

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 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 This template is intended to enable 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**") 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) 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 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 and 5. 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.

Squire Patton Boggs (UK) LLP
2 July 2019

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 policy on the retention of personal data.

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 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 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 hold³

We hold and process the following types of personal data in relation to 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 or membership and salary information.

¹ Please insert name of the Fund.

² Please insert name of the administering authority.

³ Please consider whether any personal data other than that listed is held or processed. This list should be conformed to the Fund's privacy notice.

- Financial information relevant to the calculation or payment of benefits, for example, bank account and tax details.
- Information about the 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 health, for example, to assess eligibility for benefits payable on ill health, or where the 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 employer or the Fund and the employer or Fund may be reimbursed from the Member's benefits.

Retention periods for personal data⁴

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;
- ICO's retention policy;
- EU Article 29 Working Party guidance; and
- The Pension 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:

⁴ 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 a defined period beyond which personal data will no longer be held (and, preferably, separate periods for different categories of data where this is appropriate). The GDPR does not prescribe a time period beyond which data must not be kept. Administering Authorities should be aware that if they do not attempt to give a defined period for which personal data will be held, strictly speaking this is unlikely to comply with GDPR. See Articles 5(1) and 5(2), and in particular Article 5(1)(c) - (e) of the GDPR. Please also see Recital 39 of the GDPR.

Therefore, whilst we note that:

- 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 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.

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 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 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 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.

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- comply with our legal and regulatory obligations regarding the payment of pensions from the Fund; and
- deal with any questions or complaints that we may receive about our administration of the Fund.

Personal data will be retained for **the greater of**⁵:

- such period as the Member (or any Beneficiary who receives benefits after the Member's death) are entitled to benefits from the Fund and for a period of **[15 years]**⁶ after those benefits stop being paid;
- **[100 years from the Member's date of birth]**⁷;
- **[100 years from the date of birth of any Beneficiary who received benefits from the Fund after the 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.⁸

Member's and 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 who may receive benefits from the Fund following a Member's death. Members of the Fund and 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 has the right to:

- object to the processing of their personal data
- restrict⁹ the processing of their personal data until any errors are corrected;

⁵ The greater of "100 years from date of birth" and "last payment of benefits to the Member/Beneficiary plus 15 years", is intended to ensure that Administering Authorities are acting in line with the Pensions 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 (paragraph 135).

⁶ 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.

⁷ The suggested period of "100 years from date of birth" is based on the guidelines by the National Archives and the ICO's retention policy.

⁸ 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 adopt shorter retention periods for particular categories of data (see note 4 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.

⁹ 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) 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 is based on 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 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.

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- transfer their personal data; or
- erase¹⁰ their personal data.

If the exercise of the 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 personal data in order to fulfil our legal and regulatory obligations.¹¹

Participating Employers

This policy applies to **[-]**¹² 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]**¹³ at least **[annually]**¹⁴.

¹⁰ 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).

¹¹ 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.

¹² Please insert name of the administering authority.

¹³ Amend if a specific body or individual will be responsible for the review of this policy.

¹⁴ The policy should be reviewed regularly. Amend the review period if an annual review of the policy is not suitable.