

## PORTLAND TOWN COUNCIL

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21<sup>st</sup> February 2018

Dear Councillor

You are hereby summoned to attend a **MEETING** of the **FINANCE COMMITTEE**, to be held in the **COUNCIL OFFICES, 52 EASTON STREET, PORTLAND**, on **WEDNESDAY, 28<sup>TH</sup> FEBRUARY 2018** commencing at **10.30 am**, when the business set out below will be transacted.

Members may need to refer to their copies of Financial Regulations and Standing Orders.

It is the Council's intention that all meetings of the Council and its Committees be recorded aurally.

Yours faithfully

Ian Looker  
Town Clerk

Membership: Cllrs. Atwell, Cocking, Draper, Flack and Nowak

# AGENDA

1. **Chairman's Welcome**
2. **Apologies for Absence** – to receive
3. **Declarations of Interest** – to receive any declarations from Councillors or Officers of pecuniary or non-pecuniary interests regarding matters to be considered at this meeting, together with a statement on the nature of those interest
4. **Minutes of the Meeting Held on 31<sup>st</sup> January 2018** – to receive
5. **Minute Update and Matters Arising** – to consider (see attached)
6. **Public Participation** – to receive questions and comments from the public on agenda items only
7. **Brackenbury School and Other Possible Acquisitions** – to receive updates
8. **Brackenbury and Other Properties**
  - a) Crowdfunding – to consider (see attached, other attachments to follow)
  - b) Opening Hours, access and security – to consider
  - c) Staffing Requirements – to consider
9. **Public Works Loan Procedures** – to consider actions to be taken (see attached)
10. **Civic Regalia Valuation** – to receive a report from the Clerk
11. **Nationwide Account** – to receive a report by the Clerk
12. **Council Working Parties**
  - a) West Weares, January – to receive a report from the Clerk and consider a response
  - b) General Protocols – to consider
13. **General Data Protection Regulation** – to receive updates and consider action (see attached). See also Finance Committee agenda, 31<sup>st</sup> January 2018, Agenda Item 12 notes.

14. **Office Catering** – to consider funding
15. **Electricity Supply Contract** – to consider a quotation (see confidential attachment)
16. **West Weares** – to receive an update from Cllr. Draper on ownership of lighting etc. and electricity charges
17. **Account Signatories** – to receive updates
18. **Exclusion of Press & Public** (discretionary)  
“That pursuant to the provisions of Section 1(2) of the Public Bodies (Admission to Meetings) Act 1960, the press and public be excluded from the meeting for Agenda Item(s) ... by reason of the confidential nature of the business to be transacted.”
19. **Date of Next Meeting**  
The Committee’s next meeting is scheduled for Wednesday, 4<sup>th</sup> April 2018, at the Council Offices starting at 10.30 am.

**PORTLAND TOWN COUNCIL**  
**FINANCE COMMITTEE**  
**MINUTES OF THE MEETING**  
**HELD IN THE COUNCIL OFFICES**  
**ON WEDNESDAY, 31<sup>ST</sup> JANUARY 2018**

**PRESENT:** Councillors Jo Atwell, Susan Cocking, Jim Draper, Charlie Flack and Ray Nowak

**IN ATTENDANCE:** Ian Looker (Town Clerk) and Charlotte Richards (Assistant Clerk)

Cllr. Cocking in the chair.

**131 – CHAIRMAN**

**RESOLVED** – that Cllr Cocking be appointed Chairman for the remainder of the municipal year.

**132 – APOLOGIES FOR ABSENCE**

All members of the Committee were present.

**133 – DECLARATIONS OF INTEREST**

There were none.

**134 – MINUTES OF THE MEETING HELD ON 10<sup>TH</sup> JANUARY 2018**

The minutes were formally agreed and signed as a correct record.

**135 – MINUTE UPDATE AND MATTERS ARISING**

Cllr. Draper said he had been told that responsibility for the lighting, seats, signage and fencing at West Weares had been passed from the Community Partnership to the Council. However he was asked to obtain the ownership agreement in writing. Quiddles would be asked for any outstanding electricity charges payable by the Council. The Clerk was asked to put an item about West Weares on the agenda for the next meeting.

**136 – PUBLIC PARTICIPATION**

No members of the public were present.

**137 – OUTSTANDING INVOICES: SSE**

The Clerk reported that Turrell had found no evidence of outside electricity usage being recorded on the Council's meter. SSE had removed the check meter on 15<sup>th</sup> January, but had not yet provided a report of their findings. He will pursue this and enquire whether the Council is entitled to a free smart-meter. He was also asked to provide analysis of electricity usage and charges for the offices and flat.

**138 – VAT INVOICES**

**RECOMMENDED** – that the proposed alteration to Financial Regulations detailed on the meeting agenda be brought to full Council for consideration.

**139 – INTERNET PURCHASES**

**RESOLVED** – that the Council seek a bank card for the Clerk from Unity Trust Bank with a limit of £500 on spending and no exclusions on categories.

The Clerk was asked first to enquire the cost of a debit card per transaction and report back to the Committee.

**140 – ORDER OF BUSINESS**

Agenda Item 10 – Telephone Lines was taken after Item 15.

**141 – FORMER BRACKENBURY INFANTS SCHOOL**

Members discussed possible users of the premises if the Council were to purchase the school.

**142 – ORDER OF BUSINESS**

Agenda Item 12 – General Data Protection Regulation was taken after Item 15.

**143 – ACCOUNT SIGNATORIES**

Members took note that two signatories had not yet had their electronic signatures validated.

**144 – OFFICE IT SYSTEMS**

It was agreed that the Committee would meet on 27<sup>th</sup> February at 2.00 pm with officers to go through the risk assessment details.

It was agreed that at its April meeting the Committee would discuss accountancy packages, use of MS Office, cloud storage, broadband and anti-virus software.

**145 – TELEPHONE LINES**

The Assistant Clerk presented the quotations received for enhanced telephone lines and handsets. It was agreed to postpone discussion of telephone line provision in case the Council went ahead with moving its Offices. It was further agreed to buy two compatible Motorola handsets and enquire about buying a mobile phone for the Clerk.

**146 – GENERAL DATA PROTECTION REGULATION**

It was agreed to enquire of Ellis Whittam whether they could provide a quotation for a Data Protection Officer and download the free guide available for a GDPR compliance check.

**147 – DATE OF NEXT MEETING**

The next meeting of the Committee will be held at the Council Offices on Wednesday, 28<sup>th</sup> February 2018, starting at 10.30 am.

