

LOCAL GOVERNMENT ASSOCIATION

TEMPLATE PERSONAL DATA RETENTION POLICY FOR LGPS FUNDS

- 1 This template personal data retention policy has been prepared for the Local Government Association. We understand that copies will be provided to the administering authorities of Local Government Pension Scheme funds in England and Wales. **This template will need to be tailored to the specific circumstances of each fund.** Accordingly we accept no liability to individual funds or their administering authorities unless we provide formal advice specific to that authority.
- 2 This template is not advice to other connected or stakeholder parties, their auditors or other advisers, or other third parties ("**Third Parties**"). Other than as noted in paragraph 1 above, no part of this template may be passed on to Third Parties without our written agreement but, if it is so passed, we accept no responsibility, and will have no liability in contract, tort or otherwise, to those Third Parties in relation to this template.
- 3 This template has been prepared based on an understanding of the law and guidance as at the date of issue. Accordingly, it is possible that this template will need to be updated if the law changes or guidance is revised. However, we will only do so if the Local Government Association specifically give us written instructions to do so.
- 4 Please note that we have made some amendments to the template Participating Employer Personal Data Retention Policy, which was issued on 18 July 2019. The changes made are noted below to assist administering authorities who have already issued their personal data retention policy for LGPS Funds in determining whether and when to issue an update to their data retention policy:
 - a. We have inserted a new reference to "data protection legislation" in the first paragraph rather than referring to specific legislation throughout and have added a footnote to explain what the legislation is for the benefit of administering authorities. We have also included references to the UK GDPR and the EU GDPR as there are now effectively "two GDPRs"; the EU version of the GDPR and the GDPR as incorporated into UK law. As at today's date, those provisions are near identical for most purposes. However, they may diverge over time following the UK's exit from the EU though for most purposes we would expect that it will be the UK version of the GDPR that will be relevant to administering authorities.
 - b. In the section titled, "**Types of personal data we hold**", we have removed the footnotes relating to the requirement for administering authorities to obtain explicit consent. If you would like further information on this point, this information is contained in footnotes of the long form privacy notice in the section titled, "**What personal data we hold, and how we obtain it.**"
 - c. We have updated the footnotes throughout this template personal data retention policy to ensure that all legislative references are correct and complete. The footnotes have also been expanded to provide further guidance where possible.
- 45 This template is intended to **enable** assist administering authorities, in their capacity as **data** controller of personal data relating to the Local Government Pension Scheme

fund –for which they are responsible, to satisfy their obligation under ~~the General Data Protection Regulations ("GDPR")~~[data protection legislation](#) in relation to the retention of personal data. We have not considered or advised on any tax or commercial implications that individual funds may wish to consider in conjunction with this notice. The template only concerns the retention of personal data and not any other data or information that funds may wish or be required to retain.

- 5 — This template takes into account guidance issued by a number of bodies (listed on ~~page 3~~[in the section titled, "Retention periods for personal data"](#)) as at the date of issue. Some of that guidance is not specific to pension arrangements and there is an obvious tension between the requirements of ~~GDPR~~[data protection legislation](#) and the need for funds to retain personal data for significant periods of time in order to be able to pay benefits correctly and respond to future queries. Individual funds will need to consider whether their own administration arrangements are such that more detail should be included. Particular attention should be paid to footnotes ~~4~~[5](#) and ~~5~~[7](#). It is likely that best practice in this area will continue to develop and individual funds should review their data retention policies regularly and consider whether they should be updated and reissued.
- 6

Squire Patton Boggs (UK) LLP
2 July 2019

[17 September 2021](#)

PERSONAL DATA RETENTION POLICY

[-]¹ (the "Fund")

This document has been prepared by [-]² (the "Administering Authority", or "we") in its capacity as the administering authority of the Fund and sets out the Fund's Fund's policy on the retention of personal data: [in accordance with data protection legislation applicable to the Administering Authority when processing personal data.](#)³

This policy document can also be accessed via the following link: [insert link to relevant area of website] and should be read in conjunction with the Fund's Fund's privacy notice, which can be accessed via the following link: [insert link to relevant area of website].

Introduction

As ~~data~~-controllers, we are required by [data protection](#) legislation to comply with the principles of data minimisation and storage limitation. Personal data we process:

- must be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed; and
- must not be kept in a form which permits identification of a data subject for longer than is necessary for the purposes for which the personal data is processed.

We are obliged to retain certain records (whether in hard copy or electronic form) for various periods of time because:

- we have a statutory obligation to do so; and/or
- the information contained in those records may be necessary for the future (for example, questions may arise about the calculation of benefits paid in the past, and data that may be relevant to a possible legal claim needs to be kept until the period within which that claim could be brought has expired).

This policy document sets out the measures adopted by the Fund to comply with the principles of data minimisation and storage limitation in relation to personal data that it holds.

Types of personal data we hold⁴

We hold and process the following types of personal data in relation to Members [and beneficiaries](#) of the Fund:

¹ _____ Please insert name of the Fund.

² _____ Please insert name of the administering authority.

