

GDPR – What Early Years Providers Need to Know?

The General Data Protection Regulation will come into effect on the 25th of May 2018. It will revolutionise the way companies handle and manage personal information. This new regulation will replace the EU Data Protection Directive. The central premise of this new regulation is that privacy is a 'fundamental right'. There are stringent new fines, new rules and new approaches early years providers need to understand in relation to the nursery data protection experience.

Many early years providers might have heard about the "GDPR" but are, as of yet, unaware of the full implications of this sweeping reform to individual data protection laws. This article will highlight how the GDPR – which stands for General Data Protection Regulation – impacts the nursery environment and how it changes the individual experience.

The GDPR affects everyone

No ifs, no buts... GDPR will impact businesses and individuals and helping to navigate this sea-change of data protection awareness will help make your migration journey more palatable. The GDPR will replace the [1998 Data Protection Directive](#) which will become redundant when the [General Data Protection Regulation](#) comes into force on Friday 25th of May 2018.

The new GDPR regulation will protect every individual in Europe by enshrining a new level of protection on personal privacy rights. The [GDPR](#) has a pretty broad definition of 'personal data', which applies "to any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier." What they mean by 'identifier' is any personal data:

- Name
- Identification Number
- Location Data
- Online Identification

There is a conundrum at the heart of GDPR which surrounds the ambiguity of personal information and the management of this process therein. There are no 'set rules', there are abstract themes that require organisations to take note. But how do you apply these abstract themes within a functional organisation?

How can you better understand the GDPR – in the Early Years Environment

The GDPR cares about '[Personally Identifiable Information](#)'. This isn't just about the children in your care (or their parents) but also your staff and/or contractors. How you hold this information and the accessibility of this information is what counts in relation to adhering to GDPR principles.

The way you collect 'Personal Identifiable Information' will also change. You will need to get absolute permission to use personal information details. Auto opt-in and other formats of getting permission will become illegal once the new regulations come into force.

As this is getting complex, you need to designate a "data protection officer" – someone with oversight who can learn about GDPR and, as an added bonus, will understand your nursery business and how data interacts with it. By having this internal knowledge, you can make sure you remain adherents to the new regulation.

Who can access your information – be aware!

When you start to 'audit' your personally identifiable information you will be able to understand the pathways in which information is transmitted throughout your organisation. This is invaluable information as it helps to elicit a strong awareness of structural strengths and weaknesses within your information management systems.

First, you need to know who has access and therein whether too many people have access. Reducing access can help make sure you maintain compliance. Human error is also a major concern, so think about two-step verification of data processing – whereby have two people check anything that relates to personally identifiable information and its distribution. Think about parent sign-in forms, medicine forms and other sources of collated personally identifiable information – do you need to re-write your forms to help reduce your PIM data collection?

There are issues around key ‘rights’ – like the [‘Right to Erasure’](#). The processing of personally identifiable information intersects with your legal obligations under education law/statute. This means that parents cannot ask for information to be deleted once they leave the nursery. This is because to comply with Ofsted, nurseries must keep data – child and parent data must be kept for two years. Accident data upwards of twenty years and staffing records for upwards of seven years. This means that ‘the right to erasure’ has to be contextualised alongside the current laws. GDPR does not make these responsibilities redundant.

Explicit Consent – The Core of GDPR

[‘Explicit Consent’](#) means that you must have proof of agreement – an actionable tangible form that can prove that consent was given, with full details therein. The nursery environment also has another issue, which surrounds the inability of getting consent from under-16s. This means the parents are the sole means of ‘explicit consent’. This means creating more ‘tick boxes’ that can help you get meaningful consent from parents on a range of subjects.

You’ll also need a new privacy notice on any email/letter/website. You’ll also have to make sure it is accessible and in plain English. It needs to be easy to understand so they know exactly how you are using the information – which means a legal-heavy privacy notice isn’t going to help post-GDPR implementation. Use something simpler, yet accessible:

At [INSERT NURSERY NAME HERE], we take our privacy responsibilities seriously and as such we will only use your personal information to manage our responsibilities towards your child – all personal information will only be used in accordance with this goal.

From time to time, we will need to get in touch with you, either via email, letter or telephone, to update you about the nursery, any generic developments and to inform you of any issues relating to your child’s health and wellbeing.

We will manage this data in a professional, ethical and secure way to maintain the integrity of our records – so that we can run the nursery accordingly. Personally Identifiable Information will not be shared with ANY third parties. Only authorised staff can access your secured personal information.

By ticking this box, you confirm that you have read and understood the above privacy statement and as such give us the consent required to contact you regarding matters as highlighted above.

I agree

If you are unsure about what consent you may or may not have, simply message all parents. That way you can be sure you fully comply with the regulation.

The Seven Rights – Explained

There are seven ‘individual’ rights. This section will outline your responsibilities. Remember, a parent, at any time, can ask to see the data you hold. You have one month to respond. Remembering your Ofsted obligations, you can refuse. But you must inform the individual regardless of outcome. Here are the seven ‘rights’ explained:

- The Right to be Informed – this is about using your privacy notice to highlight informed data collection and your responsibilities therein
- The Right to Access – staff and parents are allowed to request access; you must provide this information and prove its legal provenance
- The Right to Rectification – if incorrect or inaccurate data is held by your nursery, you must allow parents the right to update the data

- The Right of Erasure – otherwise known as ‘The Right to be Forgotten’ means the parent or staff member can ask you to delete any information once its use has expired. Again, you must comply with other laws relevant to early years nursery management
- The Right to Restrict Processing – this means that staff or parents can object to their information being used in a certain way. So, you may store the information, but cannot use it beyond any narrowly agreed limits.
- The Right to Data Portability – Your system needs to be able to move personal information safely and securely. So, make sure your systems adhere to this rule.
- The Right to Object – as the title suggests, staff and parents have a legal right to object to personally identifiable information being used in a way that runs counter to the original use – examples include marketing campaigns.

The [ICO](#) have also highlighted the ‘right’ of private citizens to not be technically subjected to ‘automated decision-making profiling’. This isn’t a concern for the early years setting. But you need to be aware of it in terms of your wider marketing and web-based activities.

Why should I comply with the GDPR?

The Information Commissioner’s Office will have a legal responsibility to police this regulation in the UK. This means that organisations can face crippling fines. The GDPR breach fine is £20 million or 4% of turnover – so, be mindful, the consequences of non-compliance are massive.

What happens if there is an ‘information breach’?

Your organisation has 72 hours to report this ‘breach’ to the Information Commissioner’s Office. This is only the case if it is a major breach – with financial, personal or criminal damage at stake. However, a wrongly attributed email counts as a breach. Therefore, any breach requires full and open transparency. If a breach occurs, you should inform the individuals concerned. The ICO will want to undertake an investigation – you will need to show that your systems are compliant.

This article has endeavoured to highlight the massive risks associated with the GDPR and the changing landscape around privacy. As an early years provider, you will need to evaluate your nursery, the information you hold and develop strategies and policies that can help nurture a positive interaction and collaboration between data holders and personal individuals.