The meeting ended at 11.50 am.

Signed ..... Dated .....  
(Chair)

## MINUTE UPDATE

**a) Minute 137 – Outstanding Invoices: SSE**

All the invoices have now been paid.

**b) Minute 139 – Internet Purchases**

We are in the process of applying for a bank card.

**c) Minute 145 – Telephone Lines**

The handsets have not been ordered yet. See (b) above. We have not yet enquired about a mobile phone.

**d) Minute 146 – General Data Protection Regulation**

See Agenda Item 13.

## BRACKENBURY – CROWDFUNDING

I have looked into Crowding as a way of raising funds for Brackenbury,there is a lot to it, here is a brief outline

There are two different funding methods for Crowdfunder projects

1.All or Nothing - you only receive pledges if you hit your target.This is best suited for projects that need to reach a set target to be able to carry out their aims.The average pledge size on " all or nothing" projects is £50.00

2.Flexible Funding-Keep all your pledges ,whether your projects hits target or not.This is best suited for causes or charitable projects.The average pledge size on "keep what you raise projects"is £10.00.

All or Nothing projects generally raise more money ,but you do have to hit your target."Flexible Funding" means you'll keep all the money pledge by your supporters but you'll also have to fulfil all the rewards no matter how much or how little pledged.

There are costs involved to Crowdfunding

Crowdfunder Fee 5%

Plus

Payment Processing Fee 3%

There is also a time limit for how long you can Crowd fund for

Longest 8 weeks/ 56 days

It has been proven that the best time frame is 4 weeks /28 days

For more info [www.crowdfunder.co.uk](http://www.crowdfunder.co.uk) ,they are the biggest UK based Crowdfunder and have a proven track record of success working with a number of local authorities,including Plymouth City Council,it would add more weight to our campaign if we had the backing of WPBC and DCC

Frome Parish Council raise money this way

Susan Cocking, Cllr



### **A checklist of key information to be provided with any Parish and Town Councils borrowing application**

Councils wishing to borrow will have to get in touch with the County Association, whether a member or not, to submit the Application Form. Where a borrowing approval is required the purpose must be detailed on the application and in a report to Council. Approvals should only be sought for capital expenditure. Please complete the borrowing application form and provide the following supporting information;

1. Copy of full minute of the Full Council Meeting with the resolution to seek the Secretary of State's approval for the proposed borrowing;
2. Copy of the Council's budget for the current year, and next year (if available), showing the provision made to meet the loan costs;
3. Full report to the Council or business case. This should include a breakdown of the proposed works, estimated costs, financial planning to fund the loan repayments and the steps/options the Council/has in place to mitigate the risk for not being able to afford the loan repayments;
4. Please provide information on how the Council will afford the loan repayments, breakdown of funding resources, amounts to be used from reserves, and any increase of precept to fund the borrowing;
5. If the Council precept is to be increased to cover the loan repayment, please confirm the amount and percentage of the planned increase related to the loan only (if possible how much increase for house holders at Band D);
6. If applicable, please provide evidence of public support to increase the precept to cover the loan repayment (e.g. the result of any consultation).
7. You still need to provide details how local residents were consulted on the project and associated borrowing even if you are not increasing precept to fund the loan (e.g. newsletter/website/in the agenda of public meeting).

Full provision of this information with the application demonstrating that it meets the guidance criteria will expedite the approval process. For further information,

- Please read full guide to parish borrowing in Page 5;
- For any queries, please contact your local association at first instance or;
- For clarification on aspect of this guidance, please contact Midi Zeroual at DCLG on 0303 444 2838 / email: [parish.borrowing@communities.gsi.gov.uk](mailto:parish.borrowing@communities.gsi.gov.uk)





Department for  
Communities and  
Local Government



APPLICATION FOR BORROWING APPROVAL FOR TOWN/PARISH COUNCILS

- If you have any queries about completing this form please contact your local county association.
- When completing this form please use CAPITALS.
- Once completed and signed please send this form to your local county association.

<b>Name of Council</b>	
<b>Name of Clerk</b> <b>Working Address (inc. Postcode)</b> <b>Email address</b> <b>Telephone</b>	
<b>Name of Chair</b> <b>Home Address (inc. Postcode)</b> <b>Email address</b> <b>Telephone</b>	
<b>District/Unitary Council area</b>	
<b>Purpose of Borrowing</b> Please give a brief description of the purpose for which funds are required.  Example of Capital projects : Purchase of land/building or, construction/building works or, provision of other assets or; provision of grants to another body for a Capital expenditure	
<b>Total Contract/Project Value</b>  <b>Funding from Council's own resources</b>  <b>Funding from other sources</b>  <b>Amount to be borrowed</b>	£  £  £  £

<b>Deadline for approval (if applicable)</b> If borrowing is required by a specific date – eg an auction date, or to meet matchfunding requirements - give details here.	
<b>Is funding from other sources confirmed?</b>	<b>Yes</b> <b>No</b>
<b>Proposed Borrowing Source</b>	
<b>Intended Borrowing Term</b> (please specify the number of years)	
<b>Details of Existing Loans</b>	<b>1<sup>st</sup> loan      2<sup>nd</sup> loan      3<sup>rd</sup> loan      4<sup>th</sup> loan</b>
<b>Date Taken Out</b>	
<b>Amount Outstanding</b>	£                      £                      £                      £
<b>Unexpired Term</b>	
<b>Are you increasing Precept to fund this borrowing?</b>	<b>Yes</b> <b>No</b>
<b>What will be the amount and percentage of the planned increase per annum?</b>	£                      %
<b>What will cost band D per annum?</b>	£
<b>If applicable, have you assessed the extent of public support to increase precept for this loan?</b>	<b>Yes</b> <b>No</b>
<b>If yes, what were the results of the assessment to increase precept for this loan?</b>	
<b>Precept for previous year:</b>	£                      for Band D:
<b>Precept for Current year:</b>	£                      for Band D:
<b>Precept for next year:</b>	£                      for Band D:
<b>Number of Electorate</b>	
<b>Value and purpose of all funds, capital/revenue reserves and balances currently held</b>	

<p><b>Have you provided the following supporting evidence?</b></p> <p>a) <b>Full Council minutes with resolution to apply to DCLG for borrowing approval</b></p> <p>b) <b>Report to the Council</b></p> <p>c) <b>Council Budget for current year and next year if available</b></p> <p>d) <b>Consultation and outcome of consultation</b></p>	<p>Please tick the appropriate box</p> <p>a) Yes</p> <p>b) Yes</p> <p>c) Yes</p> <p>d) Yes</p>
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**Approval of Full Council**

The above application was agreed by resolution of the full council on..... (date), the Report to Council and Budget attached have been taken to and approved by the full Council, and the draft Minutes attached have been seen and authorised for submission by the Chairman.

