

GDPR – Your Questions Answered

What is the GDPR?

The GDPR has gathered quite a bit of media coverage recently. But what exactly is it and how do you need to prepare for it? This fact sheet will help you make a start and point you in the direction of further help and guidance.

GDPR is a new EU regulation covering data protection and stands for General Data Protection Regulation. It will come into force on 25 May 2018 and replaces our current Data Protection Act 1998 (DPA) and the Electronic Communications Regulations 2003 (PECR).

It will go live regardless of Brexit and organisations will need to comply by this date.

What does this mean for my nursery?

There will be new obligations for all companies regarding personal data and new rights for individuals and the bar is raised on protection of personal data and the penalties on organisations.

Nurseries must recognise that GDPR isn't a set of guidelines for best practice; it's a new set of laws. Given consumer concerns about data, it also provides an opportunity for nurseries to engage parents, and build trust and loyalty.

Breaches, sanctions and penalties

The main difference is that if you accidentally lose, destroy or share (give unauthorised access) personal data, then it is your responsibility to report this "breach" of the regulation to the Information Commissioners Office (ICO).

The penalty could be a maximum 4% of turnover or 20M Euros – whichever is higher.

What is personal data?

Personal Data is any data that can be linked to a single person and which identifies them in some way.

For example name and personal email address and/or any of the following: postal address, telephone numbers, bank account detail, payment card details, marital status and date of birth.

However a name and a generic email (info@) is not personal data and an email address alone is NOT personal data unless it can be directly linked to more data stored elsewhere).



Consent, privacy and individual rights

The main focus of GDPR is consent and the right to privacy for individuals. In practice this means making sure that everyone (parents, staff, past customers etc.) knows what data you hold on them, has agreed that you can hold their data and knows what you intend to do with it, who you might share it with (if anyone) and how long you are likely to keep it. Individuals will have the right to be forgotten and the right to object to certain types of data use.

What should I be doing now to prepare for the GDPR?

Don't wait but also don't panic! You have time to prepare if you start now. Review where you are in terms of complying with current UK data protection legislation (DPA 1998) and the Privacy and Electronic Communications Regulations 2003 (PECR).

This ten point step by step guide should help you prepare:

1. Appoint someone to be the lead on data protection within your nursery. They must have the knowledge, support and authority to carry out their role effectively.
2. Check if you are registered with the ICO – Information Commissioner's Office and if not then register now.
3. Audit all personal data held. This is not just about customers or parents and children but also about staff. In fact any personal data you hold on an individual.
4. Understand where it came from and most importantly who you share it with
5. Write down what you do with each type of data and create a set of processes for all staff to work to.
6. Review your current terms & conditions, privacy and consent notices, ensure they are accurate and explain to people in concise, easy to understand language what you do with their data. Make sure that consent has been freely given, specific, informed and unambiguous. Sample consent messages can be found at the end of this fact sheet.
7. Ensure everyone in your nursery understands that people have the right to access their records or have their records amended or deleted.
8. Make sure you have a cookies notice on your website which asks for consent for holding and using their personal data online.
9. Identify which external organisations have access to your data and ensure they have plans in place for GDPR compliancy. E.g. Third party website supplier may have access to your data.
10. Make sure you have the right procedures in place to detect, report and investigate a personal data breach.

In Summary

1. **Be clear** – tell parents and prospective customers how you will use their data
2. **Show the benefits** – explain to them the many positive benefits of data collection
3. **Show Respect** – make sure trust, honesty and transparency are at the heart of the relationship between your business and your customers
4. **Be in the know** – continually familiarise yourself with the dos and don'ts of data rights, the law, such as the upcoming changes due to new GDPR legislation, and best practice.

More on privacy and consent for nurseries

You need the consent of a child's parent(s) to collect and process their data. You may consider placing this in your induction information or contract. Ask them to tick a box to state that you can have and hold information about them.

Do you already use a Privacy Notice in terms of your funding arrangements with your LA? You need to consider the need for a Privacy Notice covering all aspects of your setting/business.

Photography and video

Think about photos of children/parents and staff – are they used on your website, social media or in a prospectus? Are staff named on your setting website? Consider the redistribution of photos on social media, e.g. retweeting by a third party, parents snapshotting photos from the Facebook page and sharing them on their own feed.

Do you have explicit consent from both parents and staff to use these images? Do they understand how the images will be used and how long you will keep them? Be very clear about this at the point of asking for consent and make sure your consents are up to date.



