

GDPR and Wales National Workforce & Reporting System (WNWRS)

NWSSP Shared Services are to deliver on behalf of Welsh Government the Wales National Workforce Reporting System (WNWRS) for GP Practices across Wales. The system is to be delivered by NHS Digital through direct contractual arrangements with NWSSP. It is split into two modules; the first is for the capture of workforce data and the second is the reporting tool. The workforce data is personal data and employment data, the reporting tool contains no personal identifiable data, showing only positions, locations and age groups.

The GP Practices will nominate a lead, potentially a Practice Manager/Business Manager to have access (controlled login/permissions) to their own staff data, with access to view the reporting tool data across Wales. There is a NWSSP System Administrator who will have full data and reporting access, with the role of liaising with NHS Digital, GP Practices and controlling the access to reporting information.

Within the WNWRS Implementation Group, representatives from GPC Wales have raised queries concerning the General Data Protection Regulation (GDPR) issues to be considered in relation to the workforce data and in particular the need to obtain express consent from data subjects to lawfully process their personal data. As the reporting tool contains no identifiable data, the provisions of the GDPR do not apply to this module.

The Implementation Group has developed clear roles and responsibilities setting out who will have sight of the data and how it is to be used. This clearly indicates that identifiable data is only accessible to the nominated GP Practice lead and the System Administrator. Details of these roles and responsibilities are set out in Appendix 1.

We have taken advice concerning the workforce data aspect from NWSSP's Information Governance Department, NHS Wales Informatics Service Data Protection Officer as well as from NWSSP's Legal & Risk Services.

There are six lawful bases for processing personal data as set out in Article 6 of the GDPR. At least one of these must apply whenever personal data is processed:

(a) Consent: the individual has given clear consent for you to process their personal data for a specific purpose.

(b) Contract: the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.

(c) Legal obligation: the processing is necessary for you to comply with the law (not including contractual obligations).

(d) Vital interests: the processing is necessary to protect someone's life.

(e) Public task: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.

(f) Legitimate interests: the processing is necessary for your legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)

As a public authority, NHS Wales must determine the lawful basis before starting to process personal data. It is important to get it right first time, as if it is found at a later date that the chosen basis was inappropriate it will be difficult to swap to a different one. It is therefore important to thoroughly assess upfront which basis is appropriate and document this. It is possible that more than one basis applies to the processing; and if this is the case then this should be made clear from the start. If the purposes change over time or there is a new purpose which was not originally anticipated, a new lawful basis may not be needed as long as your new purpose is compatible with the original purpose. **The GDPR however specifically says this does not apply to processing based on consent.** Consent must always be specific and informed. Either a fresh consent is needed which specifically covers the new purpose, or a different basis for the new purpose needs to be found.

It is our view that for both legal and logistical reasons, obtaining individual consents is not the most appropriate basis to rely upon to process personal data. We consider the most appropriate bases are either under Article 6(b) Contract or under Article 6(e) Public task.

We understand that questions have been raised as to whether some of the data to be collected is considered to be "special category data" under the GDPR. Special category data is personal data which the GDPR considers to be more sensitive and so requires more protection. A full outline of the WNWRS data fields are set out in Appendix 2. Examples of special category data is information about an individual's:

- race;
- ethnic origin;
- politics;
- religion;
- trade union membership;
- genetics;
- biometrics (where used for ID purposes);
- health;
- sex life; or
- sexual orientation.

In order to process special category data, a specific condition must be relied upon in accordance with Article 9 of the GDPR. We consider the specific condition as contained in Article 9 (h) applies namely:

(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;

We consider the "mandatory data fields" to be completed on the WNWRS do not fall into the category of special category data. Where certain data is provided in addition to the data requested in the mandatory data fields (i.e.: in relation to gender and ethnicity), the

additional information may potentially be considered to be special category data. In this event, Article 9 (h) can be relied upon to enable any special category data to be processed.

We further understand concerns have been raised as to the potential liability of a GP Practice for any data breach that may occur when they are acting as a data controller in the reporting process. Data controllers are responsible for ensuring that the data processing (including any processing carried out by a processor on a controller's behalf) complies with the GDPR. Under the GDPR both data controllers and data processors are subject to the relevant investigative and corrective powers of a supervisory authority (such as the ICO) and may be subject to administrative fines or other penalties. An individual can bring a claim directly against a data controller and/or a data processor in court. Both data controllers and data processors can be held liable under Article 82 GDPR to pay compensation for any damage caused by processing (including non-material damage such as distress).

A data controller will not be liable if it can prove it is not in any way responsible for the event giving rise to the damage. If a data controller is required to pay compensation but is not wholly responsible for the damage, it may be able to claim back from the data processor the share of the compensation for which they were liable.

