboration with other countries in relation to data protection also provides opportunities for us to create soft diplomatic relationships, sharing best practice and experiences of implementing and administering data protection laws. Adequacy decisions are separate but complementary to international agreements and correspond well with the UK's objectives in relation to international trade following our departure from the European Union. It also safeguards the safety of our citizens in reducing the barriers to personal data transfers that can be used to prevent crime or threats to our national security.
- 24. In the absence of an adequacy decision, UK businesses are required to implement specific safeguards in order to protect personal data that they transfer overseas. These are set out in Article 46 UK GDPR⁶. The implementation and use of these safeguards incur costs and present a compliance burden for UK businesses, especially SMEs. The introduction of a country-wide adequacy decision reduces these costs for UK businesses, without compromising on data protection standards. In addition, Article 49 allows a limited number of derogations which can be used for specific situations involving data transfers to jurisdictions in the absence of adequacy regulations or of appropriate safeguards pursuant to Article 46 UK GDPR.
- 25. The *UK Business Data Survey 2020*, a DCMS survey of 4,500 UK businesses that completed fieldwork in January 2021, asked businesses if they used SCCs, and if they trade with non-EU countries. The chart below shows that of UK businesses that trade with the RoW, around 14% use SCCs. These figures partly represent the proportion of trading businesses that are data-dependent and require data transfers (and therefore SCCs in place) in order to function. The important caveat here is that these two questions are separate and so this does not necessarily mean that all SCCs are related to the RoW trade. In turn, this means that these figures are likely to be overestimates because businesses that use SCCs *for* their RoW data transfers are a subset of these businesses (i.e. some businesses that trade with the RoW use SCCs for EU data transfers but not for RoW transfers).

⁶ <u>https://gdpr-text.com/read/article-46</u>



Base: 766 businesses that said in UKBDS 2021 that they trade with the RoW. The error bars are the 95% confidence intervals.

- 26. The UK's data protection framework sets out that adequacy assessments must be carried out by the Secretary of State. There is no way in which the market itself, or any stakeholder(s), would be able to introduce its own country-wide adequacy decision. The Government is able to take a view as to a number of factors that would make a country a priority for adequacy. Along with trade considerations, the Government will look at geopolitics, international diplomacy, technological and interoperability and reciprocity of data flows and law enforcement. The objectivity in recognising these important factors makes it best placed to assess adequacy.
- 27. Without introducing data adequacy regulations, we therefore risk disadvantaging UK organisations, which would face barriers to transferring data that is often vital to their business activities. In addition, governments and law enforcement bodies would face challenges in sharing data that could have a pivotal impact on the protection of UK citizens.

#### Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

- 28. The level of analysis used in this IA is driven mainly by the data available. Specifically, we rely on DCMS survey data on the extent to which UK businesses rely on being able to send data to non-EU countries. The survey data used here is from the *International Transfer Tools Survey* ('Tools Survey'), and so the ability to estimate data-dependency by country is limited by sample sizes.
- 29. The analysis uses export statistics published by the ONS. Whilst the total value of trade is based on an established methodology and can therefore be considered reliable, it is not possible to obtain reliable statistics at the country level in all cases. Note also that adequacy decisions may also be made regarding jurisdictions smaller than a country (e.g. sector or administrative region).

# 3. Description of options considered

30. In this IA, two options are considered:

- **Option 0 Do-nothing:** data transfers between the UK and third countries require alternative transfer mechanisms, namely SCCs, before restricted data transfers are permitted. To enable certain types of trade, data transfer is required which involves time and legal costs. Some businesses currently cannot trade as compliance costs are higher than the potential profits made from trade. Not to include adequacy under regulations would continue to expose businesses and organisations to the costs of alternative transfer mechanisms and prohibit smaller businesses from exploring opportunities overseas.
- **Option 1 Do-something:** adequacy decisions are made, reducing the requirement for alternative transfer mechanisms. For the purposes of this umbrella IA, all non-red rated countries are assumed to be made adequate. There is significant uncertainty in this option both in timing and likelihood. However, this IA considers the *potential* and does not aim to prejudge the outcome of the assessment process.
- 31. At any time the DCMS Secretary of State can make the following decisions, based on their understanding of the likelihood of the country passing a full adequacy assessment:
  - **Recommend the country and/or sector for an adequacy decision**, following engagement with the country and a full consideration of its data protection laws and practices;
  - **Pause or suspend work on a country**, based on a consideration of its data protection laws and practices that has demonstrated that they will not pass a UK adequacy assessment. This decision will be as the result of an internal process and will not be externally communicated.

