

APRIL 2019

L02 -19 | DATA PROTECTION FEES

Introduction

Parish meetings, parish councils and, in Wales, community councils are data controllers under the Data Protection Act 2018, which gives effect to the General Data Protection Regulation. Councillors who process personal data for purposes other than council business are also likely to be data controllers.

The Data Protection (Charges and Information) Regulations 2018 (“the 2018 Regulations”) require data controllers to pay a data protection fee (“the Fee”) to the Information Commissioner’s Office (“ICO”) unless they are exempt from payment. Parish councils in England and community councils in Wales and parish meetings are public authorities and data controllers under the 2018 Regulations.

The purpose of this briefing is to explain the new fee structure. This briefing replaces L05-18.

Not all data controllers are required to pay the Fee. However none of the exemptions (such as processing personal data for not-for-profit purposes or processing personal data without the use of a computer) are applicable to parish and community councils or parish meetings.

Exemptions - processing of personal data by individual councillors

The Data Protection (Charges and Information) (Amendment) Regulations 2019 (which came into force on 1 April 2019) amend the Schedule to the 2018 Regulations to exempt from payment of the Fee (i) elected representatives or persons acting on the instructions, or on behalf, of such a representative, for the purposes of exercising the elected representative’s functions as such and (ii) prospective representatives or a person acting on the instructions, or on behalf, of a prospective representative, in connection with any activity which can be reasonably regarded as intended to promote or procure the election (or re-election) of the prospective representative. Councillors who processed personal data independently of their council (for example, for purposes such as constituency casework or election canvassing) were previously not exempted from payment of the Fee.

“Elected representative” means an elected member of a parish council or, in Wales, a community council. NALC’s view, as accepted by the ICO, is that “elected representative” includes all councillors including co-opted councillors.

“Prospective representative” means a person seeking to become (or remain) an elected representative.

If an individual councillor still processes personal data for purposes outside of their role as an elected, or prospective representative then the data protection fee may still apply. The ICO gives the example of a councillor business owner who processes personal data or uses CCTV for business or crime prevention purposes in connection with that business.

The ICO has produced [guidance on the data protection fee](#).

More information about paying the fee is contained in the ICO’s [data protection fee guidance](#).

Three-tier fee structure

- data controllers with up to 10 members of staff will pay a fee of £40 (tier 1);
- data controllers with more than 10 members of staff but less than or 250 will pay £60 (tier 2);
- data controllers with more than 250 members of staff will pay £2900 (tier 3).

Members of staff include employees, other workers and office holders. Each part-time staff member is counted as one member of staff.

The ICO’s registration self-assessment for data protection fee purposes can be found here: <https://ico.org.uk/for-organisations/data-protection-fee/self-assessment/>

Non-payment or incorrect payment of the data protection fee could result in a fine of £4350.

Payments process

Data controllers that have a registration (or notification) under the Data Protection Act 1998 will not need to pay the new fee until their current registration has expired. Before expiry of the current registration, the ICO will write to explain what to do next.

If a data controller’s registration has expired, the ICO will assume that there is a liability for a tier 3 fee (see above). Data controllers whose registration has

expired should provide the ICO with certain information such as the fee tier they think they fall into, so the ICO can confirm the data protection fee payable.

Data controllers that have not previously paid a fee to the ICO should go to the first link above or telephone the ICO on 0303 123 1113 for information. Fees can be paid by direct debit, credit card, debit card or cheque. Payment by direct debit attracts a £5 discount.

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