

Annex A - Questions raised in the ESC Chair’s Letter dated 27 February on Commission Report on the second annual review of the functioning of the EU-US Privacy Shield: 15836/18

Table detailing the matters raised and responses

ESC Letter of 27 February	Government Response
<p>Given the relevance of what arrangements are in place to enable personal data flows to continue between the UK and non-EEA countries who are already subject to an EU adequacy decision before UK exit in a “no deal” situation, the responses could have also usefully referred to:</p> <ul style="list-style-type: none"> • “ Amendments to UK data protection law in the event the UK leaves the EU without a deal on 29 March 2019” notice; • The Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2019 (“DPPEC Regulations”) 	<p>Not referring to the DPPEC Regulations was an oversight on our part. We will endeavour to ensure that the ESC is informed of DCMS publications relevant to its work.</p> <p>The policy notice “Amendments to UK data protection law in the event the UK leaves the EU without a deal on 29 March 2019” was published on 13 December. There has been no updates to the content of the notice since it was published. It built on the official technical notice published in September 2018. The policy notice was referenced in the Government’s response to the European Scrutiny Committee letter dated 14 November 2018 (see response to DQ3 and DQ4).</p> <p>Our aim in publishing the policy notice was to support organisations in their preparations and to enable the Information Commissioner to publish their guidance. Subsequently information has been made available for organisations and individuals through the Prepare for EU Exit website.</p>
<p>We would be grateful for your clarification on just how “transitional” that effect of existing EU adequacy decisions is supposed to be.</p> <p>Do the same review obligations apply as for new “adequacy regulations” to be made by the Secretary of State in respect of other third countries?</p>	<p>The Government made clear during parliamentary debate on the DPPEC Regulations that the transitional provisions for existing EU adequacy decisions would be kept under review.</p> <p>The UK’s data protection law as amended by the DPPEC Regulation requires the Secretary of State to review whether third countries or</p>

	<p>organisations which are the subject of adequacy regulations made under section 17A ensure an adequate level of protection. Such reviews must be conducted at least every four years (see new section 17B of the DPA 2018). This maintains the standards for adequacy decisions by the European Commission under the GDPR. The review requirement applies for the transitional provisions as equally as it does to Regulations made under 17A.</p> <p>The Secretary of State is also required to monitor developments in third countries and international organisations that could affect decisions in relation to adequacy regulations made under section 17A. Once again this requirement applies equally to the transitional provisions. There are powers within the transitional provisions to omit or narrow the scope of the country, territory or sector that is effectively treated as offering an adequate level of protection (paragraph 4(3) of new schedule 21 to the DPA 2018).</p>
<p>When would new “adequacy regulations” need to be made to replace the effect of existing EU adequacy decisions?</p>	<p>There is no obligation on the Secretary of State to replace the effect of existing EU adequacy decisions with “new” adequacy regulations under section 17A. However, it is open to the Secretary of State to opt to do so, for example where it becomes apparent (through a formal review or otherwise) that a decision requires more fundamental adjustment than is permitted within the scope of the power provided by paragraph 4(3)(c) of Schedule 21.</p>