

The General Data Protection Regulation (GDPR)

Two months to go before wide-ranging changes to data protection law come into force

The General Data Protection Regulation (GDPR) was adopted at EU level in April 2016 and will apply automatically to organisations operating in the EU, as well as those offering goods and services to EU citizens from 25 May 2018. The GDPR replaces the UK's current regime under the Data Protection Act 1998.

The GDPR will bring significant changes to the data protection framework in the UK, imposing new compliance obligations on a wide-range of data processing activities, from collecting personal data and managing data transfers, to employee monitoring and the use of CCTV.

It introduces an overarching obligation on organisations to ensure 'privacy by design', meaning designing projects, processes, products and systems with privacy in mind at the outset. Accountability for compliance is key to satisfying the new data protection obligations.

The territorial reach is expanded and takes into account not only the location of the data processing but also the location of the individual whose data is being processed.

Organisations processing data (data controllers) are subject to existing data protection laws but businesses whose main data-related activity is providing services to data controllers (data processors) will face direct obligations and liability under the GDPR for the first time.

The GDPR strengthens the rights of individuals by introducing the new rights of data portability, the right to be forgotten and certain rights in relation to profiling. There will be six lawful bases for processing personal data but the way in which consent is obtained is likely to have a major impact on organisations.

As a consequence of the new rules, many organisations will need to review and update existing contracts, general terms and conditions and other documents to make sure that processing is lawful and individuals' rights are protected.

Public authorities and organisations carrying out certain types of processing activities must appoint a data protection officer (DPO). DPOs assist organisations to monitor internal compliance and advise on data protection obligations; some organisations may choose to appoint a DPO even if not required to do so to help demonstrate compliance and a focus on accountability.

Significant sanctions for non-compliance are also introduced, including new fines of up to the greater of €20 million and 4% of worldwide turnover. This applies to numerous infringements, including a breach of the basic principles for processing, including conditions for consent, individuals' rights and the conditions for lawful international data transfers.

Ensuring compliance with the GDPR is likely to be a time consuming endeavour for organisations and will range from redesigning internal systems that process personal data to renegotiating contracts with data processors and restructuring cross-border data transfer arrangements.

For more information please contact Aisha Dickson or myself.

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This article is not intended to be a full summary of the law and advice should be sought on all issues.

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