The Council undertakes to notify the Department for Communities and Local Government (DCLG), as soon as reasonably practicable, in the event:-

- of not exercising the approval, or,
- it finds that the original amount requested is greater than the actual borrowing need.

**SIGNED**..... **DATE**.....  
**(Chair of the Council)**

**NAME**.....

**SIGNED**..... **DATE**.....  
**(Responsible Financial Officer)**

**NAME**.....

*Please send signed, completed forms and all supporting information to your county association of local councils.  
Failure to submit all required information will delay your borrowing approval.*

# **A GUIDE TO PARISH AND TOWN COUNCIL BORROWING IN ENGLAND**

## **Introduction**

1. In this guide, all references to statutory provisions are to provisions in the Local Government Act 2003 ('the 2003 Act'). References to parish councils include those designated as town councils, village councils, community councils, neighbourhood councils and city councils in England.

2. This guide replaces all previous guidance on borrowing by parish councils in England and reflects the legal framework in force as at 1 April 2015. The law that allows a parish council to borrow money is contained in paragraph 2 of Schedule 1. Before such a council can borrow a sum of money, it must first receive an approval to borrow from the "appropriate person": in England the Secretary of State by way of the Department for Communities and Local Government (DCLG), and in Wales, the Welsh Ministers. Evidence of the borrowing approval may be required at audit.

3. This guide sets out the criteria that the Secretary of State generally applies in deciding whether to give borrowing approval, and how parish councils should go about applying for approval. It applies only to England. Community and town councils in Wales should contact the Local Government Finance Division of the Welsh Government (telephone: 029 20 823227 or 029 20 825223) for details of the approval system applicable to them.

4. There is no national limit on the total annual amount of borrowing approvals that will be granted. Councils should only apply for borrowing approval when they are fully ready to take up the borrowing, for example, when planning permission has been obtained. Applications by councils for borrowing approval should be sent to the local County Association affiliated to the National Association of Local Councils (NALC). This applies whether or not the council is a member of NALC.

5. If the Association considers that the application form is complete with no obvious omissions or errors, and that the application is made in good faith, the application will be forwarded to DCLG. Where an Association has any concerns it will raise the matter with the council. The council may, if it wishes, take up any disputed issue with DCLG. The review by the County Association is intended to assist councils in submitting well-founded applications to DCLG. The County Association will provide a brief factual report to DCLG with the application.

## **Local Accountability and Transparency**

6. The Government's localism agenda aims to place more power into people's hands. For democratic accountability to increase, local people need to be able to hold local authorities to account over how they spend public funds and the decisions that are made on their behalf. This principle applies to decisions made by all levels of local government, including parish councils. Transparency is the foundation of this accountability and, if people are to play a bigger role in society, they need to have the tools and information to enable them to do so.

7. When considering whether to apply for borrowing approval, parish councils should be fully open and transparent with their residents and taxpayers in all their dealings. Details of the project and plans for borrowing and loan repayment must be available to residents from an early stage. This could include discussion of proposals in open meetings, and ensuring that information is available for the public before and after a decision is taken, for example on the council website or published in local newsletters. Evidence of this will be taken into account in considering whether to give approval for borrowing. When increasing precept to fund borrowing, evidence of public support for increasing the associated precept will be required to support the loan application.

### **What is a Borrowing Approval?**

8. It is a formal approval issued by the Secretary of State to borrow money.

9. The Secretary of State's decision on the borrowing application will be sent direct to the Clerk to the council. A copy of the decision letter will also be sent to the Chair of the council and the local County Association. Where approval to borrow is given, as well as containing the legal authority for the council to borrow money, the approval will state the maximum amount of money that can be borrowed, the purpose for which the money may be used, the period within which money must be borrowed, and the maximum period within which the borrowing must be repaid.

10. Where a council wishes to use borrowed money for a purpose other than that specified in the borrowing approval letter, written consent to the change of use must be obtained from DCLG, prior to committing to the expenditure. This applies to unused funds.

### **Who can apply for Borrowing Approval?**

11. Any parish council in England.

### **When is a Borrowing Approval not required?**

12. Under paragraph 2(3)(a)(i) of Schedule 1, no approval is required for borrowing by temporary loan or overdraft from a bank or otherwise of sums which the council may temporarily require to meet expenses pending the receipt of revenues receivable by it in respect of the period of account in which the expenses are chargeable.

13. A council may also borrow by temporary loan or overdraft pending the raising of the loan permitted by a borrowing approval (paragraph 2(3)(a)(ii) of Schedule 1). A council must be in possession of the borrowing approval when the temporary loan is taken out, but no second approval is required. The temporary loan must be for the purpose of meeting expenses intended to be met by the approved borrowing. A council can also raise a further loan to repay the original loan without the need for another approval, so long as the new borrowing takes place within the fixed period (paragraph 2(3)(b) of Schedule 1). For the meaning of "fixed period" see paragraph 33 of this guide.

14. In all other circumstances, borrowing approval is required.

### **How is an application for borrowing approval made?**

15. In the first instance, councils should complete the application form included in this guidance. Contact should also be made with the local County Association who will process the application form once it is completed. All questions in the form need to be answered and all supporting information must be supplied (see paragraph 16 below). The making of the application requires approval by resolution of the full council (paragraph 4 of Schedule 1). The form must be signed by the Chair of the council and the responsible financial officer (in most councils the Clerk is also the responsible financial officer, but the post is sometimes a separate appointment). The completed form must be sent in hard copy to the County Association (see paragraph 4 above).

### **What information must be provided?**

16. In addition the form must be accompanied by:-

- a copy of the council's budget for next year (or for the current year if next year's is not available),
- a copy of the written report considered by the council in reaching its decision to apply for borrowing approval,
- the full minutes of the meeting at which the resolution to make the application was passed,
- evidence that residents have been consulted on the following:
  - i) the proposed project,
  - ii) the council's intention to borrow,
  - iii) proposals to increase the precept to meet borrowing costs, if applicable; and
  - iv) if applicable evidence of public support to increase precept because of the proposed borrowing.

