

4.01 Personnel Records and Data Protection

This policy is about personal data and information about you that is obtained and kept by the NICS as your employer

- The way in which your personal data is handled is detailed - Section 2.2 Personal Data - Personnel and Pay Records
- Your rights to access personal data held about you are explained– Section 3 Access to Personal Data
- Certain personal data is regarded as being ‘sensitive’ and examples of this are provided – Section 6 Processing ‘Sensitive Personal Data’
- Details of how long certain types of record are retained for are provided – Annex 2

The following terms within this policy are defined in the glossary:

Personal data, relevant filing system, data controller, subject-access request, sensitive personal data

You may also be interested in the following policies:

6.01 Standards of Conduct

This policy is version 4.

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This homepage is only a guide to the policy, not the policy itself. In the event of any discrepancy between the content of this homepage and the associated policy, the wording of the policy shall apply.

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4.01 Personnel Records and Data Protection

1 Background

1.1 The Data Protection Act 1998 (DPA) came into force on 1 March 2000. It regulates the use of personal data and gives effect in UK law to a European Directive (95/46/EC) on data protection.

1.2 The main purpose of the DPA is to control the circumstances in which information relating to individuals may be obtained, held, used and disclosed. It enshrines two fundamental values:

- a. privacy and security of personal information; and
- b. the right of individuals to know what information is held about them, the reason it is held and how it is to be, or is being, used.

1.3 The Freedom of Information Act (FOIA), which came into effect on 1 January 2005, gives you the right to request official information, including information in unstructured systems. All information is covered by FOIA, irrespective of protective markings or format. Information in emails, miscellaneous collections of papers, registered paper and electronic files is all potentially disclosable.

1.4 The DPA and FOIA are inter-linked, with requests under the FOIA that involve personal data being subject to the rules of the DPA. This means that information about third parties will normally be exempt from disclosure under the FOIA, and requests for information about yourself will be dealt with under the DPA.

1.5 If you are concerned with the application of data protection you should be aware of the provisions of the Human Rights Act, Article 8 of which is concerned with the right to private and family life.

1.6 The provisions of the DPA are not covered in detail but the main principles that provide the context for standards and good practice in personnel record keeping are summarised. Much of the guidance provided is covered more comprehensively in the Information Commissioner's comprehensive codes of practice, available at their website www.dataprotection.gov.uk. More detailed guidance covering the general implications of the DPA for the Civil Service has been produced by the Cabinet Office's Historical and Records Unit (see the Cabinet Office website www.cabinet-office.gov.uk).

2 Personal Data - Personnel and Pay Records

2.1 Personal data includes information about living, identifiable, individuals that is, or is intended to be, processed by means of automated equipment or recorded as part of 'a relevant filing system'. (Definitions of what does/does not constitute personal data and what is meant by a 'relevant filing system' are given at Annex 1.)

2.2 In keeping with the fundamental values of the DPA, you can expect your personal data to be:

- a. processed fairly and lawfully;
- b. processed for limited purposes;
- c. adequate, relevant and not excessive;
- d. accurate;
- e. kept for no longer than is necessary;
- f. processed in line with your rights as a data subject;
- g. kept secure; and
- h. not transferred to countries that do not protect personal data in an adequate way.

2.3 All automated, computerised and manual data are covered by the DPA.

2.4 The DPA gives you the right to challenge the accuracy of personal data relating to you and to ask for inaccuracies to be rectified. Further, you can request the Information Commissioner to investigate your concerns about any data held by your employing Department and you can apply for a court order to require the Department to remedy inaccuracies.

2.5 You can request, in writing, that decisions - arrived at solely by automatic means and which would significantly affect them - should not be taken, for example, in relation to performance, reliability, conduct, and the like. The DPA places obligations on data controllers and gives rights to individuals in situations where automated decisions are being taken.

3 Access to Personal Data

3.1 The DPA provides you, also those who have retired or have left the Service, as well as members of the public (such as those who were unsuccessful in open recruitment/promotion competitions), with certain rights of access to information held about them, for example, in personnel records/files and also to be advised as to how that information is/was being used. Since 24 October 2001, manual (that is 'paper') data has been included in the subject-access provisions provided, however, the data forms part of a relevant filing system. In addition, from 1 January 2005, Section 69 of the Freedom of Information Act amended the Data Protection Act, thus giving you the right of access to data contained in unstructured records.

3.2 The DPA does **not** confer a right whereby you can examine your personnel files/records - the right is to receive a copy of specific data, although some Departments do permit you to see your personnel files. Generally, you will already know what data is held

on the files, since it will largely have been supplied by you at various times or provided to you in the course of your service, for example, items such as notifications about movement to points on pay-scales, promotions, transfers, special leave, and the like.

