

## It's here!

Welcome to the dawn of the new data protection era.

The European General Data Protection Regulation (GDPR) became enforceable on 25 May 2018.

This issue contains information about the most recent developments and publications available to assist controllers and processors in the transition.



## Impact of the GDPR on Island controllers and processors from 25 May

The GDPR, together with any associated legislation in a relevant EU Member State, **applies** to any Isle of Man controller or processor which processes the personal data of data subjects who are in the European Union where the processing activities are related to:

- (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the European Union; or
- (b) the monitoring of their behaviour as far as their behaviour takes place within the European Union.

Island controllers and processors must, therefore, know whether they are directly subject to the GDPR as regulation and any enforcement (including the levying of any penalties) for the relevant processing of personal data will be undertaken by an EU supervisory authority.

Compliance with the GDPR for such businesses is additional to, and irrespective of, any new or existing Isle of Man law.

## LEGISLATION

### Isle of Man

The Island's new data protection law is not yet in force.

Whilst the Data Protection Act 2018 has received Royal Assent, and the Data Protection (Application of GDPR) Order 2018 (SD2018/0143) and the Data Protection (Application of

LED) Order 2018\* (SD2018/0144) have been approved by Tynwald, they do not yet have effect with respect to the processing of personal data.

The Data Protection Act 2002 is still in force and, by virtue of Articles 5 and 6 of the Data Protection (Application of GDPR) Order 2018, will only be repealed when **Implementing Regulations** have been approved by Tynwald.

The Implementing Regulations will include detail about, amongst other things, registration and exemptions from certain provisions of the Applied GDPR and Applied LED\*.

The Implementing Regulations are expected to go before Tynwald during its sitting on 19-21 June 2018 and will appear on the Tynwald Order paper - <http://www.tynwald.org.im/about/tynwald/Pages/Business.aspx>

The Data Protection Act 2018 can be found on the Isle of Man Government's legislation page - <https://www.legislation.gov.im/cms/index.php>. The Orders will appear on the secondary legislation page in due course - <http://www.tynwald.org.im/links/tls/SD/Pages/default.aspx>.

However, as these instruments are fundamental to businesses' compliance with the new law, they can all be found, together with any other regulations and orders subsequently approved, on the Commissioner's website at – <https://www.inforights.im/legislation/data-protection-act-2018/>

Once the Implementing Regulations have been approved, this will be announced on the Commissioner's website.

*\* The Data Protection (Application of LED) Order 2018, and any reference to the Applied LED only affect 'competent authorities' listed in Schedule 1 to the Implementing Regulations (as first drafted).*

*Competent authorities are primarily government departments and bodies. Therefore, unless a controller is included in the list of competent authorities or provides the services on behalf of a government body where specified, provisions within the Isle of Man law that refer to the LED have no effect and can be ignored.*

## **Guernsey & Jersey**

The Channel Islands' respective new data protection laws came into force on 25 May 2018.

## **United Kingdom**

The Data Protection Act 2018 came into force on 25 May 2018, subject to some transitional arrangements. The new Act and associated Regulations can be found by searching: <http://www.legislation.gov.uk/>

## **Europe**

### **Council of Europe Convention 108**

Convention 108 is the only international Treaty with respect to the Protection of Individuals with Regard to the Processing of Personal Data. Convention 108, together with the Additional Protocol of 2001, have been extended to the Isle of Man.

The 128<sup>th</sup> Session of the Committee of Ministers held in Elsinore, Denmark on 17-18 May 2018, saw the approval of Protocol (CETS 223) amending and updating Convention 108.

Convention 108 can be considered as a high level GDPR and, as with the GDPR, *"The principles of transparency, proportionality, accountability, data minimisation, privacy by design, etc. are now acknowledged as key elements of the protection mechanism and have been integrated in the modernised instrument."* <https://rm.coe.int/modernised-conv-overview-of-the-novelties/16808accf8>

For more information on the updated Convention 108, see:  
<https://www.coe.int/en/web/data-protection/convention108/modernised>

## **ADVICE AND GUIDANCE**

### **Europe**

#### **The European Data Protection Board (EDPB)**

The Article 29 Working Party became the EDPB on 25 May 2018. The EDPB website is now functioning - <https://edpb.europa.eu/>

At the first Plenary Meeting, the EDPB endorsed the Article 29 Working Party's GDPR related guidelines.  
[https://edpb.europa.eu/sites/edpb/files/files/news/endorsement\\_of\\_wp29\\_documents\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en.pdf)

We would encourage you to follow the EDPB via RSS feed.

#### **The EU Commission**

There are two dedicated websites populated with guidance for businesses and individuals:

- [https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules\\_en](https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en)
- [https://ec.europa.eu/info/law/law-topic/data-protection\\_en](https://ec.europa.eu/info/law/law-topic/data-protection_en)

## **Handbook on European Data Protection Law**

The European Union Agency for Fundamental Rights (FRA), the Council of Europe and the European Data Protection Supervisor, have released an updated version of this comprehensive guide to European data protection law which *"contains recent examples of relevant case law with hypothetical scenarios that serve as practical illustrations of the diverse issues encountered in this ever-evolving field"*.

More information, and a link to the new Handbook, can be found at:

<https://www.coe.int/en/web/portal/-/legal-guide-on-how-to-apply-new-data-protection-rules>

## **Isle of Man**

Our GDPR guidance is available on the website at: <https://www.inforights.im/document-library/general-data-protection-regulation/> and includes:

- [A closer look at Accountability](#)
- [A guide for small business, charities and voluntary organisations](#)
- [The new data protection laws: what they mean for you](#) (for individuals)

We are in the process of updating existing guidance issued under the Data Protection Act 2002 and creating new webpages to reflect the forthcoming changes in IOM data protection legislation.

This is a sizeable task and we will endeavour to complete the exercise as soon as possible, taking into account that the Implementing Regulations have not yet been published. Hopefully we will have guidance ready to publish when the new law takes effect, but this is subject to our limited resources and we do ask that you bear with us during this transitional phase.

## **UK Information Commissioner's Office (UKICO)**

There have been numerous updates and additions to the UKICO's guidance. IOM controllers and processors, particularly those providing goods and services to UK residents, are advised to regularly check, at least, the following page:

- <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/whats-new/>

## **Ireland Data Protection Commission's Office**

A dedicated webpage is available at <http://gdprandyou.ie/>.

This includes a helpful guide for SME's - <http://gdprandyou.ie/wp-content/uploads/2017/12/A-Guide-to-help-SMEs-Prepare-for-the-GDPR.pdf>

## **Channel Islands**

Although there are changes to the structure of the data protection authorities in the Channel Islands, the pan-Island dedicated GDPR website remains available at: <https://thinkgdpr.org/>

## **Sector-specific guidance**

Numerous business sectors or their regulatory bodies are producing their own industry-specific guidance and information. Controllers and processors should research and review any appropriate sector guidance.

## **OTHER INITIATIVES**

### **IOM Data Protection Forum**

If you are interested in finding out more about the Forum, there is a LinkedIn Group - <https://www.linkedin.com/groups/8630427>

## **GET IN TOUCH**

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