17. Where the council intends to provide a grant to another body the references to "project" in this guide and in the application form apply to the assistance being provided by the council, not to the project towards which the assistance is given. For example, if a council wishes to borrow £50,000 to part finance a grant of £100,000 towards the construction by a local charity of a village hall costing £250,000, the application form should show £100,000 as the total cost of the project and £50,000 as the amount to be borrowed, and explain how the remaining £50,000 is to be financed by the council.

### **Parish council precepts and council tax referendum principles**

18. When planning budgets and considering whether to apply for borrowing approval, parish councils should bear in mind the provisions of Chapter 4ZA of Part 1 of the Local Government Finance Act 1992 relating to council tax referendums. Each year, the Secretary of State will determine "excessiveness principles". If an authority breaches those principles, it must arrange a referendum to seek the approval of its local electors to the excessive increase in council tax it has set. For 2014-15, no

principles were set for parish councils: so the new referendum provisions did not apply to them for that year.

19. However, Ministers have made it clear that when setting principles in future years, the Secretary of State will consider whether principles should be set in respect of parish councils, in light of the extent to which restraint in relation to council tax in 2014-15 has been exercised.

20. Ministers are putting on notice that they are prepared, if necessary, to apply the referendum thresholds to larger town and parish councils from 2015-16 onwards to provide protection for local taxpayers and extend the principle of direct democracy.

21. If the Secretary of State decides to determine council tax referendum principles in relation to parish councils for the financial year 2015-16, (and in subsequent financial years), a parish council would need to consider whether its relevant basic amount of council tax<sup>1</sup> was excessive by reference to those principles. Councils with precept increases resulting in a relevant basic amount of council tax which exceeded the principles would be required to hold a referendum to seek local electors' approval to that increase. The result of the referendum would be binding and where an increase was not approved, the parish precept would be substituted with a precept that produced a relevant basic amount of council tax that was not excessive by reference to the principles. Parish councils would be responsible for meeting the costs of any referendum.

22. It should be noted that the Secretary of State will **not** exclude increases in parish council tax precepts attributable to a borrowing approval when considering whether to set council tax referendum principles for parish councils in 2015-16 and in future years.

23. The Secretary of State intends to determine excessiveness principles in parallel with the process for deciding the annual local government finance settlement for each year; so it is expected that principles will be proposed in November/December alongside the announcement of the provisional settlement.

### **What are the criteria for borrowing approval?**

24. The Secretary of State will generally apply the following criteria in deciding whether to give borrowing approval:

- a) the borrowing should be for a purpose that would be capital expenditure as defined in section 16 of the 2003 Act. Appendix A to this guide explains what is covered by the section 16 definition;
- b) the amount to be borrowed should generally not be less than £5 multiplied by the number of local government electors for the area of the council as counted at the latest register for the electoral roll. However, the Department will consider applications for a lower borrowing amount where the total project cost is above the threshold and grants or other resources intended for the project expenditure will be refused or reduced if the borrowing does not go ahead;

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<sup>1</sup> For the meaning of "relevant basic amount of council tax" see section 52ZX(5) of the Local Government Finance Act 1992.

- c) any unallocated balances (including, where appropriate, capital receipts), beyond those required for the prudent financial management of the council, should be used in the project for which borrowing is required;
- d) the council should have a realistic budget (this must be affordable, taking account of its effect on the council's precept) for the servicing and repayment of the debt. The Secretary of State will expect to see that the affordability of the loan charges and any other revenue costs arising from the project is demonstrated in the written report to the council recommending the borrowing application. A copy of the report should be submitted with the application form. The report should provide:
- an estimate of the annual costs, and an indication of whether they will be covered by reductions in other expenditure, or by additional income from the precept or other sources,
  - in cases where an increase in the precept is proposed, an estimate of the amount of the increase in both monetary and percentage terms, and recognition that any proposed increase in precept may be subject to council tax referendum principles in future years,
  - evidence that any risks and uncertainties affecting the financing of the project have been taken into account in assessing its affordability,
  - details of any significant financial developments that might affect the ability of the council to finance the costs in future years, so far as can reasonably be foreseen.
- e) The council should have consulted local residents on the project and associated borrowing. The format of consultation with residents is a matter for the council to decide, however councils should note the following:
- details of the project and plans for borrowing and loan repayment must be accessible to residents from an early stage,
  - decisions on borrowing must be taken in an open and transparent way, following discussion in open meetings,
  - inclusion of the matter on an agenda for a public meeting of the council will not, in itself, be considered sufficient evidence of consultation,
  - the council should ensure that information about the progress of the project continues to be available to residents following the approval to borrow,
  - in particular, any proposal to increase the precept to meet borrowing costs **must** be backed by evidence of public support.

### **When should a council apply?**

25. All councils are encouraged to let their County Associations know of their borrowing requirements as soon as possible. However, councils should not apply for borrowing approval until all negotiations have been completed and all other consents (eg planning permission) have been obtained. If an applicant council is successful, processing of the borrowing approval should generally take about 15 working days from the date of its receipt by DCLG. The borrowing approval will authorise the council to take out a loan within a period of twelve months starting with the date of issue of the borrowing approval.



## **How much can a council borrow?**

26. The amount that an individual council will be authorised to borrow will normally be limited to a maximum of £500,000 in any single financial year for any single purpose.

27. Where borrowing approval is sought for an amount higher than £500,000, DCLG may issue the borrowing approval phased over the life of the project. An approval-in-principle for the full amount will normally be issued at the outset of the project, with formal approval letters issued at stages agreed with the council. DCLG may request project progress reports at any time during the phased approvals process.

28. A council wishing to borrow more than £500,000 is encouraged to contact DCLG as early as possible to discuss the approvals process.

## **Where can councils go for funds?**

29. Councils may not, without the consent of HM Treasury, borrow otherwise than in sterling (section 2(3)). In practice, most councils are likely to obtain funds from the Public Works Loan Board or the clearing banks. When councils apply for funds, the Public Works Loan Board will insist that they have sight of the original borrowing approval. Loans may also be taken out from private or voluntary sector organisations, or from individuals. Irrespective of the proposed source of borrowing, councils must have borrowing approval in place before arranging a loan. Evidence of the borrowing approval may be required at audit. Councils are advised to seek appropriate advice.

30. Councils are reminded that the decision to borrow must be taken by the full council (paragraph 2(4) of Schedule 1). This is a separate decision from the decision to apply for borrowing approval. Lenders will generally offer a variety of loan structures such as fixed or variable repayment rates of interest, discount or premiums for early repayment in certain circumstances.