3.3 Details on how to make an information request are described by the Information Request user guide in this handbook.

3.4 When a Department receives a subject-access request, it will respond promptly or, at most, within 40 calendar days and produce copies of the information it holds in intelligible form. The Department will decide whether or not to charge a fee for producing the information. The 40-day period commences when the Department has received the fee (if it has decided to levy one), together with any information necessary to verify your identity and to locate the information being sought.

3.5 While Departments will seek to respond to access requests as quickly as possible, you should refrain from chasing-up your requests, other than on the occasions when the 40-day period has expired.

3.6 The DPA does not require Departments to comply with repeat requests from you for identical or similar information, if a reasonable amount of time has not elapsed since the previous request was met. While 'reasonable' has not been specifically defined in the Act, Departments will not, given the costs involved, supply a further set of copies after a request has been met - unless there are exceptional circumstances. However, Departments will, if requested, supply copies of data added to the record since an earlier access request was made.

4 Exemptions

4.1 Certain types of data are exempt from disclosure under the DPA. Most of it that is exempt relates to data pertaining to third parties, that is other identifiable individuals. For example, in instances where a document on your personnel file includes data relating to another individual(s), you may not have a right of access to that data, or any data that would serve to identify the individual(s) concerned.

4.2 Other examples of data that may be exempt from disclosure could be that relating to, for example, the prevention and detection of crime, the collection of tax or duty and national security. More information and a full list of exemptions can be found on the Information Commissioner's website at www.dataprotection.gov.uk

5 Retention/Destruction of Personnel/Pay Records

5.1 Guidance on the retention periods for a broad range of personnel and pay records is provided at Annex 2 and will be reflected in Departmental retention and disposal schedules; it is in line with the latest Cabinet Office guidance supplied to Departments of the Home Civil Service. This guidance is not intended to be exhaustive and where a type of record has not been named specifically, it should be possible to determine which category fits best/is the most appropriate. The guidance seeks to differentiate between those records that should be retained for a mandatory period of time and those that have a

recommended retention period. A mandatory period is generally assigned to those records that need to be kept for pension purposes or where there may be a possibility of litigation at some future time.

5.2 All references in Annex 2 to 'until age 72' relate to records that Departments have discretion to destroy at whichever is the later of 72 years after the birth of the individual named on the record, or five years after the file was last 'actioned'. Departments may wish to retain those records until the death of the individual, or until the death of a dependant to whom a pension is payable. When claims are made for pension benefits and the absence of documentation means those claims cannot be repudiated officially, advice on the matter must be sought from the Departmental Solicitor's Office. If the latter rules in favour of the claimant, it will fall to the Department involved to meet the cost of the payment of the pension benefits.

5.3 References in Annex 2 to specified periods such as 12 months, 3 years, 6 years, and the like represent rolling destruction dates, in other words every year something is destroyed which has reached the specified age. Further, there should generally be a retention period of six years for those personnel records that may be required for litigation purposes, as this is the period of time allowed for by the Statute of Limitations.

5.4 References to a consolidated record or history are intended to cover instances in which original information is noted in summary form (probably computerised) that is built up over your entire career.

6 Processing 'Sensitive Personal Data'

6.1 Sensitive personal data covers information concerning your:

- a. racial or ethnic origin;
- b. political opinions;
- c. religious beliefs or other beliefs of a similar nature;
- d. community background;
- e. membership or non-membership of a trade union;
- f. physical or mental health or condition;
- g. sexual life;
- h. commission or alleged commission of an offence;
- i. involvement in proceedings for any offence committed or alleged to have been committed by you, the disposal of such proceedings or the sentence of any court in such proceedings.

6.2 Employers processing 'sensitive personal data' must satisfy at least one condition from Schedule 3 of the Data Protection Act (in addition to satisfying a Schedule 2 condition) otherwise the processing will be unlawful. Only the data necessary for the purposes of equal opportunity monitoring is covered by the exemption in Schedule 3 and there must be appropriate safeguards in place for the rights and freedoms of data subjects.

Definitions

1 Personal Data

- 1.1. The DPA applies only to ‘personal data’ which is defined as:
- a. data which relates to you if you can be identified:
 - i. from those data; or
 - ii. from those data or other information that is in the possession of, or is likely to come into the possession of, the data controller; and
 - b. includes any expression of opinion about you and any indication of the intentions of the data controller or any other person in respect of you.
- 1.2 Data will relate to you if it consists of information that affects your privacy, whether in your personal or family life, business or professional capacity. It follows that the concept of privacy is central to the definition of personal data. In determining whether or not the data under consideration represents information that affects your privacy and, accordingly, relates to you, two aspects should be taken into account:
- a. whether or not the information is biographical in a significant sense, that is going beyond the recording of your involvement in a matter or in an event that is devoid of personal connotations; and
 - b. the information in question should have you as its focus rather than some other person with whom you may have been involved or some transaction or event in which you may have been involved or have had an interest.

