

International transfers

Guidance regarding transferring personal data from the University to a country outside the EEA.

Audience

This guidance is intended for the Data Protection Champions and University staff who send personal data from within the University to an institution, a person or an organisation outwith the European Economic Area (EEA).

Introduction

The General Data Protection Regulation (GDPR) sets out that personal data may only be transferred outside of the EEA when certain safeguards are in place. These safeguards are divided into two categories: those safeguards available to all data controllers and the so-called derogations, safeguards that are not available to public authorities. However, Data Protection Law recognises that while universities are designated as public authorities, not all of their data processing activities are connected to their public tasks. Therefore, activities which the University has no delegated powers to undertake can continue to make use of these derogations to simplify overseas data transfers. However, teaching and research are public tasks, which the University has delegated authority to undertake.

Where the derogations are not available, then the University will have to ensure that sufficiently robust contractual terms are in place between the institution and an overseas partner.

Please note that transfer of personal data into the EEA is unproblematic, as Data Protection Laws will apply as though the data were generated inside the EEA.

Context

Under the GDPR and DPA 2018, these safeguards are not required where the European Commission (“the EC”) has decided that a country, territory or a sector(s) within a country has an adequate level of protection (“an adequacy decision”) over personal data. Where an adequacy decision is available, transfers of personal data can take place as if the recipient were located within the EEA, i.e. no further actions are required other than general compliance with the legislation.

To date, the EC has recognised Andorra, Argentina, Canada (only commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Jersey, New Zealand, Switzerland, Uruguay and the US (limited to the [Privacy Shield framework](#)) as providing adequate protection.

Many of the University’s overseas partnerships allow for the free transfer of personal data, as these involve institutions/bodies within the EEA. However, the University also shares personal data with institutions in countries with no EC adequacy decisions in place.

Several scenarios involve the transfer of personal data outwith the EEA:

- Regular student exchange
- Teaching and/or activities delivered by an institution overseas
- International research collaborations
- International conferences and events
- Work placements
- External examiners
- Student or staff references
- Providing membership data to professional organisations or similar organisations
- Overseas development and alumni work
- Providing data to an embassy for a very important person(VIP) visit

The legislation lists 8 safeguards, at least one of which is to be put in place to allow for the lawful transfer of personal data outside the EEA.

Adequate safeguards may be provided for by:

- a legally binding agreement between public authorities or bodies;
- binding corporate rules (agreements governing transfers made between organisations within in a corporate group);
- standard data protection clauses adopted by the EC;
- standard data protection clauses adopted by the Information Commissioner's Office (ICO) and approved by the EC;
- compliance with an approved code of conduct approved by the ICO;
- certification under an approved certification mechanism as provided for in the GDPR;
- contractual clauses agreed authorised by the ICO;
- provisions inserted into administrative arrangements between public authorities or bodies authorised by the ICO.

Besides the 8 safeguards, there are 7 derogations, which are alternatives to the application of a safeguard. Where available, a derogation would normally be relied upon when there is no adequacy decision and application of a safeguard is not possible, or desirable, e.g. establishing a contract between the University and another party for a one-time transfer would not be an efficient use of resource; with no guarantee that the partner would accept the terms a proposed agreement. The derogations are:

- the individual's informed written consent;
- necessary for the performance of a contract between the individual and the organisation or for pre-contractual steps taken at the individual's request;
- necessary for the performance of a contract made in the interests of the individual between the controller and another person;
- necessary for important reasons of public interest;
- necessary for the establishment, exercise or defence of legal claims;
- 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; or
- made from a register which under UK or EU law is intended to provide information to the public (and which is open to consultation by either the public in general or those able to show a legitimate interest in inspecting the register).

Note that the first three derogations, explicit consent and the two contractual derogations, only apply to the University's so-called private tasks, i.e. any task outwith teaching and research.

Safeguards for international transfer

Regular student exchange (incoming and outward bound students):

If the other university is a public body: a legally binding agreement between public authorities

If the other university is private: necessary for the performance of a contract between the individual and the organisation or for pre-contractual steps taken at the individual's request

Teaching and/or activities delivered by an institution overseas:

Teaching and/or research activities delivered by an institution overseas that rely on a personal data transfer from the University of Edinburgh fall outwith the scope of our GDPR compliance, as the University of Edinburgh will not be undertaking any activities under its own powers – it will be the other institution that is doing so.

International research collaborations:

If the other university is a public body: a legally binding agreement between public authorities.

If the other university is private: necessary for the performance of a contract between the individual and the organisation

International conferences and events:

Informed written consent

Work placements:

Necessary for the performance of a contract between the individual and the organisation or for pre-contractual steps taken at the individual's request

External examiners:

Necessary for the performance of a contract between the individual and the organisation or for pre-contractual steps taken at the individual's request

Student or staff references:

Necessary for the performance of a contract between the individual and the organisation or for pre-contractual steps taken at the individual's request

Providing membership data to professional organisations:

Informed written consent

Overseas development and alumni work:

Informed written consent

Providing data to an embassy for a VIP visit:

Necessary for important reasons of public interest

Guidance:

For advice on contracts and legally binding agreements, please consult Legal Services at legalservices@ed.ac.uk

Further guidance on consent is available on our website:

[Guidance on consent](#)

The Information Commissioner's Office also provides guidance on international transfers.

[Information Commissioner's Office guidance on safeguards and derogations](#)

About this guidance

Version control	Author/editor	Date	Edits made
1	Data Protection Officer	3 December 2018	Wrote guidance
2	Sara Cranston	6 December 2018	Formatted for web and accessibility

If you require the guidance in an alternative format, please contact Records Management: recordsmanagement@ed.ac.uk or 0131 651 4099