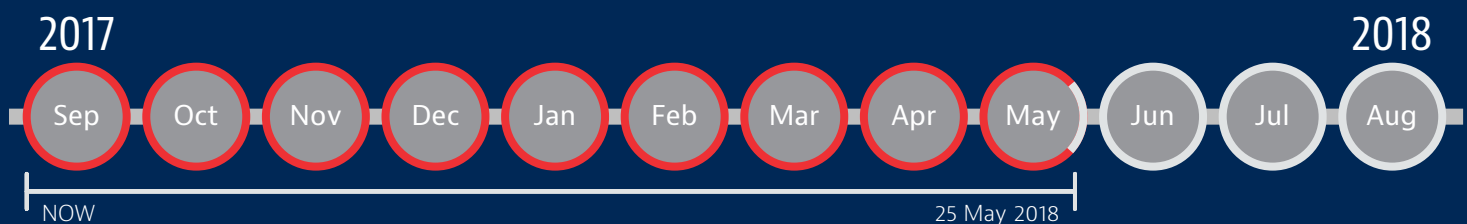


### PART 1: A Focus on Consent in Employment

All processing of personal data must be justified by one of the legal bases set out in the law. This is true under the current data protection regime and under the GDPR. The GDPR is *more prescriptive* than the current regime when it comes to obtaining valid consent. There are already significant question marks over whether you can validly obtain consent from employees. That is even more so under the GDPR.

In our view, consents to data processing in employment contracts *will not be effective*.

#### Reminder: GDPR Timing



#### What the ICO thinks

The ICO published draft guidance ([here](#)) on consent in March 2017. This reinforced what we already suspected - valid consent that is *freely given, specific, informed and unambiguous* will be very difficult to obtain from employees.

In August the Information Commissioner released a 'myth-busting' blog ([here](#)) on the topic of consent. Importantly, they confirmed that their finalised guidance *will not change significantly from its current form*.

We now know that employers should be considering very carefully how they rely on consent. It's also clear that if you rely on consent when you would have processed data anyway, that is potentially unfair and not transparent.

#### What's the risk?

We don't know how strict the ICO's enforcement regime will be, or where their focus will be. What we do know is that the potential fines for a breach of the GDPR are substantially higher than under the current regime - the headline figures being fines of up to (the higher of) 4% of annual worldwide turnover or €20 million.

#### What should we be doing now?

- 1 Take the opportunity to refresh your employment contracts and revise your data protection clauses
- 2 Identify your legitimate purposes for processing and prepare GDPR compliant privacy notices
- 3 Map how your organisation collects and processes employee data
- 4 Review existing Data Protection Policies and practices
- 5 Involve your responsible privacy officer / team

#### Where can I find out more?

- Consent is just one aspect to the new GDPR regime. To find out more about the impact of the GDPR, you can:
- Speak to Baker McKenzie about your GDPR Readiness - We've got our Game Plan ([here](#)). Have you got yours? We'd love to help you get ready
  - Come along to one of Baker McKenzie's Data Protection events. Get in touch [here](#) to find out more
  - Attend our Employment Annual Seminar, with a focus on data protection for HR
  - Keep up to date with the ICO's handy Myth Busting Blogs