# GDPR
# An Overview:

## What is it and what do I need to do?

As from 25th May 2018, the General Data Protection Regulation (GDPR) is set to increase data protection rights for all individuals within the EU. This legislation will replace the existing Data Protection Act 1988 and is being brought in to give people more control over how organisations use their data, increase data security and protect EU citizens privacy. For organisations that don't comply, they could face hefty penalty fines of up to 20 million euros or 4% of their worldwide annual revenue of the prior financial year, whichever is higher – steep, right?!

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# GDPR and Marketing Activity

Whilst the fines are pretty frightening and the term GDPR is sending shivers down spines, it's important to remember why this new legislation is taking effect - to protect individuals and prevent the misuse of data. From a marketing perspective, GDPR is simply ensuring best practice in the collection, use and storage of people's data. GDPR requires companies to obtain a higher standard of consent from customers, where relevant, and broadens individuals' rights with respect to accessing and porting their data.

How organisations manage personal data is important, I for one, don't want my name, email address, home address, phone numbers etc. being frequently passed/sold to third party organisations or being stored in an unsecured environment for the reasons that I'm tired of receiving PPI calls, insurance claims forms and over 30 emails a day that is literally just a load of junk. In regard to marketing, data being misused in this manner doesn't help marketers or businesses in their promotional activities as currently, in our experience, it's desensitising consumers to marketing communications and reducing marketing effectiveness - especially in regard to email marketing.

Best practice marketing doesn't involve purchasing a data list or sourcing data without consent in the hope that someone on that list will be interested in your product/ service, it involves:

- Undertaking efficient market research to REALLY understand your target audience and then taking this insight to ascertain which communication channels you are most likely to reach your audience through.
- You should then utilise these communication channels in your marketing strategy. Whilst developing messaging & creative to appeal and engage your audience.
- Once your audience is engaged, implement an effective retention strategy to encourage repeat custom or at least referrals (this is where data capture will come into affect)
- And then, you need to start the process all over again. Undertaking research should be a frequent activity as markets change and grow very quickly. Research is an essential activity in the process of implementing and developing an efficient marketing strategy.

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Within your marketing efforts, you should also ensure that throughout the previously discussed cycle your customers data is being collected with their permission/consent, is used in a manner which they have agreed for their data to be used and is stored securely (and legally) for your customers best interests and ultimately trust. Not only this, but when customers are no longer interested in your services you need to make it **easy for them to remove their data** from your list (unsubscribe) and ensure that their information is completely destroyed from your systems - do NOT keep it in another folder 'just in case' you need it, not only will this be illegal from 25th May 2018 but also, what's the point in keeping it? If someone is taking the effort & time to unsubscribe, they're really not interested in your products and/or services anymore and are therefore invaluable to your business.

The new GDPR legislation states that individuals should be able to remove themselves from a data list as easily as they signed-up to it i.e. when signing up, if they entered their information into a website form and ticked a box stating that they wanted to receive marketing communications, then when they want to unsubscribe, the process should be just as easy such as through ticking a box. Making them jump through hoops to withdraw their consent i.e. asking write and post a letter to be removed from a data list is not only unnecessary and poor practice, but it will soon also be illegal.

GDPR will affect many aspects of your marketing strategy and in order to provide sound advice, we'd recommend getting in touch with any questions you have in relation to ensuring your marketing activity is GDPR compliant. But, if we were to generally summarise compliance in regard to marketing activity, it would be this:

1. **Ensure you have consent to send marketing communications and that it's given freely**
   Before sending out a marketing communication ensure that each person that your sending this communication to has **consented** to receive such correspondence and that you have evidence of this. Consent must also be **given freely** i.e. no **pre-ticked** boxes, specific, informed and unambiguous by clear affirmative action.

