

# International Transfer of Personal Data Guidance

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## Modifications from previous version of document

| Version | Date of issue | Details of modification  |
|---------|---------------|--|
| 0.2     | 2018          | Head of Information Services draft   |
| 0.3     | 19.02.2019    | Data Protection Officer update   |
| 0.4     | 26.02.2019    | First draft for comment from Contracts   |
| 0.5     | 05.03.2019    | First draft for wider comment  |
| 2.0     | 01.03.2021    | Major revision after the UK exited the EU including new quick reference guide. |
| 2.1     | 30.03.2021    | Minor revisions following feedback. Updating document layout.                  |

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## 1 Scope

This policy applies to all staff and students processing personal data who may be sending or receiving data beyond the UK.

## 2 Quick Reference Practical Guide

### A) IF the UK is granted adequacy status under the GDPR by the European Commission

#### 1. Transfers of personal data from European Economic Area EEA (26 Member states of the EU plus Iceland Lichtenstein and Norway) countries to the UK

Organisations based in the EEA will be able to transfer personal data to LSTM without any additional requirements. You will need to check that the organisation has signed an agreement with LSTM which allows data transfers. Please check with the Data Protection Officer and either Procurement or Research contracts as appropriate

#### 2. Transfers of personal data from countries which the European Commission has recognised as adequate under the EU GDPR.

There will be no change from the current position, provided the UK recognises all the countries as adequate under the UK GDPR (please check the ICO guidance note on [Data Protection now the transition period has ended<sup>1</sup>](#)). Organisations in such countries will be able to transfer personal data to LSTM without any additional requirements. As above, you will need to check that the organisation has signed an agreement with LSTM which allows data transfers.

#### 3. Transfers of personal data from the USA to the UK

It is unclear what the situation will be following the European Court of Justice judgement in the Schrems 2 case. Prior to the Schrems 2 judgement, which invalidated the Privacy Shield arrangement between the US and EU (which gave certain US companies adequacy status under the EU GDPR), the UK was going to recognise the existing EU Privacy Shield Adequacy Decision in respect of US organisations who have signed up to Privacy Shield.

#### 4. Transfers of personal data from all other countries to the UK

Such transfers will only be permitted if the exporting organisation checks its own national data protection law to ensure that it can transfer personal data to the UK and complies with any specific requirements. If the personal data is going to be transferred back and forth between LSTM and the organisation in the third country then it is likely that Standard Contractual Clauses will be required. The European Commission has issued two versions of the clauses:

- 1) Data Controller to Data Controller
- 2) Data Controller to Data Processor

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<sup>1</sup> <https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/data-protection-now-the-transition-period-has-ended/>

The European Commission has issued draft revised Standard Contractual Clauses. The consultation closed in December 2020. At the time of writing (February 2021) we are waiting for the final version of the revised Standard Contractual Clauses to be approved and then published.

## **5. Transfers of personal data from the UK to other countries.**

### **a) UK to EEA Countries**

The UK has transitionally recognised all European Economic Area (EEA) countries (EU 27 Member States plus Iceland Lichtenstein and Norway) as adequate under UK law. This means nothing will change in practice in respect of transfers from the UK to the EEA.

### **b) UK to non-EEA Countries with an existing EU Adequacy Decision**

The UK has recognised all existing EU Adequacy Decisions. This means the UK will be able to send personal data freely to these countries. See section 4 Adequacy Status for a list of these countries.

### **c) USA**

It is unclear what the situation will be following the European Court of Justice judgement in the Schrems 2 case. Prior to the Schrems 2 judgement, which invalidated the Privacy Shield arrangement between the US and EU which gave the US adequacy under the GDPR, the UK was going to recognise the existing EU Privacy Shield Adequacy Decision in respect of US organisations who have signed up to Privacy Shield. US organisations who have signed up to Privacy Shield and want to continue to receive personal data from the UK must have before the 31 December 2020 updated any language stating their commitment to comply with the Privacy Shield to include a positive statement that their commitment under the Privacy Shield will include any personal data received from the UK.

### **d) Canada**

The UK will recognise existing EU adequacy decision in respect of transfers to Canada which are covered by Canadian Personal Information Protection and Electronic Documents Act.

### **e) Countries without an existing EU adequacy decision (i.e. all other countries not listed in the above section)**

The UK has recognised the EU Commission approved Standard Contractual Clauses and Binding Corporate Rules decisions issued prior to 31 December 2020. Appendix

### **Standard Contractual Clauses**

The European Commission has issued two versions of the clauses:

#### **1) Data Controller to Data Controller**

## 2) Data Controller to Data Processor

Please consult with the Data Protection Officer and, as appropriate, either Procurement or Research Contracts regarding Standard Contractual Clauses. We will work with you to ensure the latest approved version of the Standard Contractual Clauses is used and a data transfer impact assessment is completed (see Appendix).

