EXPLANATORY MEMORANDUM TO

THE DATA PROTECTION (LAW ENFORCEMENT) (ADEQUACY) (ISLE OF MAN) REGULATIONS 2025

2025 No. 89

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Dame Diana Johnson, Minister of State for Policing, Fire and Crime Prevention at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Krisztina Katona, Deputy Director for Data Policy, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Melvin Babu at the Data and Identity Directorate, at the Home Office, Melvin.Babu@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Secretary of State may by regulations specify any third country which the Secretary of State considers ensures an adequate level of protection of personal data. These Regulations specify that the Isle of Man ensures an adequate level of protection for transfers of personal data from UK competent authorities[1] to any relevant authority[2] in the Isle of Man who is subject to the Data Protection (Application of the LED) Order 2018[3]. In practice this means that the Isle of Man provides an essentially equivalent level of protection for personal data, transferred from the UK to the Isle of Man, for law enforcement purposes, to the level of protection provided by the UK itself. The Data Protection (Application of the LED) Order 2018 sets out the data protection framework that governs how competent authorities in the Isle of Man process personal data for law enforcement purposes. The effect of these Regulations is to help better facilitate the flow of law enforcement data across borders without the need to rely on other transfer mechanisms as provided in Chapter 5 of Part 3 of the Data Protection Act 2018 ("the 2018 Act").

[1] Competent authority means (a) a person specified or described in Schedule 7: https://www.legislation.gov.uk/ukpga/2018/12/schedule/7, of the Data Protection Act 2018, and (b) any other person if and to the extent that the person has statutory functions for any of the law enforcement purposes.
[2] Relevant authority means any person based in a third country that has (in that country) functions comparable to those of a competent authority.
[3] An electronic copy of this legislation can be obtained from: https://legislation.gov.im/cms/images/LEGISLATION/SUBORDINATE/2018/2018-0144/2018-0144.pdf

Where does the legislation extend to, and apply?

4.2 The territorial extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 It is vital for international law enforcement cooperation that UK competent authorities can transfer personal data to third countries for law enforcement purposes. Prior to transferring personal data to a third country, a UK competent authority is required to use one of the transfer mechanisms provided for in Chapter 5 of Part 3 of the 2018 Act. These Regulations are one such transfer mechanism. The effect of these Regulations is that UK competent authorities can transfer data freely and with confidence to the Isle of Man, without needing to rely on any other transfer mechanism. The Regulations specify, following an assessment according to section 74A of the 2018 Act, that the Isle of Man provides an adequate level of protection of personal data that is essentially equivalent to that in the UK.

5.2 These Regulations apply to transfers by UK competent authorities to relevant authorities in the Isle of Man who are subject to the Data Protection (Application of the LED) Order 2018 and the relevant regulations (that give effect to the Articles within this Order) in the GDPR and LED Implementing Regulations 2018[4]. 'GDPR' means the General Data Protection Regulation and 'LED' means Law Enforcement Directive. The Data Protection (Application of the LED) Order 2018 and the associated GDPR and LED Implementing Regulations 2018 set out the data protection framework that governs how competent authorities in the Isle of Man process personal data for law enforcement purposes.

The Home Office Assessment

5.3 In order to make such regulations, the Secretary of State is required by section 74A (4) of the 2018 Act, to take account of the rule of law, respect for human rights, the practical implementation of relevant laws governing the protection of personal data in the law enforcement context, the existence and functioning of an independent regulator, the rules for onward transfer of personal data to another third jurisdiction and relevant international commitments. Therefore, Home Office officials engaged with counterparts in the Isle of Man to assess the Isle of Man's data protection laws and practices that apply to law enforcement authorities in the Isle of Man, who are processing personal data for law enforcement purposes.

5.4 Home Office officials assessed the Data Protection (Application of the LED) Order 2018 and the GDPR and LED Implementing Regulations 2018, as the Isle of Man's comprehensive data protection framework that covers the processing of personal data by law enforcement authorities for law enforcement purposes. The Data Protection (Application of the LED) Order 2018 applies to a competent authority processing personal data for a law enforcement purpose and equally to any data subject (including a foreign national) whose personal data is processed by a controller

[4] As amended by The GDPR and LED Implementing (Amendment) Regulations 2024. An electronic copy of both can be found: https://legislation.gov.im/cms/images/LEGISLATION/SUBORDINATE/2018/2018-0145/2018-0145_1.pdf and https://tynwald.org.im/index.php/spfile?file=/business/opqp/sittings/20212026/2024-SD-0123.pdf

established in the Isle of Man or any Isle of Man resident whose personal data is processed outside of the Isle of Man. The Data Protection (Application of the LED) Order 2018 establishes core data protection principles of lawfulness and fairness, purpose limitation, data minimisation, accuracy, storage limitation and integrity and confidentiality.

5.5 The supervisory authority for data protection in the Isle of Man is the Information Commissioner. The Information Commissioner of the Isle of Man is the supervisory authority in the Isle of Man for the purposes of the Data Protection (Application of the LED) Order 2018, including both access to and use of personal data by law enforcement competent authorities. The Information Commissioner must, for the purposes of the Data Protection (Application of the LED) Order 2018, act with complete independence in performing his or her tasks and exercising his or her powers. There is a public record of the actions taken by the Information Commissioner to enforce the data protection provisions provided by the data protection legislation in the Isle of Man[5].