2. **Engage in E-Mail Marketing? Undertake a data-cleanse.**
   A data-cleanse should involve asking everyone on your list to re-subscribe (by providing explicit consent) and remove all data from your systems of those who either opt-out or don't respond.
   An effective way to do this is through the distribution of an e-shot asking people to click a box to re-subscribe. You MUST detail the type of communications that they will receive and how you plan to use & store their data. Some of this information can be in-putted into your Privacy Policy which you should provide a link to.

3. **Keep evidence of consent as 'consent must be demonstrable'**
   Keeping files of how, when and what people subscribed to receive and how long their data will be stored for will protect you in the event that someone takes your business to court for breaches in the new data law.

4. **Allow an easy process for people to withdraw consent/unsubscribe**
   Withdrawing consent should always be possible and should be as easy as giving it, as previously explained.

We recently attended a GDPR seminar and a good example was given for the collection of data for marketing purposes:

When attending a networking event, a business card draw is a standard activity. It's an opportunity for attendees to win a prize and it's useful for organisers as they can collect contact details for marketing purposes – it's a win win.

However, under the new GDPR legislation you can of course still operate a business card draw at events, but you will need to do so whilst adhering to the following compliance requirements.

- At the point a person inputs their business card into the draw, they should be informed, via a written communication (i.e. a poster next to the draw) detailing how their data is going to be used i.e. To contact the winner.
- Not only this, but businesses shouldn't just add all entrants into their marketing list because they've entered the competition. This **IS NOT** regarded as consent to marketing communications as it's not **given freely**, data was given for another purpose – to win a prize and GDPR states that people need to provide explicit consent.
- So, in order to comply going forward, you'd need to inform all entrants that they will be contacted after the draw (i.e. to let them know that they have/haven't won the competition) and within the same correspondence they can be asked whether they'd like to sign up to receive marketing communications. It's only at this point, once people have provided consent to such marketing communications, that your business can market to them. If they don't sign-up/tick this box DO NOT add them to your marketing list.
- Where it gets a little confusing is that you can keep their business card, but you can only use this data to contact them for genuine business purposes i.e. in the event that you need to contact them as you require their services or would like to refer their business. Why is this okay? Because it falls under a term called 'Legitimate Interest' which we'll go into more detail later in this document.

# GDPR and Website Operations

In regard to website operations, guess what - GDPR will be effecting this too. What all businesses should seek to be doing ahead of May 25th is updating or creating new Privacy Policies, which should be easily accessible via your website, as well as ensuring website visitors opt-in/grant consent for the use of cookies or other storage technologies.

**Privacy Policies**

This document should detail all data processes within your business, such as how personal data is collected, used, and how it's stored. GDPR says that the information you provide to people about how you process their personal data must be:

1. Concise, transparent, intelligible and easily accessible
2. Written in clear and plain language, particularly if addressed to a child
3. Free of charge

GDPR includes a longer and more detailed list of information that must be provided in a privacy notice than the DPA (Data Protection Act) does. There are also some differences in what you are required to provide, depending on whether you are collecting the information directly from data subjects or from a third party. We'd strongly suggest reviewing your Privacy Policy ahead of May 25th to ensure compliance.

**Cookies**

If you operate a website or app, it's highly likely that you use cookies or other storage technologies for the purposes of offering your website visitors/customers a better experience when using your website (i.e. tracking behaviour on Google Analytics). From May 25th 2018, you will be required to obtain consent from website users before using these technologies, as some cookies will be tracking user behaviour as well as personal data such as location, age, gender etc.

EU guidance outlines four main requirements for consent in regard to cookies:

1. Consent must be specific and based on appropriate information
2. Given **before** using cookies or other storage technology to collect information (users MUST opt-in/consent before you can track their website activity)
3. Unambiguous
4. Freely given

If you require support with installing a 'cookies banner' on your website or assistance with the creation/updating your Privacy Policy, we can help and provide you with guidance.

