

UK MINISTERS ACTING IN DEVOLVED AREAS

211 - The Framework for the Free Flow of Non-Personal Data (Revocation) (EU Exit) Regulations 2021

Laid in the UK Parliament: 14 December 2020

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	22 December 2020
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	5 January 2021
Date sifting period ends in UK Parliament	15 January 2021
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018.

Summary

These Regulations repeal Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union (“the EU Regulation”). This Regulation is concerned with reducing public sector data localisation mandates for *non-personal* data.

The effect of the EU Regulation is that Member States must: notify the European Commission if they wish to introduce a mandate for non-personal data localisation (or make a change to any existing policies); assist other EU States in terms of data localisation queries and potential infringements; provide business information and promote codes of conduct; and engage with the European Commission to report justified exemptions. In effect, this prevents EU Member States from introducing

any legislation, guidance or other measure that would restrict where non-personal data is stored in the EU that is not justified or proportionate. By 30 May 2021, EU Member States must also revoke any existing, unjustified data localisation requirement and notify the European Commission if they believe an existing data localisation requirement is justified.

The UK's exit from the EU will make the EU Regulation obsolete in the UK but any lingering effects are currently unclear. To avoid any unintended impacts on UK law, the EU Regulation is to be revoked.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 17 December 2020 regarding the effect of these Regulations:

- Both the Welsh Government's statement and the Explanatory Memorandum to the Regulations acknowledge disagreement between the UK Government and the Welsh Government as to whether the Regulations fall within the legislative competence of the Senedd. The Welsh Government's statement explains that the UK Government has taken the view that the instrument is covered by the reservation in Section C9 of Schedule 7A to the Government of Wales Act 2006, which covers telecommunications, wireless telegraphy, internet services and electronic encryption. The Welsh Government does not agree with this assessment and explains its reasoning in further detail in its written statement.

The Welsh Government's statement makes clear that there is no divergence between the Welsh Government and the UK Government on the policy for the correction, only on whether this matter currently falls within the legislative competence of the Senedd.

The Welsh Government's statement, which was laid before the Senedd before the end of the Transition Period, also goes on to explain that *"it is expected that provisions to ensure the free-flow of non-personal data will be included in the terms of any future trade agreement with the European Union. International trade agreements are a fully reserved matter; should a trade agreement include such provisions, these will effectively supercede any devolved competence."* The Prime Minister announced on 24 December 2020 that a Trade and Cooperation Agreement had been reached between the UK and the EU;

- Regulation 1 of the Regulations states that the Regulations come into force on the 22nd day after the day on which they are laid before the UK Parliament. This means that, for a period between the end of

the Transition Period and the Regulations coming into force, inappropriate obligations will continue to be in place. The Explanatory Memorandum to the Regulations acknowledges this but describes the impact of the inappropriate obligations as minimal;

- Stylistically, the Welsh Government's statement refers in certain places to the EU Regulation being *amended* by these Regulations. For clarity, it should be noted that these Regulations do not amend the EU Regulation but revoke it in its entirety.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.