

Data protection

Does GDPR require you to
appoint a data protection officer?



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Have you read our GDPR guide >

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Everything you wanted to know
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What is a data protection officer?

What is a Data protection officer (DPO)?

A DPO is a role organisations are required to fill by the General Data Protection Regulation (GDPR) in certain circumstances. The DPO is responsible for coordinating data protection strategy throughout the organisation and ensuring compliance with the GDPR requirements.

Does my organisation need a DPO?

A DPO must be appointed if your organisation is: i) a public authority; ii) carries out large scale or systematic monitoring of individuals (for example, online behaviour tracking); or carries out large scale processing of special categories of data or data relating to criminal convictions and offences.

'Core activities' can be considered as the key operations to achieve your organisation's objectives. These also include all activities where the processing of data forms an inextricable part of your organisation's activity. An example often is that the processing of health data, such as patient's health records, should be considered as one of any hospital's core activities and hospitals must therefore designate DPOs.

The DPO must be appointed on the basis of professional qualities and, in particular, expert knowledge of data protection law, practice and the ability to fulfil their tasks.

'Large scale' is not defined in the GDPR, but the following factors should be taken into account:

- a) The number of individuals concerned
- b) The volume of data and / or the range of different data being processed
- c) The duration, or permanence, of the data processing activity
- d) The geographic extent of the processing activity

Even if the appointment of a DPO is not mandatory, your organisation can appoint a DPO and this is in fact encouraged by the data protection authorities. Either way, your organisation must ensure it is appropriately resourced to discharge its duties under the GDPR.

If you decide not to appoint a DPO, it is a good idea to record your decision in your "GDPR file" in order you can demonstrate why you made that decision at a later date. Remember, your organisation is accountable and it is required to be able to demonstrate it complies with the principles set out in the GDPR.

What are the duties of a DPO?

The bare essential tasks of the DPO are set out in article 39 of the GDPR and include the following:

- a) Informing and advising the organisation and its employees of their obligations under the GDPR and other data privacy laws applicable to the organisation
- b) Monitoring compliance with the GDPR and other data privacy laws applicable to the organisation
- c) Monitoring compliance with the privacy related policies of the organisation including ensuring responsibilities are assigned, raising awareness of the policies within the organisation, training staff involved in processing and carrying out audits
- d) Providing advice in respect of data protection impact assessments
- e) Cooperating with and acting as a point of contact for the applicable supervisory authority (in the UK this is the ICO)

When carrying out these tasks the DPO must have regard to the risk associated with the processing operations carried out by the organisation. The organisation is under an obligation to ensure the DPO has the necessary resources to enable them to carry out their tasks.

Can we allocate the role of DPO to an existing employee?

Yes, a DPO can either be appointed internally within your organisation or external assistance using a contract for services can be sought.

There are however safeguards to enable the DPO to act in an independent manner. Your organisation cannot give instructions regarding the exercise of the DPO's tasks to the DPO, you cannot dismiss or penalise the DPO for performing their task and the role of the DPO should not create a conflict of interest with the DPO's other tasks and duties (e.g. it would be possible for the marketing director's tasks to conflict with those of the DPO).

Does the DPO need specific qualifications?

The DPO must be appointed on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil their tasks. The level of expert knowledge will need to be determined on a case by case basis according to the processing operations your organisation carries out.

I heard SMEs exempt, is this true?

No, if you are required to appoint a DPO by the GDPR there is no threshold on operation size the requirement applies to.

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