



**Survey  
Coordination  
Centre**

**NHS STAFF SURVEY  
SUPPLEMENTARY GUIDANCE**

**MANAGING THE NHS STAFF SURVEY IN  
LINE WITH GDPR**

## Contents

<b>1</b>	<b>What is the GDPR?</b> .....	<b>2</b>
1.1	<i>Accountability</i> .....	2
1.2	<i>Legal basis for processing</i> .....	2
<b>2</b>	<b>What is the impact of the GDPR on the NHS Staff Survey?</b> .....	<b>3</b>
<b>3</b>	<b>Recommended actions to ensure compliance with the GDPR</b> .....	<b>3</b>
3.1	<i>Provide high quality Fair Processing information and/or privacy notices</i> .....	3
3.2	<i>Supplier Contracts</i> .....	3
<b>4</b>	<b>Handling free text responses</b> .....	<b>3</b>
<b>5</b>	<b>Summary</b> .....	<b>4</b>
<b>6</b>	<b>Frequently asked questions</b> .....	<b>4</b>

# 1 What is the GDPR?

The GDPR is the EU's General Data Protection Regulation - effective from 25 May - bringing a number of changes affecting how organisations store data. The GDPR and the Data Protection Act 2018 replace the provisions of the Data Protection Act 1998 and continue in place after the UK exit from the EU. The GDPR is designed to strengthen and unify data protection for all individuals within the EU.

The GDPR sets out the legal requirements for how organisations must handle and process personal data.

## 1.1 Accountability

One of the key changes under GDPR is an explicit accountability principle. Organisations must be able to demonstrate that they are meeting the requirements of the GDPR with emphasis on organisations being able to demonstrate their justification for obtaining and using datasets. Under GDPR, only necessary personal data, required for each specific purpose, should be collected, processed and stored.

## 1.2 Legal basis for processing

It is important that organisations are clear about their legal grounds for collecting, using and storing personal data. This should be documented.

More information on the GDPR can be found on the:

Information Commissioner's Office website - <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

Information Governance Alliance website - <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/information-governance-alliance-iga/general-data-protection-regulation-gdpr-guidanceinformation-governance-alliance/General-Data-Protection-Regulation-guidance>

The legal basis for processing personal data for staff survey purposes is "for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller" (Article 6(1)(e)).

Organisations undertaking the NHS Staff Survey as part of the NHS Standard Contract are therefore 'exercising official authority' in doing so and this is the legal basis under the GDPR.

Those organisations which undertake the NHS Staff Survey on a voluntary basis have the same legal basis. Whilst there is no contractual requirement for them to undertake the survey, there is still a public interest in them collecting and acting upon the information they collect.

## 2 What is the impact of the GDPR on the NHS Staff Survey?

The Information Commissioner's Office website states that:

- The GDPR applies to 'personal data' meaning any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier.
- This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location data or online identifier, reflecting changes in technology and the way organisations collect information about people.

As sensitive information is also used in the preparation of the NHS Staff Survey sample (i.e. ethnicity), the GDPR requires a condition for processing this level of data. This 'Special Category Data' data is covered in article 9(2)(h) under 'the management of health or social care systems' and so is permissible under the GDPR. Below you will find a summary of the key changes and clarifications made to the guidance this year.

## 3 Recommended actions to ensure compliance with the GDPR

### 3.1 Provide high quality Fair Processing information and/or privacy notices

Your organisation may already be considering this as part of their local GDPR preparations, for example developing a "how we use your info" leaflet or similar. The NHS Staff Survey doesn't necessarily have to be an explicit topic within the Fair Processing but the Fair Processing needs to cover up front what happens to an employee's personal data, including where it might be used for NHS Staff Survey purposes.

It is important to address the following areas: Be clear on the legal basis for processing (i.e. exercising official authority - plus special category 'management of health or social care systems') Be clear on who is doing the processing (whether it is the trust itself or a third party) Be clear on what happens in the processing (such as whether people can be identified through the data involved – i.e. mobile phone numbers or email addresses) Be clear on where the processing is taking place (such as whether it is in the UK, within the EU and so on). Be clear about the retention period for the data Be clear about subject access rights, including rectification and erasure of personal data Inform of the right to complain to the Information Commissioner's Office.

### 3.2 Supplier Contracts

You should ensure that any contracts you hold with suppliers to deliver Staff Survey activity are compliant with the GDPR.

## 4 Handling free text responses

The common law duty of confidence is unaffected by GDPR. The process for handling free text comments remains the same. The NHS Staff Survey responses must not be presented or published in a way that allows individuals to be identified unless there is a lawful basis to do so. Free text comments that could lead to identification of respondents or other individuals must be removed before publication or disclosure outside the organisation.

## 5 Summary

You should:

- check that your Fair Processing covers the NHS Staff Survey as part of activities that use employee information
- ensure any contracts with suppliers for the purpose of delivering the NHS Staff Survey are compliant with the GDPR.

## 6 Frequently asked questions

### Why isn't consent needed before asking staff to complete the staff survey?

Consent is not required before asking staff to complete the staff survey because processing personal data for this purpose is part of exercising the organisation's official authority, and using a person's sensitive data as part of this exercise is part of managing a healthcare system.