#### Objectives

32. The UK will look at meeting its economic objectives when assessing a country's adequacy:

- Levelling competition and competitiveness (e.g., by reducing compliance costs most acutely felt by UK SMEs).
- Opening up a more global marketplace to UK organisations (e.g., for outsourcing or research collaboration) and for UK consumers.
- 33. The ongoing programme of adequacy assessments aligns with the objectives set out in Mission 5 of HMG's National Data Strategy:
  - **Build trust in the use of data**: We will create the regimes, approaches and tools to ensure personal data is appropriately safeguarded as it moves across borders.
  - Facilitate cross-border data flows: We will work globally to remove unnecessary barriers to international data flows.
  - Drive data standards and interoperability internationally: We will cooperate with nations to develop shared standards that align with the UK's national interests and objectives.
  - **Drive UK values internationally:** The UK will be a champion of good-quality, available data across the globe.

# 4 Costs & Benefits:

### Summary

34. The estimate of the benefits comprises two elements:

- a. The removal of the cost to businesses of implementing SCCs.
- b. The realisation of additional revenue that is currently suppressed due to this cost acting as a non-tariff barrier.
- 35. The starting point of the analysis is all UK businesses. The analysis is then focussed on the proportion that currently send or receive data to the RoW (and therefore require SCCs). Trade benefits attempt to estimate the amount of trade that is currently suppressed due to compliance and legal costs. One aim of the policy is to increase the number of businesses that send data and consequently trade with the RoW.
- 36. The benefits presented in this IA are the total potential benefits that could be achieved were all the jurisdictions with a non-red data protection RAG score found adequate. It is possible that not all the non-red jurisdictions will be found adequate, but going further in the analysis than the gatekeeping process already has would be to prejudge the outcome and so all non-red countries are included as *potential*.
- 37. It is assumed that there are no cost implications to UK businesses of this policy as the goal is to remove the need to implement and maintain alternative transfer mechanisms that present a cost to businesses. Familiarisation costs and costs to the government from undertaking the assessments are analysed qualitatively.

Impact	Best	Best Low			
Removal of SCC costs, annual	£360m				
Trade impacts, annual	£90m	£80m	£160m		
Total annual impact	£450m	£440m	£520m		

Table 1: Data adequacy model results summary (£m)

- 38. In total, the analysis finds annual benefits of £360m in reduced SCC costs with £330m accruing to small and micro businesses. The trade benefits central estimate is an annual £90m (range of £80-£160m). Total annual benefits are estimated at £450m (range of £440m-£520m).
- 39. The results are not placed in net present value terms over a set appraisal period as the IA represents a set of uncertain individual country-level decisions. Further detail is provided below.
- 40. Other, wider impacts could include more online harms or privacy costs due to increased flows. There is a trade-off between security and trade, including considerations of government access to data, especially data-driven trade which is hard to quantify and monetise. As above, these risks will be partly mitigated by the gatekeeping exercise which considered data-protection laws in potential partner countries.

41. Innovation and competition could be driven by reduced barriers to trade that lead to dynamic increases in economic growth through knowledge spillovers leading to large changes in trade in the medium-term. These benefits may be especially apparent in data-enabled industries and sectors.

### Methodology

- 42. The two benefits monetised in this IA are the reduction in SCC costs and increased exports. Results for both goods and services exports are estimated although it is known from earlier research that these form a minority of data-dependent trade, services trade being much more strongly driven by data transfers. SCCs are the focus as the most widely-used alternative transfer mechanism. Binding corporate rules are approved by the ICO and used by businesses as a mechanism but are used much less widely and therefore not in the scope of this analysis. As a result, we are likely to underestimate the benefits of the removal of compliance costs.
- 43. Analysts attempted to estimate SCC costs for each country. However, a lack of country-specific data meant that this was only possible at all for 35 countries. For the individual country IAs, the richer data from the UKBDS can be used, which should increase this number.
- 44. However, there will remain a large number of countries for which individual estimates are not possible, due either to a lack of data on personal data transfers or to a lack of data on exports. For those countries, the value is likely to be below the threshold for RPC involvement. For these, we rely mainly on the non-monetisable benefits (which may in these cases be more important politically, diplomatically and socially, than the relatively small, immediate, monetary gain, not forgetting an adequacy decision presents essentially negligible costs). The economic benefits of these decisions are likely to be incremental and longer term.
- 45. It will become increasingly difficult to estimate the benefits for individual countries as the list is worked through, as the priority order means that smaller economies with less personal data-sharing activity with the UK will be assessed later on. Conversely, we will progressively build our evidence base as we undertake Impact Assessments which may help fill our current evidence gaps.
- 46. The analysis makes use of the *UK Business Impacts Model*⁷, which is used to estimate the value of EU Adequacy. This assessment does not consider this impact in its scope but uses assumptions, such as the SCC costs derived for that analysis, and uses the outputs, such as the estimated trade suppression ratio, to support this analysis. More detail on these assumptions is given below.
- 47. The value of exports represents all the exports from the UK to each RoW country. In some cases an adequacy decision may not apply to the entire country. For example, the Dubai International Financial Centre (DIFC) is currently being assessed rather than the UAE as a whole. Similarly, the US does not currently have federal privacy legislation, so any adequacy decision would apply to a specific group of businesses who had signed up to a bespoke mechanism.
- 48. The benefits from an individual decision will not be realised immediately as it will take time for businesses to leverage the opportunity afforded by the free flow of personal data between the UK and the relevant country. It is also entangled with potential trade diversion from the EU toward the RoW as a result of EU Exit. RoW adequacy decisions could be considered a potential enabler of that shift but this is uncertain.

