Introduction

The General Data Protection Reg n simply as the GDPR, represents a significant modernisation of data that takes into account significant new developments in technology al data that simply did not exist at the time of the Data Protection Act

Residential lettings agencies are any information they hold about prospective and actual landlords, t rantors. The GDPR places various obligations on data controllers, to register with the Information Commissioner (ICO) and requir a processing" (collecting, using, storing, altering, sharing data with oying/deleting data).

The GDPR brings with it a numb rovements to data protection law including:

- Enhanced documentation a rements;
- Enhanced privacy notice (c) requirements;
- Stricter rules on consent to
- A new mandatory requiren nd data subjects in certain cases) of a data breach;
- Enhanced rights for data su
- New obligations for data pr
- New rules requiring the app tion Officers; and
- New, tougher penalties for law.

In addition to these headline chan inition of "personal data" – the key subject matter of all data protect considerably. Under the GDPR, personal data means: "any inform tified or identifiable natural person ("data subject"). An identifiable n who can be identified, directly or indirectly, in particular by referenc a name, an identification number, location data, an online identifie factors specific to the physical, physiological, genetic, mental, eco identity of that natural person.

The core principles of the GDP responsibilities for organisations. Personal data shall be:

a) processed lawfully, fairly nner in relation to individuals;
b) collected for specified, rposes and not further processed in a manner that is incomp es; further processing for archiving purposes in the public inte al research purposes or statistical purposes shall not be cons with the initial purposes;
c) adequate, relevant and sary in relation to the purposes for which they are processed;
d) accurate and, where ne e; every reasonable step must be taken to ensure that perso ate, having regard to the purposes for which they are processe d without delay;
e) kept in a form which p ata subjects for no longer than is necessary for the purposes data are processed; personal data may be stored for longer p sonal data will be processed solely for archiving purposes in t fic or historical research purposes

or statistical purposes su of the appropriate technical and organisational measures r order to safeguard the rights and freedoms of individuals; an

f) processed in a manner te security of the personal data, including protection agai nlawful processing and against accidental loss, destructio opriate technical or organisational measures.

Under Article 5(2) of the GDPR responsible for, and be able to demonstrate, compliance with the

Data Protection Audit

An essential starting point in com nd being able to demonstrate that compliance, is a Data Audit. This t to identify what data is held, why it is held and on what lawful basis ined below. The audit should also record what data is shared with eason for the data sharing. The completed Data Audit can be use letting agent's Privacy Notice (see below).

Lawful Basis for Process

In order for the collection and pro to be lawful under the GDPR, the letting agent must have a lawful b DPR specifies six conditions under which personal data processing w ur of these are relevant to letting agents:

- You have the consent of respect to one or more specific purposes;
- The processing is necessa of a contract with the data subject or to take steps to enter int
- The processing is necessa egal obligation; and
- The processing is necessa he legitimate interests pursued by the data controller (the le interests are overridden by the interests or fundamental r e data subject which require the protection of personal data ata subject is a child.

Different conditions apply if the on is sensitive personal data or, "special categories of personal da GDPR. The following conditions may be relevant to letting agents:

- You have the explicit cons unless reliance on such consent is prohibited by law;
- The processing is necess ligations under employment law, social security or social pro llective agreement;
- The processing is necess interests of the data subject or another person where the le, physically or legally, of giving consent;
- The processing concerns s anifestly made public by the data subject; and
- The processing is necess nt, exercise, or defence of legal claims, or where the courts l capacity.

The standards of consent unde even more so where the data concerned is sensitive personal d he GDPR is to give data subjects more control over what happens to

Under the GDPR, in order to be va

- Be freely given;
- Specifically state the contr ng agent), the purposes for which the letting agent require and the type(s) of processing undertaken;
- Be requested prominently, rms and conditions, in a way that is user-friendly, easy-to-un
- Be obvious, requiring a pos aning that pre-checked boxes and opt-out boxes should be av
- Be expressly confirmed in

Consent under the GDPR must b lve some kind of clear affirmative action on the part of the data su mechanisms should comply with the following:

- Consent should be separat ement. It should also generally not be a precondition to signing
- If you use opt-in boxes to hat the GDPR expressly prohibits these from being pre-check
- The GDPR requires "gran t data processing operations (i.e. separate consent for differe
- Clear records must be kept consent.

It is also important to note that onsent, data subjects are free to withdraw that consent at any time subjects of this right and provide easy means to exercise it. Moreo time limit for consent. How long it lasts will depend on the context in

Having obtained consent, ensure suitable system for recording that consent, including the identity of ey consented, when, to what, and what information they were provid onsent (for example, your privacy notice).

It is also important to remember th processing as described above. If another criterion can be satisfied necessary to obtain consent. For example, a certain amount of sing will be necessary for the performance of a contractual oblig ncy and property.