³ [Please note that the relevant data protection legislation includes:](#)

- [The UK Data Protection Act 2018;](#)
- [The UK GDPR \(as defined in the Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019/419\); and](#)
- [To the extent relevant, the General Data Protection Regulation 2016/679 \(the "EU GDPR"\).](#)

[In this policy references to the "GDPR" include both the EU GDPR and UK GDPR unless expressly otherwise specified.](#)

⁴ _____ Please consider whether any personal data other than that listed is held or processed. This list should be conformed to the Fund's Fund's privacy notice.

- Contact details, including name, address, telephone numbers and email address.
- Identifying details, including date of birth, national insurance number and employee and membership numbers.
- Information that is used to calculate and assess eligibility for benefits, for example, length of service or membership and salary information.
- Financial information relevant to the calculation or payment of benefits, for example, bank account and tax details.
- Information about the ~~Member's~~Member's family, dependents or personal circumstances, for example, marital status and information relevant to the distribution and allocation of benefits payable on death.
- Information about the ~~Member's~~Member's health, for example, to assess eligibility for benefits payable on ill health, or where the ~~Member's~~Member's health is relevant to a claim for benefits following the death of a Member of the Fund.
- Information about a criminal conviction if this has resulted in the Member owing money to the ~~Member's~~Member's employer or the Fund and the employer or Fund may be reimbursed from the ~~Member's~~Member's benefits.

Retention periods for personal data⁵

In compiling our policy on the retention of personal data, we have taken into account the guidelines on the retention of personal data as set out by / in:

- Information and Records Management Society;
- The National Archives;
- HMRC compliance handbook manual CH15400;
- ~~[Lord Chancellor's~~Chancellor's Code of Practice on the Management of Records issued under Section 46 of the Freedom of Information Act 2000~~];~~
• ~~ICO's~~Information Commissioner's Office's guidance on storage retention policy;

⁵ ~~_____~~ The European Data Protection Board (previously known as the Article 29 Working Party) guidelines on retention periods state that meaningful information about the likely period of retention should be provided to data subjects and a generic statement in the privacy notice is not appropriate. This retention policy should, therefore, set ~~out~~ defined ~~periods~~periods beyond which ~~different categories of~~ personal data will no longer be held (and, ~~preferably, should include~~ separate periods for different categories of data where this is appropriate). ~~For example, it is unlikely to be justifiable to retain bank details for beneficiaries once they cease to be entitled to receive benefit payments).~~ The EU GDPR does not prescribe a specific time period beyond which particular categories of personal data are required to be deleted but does make it clear that data must not be kept: for longer than is necessary. Administering Authorities should be aware that if they do not ~~attempt to give a~~specify defined ~~periods~~periods for which personal data will be held, ~~strictly speaking and then put measures in place to delete data after the end of the relevant period,~~ this is unlikely to comply with the GDPR. See Articles 5(1) and 5(2), and in particular Article 5(1)(c) - (e) of the GDPR. ~~Please also see and~~ Recital 39 of the GDPR.

Therefore, whilst we note that:

- the Lord ~~Chancellor's~~Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000 refers to records being kept as long as they are needed by the authority: for reference or accountability purposes, to comply with regulatory requirements or to protect legal and other rights and interests (paragraph 12.2); and
- the Information and Records Management Society states that certain records will need to be retained indefinitely where they evidence pension or other benefit entitlements;

a suggested specific default timeframe for the retention of personal data has been included in this policy ~~in order to comply with the requirements of the GDPR.~~ Administering Authorities will need to consider the extent to which the suggested wording matches their actual (or intended future) practice. and requirements. Administering Authorities should also consider whether different retention periods should be adopted and set out here for different categories of data, if certain categories will not be required for this full default timeframe.

We are aware that the majority of pension funds have kept personal data indefinitely, either because they believe that is appropriate (e.g. because the data might need to be referred to in the future given the long term nature of pension liabilities), or because in practice it is not possible within the constraints of the administration system to implement a destruction policy for selected data relating to a particular individual. This is unlikely to comply with the GDPR. Although we are not aware of the Information ~~Commissioner's~~Commissioner's Office ("ICO") having issued guidance in this area that is specific to pension schemes and we consider the risk of retrospective sanction by the ICO in this area to be low, we anticipate that this will be an area in which good practice will continue to develop. Consequently we recommend that pension funds consider proactively putting in place a policy with defined period(s) beyond which personal data will not be held (within the constraints of an acknowledged need to retain at least some personal data for a significant period of time, in order to administer benefits and deal with potential future queries). If there are certain categories of personal data that ~~funds~~Funds consider are not needed for as long a period (e.g. bank account details; underlying benefit calculation information for a Member who has transferred-out more than a specified number of years ago) then it would be advisable to adopt a shorter retention period for such categories.

- ~~EU Article 29 Working Party guidance~~; and
- The ~~Pension Regulator's~~ [Pensions Regulator's](#) code of practice 14 for public service pension schemes.