⁷ The UK Business Impacts Model has been independently quality assured three times: when it was first completed in early 2019, after being updated toward the end of 2019 and most recently following updates made for the final Data Protection and Digital Information Bill IA analysis. The final model results have been used previously in numerous papers and submissions.

- 49. Lastly, the estimates provided are the annual, maximum, theoretically-realisable benefit once all non-red-rated, non-adequate, RoW countries have been granted adequacy. It is not necessarily the case that all green and amber countries will be granted adequacy. It is also possible for circumstances to change, particularly given that the assessments will take a number of years to complete. For example, a country currently rated red during the gatekeeping process because they have no data protection legislation in place may implement data protection legislation and create a new data protection authority, whereupon they may move into the green category.
- 50. Similarly, the order in which countries are assessed is not fixed, and overall timings are too indeterminate to be able to place the realisation of benefits along a timeline for the purposes of discounting and providing a ten-year assessment of the benefits.
- 51. For this reason, we intend to refine the estimates as an ongoing process and keep the RPC updated. For the individual country IAs, this may require analysis using *ad hoc* sources of data yet to be identified, rather than the overall DCMS and ONS statistics used here.

### **Quantitative Benefits**

#### SCC and Derogation Costs Benefits

- 52. The first benefit of an adequacy decision is the removal of the cost of implementing SCCs, along with derogations under Article 49, in contracts with business partners in that country. The top-down estimate of the total, global cost (excluding the EU) comprises the following steps:
  - a. Take the total number of UK businesses by size category from ONS Business Population Estimates 2020⁸. The size categories used are commonly-used:

Micro and Sole traders (0 to 9) Small (10 to 49) Medium-sized (50 to 249) Large (250+)

- b. The *International Transfer Tools Survey*, conducted in October 2020, provided the percentage of UK businesses that send data to the RoW, by the same size categories.
- c. The product of 1 and 2 gives us the number of UK businesses that send data to the RoW.
- d. Previous work carried out in 2018 and 2019 estimated the cost to an individual business of implementing SCCs, in the UK Business Impacts Model. This was done to estimate the cost to businesses of the UK leaving the EU without an adequacy decision, and so the use of these estimates is to assume that it costs a business the same to implement SCCs to enable transfers of personal data to the RoW as it does those to the EU. Individual businesses' SCC costs were estimated using DCMS survey data in which businesses estimated the time required to put SCCs in place. It was assumed that these estimates equate to one full time administrator working for the length of time given by the respondent. ONS Annual Survey of Hours and Earnings⁹ published statistics on average salary by profession were used to calculate the resultant cost. Per RPC guidance¹⁰, a non-wage uplift of 22% is applied. These costs are shown below in table 3. This is a reasonable assumption as the work would generally be carried out by the same people in either case. This work assumed that all relevant businesses would be required to incur this cost upon the UK leaving the EU.

⁸ Business Population Estimates, 2020

⁹ Employee earnings in the UK Statistical bulletins, ONS

¹⁰ RPC guidance on implementation costs, 2019

However, since the contractual relationships that include SCCs with the RoW already exist, the average five-year contract refresh cycle assumption that was used in that work is used here in order to spread the cost. Therefore, the SCC cost estimates are divided by five to obtain a per-year value.

- e. Multiplying 3 and 4 together gives us the total cost by size category to businesses of implementing SCCs with respect to transfers of personal data to non-EU countries.
- f. Taking the total over the size categories gives us the final estimate of **around £360m for the current, annual SCC cost** representing a direct benefit to businesses.

		Micro (0 to 9)	Small (10 to 49)	Medium (50 to 249)	Large (250+)	Total (rounded)
1	Population	5,724,700	211,845	36,140	7,835	6m
2	% send data to RoW	4%	6%	16%	31%	4%
3	Num. send data to RoW	209,185	13,391	5,901	2,448	230k
4	SCC assumption per year (incl. non-wage cost uplift)	1,403	2,635	3,026	4,124	
5	SCC cost per year / £m	£294m	£35m	£18m	£10m	£360m

Table 2: Annual SCC cost (£m) by Business Size

53. For **small and micro-businesses**, although a relatively small proportion send data to the RoW, because they make up by far the majority of UK businesses the majority of the estimated SCC cost applies to them, at **£330m**.

