

Not only GDPR... but also

Rosalind Connor, Partner

rosalind.connor@arcpensionslaw.com

020 7653 8965

ARC
Pensions Law

Not only GDPR... but also

- What does data protection law say now?
- How is GDPR going to change things?
- What about Brexit?
- What should you be doing now?
- Do data inaccuracies lead to a breach of trustee duties?

What does data protection law say now?

- Data Protection Act 1998 (from the 1995 Data Protection Directive)
 - 8 principles for processing personal data
 - Stronger requirements for 'sensitive personal data'
 - Subject access rights
 - Fines – up to £500,000
- Enforced by Information Commissioner's Office (ICO)
 - Fines have been issued
 - Including for pension schemes (and mostly for security breaches)

How is GDPR going to change things? (1)

First, the law:

- EU General Data Protection Regulation
 - Aims to update and harmonise EU data laws for the digital age
 - Automatically takes effect in EU countries (including UK) on 25 May 2018
- Data Protection Bill
 - Repeals Data Protection Act 1998, but tries to maintain key framework
 - Applies GDPR (modified through derogations) and maintains the position post-Brexit, to maintain flow of data with UK post-Brexit
 - Draft published 14 September 2017, reached House of Commons on 18 January 2018 – still a long way to go through Parliament
 - Wide regulation making powers

How is GDPR going to change things? (2)

- Most importantly:
 - Fines up to €20m/£17m (or 4% annual global group turnover)
 - Direct and joint liability for processors with controllers
- Also
 - Harder to prove a lawful basis for processing
 - Greater subject access rights
 - Higher obligations to notify breaches
 - More record keeping
 - More compulsory obligations for some (DPO, DPIA)
 - More restrictions for data transfer overseas

What is the effect of Brexit?

- GDPR falls away automatically if UK is not in the EU
- Data Protection Bill intends to keep GDPR in force
 - So does the “Great Repeal Bill”
- The UK wants this
 - So that EU data can come to the UK
 - Aim for “safe harbour” status post- Brexit?
- What happens if GDPR changes?
 - Changes within the EU automatically
 - How does the UK catch up?

What should you be doing now?

- Data mapping
 - Who has your data and where?
- Take formal advice on the basis for lawful processing and whether you need a data protection officer
- Update your contracts with all providers
 - GDPR requires certain matters are covered
 - Who is liable when it goes wrong?
- Document your policies for managing data
 - Covering member rights, breaches, security, retention and much more
- Privacy notices to all members in the new form

ALL BY 25 MAY 2018!!!

Do data inaccuracies lead to a breach of trustee duties?

- Yes.
- Fundamental duty of trustees
 - To provide the benefits under the scheme in accordance with its terms
- If the information is wrong, the benefits are wrong, and the trustees are in breach.
- Also a problem for other trustee activities:
 - Investment choices
 - Valuation and recovery plan
 - Communications (and note there may be more with IORP II)
 - Flight path to buy out

ARC Pensions Law is the trading name of Anna Rogers & Co LLP, a limited liability partnership registered in England and Wales with registered number OC398641. The LLP is authorised and regulated by the Solicitors Regulation Authority.

A list of names of the members is available for inspection at the LLP's registered address at 80 Coleman Street London EC2R 5BJ. The word "partner" denotes an LLP member, or consultant or employee with equivalent standing and qualifications.

Nothing in this presentation should be taken as constituting legal advice.

Copyright ARC Pensions Law 2015.

ARC
Pensions Law