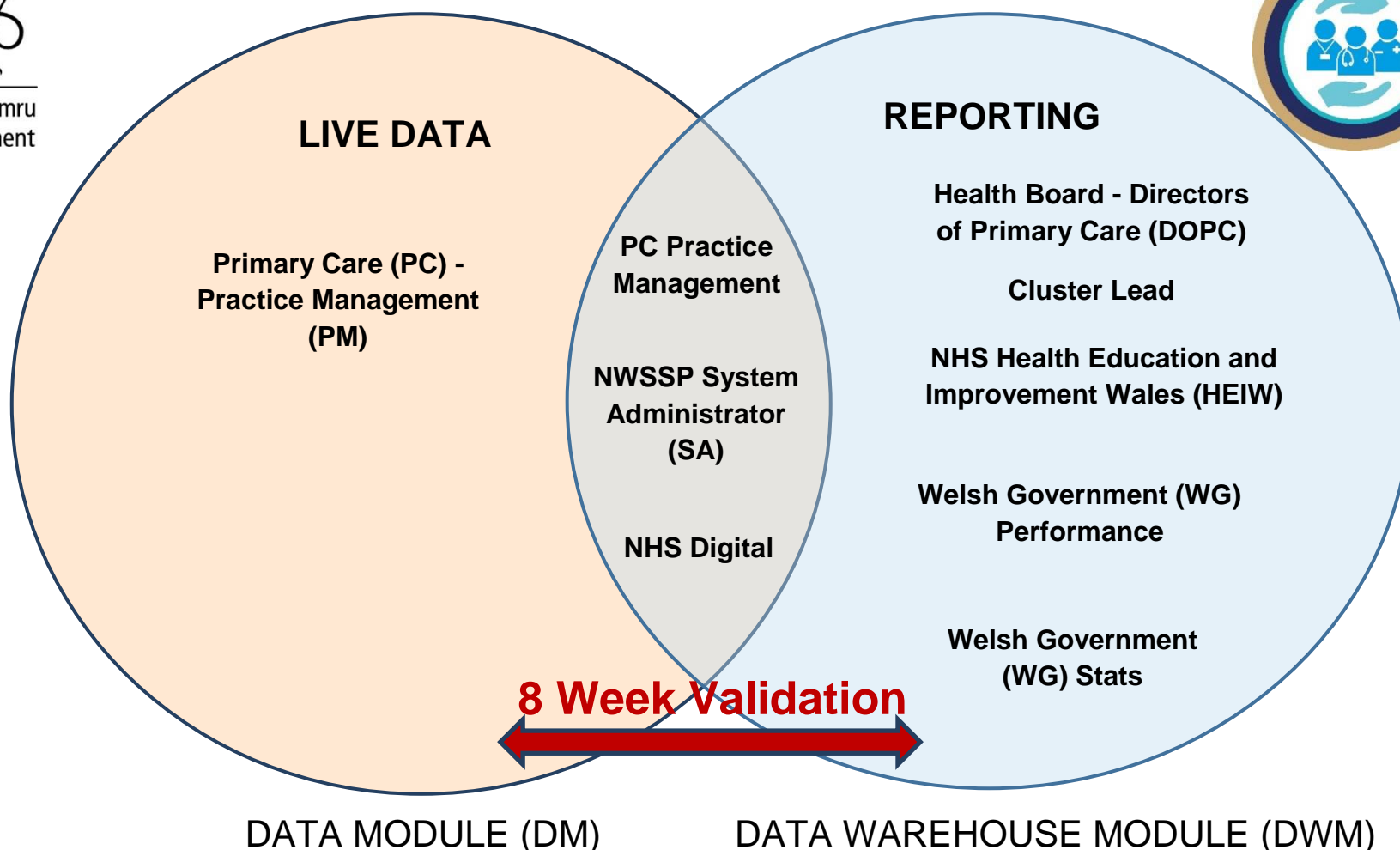
We trust the above information is of assistance and provides reassurance to GP practices in relation to the operation of the WNWRS.

We confirm a Data Protection Impact Assessment is in progress, which will further demonstrate compliance with the GDPR and engender trust and confidence in the WNWRS. A copy of this assessment will be shared with all GP practices week commencing 24 June 2019.

Developed by NHS Wales Shared Services Legal & Risk Service on behalf of NWSSP Employment Services.