 Table 3: SCC costs by Business Size

Number of employees	Average SCC cost to businesses for five years	With non-wage cost uplift
0	£1,500	£1,830
1 - 9	£8,300	£10,126
10 - 49	£10,800	£13,176
50 - 249	£12,400	£15,128
250 +	£16,900	£20,618

54. These are the estimated one-off costs incurred by a business as it becomes compliant following a loss of adequacy from the EU, and are assumed to hold until the beginning of a new five-year contract cycle. However, as mentioned in step 4, the costs with which this IA is concerned are current, 'business as usual' costs - i.e. SCCs have been a natural part of conducting personal data transfers abroad for many years - and so these costs are divided by five to give an average annual cost. The cost for the 'micro' category in the *Transfer Tools Survey* is the weighted mean of the 0 and 1-9 categories, weighted by the business population in each category.

- 55. These cost assumptions reflect the average over all UK businesses in each size category. The 250+ category includes a relatively small number of very large businesses that will incur considerably higher costs.
- 56. The main reason the cost increases by business size is that larger businesses generally have more contracts with a greater number of foreign business partners that involve the exchange of personal data. Therefore, the total amount of work required to implement SCCs to cover all their international relationships is greater.
- 57. Analysts in BEIS, DIT and HMT as well as a data protection lawyer in BEIS were consulted to obtain a view on how reasonable these SCC cost estimates are. The general consensus was that they were likely to underestimate the real cost however they are used in order to be conservative and mitigate parameter uncertainty. Therefore, these inputs have been widely agreed upon for use in modelling the cost implications of SCCs.

### Suppressed Export Benefits

- 58. The second benefit is the additional export activity enabled when the SCC costs have been removed and therefore no longer act as a non-tariff barrier. The EU Exit modelling work mentioned in step 4 above, in addition to the SCC cost, also estimated the value of exports that would be lost as a result of the cost of SCCs becoming necessary to receive personal data from the EU in order to export services there. The value of these exports as a proportion of the current total can be used as a 'suppression factor', i.e. the proportion by which exports to the EU would be suppressed by the cost of SCCs acting as a barrier to trade.¹¹
- 59. To estimate the second benefit, the inverse of this suppression factor is applied to the value of current data-dependent RoW exports, on the assumption that trade is already suppressed in the same manner. Therefore, the following formula is applied to the export value to 'inflate' the current value up to 100% from its presumably suppressed value, and take the difference between that and the suppressed value.

$$d\frac{1}{1-s}-d$$

where:

Data-dependent RoW exports¹², d = £220bn * 14% = £30bn

The data-dependency value of 14% is taken from the *UK Business Data Survey 2021*.¹³ Suppression factor, s = 0.0030 (high=0.005; low=0.0026)

60. Data-dependent RoW exports excludes countries that already have an adequacy decision and those given a red rating during the gatekeeping process.

¹¹ The 'suppression factor' sourced from *UK Business Impacts Model* mentioned in step 4 of the SCC costs section above, is based on the estimate of current data-dependent exports from the UK to the EU and the proportional estimated loss of trade in the event SCCs were required, which acts as a non-tariff barrier to trade.

¹² Services from <u>UK trade in services: all countries, non-seasonally adjusted</u> and goods from <u>Trade in goods: all countries, seasonally adjusted</u>, for 2020.

¹³ The data-dependency percentages, i.e. the proportion of rest-of-world traders who use SCCs is based on robust statistical analysis.

- 61. The result is **around £90m (with a sensitivity range of £80m-£160m based on low and high suppression factor estimates) per year in suppressed export revenue** that it is assumed would be enabled if all non-red-rated, non-EU, non-adequate countries were given adequacy by the UK.
- 62. This estimate makes two important assumptions:
  - a) That the effect of SCC costs on exports to the RoW is currently the same as that on exports to the EU would have been had we not received an adequacy decision from the EU.
  - b) That the effect is symmetrical. The EU Exit analysis modelled the need to receive data from the EU in order to export to the EU. The suppressed trade calculation here applies the same methodology to exports to the RoW that depend on *sending* data to the RoW. This assumption is necessary because we currently lack the evidence to differentiate between the two directions. Getting a better understanding of the directionality of data flows with respect to business functions is a medium-term research gap that DCMS aims to fill.
- 63. It is not possible to produce a suppressed export revenue figure specifically for small and micro-businesses as it is not possible to remove adequate and red-rated countries from this value and so any figure produced would be a considerable overestimate (for all business sizes, adding in red-rated countries adds around £60m to the £90m estimate).
- 64. To note, businesses' behavioural reactions may reduce the benefits estimated. Some may choose to keep SCCs in place into the long term to account for uncertainty and risk aversion. Adequacy can also be revoked. This likelihood should be mitigated by the assessment process identifying any policy risks but we cannot discount that businesses may account for uncertainty and as a form of extra legal protection by keeping SCCs in place. We have not attempted to estimate these factors.

