

Data Protection Officer (DPO)

Article 37 of the General Data Protection Regulations (effective 25th May 2018) makes it **mandatory** for data controllers and processors to designate a DPO in certain circumstances including, *inter alia*, where:

- the processing is carried out by a public authority or body (irrespective of what data is being processed). *

The GDPR also make reference to the designation of DPOs in other cases, i.e. where not mandatorily required, and in this regard the independent European data protection and privacy advisory body (the Art. 29 Working Party) encourages designation of a DPO on a voluntary basis when not specifically required. If designating a DPO on a voluntary basis, the same requirements and responsibilities will apply to the position as if it had been made on a mandatory basis. An alternative approach, where not mandatorily required to have a DPO, would be to have an equivalent to a DPO but making clear that it is not a DPO designated for the purposes of the GDPR.

A DPO is not personally responsible for non-compliance with data protection requirements. Compliance remains the responsibility of the controller or processor. The DPO facilitates compliance with data protection laws.

Role/Function of the DPO

The GDPR detail the following characteristics of the role:

- The DPO shall be designated on the basis of professional qualities and in particular expert knowledge of data protection law and practices.
- The controller and processor shall ensure that the DPO is involved properly and in a timely manner in all issues relating to the protection of personal data.
- The DPO must be supported by the controller and processor in the performance of its tasks (including being provided with the appropriate resources to carry out the tasks of the role and to maintain his/her expert knowledge (training) and access to personal data and processing information).
- The controller and processor must ensure that the DPO does not receive any instruction regarding the exercise of his/her tasks, including a prohibition on dismissal or penalisation by the controller or processor for performing his tasks.
- The DPO shall report directly to the highest management level of the controller or processor.
- Data subjects may contact the DPO with regard to all issues related to processing of their personal data and to the exercise of their rights under the GDPR.
- The DPO shall be bound by secrecy or confidentiality concerning the performance of his or her tasks.

GDPR Roles and responsibilities

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- The DPO shall in the performance of his/her tasks have due regard to the risk associated with processing operations, taking into account the nature, scope, context and purposes of processing.
- The DPO may fulfil other tasks and duties provided the controller / processor is satisfied that there is no conflict of interest (i.e. he/she should not be involved in determining the purpose and means of processing).
- The controller or processor must publish the DPO's contact details and communicate them to the ODPC.

Professional qualities and expertise include:

- having an expertise in national and European data protection laws and practices including an in-depth knowledge of the GDPR;
- understanding of the processing operations;
- understanding of IT and data security;
- knowledge of the sector;
- ability to promote a data protection culture within the organisation.

The DPO shall have the ability to fulfil, at a minimum, the following tasks:

- i. To inform and advise the controller/processor and the employees who carry out processing of their GDPR and other E.U. or domestic data protection provisions;
- ii. To monitor compliance with the GDPR, other Union or domestic data protection provisions and with the controller/processor's data protection policies;
- iii. Responsibility for awareness raising and training of staff involved in processing operations and responsibility for related audits;
- iv. To provide advice where requested regarding the data protection impact assessment and monitor its performance
- v. Cooperate with the ODPC;
- vi. Act as the contact point for the ODPC on issues relating to processing, including where GDPR prior consultation obligations with the ODPC arise and to consult as appropriate with regard to any other matter.

***ETBs will be appointing DPO's**

Special Needs Schools have been identified as a category under the legislation that will require DPOs. Primary/Community Schools and Voluntary schools at present under the proposed Irish legislation are not deemed to be a public body. Schools will be kept up-to-date in these sectors.