

Checklist

Data subjects' rights



Right provided by GDPR	Notes
<p>Right to be informed See our privacy notice checklist for the details required to be communicated to the data subject</p>	<p>If data is obtained directly from the data subject, the information should be provided at the time of collection of the data.</p> <p>If data is not obtained directly the information should be provided:</p> <ul style="list-style-type: none">• within a reasonable period of obtaining the data (within one month);• if the data are used to communicate with the data subject, at the latest, when the first communication takes place; and• if disclosure to another recipient is envisaged, at the latest, before the data are disclosed
<p>Right of access Data subjects have the right to obtain:</p> <ul style="list-style-type: none">• confirmation that their data is being processed;• access to their personal data; and• other supplementary information – this largely corresponds to the information that should be provided in a privacy notice (see Article 15).	<p>Information must be provided without delay and at the latest within one month of receipt. You will be able to extend the period of compliance by a further two months where requests are complex or numerous. If so, you must inform the individual within one month and explain why.</p> <p>Where you process a large quantity of information about an individual, the GDPR permits you to ask the individual to specify the information the request relates to.</p> <p>You must provide a copy of the information free of charge.</p> <p>You can charge a 'reasonable fee':</p> <ul style="list-style-type: none">• when a request is manifestly unfounded or excessive, particularly if it is repetitive. You could also refuse to respond but, without undue delay and within one month, you would have to explain why and inform them of their right to complain and to a judicial remedy; or• to comply with requests for further copies of the same information.
<p>Right to rectification Individuals are entitled to have personal data rectified if it is inaccurate or incomplete</p>	<p>You must respond within one month or, if the request is complex, this can be extended by two months.</p> <p>If you are not taking any action, you must explain why to the individual, informing them of their right to complain to the supervisory authority and to a judicial remedy.</p> <p>If you have disclosed the personal data to third parties, you must inform them of the rectification where possible and inform the data subject where appropriate.</p>

Right provided by GDPR	Notes
<p>Right to erasure A data subject may request the erasure of personal data where:</p> <p>a. the personal data:</p> <ul style="list-style-type: none"> • is no longer necessary in relation to the purpose for which it was originally collected/processed • was unlawfully processed • has to be erased in order to comply with a legal obligation • is processed in relation to the offer of information society services to a child <p>b. the individual:</p> <ul style="list-style-type: none"> • withdraws consent • objects to the processing and there is no overriding legitimate interest for continuing the processing 	<p>You can refuse to comply with a request for erasure where the personal data is processed:</p> <ul style="list-style-type: none"> • to exercise the right of freedom of expression and information; • to comply with a legal obligation or for the performance of a public interest task or exercise of official authority; • for public health purposes in the public interest; • for archiving purposes in the public interest, scientific research historical research or statistical purposes; or • for the exercise or defence of legal claims. <p>If you have disclosed the personal data to third parties, you must inform them about the erasure of the personal data, unless it is impossible or involves disproportionate effort to do so.</p>
<p>Right to restrict processing Processing must be suppressed where:</p> <ul style="list-style-type: none"> • the individual contests the accuracy of the personal data; • an individual has objected to the processing (where it was necessary for performance of a public interest task or legitimate interests); • processing is unlawful and the individual requests restriction instead of erasure; • you no longer need the personal data but the individual requires the data to establish, exercise or defend a legal claim 	<p>You can continue to store the personal data, but may only further process it:</p> <ul style="list-style-type: none"> • with the data subject's consent; • to establish, exercise, or defend legal claims; • to protect the rights of another individual or legal entity; or • for important public interest reasons. <p>You must inform individuals when you decide to lift a restriction on processing.</p> <p>If you have disclosed the personal data to third parties, you must inform them about the restriction on the processing of the personal data, unless it is impossible or involves disproportionate effort to do so.</p>
<p>Right to data portability</p> <p>This includes the right to:</p> <ul style="list-style-type: none"> • receive a copy of the personal data, free of charge, from the data controller in a commonly used and machine readable format and store it for further personal use on a private device; • transmit the personal data to another data controller; and • have personal data transmitted directly from one data controller to another where technically possible 	<p>The right to data portability only applies:</p> <ul style="list-style-type: none"> • to personal data that an individual has provided to a controller; • where the processing is based on the individual's consent or for the performance of a contract; and • when processing is carried out by automated means. <p>You must respond without undue delay and within one month or, if the request is complex or there are numerous requests, this can be extended by two months. You must inform the individual of any extension within one month of the receipt of the request and explain why it is necessary. If you are not taking any action, you must explain why to the individual, without undue delay and within one month, informing them of their right to complain to the supervisory authority and to a judicial remedy.</p>