## **Timing of borrowing**

31. A council may borrow by temporary loan or overdraft pending the raising of the loan permitted by a borrowing approval (paragraph 2(3)(a)(ii) of Schedule 1). This means that progress on a project need not be delayed until the longer-term borrowing is arranged. See paragraph 13 above for the requirement for borrowing approval in these circumstances.

## **Security for the lender**

32. All borrowing by a council, together with interest on it, is charged indifferently on all the revenues of the council (section 13(3)). A council cannot mortgage or charge any of its property as security for money borrowed or which it otherwise owes; any security given in breach of this provision is unenforceable (section 13(1) and (2)).

## **Period of loan**

33. Councils must determine the period within which the money borrowed will be repaid, and they are required to make charges to revenue account sufficient to repay the principal within that period and meet the interest charges on the borrowing (paragraphs 3 and 5 of Schedule 1). The period determined is known as the "fixed period", and the council's determination requires the consent of the Secretary of State. The borrowing approval letter will normally specify the maximum period for the repayment of the loan. The maximum period will begin on the date on which the money is borrowed, and will generally be either:

- *50 years*, for the acquisition of, or works on or to, land, buildings, roads or structures, or the making of grants for such purposes; or
- *10 years or life span of an asset*, in all other cases.

34. Councils are asked to consider carefully whether it would be appropriate to borrow for the permitted maximum or for a shorter period. Generally the borrowing period should be no greater than the period for which the expenditure is forecast to provide benefits to the council (or the body being assisted). Thus if a piece of equipment is only thought likely to last for five years, it would be more appropriate to borrow for five years than for the ten years that the borrowing approval might permit.

### **When a borrowing approval is no longer required**

35. If a council finds it no longer needs the borrowing approval issued to it, it must inform DCLG.

36. If a council finds that it does not need to borrow the full amount as specified in the approval letter, DCLG should be informed of the actual loan amount as soon as is reasonably practical.

### **Best Practice**

- Seek appropriate advice and guidance at early stage of the project.
- Programme prudent use of balances as well as borrowing.
- Budgets or revised budgets should be considered before applying for borrowing approval.
- The borrowing term should not exceed the life of the asset.
- Even if the council secures an interest free loan, it will still require borrowing approval.
- Consult local residents about the proposed project and the intention to borrow.
- Make sure residents have access to as much information as possible about the project and loan, both before and after the decision to borrow.
- If increasing precept, ensure residents are consulted on the increase and obtain evidence to support loan application.

# APPENDIX A

## DEFINITION OF CAPITAL EXPENDITURE

- 1 Section 16 of the 2003 Act defines "capital expenditure" as "expenditure of the authority which falls to be capitalised in accordance with proper practices". In turn section 21(2) defines "proper practices" as those accounting practices that local authorities are required to follow by virtue of any enactment, or of a code of practice or other document specified in regulations. Under this power the Secretary of State has specified (among other documents) the CIPFA/LASAAC *Code of Practice on Local Authority Accounting in the United Kingdom* ("the Code"). The Code does not apply to parish councils. However, the first of the criteria set out in paragraph 24 of this guide relies on the Code's provisions to provide a definition of capital expenditure for parishes consistent with the definition applicable elsewhere in the public sector. This is done purely to ensure that all applications are judged against uniform criteria, and does not imply that the Code is in any way applicable to a parish council's accounting statements.
- 2 The key relevant paragraphs of the 2012-13 Code for the purposes of the capital expenditure definition are as follows:

**4.1.2.11 Property, plant and equipment** are tangible assets (ie assets with physical substance) that are held for use in the production or supply of goods and services, for rental to others, or for administrative purposes, and expected to be used during more than one period.

### **Recognition**

**4.1.2.16** The cost of an item of property, plant and equipment falling under this section of the Code shall be recognised (and hence capitalised) as an asset on a local authority Balance Sheet if, and only if:

- it is probable that the future economic benefits or service potential associated with the item will flow to the authority, and
- the cost of the item can be measured reliably.

**4.1.2.17** Costs that meet the recognition principle in paragraph 4.1.2.16 include initial costs of acquisition and construction, and costs incurred subsequently to enhance, replace part of, or service the asset.

The Code goes on to exclude day-to-day servicing (ie repairs and maintenance) from the definition if they do not add to the future economic benefits or service potential of the asset.

- 3 In addition, section 16 allows the Secretary of State to adjust the definition of capital expenditure by regulation, and, in the case of a particular authority, by direction. Regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146), as amended, provides as follows:

## **Expenditure to be capital expenditure**

25. —(1) For the purposes of Chapter 1 of Part 1 the following expenditure of a local authority, incurred on or after 1st April 2004, shall be treated as being capital expenditure insofar as it is not capital expenditure by virtue of section 16(1) —

(a) expenditure incurred on the acquisition or preparation of a computer program, including expenditure on the acquisition of a right to use the program, if the authority acquire or prepare the program for use for a period of at least one year for any purpose relevant to its functions;

(b) subject to paragraph (2), the giving of a loan, grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the authority, be capital expenditure;

(c) the repayment of any grant or other financial assistance given to the local authority for the purposes of expenditure which is capital expenditure;

(d) subject to paragraph (3) the acquisition of share capital in any body corporate;

(e) expenditure incurred on works to any land or building in which the local authority does not have an interest, which would be capital expenditure if the local authority had an interest in that land or building;

(ea) expenditure incurred on the acquisition, production or construction of assets for use by or disposal to, a person other than the local authority which would be capital expenditure if those assets were acquired produced, or constructed for use by the local authority; and

(f) the payment of any levy by a local authority under section 136 of the Leasehold Reform Housing and Urban Development Act 1993 (levy on disposals)

(2) Where the expenditure referred to in paragraph (1)(b) is a loan given by a parish council or charter trustees to any person, it shall not be treated as being capital expenditure by virtue of this regulation.

(3) Where the expenditure referred to in paragraph (1)(d) is—

(a) an investment in a money market fund; or

(b) an investment in the shares of a company to which Part 4 of the Finance Act 2006 (Real Estate Investment Trusts) applies; or

(c) the acquisition of shares in an investment scheme approved by the Treasury under section 11 (1) of the Trustee Investments Act 1961 (local authority investment schemes).

it shall not be treated as being capital expenditure by virtue of this regulation.

Parish councils should note in particular the effect of paragraph (2) of the regulation.

