

Firefighters' Pension Scheme

General Data Protection Regulation Privacy Notices

As confirmed in bulletin 7 (April 2018) the LGA Bluelight team commissioned Squire Patton Boggs to produce a template privacy notice for Fire Authorities as the data controller to use/adapt. These documents have now been uploaded to the [GDPR](#) page of www.fpsregs.org

The full privacy notice is intended to enable Fire Authorities in their capacity as data controller of personal data relating to the Firefighters Pension Scheme for which they are responsible, to satisfy their obligation under the General Data Protection Regulations ("GDPR") to inform affected individuals what personal data is held and how it is used for the purposes of the pension scheme.

As the documents confirm, the privacy notice will need to be tailored to the specific circumstances of each Fire Authority, taking into consideration appendix 1 of this document and the notes on the template privacy notice. The footnotes should be removed before this is published.

Where text appears in [square brackets] authorities must either insert/amend or delete text as appropriate. The text in square brackets is **highlighted yellow** to make it easier to identify.

The privacy notice can be accessed [here](#).

Privacy Notices

Privacy Notices are designed to give the subjects of data information about the data held about them, how it is used, their rights in relation to it and the safeguards that are in place to protect it.

It will be for Fire Authorities to determine their approach to privacy notices generally and more specifically across the whole range of employment issues.

Data controllers will be required to update their privacy notice in line with the new requirements setting out, among other things, why certain data is held, the reason for processing the data, who they share the data with and the period for which the data will be retained which is likely to be long-term. Within the notice, members will also be provided with additional information about their rights under the legislation.

Fire Authorities will need to liaise with their Pension Administrators regarding how they work together and communicate with active members, deferred and pensioners. The template can be adopted in full, modify it or develop their own.

For active members of the pension scheme, the privacy notice could be placed on the intranet and each active member emailed with a short message containing a link (as part of, or in a similar process to, the wider range of employment issues being communicated to the current workforce).

In relation to medical records, each Fire Authority will determine its approach depending on the material held, data flows, content, destruction policy etc. But something could be included in the general employment notice, specifying when medical details will be requested and what permission may need to be obtained to hold them.

For pensioners, Fire Authorities should consider communication via their Pension Administrator, Pension Portal and Pension payment notice.

For deferred members, where address details are old or uncertain, caution will need to be exercised to ensure sensitive data are not revealed to unintended recipients. So, initially, there may be a need to verify an individual's identity and personal details (NI number; date of birth) before sending further information.

Main Principles of GDPR

Under GDPR there are new and extended rights for individuals in relation to the personal data an organisation holds about them, for example, an extended right to access and a new right of data portability. In addition, organisations will have an obligation for better data management and a new regime of fines will be introduced for use when an organisation is found to be in breach of the GDPR.

The GDPR states that personal data must be:

- processed lawfully, fairly and in a transparent manner
- collected only for specified, explicit and legitimate purposes
- adequate, relevant and limited to what is necessary
- accurate and kept up to date
- held only for the absolute time necessary and no longer
- processed in a manner that ensures appropriate security of the personal data.

Application of GDPR to Pensions

Each Fire Authority is a Data Controller for pension scheme data and determines how, and for what purposes, data is to be processed.

In many cases administration is carried out on Fire Authorities behalf by an external pensions administrator, which may be a private contractor or a local or County Council pensions department. In these cases the administrator is considered to be a Data Processor and processes the data on the instructions of the Fire Authority. This means that ultimately the Fire Authority has responsibility for its pension scheme data.

GDPR is particularly relevant to pensions data because:

- Data is held for a long time, extending after the employment relationship ends
- It can include data about others, such as partners and children, which may be sensitive.
- There may be other sensitive data held about health conditions or reasons for leaving service
- It can include home address information, which is sensitive data in relation to both serving and former officers
- Because many pensions functions are outsourced, data flows extensively from Fire Authorities to administrators and returns back to the authority. From time to time, some data is shared with others, such as the Government Actuaries Department, with auditors or with HMRC.

GDPR is affecting forces across a wide range of activity, of which employment is only a part - and pensions are a smaller part of that part!

