



Updates to Data Protection Regulation – Are You Ready?



The History:

The Data Protection Act of 1984 and latter the 1995 Data Protection Directive, were turning points in the history of Data Protection and was established with the intention of:

- **Protecting the fundamental right to data privacy**
- **Ensure the free flow of personal data between member states.**



These basic principles are still valid, but the implementation of the original legislation across the European Union's 27 countries was divergent and inconsistent, leading to an increased disparity between today's needs and current legislation. Whilst the principles are still applicable, a lot else has changed since 1995; technological advancements, significant increases in the scale of data being shared, the ready availability of data and increased globalisation have all led to new risks, challenges and opportunities.

The Future: "A Brave New Data World"

Today's dynamic world requires a more comprehensive and coherent policy around the right to personal data protection. As such the European Commission launched a two year consultation with major stakeholders and the public in order to review and modernise the current framework.

The consultation and resulting regulation, due to come into effect in 2014/15 aims to:

- **Build a single and coherent framework across the EU**
- **Back the regulation with strong enforcement powers**
- **Put individuals back in control of their own data**
- **Re-enforce legal and practical certainty for operators and public authorities**
- **Enforce consumer confidence**



Understanding the Basics

What is personal data? This can be anything from names, photos, email addresses, social networking posts, bank details to medical information. Whilst data sharing is increasingly part of everyday life through social networking sites, smart phones and cloud computing, people are growing increasingly wary about the level of personal information they disclose and are losing confidence in the organisations that hold it. This revised framework aims to reinstate trust, which in turn will help businesses grow, boost the digital economy, reduce costs and administrative burden whilst fostering innovation.

70% of Europeans are concerned their personal data held by companies may be used for purposes other than that for which it was collected

€2.3 Billion Euros
of cost savings to be achieved

The European Commission review is ultimately looking to remove the barriers to the internal market and create a level playing field for data processing within the EU, through the creation of one single law overseen by one data protection authority. It is anticipated the savings to be achieved from the removal of current administrative burden, red tape and bureaucracy will total €130 billion per year.

Key Changes – For you to be aware of:



- Responsibility/Accountability – Companies will be increasingly responsible for the processing of the personal data they hold. Companies with over 250 employees must appoint a dedicated Data Protection Officer, whether in-house or outsourced to ensure compliance and a proactive approach is taken when handling data.
- One stop shop National Authority – Companies will only have to report to a single authority relating to the EU country where their main establishment is rather than each of the countries in which they do business.
- Enhances Enforcement – National data protection authorities' powers strengthened to better enforce the new EU legislation with enhanced co-operation between DPA's to ensure consistent application.
- Explicit Consent – consent must now be given explicitly rather than assumed.
- The right to be forgotten – People have the right to have their data deleted when they no longer want it held or a company has no legitimate grounds to retain it, even in back-up form.
- Notification of a data breach – Companies and organisations will have to notify the authority of a data breach without delay (within 24 hours)
- EU Rules Apply – The regulation will also apply to companies outside of the EU if they offer goods or services within the EU
- Documentation– Companies will need to conduct Privacy Impact Assessments and produce and upkeep a large amount of documentation on data handling and processing.
- Consumer right to refer – People will have the right to have a case referred to their own home nation authority even if the data was processed outside of this country
- Administrative Sanction – Supervisory authorities will be empowered to impose administrative sanctions which will be individual case effective, proportionate and dissuasive. Fines will be in line with the nature, gravity and duration of the infringement up to 2% of an organisation's annual turnover

What Does This Mean For You? Risks & Opportunities



As with any new regulation and legislative change there are associated challenges and business risk. However, if managed effectively there are a wealth of opportunities to be gained.

The risks to your business as a result of this latest framework include a significant increase in the potential cost of fines in the event the worst should happen. Supervisory authorities will have the jurisdiction to impose fines up to 2 million or up to 2% of an enterprises' annual worldwide turnover. The increased requirement for accountability within an organisation will also require these new principles and safeguards be integrated into business processes at an early stage to avoid business impact on products and services in the future.

There are opportunities and business benefits that you can harness however, including cost and time savings and the re-building of trust with your customers whilst providing a platform for gaining competitive advantage on a global scale. The single market holds great potential for businesses of all sizes and with the increasing size of the digital economy and popularity of Cloud Computing, this legislation re-enforces trust within your market and delivers a key driver for business growth.

Blackfoot Top Tips:



- Do a data audit to know where your data is
- Future proof your business - Take steps today to ensure you are protected and ready for tomorrow
- Check supplier contracts – be vigilant that both existing and new contracts will be subject to these new requirements
- Investment decisions – Ensure any investment decisions made today will not be impacted by this new legislation.
- Communicate with your customers – reassurance and trust will keep them coming back to you safe in the knowledge their data is treated with care and diligence.

DMH Stallard Top Tips:



- Reassess your use of personal data. Ensure you obtain an individual's explicit consent to process their data and make sure you are able to strike a balance between retaining records of dormant customers against their new right to be forgotten.
- Are your data protection procedures up to date? Also, your partners should be able to reassure you that they will not cause you to breach data protection obligations. So check their track records via customer testimonials and an independent search.
- Run a credit check on your suppliers. If you receive a fine and it is their fault, can you get them to pay the fine?
- Check where your suppliers operate and store the data. The proposed new law still restricts data transfers outside the European Economic Area unless to a country on the European Commission's approved list or under the Commission's model transfer clauses.
- Specify notification protocols with your partners so that they will inform you immediately if there is a breach. Don't forget, you then have to notify the relevant regulatory authority within 24 hours where possible.

Conclusion:

As part of Blackfoot's dedication to future proofing your business, contact us today on **0845 805 2409** or **DataPrivacy@blackfootuk.com** to discuss how we can help reduce your specific business risk and harness the advantages this regulation provides.

Also, if you would like to discuss the legal aspects of the new data protection regulation or how to address this in your customer and supplier contracts, contact Frank Jennings at DMH Stallard LLP on **01293 605018** or **frank.jennings@dmhstallard.com**.

Blackfoot and DMH Stallard are currently working on a key study in this area "The Coping with the Data Explosion - How businesses are coping with the exponential growth of data". This report will be published in Spring 2012. Click here for more information: http://www.dmhstallard.com/data_security



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