

Providing the Right Information to Contractors – Know the Rules on GDPR

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Overview

- What is the GDPR?
- How does the GDPR apply to RSLs?
- How does the GDPR apply to contractors?
- What do RSLs need to do when engaging contractors?

What is the GDPR?

- The “GDPR” stands for the General Data Protection Regulation (EU) 2016/679, which governs the use of personal data across the EU
- The GDPR forms part of the data protection regime in the UK, together with the new Data Protection Act 2018 (the “DPA”). Both the GDPR and DPA apply from 25 May 2018
- “Personal data” includes information relating to natural persons (known as “data subjects”) who can be:
 - identified or who are identifiable directly from that information
 - indirectly identified from that information in combination with other information

How does the GDPR apply to RSLs?

- RSLs will largely collect, store and use (“process”) personal data relating to your tenants, service users, employees, committee members, etc.
- The GDPR applies to “controllers” of personal data. A “controller” is an organisation that determines the purposes and means of processing personal data.
- RSLs will be controllers of, for example, tenants’ personal data as:
 - RSLs decide what personal data to collect in order to assess housing applications, allocate housing and manage tenancies
 - RSLs decide how such personal data is stored and used
 - RSLs are under statutory obligations to process tenants’ personal data

How does the GDPR apply to contractors?

- Many contractors will be given personal data by RSLs in order to provide services / supplies / works – for example tenants' addresses to carry out repairs
- Where a contractor receives personal data from a RSL, they will be acting as a “processor” of that personal data on behalf of the RSL
- The GDPR also applies to “processors” of personal data, which is an organisation responsible for processing personal data on behalf of a controller
- Contractors have specific legal obligations under the GDPR – for example, maintaining a record of personal data and processing activities. They also have legal liability for personal data breaches

What do RSLs need to do when engaging contractors?

- Whenever a RSL uses a processor it needs to have a written contract in place, which meets the requirements of the GDPR
- The contract must include:
 - The subject matter and duration of the processing
 - The nature and purpose of the processing
 - The type of personal data and categories of data subject
 - The obligations and rights of the RSL (as controller)
- The requirement to have a written contract in place also applies where a processor employs another processor – for example, a sub-contractor (a “sub-processor”)

What do RSLs need to do when engaging contractors?

- Contracts must include the following obligations on the processor:
 - Only to act on the written instructions of the controller (unless otherwise required by law)
 - Ensure people processing are subject to a duty of confidentiality
 - Take appropriate measures to ensure the security of the processing
 - Only engage a sub-processor under written contract with prior consent
 - Assist the controller regarding data subjects' rights
 - Assist the controller in meeting its GDPR obligations
 - Delete or return personal data to the controller at the end of the contract
 - Submit to audits and inspections by or on behalf of the controller

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