#### **Qualitative Benefits**

- 65. Adequacy decisions are unilateral. Some countries have mechanisms to reciprocate and make the UK similarly adequate. These benefits have not been calculated. Data flows and impacts on trade are not well-understood so there are likely further benefits when both outbound and inbound flows are adequate, beyond those when summing the two policies in isolation. Similarly, UK businesses may incur some of the SCC costs for inbound flow legal costs when international businesses want to send personal data which would not be incurred in the event of reciprocation.
- 66. Other, strictly domestic businesses utilise services crucial to their business from businesses that rely on cross-border transfers. There may be additional indirect benefits for businesses who do not undertake cross-border transfers in terms of productivity as services improve due to easier cross-border transfers of data. One example may be research and development benefits from sharing data internationally that lead to the development of a service. The strictly domestic business then uses the improved service which leads to an improvement in productivity.

### **Quantitative Costs**

67. Costs have been assessed qualitatively below as a result of proportionality. Some costs are small whereas for others the evidence base is not advanced enough to provide robust estimates.

### **Qualitative Costs**

68. Familiarisation costs have not been calculated as these are expected to be very small at the individual business level and therefore difficult to estimate. This is because the change in legislation, i.e. to specify in law that a particular country has been assessed as adequate, removes

requirements that businesses in scope would already be familiar with (i.e. SCCs), rather than requiring businesses to perform some action in response. The most likely scenario for businesses is that they would keep SCCs in place, but as part of naturally reviewing or placing new contracts in with new international partners, either not update existing SCCs or no longer put them in place. In the case of establishing new contractual relationships with RoW business partners, the change in legislation means a business does not need to do anything with respect to the relevant country regarding data protection. There may be some small familiarisation costs as businesses read and confirm what they no longer need to do. It will also be true for businesses that currently do not trade with the RoW; the familiarisation cost is small as it is what they do not need to do. A key research question as part of the evaluation of adequacy decisions will be the familiarisation costs after adequacy decisions. Evaluations will feed back into future IAs as methods are refined.

- 69. The quantitative export revenue benefits calculated above are estimates of additional revenue which are subject to costs, for example, taxes, production costs and other export costs. The analysis does not net off the additional revenue as these costs are unknown and uncertain. For example, what part of the costs falls onto the exporter compared to the importer. The costs would reduce the overall export revenue benefits.
- 70. There is a cost to HMG of carrying out the adequacy assessments. However, this is difficult to estimate and is likely to be highly variable from country to country. Further, it is the employment cost of a small team of Civil Servants carrying out their roles, it is small enough compared to the estimated benefits that it can be regarded as negligible.
- 71. Additional transfer of data may lead to increased risk of online harms and loss of privacy. The assessment process accounts for both data protection laws in countries but also the effectiveness of enforcement such as the presence of a regulator. Therefore, risks are partly mitigated. Individual country IAs will present this information. Valuing privacy and online harms is a long-term research aim and DCMS is actively working in this field including as part of the latest online harm bills impact assessment¹⁴.
- 72. There might be a trade-off between trade openness and security that is not currently well-understood or extensively researched. Most analysis available focuses on the issues around free trade benefits and the impact of protectionist policies more broadly, rather than the tradeoff of "data openness" and security specifically. The gatekeeping and assessment process encompasses this in part through an assessment of data protection law and regulatory power. Individual country IAs will be able to consider country-specific contexts. Specific areas of assessment could include government access to data.

### **Net Present Value**

- 73. This IA does not represent a single decision that leads to a benefit that accrues over a set period. Rather, separate decisions on each country (and commensurate legislative changes needed to be laid in Parliament) that will be made over a number of years. To calculate the NPV over an appraisal period, we would need to assign each decision and its benefit to a point in time and accrue that benefit forward. This is not possible to do this for the following reasons:
  - The individual country approach to estimating the benefits was not possible due to a lack of data on the numbers of businesses that need to send data to individual countries, as well as, in some cases, a lack of trade data. This same issue means that in most cases, no value exists from which to calculate the NPV. This will be mitigated to some extent by the new UKBDS providing a

¹⁴ Available at Online Safety Bill - Impact Assessment, DCMS 2021

bigger sample, but in many cases bespoke research will be required. Proportionate analysis will be employed to verify smaller countries do not fall above the RPC threshold. The overall benefits at the programme level will be updated as the process progresses.