### **B) OR IF the UK is not granted adequacy status under the EU GDPR.**

#### **1. Transfers of personal data from European Economic Area (26 Member states of the EU plus Iceland Lichtenstein and Norway) countries to the UK**

You will need to put in place GDPR safeguards for such transfers (see section 5 Transfer subject to appropriate safeguards). The only realistic solution to allow transfers of personal data from the EEA to the UK is Standard Contractual Clauses (SCC). Please consult with the Data Protection Officer and either Procurement or Research Contracts as appropriate regarding Standard Contractual Clauses (see Standard Contractual Clauses above).

#### **2. Transfers of personal data from countries which the European Commission has granted adequacy status under the EU GDPR to the UK.**

It is likely that such countries have their own legal restrictions under their domestic data protection law about transferring personal data from them to countries outside the EEA which have not been granted adequacy status by the European Commission. This is likely to have been one of the reasons why they were granted adequacy status and are able to maintain it. The UK Government is working with countries and territories which have adequacy status to make specific arrangements for transfers from such countries/territories to the UK. Please see the section “How can we maintain transfers into the UK from countries, territories or sectors covered by an EC adequacy decision?” in the section on “International data Transfers” in footnote 1. If specific arrangements have not been made then please consult the Data Protection Officer.

#### **3. Transfers of personal data from the UK to EEA countries.**

The UK has transitionally recognised all European Economic Area (EEA) countries (EU 27 Member States plus Iceland Lichtenstein and Norway) as adequate under the UK GDPR. This means nothing will change in practice in respect of transfers from the UK to the EEA,

#### **4. Transfers of personal data from the UK to countries outside the EEA which have been granted adequacy status by the European Commission.**

The UK has recognised all existing EU Adequacy Decisions. This means the UK will be able to send personal data to these countries in the same way as data can be shared with other organisations in the UK.

## **5.USA**

It is unclear what the situation will be following the European Court of Justice judgement in the Schrems 2 case (see 2.5.c) above)

### **6 Countries without an existing UK GDPR or EU GDPR adequacy decision (i.e., all other countries not listed above)**

The UK has recognised the EU Commission approved Standard Contractual Clauses and Binding Corporate Rules decisions issued prior to 31 December 2020. Please consult with the Data Protection Officer and either Procurement or Research Contracts as appropriate regarding Standard Contractual Clauses.

## **3 Background**

This Guidance document has been written in accordance with the Data Protection Act 2018, the UK General Data Protection Regulation (UK GDPR) and the EU General Data Protection Regulation as it stood on 31 December 2020 (GDPR). It accompanies the LSTM Data Protection Policy and is intended to give guidance to LSTM staff or students who may be involved in the transfer of personal data from the UK to another country inside or outside the European Union.

The UK has now left the EU and an amended version of the GDPR (UK GDPR) has been retained in UK domestic law and sits alongside an amended version of the Data Protection Act 2018. The EU GDPR as it was on the 31 December 2020 applies to the processing of personal data collected by LSTM prior to 31 December 2020. EU GDPR also applies to any transfer of personal data made to LSTM from an organisation inside the European Economic Area (EEA - the member states of the European Union plus Iceland Lichtenstein and Norway) before or after the 31 December 2020.

The UK GDPR and the EU GDPR place restrictions on the processing of personal data, including transfers of personal data outside the UK and, if the European Commission does not grant adequacy status to the UK, from the European Economic Area (EEA)<sup>2</sup> to the UK, under the EU GDPR. Later sections cover how such transfers can be permitted.

The UK is now a third country outside the EEA for the purposes of international transfers of personal data from LSTM to organisations located in the EEA and from organisations in the EEA to LSTM.

The European Commission has not yet granted the UK adequacy status under the EU GDPR. Under the Framework and Cooperation Agreement between the UK and the EU dated 31 December 2020 the EU has agreed that until the 30 April 2021, renewable for a further 2 months until 30 June 2021, personal data can flow freely from an organisation within the EEA to an organisation within the UK, such as LSTM without any of the additional safeguards specified in clause 4 below. This is conditional that the UK does not make any alterations to its data protection law. The European Commission issued a draft decision to grant the UK adequacy status

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<sup>2</sup> <https://www.gov.uk/eu-eea>.

under the EU GDPR on the 19 February<sup>3</sup>. The European Commission must obtain an opinion from the European Data Protection Board (senior members from the national data protection authorities from the 26 EU Member States) and the approval of a committee comprised of representatives from the governments of the EU Member States. It is hoped that this process can be completed during the six-month period.