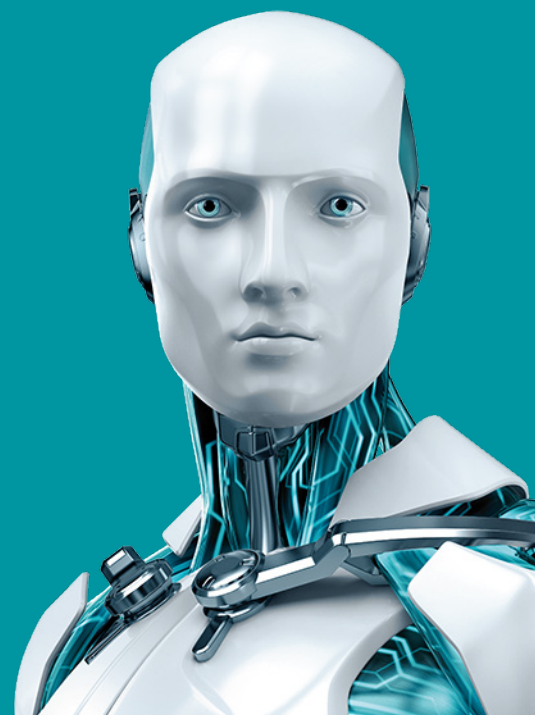
# IS GDPR GOOD OR BAD NEWS FOR BUSINESS?

Based on:

“A concise guide to the key provisions of the General Data Protection Regulation (GDPR)” by Kemp Jones Solicitors LLP



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## EXECUTIVE SUMMARY

Recent years have brought major advances in information technology, and fundamental changes to the ways in which individuals and organizations communicate and share information. However, while these developments have led to more frequent data usage, the trend hasn't been equally reflected in all of the legal codes of EU member states.

To achieve harmonization, a new single data protection law – General Data Protection Regulation (GDPR) – has been passed and will come into force on May 25, 2018. The changes it brings will have implications for businesses of all sizes that process the personal data of Europeans, whether in or out of the EU.

Some core concepts existing under the current EU data protection regime (Data Protection Directive or DPD introduced in 1995) will remain broadly similar, such as the concept of personal data, data controllers and data processors. However, **many new concepts and approaches** will come into force that may create compliance difficulties for businesses.

Some of the significant changes include:

- Expanded territorial scope, including EU as well as non-EU companies
- Higher fines and a broader range of powers for national data protection authorities (NDPA)
- Stricter rules for acquiring and retracting an individual's consent
- Stricter breach notification rules

GDPR also expands the rights of individuals, by giving them:

- Right to object to profiling
- Right to obtain a copy of their gathered personal data
- Right to be forgotten

However, GDPR also means good news for the companies working with data. It will remove excessive national variation in the data protection compliance obligations and replace them with one common set of rules, mainly lowering the burden for multinational businesses.

Another benefit is the move to the "one-stop shop" concept which will allow companies to deal with a single data protection authority.

This whitepaper offers a more detailed description of the aforementioned bullet points as well as several other changes brought by GDPR.

## GDPR: A MORE CONSISTENT SET OF DATA PROTECTION RULES

GDPR introduces a single legal framework that applies across all EU member states, meaning that businesses will face a more consistent set of data protection compliance obligations from one EU member state to another.

But GDPR doesn't solely concern businesses or entities working with personal data within the EU. Many non-EU companies or organizations that were not required to comply with the former regulation (Data Protection Directive or DPD) will have to follow the new rules.

A company is subject to the GDPR if it either:

- offers goods or services to data subjects in the EU, irrespective of whether payment is received
- monitors its data subjects' behavior within the EU

**Data Subject** - a natural person whose personal data is processed by a controller or processor.

For the sake of clarity, throughout this whitepaper the term will also be referred to as **customers or employees**.

Despite introducing a more streamlined legal framework, the GDPR is still likely to entail significant changes for many businesses, requiring substantial lead-time.

## National data protection authorities will gain more power

Currently, fines under national law vary, and are comparatively low, reaching into the hundreds of thousands in some countries. GDPR will increase the maximum fines significantly, making non-compliance a very-high risk issue. Penalties are to be divided into two groups:

- 1. Up to 2% of annual worldwide turnover of the preceding financial year or 10 million euros** (whichever is the greater) for violations relating to internal record keeping, data processor contracts, data security and breach notification, data protection officers, and data protection by design and default.

**Data Processor** - the entity that processes data on behalf of the Data Controller.  
For the sake of clarity, throughout this whitepaper the term will be referred to as **processing company**.

- 2. Up to 4% of annual worldwide turnover of the preceding financial year or 20 million euros** (whichever is the greater) for violations relating to breaches of the data protection principles, conditions for consent, data subjects' rights and international data transfers.

Powers of National data protection authorities (NDPAs) will increase as well, enabling them to:

- Impose the aforementioned fines
- Carry out audits
- Require business to provide information
- Obtain access to company premises

## Obtaining consent becomes more difficult

Prior to GDPR, **ordinary consent** was necessary for non-sensitive personal data and **explicit consent** for sensitive personal data.

After May 2018, data subjects must give consent in all cases *"by a clear affirmative action establishing a freely given, specific, informed and unambiguous indication of the individual's agreement to their personal data being processed, such as by a written statement."*

Businesses will bear the burden of proof that customers or employees have given their consent to the processing of their data and that it was obtained in a valid manner. In case the processing has multiple purposes, consent is necessary for each of them separately.

In addition to that, end-users, customers and employees must be able to withdraw their consent at any time, given that such procedures will be equally simple as providing consent. Additionally, businesses can **no longer require** consent in exchange for their services, or "execution of the contract", nor use data unnecessary for these activities.

## Risk-based approach to compliance

Under the new GDPR rules, businesses will bear responsibility for assessing the degree of risk that their processing activities pose to data subjects – such as end-users, customers or employees.



This can be seen in several of the provisions, for example, the new accountability principle and requirement for data controllers to maintain documentation, privacy by design and default, privacy impact assessments, data security requirements and the appointment of a data protection officer.

Low-risk processing activities may face a reduced compliance burden.

**Data Controller** - the entity that determines the purposes, conditions and means of the processing of personal data.

For the sake of clarity, throughout this whitepaper the term will be referred to as **controlling company or company in control**.

## The “one-stop shop”

For multinational businesses, present in more than one EU market, GDPR will represent a substantial change in communications with the data protection authorities. It allows businesses to communicate and predominantly, deal with a single NDPA.

This is also described as a “lead supervisory authority”, usually responsible for the main establishment of the business within the EU.

