

2040 Training

# THE GREAT ESCAPE:

INTERNATIONAL DATA TRANSFERS FROM THE UK

Tim Turner  
5<sup>th</sup> December 2022

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All PD processing in the UK

Orgs offering goods or services to / monitoring behaviour of people in UK, wherever orgs is located

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**Not restricted transfer**

Shared with same organisation

Disclosed by data subject

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**Restricted transfers**

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**Adequacy**

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The EU + EEA

Everyone who was EU adequate on 31 Dec 2020

Anywhere UK approves – e.g. South Korea

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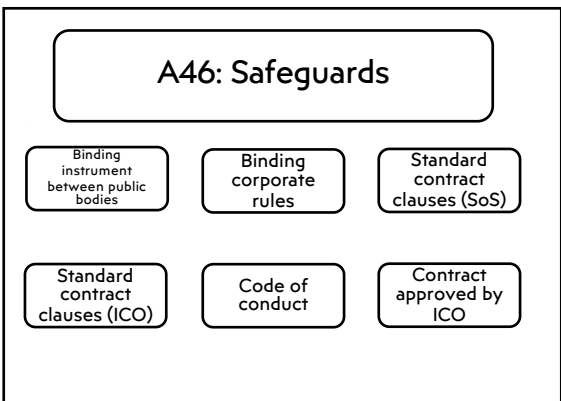
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PLUS a transfer risk assessment

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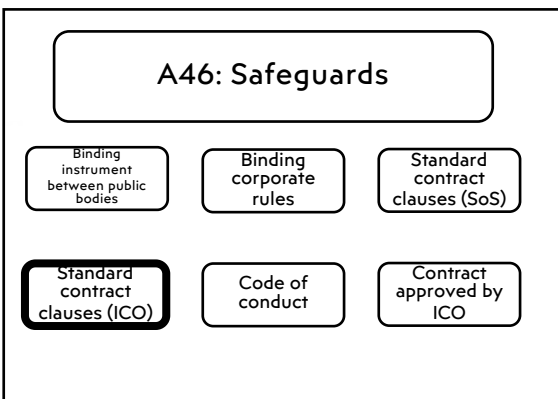
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The IDTA: agreement for transfers out of the UK

The Addendum: makes existing EU SCCs compliant for UK outward transfers

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Both came into force on March 21<sup>st</sup> 2022

Deadline for replacement 21<sup>st</sup> March 2024

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The IDTA: agreement for transfers out of the UK

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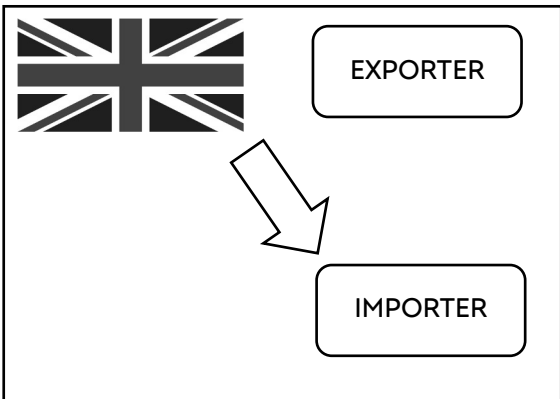
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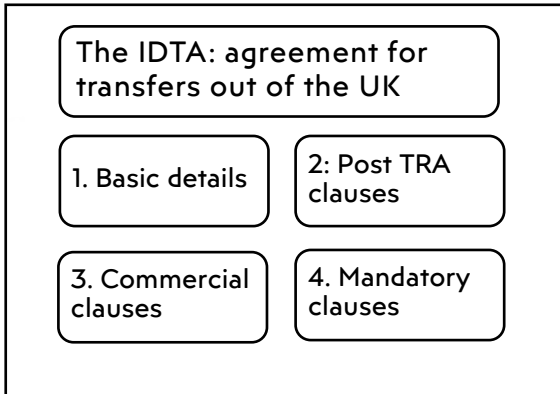
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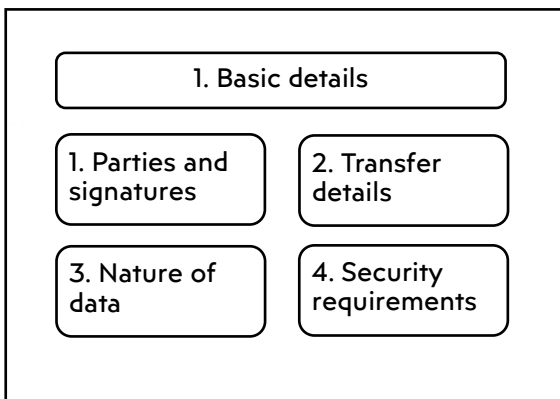
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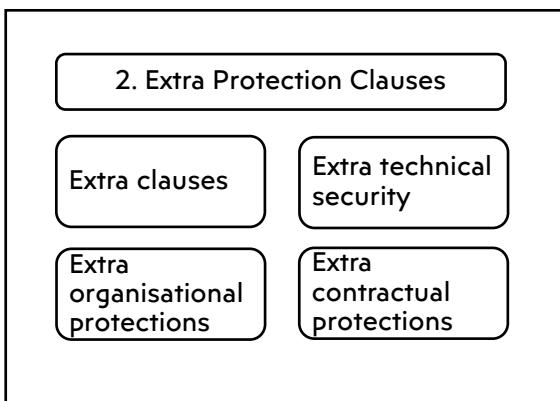
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3. Commercial Clauses