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- 1.3 Where your name appears in a particular piece of information, it will constitute personal data only where its inclusion in the information affects your privacy. It is more likely that your name will represent personal data where it appears alongside other information about you, such as home address or telephone number.
- 1.4 Providing the information in question can be linked to you, examples of personal data would be information about or relating to your medical history, salary details and tax liabilities.
- 1.5 The following are instances of the types of information that would not normally be classed as personal data within the meaning of the DPA:
 - a. mere reference to your name where your name is not associated with any other personal information;
 - b. incidental mention in the minutes of a business meeting of your attendance at that meeting in an official capacity; or
 - c. where your name appears on a document or email indicating only that it has been sent or copied to you, the content of that document or email does not amount to personal data about you, unless there is other information about you within it.

2 Relevant Filing Systems

- 2.1. When a subject-access request made by you is received by a Department and your request is for information held in manual form, the statutory right to be given access to personal data will apply only if the filing system is structured in such a way to constitute a relevant filing system, that is, one which is structured in such a way as to allow the Department to either:

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- a. know that there is a system in place which will allow the retrieval of a file(s) in your name (if such file(s) exist) and know that the file(s) will contain the category of personal data requested (if such data exists); or
 - b. know that there is a system in place which will allow the retrieval of file(s) covering topics about you (for example personnel-type topics such as leave, sick notes, contracts, and the like) and know that the files are indexed/structured to allow the retrieval of information about you specifically (if such information exists), for example the topic file is sub-divided in alphabetical order of individuals' names.
- 2.2 For manual files to fall within the definition of a relevant filing system, their contents must either be so sub-divided as to allow the searcher to go straight to the correct category and retrieve the information requested without a manual search, or be so indexed as to allow the searcher to go directly to the relevant page(s). Essentially, if there is a need to leaf through a file's contents in order to find the required information, such a file would not be part of a relevant filing system within the meaning of the DPA.
- 2.3 From 1 January 2005, the Freedom of Information Act (Section 69), extended the right of access to data contained in manual files in unstructured systems.

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ANNEX 2

Retention Periods are currently being reviewed

Retention/Destruction of Personnel and Pay Records

Personnel or Pay Records to which Subjects may Request Access under the Data Protection Act 1998	(M) Mandatory or (R) Recommended Retention with Explanation	Retention Period
Employment and Career Documentation		
Written particulars of employment, contracts of employment, including Certificates of Qualification or equivalent and including the Senior Civil Service; changes to terms and conditions, including change of hours letters, Official Secrets Act forms, Oath of Allegiance forms, and the like.	(M) Pension	Until age 72.
Job history - consolidated record of whole career, location details (paper or electronic).	(M) Pension and litigation	Until age 72.
Current address details.	(M) Litigation	Six years after employment ended.
Record of location of overseas service.	(M) Pension and litigation	Until age 72.
Variation of hours - calculation formula for the individual.	(R)	Destroy after use.
Promotion/temporary promotion/substitution documentation.	(R) Litigation	Six years.
Working-Time Directive opt-out forms.	(M) Litigation	Three years after opt-out rescinded or has ceased to apply.

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Personnel or Pay Records to which Subjects may Request Access under the Data Protection Act 1998	(M) Mandatory or (R) Recommended Retention with Explanation	Retention Period
Record of previous service dates.	(M) Pension and litigation	Until age 72.
Previous service supporting papers.	(R) Litigation	Destroy after records noted, as appropriate.
Qualifications/references.	(R) Litigation	Six years.
Transfer documents.	(R)	Destroy after records noted.
Annual/assessment reports.	(R) Management	Five years.
Annual/assessment reports for last five years of service.	(M) Pension	Until age 72.
Training history.	(R) Management	Six years.
Travel and subsistence - claims and authorisations.	(M) Litigation	Six years.
Annual leave records.	(R) Management	Two years.
Job applications - internal.	(R) Management and discipline	One year.
Recruitment/appointment/promotion board papers.	(R) Management and discipline	One year from close of competition (in other words from the date the competition is no longer 'live').
Building society references.	(R) Queries	Six months.

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Personnel or Pay Records to which Subjects may Request Access under the Data Protection Act 1998	(M) Mandatory or (R) Recommended Retention with Explanation	Retention Period
Health Declaration Forms.	(M) Pension and litigation	Until age 72.
Health referrals - including doctors'/consultants' reports, correspondence/reports from OHS, Medical Advisory/Referee Service, and the like.	(M) Pension and litigation	Until age 72.
Papers relating to any injury sustained while on duty.	(M) Pension and litigation	Until age 72.
Medical reports on those exposed to substances hazardous to health, including:		
- Lead (Control of Lead at Work Regulations 2003).	(M) COSHH requirement	40 years from date when entry was made.
- Asbestos (Control of Asbestos at Work Regulations (NI) 2004).	(M) COSHH requirement	40 years after last record.
- Compressed Air (Work in Compressed Air Regulations (NI) 2004).	(M) COSHH requirement	40 years from date of last entry.
- Radiation (Ionising Radiation Regulations 2000).	(M) COSHH requirement	50 years from date of last entry.
- Noise (Noise At Work Regulations (NI) 1990).	(M) COSHH requirement	40 years from date when entry was made.
Medical/self-certification certificates - unrelated to industrial injuries.	(R) Management	four years.

