

**TEMPLATE PERSONAL DATA RETENTION POLICY FOR SCHEME EMPLOYERS IN  
THE LGPS**

- 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 for them to provide to employers participating in their fund. **This template will need to be tailored to the specific circumstances of each fund/scheme employer.** Accordingly, we accept no liability to individual funds, their administering authorities or any scheme employer unless we provide formal advice specific to that authority or employer in relation to this template.
- 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 Personal Data Retention Policy for Scheme Employers in the LGPS, which was issued on 25 July 2019. The changes made are noted below to assist administering authorities who have already issued their personal data retention policy for LGPS scheme employers 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 Scheme Employers 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 the 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 ~~enables~~ is intended to 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 set their expectations of employers participating in their fund in relation to the retention of personal data that may need to be provided to the fund. The template includes a suggested form of data retention policy for adoption by individual employers in relation to their participation in the fund. We have not considered or advised on any tax or commercial implications that administering authorities and/or scheme employers may wish to consider in conjunction with this template. The template only concerns the retention of personal data and not any other data or information that administering authorities and/or scheme employers may wish or be required to retain.

56 This template takes into account guidance issued by a number of bodies (listed in the policy) 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 ~~the General Data Protection Regulations ("GDPR")~~ data protection legislation and the need for funds and/or scheme employers 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 and scheme employers will need to consider whether their own administration arrangements are such that more detail should be included. Particular attention should be paid to footnotes 89 and 1112. It is likely that best practice in this area will continue to develop and individual funds and scheme employers should review their data retention policies regularly and consider whether they should be updated and reissued.

Squire Patton Boggs (UK) LLP

~~25 July 2019~~

17 September 2021

## PERSONAL DATA RETENTION POLICY EXPECTATIONS

**[ - ]**<sup>1</sup> (the "Fund")

This document has been prepared by **[ - ]**<sup>2</sup> (the "Administering Authority") in its capacity as the administering authority of the Fund. Employers participating in the Fund are under a statutory duty to provide data to the Fund under regulation 80 of the Local Government Pension Scheme Regulations 2013. This document sets out the Fund's expectations of employers participating in the Fund in relation to the retention of personal data that is required by the Fund.

This 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 privacy notice, which can be accessed via the following link: [\[insert link to relevant area of website\]](#).

This document largely takes the form of a template personal data retention policy for individual employers participating in the Fund to tailor to their own circumstances before adopting or incorporating into their existing personal data retention policy. In collecting and processing personal data required by the Fund, individual employers will be acting as separate, independent ~~data~~-controllers to the Administering Authority. The Administering Authority will assume responsibility as ~~data~~-controller of that personal data once it is provided to the Fund. However, in order that the Administering Authority can fulfil its legal obligations in relation to that data (as well as to pay the correct benefits to current and former employees of each individual employer and their beneficiaries), the Administering Authority expects individual employers to adopt certain minimum data retention periods. Those minimum periods are set out in the template personal data retention policy.

In determining what data retention period to adopt, ~~Employers~~[employers](#) should note in particular that:

- you may have to provide salary information to the Administering Authority for certain Members relating to the thirteen years prior to the date of ceasing pensionable service in the Fund;
- the working hours of Members who have pre-1 April 2014 pensionable service in the Fund and are entitled to final salary benefits, are used in the calculation of certain benefits - queries regarding the Member's working hours can be received many years after any change in the Member's working pattern took effect;
- you are responsible for making ill health determinations in respect of both active and deferred Members (i.e. your former employees) and, in the case of deferred Members, may need to provide job descriptions to Independent Registered Medical Practitioners many years after a Member has ceased employment with you in order to assess if the Member is permanently incapable of doing the job they were employed to do whilst in employment with you;<sup>3</sup>
- queries about salary data may arise some time after the relevant pay period for which it was provided, due to the complex definitions of pensionable pay in the Local Government Pension Scheme Regulations 2013 and the interaction with the tax regime for pension benefits;

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<sup>1</sup> Please insert name of the Fund.

