

APRIL 2018

L05-18 | DATA PROTECTION FEES

Introduction

Under the Data Protection Act 1998 (“the 1998 Act”) which is due to be repealed by 25 May 2018, data controllers are required to register with the Information Commissioner’s Office (“ICO”) and to pay a notification fee to the ICO unless exempt from payment. The present notification fee is either £35 or £500. Parish meetings, parish councils and, in Wales, community councils are data controllers. There are some councillors who are data controllers, independently of their council. Legal briefing L04-11 describes the circumstances when this may be the case.

GDPR will come into force on 25 May. Under GDPR, there is no requirement for a data controller to register with the ICO. The Data Protection (Charges and Information) Regulations 2018 (“the 2018 Regulations”) also due to come into force on 25 May requires data controllers to pay a data protection fee to the ICO unless they are exempt from payment. The purpose of this briefing is to explain the new fee structure to be introduced by the 2018 Regulations.

Three-tier fee structure

Data controllers (such as councils in England and Wales and parish meetings) with up to 10 members of staff will pay a fee of £40 (tier 1); data controllers with more than 10 members of staff will pay £60 (tier 2); and 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 intend to publish a fee calculator on its website before 25 May. This briefing will be updated to include the link.

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

Exemptions

Not all data controllers are required to pay the data protection fee. There are exemptions from paying 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 councils or parish meetings. Councillors who are data controllers independently of their council and process personal data using a computer for purposes such as constituency casework or election canvassing will not be exempt from payment of the data protection fee.

Payments process

Data controllers that have a current registration (or notification) under the 1998 Act 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 <https://ico.org.uk/for-organisations/register/> 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.

Further reading

For more information on the new data protection fee arrangements, please read "The data protection fee: a guide for controllers", published by the ICO. It includes a set of questions to help data controllers ascertain whether or not they are exempt from the requirement to pay the data protection fee. The guidance can be accessed via <https://ico.org.uk/media/for-organisations/documents/2258205/dp-fee-guide-for-controllers-20180221.pdf>