

The General Data Protection Regulation

# The data protection fee

A guide for controllers

**ico.**

Information Commissioner's Office

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# 1. Introduction

The Information Commissioner's Office (ICO) is the independent supervisory authority set up to promote and oversee compliance with data protection legislation in the UK.

On 25 May 2018, a new data protection regime will come into force, through the General Data Protection Regulation (GDPR) and the Data Protection (Charges and Information) Regulations 2018 (the 2018 Regulations). Amongst other things, these will change the way we fund our data protection work.

This guidance deals specifically with the requirements of the 2018 Regulations. These were laid before Parliament on 20 February 2018 and are still in draft form. We have produced this guidance in line with the draft regulations to give controllers as much time as possible to work out what fee, if any, they are likely to need to pay under the new regime. However, the 2018 Regulations are still subject to Parliamentary approval and may be subject to change. We therefore intend to update this guidance before 25 May 2018.

## 2. Overview of the 2018 Regulations

Under the 2018 Regulations, organisations that determine the purpose for which personal data is processed (controllers) must pay the ICO a data protection fee unless they are exempt. These fees fund our data protection work, which includes our work under the General Data Protection Regulation (GDPR) and the Data Protection Act (DPA).

The new data protection fee replaces the requirement to 'notify' (or register), which is in the Data Protection Act 1998 (the 1998 Act). We have the power to enforce the 2018 Regulations and to serve monetary penalties on those who refuse to pay their data protection fee.

Although the 2018 Regulations come into effect on 25 May 2018, this doesn't mean everyone has to pay the new fee on that date. Controllers who have a current registration (or notification) under the 1998 Act do not have to pay the new fee until that registration has expired.

## 3. How much is the data protection fee?

There are three different tiers of fee and controllers are expected to pay between £40 and £2,900. The fees are set by Parliament to reflect what it believes is appropriate based on the risks posed by the processing of personal data by controllers.

The tier you fall into depends on:

- how many members of staff you have
- your annual turnover
- whether you are a public authority
- whether you are a charity
- whether you are a small occupational pension scheme.

Not all controllers must pay a fee. Many can rely on an [exemption](#).

### **Tier 1 – micro organisations**

You have a maximum turnover of £632,000 for your financial year **or** no more than 10 members of staff. The fee for tier 1 is £40.

### **Tier 2 – small and medium organisations**

You have a maximum turnover of £36 million for your financial year **or** no more than 250 members of staff. The fee for tier 2 is £60.

### **Tier 3 – large organisations**

If you do not meet the criteria for tier 1 or tier 2, you have to pay the tier 3 fee of £2,900.

We regard all controllers as eligible to pay a fee in tier 3 unless and until they tell us otherwise.

## **4. Working out your data protection fee**

### **Calculating members of staff**

For the purpose of working out the fee, 'members of staff' is defined broadly to include all your employees, workers, office holders and partners. Your number of members of staff is the average number working for you during your financial year. Each part-time staff member is counted as one member of staff.

So you should:

- work out, for each completed month of your financial year, the total number who were members of staff in that month
- add together the monthly totals
- divide it by the number of months in your financial year.

It doesn't matter if your members of staff are based in the UK, overseas or a mixture of both. They all count.

## Exceptions

The 2018 Regulations make certain exceptions for some controllers.

- **Public authorities** should categorise themselves according to staff numbers only. They do not need to take turnover into account.
- **Charities** that are not otherwise subject to an exemption will only be liable to pay the tier 1 fee, regardless of size or turnover.
- **Small occupational pension schemes** that are not otherwise subject to an exemption will only be liable to pay the tier 1 fee, regardless of size or turnover.

We intend to publish an online self-assessment tool to help you work out which fee applies to you, before 25 May 2018.

## Direct debit discount

If you choose to pay your fee by direct debit, you will receive an automatic discount of £5 at the point of payment.

## 5. Exemptions

Generally speaking, you have to pay a fee if you are processing personal data as a controller. But there are some exemptions. You don't need to pay a fee if you are processing personal data **only** for one (or more) of the following purposes:

- Staff administration
- Advertising, marketing and public relations
- Accounts and records
- Not-for-profit purposes
- Personal, family or household affairs
- Maintaining a public register
- Judicial functions
- Processing personal information without an automated system such as a computer

By working through the questions below, you will be able to tell whether you need to pay the data protection fee.