<sup>2</sup> Please insert name of the administering authority.

<sup>3</sup> This may involve your HR department rather than your payroll department or provider. Generic job descriptions may not be personal data. However, if the individual member can be identified from the job description, it will still be personal data protected by [GDPR data protection legislation](#).

- legal and tax requirements may change, requiring the Fund to recalculate benefits for which additional personal data is needed (for example, the Government may amend the [LGPS Local Government Pension Scheme Regulations 2013](#) to take account of recent Court cases concerning age discrimination within public sector pension schemes following benefit changes in 2014/5).

These factors mean the Fund requires some types of personal data to be available for longer periods of time than may usually be the case in relation to employees.

Employers wishing to make significant amendments to the template data retention policy are invited to discuss their policy with the Administering Authority before adoption, so that both parties can ensure they will be able to fulfil their legal obligations in relation to personal data required by the Fund.

Employers are responsible for providing payroll information and other data to the Administering Authority, even if those services are outsourced. You should provide your payroll department or provider with a copy of your data retention policy once adopted or updated and ask them to confirm that personal data will be retained in line with your policy. Employers should also ensure that they retain access to historical pay information if there is a change to the payroll provider.

Failure to provide historic salary/hours worked information or job descriptions may result in the Administering Authority having to make decisions or reasonable assessments in respect of a Member's benefits payable from the Fund. In the absence of such information, these could be challenged by the Member under the Internal Dispute Resolution Procedure, ultimately resulting in referral to the Pensions Ombudsman.

Issued on behalf of the Administering Authority by:

[Name]

[Date]

## PARTICIPATING EMPLOYER PERSONAL DATA RETENTION POLICY

**[ - ]**<sup>4</sup> (the "Employer" and "we")

This document has been prepared by the Employer, in its capacity as a scheme employer in the **[ - ]**<sup>5</sup> (the "Fund") and sets out the Employer's policy on the retention of personal data relating to its employees who are members of the Fund, [in accordance with data protection legislation, applicable to the Employer when processing personal data.](#)<sup>6</sup>

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

### 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<sup>7</sup> 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 either to be put into payment or that have been 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 Employer to comply with the principles of data minimisation and storage limitation in relation to personal data that we hold and process for the purposes of the Fund.

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<sup>4</sup> Please insert name of the ~~Scheme Employer~~[scheme employer](#).

<sup>5</sup> Please insert name of the Fund.

<sup>6</sup> 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.](#)

<sup>7</sup> Scheme employers have a statutory obligation to provide information to the pension fund under regulation 80 of the Local Government Pension Scheme Regulations 2013.

## Types of personal data we hold<sup>8</sup>

We hold and process the following types of personal data in relation to our current and former employees who are Members of the Fund:

- 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, history of hours worked or membership and salary information necessary for the calculation of the Member's benefits in the Fund.
- For current employees, information about the Member's family, dependants or personal circumstances, for example, marital status and information relevant to the distribution and allocation of benefits payable on death in service.
- Information about the Member's health, for example, to assess eligibility for benefits payable on ill health, or where the ~~scheme~~ Member's health is relevant to a claim for benefits following their death.
- Information about a criminal conviction if this has resulted in the Member owing money to the Employer or the Fund and the Employer or Fund may be reimbursed from the Member's benefits.

## Retention periods for personal data<sup>9</sup>

<sup>8</sup> Please consider whether any personal data other than that listed is held or processed by the Employer. Any personal data that the Fund generates and holds independently of the Employer can be deleted (e.g. bank account details if only provided directly by Members to the Fund). This list should be conformed to the Employer's and the Fund's privacy notices.

