

When do I need a Data Protection Officer (DPO)?

The GDPR has made it a requirement for certain organisations to appoint a designated Data Protection Officer (DPO).

Do I need a DPO?

If you answer Yes to any of the below three questions, then you will require a DPO.

If you answer No to all the questions, you will still need to ensure that you have someone in your business who is responsible for data protection.

1. Are you a public body or authority?
2. Do your core activities consist of regular or systematic monitoring of individuals on a large scale online and or/off-line? For example, behavioural advertising or monitoring behaviour by CCTV?

When considering what is large-scale you should take into account,

- the numbers of data subjects concerned;
- the volume of personal data being processed;
- the range of different data items being processed;
- the geographical extent of the activity; and
- the duration or permanence of the processing activity.

WP 243 (2016) Guidelines on Data Protection Officers

3. Do your core activities require the large-scale categories of special categories of personal data or personal data relating to criminal convictions and offences?

Special Category data is personal data that reveals

- Racial or ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning sex life or sexual orientation

Article 9 GDPR

How do I employ a DPO?

If you do require a DPO, then you can employ someone directly in your organisation or you can out-source the role. In either instance, whomever you hire must meet the requirements of Article 37.5 GDPR. This states that the DPO “shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection, law and practices.”

As an organisation, you can decide on the appropriate level of qualifications and knowledge. This should be done with respect to the personal data operations being carried out and take into account the scale and complexity of the processing and sensitivity of the data. You should also consider the level of protection needed for the personal data.

What does a DPO do?

While the GDPR does not define out the professional training or qualities required by a DPO, in Article 39 it does list the tasks that the DPO will be required to carry out including,

- To inform and advise those who carry out the processing (controller, processor and/or their employees) of the obligations under GDPR and other relevant legislation,
- To monitor compliance,
- To provide advise as requested for data protection impact assessments,
- To cooperate with the supervisory authority. For businesses registered in Ireland this is the Data Protection Commission
- To act as a contact point for the Data protection Commission

What are your responsibilities?

As an employer, you have specific responsibilities that you must adhere to in relation to the DPO.

The DPO must be able to carry out their role without interference or instruction as to how they may carry out the tasks. They must be provided with sufficient resources, such as time, finance, equipment and IT infrastructure, provided to both carry out their assigned tasks and maintain their level of expert knowledge. As an organisation you must ensure that you support the DPO by involving them in a timely matter in all data protection related matters, providing them with appropriate access to personal data and processing activities and other services as required to enable them to fulfil their duties.

The DPO must report directly to the highest level of management in your organisation and they cannot be dismissed or penalised for performing their tasks. If the DPO is instructed to carry out other tasks, these should not conflict with the role as a DPO.

What next?

Once you have directly hired or outsourced you DPO, this must be registered with the DPC at <https://forms.dataprotection.ie/register-a-dpo>

If you decide that you don't need a DPO, you should record this decision as part of your accountability requirements.