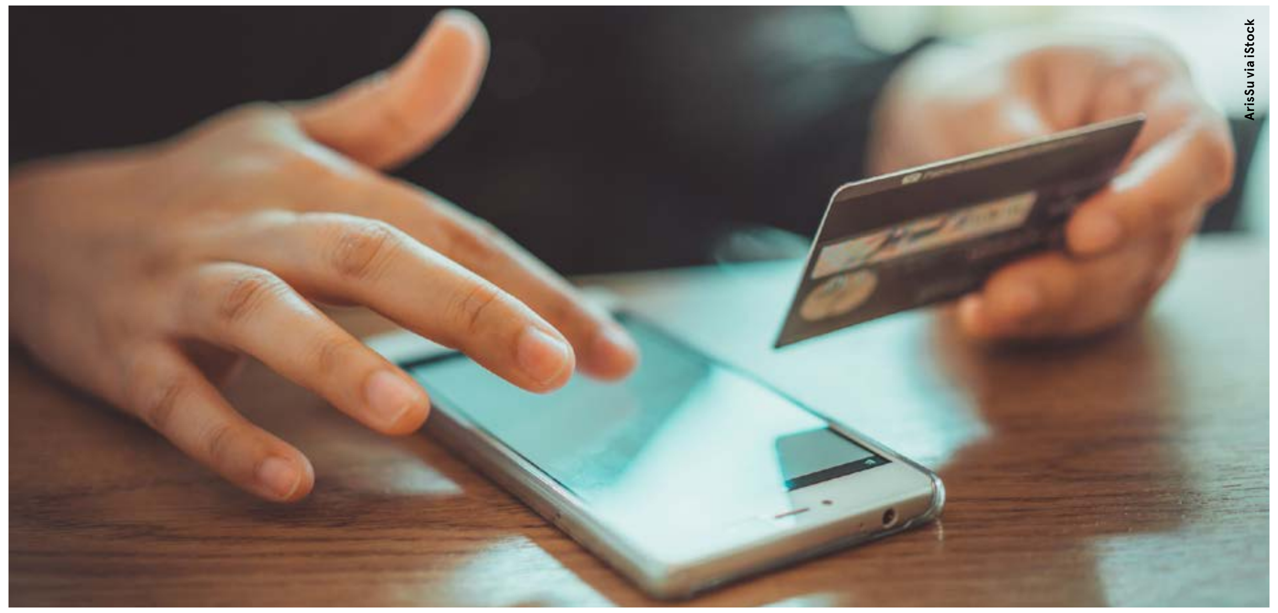
REGULATION

What the revised data protection and digital information bill means for retailers

The government's second attempt at reforming the GDPR focuses on cutting red tape and business costs. Can it achieve this without removing crucial safeguards?



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Jonathan Weinberg

Ever since the EU General Data Protection Regulation (GDPR) came into force in the UK in 2018, it has attracted both praise and criticism, often in equal measure. Nonetheless, the common view held by politicians, lawyers and IT experts in light of Brexit has been that Westminster's approach to regulation in this area will diverge from that of Brussels.

Such a split became even more likely on 8 March when the government introduced the second iteration of its data protection and digital information bill to Parliament. (The original bill on which it's largely based stalled after its first reading when Liz Truss became prime minister in September 2022.)

This is a generally promising development for UK retailers working under the GDPR. The bill's enactment could lighten the data management burden, do away with risk assessments and maybe even relieve some firms from having to employ a dedicated data protection officer.

Whatever happens when the bill is finally enacted, public trust has to be maintained. That's the view of Gavin Freeguard, interim head of public policy at the Open Data Institute, the not-for-profit research body co-founded by Sir Tim Berners-Lee.

Freeguard fears that the proposed legislation risks "diluting the existing rights, protections and redress mechanisms that provide transparency" over how personal data is stewarded. Data protection impact assessments, which are designed to identify and mitigate risks when processing personal data, can be "a boon, not a burden" to business, he argues, adding that provisions in the bill should also deal with the need for better infrastructure to support data intermediaries.

