

## SCHEDULE 2

### Amendments of the Data Protection Act 2018

#### 42. After section 74 insert—

##### **“74A Transfers based on adequacy regulations**

(1) The Secretary of State may by regulations specify any of the following which the Secretary of State considers ensures an adequate level of protection of personal data—

- (a) a third country,
- (b) a territory or one or more sectors within a third country,
- (c) an international organisation, or
- (d) a description of such a country, territory, sector or organisation.

(2) For the purposes of this Part of this Act, a transfer of personal data to a third country or an international organisation is based on adequacy regulations if, at the time of the transfer, regulations made under this section are in force which specify, or specify a description which includes—

- (a) in the case of a third country, the country or a relevant territory or sector within the country, and
- (b) in the case of an international organisation, the organisation,

and such a transfer does not require specific authorisation.

(3) Regulations under this section may specify that the Secretary of State considers that an adequate level of protection of personal data is ensured only for a transfer specified or described in the regulations and, if they do so, only such a transfer may rely on those regulations for the purposes of subsection (2).

(4) When assessing the adequacy of the level of protection for the purposes of this section or section 74B, the Secretary of State must, in particular, take account of—

- (a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation, which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data is transferred,
- (b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with data protection rules, including adequate enforcement powers, for assisting and advising data subjects in exercising their rights and for cooperation with the Commissioner, and
- (c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

(5) Regulations under this section—

**Changes to legislation:** There are currently no known outstanding effects for the The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, Paragraph 42. (See end of Document for details)

- (a) where they relate to a third country, must specify their territorial and sectoral application;
  - (b) where applicable, must specify the independent supervisory authority or authorities referred to in subsection (4)(b).
- (6) Regulations under this section may, among other things—
- (a) provide that, in relation to a country, territory, sector, organisation or territory specified, or falling within a description specified, in the regulations, section 74B(1) has effect as if it required the reviews described there to be carried out at such shorter intervals as are specified in the regulations;
  - (b) identify a transfer of personal data by any means, including by reference to the controller or processor, the recipient, the personal data transferred or the means by which the transfer is made or by reference to relevant legislation, lists or other documents, as they have effect from time to time;
  - (c) confer a discretion on a person.
- (7) Regulations under this section are subject to the negative resolution procedure.

#### **74B Transfers based on adequacy regulations: review etc**

(1) For so long as regulations under section 74A are in force which specify, or specify a description which includes, a third country, a territory or sector within a third country or an international organisation, the Secretary of State must carry out a review of whether the country, territory, sector or organisation ensures an adequate level of protection of personal data at intervals of not more than 4 years.

(2) Each review under subsection (1) must take into account all relevant developments in the third country or international organisation.

(3) The Secretary of State must, on an ongoing basis, monitor developments in third countries and international organisations that could affect decisions to make regulations under section 74A or to amend or revoke such regulations.

(4) Where the Secretary of State becomes aware that a country, territory, sector or organisation specified, or falling within a description specified, in regulations under section 74A no longer ensures an adequate level of protection of personal data, whether as a result of a review under this section or otherwise, the Secretary of State must, to the extent necessary, amend or revoke the regulations.

(5) Where regulations under section 74A are amended or revoked in accordance with subsection (4), the Secretary of State must enter into consultations with the third country or international organisation concerned with a view to remedying the lack of an adequate level of protection.

- (6) The Secretary of State must publish—
- (a) a list of the third countries, territories and specified sectors within a third country and international organisations, and the descriptions of such countries, territories, sectors and organisations, which are for the time being specified in regulations under section 74A, and
  - (b) a list of the third countries, territories and specified sectors within a third country and international organisations, and the descriptions of such countries, territories, sectors and organisations, which have been but are no longer specified in such regulations.

(7) In the case of regulations under section 74A which specify that an adequate level of protection of personal data is ensured only for a transfer specified or described in the regulations—

- (a) the duty under subsection (1) is only to carry out a review of the level of protection ensured for such a transfer, and
- (b) the lists published under subsection (6) must specify or describe the relevant transfers.”.

#### Commencement Information

- II** Sch. 2 para. 42 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

**Changes to legislation:**

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