Privacy Notice

Letting agents must provide certa ubjects. This information will often be provided in your Privacy No that must be provided will vary depending upon whether you ha rom the data subject directly, or whether you have obtained it from

Information	Obtained Directly	Obtained from Third Party
Identity and contact details of the c data controller's Data Protection O	Yes	Yes

Purpose of collection and processi for it.	Yes	Yes
(Where applicable) the legitimate i	Yes	Yes
The categories of personal data.	No	Yes
Details of any third party recipients	Yes	Yes
Details of any "third country" (non- safeguards in place.	Yes	Yes
How long the data will be retained determine how long).	Yes	Yes
The existence of data subjects' rig	Yes	Yes
The data subject's right to withdra applicable).	Yes	Yes
The data subject's right to complai authority (e.g. the ICO).	Yes	Yes
The source of the personal data, a publicly accessible sources.	No	Yes
Whether the provision of the perso or contractual requirement or oblig consequences of not supplying it.	Yes	Yes
The existence of any automated d profiling) with details of how the de significance, and the consequence	Yes	Yes

This information should be provid onal data is obtained if it is being obtained directly from the data s rom a third party, the information must be provided to the data sub time (not more than one month); when communicating with the da being used to communicate with them); or, if the data is to be disc party, before that disclosure takes place.

The Right of Access

Data subjects have the right t l data held by you along with supplementary information. In re wn as a Subject Access Request ("SAR") you must provide confirm is being processed; access to the personal data you hold on the da pplementary information (in broad terms, the same information you w vide in a privacy statement).

Under the Data Protection Act, it w e a fee for complying with SARs - usually £10 - however the GDPR s to be free of charge unless the request is "manifestly unfounded case a "reasonable fee" can be charged. Further copies of the san e charged for.

You should respond to SARs no er receipt. In the case of complex and numerous requests, this can b months.

The Right to Rectificatior

Personal data should be accurate subject requests the rectification of

any personal data you hold about within one month of their request. If the request is complex, this can months.

If the personal data in question any third parties, the data subject should be informed of this.

The Right to Erasure

This is also known as the “right t an unqualified right, but in broad terms, data subjects have the rig n or destruction of personal data unless there is a sound reason for .

The most obvious way of exercisi subject to withdraw their consent to your use of their personal da ng it (and there is no overriding legitimate interest that justifies cor nces are:

- When it is no longer neces l data with respect to the purpose for which it was originally c
- The personal data has bee and
- The personal data has to b a legal obligation;

There are some circumstances se to erase personal data. The circumstances that might be releva

- When exercising the huma ression and information;
- In order to comply with a le rformance of a public interest task or the exercise of official au
- For the exercise or defence

If any personal data affected by a s been disclosed to a third party, that third party must also be inform ss it is impossible or would require disproportionate effort to do so).

The Right to Restrict Pro

If a data subject asserts this right, onal data, but must not process it. In practice, this may require retai n about the data subject so as to ensure that the restriction is respe

The right to restrict processing app mstances:

- If a data subject has inf al data you hold about them is inaccurate, processing of t ted until its accuracy is verified;
- If a data subject objects to onal data and you are considering whether your business’s le cessing that data override the data subject’s interests (this a processing is necessary for the performance of a public int gitimate interests);
- Where the processing is u erasure, the data subject requests restriction; or
- Where you no longer requ ut the data subject requires it to establish, exercise, or defe

If any personal data affected by s en disclosed to a third party, that third party must also be informed it is impossible or would require

disproportionate effort to do so).

The Right to Data Portabi

Data subjects, under the GDPR, h copy of their personal data from a data controller in a commonly-us it transferred to a different data controller. This enables data sub eir personal data across different services. As with many other righ not unqualified. The right to data portability applies only:

- To personal data provided ct;
- Where the personal data is with the data subject's consent or for the performance of a co
- Where the processing of th d out by automated means.

Letting agents must respond to re ty within one month. This can be extended by up to two months wh lex or if you receive a number of requests.

The Right to Object

Under the GDPR, data subjects ha certain uses of their personal data and must be informed of the right eparately from other information. If the data processing is based on t ate interests data processing must stop unless you can demonstrate rounds to continue which override the interests, rights, and freedoms ernatively, you may continue if the processing is necessary for the es defence of legal claims.

Sharing of Personal Data

Letting agents may need to sha a range of third parties, such as solicitors, utility companies and co ervices to a property. These third parties will be data processors.

Letting agents, as data controller data processing agreement with any third party data processors. H d parties with whom letting agents share data will themselves be data ement may not be appropriate. If a data processing agreement is req uired where the data processor is a self-employed tradesperson) it n ng:

- The subject matter and the ng;
- The nature of the processi
- The type of personal data t categories of data subject; and
- The rights and obligations

As a guide, contracts between c a processors should contain the following requirements:

- The processor acts only o of the controller (unless required by law to act without);
- The processor ensures tha personal data are subject to duties of confidentiality;
- The processor takes suitab at the data is processed securely;

- The processor may not r without the controller's written consent, and then not with lace with the sub-contractor;
- The processor must assis necessary, in handling SARs and otherwise allowing data su DPR rights;
- The processor must assist g its obligations under the GDPR with respect to security, PI f data breaches;
- At the end of the contract, te and/or return (as requested) all personal data; and
- The processor must comp spections that the controller may carry out, provide the cont nformation required to ensure that both parties are meeting th e GDPR, and inform the controller immediately if the process g that infringes the GDPR or other data protection laws (wheth

Data Retention and Delet

Personal data must be kept in a f entification of data subjects for no longer than is necessary for the e personal data is collected and processed.

Data relating to a prospective ten me an actual tenant or a potential landlord client who does not contra for its services, should be retained for one year. Information relating t nts, residents or guarantors should be retained for seven years from (i.e. the six year limitation period plus an extra year to allow for a cla