But even if you are exempt from paying a fee, you still need to comply with your other data protection obligations.

## **1. Are you processing personal data?**

'Personal data' means any information relating to a person (a 'data subject') who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

'Processing' means any operation or set of operations that is performed on personal data or on sets of personal data (whether or not by automated means, such as collection, recording, organisation, structuring, storage, alteration, retrieval, consultation, use, disclosure, dissemination, restriction, erasure or destruction.)

If yes – move to Q2

If no – a data protection fee is not due

## **2. Is any of your processing on a computer?**

If none of your processing is carried out on computer, a fee is not due.

'Computer' includes any type of computer, for example cloud computing, desktop, laptop, tablet. It also includes other types of equipment which, although not normally described as computers, nevertheless have some ability to process automatically. Examples include automatic retrieval systems for audio and visual systems, electronic flexi-time systems, telephone logging equipment, CCTV systems and smartphones.

If yes – move to Q3

If no – a data protection fee is not due

## **3. Are you a controller?**

A 'controller' determines the purposes and means of the processing of personal data. Only controllers need to pay the data protection fee.

You do not need to pay the fee if you are only a 'processor', which means you only process personal data on a controller's behalf.

If yes – move to Q4

If no – a data protection fee is not due

## **4. Are you only processing personal information for personal, family or household affairs?**

Individuals are exempt from paying a fee if the only information they process is for personal, family or household affairs that have no connection to any commercial or professional activity.

'Personal, family or household affairs' includes recreational activities and the capturing of images that contain personal data, even if they are captured in a public space.

Examples include holding a personal address list; social networking and online activity, including blogging (as long as this is done in a purely personal capacity and you do not use the blog to endorse or promote businesses, services or products); using CCTV to monitor property, even if capturing images beyond the boundaries of your property; and personal information held in connection with a hobby, even if this involves capturing personal data images in a public space.

If yes – a data protection fee is not due

If no – move to Q5

## **5. Are you processing personal information for any of the following purposes?**

- Accounting and auditing
- Administration of justice including police and probation boards (but other than for judicial functions – see Q9)
- Administration of membership association records
- Advertising, marketing and public relations for others
- Canvassing political support among the electorate
- Charities – including housing associations
- Constituency casework
- Consultancy and advisory services
- Credit referencing
- Crime prevention and prosecution of offenders, including non-domestic CCTV systems
- Debt administration and factoring
- Education – including schools
- Emergency services – including ambulance and fire service
- Health administration and provision of patient care, including medico legal, pharmacists, optometrists and dentists
- Insolvency practices
- Insurance administration
- Journalism and media
- Legal services
- Leisure – including airlines and TV/radio stations
- Loyalty cards
- Mortgage/insurance broking

- Pastoral care
- Pensions administration
- Personal data processed by or obtained from a credit reference agency
- Private investigation
- Property management, including the selling and/or letting of property
- Provision of childcare – including childminders
- Provision of financial services and advice
- Recruitment
- Research
- Social media - including networking sites or dating agencies
- Software development – including web hosting and design or IT support
- Trading and sharing in personal information
- Training

If yes – you must pay the data protection fee unless you are a not-for-profit organisation – see Q7  
 If no – move to Q6

If you are processing for any of the purposes listed above, you are not exempt so you have to pay the data protection fee. This is not intended to be a complete list of activities that attract the data protection fee. We have produced this list because, in our experience, organisations in these sectors typically have to pay.

## **6. Are you only processing personal data to maintain a public register?**

You do not have to pay the data protection fee for any processing whose sole purpose is maintaining a public register. The exemption only applies to the information that you must publish.

If yes – a data protection fee is not due  
 If no – move to Q7

## **7. Are you a not-for-profit organisation?**

A specific exemption applies to bodies or associations that are not established or conducted for profit. However, the exemption applies only if:

- you are only processing data for the purposes of establishing or maintaining membership or support for a body or association not established or conducted for profit, or providing or administering activities for individuals who are members of the body or association or have regular contact with it

- you only hold information about individuals whose data you need to process for this exempt purpose
- the personal data you process is restricted to personal information that is necessary for this exempt purpose

If yes to all – a data protection fee is not due

If no to any – see Q8

## **8. Are you only processing personal data for 'core business purposes'?**

You do not have to pay the data protection fee if the only processing you carry out is for one or more 'core business purposes'. These are:

- staff administration
- advertising, marketing and public relations
- accounts and records.