Ensure your social media accounts have high level privacy settings – ideally use closed groups to prevent access from people other than your parents and staff.

Think about how long do you keep observational photos and videos of the children? Do you keep them longer than is strictly necessary? Do you have a process in place for deleting them?

Staff

Consider staff personal files. You may have personal details, addresses, date of birth, NI numbers DBS checks, qualification details, medical details, references and bank account numbers etc. Who has access to them? Who are they shared with?

Do you allow staff to take laptop computers or tablet computers home with them for record keeping purposes? Do they have access to an app for this purpose? If so then you may need to replace all personal data with a unique reference number that is only accessible in the offices via a password and only by named managers. This data should not be printed out.

Record keeping

Remember you have to keep your Public Liability Insurance certificates, accidents notes, incident and any child protection records etc. to comply with the Limitations Act. Consider the information you retain about a child and their family. Child's personal details, parent and emergency contact details, parent's bank details, health records. How do you keep these secure? What do you do with these after a child has left the setting?

If you keep copy birth certificates/passports to prove the children's ages/date of birth for funding purposes where do you store this information and how long will you retain them? If you hold written policies or a handbook, then they should be updated accordingly with any changes.

Safeguarding

For child protection purposes records of children who have attended the setting, accident and incident records and child protection records need to be retained until the child reaches the age of 21 - or until the child reaches the age of 24 for child protection records.

It is important to remember that if you have any concerns about a child that come under the child protection umbrella, GDPR is not a barrier for sharing information.

The safety and welfare of the child always comes first.

Further references

Current data processing legislation

The GDPR updates the Data Protection Act 1998 (DPA) – covers all paper or off-line communications and the Privacy and Electronic Communications Regulation 2003 (PECR) – covers electronic communications.

The regulation is still in the process of being developed and so it is important to keep checking the ICO website (below) for updates.



ICO

Information Commissioner's Office (ICO) is the first organisation to contact regarding the GDPR. It holds codes of practice, guides and references on current UK legislation and the GDPR and registers organisations. www.ico.org.uk

Get GDPR updates here:

- Overview of GDPR: <https://goo.gl/Uq4UG5>
- Getting ready for the GDPR: <https://goo.gl/QJ7S2M>
- More on consent: <https://goo.gl/SnrpZZ>

Cookies

The Cookie law is a piece of privacy legislation that requires websites to get consent from visitors to store or retrieve any information that requires websites to get consent from visitors to store or retrieve any information on a computer, smartphone or tablet.

It was designed to protect online privacy by making consumers aware of how information about them is collected and used online.

Some useful terms

- **Record** – the data you hold on a person.
- **Data processing** involves planning, collecting, storing, using, sharing, managing, expiry and deletion.
- **Privacy notices** is a statement that discloses some or all of the ways a party gathers, uses, discloses, and manages a customer or client's data. It fulfils a legal requirement to protect a customer or client's privacy. They are usually published on a company's web site alongside terms & conditions.
- **Images** are data but do not need to be linked to a record. However you do need to be able to justify holding an image where people can be identified.
- **Data breach** – somebody sees data that they are not supposed to see.

Sample consent message to update your records – parents

We are in the process of updating our records to comply with a new data protection standard. We will only use your (including your child's) personal information to provide a childcare service to you. We'd like to keep sending you information about your child / our nursery (as relevant) by email/Facebook/phone/other (as applicable) but we need to be sure we have your permission to do so. We keep your information so you can receive important updates about your child / our nursery. We will keep your information secure and will never share it except if required to do so by law or on the request of our local authority and/or health trust and only where they have legitimate reasons for gathering the data.

By ticking this box, you are consenting to us continuing to holding and processing your data and sending you information.



You can of course unsubscribe / ask us not to contact you by email / phone / facebook etc. at any time.

Sample consent message to update your records – prospective parents

We are in the process of updating our records to comply with a new data protection standard. We will only use your personal information in relation to our childcare service. We'd like to keep sending you information about our nursery by email/Facebook/phone/other (as applicable) but we need to be sure we have your permission to do so. We keep your information so you can receive important updates about our nursery. We will keep your information secure and will never share it except if required to do so by law.

By ticking this box, you are consenting to us continuing to holding and processing your data and sending you information.

You can of course unsubscribe / ask us not to contact you by email / phone / facebook etc. at any time.



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We hope that you will continue to use this factsheet as a useful tool and would welcome any feedback. If you have any queries or concerns about the factsheet please do not hesitate to contact us.

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