



Information Commissioner's Office
Promoting public access to official information
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International transfers/Transborder Data Flows

Guidance on the Use of Model Contract Clauses – data controllers established in the EU to data processors in countries outside the EU

The European Commission has adopted a decision on standard contractual clauses for the transfer of personal data to third countries which sets out model contract clauses for use by data controllers established in the EU to data processors in countries outside the EU. Following this decision and under section 54(6) of the Data Protection Act 1998, the Commissioner has made an Authorisation under paragraph 9 of Schedule 4 to the Data Protection Act 1998.

The text of the decision, including the model terms, is available from the Commission's website at:

http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_006/l_00620020110en00520062.pdf

The Information Commissioner has taken the view that the following options are available to data controllers who wish to use the model terms:-

1. Use of the model terms word for word as a stand-alone contract, with completion of the "blanks".
2. Use of the model terms word for word, with completion of the "blanks" but including further terms, provided that the further terms do not contradict in any way the model terms.
3. Incorporation of the model terms into a contract containing other business terms, either word for word or with minimal changes required solely to enable the model terms to fit the context of the contract, in both cases, with completion of the "blanks".

4. Incorporation of the model terms into a contract containing other business terms, by reference to the decision, by including the following wording within the contract:

“The Standard Contractual Clauses for the transfer of personal data to third countries under Directive 95/46/EC contained in the Annex to the Commission Decision of 27 December 2001 are incorporated into the contract with the following changes:-

Data Exporters shall mean [name of data controller organisation]

Data Importer shall mean [name of data processor organisation to which data are transferred]

With reference to clause 9 the Governing Law is the law of [insert law of Member State in which data exporter is established];

With reference to Appendix 1:

The Data Exporter is [specify activities relevant to the transfer]

The Data Importer is [specify activities relevant to transfer]

The Personal Data transferred concern the following categories of data subjects: [specify]

The personal data transferred fall within the following categories of data: [specify]

The personal data transferred fall within the following categories of sensitive personal data: [specify]

The personal data transferred will be subject to the following basic processing activities:[specify]

With reference to Appendix 2:

The technical organisation and security measures implemented by the data importer in accordance with clauses 4d and 5c are as follows: [insert a description of such measures or attach document/legislation]

Use of the model terms whether as a stand-alone contract or incorporated into another contract, where the wording is changed but without altering the intended meaning or effect of any clause does not amount to use that is authorised by the Information Commissioner under the Authorisation referred to above. However, this does not prevent the data controller from taking the view that the transfers made on terms which provide adequate safeguards to the data subjects, and indeed the use of the terms with the same meaning and effect as those in the model terms would be a significant factor were the Commissioner required to assess the adequacy of any safeguards.

The Commissioner has given a separate authorisation in relation to the transfer of personal data by data controllers established in the EU to data controllers established outside the EU. This authorisation is dated 21 December 2001 and relates to Decision C (2001)1539(15 June 2001) and may be found on the Commissioner's website.