Right provided by GDPR	Notes
<p>Right to object Individuals have the right to object to:</p> <ul style="list-style-type: none"> • processing based on legitimate interests or the performance of a task in the public interest/exercise of official authority (including profiling); • direct marketing (including profiling); and • processing for purposes of scientific/historical research and statistics 	<p>If processing for the performance of a legal task or legitimate interests, individuals must have an objection on “grounds relating to his or her particular situation”.</p> <p>You must stop processing the personal data unless:</p> <ul style="list-style-type: none"> • you can demonstrate compelling legitimate grounds for processing, which override the interests, rights and freedoms of the individual; or • the processing is for the establishment, exercise or defence of legal claims. <p>If processing for the performance of a legal task or legitimate interests or for direct marketing purposes:</p> <p>You must inform individuals of their right to object “at the point of first communication” and in your privacy notice.</p> <p>This must be “explicitly brought to the attention of the data subject and presented clearly and separately from any other information”.</p> <p>If processing for direct marketing purposes, there are no exemptions or grounds to refuse.</p> <p>If you receive an objection to processing for direct marketing purposes:</p> <ul style="list-style-type: none"> • You must stop processing personal data for direct marketing on receipt; and • you must deal the objection at any time and free of charge. <p>If processing for research purposes, individuals must have “grounds relating to his or her particular situation” in order to object.</p> <p>You are not required to comply with an objection if you are conducting research where the processing of personal data is necessary for the performance of a public interest task.</p> <p>If your processing activities fall into any of the specified categories and are carried out online, you must offer a way for individuals to object online.</p>
<p>Rights in relation to automated decision making and profiling</p> <p>Individuals have the right not to be subject to a decision when:</p> <ul style="list-style-type: none"> • it is based on automated processing; and • it produces a legal effect or a similarly significant effect on the individual 	<p>The right does not apply if the decision:</p> <ul style="list-style-type: none"> • is necessary for entering into or performance of a contract between you and the individual; • is authorised by law (eg for the purposes of fraud or tax evasion prevention); • is based on explicit consent (Article 9(2)); or • does not have a legal or similarly significant effect on the individual. <p>You must ensure that individuals are able to:</p> <ul style="list-style-type: none"> • obtain human intervention; • express their point of view; and • obtain an explanation of the decision and challenge it.
<p>Breach Notification Right When a personal data breach is likely to result in a high risk to a data subject's rights, a data controller must notify the data subject of the security breach without undue delay.</p>	<p>The breach must be notified without undue delay.</p>

GDPR - getting data protection right

The EU General Data Protection Regulation (GDPR) and Data Protection Act 2018 are now in force. This has been described as “the biggest change to data protection law for a generation”. It’s not just us saying that – those are the words of the Information Commissioner, Elizabeth Denham.

There has been quite a lot of focus on the consequences of getting data protection compliance wrong, with headlines about fines of up to €20million, or 4% of global annual turnover if that is higher.

At Mills & Reeve we focus on the practical steps your organisation can take to get data protection compliance right

Get in touch



Richard Sykes
Partner
T +44(0)121 456 8436
richard.sykes@mills-reeve.com



Paul Knight
Partner
T +44(0)161 234 8702
paul.knight@mills-reeve.com



Peter Wainman
Partner
T +44(0)1223 222408
peter.wainman@mills-reeve.com



MILLS & REEVE

Achieve more. Together.

www.mills-reeve.com/GDPR