- As each decision will be made at a different time, earlier decisions will accrue a greater benefit over the evaluation period than later decisions, and so the total NPV estimate will be biased by the order in which jurisdictions are expected to be assessed.
- Whilst there is a priority order to these decisions, this is subject to change, and so it is difficult to accurately fit the individual decisions and their benefits along a timeline.
- The overall, top-down benefit estimated in this umbrella IA is the theoretical maximum were all
  jurisdictions to be given adequacy. This is acceptable as a measure of the total *potential* of the
  overall policy. However, not all the assessments will result in an adequacy decision, and so
  when it comes to arraying all these decisions over an evaluation period, the NPV estimate of
  benefit accrual is inaccurate due to those decisions which do not result in adequacy.

# 5. Wider Impacts

## **Small and Micro Business Assessment**

- 74. Small and micro businesses are not exempt from the compliance requirements. Even though a smaller proportion of businesses send data to the RoW (for example 4% of micro businesses send data to the RoW compared to 31% of large businesses)¹⁵, there are more of them (approximately 209,000 vs 2000) as there are more businesses of that size in the general business population. Out of businesses that do not currently share data internationally, the smallest businesses state that they do not have the resources to share data internationally and are more likely to have concerns about legal risks and uncertainty (although the very largest businesses also have the highest concerns).¹⁶ The policy directly reduces the cost and legal barriers to undertake data transfers with countries that are deemed adequate. Similarly, even though SCC costs increase by business size, it is likely that SCC costs are proportionally larger for the smallest businesses (compared to their turnover) and so represent the highest burden.
- 75. As the SCC cost element of the benefits has been calculated by size category, it is possible to separate small and micro business from the overall £360m saving theoretically achievable by giving adequacy to all the jurisdictions being assessed. This is estimated at £330m. This is a large proportion because the large majority of UK businesses fall into this category.
- 76. The potential increased trade of £90m is more difficult to separate out. However, it is known that larger businesses generally represent the greater share of trade revenue and so it is likely that the proportion of the £90m total attributed to small and micro businesses would be smaller than the proportion of the SCC cost saving (£330m/£360m).
- 77. Analysis of business-level productivity shows even when controlling for business characteristics, businesses that trade are more productive than those that do not¹⁷. The policy has the potential to increase the number of businesses that transfer data internationally and consequently trade. As a result, there may be increased productivity for the smallest businesses that currently face the highest proportional barriers to trade.

¹⁵ International Transfer Tools Survey

¹⁶ UK Business Data Survey 2021

¹⁷ Business-level labour productivity measures from the Annual Business Survey, UK: 1998 to 2019, ONS 2022

#### Trade, Innovation and Competition

- 78. The wider impacts are likely to stem mainly from supply chain impacts resulting from the increased ability of businesses to share data across borders. However, the value of data flows and their effects on supply chains remain poorly-understood (whilst DCMS is at the forefront of this research, it is very much a long-term research undertaking), not forgetting that data is an intangible, non-rival asset.
- 79. The modelling does not capture dynamic impacts of trade. Taking a static view of businesses, by using current survey data with a cross-sectional methodology thereby pivoting off current trading relationships, may give a limited estimate when considering longer term impacts. The modelling approach is strictly backwards-looking, using established trade relationships as a guide for future changes. This approach, as with a range of similar methods, leaves limited room to interpret what substantial changes in trade policy, such as the UK's exit from the EU, may result in and might not be able to fully capture the impact of policy reforms. Dynamic impacts may include closer alignment with other trade blocks, due to treaties or business behaviour change.
- 80. Similarly, trade diversion has not been captured in the main modelling. As adequacy decisions are made, businesses' trading relationships might diverge from past established relationships. As more countries become adequate, trade terms with new partners might be more appealing than existing ones leading to trade expansion and potentially in some instances of trade diversion. For example, if the US is made adequate, that makes trading with the US comparatively cheaper than previously, compared to countries that are not adequate. Similarly, currently adequate countries may become comparatively less attractive as more countries become adequate, as their relative advantage, in terms of lower compliance and legal costs, is removed. The policy may have the effect of 'levelling the playing field' which can be considered a positive in terms of global economic activity in producing a more competitive trading environment.
- 81. To capture the more macro-level impacts in terms of changes to adequacy, DCMS have used a complementary gravity modelling approach to estimate the medium-term impact on trade.¹⁸ The analysis should be seen alongside the business-level approach identified above but ultimately have different methodological foundations. The analysis was originally produced for the Data Protection and Digital Information Bill IA and full details of the modelling can be found in the published accompanying Gravity Modelling Annex¹⁹. Full methodological detail of the underlying model can be found in DIT's published Services Trade Modelling Working Paper.²⁰ DCMS analysis focused on a subset of the published adequacy priority list due to model coverage and found an impact on exports of between £598m-£1062.3m depending on the level of reciprocation by partners.²¹ Similarly, the analysis found an impact on imports of between £590m-£624m. The main affected sectors are financial services, other business services and insurance. DCMS will continue to develop its trade modelling capabilities to build on this initial analysis and present results as part of individual country assessments where possible.

