

General Data Protection Regulation (GDPR)

This practice guidance will consider areas of best practice when processing data in line with GDPR

Supporting members to provide the highest standards of care and learning for children

This practice guidance has been developed for childminders.

This guide covers:

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1. Introduction

As an early years and childcare practitioner in England or Wales, you are required to comply with the Data Protection Act 1998. With this in mind, you will already be collecting, storing, maintaining, and sometimes sharing the personal data of the children and families that you work with. You may also be registered with the Information Commissioner's Office (ICO). The ICO is the UK regulator and enforcer of Data Protection legislation. Read more about registering with the ICO in the factsheet in MyPACEY:

<https://www.pacey.org.uk/mypacey/resources/safeguarding/child-protection/register-information-commissioners-office/>

On 25th May 2018, data protection rules will change with the introduction of the General Data Protection Regulation (GDPR). GDPR builds on the Data Protection Act 1998, and is designed to improve upon and strengthen the way in which you process personal data. "Processing data" means anything that you do with the personal data that you hold.

This is a wide-ranging change that will affect all businesses across the European Union. All businesses are affected – even a small, one-person concern such as a childminding business. There will be steps you will need to take in order to ensure you are compliant with the new regulation.

2. Important definitions

Personal data

Any information about a person that can be directly or indirectly identifiable to them. Examples include names, addresses, telephone numbers, email addresses, reference numbers, photographs and online profiles, for example on Facebook. The list reflects changes in technology and the way organisations collect information about people. Personal data can appear in many forms, from traditional paper to WhatsApp groups.

Sensitive personal data

Any information that is likely to be of a private nature which could be used in a discriminatory way, for example about a person's religion or belief, ethnic origin, sexual orientation, physical and mental health, genetic and biometric information, or criminal records.

3. The seven principles of GDPR

The data protection principles of the Data Protection Act 1998 have been reviewed and strengthened in GDPR. There are now seven principles instead of eight. Below we have given you some suggestions of how you might ensure you are adhering to each of these seven principles.

1. You must have a lawful reason for collecting personal data, and must do it in a fair and transparent way.

Under the GDPR, there are six lawful bases for processing personal data. No single basis is better than another; you will need to decide depending on your purpose and relationship with the individual. You must determine your lawful basis before you begin processing, and you should document it, for example in your privacy notice. Take care to get it right first time - you should not swap to a different lawful basis at a later date without good reason. Here are the six bases:

(a) Consent:

The individual has given clear consent for you to process their personal data for a specific purpose.

(b) Contract:

The processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.

(c) Legal obligation:

The processing is necessary for you to comply with the law (not including contractual obligations).

(d) Vital interests:

The processing is necessary to protect someone's life.

(e) Public task:

The processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.

(f) Legitimate interests:

The processing is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual's personal data which

overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)

How do you do this?

In many cases, you will be collecting data in order to comply with the legal obligations of your home nation (England or Wales). In this case, your lawful basis will be “legal obligation”. You may also be entering into a contract with parents/carers; “contract” is another lawful basis. You may ask for parents’ permission to take photographs or post information on Facebook or WhatsApp, in which case “consent” may be the most appropriate lawful basis.

In all cases, make sure you inform parents and carers why you must collect personal data, and what you do with the data you have. One way to do this is through a privacy notice, which should include your lawful reason(s) for collecting data. There’s a template privacy notice available to PACEY members here:

<https://www.pacey.org.uk/mypacey/resources/regulation-and-legislation/gdpr/sample-privacy-notice/>

For more detail on lawful basis see: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/>

2. You must only use the data for the reason it is initially obtained.

This means that you may not use a person’s data to market a product or service to them that is unconnected to the reason(s) for which they shared the data with you in the first place.

How do you do this?

Make sure you only hold data to enable you to carry out your role as a professional childcarer. Do not market unrelated products and services to parents, carers or children.

3. You must not collect any more data than is necessary.

Only collect the data you need to hold in order to do the job for which you have collected the data.

