

May 2018

L06-18 | DATA PROTECTION LEGISLATION FOR PUBLIC AUTHORITIES

Introduction

Legal briefings issued last year confirmed that data protection law is set to change by 25 May following the introduction of (a) European legislation, the GDPR and (b) pending UK data protection legislation. In respect of (b), the purposes of the Data Protection Bill, currently before Parliament, include to (i) repeal the Data Protection Act 1998 and (ii) introduce derogations to the GDPR in situations where EU member states have been granted the discretion to do so (e.g. national security matters, lowering the age that a child under 16 may consent to the processing of their personal data for e.g. online businesses or social networking sites).

The GDPR imposes certain requirements and restrictions on a body which is a “public authority”. Legal briefings issued last year confirmed that (i) GDPR does not define the term “public authority” and (ii) it was anticipated that such term would encompass local authorities and include parish councils, parish meetings and, in Wales, community councils. The Data Protection Bill, when first introduced in September 2017, defined a ‘public authority’ for the purposes of GDPR as those defined as a public authority in the Freedom of Information Act 2000 i.e. these included parish meetings, parish councils, and in Wales, community councils.

Last week, the Government gave notice of its proposal to amend its definition of a “public authority” in the Data Protection Bill. The amendment seeks to exclude parish meetings, parish councils, and in Wales, community councils from the definition of a “public authority” for the purposes of GDPR. The purpose of this briefing is to summarise the consequences of the Government’s proposed amendment to the Data Protection Bill.

The Government’s recent proposal does not change the fact that councils and parish meetings are data controllers (and sometimes data processors) and as such are subject to data protection legislation such as the GDPR and UK data protection legislation.

Data protection officer

NALC's legal advice to date has been that parish councils, parish meetings and, in Wales, community councils are required to appoint a Data Protection Officer ("DPO"). This is because under the GDPR and the original version of the Data Protection Bill, a public authority has a duty to appoint a DPO.

If the Government's amendment is successful, this would mean that parish meetings, parish councils, and in Wales, community councils would not have a duty to appoint a DPO.

Lawful bases for processing personal data

Under GDPR and the original version of the Data Protection Bill, the processing of personal data is lawful if at least one of the following conditions are met.

- a. The data subject has given consent to the processing of his personal data for specific purpose(s);
- b. Processing is for contractual necessity;
- c. Processing is necessary for compliance with the data controller's legal obligation(s). This criterion includes processing for the performance of legal and statutory obligations which are not contractual;
- d. Processing is necessary in order to protect the data subject or another individual's vital interests (e.g. in a medical emergency);
- e. Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or
- f. Processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

NALC's legal advice to date has been that parish meetings, parish councils, and in Wales, community councils may rely on conditions (a) - (e) above, but they cannot rely on condition (f).

If the Government's amendment in the Data Protection Bill is successful, this would mean that parish meetings, parish councils, and in Wales, community

councils may process personal data by relying on any of the conditions in (a) to (f) above.

Next steps

Once the Data Protection Bill is enacted, we will review relevant previous legal guidance and NALC's model standing order relating to the appointment of a DPO to ensure any changes in respect of the new UK legislation are incorporated.

© NALC 2018