Essentially, the Fire Authority needs to ensure they are GDPR compliant in respect of pensions personal data. They can do this by:

- Mapping data flows and identifying risks
- Documenting personal data processing activities
- Updating policies and procedures to reflect GDPR requirements
- Issuing privacy notices in relation to pensions
- Reviewing and amending third party contracts to reflect GDPR requirements
- Putting a data breach notification procedure in place

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Further information for completion of the template

- You will need to insert the date of issue into the header and the name of the Fire Authority into the first paragraph.
- You will need to link to the web address
- Please consider whether any personal data other than that listed under “*What personal data we hold*” is held or processed. Please note that Article 9 of the GDPR applies different treatment to the processing of special categories of personal data (please see *Further Points* below).
- The suggested list of service providers will need to be tailored and completed. We have suggested whether a particular type of provider is a data processor or a data controller but this will need to be verified when the Fire Authority completes its data mapping exercise (to analyse what personal data is held in connection with the Scheme and how it is processed). The template reflects a reasonable view of whether entities are controllers or processors but this is a complex matter and Fire Authorities may wish to seek legal advice.
- Please note Article 14 sets out specific information obligations on the Fire Authority where it obtains information from a third party unless one of the exceptions under Article 14(5) apply. The Article 29 Working Party guidelines state that where possible specific sources of personal data should be listed – consider if any more need to be added (particularly any that a member might not generally be aware of).
- Tracing bureaux may consider themselves to be data controllers – the Fire Authority may wish to check this with each tracing bureau directly.
- This template assumes there are no joint controller relationships. If that is the case, this notice will require amendment as Article 26 requires joint controllers to have an “arrangement” between them setting out their respective responsibilities and that the “essence of the arrangement shall be made available to the data subject”.

Further points to be considered

Special Category Data

Explicit consent may be required in the processing of health data and ill health early retirement applications and any criminal convictions. This privacy notice does not seek such consent, which should be obtained at the time of any application. It should not generally be necessary to renew consents obtained under the Data Protection Act 1998 in respect of past ill health early retirement applications provided that the requirements of GDPR were complied with. However, legal advice should be taken. As a pragmatic approach, consider renewing consent when communicating with individuals about special category data collected prior to 25 May 2018.

Changes in Data

The Article 29 Data Protection Working Party guidelines state that, where information previously provided to data subjects (for example in privacy notices) is being updated to comply with the GDPR, it should be made clear to the data subjects that the changes have been made in order to comply with the GDPR – Fire Authorities may wish to consider the extent to which wording is included in the privacy notice in this regard.

Vulnerable Individuals and Children

Please note that this notice will not be suitable for issue to vulnerable individuals, including children. Fire Authorities may wish to take legal advice on what would be suitable to be supplied to vulnerable individuals.

Automated Decision Making

It is assumed that the Fire Authority or its advisers/service providers are not carrying out any automated decision making (including profiling). The Fire Authority should also be made aware that if they carry out automated decision making in the future then it is likely that further information will need to be provided to the individuals concerned and should take legal advice.

Information for New Members

In addition, the Fire Authority should conduct a separate review of the correspondence and documentation provided to members at the point in time that the personal data is requested, such as new joiner forms, and also consider how the privacy notice is incorporated into the data collection process.

Supplying Data to Others

This is suggested as a pragmatic approach in order to keep the Scheme's privacy notice as succinct and easy to understand as possible, rather than adding any specific information another data controller may ask the Fire Authority to include on its behalf. However, Fire Authorities should consult with their own providers. Data controllers will have their own, separate obligations under GDPR to provide a privacy notice to any Scheme members whose personal data they receive when providing services to the Scheme Manager. In practice it is likely the Fire Authority will be asked to assist with that process, either by sending the adviser's privacy notice to Scheme members or by including a link in the Fire Authority's own privacy notice to the adviser's website, where a copy of the adviser's privacy notice can be accessed. This link could be included within the table of current advisers set out in the template.

Data Transfer outside the European Economic Area

The reference to data processed outside the EEA is intended to satisfy the requirements of Articles 13(1)(f) and 14(1)(f) of the GDPR. The Article 29 Working Party guidelines state that known third countries should be specified, but this may not be practical. Fire Authorities should consider their own circumstances and take legal advice where appropriate. In addition, Fire Authorities should reconsider whether amendments are needed to this paragraph when we have greater clarity concerning Brexit.

