

**International Data Transfer Policy**

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# **Summary**

Housing 21 understand that any transfer of personal data undergoing processing or intended processing after transfer to a third country or an international organisation, shall only take place in compliance with Chapter 5 of the UK GDPR.

This policy should be read in conjunction with our Data Protection Policy and Data Privacy Impact Assessment Policy and details the processes to follow when transferring personal data to a third country or an international organisation.

Housing 21 will adhere to the UK GDPR for all non-EU transfers and have robust transfer safeguarding measures and controls in place to protect the personal data and the rights of the data subject.

This policy applies to all employees but will be more applicable to the following business areas: IT, Business Systems and Procurement as these are the teams responsible for defining and implementing new initiatives which may result in our resident and employee personal data being transferred and processed internationally.

# **Equality, Diversity, and Inclusion**

Housing 21 aspires to embed diversity and inclusion within all our organisational activities to enable these principles to become part of our everyday processes.

1. **Policy**

1.1 The purpose of this policy is to provide procedures and guidelines for transferring personal data outside the EU for processing and to demonstrate our adherence to the Chapter 5 requirements and compliance with the required safeguarding measures.

1.2 Housing 21 takes proportionate and effective measures to protect personal data held and processed by us, however we recognise the high-risk nature of disclosing and transferring personal data to a third country or an international organisation. This policy outlines the measures and controls that we will take to comply with data protection legislation and regulation and provides guidance on data transfer to our employees and associated third parties.

1.3 It is Housing 21’s aim to ensure that all personal data transfers to a third country or an international organisation comply with the GDPR and that we ensure that data subject rights are enforceable and upheld. Housing 21 have the following objectives regarding non-EU data transfers:

* To comply with GDPR (Articles 44-50) regarding personal data transfers to a third country or an international organisation
* To have adequate and appropriate safeguards and measures in place to protect personal data and data subjects when transferring personal information
* To only transfer data outside the EU where there is an adequacy decision by the European Commission (hereinafter referred to as ‘the Commission’), one or more of the appropriate safeguards are place or the transfer complies with one of the transfer exceptions
* To have compliant Binding Corporate Rules or Standard Data Protection Clauses (where applicable) when transferring personal data without an Adequacy Decision
* Ensure that the DPO regularly reviews the Official Journal of the European Union to ensure Housing 21’s adequacy decision list is accurate and up to date
* To train and support all employees involved in personal data transfers to a third country or an international organisation
* To have robust and compliant policies and procedures in place for effecting non-EU transfers
* To regularly review and monitor this policy and any associated procedures

**2.0 Guidelines & Procedures**

2.1 Where data is being transferred for a legal and necessary purpose, compliant with all Articles in the Regulation, Housing 21 will use a process that ensures such data is encrypted with a secret key and where possible is also subject to our data minimisation methods.

2.2 We will use approved, secure methods of transfer and have dedicated points of contact with each organisation to whom we transfer data. All data transferred will be noted on our Information Asset Register (IAR/ Record of Processing Activities (RoPA)) register. The Data Protection Officer, with the support of IT and Business Systems will verify all EU transfers and ensure the encryption and security methods and measures.

**3.0 Adequacy Decision**

3.1 Where Housing 21 intend to transfer personal data to a third country or an international organisation, we will check if the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection.

3.2 Where a positive adequacy decision is in place for the transfer recipient, we recognise that we do not require any specific authorisation to transfer the personal data and that the Commission has already undertaken a comprehensive assessment of the organisation or third country in making their decision.

3.3 Such transfers are still subject to our own security and encrypted transfer measures and safeguards and we still complete third-party due diligence where applicable. Such transfers are to be reviewed by the DPO and IT Security and conducted following the same process as those within the EU.

3.4 The DPO is responsible for monitoring the approved third country list provided by the Commission and only transferring data under this provision to those countries, organisations or sectors listed.

**4.0 Appropriate Safeguards**

4.1 In the absence of a decision by the Commission on an adequate level of protection by a third country or an international organisation, we restrict transfers to those that are legally binding or essential for the provision of our business obligations or in the best interests of the data subject. In such instances, we develop and implement appropriate measures and safeguards to protect the data, during transfer and for the duration of processing and/or storage with the third country or international organisation.

