



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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

**DATE**            **17 December 2020**

**BY**                **Rebecca Evans MS, Minister for Finance and Trefnydd**

### **Policy Overview of the SI**

Regulation (EU) 2018/1807 – Free Flow of Non-Personal Data came into force in 2019 prevent EU Member States from introducing any legislation, guidance or other measure that would restrict where non-personal data is stored in the EU (a ‘data localisation requirement’) that is not justified or proportionate on the grounds of public security. Member States are now obliged to review all their domestic legislation and amend or revoke any unjustified data localisation requirement. Member States must notify the European Commission if they believe an existing data localisation requirement is justified, as well as notifying the Commission if they intend to introduce any new requirements.

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 Department for Digital, Culture, Media and Sport intend to revoke the EU Regulation on or shortly after the end of the transition period.

### **The retained EU Law which is being amended**

Regulation (EU) 2018/1807 of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union

### **The purpose of the amendments**

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the framework for the free flow of non-personal data in the European Union. The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment are available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-framework-for-the-free-flow-of-non-personal-data-revocation-eu-exit-regulations-2021>

## **Any impact the SI may have on the Welsh Ministers' executive competence**

UK Government maintains that this SI is covered by Section C9 of Schedule 7A to the Government of Wales Act 2006, which covers telecommunications, wireless telegraphy, internet services and electronic encryption. They have taken this view because the purpose of the EU Regulation is designed to remove unnecessary barriers to the free-flow of non-personal data within the EU through prohibiting unjustified restrictions on where data can be stored or processed. This assessment is also in part informed by the explanatory notes to the Scotland Act 1998, which define the equivalent reservation as covering all forms of electronic communication completed at a distance.

Welsh Government does not agree with this assessment. Although the intention of the EU Regulation is to facilitate the movement of data across borders, it specifically affects only the location where data may be stored or processed by preventing Member States from introducing any statutory or administrative measure to limit where data is stored. As it does not directly concern the transmission, movement or communication of data, the C9 reservation cannot be engaged. Additionally, the definitions which appear in the explanatory notes to the Scotland Act 1998 do not appear in the explanatory notes to GOWA 2006. As no other reservations within GOWA 2006 apply to the EU Regulation or to the revoking SI, this matter falls within the legislative competence of the Senedd.

However, 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.

## **Any impact the SI may have on the legislative competence of the Senedd**

The SI has no impact on the Senedd's legislative competence.

The Senedd has always had powers to legislate on the location of data storage for devolved purposes. This SI removes the requirement to report any necessary measures to the EC for approval after the end of transition.

## **Why consent was given**

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. Consenting to this SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.