In most instances, LSTM will be acting as the “Controller”. For some collaborative work, LSTM might be Joint also distinguishes between Controller and “Processor” (see Table 1).

Understanding the respective differences and responsibilities of “Controller” and “Processor” is fundamental and must be underpinned by a contract between LSTM and the other organisation(s). Contracts should also describe the nature of the data to be processed, the purpose of the processing, and security arrangements such as encryption, access control, and password management. Guidance on these matters should be sought from the Data Protection Officer<sup>4</sup>. Please also refer to definitions in Table 1.

*Table 1 Glossary of selected terms from the Data Protection Act, 2018<sup>3</sup>. This supplements the Definitions from the UK GDPR in the Data Protection Policy. Both lists are combined and updated regularly on the intranet.*

|                      |   |
|----------------------|---|
| Personal data        | Any information relating to an identified or identifiable living individual, i.e. a living individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual. <sup>5</sup>                  |
| Processing           | An operation or set of operations which is performed on information, or on sets of information, such as:<br><br>(a) collection, recording, organisation, structuring or storage,<br><br>(b) adaptation or alteration,<br><br>(c) retrieval, consultation or use,<br><br>(d) disclosure by transmission, dissemination or otherwise making available,<br><br>(e) alignment or combination, or<br><br>(f) restriction, erasure or destruction. <sup>5</sup> |
| Sensitive processing | the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;  |

<sup>3</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_661](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_661)

<sup>4</sup> Please direct enquiries for the DPO to [dataprotection@lstmed.ac.uk](mailto:dataprotection@lstmed.ac.uk)

<sup>5</sup> Data Protection Act 2018 <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

|                       |   |
|-----------------------|---|
|                       | <p>the processing of genetic data, or of biometric data, for the purpose of uniquely identifying an individual;</p> <p>the processing of data concerning health;</p> <p>the processing of data concerning an individual's sex life or sexual orientation; the processing of personal data as to (i) the commission or alleged commission of</p> <p>an offence by an individual, or (ii) proceedings for an offence committed or alleged to have been committed by an individual, the disposal of such proceedings or the sentence of a court in such proceedings.</p> |
| Data subject          | The identified or identifiable living individual to whom personal data relates.   |
| Controller            | Responsible for complying with data protection law. They are defined in Article 4 of the GDPR as the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data. <sup>6</sup>   |
| Processor             | Any person who processes personal data on behalf of the controller (other than a person who is an employee of the controller).  |
| Supervisory authority | <p>Independent public authorities responsible for monitoring the application of this Regulation, to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the European Union.<sup>7</sup></p> <p>In the UK the Information Commissioner's Office (ICO) is the supervisory authority (called 'The Commissioner' in the Data Protection Act).</p>  |
| Adequacy status       | When the European Commission has formally decided that a country has a similarly high standard of data protection as exists in the European Economic Area.  |
| UK GDPR               | The UK version of the General Data Protection Regulation. After the UK's exit from the European Union the UK GDPR now sits alongside the Data Protection Act 2018 instead of the original European GDPR.  |

<sup>6</sup> Data Protection Act 2018 c.12 Annex A  
<http://www.legislation.gov.uk/ukpga/2018/12/notes/division/10/index.htm>

<sup>7</sup> GDPR Article 51 <https://gdpr-info.eu/art-51-gdpr/> 9



## 4 Adequacy Status

This is an exception for countries that provide an adequate level of protection for the rights and freedoms of data subjects with regards to the processing of personal data.

Under UK GDPR the following countries are recognised as providing adequate protection for transfers of personal data from the UK: all EEA Member States, Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan Jersey, New Zealand, Switzerland and Uruguay . This list should be checked<sup>8</sup> before assuming that a country has been granted adequacy status as countries may be granted adequacy status or have it removed.

## 5 Transfer subject to appropriate safeguards

Transfers of personal data from the UK to non-EEA countries or countries without an adequacy status under the UK GDPR and transfers from the EEA to the UK (if the UK is not granted adequacy status under the EU GDPR) are known as “restricted”. Such transfers can only take place where the organisation receiving the personal data has provided appropriate safeguards<sup>9</sup>. Appropriate safeguards include a) Contractual clauses incorporating Standard Contractual Clauses b) Codes of conduct (industry self – regulation) C) intra -organisation arrangements where the organisations are part of the same organisational group or Binding Corporate Rules To date no Code of Conduct has been approved under either the UK GDPR or the EU GDPR In all these cases, individuals’ rights must be enforceable and effective legal remedies for individuals must be available following the transfer. There will also need to be transfer impact assessment carried out (see Appendix).