Typically this would apply to a small business that processes personal information only for these purposes to support its primary activity. More details are shown next.

- **Staff administration**

This is processing for the purposes of appointments or removals, pay, discipline, superannuation, work management or other personnel matters concerning your staff.

- The individuals you hold information about will be restricted to any person whose personal information has to be processed for staff administration.

The term 'staff' includes all past, existing or prospective members of staff who are employees, office holders, temporary and casual workers, and also agents and volunteers. The personal information held about them includes all personnel and work management matters – for example their qualifications, work experience, pay and performance.

- **Advertising, marketing and public relations**

This is processing for the purposes of advertising or marketing your business activity, goods or services and promoting public relations only in connection with that business of activity, or those goods and services. For this exemption to apply, you must meet all the following criteria:

- The individuals you hold information about are restricted to any person whose personal information you need to process for your own advertising

marketing or public relations – for example past, existing or present customers or suppliers.

- Your information is restricted to information that is necessary for your advertising, marketing and public relations – for example, names, addresses and other identifiers.
- You advertise and market your own goods and services.
- If you obtain personal information from a third party, it is for the purpose of marketing your own goods and services.

However, if you sell or trade a list of your customers, you must pay the fee.

- **Accounts and records**

This is processing for the purposes of keeping accounts relating to any business or other activity you carry out; deciding whether to accept anyone as a customer or supplier; keeping records of purchases, sales or other transactions to ensure the relevant payments, deliveries or services take place; or making financial or management forecasts to help you carry out your business or activity.

- The individuals you hold information about are restricted to anyone whose personal information needs to be processed for your accounts and records – for example past, existing or present customers or suppliers.
- The information you hold is restricted to personal information that is necessary for your accounts and records – for example, name, address and credit card details. However, the exemption specifically excludes information processed by or obtained from credit reference agencies.

Controllers who are providing accounting services for their customers are not exempt.

## 9. Judicial functions

If you are processing personal data for judicial functions, you do not have to pay the data protection fee.

Processing is exempt if it is carried out by or on behalf of a judge or by a person acting on a judge's instructions; and it is also for the purpose of exercising judicial functions including functions of appointment, discipline, administration or leadership of judges.

'Judge' includes a justice of the peace (or, in Northern Ireland, a lay magistrate); a member of a tribunal; and a clerk or other officer entitled to exercise the jurisdiction of a court or tribunal.

## 10. Certain disclosures

Finally, if your processing does not fall into any of the other exemptions solely because it consists of disclosures made for any of the following purposes, then it is also exempt.

- Disclosures required by or under any enactment, by any rule of law or by the order of a court.
- Disclosures for the purposes of preventing and detecting crime, apprehending or prosecuting offenders, or assessing or collecting any tax or duty or any similar imposition, to the extent that not making the disclosure would be likely to prejudice these purposes.
- Disclosures for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings) or for the purpose of obtaining legal advice, or otherwise necessary for the purposes of establishing, exercising or defending legal rights.
- Disclosures required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

We intend to publish an online self-assessment tool to help you work out if you are exempt, before 25 May 2018.

## 6. Paying the data protection fee

- **If you are currently registered**

If you currently have a registration (or notification) under the 1998 Act, you will not need to pay the new data protection fee until your registration expires. We will write to you before this happens, to remind you it is about to expire and to explain what you need to do next.

If you are already registered, we will decide what tier you are in based on the information we have and you should tell us if you think we have got it wrong. You can email us, or we can take the details over the telephone. Please have your security number and reference number ready.

- **If your registration has recently expired**

If you aren't currently registered because your registration has recently expired, we will regard you as eligible to pay a fee in tier 3 unless and until you tell us otherwise. You will need to give us certain information such as the fee tier you think you fall into, so we can advise what data protection fee you are required to pay.

