

11 August 2017

3HR Data Protection Update

Commercial

Data protection bill

Within the past week, the government has taken the step of introducing a Data Protection Bill to parliament ahead of the implementation of the EU's General Data Protection Regulation ("GDPR") in May 2018. It will be the first update to data protection rules since the Data Protection Act 1998 ("DPA").



Because of the nature of EU regulations, the GDPR would have come into force before Brexit takes place and would have remained law thanks to the planned Repeal Bill, which will incorporate all EU law into UK Law after we have left the EU. However, the government has taken the step of presenting the contents of the GDPR to parliament in a separate bill. This should not have any impact on your GDPR preparation, which should continue unabated.

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As with the DPA, consent is very important under the GDPR and the Data Protection Bill. In fact, the new rules place an even greater importance on a data subject understanding and approving what is to happen to their personal data. Consent must be freely given, specific, informed and unambiguous. The subject must be under no obligation to give consent, and must understand both that he is giving consent and what the implications of the consent will be. A subject must make a positive action to confirm consent, such as ticking a box. Pre-ticked boxes or opt-out boxes will become a thing of the past.

Companies must always be able to prove that they received consent, and a data subject always has the right to withdraw any previously granted consent.

The new rules also introduce eight key concepts. These give people the right:

- to be informed about the use of their data,
- to have access to it,
- to have incorrect data corrected,
- to have it erased,
- to restrict processing,
- to data portability,
- to object to the use of their data, and
- to know about automated decisions.

The GDPR also massively increases the importance of accountability in data protection law. Organisations will have the duty to report their own data breaches within 72 hours of their occurring. This means that a security breach that leads to personal data being compromised must be reported to the authorities within 3 days. There will also be times when companies will have to report data breaches to the individuals affected. These are obviously very significant changes, and require preparation in advance.

Should you require any assistance in this or any other commercial area please refer to our 3HR Commercial Law team which can advise accordingly.

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