

Information Commissioner's Office

# Consultation:

## GDPR guidance on contracts and liabilities between controllers and processors

Start date: 13 September 2017

End date: 10 October 2017



# Introduction

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The General Data Protection Regulation (GDPR) will apply in the UK from May 2018 and replaces the Data Protection Act 1998 (DPA).

The GDPR builds on the existing requirement of principle 7 of the DPA (security measures) to have a written contract in place between a controller and processor. The GDPR requires much more; it specifies the detailed terms such a contract must contain with the aim of setting high standards and protecting the interests of data subjects.

Processors have new responsibilities and liabilities in their own right under the GDPR. Both controllers and processors may now be liable to pay damages or be subject to significantly increased fines or penalties.

Our draft guidance on contracts and liabilities explains:

- to controllers, what they must include in contracts; and
- sets out what responsibilities and liabilities processors have under the GDPR.

We are now running a short consultation on the draft guidance to gather the views of stakeholders and the public. These views will inform the published version of the guidance.

We are provisionally aiming to publish this guidance later in 2017, although this timescale may be affected if we need to take account of developments at the European level. We intend to publish this guidance as a series of linked webpages that can be downloaded as a pdf.

As the GDPR is a new regulation which applies consistently across the EU, our published guidance will need to continue to evolve to take account of any guidelines issued in future by relevant European authorities (including the Article 29 Working Party of European data protection authorities and the EDPB), as well as our developing experience of applying the law in practice.

Responses to this consultation must be submitted by 10 October 2017. You can submit your response in one of the following ways:

**Download this document and email to:**

[GDPRcontracts@ico.org.uk](mailto:GDPRcontracts@ico.org.uk)

Or

**Print off this document and post to:**

Policy and engagement team 2  
Information Commissioner's Office  
First floor  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

If you would like further information on the consultation, please email [GDPRcontracts@ico.org.uk](mailto:GDPRcontracts@ico.org.uk).

## **Privacy statement**

Following the end of the consultation we will publish a summary of responses received. Information people provide in response to our consultations, including personal information, may be disclosed in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998. If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality.

# Section 1: Your views

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Please provide us with your views by answering the following questions:

**1. Do you find the draft guidance clear and easy to understand?**

Yes

No

Please explain why not:

**2. Does the guidance contain the level of detail that you need?**

Yes

No

Please explain why not:

**3. Does the guidance cover the issues about contracts between controllers and processors under the GDPR that you need to know?**

Yes

No

If not what do you believe is missing?

**4. The GDPR specifies what must be included in a contract between a controller and a processor. Is there anything about this that we need to explain more clearly in the guidance?**

Yes

No

Please outline your examples:

**5. Processors have new liabilities and responsibilities under the GDPR. Is there anything about this that we need to explain more clearly in the guidance?**

Yes

Please explain why:

No

**6. Please provide any further comments or suggestions on our draft guidance.**

## Section 2: About you

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**Are you:**

A member of the public who has used our service?	<input type="checkbox"/>
A member of the public who has not used our service?	<input type="checkbox"/>
A representative of a public sector organisation? Please specify:	<input type="checkbox"/>
A representative of a private sector organisation? Please specify:	<input type="checkbox"/>
A representative of a community, voluntary or charitable organisation, or of a trade body? Please specify:	<input type="checkbox"/>
A lawyer in private practice or in-house, or part of a trade or professional body? Please specify:	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>

Other? Please specify:	<input type="checkbox"/>
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**Thank you for completing this consultation.  
We value your input.**