

# General Data Protection Regulation (GDPR)

## from 25 May 2018

This document has been created to help members to find further information and is provided for general guidance on your rights and responsibilities. It is **not legal advice**. If you need more details on your rights or legal advice about what action to take, please contact a legal adviser or solicitor.

Details of legal advisers can be found on the Citizens Advice website:

<https://www.citizensadvice.org.uk/>

More details about Data Protection can be found on the **Information Commissioner's Office (ICO)** website:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/>

## What information does the GDPR apply to?

- **Personal data**

The GDPR applies to 'personal data' meaning any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier.

This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location data or online identifier, reflecting changes in technology and the way organisations collect information about people.

The GDPR applies to both automated personal data and to manual filing systems where personal data are accessible according to specific criteria. This could include chronologically ordered sets of manual records containing personal data.

Personal data that has been pseudonymised – e.g. key-coded – can fall within the scope of the GDPR depending on how difficult it is to attribute the pseudonym to a particular individual.

- **Sensitive personal data**

The GDPR refers to sensitive personal data as "special categories of personal data" (see Article 9).

The special categories specifically include genetic data, and biometric data where processed to uniquely identify an individual.

Personal data relating to criminal convictions and offences are not included, but similar extra safeguards apply to its processing (see Article 10).

**Education** - responsibilities to information rights in schools, colleges and universities: <https://ico.org.uk/for-organisations/education/>

## Children

You should start thinking now about whether you need to put systems in place to verify individuals' ages and to obtain parental or guardian consent for any data processing activity. For the first time, the GDPR will bring in special protection for children's personal data, particularly in the context of commercial internet services such as social networking. If your organisation offers online services ('information society services') to children and relies on consent to collect information about them, then you may need a parent or guardian's consent in order to process their personal data lawfully. The GDPR sets the age when a child can give their own consent to this processing at 16 (although this may be lowered to a minimum of 13 in the UK). If a child is younger then you will need to get consent from a person holding 'parental responsibility'. This could have significant implications if your organisation offers online services to children and collects their personal data. Remember that consent has to be verifiable and that when collecting children's data your privacy notice must be written in language that children will understand.

## GDPR FAQs for the education sector

<https://ico.org.uk/for-organisations/education/education-gdpr-faqs/>

Is parental consent always required when collecting or processing children's personal data?

The GDPR contains new provisions intended to enhance the protection of children's personal data, in particular, privacy notices and parental consent for online services offered to children.

Article 8 imposes conditions on children's consent, but it does not require parental consent in every case. Other lawful bases may still be available. Article 8 only applies when the controller is:

- offering information society services (ISS) directly to children; and
- wishes to rely on consent as its basis for processing.

So, if an ISS is actually intended for parents to use, or if the controller is relying on a different lawful basis such as legitimate interests, then Article 8 won't apply.

The ISO have included a section covering this topic in [our Guide to the GDPR](#).

[Information Commissioner Elizabeth Denham explains more about children's consent in her blog of 21 December 2017 and asks for comments on her draft Children and GDPR guidance.](#)

## Advice service for small businesses

This dedicated advice line from the ISO offers help to small organisations preparing for the new data protection law, including the [General Data Protection Regulation](#).

The phone service is aimed at people running small businesses or charities. To access the new service dial the [ICO helpline](#) on 0303 123 1113 and select option 4 to be diverted to staff who can offer support.

As well as advice on preparing for the General Data Protection Regulation, callers can also ask questions about current data protection rules and other legislation regulated by the ICO including electronic marketing and Freedom of Information.

## Data Protection and privacy statements or notices

The Gov.UK website has some suggested privacy notices for schools and local authorities to issue to staff, parents and pupils about the collection of data. See examples here:

<https://www.gov.uk/government/publications/data-protection-and-privacy-privacy-notices>

A simple example of a Data Protection Statement for a report would be:

"This report will be processed in accordance with the **Data Protection Act and the General Data Protection Regulation (2018)**. The information will not be shared with third parties without your permission unless there is a legal requirement to do so. We store your information for \_ years, after which your data is disposed of in a secure manner."

## How long should I keep reports?

A general guide to the retention of all sorts of school information is given by the Information and Records Management Society and can be found at: <http://ldbsact.org/download/policies> - if you scan down you will find the **Document Retention Schedule** PDF. - as you will see from that document some data storage is governed by direct statute, but some is by 'best practice' guidelines only. If you look at the ICO website, this gives Data Protection Principles: <https://ico.org.uk/for-organisations/guide-to-data-protection/data-prote...> - you will see that the advice on duration of storage is not specific. It states "Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes."

One way around this would be to state on your report the length of time for which it will be stored in digital format, after that date data will be permanently removed from your records. This means that you have given a date and that the person you've written the report for has been informed. Current practice seems to be moving towards shorter storage periods.

You may be aware that a seven-year rule usually applies to financial records, so if you work in an educational organisation, it might be best to speak to your finance department to see if you need to tie the actual reports to the financial transaction data in some way.

It is believed that civil cases have a time limit of six years and there is more advice on the Citizens Advice Bureau here: <https://www.citizensadvice.org.uk/law-and-courts/legal-system/taking-legal-action/small-claims/small-claims/>

You might want to put the onus on the clients, explaining in a disclaimer that you will only keep reports for a limited time to ensure that they do not see you as some sort of archiving service for their records.

## Indemnity Insurance and career breaks or retirement.

The Dyslexia Guild has asked Howdens, our recommended insurance company about liability policies for those of our members who hold indemnity insurance and they have provided the following helpful information:

Liability policies are settled on one of two methods, the first is called “claims made” the second “losses occurring”. **Claims made** means that the policy which responds is the one which you have in place at the time the claim is made regardless of when the alleged event took place, the benefit of this method is that it is easy to establish and make a claim under your most current policy and you also have the benefit of the most up to date level of cover. **Losses occurring** basis is the opposite so that the policy which responds is the one you had in place at the time the loss occurred, the benefit of this method is that you will always have cover in to the future for events which happened in the past, the negative is that you would need to identify the policy which you need to call upon and would only have the benefit of the level of cover at the time that policy was in force.

Our policy (Howden Group) is on a **claims made** basis and you would enjoy all the pros explained above of that basis of cover, you would also, however, be left without cover at the time of retirement as any claims made after the last policy expires would not be covered. To remedy this we offer what is called “run off” cover which extends the policy at retirement and career break, maternity leave etc. to provide cover going forward for work done in the past, this is free of charge for individuals and is explained in our renewal invitations so that client let us know and we can activate that cover. I hope this answers your query, please contact us to discuss arranging free cover if this applies.

**Jo Mountain (Mrs) Cert CII**, Associate Director Howden Group UK Ltd, 01924 241945

## Disclosure and Barring Service (DBS) checking

This website explains what DBS means for private tutors:

<https://www.thetutorblog.com/2013/01/disclosure-and-barring-service-dbs-private-tutors/>

If you are working for an employer then they will advise you if you need to have a DBS and will be able to obtain that for you.

The Dyslexia Guild does not offer a DBS service for self-employed members but you can find other umbrella body companies here: <https://www.gov.uk/find-dbs-umbrella-body>

**Disclaimer:** This document has been created to help members to find more information and is for general guidance on your rights and responsibilities and is **not legal advice**. If you need more details on your rights or legal advice about what action to take, please contact a legal adviser or solicitor.