

Changes to Data Protection Law

On 24 May 2016, the European Union (EU) passed the General Data Protection Regulation (GDPR). The GDPR enhances existing EU protections for personal data and the free movement of such data. It will provide a single set of rules which can be directly enforced in all member states, and will apply to all organisations which hold information on EU residents regardless of their size or location in the world.

On 25th May 2018, the GDPR was brought into force in the UK through the Data Protection Act 2018.

The Data Protection Act 2018 replaced the Data Protection Act 1998 but there are also other regulations, notably the Privacy and Electronic Communications Regulations (PECR), which effect how organisations can process personal data,

Impact on charities

The main impact of the GDPR for charities is on their ability to use personal data for fundraising and other communication purposes.

Charities used to be able to give donors the option to opt-out rather than opt-in to direct mail or telephone marketing calls (unless the donors have indicated an earlier preference not to be contacted on the Telephone Preference Service). The PECR had already curtailed the ability for charities to send marketing communications through email and text message, and a charity is not able to operate an opt-out policy for such communications unless the communications fall into a narrow definition of being for the same services as the recipient has expressed an interest before

The GDPR has increased the restrictions on charities. Where a charity relies on consent as the legal basis for sending marketing communications, the GDPR says that the donor's consent for marketing (including fundraising) must be freely given, specific, informed and unambiguous and be communicated by a statement or clear affirmative action. Consent must be explicit for sensitive data.

In addition, charities need to be able to prove that valid consent was obtained from the donor to send fundraising material, and donors must also be able to withdraw consent as easily as they give it.

However for mail and telephone marketing, it is possible to circumvent this difficulty by relying on the basis of legitimate interest for marketing and fundraising communications. In order to rely on legitimate interests, the charity must complete a legitimate interests assessment comparing the benefits to the charity with the potential risks to the individuals who will receive the communications and whether they would be surprised or object to such communications. This is not a blanket exercise. Clearly, the first marketing message has a very different impact on the recipient compared to the fifth in a short time frame. The expectation of the charity sector that the GDPR would be devastating for fundraising was overstated.

According to data released in July 2019, there was a significant dip in recruitment of new donors in late 2017 and 2018, caused by a fall in direct marketing activity. However, donations from existing donors showed strong growth into 2019 and crucially cancellations of regular donations were significantly down. The charities surveyed noted they had refocused their campaigns on building relationships with

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existing donors and becoming compliant with the GDPR and this had led to the change.

Enforcement

Breaking the rules on data protection could lead to enforcement action from the Information Commissioner's Office. They will have the power to issue significantly higher fines under the GDPR.. The fines levied could be as high as €20m, or 4% of annual worldwide turnover for groups of companies, whichever is higher.

Key additional changes introduced by the GDPR include:

- Raising the age of consent for collecting an individual's data from 13 to 16 years old.
- Requiring a charity to delete data if it is no longer used for the purpose it was collected.
- Requiring charities to notify the relevant data protection authority of data breaches within 72 hours of learning about the breach.
- Establishment of a single national office for monitoring and handling complaints brought under the GDPR.

If you would like further information on the impact of the new regulations please do not hesitate to contact one of our charity & not-for-profit and education sector partners Michelle Rule or Nick Hobden on 01892 510000 or by email at:

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