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Personnel or Pay Records to which Subjects may Request Access under the Data Protection Act 1998	(M) Mandatory or (R) Recommended Retention with Explanation	Retention Period
Pay and Superannuation Documentation		
Bank details (current only).	(M) Litigation	Six years after end of service.
Death-benefit nomination and revocation forms.	(M) Pensions	Until age 72.
Death certificates.	(M) Pension and litigation	Return original to the provider. Retain copy until age 72.
Decrees Absolute.	(M) Pension	Return original to the provider. Retain copy until age 72.
Housing loans/advances.	(R) Litigation	Six years after repayment.
Marriage certificates.	(M) Pension	Return original. Retain copy until age 72.
Unpaid leave periods (maternity leave, and the like).	(M) Pension and litigation	Until age 72.
Statutory Maternity Pay documents.	(R) Litigation	Six years.

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Personnel or Pay Records to which Subjects may Request Access under the Data Protection Act 1998	(M) Mandatory or (R) Recommended Retention with Explanation	Retention Period
Other maternity pay documentation.	(R) Management	18 months.
Over-payments documentation.	(M) Litigation	Six years after repayment or write-off.
Personal payroll history, including record of pay, performance pay, overtime pay, allowances, pay enhancements, other taxable allowances, payment for untaken leave, reduced pay, no pay, maternity leave.	(M) Pension and litigation	Until age 72.
Pensions estimates/awards.	(M) Pension and litigation	Until age 72.
Record of:	(M) Pension and litigation	Until age 72.
- full name;		
- National Insurance Number;		
- date of birth;		
- pensionable pay at date of leaving;		
- reckonable service for pension purposes (and actual service, where this is different, together with the reason/s for the difference);		

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Personnel or Pay Records to which Subjects may Request Access under the Data Protection Act 1998	(M) Mandatory or (R) Recommended Retention with Explanation	Retention Period
<ul style="list-style-type: none">- reason for leaving and new employer's name (if known);- amount and destination of any transfer value paid;- amount of any refund of PCSPS contributions;- amount and date of any Contributions Equivalent Premium paid.		
<p>All papers relating to superannuation not listed elsewhere in this Annex, including:</p> <ul style="list-style-type: none">- application forms;- papers about pension rights associated with other employment (including war service);- papers about widows', widowers', children's pensions and other dependants' pensions;- correspondence with the Cabinet Office, other Departments and pensions administrators, or the officer and his/her representatives (MPs, MLAs, trade unions, and the like) about pensions matters.		

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Personnel or Pay Records to which Subjects may Request Access under the Data Protection Act 1998	(M) Mandatory or (R) Recommended Retention with Explanation	Retention Period
Resignation/termination/retirement letters.	(M) Pension and litigation	Until age 72.
Added years.	(M) Pension	Until age 72.
Added voluntary contributions.	(M) Pension	Until age 72.
Payroll input forms - reduced/No. Pay/Maternity Leave.	(M) Litigation	Six years.
Bonus payment nominations.	(R) Litigation	Six years.
Complete sickness absence record showing dates/causes of sickness absence/leave.	(M) Pension and litigation	Until age 72.
SSP1 - SSP1L	(M) Statutory requirement	For last four - six years.
Papers relating to disciplinary action that has resulted in any change to terms and conditions of service, salary, performance pay or allowances.	(M) Pension and litigation	Until age 72.
Authorisation for deputising/ substitution allowance, or overtime/travelling-time claims.	(R) Audit purposes	Six years.
Travel and Subsistence - claims and authorisation.	(M) Litigation	Six years.

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Personnel or Pay Records to which Subjects may Request Access under the Data Protection Act 1998	(M) Mandatory or (R) Recommended Retention with Explanation	Retention Period
Advances of pay for: <ul style="list-style-type: none">- season tickets;- car parking;- bicycles;- Christmas and holidays;- housing.	(R) Litigation	Six years after repayment.
PERSONAL DOCUMENTATION		
Welfare papers.	(R) Litigation	Destroy after a minimum of six years after last action.
SECURITY DOCUMENTATION		
Personnel security files.	(R) Central guidance	5 years after leaving (normal retirement age); or 10 years after leaving (if before the retirement age, but not exceeding a period of 5 years after normal retirement age); or 1 year after death.