How do you do this?

Only collect data that is necessary for you to comply with the legal obligations of your home nation, and ensure you review the personal data you hold on a regular basis to ensure it is relevant and necessary.

4. Data has to be accurate and there must be mechanisms in place to keep it up to date.

This could be through an annual review, in which you check and confirm that the personal data you hold is still accurate.

How do you do this?

Ask parents and carers to regularly provide updates about their own and their children’s personal details.

5. You cannot keep data any longer than needed.

You must only keep the data for as long as is needed to complete the tasks it was collected for.

How do you do this?

Carry out a data audit, for example on a yearly basis (see Section 6). You may find the PACEY record keeping practice guide useful.

<https://www.pacey.org.uk/mypacey/resources/regulation-and-legislation/gdpr/gdpr-practice-guide/>

Archive any data that you still need to hold and securely destroy data that is no longer needed. Use a shredder when disposing of paper records. Delete digital data, i.e. emails, social media groups, cloud based storage.

6. You must protect all personal data.

You are responsible for ensuring that you, and anyone else charged with using the data, process and store it securely.

How do you do this?

Store all paper records in a locked, secure place at all times. Have appropriate security in place for any digital records you keep, for example by using strong (and regularly changed) passwords. Ensure all electronic devices are protected by up-to-date anti-virus and firewall software and automatically lock after a period of inactivity. All portable devices containing personal data, including laptops, tablets, mobile phones and USB sticks, should be encrypted. Ensure you and any members of staff have separate log-in details and passwords that are not accessible to anyone outside of your business (e.g. family members).

You should also carry out due diligence checks on any third-party suppliers that have access to your data, for example online record-keeping software and apps, to make sure they are complying with GDPR.

In addition, make sure you have registered with ICO.

7. You must be accountable for the data.

This means that you need to be able to show how you, and anyone working with you, are complying with the law.

How do I do this?

Undertake an audit of all the personal data you hold (see Section 6) and the lawful basis for holding it. Review your data regularly to make sure it is up to date and still necessary. Dispose of all unnecessary data securely. Ensure you have a data protection and fair processing policy. Make sure you and any staff regularly undertake data protection training. Notify the ICO of any data security breach.

4. Children and the GDPR

The GDPR enhances the protection of children's personal data. Compliance with the seven data protection principles, especially fairness, are absolutely central when it comes to processing children's personal data. You should also bear in mind that children have the same rights as adults over their personal data, including the rights to access their personal data; request rectification; object to processing; and have their personal data erased. Particular care needs to be taken if you market any services or products directly to children. See ICO for the most up to date guidance: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/applications/children/>.

Let's now explore how you can meet those principles in more detail.

5. Importance of maintaining records

One of the primary requirements of GDPR is for you to maintain records of how you gather and hold all personal data. Remember that personal data is information that may be used to identify a living person. This could be data held in your business documentation, for example, child record forms, photos you have taken of children, any staff records, CCTV images, or even information in WhatsApp groups. This data may be stored digitally through a third party apps, for example, Kinderly, or on your own computer systems or on paper. Maintaining these records robustly will help you to make sure that you are doing what you can to meet the new regulations.

Put simply, this means that you need to be clear about the following:

- What personal data you hold
- Why you need it
- What you plan to do with it
- Where it came from
- Who you share it with

These records are essential. Consider, for example, if you have shared information with another organisation which you later discover to be incorrect; you will have to tell the other organisation about the inaccuracy so it can correct its own records. You won't be able to do this unless you know what personal data you hold, where it came from and who you share it with. You should also make a note of any requests to access or destroy personal data. Documenting this information will also help you to comply with the GDPR's **accountability principle**, which requires organisations to be able to show how they are complying with the data protection principles, for example by having effective policies and procedures in place.

Let's think about what personal data you hold in relation to your early years and childcare business.

