

New UK Trade Secret Regulation in Effect

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Recently, the UK implemented its first meaningful regulation designed to protect trade secrets—the [Trade Secret \(Enforcement, etc.\) Regulations 2018](#), which puts into effect the [EU Trade Secret Directive](#). The EU Trade Secret Directive, which is designed to create some degree of harmony in [trade secret](#) regulation across the EU yet also allow for more stringent regulation, must be enacted by each individual member states' legislature in order for it to have an effect in that member state. The UK's decision to adopt a regulation in line with EU-based law should help companies who want to implement EU-wide trade secret policies.

Under the UK regulation, in order for information to constitute a trade secret, it must not be known to “persons within the circles that normally deal with the kind of information in question,” have commercial value because it is a secret, and have been subject to reasonable efforts to remain a secret. While the first two portions of that definition largely overlap with the UK's approach to trade secret data under common law, the requirement that an organization take “reasonable steps” to keep the information a secret adds a new wrinkle that may make it more difficult for companies to qualify information as a trade secret under the regulation. Notably, this requirement, on its face, resembles the U.S. federal Defend Trade Secrets Act's requirement that data owners take “reasonable measures” to keep the information secret, a requirement that U.S. federal courts are starting to interpret following the Act's enactment in 2016. Thus, it will be interesting to observe how jurisprudence develops both in the U.S. and UK regarding what type of actions a company must take to ensure their data constitutes a “trade secret.”

TIP: Pay close attention to how UK courts interpret this regulation and, in particular, the level of “reasonableness” that the courts require when judging whether an organization did enough to keep information a secret. In addition, continue to monitor EU member states' implementation of the EU Directive, as each country's implementing regulation may slightly alter the definition of trade secrets and the protections afforded to such information.

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