¹⁸ The gravity model of international trade states that the volume of trade between two countries is proportional to their economic mass and a measure of their relative trade frictions. The gravity model has been commonly used in international trade analysis for several decades due to its intuitive appeal. Medium-term here reflects a 5-year or longer impact where third party effects are able to occur.

¹⁹ Data Protection and Digital Information Bill Impact Assessment Annex 6. Please note EU adequacy loss is also explored as a scenario as the analysis represents the risks attached to wider data reform. Results here represent medium and high scenarios only.

²⁰ Services trade modelling Working Paper and for further detail on the methodology underpinning the model please see An Advanced Guide to Trade Policy Analysis: The Structural Gravity Model. WTO iLibrary.

²¹ The countries with policy shocks were Australia, Brazil, India, Indonesia, South Korea and the United States. Omissions include Singapore, Colombia amongst others.

- 82. There are also potential secondary impacts related to the development of smaller economies that can theoretically benefit from the technological impacts of easier data-sharing with the UK, which are likely to also benefit the UK in the long-term. Knowledge exchange and spillovers may drive large changes in industry growth and innovation for trade partners through increased competition and specialisation leading to further onward increases in trade and GDP.²² This potential impact may be especially apparent in data-intensive sectors and industries (such as AI).
- 83. More external research is required to better understand all the mechanisms of data policy's impacts on trade, innovation and competition. Individual country IAs should allow us to explore in more detail specific sectors of note in bilateral trading relationships.

## Equalities

- 84. As part of the gatekeeping and assessment process, adequacy assessments take into account, amongst other things, the rule of law, respect for human rights and fundamental freedoms, and the existence and effective functioning of a regulator in the third country.
- 85. No additional assessment of the policy's impact on protected characteristics has been undertaken.

# 6. Monitoring and Evaluation

- 86. Separate IAs will be published for adequacy decisions with individual RoW countries. The M&E sections of these will focus on understanding the impacts of changes with respect to individual countries. As a starting point for these future M&E sections, we set out below our proposed methods for:
  - a. Repeating and improving analysis in this IA, for understanding high-level macro impacts
  - b. Establishing baseline data for evaluating adequacy decisions
  - c. Filling evidence gaps

### Repeating and improving the existing analysis

- 87. This primarily consists of maintaining and improving the DCMS-commissioned UK Business Data Survey (UKBDS). This provides nationally representative figures for many key assumptions in this IA, including:
  - a. The proportion of businesses sharing data internationally
  - b. Which countries that data is being shared with
  - c. The size of these businesses
  - d. The legal mechanisms these organisations use to share the data
- 88. DCMS will continue to commission this survey, expanding and improving the coverage of topics. From this year this will include questions on
  - a. The countries with which organisations share data disaggregated to sending and receiving data
  - b. The extent to which they rely on SCCs or adequacy to legitimise those transfers
- 89. Whilst this comes with the caveat that there may be other influences on changes in those activities, it should be possible to use these statistics to re-estimate the benefits presented in this IA every time

²² See Trade and Innovation, Melitz and Redding (2021) for a recent discussion over the role of trade in driving cross-border innovation.

the survey is run, and potentially see in the time series any increases in data-sharing that correlate with reductions in the use of SCCs.

## Establishing baseline data and evaluation

- 90. Alongside this, we will consider, where proportionate to do so, undertaking two types of evaluation including:
  - a. Process evaluations: to check how things are happening and how changes are being made to improve implementation of future reforms. Research questions here could entail how businesses become aware of the changes.
  - b. Impact evaluations: assessing how effects caused by the planned changes actually materialise compared to the initial ambition of the measure. This may be difficult to assign directly to individual decisions especially when considering the smaller economic jurisdictions.
- 91. The process evaluations for individual adequacy decisions will likely answer through interviews and/or a bespoke survey vehicle:
  - a. Whether organisations are aware of the changes
  - b. Whether familiarisation or other costs have been incurred as a result of the changes
  - c. What benefits the organisations see resulting from the changes
  - d. Whether organisations think the adequacy decisions contribute to their trade in that country
- 92. The impact evaluations will need baseline data collected to allow before and after comparisons. We plan to collect more detailed data on international data transfers which will likely use some questions used in the UKBDS, building out more detail on which countries data is shared with.
- 93. Evidence gaps from undertaking Impact Assessments will justify where additional research is needed and refine some of the assumptions underpinning the analysis.

