



CHANGES TO THE USE OF COOKIES ON BUSINESS WEBSITES

The Government has recently made changes to the regulations which apply to data protection. These changes are likely to affect businesses that operate websites. The amendments to the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the "E-privacy regulations") are due to be implemented as from **26th May 2011**.

The most immediate concern for businesses relates to the use of cookies (information sent to a user's hard drive when the user visits particular websites) on their websites. To date, the current regulations provide that cookies may be used by businesses and that visitors to their websites may choose to opt out of having cookies placed if they object to having information accessed or stored on their own terminal.

This is due to change, from Thursday 26th May, so that subject to limited exceptions (such as the use of cookies in online shopping baskets), visitors to a website must be given full information relating to the use of cookies and then they must give their consent to the use of cookies. Essentially the cookies may only be placed if the user opts in.

The Government has included a provision in the regulations allowing that consent may, in future, be signified by visitors to websites if they have amended their browser settings to permit the use of cookies. At the time of writing this article, web browser settings are not considered to be compliant with the new E-privacy regulations. Businesses should not therefore rely on the browser settings of visitors to a website to assume that consent has been given to the use of cookies. Businesses should also be aware that not all visitors to their websites are using standard web browsers. The Government is in consultation with web browser manufacturers in order to identify potential changes which would allow web browsers to be fully compliant with the amended E-privacy regulations.

As a result of the change to the E-privacy regulations if a business uses cookies on its website, that business may well be required to update the way in which it does so, looking at whether the cookies are intrusive and how they obtain consent from users. Business organisations may also need to review their privacy policies and update them to ensure that they are in line with the changes to the E-privacy regulations.

The Information Commissioner's Office has published guidance on this topic, entitled "Changes to the rules on using cookies and similar technology for storing information." This guidance is available on the Information Commissioner's Office's website.

While the Information Commissioner has assured businesses that – initially – it will only require them to show they are considering the steps to take to achieve compliance, it is as yet unclear when this transitional period will end.

What should you do?

Conduct a review of the use of cookies on your website in order to ascertain whether cookies are necessary and if they are intrusive.

Update the use of cookies to ensure that visitors to your website are provided with full information relating to their use and that they are able to provide consent.

Carry out a review of your website privacy policies and update them to ensure that they comply with the amended E-privacy regulations.

How can we help you?

We can provide you with general advice on compliance with the changes to the E-privacy regulations.

We can help you structure your privacy policies and consent wording for visitors to your website so that they comply with the changes to the E-privacy regulations.

For further information, please contact:

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The information contained in this update is correct as at May 2011.

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