To ensure UK GDPR and EU GDPR compliance, LSTM Contracts Office has template agreements and clauses for when a third party outside the UK is acting as a Processor on LSTM’s behalf and will negotiate suitable terms for when LSTM is acting as a Processor on behalf of a Controller located outside the UK. Contact [lstmroc@lstmed.ac.uk](mailto:lstmroc@lstmed.ac.uk) for further guidance.

## 6 One-off or infrequent transfers concerning few individuals.

The rules on one-off or infrequent transfers concerning few individuals will not apply to LSTM research projects or where LSTM is a Processor or outsourcing work to a Processor.

One-off transfers are allowed only where the transfer is not:

Made by a public authority in the exercise of its public powers.

Repetitive.

One-off transfers are also only allowed where the transfer is:

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<sup>8</sup> [http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/index\\_en.htm](http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/index_en.htm)

<sup>9</sup> For a list of appropriate safeguards see GDPR Article 46(2) <https://gdpr-info.eu/art-46-gdpr/>

Necessary for the purposes of the compelling legitimate interests of the organisation (in instances where the interests of the organisation are not overridden by the interests of the individual);

Made subject to suitable safeguards put in place by the organisation to protect the personal data. LSTM would need to enter into a contract under specific safeguards.

Data that relates only to a small number of individuals.

Organisations have an obligation to inform the relevant Supervisory Authority of the transfer and give information to the relevant individual<sup>13</sup>. For LSTM this would require the Data Protection Officer to contact the Information Commissioner's Office.

If you think any of these one-off situations apply, then you must first discuss the proposed transfer with the Data Protection Officer.

## **7 Exemptions (derogations)**

The UK GDPR provides derogations from the general prohibitions, on transfer of Personal Data outside the UK, for certain situations: It is unlikely that any of the situations would apply in the case of research carried out at LSTM.

It is made with the individual's consent;

It is necessary for the performance of a contract (between the individual and the organisation) or for pre-contractual steps taken at the individual's request;

It is necessary for the performance of a contract, that has been made in the interests of the individual between the Controller and another person;

It is necessary for reasons of public interest;

It is necessary for the establishment, exercise, or the defence of legal claims;

It is necessary to protect the vital interests of the Data Subject or other persons, where the Data Subject is physically or legally incapable of giving consent;

It is made from a register that, under UK law, is intended to provide information to the public. It must be open to consultation by either the public or those able to show a legitimate interest in inspecting the register.

If you need to make a transfer of personal data and meet any of the above conditions, then please contact the Data Protection Officer before you make the transfer. Be prepared to give details of the measures you propose to ensure the security of the data during and after the transfer.

## **8 Responsibility**

The responsibility for any international transfers ultimately rests with the organisation (Controller or Processor) who is exporting the personal data. This means unlawful international transfers from LSTM would make the organisation subject to the highest

tier of penalties which are currently up to Euros 20 million or 4% of the previous year's turnover, whichever is the higher<sup>14</sup>.

## 9 Further information

If you have any queries or concerns, please contact the Data Protection Officer [dataprotection@lstmed.ac.uk](mailto:dataprotection@lstmed.ac.uk) 0151 702 9323.

Further reading<sup>15</sup>:

ICO Guidance on international transfers <https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/>

European Commission Justice and Consumers International dimension of data protection [https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection_en)

European Commission Adequacy Decisions: How the EU determines if a non-EU country has an adequate level of data protection [https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en)

EU Standard Contractual Clauses for data transfers between EU and Non-EU countries [https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/model-contracts-transfer-personal-data-third-countries\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/model-contracts-transfer-personal-data-third-countries_en)

DLA PIPER Comparison of data protection laws of the world <https://www.dlapiperdataprotection.com/>

## Appendix

### Transfer Impact Assessment

This impact assessment is to be completed for any international data transfer to a country outside the European Economic Area that does not have adequacy status. Please complete and include a copy in your project's Data Protection Impact Assessment (see [guidance](#)).

Consider the following in relation to each country and organisation in question:

What is the extent of known surveillance or investigatory powers?

Are there active privacy campaigns against this country or organisation?

What is the culture / ethics regarding informational privacy in this country or organisation?

What legal assurances have been offered, e.g. in contract or privacy notice, for example prohibiting the sharing of personal data with state surveillance agencies?