- **If you are paying for the first time**

You will need to give us certain information such as the name of your organisation, the best way to contact you and the fee tier you think you fall into. The quickest way to do this is online at [www.ico.org.uk/for-organisations/register/](http://www.ico.org.uk/for-organisations/register/). You can call us on 0303 123 1113 for help starting the process, or at any point along the way.

There are a number of ways you can pay:

### **Direct debit**

The easiest way to pay. If you pay by direct debit, you will receive a £5 discount. If you are not already registered (or notified), we'll send you a direct debit form when you contact us to register. If you are already registered, we'll send it with your renewal reminder.

### **Credit or debit card**

To pay by credit or debit card, you'll need your order reference and payment reference. If you are not already registered (or notified), we will send you these when you contact us to pay the fee. If you are already registered, we'll send it with your renewal reminder. You can make your payment online. We don't currently take payments over the telephone.

### **Cheque**

Please make your cheque payable to the 'Information Commissioner's Office', and write your application reference or reference number on the back. Again we will send you these when you contact us to register or when we send out your renewal reminder.

It is important that you include all the above information. If you do not include your payment reference number, we will not be able to trace the payment to you and will not regard you as having paid the fee.

## **7. Information we will collect from you**

When paying the data protection fee, you will need to tell us:

- the name and address of the controller (for registered companies this should be the address of its registered office; for any other person carrying on a business, this should be that person's principal place of business in the UK)
- the number of members of staff you have (see section on '[Working out your data protection fee](#)')
- the turnover for your financial year

- any other trading names you have.
- We will also ask for the names and contact details of the following people:
- The person completing the registration process.
- A relevant person in your organisation (or another relevant representative) whom we can contact about our regulatory purposes (for example, renewing the data protection fee when it is due), if this is different from the above.
- Your data protection officer (DPO), if you must have one under the GDPR – again, if this is different from the above.

Although the 2018 Regulations don't require controllers to give us any information about DPOs, controllers who need to have a DPO under the GDPR, must also give us their contact details. To make things easier, we will collect DPO details as part of the fee paying process, although you don't have to provide these details at the same time if you're unable to. If you don't need a DPO under the GDPR, you can register one voluntarily if you wish.

## 8. Information we will publish

We will publish details of all controllers who pay the data protection fee on the data protection register, which will be available from our website. However, we won't publish all the information you give us.

The information we publish on the register will be limited to:

- the name and address of the controller, but not details about individuals nominated as contact points for us
- the data protection registration number we give you
- the level of fee you have paid (that is, tier 1, tier 2 or tier 3)
- the date you paid the fee and when it is due to expire
- any other trading names you have
- contact details for your DPO, if you have told us you have one
- the name of your DPO, if you have told us you have one and if they consent to this (you will be asked to tick an 'opt in' box if they do consent.)

If a DPO opts out of having their name published on the register and we are asked to release it under the Freedom of Information Act 2000, we will have to consider whether we can disclose it. We won't routinely provide this information, but may have to disclose it if our position is challenged in law and we are ordered to do so.

## 9. Penalties

You are breaking the law if, as a controller, you process personal data, or are responsible for the processing of personal data, for any of the non-exempt purposes and you have either:

- not paid a fee, or
- not paid the correct fee.

The maximum penalty is a £4,350 fine (150% of the top tier fee.)

## 10. Frequently asked questions

### **What is the data protection fee for?**

We use the data protection fee to fund our data protection work. We do not keep any money we receive in fines, but pass it directly to the Government.

### **Do I have to pay a fee?**

If you are a [controller](#) and the [exemptions](#) don't apply to you, you will have to pay the fee.

### **If my registration expires on or after 25 May 2018, can I renew early and pay my current fee?**

No. You must pay the correct fee under the new fee structure.

### **How do I determine if my business is exempt?**

Read through the [exemptions questions](#). If you are a [controller](#) and the exemptions don't apply to you, you will have to pay a fee.

### **How much do I have to pay?**

The fees range from £40 to £2,900. The fee depends on the size of your organisation, your turnover and, in some cases, the type of organisation you are. It's structured like this out of fairness.

### **Who sets the fee?**

The fee is set by Parliament and reflects what Parliament feels is appropriate, based on the risks that the processing of personal data presents.