The lead NDPA will be responsible for all regulation of cross-border processing activities carried out by that controlling or processing company. It must also work with all the other concerned NDPAs, as they all have a say in decisions on enforcement relating to cross-border processing activities.

If these NDPAs cannot agree on a decision, the matter is referred to the **European Data Protection Board (EDPB)**. This has a range of powers to ensure the consistent application of the GDPR across the EU – including the authority to make the final decision in enforcement cases. Purely local cases will continue to be handled by the NDPA for the local jurisdiction.

## NEW OBLIGATIONS OF COMPANIES UNDER GDPR

### Privacy by design and by default

In particular, the GDPR will require businesses to implement technical and organizational measures to ensure that the requirements of the GDPR – “privacy by design” as well as “privacy by default” – are met.

Businesses must take data protection requirements into account from the inception of any new technology, product or service that involves the processing of personal data (privacy by design) and by implementing appropriate measures to the processing of personal data (privacy by default).

GDPR names several measures that can help companies achieve these goals - mentioning minimization of personal data processing, encrypting or pseudonymising personal data, transparency with regard to the functions and processing of personal data, enabling data subjects to monitor how their data is being handled. These measures are also to be kept up-to-date in the future.

### Mandatory privacy impact assessments

If any newly developed technologies are likely to result in a high risk to end-users, customers or employees, businesses will be required to perform data **protection impact assessment** (PIAs) before carrying out any processing.

In particular, PIAs will be required for:

- A systematic and extensive evaluation of personal aspects by automated processing, which create basis for decisions that produce legal effects concerning the data subjects, or significantly affect them. This includes profiling.
- Processing of special categories of personal data or data relating to criminal convictions and offences on a large scale.
- A systematic monitoring of a publicly accessible area on a large scale.
- Other kinds of processing operations that require a PIA, published by the NDPA.

Controlling companies can carry out a single assessment to address a set of similar processing operations that present similarly high risks.

Where a PIA indicates that the processing would result in a high risk to individuals, prior to any processing taking place, the business must consult with their NDPA.

Standardized icons to indicate important features of the relevant data processing activities in a simplified format may be prescribed by delegated acts.

## No more registrations

Instead of registering with an NDPA, controlling companies will have to maintain detailed documentation recording their processing activities.

Similarly, processing companies must keep a record of the categories of processing activities they carry out on behalf of a company in control. GDPR specifies the information each record must contain in each of the aforementioned instances.

This does not apply to businesses employing fewer than 250 people, unless: 1.) the processing is likely to result in high risk to individuals, 2.) the processing is not occasional or 3.) the processing includes sensitive personal data.

Only in certain circumstances, can controlling or processing companies be required to appoint a data protection officer, with expert knowledge of data protection. An employee in such a position may have protected employment status.

## New obligations of data processors

Whereas, under former regulations, processing companies were generally not subject to fines or other penalties, GDPR will change that. Processors may be liable to pay fines of up to 4% of annual worldwide turnover from the preceding financial year or 20 million euros, whichever is greater.

The increase in compliance obligations will probably lead to an increase in the cost of data processing services. It may also make negotiation of data processing agreements more difficult, as the processors will have a greater interest in ensuring that the scope of the controller's instructions is clear.

This may also lead to a review of the existing agreements to ensure that the processing companies have met their own obligations under the GDPR. Companies in control should therefore identify agreements that might require review and amend them as necessary.

## Strict data breach notification rules

GDPR requires businesses to notify the NDPA of all data breaches without undue delay, within a maximum of 72 hours, unless the data breach is unlikely to result in a risk to individual data subjects. If this is not possible, the business will have to justify the delay to the NDPA via a "reasoned justification".

In cases where the breach is likely to result in high risk to the individuals, GDPR requires businesses to inform data subjects "without undue delay", unless an exception applies. Data processors must notify the data controller.

Based on these new rules, businesses will need to create a data breach response plan, enabling them to react promptly in the event of a data breach. This will also require designation of specific roles and responsibilities within the company, as well as employee training and preparation of notification templates.

Compliance with the new GDPR rules for breach reporting will entail a significant administrative burden, one which may increase costs for businesses.

**Encryption** - is the process of encoding information in a way that prevents unauthorized parties from being able to read it.

## Encryption

The communication of the data breach to data subjects will not be required if the controller has implemented appropriate protection measures. This applies in particular to means that render personal data unintelligible to any person who is not authorized to access it.

Encryption fulfills this goal, being explicitly named by the GDPR as one of the appropriate technical and organizational measures that businesses shall implement to ensure a level of security adequate to the risk.

## Binding Corporate Rules (BCRs)

GDPR introduces a slightly broader range of mechanisms to transfer personal data out of the European Economic Area (EEA).

It formally recognizes the binding corporate rules (BCRs) – agreements used for these purposes in the past – as a lawful data transfer mechanism (whereas some GDPR predecessors did not).

Under the new regulation, BCRs will still require NDPA approval, but the process should become less burdensome than the current system. BCRs are available to both controlling and processing companies.

Businesses should review their procedures and legal basis for transferring personal data outside of the EEA and keep this under review, particularly as the validity of transfer mechanisms continues to be examined by the ECJ amid ongoing cases.

The fines for breach of the data transfer restrictions under GDPR fall into the higher tier for failure to comply with the requirements.

## NEW RIGHTS OF DATA SUBJECTS

In general, the rights of customers or employees (data subjects) are expanded under GDPR. The list of new individual rights includes:

### The right to be forgotten

Individuals will have the right to request that businesses delete their personal data in certain circumstances. For example, if the information is no longer necessary for the purpose for which it was collected, or the data subject withdraws their consent.

As a result of the court's decision<sup>1</sup>, many businesses may already be doing this. However, it remains unclear precisely how this will work in practice and businesses should consider ways how they will give effect to this right, as deletion of personal data is not always straightforward.

## The right to object to profiling

In certain circumstances, individuals will have the right to object to their personal data being processed (which includes profiling).

**Profiling** - is defined broadly and includes most forms of online tracking and behavioral advertising, making it harder for businesses to use data for these activities. The fact of profiling must be disclosed to the data subject, and a PIA is required.

For businesses which use profiling only on rare occasions, it may be easier to conclude such activities than to comply with GDPR. Companies that regularly engage in profiling need to consider how best to implement appropriate consent mechanisms.

The European Data Protection Board is expected to provide further guidance on profiling.

## The right to data portability

Data subjects have a new right to obtain a copy of their personal data from the controlling company in a commonly used and machine-readable format. They will also have the right to transmit those data to another controller - for example, another online service provider.

