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Headlines

- 'If you knew about security flaws before GDPR, they will be enforced under the new rules', p.19
- ICO updates GDPR guidance, p.20

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Guidance takes strict interpretation of GDPR consent

The Article 29 Working Party has published its guidance on consent in the context of the GDPR, and the guidelines appear to apply a strict interpretation of the principles that underpin valid consent in the GDPR.

Giving an overview, the Working Party said "in practice, the GDPR raises the bar with regard to implementing consent mechanisms and introduces several new requirements that oblige controllers to alter consent mechanisms, rather than rewriting privacy policies alone."

The guidelines address in depth the elements of valid consent under Article 4(11), reiterating that consent must be (i) freely given, (ii) specific, (iii) informed, and (iv) unambiguously indicated.

Organisations are reminded that consent will not always be the best mechanism to legitimise their processing. Indeed, the Working Party urges organisations to consider whether it is more appropriate to rely on alternative lawful bases for processing the information under the new Regulation.

"Generally, consent can only be an appropriate lawful basis if a data subject is offered control and is offered a genuine choice with regard to accepting or declining the terms offered or declining them without detriment," it said.

"When asking for consent, a controller has the duty to assess whether it will meet all the requirements to obtain valid consent. If obtained in full compliance with the GDPR, consent is a tool that gives data subjects control over whether or not personal

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Latest Bill amendments — legitimate interests; protection for researchers

Among the latest amendments to the UK Data Protection Bill as it progresses through Parliament is one that diverges from the GDPR by allowing UK public sector bodies to rely on legitimate interest grounds when carrying out non-public tasks.

The amendment says that an organisation will only be a public authority "when performing a task carried out in the public interest or in the exercise of official authority vested in it."

The change will be particularly useful for universities, schools and colleges that had been concerned that they could not process the personal data of alumni for fundraising purposes. Other organisations with hybrid activities will also benefit from the amendment.

Another recent amendment clarifies that IT security workers/testers will avoid criminal conviction when testing the efficacy of anonymisation measures.

Under the suggested amendment, people who satisfy 'effectiveness testing conditions' would have a defence to the proposed new offence. The first condition is that the person acted with a view to testing the effec-

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