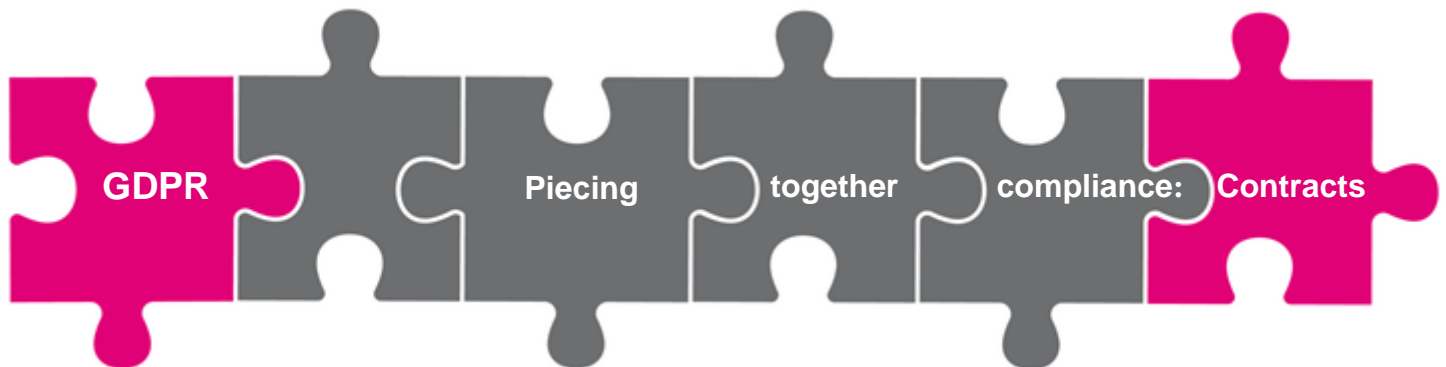


GDPR and Contracts

Whether as a customer, supplier or distributor of services which involve the handling of personal data, many businesses will be subject to significant legal changes from May 2018 when the General Data Protection Regulation ("GDPR") comes into effect.

A major focus area for businesses will be how certain key changes in GDPR affecting outsourcing and data sharing will impact both existing and future contractual relationships. Steps should therefore be taken to review these relationships and where necessary update contracts before GDPR comes into effect.

How DWF can help you prepare for GDPR – Piecing together compliance:



Why is this relevant?

EU data protection law already requires organisations who entrust the handling of their personal data to third parties, to adopt certain minimum requirements via written contracts. Whilst this principle is set to remain, GDPR imposes far more stringent requirements for contractual relationships.

GDPR isn't just an issue for outsourced activities though. Those who supply third parties with personal data for re-use will need to consider more stringent contractual safeguards. Cross selling initiatives and data brokering arrangements are key examples of where contractual relationships will need careful re-evaluation.

Data processing services

A significant consequence of GDPR is that many service providers will, for the first time, be directly subject to data protection law. Failure to keep personal data secure will therefore no longer be merely a contractual matter for them. Service providers could potentially face direct regulatory action, including

very significant fines, and compensation claims from disgruntled data subjects. Aside from the contractual aspects, many service providers will have to implement a wholesale compliance regime to reflect their new status of being directly caught by GDPR.

Data sharing initiatives

Under GDPR, certain types of data sharing arrangements will require the various parties involved in the data processing chain to enter into a documented data sharing protocol. In such a relationship, each party is potentially directly liable under GDPR for the failure by other parties to handle the data compliantly. Both new and existing contractual arrangements should therefore be reviewed and where necessary updated to provide for more detailed operational understanding and requirements for precisely *how* each party will achieve compliance.

How can we help?

DWF has an experienced team of privacy professionals who are able to advise you on implementing a risk-based project to update and amend your existing contracts so that they are GDPR compliant.

Examples of how we can assist include:

Strategic advice

- Defining the scoping your contract compliance project
- Advising on how to use commercial objectives to drive compliance objectives
- Advising on the wider considerations to be factored into supplier relationships, such as cyber-security standards employed and data breach reporting processes
- Assessing how commercial value might be leveraged from data derived from the delivery of contractual services, and the corresponding regulatory impact of using source personal data for such purposes

Reviewing existing contracts

- Conducting a gap analysis data protection contract provisions and connected compliance issues
- Preparing GDPR risk ratings on either a sample set or a per contract basis
- Drafting GDPR compliant provisions and administering associated contract changes and negotiations
- Creating compliance logs to demonstrate compliance with GDPR 'accountability' requirements

Contracts going forward

- Drafting a range of standard contract clauses to reflect different types of data sharing relationships and the corresponding varying risk profiles
- Drafting GDPR provisions in individual contracts, including where relevant, data sharing protocols and operational processes for compliance with contract obligations
- Advising on risk and drafting contractual provision to address apportionment of liability provisions in GDPR
- Advising on and drafting both mandatory contract terms and additional risk mitigation provisions and measures for ensuring compliance with data subject rights, data security breach notification requirements and any investigations and enforcement actions that may arise
- Assisting with contractual negotiations in relation to both existing contracts and proposed new arrangements with customers or suppliers
- Creating bespoke playbooks for a standard business approach to addressing contractual provisions in contracts

Working to your budget

We can offer a level of service to reflect varying budgets, ranging from conducting comprehensive reviews to ad hoc advice to help steer or sense check your own internal GDPR contract review projects.

Get in touch

If you would like to discuss any of the above issues, or learn more about our services, we would be delighted to hear from you



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