

# Privacy & Data Protection

Volume 18, Issue 5

April / May 2018

## Headlines

- Government given six months to rewrite Snooper’s Charter, p.18
- Facebook fails its attempt to stall progress of Model Clauses case, p.19
- Sharing of school pupils’ data put on hold, p.20

## Contents

<i>Expert comment</i>	2
<i>GDPR series: Certifications, Seals and Marks</i>	3
<i>GDPR series: Automated decisions — what controllers need to know</i>	6
<i>What public bodies should take from Procurement Policy Note 03/17</i>	8
<i>At-a-glance list of GDPR resources</i>	10
<i>GDPR series — Challenges in informing individuals in health setting</i>	12
<i>Personal liability for DPOs</i>	14
<i>News &amp; Views</i>	17

## Regulator releases raft of GDPR guidance

The UK Information Commissioner’s Office has published its final guidance on consent and data protection impact assessments, to sit alongside its main guide to the GDPR.

In keeping with the ICO’s earlier communications on the topic, the guidance reminds organisations that consent isn’t a ‘silver bullet’ and to consider using alternatives. It states:

“Consent is not inherently better or more important than these alternatives. If consent is difficult, you should consider using an

alternative. Consent is appropriate if you can offer people real choice and control over how you use their data, and want to build their trust and engagement. But if you cannot offer a genuine choice, consent is not appropriate. If you would still process the personal data without consent, asking for consent is misleading and inherently unfair.”

Although the ICO is at pains to stress that the GDPR does not automatically require organisations to update the consents they have previously obtained, it does urge organisations to review their

existing consents and consent mechanisms to ensure that they comply with the new Regulation.

Steve Wood, Deputy Commissioner for Policy at the ICO, said: “It’s important to check your processes and records to be sure existing consents meet the GDPR standard. If they do there is no need to obtain fresh consent. Where you have an existing relationship with customers who have purchased goods or services from you it may not be necessary to obtain fresh consent.”

[\(Continued on page 17\)](#)

## Article 29 working party issues various GDPR guidance

In mid April, the Article 29 Working Party issued final guidance on consent and transparency. This followed the February publication of guidance on automated decision making and profiling, fines, and personal data breach notification.

The main changes from the draft guidance on consent are the insertion of a new section addressing requests for consent online, where continued

use of a site is stated to amount to consent. The guidance is clear that this will be inadequate. Controllers must avoid ambiguity and must ensure that the action by which consent is given can be distinguished from other actions. The guidance states that:

“Merely continuing the ordinary use of a website is not conduct from which one can infer an indication of wishes by

the data subject to signify his or her agreement to a proposed processing operation.”

In another change from the draft guidance, the Working Party deleted text requiring controllers to offer cost free services which are not dependent on provision of personal data. Article 7(4) of the GDPR states that, when assessing if consent is

[\(Continued on page 17\)](#)