You're likely to have personal data about individuals recorded in:

- Child record forms
- Contracts
- Accident, incident, and medication forms

- Attendance registers
- Complaint forms
- Daily diaries
- Learning journals
- Individual care plans for medical conditions
- Plans for disabled children or those with additional needs
- Parental consent forms
- Partnership consent forms
- Accounts
- Staff records, including recruitment information
- Photographs and videos
- CCTV

6. Personal data audit

Complete the table below to remind yourself of the personal data you hold and the processes you have in place for managing it. There's a blank version at the end for you to use.

Information held and type of data	Digital or paper	Where did the data come from?	Why do I need it?	Who do I share it with?	Is there a risk of data breach?	When will I dispose of this data?
Child record form <i>Sensitive personal</i>	Paper	Information from parents	Comply with statutory requirements	Other professionals Ofsted LSCB CIW/RSCB	No, locked in filing cabinet	(REFER TO PACEY RECORD KEEPING PRACTICE GUIDE)
Head count or other reporting data <i>Sensitive personal</i>	Digital – spreadsheet on my computer	Compiled from my setting records	Comply with funded places delivery	My local authority	No, sent via secure portal provided by local authority	n/a

7. Additional policies to consider

Now that you have identified the personal data you hold, it's time to ensure that you are clear and transparent about how you communicate your duty to parents, carers, other providers, your local authority and national regulators (Ofsted/CIW etc.). One way to do this is with a privacy notice. You can adapt this version to meet your own setting's needs.

<https://www.pacey.org.uk/mypacey/resources/regulation-and-legislation/gdpr/sample-privacy-notice/>

You should also use this opportunity to review your other policies and documentation in light of the new GDPR requirements. PACEY has produced a range of relevant resources, including:

- Data protection policy
- Privacy notice template
- Opt-in template
- Record-keeping practice guide
- Registering with ICO-factsheet

8. Other sources of advice and information

The Information Commissioner's Office is leading the UK's implementation of GDPR, and contains resources including [self-assessment checklists](#) which can give you a rating and suggestions of how to comply.

There is also [advice for small businesses](#) and an advice line for small organisations

Remember that if you handle personal data, you may need to register as a data controller with the Information Commissioner's Office. Registration is a statutory requirement and every organisation that processes personal information must register with the ICO, unless they are exempt. Failure to register is a criminal offence.

If you are not sure if you need to register with the ICO you can complete a registration self-assessment. Please note there will be changes to ICO fees and registration in 2018.

9. Professional Standards

Here are the areas of PACEY professional standards that this practice guide relates to. Remember, reading practice guides can count towards your continuing professional development (CPD).

PACEY Professional Standards
Member
C1.1 Organise routines, activities and experiences to promote children's development
C3.1 Take all necessary steps to safeguard the children in your care
E1.1 Plan and organise my setting to make sure it is safe and welcoming
E2.1 Work in partnership with parents, carers, other childcare practitioners and professionals

S1.1 Meet relevant laws, regulations, guidance and quality requirements

S2.1 Run my childcare service so that it survives

Affiliate

C1.2 Organise routines, activities and experiences to promote children's development

C3.2 Take all necessary steps to avoid risks and safeguard the children in your care

E1.2 Plan and organise my setting to make sure it is safe and welcoming

E2.2 Work in partnership with parents, carers, other childcare practitioners and professionals

S1.2 Meet relevant laws, regulations, guidance and quality requirements

S2.2 Run my childcare service so that it survives

Personal Data Audit Table

Information held and type of data	Digital or paper	Where did the data come from?	Why do I need it?	Who do I share it with?	Is there a risk of data breach?	When will I dispose of this data?

Personal Data Audit Table

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PACEY is the Professional Association for Childcare and Early Years. A standard-setting organisation, we promote best practice and support childcare professionals to deliver high standards of care and learning. Since 1977 we have provided high quality support to our members and have worked with government, local authorities and others to raise standards. Together with our members - childminders, nannies and nursery workers - we are working to become the professional association for everyone in childcare and early years and ensure our members are recognised for the vital role they play in helping children get the best start in life

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