4.2 Such measures include ensuring that the rights of data subjects are carried out and enforced and that effective legal remedies for data subjects are available. The appropriate safeguards can be provided without Supervisory Authority ‘ICO’ authorisation by:

* A legally binding and enforceable instrument between public authorities or bodies
* Binding corporate rules
* Standard data protection clauses adopted by the Commission
* Standard data protection clauses adopted by the ICO and approved by the Commission
* An approved code of conduct together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regard data subjects’ rights
* An approved certification mechanism together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regard data subjects’ rights

4.3 With authorisation from the ICO, the appropriate safeguards may also be provided for by:

* Contractual clauses between Housing 21 and the controller, processor or the recipient of the personal data in the third country or international organisation
* Provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights

4.4 Housing 21 do not transfer personal data to any third country or international organisation without one or more of the above safeguards being in place or without the authorisation of the ICO, where applicable. We verify that any safeguards, adhere to the GDPR Principles, enforce the rights of the data subject, and protect personal information in accordance with the Regulation.

4.5 Pursuant to Article 46, we ensure that any agreement, contract or binding corporate rules for transferring personal data to a third country or international organisation, are drafted in accordance with any ICO and/or the Commission’s specification for format and procedures (where applicable). As a minimum standard, we verify that the below are specified:

4.6 The structure and contact details of the group engaged in the activity and of each of its members and the data transfers or set of transfers, including:

* 1. The categories of personal data
	2. The type of processing and its purposes
	3. The type of data subjects affected.

4.7 The identification of the third country or countries in question and their legally binding nature, both internally and externally and the application of the general data protection principles, in particular:

1. Purpose limitation
2. Data minimisation limited storage periods
3. Data quality
4. Data protection by design and by default
5. Legal basis for processing
6. Processing of special categories of personal data
7. Measures to ensure data security
8. The requirements in respect of onward transfers to bodies not bound by the binding corporate rules

4.8 The rights of data subjects regarding processing and the means to exercise those rights, including the right:

1. Not to be subject to decisions based solely on automated processing (including profiling)
2. To lodge a complaint with the ICO and before the competent courts of the Member States, where applicable
3. To obtain redress and, where appropriate, compensation for a breach of the binding corporate rules

4.9 Our acceptance (and that of any processor acting on our behalf) of liability for any breaches of the binding corporate rules by the third country or international organisation to whom the data is being transferred (with exemption from that liability, in whole or in part, only where we prove that we are not responsible for the event giving rise to the damage)

4.10 How the information on the binding corporate rules and the information disclosures (Articles 13/14) is provided to the data subjects (with reference to the application of the GDPR Principles, the data subjects rights and breach liability).

4.11 The tasks of any Data Protection Officer and/or person(s) in charge of monitoring compliance with the binding corporate rules, as well as monitoring training and complaint handling and complaint procedures.

4.12 The mechanisms within Housing 21, for ensuring the verification of compliance with the binding corporate rules, including:

1. Data protection audits and completion of Data Privacy Impact Assessments
2. Methods for ensuring corrective actions to protect the rights of the data subject
3. Providing the Data Protection Officer and IGSG with such verification results

4.13 The appropriate data protection training to personnel having permanent or regular access to personal data.

**5.0 Transfer Exceptions**

5.1 Housing 21 will not transfer any personal information to a third country or international organisation without an adequacy decision by the Commission or with ICO authorisation and the appropriate safeguarding measures, unless one of the below conditions applies. The transfer is:

* Made with the explicit consent of the data subject, after being informed of the possible risks and the absence of an adequacy decision and appropriate safeguards
* Necessary for the performance of a contract between the data subject and Housing 21 or the implementation of pre-contractual measures taken at the data subject’s request
* Necessary for the conclusion or performance of a contract concluded in the interest of the data subject between Housing 21and another natural or legal person
* Necessary for important reasons of public interest
* Necessary for the establishment, exercise or defence of legal claims
* Necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent
* 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*). Transfer made under this exception must not involve the entire personal data or categories of the personal data in the register and if the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

5.2 Where a transfer is not valid under Article 45 or 46 and none of the above derogations apply, Housing 21 will comply with the Article 49 provision that a transfer can still be affected to a third country or an international organisation where all the below conditions apply. The transfer:

* Cannot be made by a public authority in the exercise of its public powers
* Is not repetitive
* Concerns only a limited number of data subjects
* Is necessary for the purposes of compelling legitimate interests pursued by Housing 21, which are not overridden by the interests or rights and freedoms of the data subject
* Housing 21 has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment, provided suitable safeguards with regard to the protection of personal data

5.3 Where the above transfer must take place for legal and/or compelling legitimate reasons, the Supervisory Authority is notified of the transfer and the safeguards in place, prior to it taking place. The data subject in such instances is provided with all information disclosures pursuant to Articles 13 and 14, as well as being informed of the transfer, the compelling legitimate interests pursued, and the safeguards used to affect the transfer.

**6.0 Management Guidance / Processes**

6.1 When transferring personal data to a third country or international organisation, Housing 21 adhere to the appropriate safeguards defined in Article 46 of the GDPR, by:

1. A legally binding and enforceable instrument between public authorities or bodies;
2. Binding corporate rules in accordance with Article 47;
3. Standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 93(2);
4. Standard data protection clauses adopted by a supervisory authority and approved by the Commission pursuant to the examination procedure referred to in Article 93(2);
5. An approved code of conduct pursuant to Article 40 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects’ rights; or
6. An approved certification mechanism pursuant to Article 42 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects’ rights.

6.2 The Data Protection Officer has overall responsibility for reviewing data transferred to a third country or international organisation and is tasked with the continued review of the Commissions adequacy decisions, along with ICO communication and authorisations, where applicable.

6.3 Any employees involved in the transfer of personal data as categorised in this policy, must adhere to the conditions of this document and the regulations laid out in Chapter 5 of the GDPR.

**7.0** **Training and Auditing**

7.1 Housing 21 are required to ensure all employees have undergone mandatory data privacy related training to enable them to comply with data privacy laws. This training is available in employees’ learning pathways on our internal learning and development platform.

7.2 All employees must regularly review all the systems and processes within their remit to ensure they comply with this Policy and check that adequate information governance controls and resources are in place to ensure proper use and protection of personal data.

7.3 To further support the understanding of data protection and data security compliance, the following processes are in place:

* Coverage of data protection principles and a summary overview of the information governance framework as part of the corporate induction process for all new starters, which also includes focus on cyber security
* Supporting guidance on Housing 21s intranet covering all elements of data protection and overall information governance legislation, how to implement in day-to-day roles and best practice examples
* Regular workshops (at least every quarter) with business areas where there is high data processing or recent risks of data breaches
* Quarterly liaison with Heads of Service to identify gaps and support their information governance security profiles.
* Regular communications on the intranet, using recent data breach case studies and general good practice tips.
* We also regularly conduct assurance audits to ensure our information governance framework and associated polices and training remain compliant and fit for purpose.
* The newly formed Data Protection Champions (DPCs) will also support to deliver further information governance and awareness within their teams.
* The SIRO takes overall responsibility for the organisations data risk approach with support from the Information Governance Steering Group (IGSG) and the DPO.

**8.0** **Related Policies, Procedures and Legislation**

* Data Protection Policy and Procedure
* Data Subject Access Request Guidance
* Document Retention Policy and Procedure
* Information Governance and Security Policy and Procedure
* Equality, Diversity, and Inclusion Policy
* Reasonable Adjustment Policy
* Safeguarding Policy and Procedure
* IT Acceptable Use Policy and Procedure
* Work Location Policy and Procedure
* UK General Data Protection Regulation (UKGDPR)
* Data Protection Act 2018 (DPA18)
* [Crime and Disorder Act 1998](http://www.legislation.gov.uk/ukpga/1998/37/contents)
* [The Human Rights Act 1998](http://www.legislation.gov.uk/ukpga/1998/42/contents)
* [The Public Interest Disclosure Act 1998](http://www.legislation.gov.uk/ukpga/1998/23/contents)
* [The Access to Medical Reports Act 1988](http://www.legislation.gov.uk/ukpga/1988/28/contents)
* [Access to Health Records Act 1990](http://www.legislation.gov.uk/ukpga/1990/23)
* [Privacy and Electronic Communications Regulations](http://www.legislation.gov.uk/uksi/2003/2426/contents/made) (PECR)