In exercising their right, data subjects can request the information be transmitted directly from one controller to another, if it is technically feasible.

Businesses that process large quantities of personal data (such as social media businesses, insurance companies or banks) should consider how they make these rights accessible.

While new-to-market online companies might see this as a way to improve competition, the established providers will probably view it in less beneficial terms.

## Data subject access requests

Business must reply within one month from the date of receipt of the request and provide more information than was required by the regulations previous to GDPR.

## HOW CAN ESET HELP?

As we already mentioned, GDPR is not just introducing stricter rules for the protection of personal data belonging to individuals, it also names measures deemed appropriate for the job – naming encryption as one of them.

Generally, the main benefits of the encryption technology are its strength – thanks to powerful algorithms and growing key length (bits) – wide availability and relatively low cost of implementation, embraced even by some [national authorities](#).

1) In May 2014 in Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, Case C-131/12, 13 May 2014, on a referral from a Spanish court, the ECJ explored the existence and scope of the right to be forgotten and ruled that an individual has a right to rectification, erasure or blocking of that information, and a right to object to the processing of the information in certain circumstances.

One example, DESlock Encryption by ESET, offers more than just the basics. It also offers business clients a solution that is simple to deploy, easy to use for even non-technical users and, one that allows for the remote management of keys, settings and security policy. It also allows users to safely encrypt hard drives, removable media, files and email.

In addition, DESlock Encryption allows companies to meet the data security obligations required by GDPR by easily enforcing encryption policies, while keeping productivity high. Apart from all that, DESlock Encryption by ESET solves one of the biggest usability challenges: How can users share encrypted information?

Common passwords are a potential security risk and public-key encryption cause problems, mainly in larger teams with higher staff turnover. Centrally-managed, shared encryption keys avoid these hindrances, mirroring a more natural way – resembling the use of physical keys to lock houses or cars.

More about GDPR and DESlock Encryption can be found on [ESET's webpage dedicated to GDPR](#).

## CONCLUSION: PROS AND CONS OF GDPR

GDPR has the potential to introduce positive changes for many businesses. It is designed to increase the harmonization of national data protection laws across the EU while, at the same time, addressing new technological developments. GDPR will be directly applicable across the EU, without the need for national implementation, thanks to which, businesses are likely to face fewer national variations in data protection rules.

Businesses may also benefit from the “one-stop shop” approach, which will permit them to deal primarily with a single DPA. However, there remain areas in which material differences will continue from one member state to another, affecting data protection compliance requirements (including issues of national security, journalism, freedom of speech, employment law, professional secrecy laws and laws on the interception of communications).

On the other hand, GDPR is likely to require organization-wide changes for many companies across the EU, as business will have to ensure that personal data are processed in compliance within the newly set requirements.

Such changes may include redesigning systems that process personal data, renegotiating contracts with third party data processors and restructuring cross-border data transfer arrangements. It may also lead to adapting new organizational and [technical measures such as encryption](#).

Businesses should therefore consider that these changes may require a significant amount of time to implement, and plan ahead. Failure to do so could mean that businesses are left with new requirements to implement, without having set aside appropriate resources necessary to achieve compliance.



Learn more at:  
[encryption.eset.com](https://encryption.eset.com)



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# GENERAL DATA PROTECTION REGULATIONS (GDPR)



## Introduction

This course highlights the key themes of the General Data Protection Regulation (GDPR) to help organisations understand the new legal framework in the EU.

## Course Overview

At the end of the course, trainees will be able to:

- Define the key concepts and terminology of the GDPR
- Recognise the importance of protecting personal data
- Identify which information the GDPR applies to
- Identify the principles of Data Protection
- Explain the rights of Data Subjects under the Act
- Understand the responsibilities of Data Controllers
- Outline the consequences of non-compliance

## Course chapters

### 1. Introduction to the General Data Protection Regulations (GDPR)

In this section, we'll cover why data protection? And what is personal data? You'll identify which information the GDPR applies to, and understand the importance of protecting personal data.

### 2. Rights and responsibilities

In this section, we'll cover who does the GDPR apply to and outline the individual rights of Data Subjects and the responsibilities of Data Controllers.

### 3. Regulation and Enforcement

In this section, we'll cover the data protection principles, data breaches, and notification of a data breach. We'll cover basic guidelines to help prevent security and outline the consequences of non-compliance breaches.

#### Who will it benefit?

Ideal for anyone who works in any type of organisation that handles data. This course will allow employees to understand what General Data Protection Regulations are and why it's important to follow these requirements in order to protect Data Subject's data

#### How it works?

GDPR is delivered online as an interactive course to each trainee on their computers, or portable device at any internet enabled location. The interactive course is engaging, informative and exciting to use.

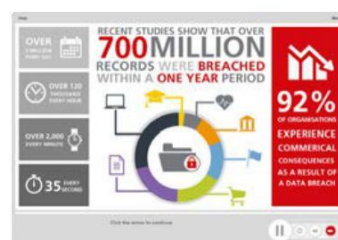
Using up-to-date, modern graphical images, users will be faced with a selection of interactive elements and mini quizzes to test their knowledge.

Users will receive informative advice and guidance and will be tested on their understanding of the subject at the end of the course by completing the compulsory self-test.

This course also features a risk checklist which asks the user a series of questions relating to their current working environment.

Course Format: Interactive

Running time: 25-30 minutes



#### Technical Information

**Internet Access:** Users will need a computer or apple device with a web browser and an internet connection to access Safety Media e-Learning Solutions.

**Minimum Recommended Bandwidth:** 2Mbs

**Software:**

One of the following web-browsers:

**Windows:** Internet Explorer  
Latest versions as maintained and supported by the manufacturer  
Google Chrome

**OS X:** » Latest versions as maintained and supported by the manufacturer  
» Google Chrome

**IOS:** » Latest versions as maintained and supported by the manufacturer  
» Google Chrome

**Android:** » Latest versions as maintained and supported by the manufacturer  
» Google Chrome

**Adobe Reader or Reader DC** (for viewing of PDF documents downloadable from the solution where applicable)

**Plug-ins** » Flash player: Version as recommended by Adobe  
**Settings** » Enable JavaScript  
» Allow cookies

**Hardware**

Processor: 600MHz  
Minimum Hard Disk Space Required: 1GB  
RAM: OS Dependent

**Audio**

The courses contain audio, system requirements for running the courses are browser dependent. Where no enabled audio device is detected and the browser defines that this is required the user will be informed via an error message window upon launching the course