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GDPR: The projected legal impact

26 June 2017

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What will the regulatory landscape look like?

- **GDPR** – 25 May 2018
- **E-Privacy Regulation** (repealing the E-Privacy Directive)
– planned date for implementation still 25 May 2018
- **Data Protection Bill** (Queen's speech) – the GDPR renamed?

What regulatory guidance has been published?

- Article 29 WP:
 - Guidelines on data portability
 - Guidelines on data protection officers
 - Guidelines on identifying a controller or processor's lead supervisory authority
 - Draft guidelines on Data Protection Impact Assessments
- ICO:
 - Preparing for the GDPR: 12 steps to take now
 - Overview of the GDPR
 - Privacy notices code of practice (short section on GDPR)
 - Draft consent guidance for public consultation

The main changes under the GDPR

- Extra-territorial applicability (and the one-stop shop)
- Breach notification
- Data Protection Officers
- Sanctions for non-compliance

- Consent (as a grounds for processing)
- Accountability
- Appointing a data processor

Accountability

“Arguably the biggest change is around accountability. The new legislation creates an onus on companies to understand the risks that they create for others, and to mitigate those risks. It’s about moving away from seeing the law as a box ticking exercise, and instead to work on a framework that can be used to build a culture of privacy that pervades an entire organisation”

Elizabeth Denham, Jan 2017

- A **specific obligation** on data controllers (although also impacts data processors)
- **Practical implications:**
 - Data protection by design and default
 - Record keeping
 - Data Protection Impact Assessments

Appointing a data processor...

Issues to consider:

- Due diligence of processors
- Specific processing terms set out in the GDPR need to be incorporated in any written agreements between data controllers and data processors
- Negotiating processor agreements when the stakes are raised

Practical implications:

- Review of template standard terms
- Review of pre-2018 contracts
- Dealing with third party 'GDPR-ready' patches

Consent and the grounds for processing



DP Directive definition:

“any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed”

GDPR definition:

*“any freely given, specific, informed and **unambiguous** indication of the data subject's wishes by which he or she, **by a statement or by a clear affirmative action**, signifies agreement to the processing of personal data relating to him or her”*

Compliance strategy – the lawyer’s take...

- **Phase 1 – organisational/structural**

- Staff and internal resources
- Structures required (steering committee with appropriate report lines in and out?)
- External resources (consultants/technology solutions)

- **Phase 2 – Data audit and gap analysis**

- Understand what data is collected, how and where it is used, with whom it is shared and what existing compliance framework is in place
- Identify the strategic issues posed by GDPR compliance

- **Phase 3 – phased compliance**

Conclusion and questions



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