"All this is particularly vital given the excitement surrounding generative AI, which is driven by data. The right regulations, as part of an open and trustworthy data ecosystem, will let us unlock benefits. But the wrong ones could result in undesirable outcomes that diminish the potential returns to both society and the economy," Freeguard warns. "Such outcomes include the proliferation of data and practices that aren't trusted."

Sarah Simpson, a senior associate in the intellectual property team at international law firm Katten, accepts that the government's main aim with its new bill is to lighten the regulatory burden. There are clear benefits in it for retailers, she says, although there are concerns that proposals which would remove cookie consent banners from websites could result in more profiling and tracking, reducing transparency surrounding the collection of personal data.

"Changes to the rules governing direct marketing – for instance, broadening the so-called soft opt-in to include a simple means of refusing such marketing materials – will be hugely beneficial to retail companies," she predicts. "At present, the soft opt-in is limited to where individuals have bought goods or services from businesses previously, enabling such businesses to continue marketing to them."

Simpson explains that, if the legislation lets retailers target consumers they don't yet have a relationship with by simply giving them the chance to unsubscribe by clicking an opt-out link, this could have a big impact on the "potential to market to individuals they're unable to target at present, thereby increasing sales and improving revenue".

But she warns: "If customers aren't given the option to control how their data is collected, they may seek clarification of this in other ways, such as via subject-access requests. These are an administrative headache that can be hugely costly for businesses to deal with."

There are also concerns that retailers that sell to markets in the EU could need to abide by both the new UK legislation and the GDPR.

Other legal experts believe that the proposed changes concerning cookies will turn out to be limited. Andrew Kimble, a partner specialising in data protection at law firm Womble Bond Dickinson, is one of them. He says that the bill is "not quite the rewrite of the GDPR and cookies law that was perhaps anticipated", suggesting that its "main thrust" will stay the same in keeping high standards in data protection.

But he adds: "Changes to the cookies regime, proposed in the original bill and retained in this revision, may mean that consent is no longer required for the use of certain analytical cookies and similar technologies where the data is being used to improve services or websites. This will be well received by ecommerce businesses and website users alike."

James Cull is a solutions engineer at Rokt, an ecommerce tech provider that includes Domino's Pizza and Ticketmaster among its clients. He thinks that the GDPR's requirement on retailers to secure consent before using data for marketing purposes has generally detracted from the customer experience. Cull hopes that the legislation will give clear guidance on the proper use of data for direct and indirect marketing. This would offer consumers "a smoother and satisfactory ecommerce journey", given that they want "a relevant shopping experience – similar to one they'd receive when speaking to a great salesperson in a store".

He suggests that a focus on "legitimate interest" in the use of direct marketing would help retailers. For instance, if the personal data used by marketers is handled correctly and respects all data privacy rights, it could then be processed for that purpose on a particular website.

Cull explains: "This would enable retailers and brands to create a more relevant customer experience that's tailored to each individual's needs. This might even include quality measures such as frequency caps or the complete suppression of ads to existing customers, offering a superior experience in every case."