Direct Marketing

The use of personal data for direct marketing purposes is addressed at Article 21 of the GDPR and automated processing and profiling at Article 22. We assume there will be no automated processing which has a legal effect or significant impact on the data subject's rights but Fire Authorities should assess whether that is in fact the case and include appropriate wording where necessary to satisfy Article 13(2)(f) of the GDPR.

We have assumed that Fire Authorities and their advisers/service providers are not using personal data for direct marketing purposes. However, if direct marketing is taking place then the members should be informed about their right to object to this. Fire Authorities may wish to seek legal advice.

Retention of Data

Fire Authorities should be aware that if they do not attempt to give a defined period for which personal data will be held, strictly speaking this is unlikely to comply with GDPR.

Fire Authorities will need to consider the extent to which the suggested wording matches their actual practice. See Articles 5(1) and 5(2), and in particular Article 5(1)(c) - (e) of the GDPR. Please also see Recital 39 of the GDPR.

This template is intended to satisfy the requirements of Article 13(2)(a) of the GDPR. The Article 29 Working Party guidelines on retention periods state that meaningful information about the likely period of retention should be provided and a generic statement is not appropriate ("It is not sufficient for the data controller to generically state that personal data will be kept as long as necessary for the legitimate purposes of the processing."). While the GDPR does not prescribe a time period beyond which data must not be kept, the data controller is under an obligation to inform individuals of the period for which data will be kept or, if this is not possible, the criteria that will be used to determine the retention period. The GDPR states that while the data is being retained, the data controller is also under an obligation to keep personal data up to date and to take every reasonable step to ensure that inaccurate data is either erased or rectified without delay. Further that data must not be kept in a form that is capable of identifying an individual for longer than is necessary.

In practice, we anticipate that Fire Authorities will need to retain personal data held for the purposes of the Scheme for extended periods because of the long-term nature of the pension liabilities. Consideration should, however, be given to "filleting" the data held so that individual items are not retained for longer than actually required.

The suggested period of “last payment of benefits plus 15 years” was based on the current maximum statutory limitation period, as any complaints about the payment of those benefits would need to be brought within that timeframe. It does, however, suggest that at some point data would actually be deleted. If in practice Fire Authorities do not currently operate such a practice and don't propose to do so going forward as a response to GDPR, then the wording will need to be amended.

Rights of the Individual

Contesting Data

The Fire Authority should restrict the processing of the personal data (subject to certain exceptions e.g. storage or to defend a legal claim or for reasons of important public interest) where the individual has contested the accuracy of the personal data. The processing would also have to be restricted in this way where the individual has raised an objection for any the public interest or pursuant to an official authority; or (if applicable) in its legitimate reason, and the Fire Authority's justification is based on the necessity to: perform a task in interests. The restriction will last until the Fire Authority is able to verify the accuracy of the personal data or demonstrate the justification for its processing respectively.

For reference, note: Article 21(1) contains the right of the data subject to object to the processing of personal data in circumstances relating to the individual, where the controller is relying on the justifications in Article 6(1)(e) or (f), which includes those mentioned immediately above. Under Article 21(2), the right to object also includes where personal data is used for direct marketing purposes and profiling for that purpose.

Article 18(2) and 18(3) provide exceptions to the right of the member to restrict the processing of personal data in certain circumstances.

Erasing Data

See Articles 17(1) and 17(2) of the GDPR. This information has to be included notwithstanding that in relation to the Fire Scheme 2015, the Fire Scheme 2006 and the Fire Scheme 1992 it is not anticipated that members will in practice have a right of erasure (due to the legal basis for which personal data is collected and processed).

The controller is also under an obligation to inform other data recipients that personal data has been restricted or erased, and inform the member of such data recipients on request. See Article 19 of the GDPR.

Collection of Data

In order to satisfy Article 13.2(e) of the GDPR, correspondence/documentation asking for personal data should contain specific information about why such information needs to be provided and whether the member is obliged to provide the information. Legal advice should be taken to ensure any such correspondence/documentation is compliant.