

Information Commissioner's Opinion:

**The UK Government's  
assessment of adequacy  
for the Republic of Korea  
for the general processing  
of personal data**

23 November 2022

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Information Commissioner's Office

# Introduction

The UK Government can assess whether another country, territory or an international organisation provides an adequate level of data protection compared to the UK. An adequacy assessment may cover either general processing, or law enforcement processing, or both. The Government must consider a range of factors and ensure that sending personal data to that country, territory or international organisation does not undermine people's protections.

Some countries may have a substantially similar level of data protection to the UK. In these cases, the Government can make UK adequacy regulations. This allows organisations to send personal data to that country, territory or international organisation if they wish.

We support the Government in undertaking adequacy assessments and making regulations to enable personal data to flow freely in our global digital economy to trusted partners. We do this by providing independent assurance on the process followed and the factors that government officials take into consideration. This allows the Secretary of State to make an informed and reasonable decision. By doing this work once for everyone, the Government and the ICO are reducing the burden of compliance on organisations that would otherwise have to put alternative measures in place.

One of our priorities for this year, as set out in our ICO25 strategic plan<sup>1</sup>, is to "enable international data flows through regulatory certainty". This includes our work on adequacy assessments. We provided advice to the Government during this assessment of the Republic of Korea (also known as South Korea). Now that the Government has laid the regulations, we are publishing this Opinion to set out our views on the process and the Government's conclusion.

## Key Finding

The Information Commissioner (the Commissioner) considers that it was reasonable for the Secretary of State to conclude that the Republic of Korea provides an adequate level of data protection and to lay regulations to that effect.

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<sup>1</sup> [ICO25 strategic plan](#)

He also advised there are particular aspects that the Secretary of State should monitor. These are detailed later in this Opinion.

## About this Opinion

### Who is this Opinion for?

This Opinion is primarily for Members of the UK Parliament to consider alongside the UK adequacy regulations laid by the Secretary of State.

It may also interest the wider public, data protection professionals and organisations that already transfer personal data to the Republic of Korea or who are considering doing so.

### What is an adequacy assessment?

The UK's data protection laws set out a framework for the responsible use of personal data by organisations. People may lose this protection when organisations transfer their personal data to organisations in other countries or to international organisations not subject to national laws.<sup>2</sup> This is why the UK General Data Protection Regulation (UK GDPR) has specific rules on how to make international transfers of personal data. These rules mean that organisations must protect people's personal data or one of a limited number of exemptions must apply.

One way that UK organisations can transfer personal data internationally is by relying on UK adequacy regulations made by the Secretary of State. The Secretary of State can assess a country, territory or international organisation or a particular sector in a country or territory, and decide if its legal framework offers a similar level of data protection to the UK.

Article 45 of the UK GDPR contains a list of criteria the Secretary of State must consider when carrying out an adequacy assessment.

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<sup>2</sup> An international organisation is defined by the UK GDPR as "an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries".

### **Criteria to be considered in an adequacy assessment<sup>3</sup>**

2. When assessing the adequacy of the level of protection [...], the Secretary of State shall, in particular, take account of the following elements:

a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data are being transferred;

b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with the data protection rules, including adequate enforcement powers, for assisting and advising the data subjects in exercising their rights and for cooperation with the Commissioner; and

c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

If the Secretary of State decides the country, territory or international organisation, or a particular sector in a country or territory, provides an adequate level of data protection after considering all the above criteria, they can make regulations to give legal effect to their decision.

These adequacy regulations allow UK organisations to transfer personal data to a controller or processor located in a third country or to an international organisation. The transfer must adhere to the particular scope of those regulations.

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<sup>3</sup> Article 45(2), UK GDPR

## What is the Commissioner's role in adequacy assessments?

Article 36(4) of the UK GDPR requires the Secretary of State to consult the Commissioner when preparing a proposal for a legislative measure which relates to processing. The Secretary of State must also consult the Commissioner before making regulations under the Data Protection Act 2018 (DPA 2018).<sup>4</sup>

The Secretary of State for Digital, Culture, Media and Sport (DCMS) and the Information Commissioner entered into a Memorandum of Understanding (MoU) on the role and responsibilities of the ICO in relation to DCMS's work on UK adequacy assessments and regulations.<sup>5</sup>

As set out in the MoU, DCMS consults the Commissioner at various stages in their process. He offers advice and comments on the information provided. However, it is not for the Commissioner to make his own assessment of the adequacy of another country, territory or international organisation. He provides an independent assurance on the process followed and the factors that DCMS officials take into consideration. This allows the Secretary of State to make an informed and reasonable decision.