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# GDPR and General Business Operations

It's important to remember that GDPR isn't just in relation to your marketing activity – it concerns the collection, use and storage of data in general. For example, when taking on new clients or even new employees, such data must to be managed correctly. In the circumstance of obtaining new customers, they are going to be willing to provide their data when it's an essential part of the purchasing or service delivery process, in which case, under the new GDPR legislation the legal reason for processing this data could fall under a 'Contractual Agreement' or a term called 'Legitimate Interest' (dependant on the circumstance) in which case consent is not necessary. Legitimate Interest involves a 3-part test and full-filling your services is one of them. It's a similar situation for taking on new employees; employees expect to provide information as it's essential for business operations from a contractual as well as a legitimate interest perspective.

Legitimate Interests is the most flexible legal ground for data processing and is most appropriate when using people's data in ways they would reasonably expect and there is minimal privacy impact or when there is compelling justification for the processing of the data.

If you rely on this ground, then you are taking on a risk and you'd need to be certain in your defence that explicit consent wasn't necessary in the processing of data.

There are actually 6 legal grounds, including Contractual, Consent & Legitimate Interest for the processing of data:

1. Consent (explicit consent)
2. Contract (necessary for employment or social security)
3. Legal Obligation (non-contractual such as a defence of legal claims)
4. Vital Interests (best interest of the data subject where they cannot consent themselves e.g. when protecting lives)
5. Public Task (public interests are concerned i.e. local authority's census data collection)
6. Legitimate Interest (for more information on Legitimate Interest, click here)

As long as your data processes falls under one of these legal grounds, you'll be complying with GDPR.

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We'd suggest taking the opportunity to review all data processes that you have in your business and ensure that your team are aware of the importance of managing data appropriately with confidentially and ensuring the systems that store personal data is highly secure (at the very least password protected).

If you're unsure what your data processes are, why not look at creating a data flow map to determine how your business collects, uses & stores data and to understand what type of data is collected/used. This is a great activity to engage within to allow you to really understand your data processes, for more information on data mapping **click here**.

As part of your data mapping activity, you should also look into what data is no-longer needed. If you're still keeping files containing data from ex-employees who left your business 5-years ago – is this really necessary? Under new GDPR legislation, **you will no-longer be able to do this**, the law will stop businesses from keeping people's data indefinitely (the amount of time depends on which type of data), so we'd suggest simply removing people's data which is no-longer in use from your database and performing  data cleanse every couple of years to ensure personal data is evaluated, managed and destroyed appropriately.

# Summary

How the GDPR legislation will affect your business will be completely different to the next company. In regard to ensuring you're GDPR compliant ahead of May 25th, reviewing/updating the following documents will ensure you're well on your way to compliance:

- Updated Privacy document
- Updated Terms & Conditions – updated to refer to Privacy Policy.
- Updated Cookies agreement on your website
- Consent requests – ensure that upon all data collection such as an online e-newsletter sign-up or contact form is GDPR compliant.
- We'd strongly suggest a full data-cleanse and/or a data-mapping activity which should involve addressing your existing data list to provide further consent to continue sending marketing communications.

If you need any assistance with any of the activity detailed in this document or if have any questions, please do not hesitate to get in touch – we'd be more than happy to review your data processes and provide cost quotations to ensure your business operations are GDPR compliant. It might be that, where appropriate, we recommend speaking to your solicitor/lawyer or a referred solicitor/lawyer of ours who can provide informative legal advice. Our skills lie in the marketing and website sector and therefore we won't be able to advise on all aspects of the new GDPR legislation.

We appreciate that GDPR is a minefield and believe us, we've only just touched upon the new legislation in this guide, but GDPR is happening and it's happening soon – so please do make the effort to ensure compliance before May 25th 2018.

We're sure that we will learn a great deal more about GDPR once it comes to affect as best practice is yet to be supplied, but we promise that we will keep all of our clients updated on developments as and when they occur.

In the meantime, if you have a spare day or so (yes, days!), you can read all articles contained within the General Data Protection Regulation here.