

Data Protection Regulation/Consents and notices checklist

January 2016

The following is a list of issues to consider/actions to take in relation to obtaining consent and/or providing notice of data processing to individuals.

- Conduct an audit to establish what consents are obtained from individuals so that you have a full list of types of consent, which class of individuals they are relevant to and what data processing they cover.
- Consider whether any consents are obtained from individuals in circumstances where there is a significant imbalance in power between the company and the relevant individual or where the performance of a contract is conditional on the consent being given. The obvious example is employee consents. Consider whether there are grounds (as specified in the Data Protection Regulation) on which the data may be processed without consent. Note that there may still be good practical reasons why consent forms would still be used but they may well not be effective consents.
- Consider how the consent is obtained and how clearly the details of processing are presented to individuals. Data controllers will have to ensure that consents are not hidden away in other terms and conditions.
- How will you prove that individuals have given their consent?
- Is the consent unambiguous? Is it provided by means of some active communication from the individual? Both are required features of the consent.
- If you process data relating to children below the age of 16 consent will have to be obtained from the parent/guardian (unless local law provides for a lower age of consent). Are your systems set up to do this? Can you prove that it is the parent/guardian providing the consent?
- Conduct an audit to establish what data processing notices are given to individuals so that you have a full list of the types of notice, which class of individuals they are relevant to and what data processing they cover.
- Review the data processing notices and redraft them to meet the additional information requirements of the Data Protection Regulation. Note that consents (since they provide notice of what data processing is undertaken) will also have to be redrafted.

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