### **When will I have to pay the new fee?**

The new regulations come into effect on 25 May 2018, when organisations must apply the GDPR. But this doesn't mean that everyone has to pay us a fee on

that day. Controllers with a current registration (or notification) under the 1998 Act will not have to pay any other fee until their notification has expired (12 months from the day they made it). Controllers that are not currently notified will be liable for the new fee on 25 May 2018, unless an [exemption](#) applies.

### **If I renew under the old arrangements will I have to pay again on 25 May 2018?**

No. If you renewed or registered before 25 May 2018 under the 1998 Act, that registration will be valid for 12 months. You will not need to pay the new fee until your current registration expires.

### **How long will I be covered?**

Your fee covers a 12-month period from the renewal date (not the payment date), but we will not regard you as covered until we receive a payment we can attribute to you.

### **What is the difference between notifying under the Data Protection Act 1998 and paying the data protection fee?**

Aside from the level of the fee, the main difference is that under the 1998 Act, controllers had to give details of the types of processing they did. You will not need to provide this information from 25 May 2018.

### **How often do I have to pay the data protection fee?**

Every 12 months.

### **How will I know my renewal is due?**

We will email you before your previous payment expires and your new payment is due.

### **Does the fee include VAT?**

No. Statutory fees are outside the scope of VAT, so no VAT is charged on it.

### **How can I check that my fee level has been based on the correct information?**

If you already have a current registration, we will write to you before it is due to expire, letting you know that you will soon need to pay the new data protection fee. In the renewals paperwork we send you, we will have made a preliminary decision as to which tier we think you will now belong to, based on the details you previously gave us. If you think this is wrong, you should let us know by calling our helpline on 0303 123 1113. You can search for your current registration on our website.

### **Do you issue refunds?**

Only in exceptional circumstances. Please get in touch with us as soon as possible.

### **What happens if I don't pay my fee?**

We will send you a reminder explaining when you need to pay. If you don't pay, or tell us why you are no longer required to pay a fee, we will issue a notice of intent 14 days after expiry. You will have 21 days to pay or make representations. If you do not pay or fail to notify us that you no longer need to pay, you may be issued with a fine of up to £4,350 (150% of the top tier fee.)

## 11. Glossary

**Charity** – In England and Wales, 'charity' has the meaning given in section 1 of the Charities Act 2011. In Scotland, it means a body entered in the Scottish Charity register maintained under section 3 of the Charity and Trustee Investment (Scotland) Act 2005. In Northern Ireland, it has the meaning given in section 1 of the Charities Act (Northern Ireland) 2008.

**Controller** – a person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data. Only controllers need to pay the data protection fee.

**Processor** – a person, public authority, agency or other body which processes personal data on behalf of the controller.

**Data protection officer** – Under the GDPR, some organisations need to appoint a data protection officer who is responsible for informing them of and advising them about their data protection obligations and monitoring their compliance with them.

**Data subject** – the identified or identifiable living individual to whom personal data relates.

**Financial year** – a controller's financial year regarding a company is determined in accordance with section 390 of the Companies Act 2006; regarding a limited liability partnership is determined in accordance with section 390 of the Companies Act 2006, as applied by regulation 7 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008; and regarding any other case, it means the period, covering 12 consecutive months, over which a controller determines income and expenditure.

**Member of staff** – any employee, worker (within the meaning given in section 296 of the Trade Union and Labour Relations (Consolidation) Act 1992) office holder or partner.

**Personal data** – any information relating to a person (a 'data subject') who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

**Processing** – in relation to personal data, means any operation or set of operations which is performed on personal data or on sets of personal data (whether or not by automated means, such as collection, recording, organisation, structuring, storage, alteration, retrieval, consultation, use, disclosure, dissemination, restriction, erasure or destruction).

**Public authority** – means a public authority as defined by the Freedom of Information Act 2000 or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002.

**Small occupational pension scheme** – has the meaning given in regulation 4 of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.

**Turnover** – regarding a company, turnover has the meaning given in section 474 of the Companies Act 2006; regarding a limited liability partnership, it is determined in accordance with section 474 of the Companies Act 2006, as applied by regulation 32 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008; and regarding any other case, it means the amounts derived by the controller from the provision of goods and services falling within the controller's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.