5.6 In addition to the clear evidence of effective independent supervision and oversight mechanisms in place, routes for redress are also available to UK data subjects, that enable infringements to be reported, investigated, and sanctioned. There are administrative and judicial remedies available to the UK data subject to access their personal data and ensure that personal data is accurate and kept only for as long as necessary, resulting in enforceable data subject rights. The Data Protection (Application of the LED) Order 2018 restricts onward transfers of personal data from the Isle of Man through imposing conditions which must be satisfied when transferring personal data outside of the Isle of Man.

5.7 There is a clear need established within the Isle of Man legislation for law enforcement competent authorities to apply the principles of necessity and proportionality when interfering with the right to privacy and protection of personal data of individuals whose personal data are transferred from the UK to the Isle of Man.

5.8 Therefore, these Regulations have been made because the Secretary of State, following this assessment by Home Office officials, considers that the Isle of Man ensures an adequate level of protection of personal data, taking into account the elements set out in section 74A (4) of the 2018 Act. Competent authorities in the UK can rely on these Regulations to transfer personal data freely, without further safeguards such as those set out in sections 75 or 76 of the 2018 Act, to relevant authorities in the Isle of Man that are subject to the Data Protection (Application of the LED) Order 2018. The conditions in section 73 of the 2018 Act would still apply, as will the general data protection principles set out in Chapter 1 of the 2018 Act.

What was the previous policy, how is this different?

5.9 In the absence of adequacy regulations, UK competent authorities are currently required to use other transfer mechanisms under section 75 or section 76 of the 2018 Act to transfer personal data to the Isle of Man for law enforcement purposes.

5.10 These Regulations will specify that the Isle of Man ensures an adequate level of protection for transfers of personal data from UK competent authorities to any relevant authority (i.e. law enforcement authority) in the Isle of Man who is subject to the Data Protection (Application of the LED) Order 2018. The effect of these

[5] https://www.inforights.im/document-library/data-protection-law-2018-notices/

Regulations is to allow such transfers of personal data, without a controller or processor being required to identify further safeguards.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 73(3)(a) and 74A of the 2018 Act establish that personal data may be transferred by UK law enforcement authorities overseas without the need for further safeguards or specific authorisation if the transfer is based on adequacy regulations. The Secretary of State has the power to make adequacy regulations in respect of a third country[6], territory, or sector within a third country or international organisation under Part 3 of the 2018 Act (specifically section 74A) where the Secretary of State considers that it ensures an adequate level of protection of personal data. Section 74A (4) of the 2018 Act describes the elements that the Secretary of State must consider when making an assessment under Part 3 of the 2018 Act.

6.2 These Regulations provide UK competent authorities with a simple mechanism for transferring personal data to law enforcement authorities in the Isle of Man for law enforcement purposes and remove the need for UK competent authorities to put in place further safeguards to transfer such data. These Regulations ensure the transfer of data from the UK to the Isle of Man for law enforcement purposes is on firm legal footing and ensures this vital cross-border transfer continues with greater confidence in the protection of personal data by relevant authorities in the Isle of Man.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with section 182(2) of the 2018 Act, the Secretary of State is required to consult with the Information Commissioner and such other persons as the Secretary of State considers appropriate before making Regulations. No other person has been consulted by the Secretary of State before making these Regulations. The Information Commissioner has been formally consulted by the Home Office for their opinion on these Regulations. The Information Commissioner will publish their opinion once these Regulations have been laid in Parliament. The consultation with the Information Commissioner was conducted according to the Memorandum of Understanding between the Home Office and the Information Commissioner's Office on new law enforcement adequacy assessments[7].

8. Applicable Guidance

8.1 Relevant information that supports UK competent authorities undertaking personal data transfers to the Isle of Man in reliance of these Regulations will be made available on the Information Commissioner's Office website[8].

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

[7] https://ico.org.uk/media/about-the-ico/mou/4025752/ico-ho-mou.pdf

[8] Guidance on undertaking personal data transfers based on existing law enforcement adequacy regulations is available at https://ico.org.uk/for-organisations/law-enforcement/guide-to-le-processing/international-transfers/ .

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no additional costs or benefits are imposed on businesses or the public sector. An Economic Note has been prepared outlining this in greater detail and is published alongside this Explanatory Memorandum on the legislation.gov.uk website. The Economic Note confirms there is no economic impact associated with these Regulations. These Regulations are cost neutral on UK competent authorities.

9.2 There is no impact on the public sector. There are no familiarisation costs for UK competent authorities and no action is required to benefit from these Regulations.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because these Regulations are not applicable on their policies.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that these Regulations must be monitored and kept under periodic review, at intervals of not more than four years[9]. During this time, the Secretary of State may also amend or revoke these Regulations and must do so if the Secretary of State becomes aware that the third country or sector therein no longer ensures an adequate level of protection.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).

[9] Section 74B of the Data Protection Act 2018.