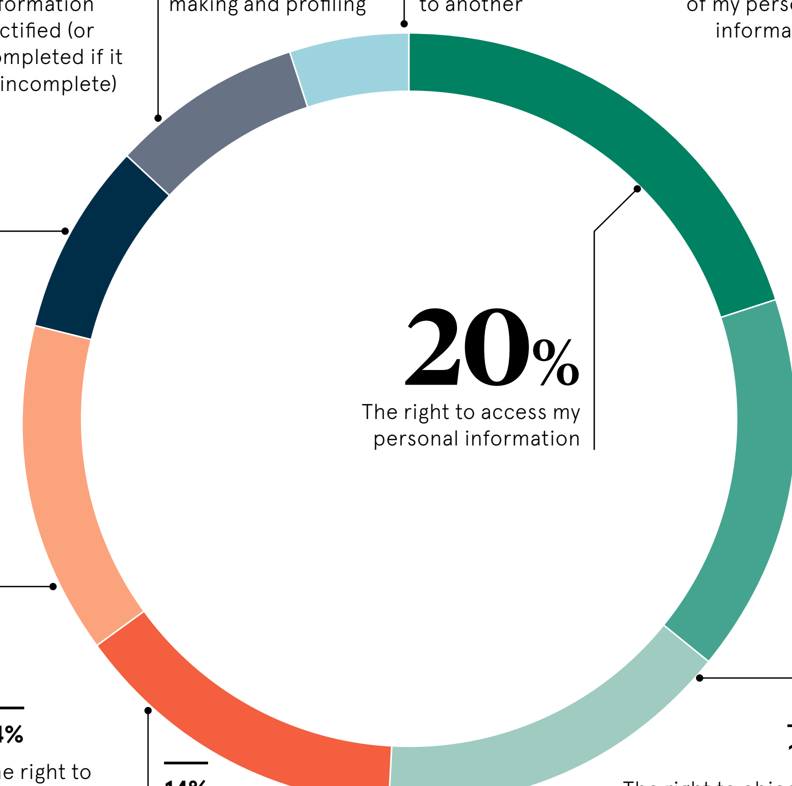
Sarah Pearce is a partner specialising in data privacy and security at law firm Hunton Andrews Kurth. She says that questions remain about the UK's ability to satisfy the EU authorities that its new provisions remain "essentially equivalent", bearing in mind that it took more than a year of talks to persuade Brussels to sign a so-called data adequacy agreement in 2021. This was a formal recognition of the UK's high standards in data protection, allowing the continued inflow of personal data from the EU.

But Pearce adds that many retailers would welcome the bill's statement that records of processing will be required only for entities using processing activities that are likely to pose a "high risk to the rights and freedoms of data subjects".

She adds: "Most online retailers are unlikely to be carrying out such processing. The removal of this obligation, which some see as overly burdensome, is likely to be welcomed by the industry."

CONSUMERS PRIORITISE THE RIGHT TO ACCESS DATA HELD ON THEM

Percentage of UK consumers giving the following responses when asked: what do you consider to be your most important right relating to the personal data that organisations hold?



Information Commissioner's Office, 2021

Why retailers can't afford to ignore generational payment preferences

Millennials and gen Z both want fast, frictionless payment experiences, but there are also key differences between the generations

Millennials – those born between 1981 and 1996 – are now the world's largest consumer group. But gen Z – the generation born between 1997 and 2012 – is hot on their heels. So how do their ecommerce expectations differ? And more importantly, how can merchants meet them?

"With millennials, there's an expectation that the payments process should be smooth, seamless and always work," says Moshe Winegarten, chief revenue officer at Ecommpay, an international payment service provider.

Gen-Z consumers feel the same way. But they also take such experiences – which many retailers have worked hard to achieve – for granted. "It's a baseline for them," says Olga Karablina, head of payment product development and partner relations at Ecommpay. "It's about what else you do on top to ensure they're happy and willing to come back."

In fact, one bad payment experience could push them into the arms of a rival retailer. "If there's a glitch – their card has funds on it, but it's been declined and they don't know why – you lose the customer," says Winegarten.

This may not happen as often with gen Z as it does with millennials. According to research commissioned by Ecommpay, millennials are twice as likely to use a credit card than gen Z and far more keen to use a debit card too (52.9% versus 31.5%). Gen-Z consumers are less bothered by the lack of a local payment option, however, with just 6.7% of 16- to 24-year-olds claiming it would cause them to abandon the checkout as opposed to 12.4% of millennials.

Ecommpay's research also found that almost two-thirds (65%) of gen-Z respondents were "very likely" or "somewhat likely" to abandon the checkout in the middle of an online payment if their preferred payment method isn't available. For millennials, the figure is even higher at 78.7%. That's a lot of lost sales simply due to the lack of additional payment options, like Apple Pay or Google Pay.