Clauses where there is no separate commercial agreement

If there is, IDTA calls it 'Linked Agreement'

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~~3. Commercial Clauses~~

~~Clauses where there is no separate commercial agreement~~

~~If there is, IDTA calls it 'Linked Agreement'~~

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4. Mandatory Clauses

Change nothing except:

Obsolete clauses (processor / controller)

Updates from revised IDTA

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8.3: Importer must:

Provide info

Cooperate for UK DP compliance

Keep local situation under review

Be alert to legal conflicts

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Importer is controller

14: mini GDPR regime

15.2: PDB treatment

15.3: PDB reporting

19: Transparency

20: Subject rights

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**Importer is processor**

15.2: Report PDB to exporter

17: Have to comply with linked A28 agreement

21: Route rights requests back to exporter

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**16: Onward transfer controls**

Must be in agreement

Consistent with purpose

Doesn't breach agreement

Recipient must respect subject rights

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26: Breaches of the IDTA

27: Breaches by Importer

28: Breaches by Exporter

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**Final matters**

29 – 31: How to end agreement

32: Liability

33: Subject's right to claim

33: ICO's right to claim???

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The ICO is entitled to bring claims against the Exporter and/or Importer for breach of the following Sections: Section 10 (The ICO), Sections 11.1 and 11.2 (Exporter's obligations), Section 12.1.6 (General Importer obligations) and Section 13 (Importer's obligations if it is subject to UK Data Protection Laws).

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**Final matters**

29 – 31: How to end agreement

32: Liability

33: Subject's right to claim

33: ICO's right to claim???

34: Where you can claim

35: Arbitration

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The Addendum: makes existing EU SCCs compliant for UK outward transfers

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ICO Transfer Risk Assessment guidance

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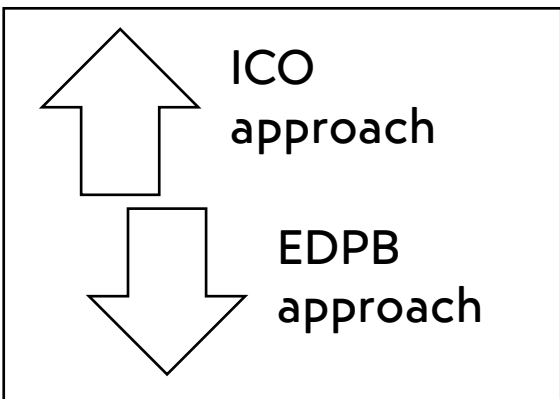
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Two risks

Risks to people's rights arising in the destination country from third parties, in particular government and public bodies.

Risks to people's rights arising from difficulties enforcing GDPR rules

COMPARE TO THE UK

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Six questions

**Question 1:** What are the specific circumstances of the restricted transfer?

**Question 2:** What is the level of risk to people in the personal information you are transferring?

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Start with data risk level

Factors that make risk worse

Final level

Factors that make it better

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<b>Low harm risk</b>	Unlikely to cause more than inconsequential financial harm, physical harm, mental harm or distress. Minimal actions required to put it right (if any), such as an apology.
<b>Moderate harm risk</b>	Unlikely to cause more than minor financial harm, physical harm, mental harm or distress. Some actions needed to put this right, such as proactively seeking the return of information or stopping its unauthorised spread. If this was a data breach, you may need to inform the ICO, but not the people the information is about.
<b>High harm risk</b>	Likely to cause significant financial harm, physical harm, mental harm or distress. Urgent action is required to put this right and minimise the harm caused. If this was a data breach, you would need to inform the ICO and the people the information is about.

