

# Data Processor Checklist

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The following is a list of issues/actions that should be considered by both data processors and data controllers using data processors as a consequence of the Data Protection Regulation.

## Data Processors

- Conduct a review of the data processing undertaken for third parties such that you have a full list of the types of data processed, the processing activities and who the relevant data controllers are. These and other details will need to be kept in a register so that data processors satisfy the requirement to document the details of data processing conducted for others, and made available for inspection by supervisory authorities.
- Review standard and existing contracts with sub-processors and revise as necessary to ensure they include the same data protection obligations as are found in contracts with data controllers.
- Assess the standard of data security in place in relation to data handled on behalf of others. Does it meet the requirement to be appropriate to the nature of the data? Data processors will have a direct responsibility for data security, not just through the contract with the data controller.
- Do you have procedures in place for reporting of data security breaches (both internally and to data controllers)? Do you have procedures in place for managing data security breaches?
- The fact that the Regulation greatly increases the enforcement risk through much greater potential fines and the fact that data processors may incur liability directly (eg in relation to a data security breach) may require a rethink on the position reached in contracts on liability for data protection related breaches. Consider whether you need to revisit standard contractual provisions and acceptable negotiated positions. Consider whether you need to review and possibly renegotiate existing contracts with data controllers.
- Review standard contracts and negotiated contracts to include wording addressing procedures to deal with compliance with data subject rights (eg access/erasure etc).
- Consider how to deal with the new requirement to be included in contracts for the data processor to make available all information necessary to demonstrate compliance with its obligations under the Regulation and allow onsite inspections, How will inspections be controlled? Do standard/existing contracts need to be changed?
- Appoint a data protection officer if required by law (see separate guidance note on data protection officers).

## Data Controllers

- Conduct a review of data processing activities undertaken by third parties such that you have a full list of the data processors used, the data that they are handling and the purposes behind that processing. These details should be kept in a maintained register and made available for inspection by supervisory authorities.
- Review standard and existing contracts with data processors and revise as necessary to deal with:
  - greater enforcement risk through much greater potential fines. This may require adjustment to the limitation of liability clauses and their application to data protection related breaches;
  - procedures dealing with compliance with data subject rights;
  - the requirement for the processor to make available all information necessary to demonstrate compliance with its obligations under the Regulation; and onsite inspections of the data processor's activities.

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