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GDPR TRAINING SESSION FOR RICS

by
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Background

- GDPR is EU-wide (Data Protection Act 2018 ensures it is effective in the UK after Brexit)
- Data Protection Acts of 1984 & 1998 established many of the key concepts
- GDPR broadens scope of data protection
- Increase in penalties (potentially up to €20 million or 4% of annual worldwide turnover, whichever is greater)
- UK regulator is the Information Commissioner's Office (ICO)

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Some key concepts

- It relates to "Personal Data" i.e. information relating to an identified natural person and includes, e.g. Facebook profiles, IP Addresses, CCTV images.
- Data subjects can include employees, customers, suppliers/contractors and members of the public.
- "Processing" includes collection, storage, use etc. of the personal data.
- Higher standards for processing of sensitive personal data.

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KEY CONCEPTS (CONT)

- Data Controller: Responsible for most aspects of compliance even when engaging a data processor to process personal data on its behalf
- Data Processor: Acts only under Data Controller's instructions; Required to keep personal data secure (e.g. subcontractors)
- Who determines the purposes or the means of processing?

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Processing Personal Data on behalf of another

- The Controller/Processor relationship
- A Contract is required, setting out scope of data processor's instructions and how they should assist the Controller in complying with, for example, requests from data subjects to exercise their rights
- Potential liability of data processors acting outside of scope of instructions

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New Data Protection Principles

- Lawfulness and transparency (which includes privacy notices when collecting data)
- Purpose limitation (collect data for specific, identified purposes; do not further process the data in any manner incompatible with these purposes)
- Data minimisation (only keep what is relevant and necessary)
- Accuracy (reasonable steps to maintain accuracy, where necessary)
- Storage limitation (only keep it for as long as necessary)
- Integrity and confidentiality (have *appropriate* technical/IT security measures

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You must find a lawful basis for processing personal data

- Consent
- Necessary for performance of a contract
- Legal obligations (i.e. processing under a legal obligation to do so)
- Vital interests (i.e. necessary to protect data subjects vital interests)
- Public interests (i.e. under official authority)
- Legitimate interests (likely to be key for many businesses)

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Data Breaches

- A data breach is "a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data, transmitted, stored or otherwise processed"
- This includes accidental loss (e.g. of a device containing data) as well as unauthorised disclosures as a result of hacking, etc
- Establish the likelihood and severity of the resulting risk – If there is a risk you must notify the ICO without undue delay, but not later than 72 hours after becoming aware of the data breach

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Marketing under GDPR

- Consent is now much harder to obtain. Old consents may not be GDPR compliant
- Direct marketing is specifically identified as being a legitimate interest, but must be balanced against the interests of the data subject concerned
- Electronic marketing is subject to the privacy and electronic communications regulations, which are in the process of being amended
- International Transfers of Personal Data

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Data Subject Rights

- Access (no fees; shorter compliance times)
- Rectification of errors
- Erasure (the right to be forgotten, where continued processing of the data is not justified)
- Restriction of processing (as opposed to full erasure)
- Portability (standard data formats to enable details to be transferred)
- Object to processing (data processor must consider the objection; relevance to direct marketing)
- (right not to be evaluated by) Automated decision making (eg profiling)

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New Documentary Requirements

- Data controllers need to address their minds to all of the above and document all of it in a primary compliance document: The privacy policy (e.g. the basis on which they lawfully process data; how they ensure data subjects can exercise their rights; how to deal with data breaches)
- When personal data is collected the data subject needs to know how his data will be used.
- Other documentary requirements to demonstrate compliance
- Seek assistance from your internal designated Data Protection Officer/Manager

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Any Questions?

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