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## Data Protection – a summary guide to the key aspects

As of 25 May 2018, the General Data Protection Regulation (GDPR) will come into force throughout the European Union. Irrespective of the uncertainty over the ultimate consequences of 'Brexit', it is almost inevitable that the privacy standards set by the EU will need to be maintained.

It will be the most pronounced overhaul of data protection laws since the Data Protection Act 1998, which had remained largely unaltered since inception.

The amendments give rise to a number of changes, which will likely have significant effects upon social housing.

### What does it cover?

The types of data considered personal under the existing legislation include names, addresses, and photographs

Broadly, the GDPR will expand the definition of data to incorporate the ever-growing digital element of personal data.

More specifically, GDPR extends the definition of personal data so that something like an IP address can be considered personal data. It also includes sensitive personal data such as genetic data, and biometric data which could be processed to uniquely identify an individual.

### Controllers and processors

The legislation defines two different types of data handlers. A "controller" is a person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of processing of personal data.

A "processor" is a person, public authority, agency or other body which processes personal data on behalf of the Controller.



### Potential for problems?

Housing Organisations may deal with a large number of tenants, their families and other occupiers. In order to do so they require information or data and therefore have to determine the purposes and means of processing it. Furthermore, such organisations process data from within their own departments and from third parties such as local authorities. It is also often necessary for housing organisations to share personal data with various organisations, particularly for the purposes of legal proceedings or debt recovery. Thus, a Registered Provider of Social Housing may be a controller and/or a processor of data.

The central aim of the regulation is to ensure individuals are able to control their own personal data. To help achieve this, 'data controllers' (including local authorities) will need to inform individuals of how they will process the individuals' data before such processing takes place.

In addition to the current obligations, the individual must be informed of the following matters:

- The basis for processing the data
- The retention period
- That the individual has a right to complain to the Information Commissioner's Office
- Whether the individual is under a statutory or contractual requirement to provide the data
- Any potential consequences for failing to provide the data

Further, where consent to information is inferred from inactivity, pre-ticked boxes or silence, the consent will be deemed invalid.

In order for consent to be valid under the GDPR, it must be:

- Freely given
- Specific
- Informed
- unambiguous

### Right to be forgotten

Where a request is made for an individual to be forgotten, their data can be erased if the individual withdraws consent or if the processing does not satisfy the GDPR. Where an authority receives such a request, it will need to notify anyone with whom it has shared the personal data, unless it would be impossible to do so, or require disproportionate effort.

The Commission has stated that "By unifying Europe's rules on data protection, lawmakers are creating a business opportunity and encouraging innovation".

Opportunity and innovation may still come at the price of a regulatory burden...

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