

Data Protection Frequently Asked Questions

1. **Are we required to send a permission/consent form to all members on the Congregational Roll?**

No.

To process sensitive personal data lawfully at least one of the conditions relating to fair processing set out in each of Schedule 2 and Schedule 3 of the Act must be met. In the case of congregations, the relevant conditions in each Schedule are likely to be:

Schedule 2

- The data subject has given his explicit consent to the processing
- The processing is necessary for the performance of a contract of employment, or to comply with any legal obligation
- **The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed**, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject

Schedule 3

- **where a not-for-profit organisation existing for political, philosophical, religious or trade union purposes processes personal data in the course of its legitimate activities and relating only to individuals who either are members of the body or association or have regular contact with it**; carries out the processing with appropriate safeguards for the rights and freedoms of the data subjects; and does not disclose the personal data to a third party without the consent of the data subject
- where information has been made public by the deliberate steps of the data subject

It will therefore not be necessary to obtain consent to the holding of sensitive personal data such as membership records provided that this information is not shared with third parties and that the data protection principles are complied with so far as the storage, security, accuracy and relevancy of such information is concerned. It is, however, good practice to make it clear to members that their personal details are held, and continue to be securely held, by the congregation in connection with the purposes of the Church of Scotland.

It is also good practice to go through an exercise periodically to check that the information held remains accurate and up to date. There may be members on the roll who no longer attend. This should be reviewed and any data which is no longer required should be removed.

2. **How should we store any consent forms?**

Securely! Please refer to the separate note in relation to information storage containing practical hints and tips.

3. We understand that some records ought to be archived, at what point are we required to do this?

Manual records and any mobile devices such as laptops holding such information electronically should be kept in lockable fire retardant storage in the Church Office or Vestry. Once minutes and other records of future historical interest are more than 50 years old, they require to be transmitted on to the Principal Clerk's Department. They will then be passed to the National Archives for safe keeping and made available to the public after approximately 100 years for research purposes.

4. We rent our Church Hall to various groups (including the Guides and BB). How should we be dealing with them?

The BB and others will be covered by their national bodies and those who are using the halls ought to be compliant with data protection law. This is a condition of the style hall letting agreement available on the Law Circulars section of the website. The congregation will not legally be responsible for any data protection breaches by users of the Hall, but if you are aware that there are breaches occurring, it is recommended that you have a word with those involved to check they know they ought to be complying with the terms of the Data Protection Act 1998.

If you are holding contact data relating to individuals using the hall, then depending on what data you are collecting, you may wish to think about obtaining consent from the individuals concerned by way of a permission form. All outside users ought also to be signing a hall letting agreement (in terms of the Law Department style).

5. What about the Cradle roll?

Many Congregations display a cradle roll containing names, addresses, dates of birth, dates of baptism etc. of babies. Unfortunately, unless it is just the babies' names and the year of baptism that are being displayed, other information may likely contain too many 'identifying factors' and could be regarded as being in breach of the legislation. It is suggested that the information displayed should not be located in a place to which members of the public have ready access, but is instead placed somewhere to which only members have access, for example the Church Office..

6. What about encryption?

There is a separate guidance note available in relation to information storage containing practical hints and tips. It is suggested that you refer separately to this document.