Long-run Impact	How this will be monitored and evaluated
Reduction in SCC costs	<ul> <li>UKBDS <ul> <li>Changes in data transfers with adequate countries²³</li> <li>Use of adequacy as a percentage of those that send personal data internationally</li> <li>Tracking changes in the number of businesses that: <ul> <li>Do not currently transfer data internationally and the percent that state that one of the reasons is because they:</li> <li>Do not have a need to do so</li> <li>Do not have the resources to transfer data internationally</li> <li>Are concerned about the legal risks</li> </ul> </li> <li>Where possible analysis will be undertaken at the business size level</li> </ul></li></ul>

**Table 4:** Initial plans for monitoring and evaluating adequacy decisions

²³ UKBDS asks, when respondents state they transfer data internationally, for the top three most important countries they do so with. Therefore, we will be limited in testing to whether a country is now more likely to be one of the most important countries rather than a measure of absolute changes in data sharing with now adequate countries.

	Refinement of SCC cost estimates.			
	Process evaluation assessing how businesses find out and implement any changes post-decision.			
Increased trade	<ul> <li>Measuring changes in data-enabled trade between the UK and adequate countries, where data available exists and is sufficiently robust.</li> <li>UKBDS</li> <li>Changes in traders who send personal data and who use adequacy. Data is only available at the RoW and EU level.</li> <li>Where possible analysis will be undertaken at the business size level.</li> </ul>			

#### Filling evidence gaps

- 94. The sections above outline how we will ensure the analysis in this IA can be repeated and improved on, and how we intend to lay the groundwork for evaluations of individual countries' adequacy decisions. Throughout this IA we have highlighted that these represent the best options available at present. This section outlines the ways we plan to expand the existing evidence base and develop new methods that enable novel ways in which we can monitor and evaluate.
- 95. The evaluation approach described in the section above could fill the evidence gaps relating to some of the key assumptions that are made in this IA:
  - a. Familiarisation costs are not assessed and assumed to be negligible at the level of individual businesses; this assumption will be tested through the proposed process evaluation methods above
  - b. Whether the suppression factor used in this analysis to estimate changes in trade applies
- 96. More generally, data economics is a nascent field and DCMS will be undertaking a range of external research to further identify benefits and costs of cross-border data transfers in the medium-term, working with a range of stakeholders.
- 97. As adequacy decisions will be made over a number of years, the evaluations will allow both the policy itself to be better refined to minimise any potential negative impacts (i.e. determining the best communication strategy) as well as feeding directly back into the assessment process of future individual country IAs.
- 98. We shall also periodically look at the programme of decisions holistically, bringing together the evidence from individual country decision evaluations.

#### Legislative Review

- 99. Ahead of the UK exiting the EU, the Data Protection Act 2018 included provisions, which are set out Sections 17A and 74A of the Data Protection Act 2018, that allow the UK to undertake assessments of countries' and jurisdictions' data protection legislation for the purpose of making data adequacy regulations for those countries.
- 100. Those powers came into force at the end the Transition Period on 31 December 2020 and in terms of adequacy decisions are being used for the first time.
- 101. Assessing the adequacy of third countries is a new power with the process only becoming fully operational following the UK receiving adequacy from the EU at the end in June 2021. However, in

September 2021 the Government launched a consultation on reforms to create a new, ambitious, pro-growth and innovation-friendly data protection regime that underpins the trustworthy use of data for an even better UK data rights regime. The consultation set out the Government's future intentions for a data protection regime outside the EU and is part of the wider conversation on unlocking the power of data.

102. The adequacy process will continue and be aligned to the outcome of the reforms while maintaining the UK's high standard of data protection.

# Annex A: Risk and Assumptions

- 103. A number of assumptions are made in the estimation of benefits. The following section will outline each.
- 104. Survey evidence has been used throughout. The figures used are statistically robust. In some instances, it is likely that the figure does not reflect the exact type of proportion required. One example is the percentage of RoW traders that use SCCs. The evidence does not split out what proportion of those are using them explicitly for trade with the RoW rather than as additional protection for trade with the EU or put in place ahead of the risk of a No-Deal EU Exit.
- 105. Trade suppression ratios are derived from the UK Business Impacts Model. Within that model, scenario analysis is undertaken, adjusting parameters such as the assumed profit margin of businesses and investment horizon (how many years' export revenue a business considers when deciding whether to incur compliance costs). Within that model, these adjustments are made to capture uncertainty in the parameters. A set of ratios is produced as a result. The output ratios are similarly used here to capture uncertainty. These are then used as the basis for the range of export revenue benefits found in the analysis. All other aspects of the calculation, the RoW trade and data-dependency are assumed constant across the three scenarios.

Scenario	Trade Suppression Ratio	Export Benefit
Best	0.0030	£90m
Low	0.0026	£80m
High	0.0050	£160m

**Table 5:** Export Revenue Scenario analysis