Data protection legislation requires that we retain personal data for no longer than is necessary in order to fulfil the purpose(s) for which it is processed. Given the long term nature of pensions, we need to ensure that personal data is retained to:

- comply with our [\[legal and regulatory\]](#) obligations regarding the payment of ~~pensions~~ [benefits](#) from the Fund; and
- deal with any questions or complaints that we may receive about our administration of the Fund.

~~Personal~~ [We will retain personal](#) data ~~will be retained~~ for the greater of ⁶:

- such period as the Member (or any ~~Beneficiary~~ [beneficiary](#) who receives benefits after the ~~Member's~~ [Member's](#) death) are entitled to benefits from the Fund **and for a period of [15 years]**⁷ after those benefits stop being paid; ~~for~~
- **[100 years from the ~~Member's~~ [Member's](#) date of birth]**⁸; ~~for~~
- **[100 years from the date of birth of any ~~Beneficiary~~ [beneficiary](#) who received benefits from the Fund after the ~~Member's~~ [Member's](#) death].**

During any period when we retain personal data, we will keep that personal data up to date and take all reasonable steps to ensure that inaccurate data is either erased or rectified without delay. We will periodically review the personal data that we retain and consider whether it is still required; any personal data that we no longer require will be destroyed.⁹

~~Member's~~ [Member's](#) and ~~Beneficiary's~~ [beneficiary's](#) rights

Beneficiaries form a wider category of people who receive benefits from the Fund, for example the active/deferred/pensioner ~~Member's~~ [Member's](#) spouse / child(ren) / dependants who may receive benefits from the Fund following a ~~Member's~~ [Member's](#) death. Members of the Fund and ~~Beneficiaries~~ [beneficiaries](#) have a right to access and obtain a copy of the personal data that we hold about them and to ask us to correct personal data if there are any errors or it is out of date or incomplete.

In certain circumstances a Member / ~~Beneficiary~~ [beneficiary](#) has the right to:

- object to the processing of their personal data;
- restrict¹⁰ the processing of their personal data until any errors are corrected;

⁶ — The greater of "100 years from date of birth" and "last payment of benefits to the Member/~~Beneficiary~~ [beneficiary](#) plus 15 years", is intended to ensure that Administering Authorities are acting in line with the Pensions ~~Regulator's~~ [Regulator's](#) Code of Practice 14 (Public Service Pension Schemes) which notes that data will need to be held for long periods of time and schemes will need to retain some records for a Member even after that individual has retired, ensuring that pension benefits can be properly administered over the lifetime of the Member and their ~~Beneficiaries~~ [beneficiaries](#) (paragraph 135).

⁷ — The suggested period of "last payment of benefits plus 15 years" is based on the current maximum statutory limitation period, as any complaints about the payment of those benefits would usually need to be brought within that timeframe.

⁸ — The suggested period of "100 years from date of birth" is based on the guidelines by the National Archives and the ~~ICO's~~ [ICO's](#) retention policy.

⁹ — 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. Consideration should also be given to "filleting" the data held, so that individual items are not retained for longer than actually required. For example, it may be appropriate to destroy bank account details within a shorter period of a benefit ceasing to be payable. We recommend that ~~funds~~ [Funds](#) adopt shorter retention periods for particular categories of data (see ~~note 4~~ [footnote 5](#) above) and conduct a periodic audit of personal data held, with a view to destroying any that is no longer required in relation to a particular Member or ~~Beneficiary~~ [beneficiary](#).

¹⁰ — See Article 18 of the GDPR. The Administering 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) [in a number of circumstances](#)

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- transfer their personal data; or
- erase¹¹ their personal data.

If the exercise of the ~~Member's / Beneficiary's~~Member's / beneficiary's rights would prevent us from paying or continuing to pay a pension from the Fund, we will consider retaining a minimised version of that ~~Member's / Beneficiary's~~Member's / beneficiary's personal data in order to fulfil our legal and regulatory obligations.¹²

Participating Employers

This policy applies to [-]¹³ in its capacity as the administering authority of the Fund. We have produced separate guidance for other participating employers in the Fund about our expectations for the retention by them of personal data we may require to administer the Fund. That guidance includes a suggested data retention policy that employers can each adopt in relation to their participation in the Fund.

Review

This policy will be reviewed by [the Fund]¹⁴ at least [annually]¹⁵.

specified in Article 18. These include 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 reason~~, and the Administering Authority's justification for the processing is based on Article 6(1)(e) or (f), i.e. the necessity to: perform a task in the public interest or pursuant to an official authority; or (if applicable) in its legitimate interests. The restriction will last until the Administering Authority is able to verify the accuracy of the personal data or demonstrate ~~the~~an overriding 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.

¹¹ — See Articles 17(1) and 17(2) of the GDPR. This information should be included in the policy notwithstanding that in relation to the LGPS 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).

¹² — See Article 17(3) of the GDPR. Article 18(2) and 18(3) provide exceptions to the right of the Member to restrict the processing of personal data in certain circumstances.

¹³ — Please insert name of the ~~administering authority~~Administering Authority.

¹⁴ — Amend if a specific body or individual will be responsible for the review of this policy.

¹⁵ — The policy should be reviewed regularly. Amend the review period if an annual review of the policy is not suitable.