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Name	Low
Address & Contact details	Low
Age / DOB	Low
Gender	High
Biometric data	High
CCTV, photos and other images (which are not biometric data)	Moderate
Race/ethnic origin	High
ID documentation, such as passport, national insurance number, ID card, driving licence details	High
Medical records	High

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Category	Purpose	Basic Protection	Enhanced Protection	Significant Protection
Contractual	Additional contractual clauses in transfer mechanism to reduce risk of (i) exporter or the person who the information is about from being unable to enforce contractual rights; and (ii) third party access to personal information outside of legal process in destination country	Importer and/or exporter has an enhanced complaints process for people whose personal information has been subject to a data breach, including a compensation scheme.	If exporter has sufficient financial resources: contractual right for people to bring a claim against the exporter if the importer fails to comply with UK court order or arbitration award. The importer may only comply with a request by a third party or public authority (i) where the legitimate interests of the importer, the requesting party and any other third party override the interests or fundamental freedoms of the person who the information is about; or (ii) if the request was made in the UK, the disclosure would be lawful and/or in the overriding public interest.	If exporter has sufficient financial resources: contractual right for people to bring a claim against the exporter for any breach of the Article 46 transfer mechanism by importer. Or a contractual right for people to bring a claim against a UK organisation in the same group as the importer (with sufficient financial resources) for breach by the importer. Confirmation and commitment by importer to maintain: <ul style="list-style-type: none"> <li>• Professional or regulatory status</li> <li>• ICO code of conduct</li> <li>• ICO certification</li> <li>• Reputable security certification</li> </ul>

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**Six questions**

**Question 1:** What are the specific circumstances of the restricted transfer?

**Question 2:** What is the level of risk to people in the personal information you are transferring?

**Question 3:** What is a reasonable and proportionate level of investigation, given the overall risk level in the personal information and the nature of your organisation?

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**Levels of investigation**

1. Specific FCO / UN reports
2. Internet-based research (DYOR)
3. Detailed human rights analysis

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**Factors to consider**

Data-based risks

Size (i.e. resources) of organisation

Volume of data

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**Question 4:** Is the transfer significantly increasing the risk for people of a human rights breach in the destination country?

**Question 5:** (a) Are you satisfied that both you and data subjects will be able to enforce your transfer mechanism against the importer in the UK?

**Question 5:** (b) Are you satisfied that both you and data subjects will be able to enforce your transfer mechanism in the destination country (or elsewhere)?

**Question 6:** Do any of the exceptions to the restricted transfer rules apply to the "significant risk data"?

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**Article 49**  
Exemptions for occasional processing

Consent	Contract	Public interest
Legal claims	Vital interests	Public registers

Rare legitimate interests situations

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Low risk of access

Low risk of harm

Proceed

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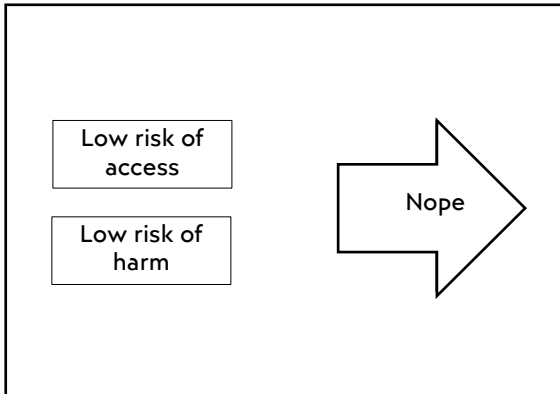
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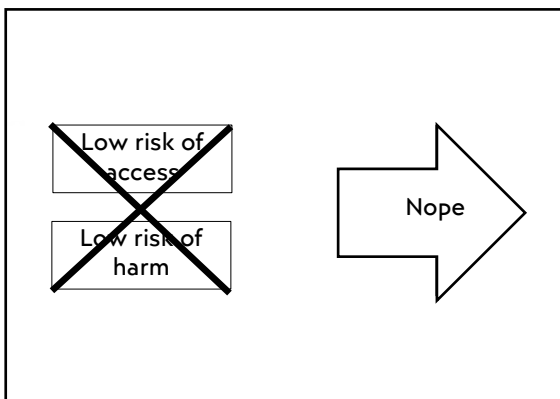
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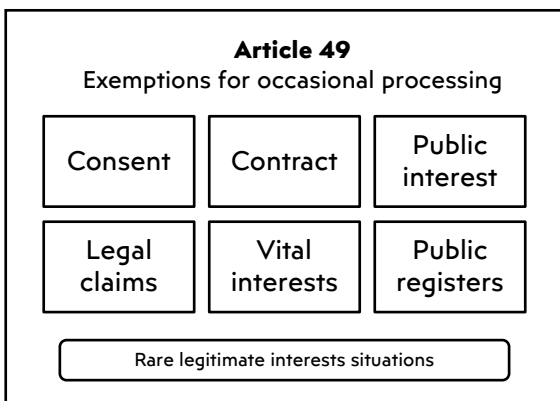
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**SUMMARY**

Track all non-adequate international disclosures

Ensure all processors have A28 agreements

Ask whether transfers are necessary

Low risk transfers are allowed

EU Adequacy may be transitional

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**2040**

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- **Twitter:** @tim2040 + @theDPOdaily + @theDPOjobs
- **LinkedIn:** Tim Turner + DPO Daily + DPO Jobs
- **Reality:** feral but friendly (for short periods)

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