<sup>9</sup> 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 ~~period~~ 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~~. Scheme Employers should be aware that if they do not ~~attempt to give a~~ specific defined ~~period~~ 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:

- (to the extent applicable to the ~~Scheme Employers~~ ~~scheme employer~~), the Lord 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. Scheme~~. Employers will need to consider the extent to which the suggested wording matches their actual (or intended future) practice ~~and requirements. Employers 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.~~

Retaining personal data indefinitely, either because ~~Scheme Employers~~ ~~scheme employers~~ 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 personnel or administration system to implement a destruction policy for selected data relating to a particular individual, is unlikely to comply with the GDPR. Although we are not aware of the Information Commissioner 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 ~~Scheme Employers~~ ~~scheme employers~~ 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 scheme employers / 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. It is possible that individual ~~Scheme Employers~~ ~~scheme employers~~ will have shorter data retention periods for their employment personal data more generally; Funds will need to understand when personal data will be destroyed and check that the Employer's policy will allow them sufficient

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 Code of Practice on the Management of Records issued under Section 46 of the Freedom of Information Act 2000;]<sup>10</sup>
- ~~ICO's~~ [Information Commissioner's Office's guidance on storage retention policy](#);
- ~~EU Article 29 Working Party~~ [guidance](#); and
- The ~~Pension~~ [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 [\[legal and regulatory\]](#)<sup>44</sup> obligations as a participating employer regarding the payment of ~~pensions~~ [benefits](#) from the Fund; and
- deal with any questions or complaints that we or the Fund may receive about a Member's ~~pension~~ [or other beneficiary's](#) entitlement [to benefits](#) from the Fund.

~~Personal data~~ We will ~~be retained~~ [retain personal data](#) for a maximum period of fifteen years<sup>12</sup> after termination of employment.<sup>13</sup>

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.<sup>14</sup>

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opportunity to obtain all personal data that the Fund requires (and enable any subsequent queries or checks for a sufficient period).

<sup>10</sup> This will only be relevant to certain categories of scheme employers (e.g. public bodies such as county councils) and therefore the ~~scheme employer~~ [Employer](#) should consider whether the inclusion of this reference is appropriate.

~~<sup>44</sup> This will need to be tailored to fit the circumstances of the individual scheme employer.~~

<sup>12</sup> The suggested period of "fifteen years after termination of employment" is based on the current maximum statutory limitation period, as any complaints about the calculation of either deferred or pensioner benefits would usually be expected to be brought within that timeframe.

<sup>13</sup> This will need to be tailored to fit the circumstances of the individual scheme employer. The Fund will hold the relevant information for the greater of "100 years from date of birth" and "last payment of benefits to the Member/~~Beneficiary~~ [beneficiary](#) plus 15 years", however the Fund is conscious that individual scheme employers may have their own individual data retention policies in place.

<sup>14</sup> 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 ~~Scheme~~ Employers adopt shorter retention periods for particular categories of data (see note [79](#) 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](#).



## 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 spouse / child(ren) / dependants).<sup>15</sup> 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
- restrict<sup>16</sup> the processing of their personal data until any errors are corrected;
- transfer their personal data; or
- erase<sup>17</sup> their personal data.

If the exercise of the Member's / ~~Beneficiary's~~ beneficiary's rights would prevent us from providing the personal data to the ~~[ - ]~~<sup>18</sup> in order for the payment or continued payment ~~of a pension~~ benefits from the Fund, we will consider retaining a minimised version of that Member's / ~~Beneficiary's~~ beneficiary's personal data in order to fulfil our legal obligations.<sup>19</sup>

## Review

This policy will be reviewed by ~~[the Employer]~~<sup>20</sup> at least ~~[annually]~~<sup>21</sup>.

<sup>15</sup> Funds to consider whether ~~Employers~~ employers provide personal data about ~~Beneficiaries~~ beneficiaries in practice and amend the template accordingly if required.

<sup>16</sup> See Article 18 of the GDPR. The ~~Scheme Employer~~ scheme employer 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 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 ~~Scheme Employer's~~ scheme employer'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 ~~Scheme Employer~~ scheme employer 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.

<sup>17</sup> 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).

<sup>18</sup> Insert name of administering authority.

<sup>19</sup> 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.

<sup>20</sup> Amend if a specific body or individual will be responsible for the review of this policy.

<sup>21</sup> The policy should be reviewed regularly. Amend the review period if an annual review of the policy is not suitable.