The MoU also says that the Commissioner may provide an Opinion to Parliament, including on the DCMS process and factors they take into account. These Opinions recognise that different countries have different ways of ensuring adequate levels of data protection.

## Assessment of the Republic of Korea

In August 2021, the Secretary of State announced that the Government would assess the Republic of Korea for adequacy under the UK GDPR.<sup>6</sup>

DCMS's assessment considered the level of data protection in the Republic of Korea provided by the:

- Personal Information Protection Act and the Enforcement Decree of the Personal Information Protection Act,

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<sup>4</sup> Section 182(2), DPA 2018

<sup>5</sup> [Memorandum of Understanding \(MoU\) on the role of the ICO in relation to new UK adequacy assessments](#)

<sup>6</sup> DCMS, [International data transfers: building trust, delivering growth and firing up innovation](#), 26 August 2021

- The Credit Information Use and Protection Act and the Enforcement Decree of the Credit Information Use and Protection Act, and
- The Supplementary Rules.

It obtained information from:

- the legislation itself;
- other desk-based research; and,
- discussions and correspondence with representatives of the Personal Information Protection Commission and the Financial Services Commission of the Republic of Korea.

## The Commissioner's Opinion on the adequacy assessment of the Republic of Korea

DCMS officials provided copies of a significant amount of the information gathered about data protection in the Republic of Korea for review. DCMS officials responded positively to the ICO's suggestions of areas to clarify, and they explored these further. Therefore, the final assessment is based on an appropriate range and depth of relevant factual information. The Commissioner provided advice to the Secretary of State. He gives this Opinion, based on that information.

The assessment considered all the criteria for adequacy listed in article 45 of the UK GDPR to the appropriate extent.

The Commissioner considers that it was reasonable for the Secretary of State to conclude that the Republic of Korea provides an adequate level of data protection and to lay regulations to that effect.

The Commissioner is therefore pleased to offer Parliament his assurance as it considers the regulations.

## Review and ongoing monitoring

The Secretary of State can review the adequacy of the Republic of Korea at any time, if they become aware of a significant change in the level of data protection that applies to personal data transferred from the UK. They also have the power to revoke or amend the regulations if necessary, to ensure organisations can only freely transfer personal data where there are sufficient safeguards in place.

In any event, the Secretary of State must undertake a review of the level of data protection in the Republic of Korea every four years from the date the regulations come into force.

The Secretary of State is also required to monitor, on an ongoing basis, developments in a country, territory or international organisation which is the subject of UK adequacy regulations.

We considered whether any of the information we reviewed highlighted particular aspects that the Secretary of State should monitor. We advised her to monitor:

- developments related to automated decision-making given the judgement that the current absence of legislative protection is unlikely to affect personal data transferred from the UK;
- the effectiveness in practice of the protections for personal data transferred to religious organisations for missionary purposes and to political parties for the nomination of candidates since the full requirements of the Korean Personal Information Protection Act do not apply in these cases; and
- the progress of proposals to amend the relevant laws in the Republic of Korea and the impact those proposals would have on personal data transferred from the UK.

In the course of his duties, the Commissioner, or his staff, may become aware of information that suggests the Republic of Korea no longer provides adequate data protection. Should that happen, he will inform the Secretary of State and may recommend they undertake a review of the regulations. Depending on the circumstances, he may revise this Opinion accordingly.

## What is the status of this Opinion?

The Commissioner has several powers and functions around UK adequacy assessments. This includes section 115(3)(a) of the DPA 2018<sup>7</sup>. This gives the Commissioner a duty to advise the UK Parliament and Government, amongst others, on legislative and administrative measures. A key part of this links to the protection of people's rights and freedoms relating to the

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<sup>7</sup> Another example is article 57(1)(c) of the UK GDPR.

processing of personal data under the UK GDPR. UK adequacy regulations fall within this remit.

There is also section 115(3)(b) of the DPA 2018<sup>8</sup> which allows the Commissioner to issue Opinions to Parliament, the Government, other institutions and bodies and the public. They can cover any issue about the protection of personal data. The Commissioner can issue Opinions either on his own initiative or on request.

This Opinion sets out the Commissioner's view of the adequacy assessment process followed and factors taken into consideration by the Secretary of State for DCMS for the Republic of Korea under section 17A of the DPA 2018 and article 45 of the UK GDPR.

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<sup>8</sup> See also article 58(3)(b) of the UK GDPR.