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GDPR – No Notification Fees, But UK Regulator to Implement New “Data Protection” Fees

Although the GDPR does not include a requirement for data controllers to notify national regulators, the draft Data Protection (Charges and Information) Regulations 2018 currently before the UK Parliament set out a new model for funding the data protection work of the UK Information Commissioner’s Office, which requires national notifications to continue in the UK. The new structure for data controllers will come into effect on 25 May 2018 to coincide with the General Data Protection Regulation becoming effective. Until then, organisations are legally required to pay the current notification fee, unless they are exempt. The ICO has also published a Guide to the Data Protection Fee to help organisations work out what fee, if any, they are likely to need to pay under the new regime.

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Introduction

The UK’s data protection regulator’s data protection work is currently funded through fees levied on organisations that process personal data as data controller, unless they are exempt, under powers granted in ss 18 and 19 of the Data Protection Act 1998.

When the GDPR comes into effect on 25 May 2018, it will remove the requirement for data controllers to pay the ICO a fee. However, under the Digital Economy Act 2017, it remains a legal requirement in the UK for data controllers to pay the ICO a data protection fee.

The UK Government, which also has a statutory duty to ensure the ICO is adequately funded, has proposed the new funding structure based on the relative risk to the data that an organisation processes.

The New Model

The new fee model is divided into three tiers and is based on a number of factors including size, turnover and whether an organisation is a public authority or charity.

For very small organisations, the fee will not be any higher than the £35 they currently pay (if they take advantage of a £5 reduction for paying by direct debit).

Larger organisations will be required to pay £2,900. The ICO explains that the fee is higher because these organisations are likely to hold and process the largest volumes of data, and therefore represent a greater level of risk.

There will continue to be financial penalties for not paying fees, but these will be in the form of civil monetary penalties rather than the current criminal sanction.

The fees are:

- i. Tier 1 – micro organisations. Maximum turnover of £632,000 or no more than ten members of staff. Fee: £40 (or £35 if paid by direct debit);
- ii. Tier 2 – SMEs. Maximum turnover of £36 million or no more than 250 members of staff. Fee: £60;
- iii. Tier 3 – large organisations. Those not meeting the criteria of Tiers 1 or 2. Fee: £2,900.

Comment

Most data controllers formerly paying the £500 fee are, under the new structure, likely to have to pay a charge of £2,900. The Explanatory Memorandum to the Regulations accepts that this represents an above-inflation increase (an inflationary increase would have seen the £500 fee rising to £623.61 in 2017), but says that this reflects the “*increased level of information risk inherent in this category of data controllers*”. The new charge levels are based on the income required to enable the ICO to adequately deliver on their expanding remit following the implementation of the GDPR. A consultation on a proposed model was undertaken by the Department for Culture, Media and Sport through a third party, using organisations that had previously responded to ICO research, and the results have been reflected in the final design of the new charge structure.

So it appears that the quid pro quo of greater self-evidencing of data processing compliance by organisations under the GDPR will not, in the UK at least, be offset by even a modest saving, either financially or administratively, which was expected as the requirement to register was dropped. A silver lining on this cost may be that it is better than the regulator raising its operating funds by way of administrative fines.

Organisations will have to wait and see what other national regulators decide to do about registration fees, but the UK may be the start of a significant and expensive trend, which is not based on the text of the GDPR but on the wider burden it has created.