

Statutory Document No. 2019/0139



Data Protection Act 2018

DATA PROTECTION (WITHDRAWAL FROM THE EU) (U.K. AND GIBRALTAR) REGULATIONS 2019¹

Approved by Tynwald: 20 March 2019
Coming into Operation In accordance with regulation 2

The Council of Ministers makes the following Regulations under section 5 of the Data Protection Act 2018 and regulation 68(3) of the GDPR and LED Implementing Regulations 2018.

1 Title

These Regulations are the Data Protection (Withdrawal from the EU) (U.K. and Gibraltar) Regulations 2019.

2 Commencement

- (1) If approved by Tynwald, these Regulations come into operation on Exit Day.
This is subject to paragraphs (2) and (3).
- (2) These Regulations will only come into operation if, as at the time when the United Kingdom (and, by extension, Gibraltar also) ceases to be a Member State, the European Commission has not issued an adequacy decision in respect of —
 - (a) either the United Kingdom or Gibraltar; or
 - (b) both the United Kingdom and Gibraltar.
- (3) In the circumstance described —
 - (a) in paragraph (2)(a), these Regulations come into operation only with regard to the jurisdiction in respect of which an adequacy decision has not been issued; or
 - (b) in paragraph (2)(b), these Regulations come into operation with regard to both jurisdictions.

3 Interpretation

- (1) In these Regulations —

“**applied GDPR**” must be construed in accordance with regulation 5(1) of the GDPR and LED Implementing Regulations 2018¹;

“**adequacy decision**” means a decision issued under Article 45 of the GDPR;

“**controller**” must be construed in accordance with Article 4(7) of the applied GDPR;

“**Exit Day**” means the date on which the United Kingdom (and, by extension, Gibraltar also) ceases to be a Member State;

“**GDPR**” must be construed in accordance with regulation 5(1) of the GDPR and LED Implementing Regulations 2018;

“**Member State**” means a Member State of the European Union;

“**personal data**” must be construed in accordance with Article 4(1) of the applied GDPR;

“**processor**” must be construed in accordance with Article 4(8) of the applied GDPR.

- (2) A reference in these Regulations to personal data being transferred must be construed as a reference to a transfer that conforms to the description specified in regulation 5(a).

4 Construction

To avoid doubt, any retained EU law is to be construed and have effect subject to these Regulations.

5 Scope of these Regulations

These Regulations apply only to a transfer of personal data —

- (a) from a controller or processor in the Island to a controller or processor in the United Kingdom or in Gibraltar; and
- (b) which takes place after the United Kingdom (and, by extension, Gibraltar also) has ceased to be a Member State.

6 Deemed membership of EU as of Exit Day

- (1) Paragraph (2) applies to every enactment that falls within the scope of “**data protection legislation**” as that term is defined in regulation 5(1) of the GDPR and LED Implementing Regulations 2018.
- (2) As of Exit Day —
 - (a) in the circumstance described in regulation 2(3)(a), the jurisdiction with regard to which these Regulations come into operation is deemed to be a Member State; or

¹ SD No. 2018/0145

- (b) in the circumstance described in regulation 2(3)(b), both the United Kingdom and Gibraltar are deemed to be Member States,
for the purposes of “**data protection legislation**”.

7 Expiry

- (1) In paragraph (2), “**the relevant jurisdiction**” means the jurisdiction with regard to which these Regulations come into operation in accordance with regulation 2(3)(a).
- (2) If these Regulations come into operation —
- (a) in accordance with regulation 2(3)(a), they expire when an adequacy decision is issued in respect of the relevant jurisdiction;
or
- (b) in accordance with regulation 2(3)(b), they expire —
- (i) with regard only to the jurisdiction in respect of which an adequacy decision is issued (where such a decision is issued after Exit Day in respect of either the United Kingdom or Gibraltar); or
- (ii) simultaneously for both the United Kingdom and Gibraltar (where, after Exit Day, adequacy decisions are simultaneously issued in respect of both those jurisdictions).
- (3) In the circumstances described in paragraph (2)(b)(i), if an adequacy decision is subsequently issued in respect of the jurisdiction for which these Regulations remain in operation, these Regulations expire immediately upon that adequacy decision being issued.

MADE 13 MARCH 2019

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.