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3HR Legal Weekly

Commercial

Data protection update – the GDPR

Despite the UK leaving the EU, there is soon to be a change to the European rules concerning data protection that will apply to all organisations that operate within the EU. The General Data Protection Regulation (“GDPR”) contains a large number of changes to the current data protection legislation, and now is the time to start preparing as the government has stated that all EU law will be incorporated into post-Brexit UK’s statute books.

Data protection law should be at the top of your agenda: in April 2017 the ICO issued penalties totalling more than £175,000 for breaches of the data protection legislation. This figure will only rise once the GDPR comes into force, as standards and individuals’ rights will increase. Now is the time to prepare and this newsletter sets out an overview of the new requirements.

Obtaining the data subject’s consent to process their data is hugely important under the Data Protection Act (“DPA”), and there will be some changes under the GDPR. The request for consent must be in plain language, easily accessible, and clear that the subject is opting into the consent. The way that the data will be processed or used must also be expressly set out, and should not be contained in the middle of a large set of terms and conditions. You must also tell the subject that it is easy to withdraw this consent at a later date. It will be important to make sure that you can always provide evidence of consent, so it should be written where possible.

When a data subject asks, there is a long list of information you must be able to provide. This includes (but is not limited to): the identity and contact details of the controller and the data protection officer; the purpose and the legal basis for the processing; all categories of personal data held about the subject; details of anyone who has been sent the personal data; details of transfers to third countries and the safeguards in place to protect the data; the right to lodge a complaint with a supervisory authority; the source of the personal data and whether it came from publicly accessible sources; and the existence, significance and consequences of any automated decision making that uses the personal information. This should all be provided without delay once you have confirmed the identity of the requester. It should also be free of charge, unless the request is excessive. The £10 fee payable under the DPA has been removed.

If any data you hold is inaccurate or incomplete, the GDPR says that you must update it. You must also identify everyone that you have sent the inaccurate information to and tell them to update it. If someone asks, and there is no compelling reason to refuse, you must be able to delete someone’s personal information. There are times when you should stop processing the data (this is different to deleting the information – you can store it without it being processed). You should do this if the accuracy of the data is challenged, someone asks you to, the processing is unlawful, or you no longer have a need to process it. People must also be able to object to their data being used for direct marketing.

The GDPR also introduces an obligation to report your own data breaches to the relevant authorities, further restricts transfers of data outside the EU, and increases accountability and transparency.

3HR offers a report on data protection and avoiding the pitfalls of the GDPR, and can of course offer bespoke advice tailored to your circumstances. Please refer to our 3HR Commercial Law team.

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