Furthermore, 22.3% of gen Z are likely to abandon the checkout process if they have to make an account on the merchant's website or app – a considerably higher percentage than for millennials (13.1%). Gen-Z shoppers also feel almost twice as uncomfortable as millennials when it comes to sharing their card details online (20.1% versus 10.5%). This suggests that slowing down the checkout process to ask for personal information, or requesting card details, could potentially damage conversion rates among gen-Z customers.

Buy now, pay later

Both generations are keen to see alternative payment options at the checkout – including buy now, pay later (BNPL). These services allow consumers to spread the costs of their purchases, often while incurring little to no interest. One in ten gen-Z consumers expect to use BNPL more over the next five years, as is an even higher percentage of millennials (14.2%). In addition, Ecommpay's research found that around 57% of 16- to 24-year-olds, and almost 56% of 25- to 34-year-olds, feel the increasing cost of living and inflation will encourage them to use such services more.

> In the case of BNPL, it's the responsibility of a trusted lender to provide a clear message within this flow of payment

Gen Z is less worried than millennials about getting into debt through BNPL, with twice as many millennials citing it as a concern compared with gen Z (36.3% versus 18%). Likewise, the risks of late charges and more interest were only of concern to 17.2% of gen Z, whereas 27.9% of 24- to 34-year-olds thought this was an issue. Ecommpay's new BNPL solution helps to address these fears and ensure responsible lending, as it uses a robust risk scoring system tailored to different industries, like retail or travel.

When asked if businesses were doing enough to educate consumers about the BNPL option at the checkout, only 36.8% of gen-Z respondents said 'no' compared with 52.9% of millennials. When it comes to regulation, 35.3% of gen Z said that BNPL needs to be further regulated. Millennials feel even stronger about better regulation, with 60.7% of respondents pushing for more rules to be implemented within this credit category. This appears to show that millennials are more up-to-speed with both the benefits and potential risks of BNPL.

However, when asked what changes would encourage them to use BNPL as a payment option, twice as many gen-Z respondents cited 'more pre-contractual explanations with clarity on processes and support' (22.8% versus 10.9%). This shows that gen Z are perhaps not as confident as they might seem about precisely what BNPL services entail.

"Yes, there has to be a fast, frictionless flow at the checkout to mitigate the chance of an abandoned basket," says Karablina. "But in the case of BNPL, it's the responsibility of a trusted lender to provide a clear message within this flow of payment to help the consumer fully understand what they're doing."

22.3%

of gen Z are likely to abandon the checkout process if they have to make an account on the merchant's website or app

78.7%

of millennial respondents are 'very likely' or 'somewhat likely' to abandon the checkout in the middle of an online payment if their preferred payment method isn't available

57%

of 16- to 24-year-olds feel inflation and the increased cost of living will encourage them to use BNPL services

Ecommpay, 2022

Looking ahead

Although open-banking payment options have yet to make much impact on ecommerce – not least because the likes of Apple and Google Pay already offer consumers quick and secure means of paying by card – it doesn't hurt to offer millennials and gen Z a range of options at the checkout. However, the fact that only 13.9% of gen-Z consumers believe they completely understand what open banking is and how it is used, compared with 24.1% of 25- to 34-year-olds, suggests that gen Z may not grasp how checkout options like 'pay by bank' actually work.

Looking ahead, social shopping is likely to grow in importance. "Gen Z wants to buy what they see on Instagram, and being able to take payments in that space is something we're beginning to see and support," says Winegarten. Gen Z is also the most open to paying with crypto, with 23% of 16- to 24-year-olds saying they would use it if it were offered as a payment option.

Ecommerce merchants need a trusted partner who understands these generational nuances. Because while millennials and gen Z share some similarities when it comes to payments, they also differ in countless subtle ways, such as their approach to new options like BNPL and crypto, their dislike of account creation requirements and overall brand loyalty. The merchants that recognise this and adapt their processes accordingly will ultimately be those who succeed.

For more information visit ecommpay.com

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