Dated 14 June 2019

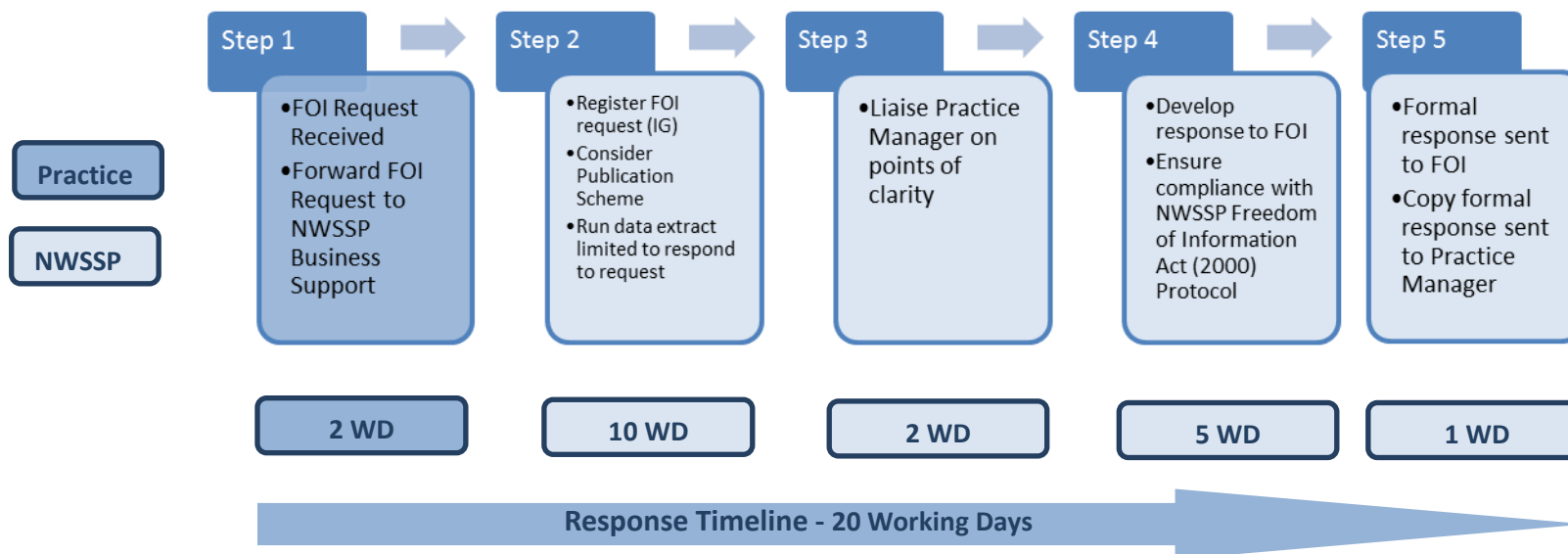
Wales National Workforce Reporting System (WNWRS) DATA PERMISSIONS



Phase One (Sept 2019) of the Data Warehouse Module reporting will be managed by the NWSSP System Administrator. Phase Two - access to the Data Warehouse Module reporting will be allocated to Health Board – DOPC & HEIW.

Wales National Workforce Reporting System Roles and Responsibilities.

Stakeholder	Data Module	Data Warehouse Module
NWSSP System Administrator (SA)	<p>Single Point Of Contact (SPOC) for Wales Primary Care WNWRS System Administration access NHS Digital - Manage the contract – Point of Contact User Support</p> <ul style="list-style-type: none"> • Password reset • Expert – Tips/Guidance • Training/Guide/Webinar • Information Governance/GDPR • FOI Queries • System Development queries • System failure/Business Continuity support <p>Horizon Scan Data against National Workforce Data Standard and work with practice to resolve and raise concerns on data quality issues. Engagement with Practices to populate data Liaise with Cluster Lead Resolve Data Quality issues/gaps within 5 Working Days Communicate developments/changes affecting the system Support GP Practices to identify system development requirements and present to National Workforce Group</p>	<p>Wales Point Of Contact - NHS NHS Digital - Manage the contract NHS Digital 'SR's@ - Proactive Management - Resolution Reports - Stakeholders e.g. HB(HoPC)/HEIW(WF) FOI Management – Information Governance Support ad-hoc Stakeholder requests for non-published data within GDPR</p>
Practice Management (PM)	<p>Entry, management and maintenance of</p> <ul style="list-style-type: none"> • Workforce data: • Absence • Locum allocation/Cumulative Sessions • Vacancy information <p>Apply Workforce National Data Standards Engage with NWSSP SA for guidance, to populate data and raise concerns or developments</p>	<p>Will have responsibility and control of their data and reporting functions No publication of data by PM (this will be provided by SA)</p>
NHS Health Education and Improvement Wales (HEIW)		<p>Using the data to inform on the Primary Care Workforce Strategy and Planning To understand the reporting roles & responsibilities to avoid duplication Utilise data published by other Stakeholders No publication of data by HEIW</p> <p>Confirmation to be received from HEIW</p>
Welsh Government		<p>Published Data Set (Anonymised data set) Workforce Planning</p>
Health Boards – Directors of Primary Care (DOPC)	<p>Promote the uptake of the system Communicate to practices that the data requirements to HBs can be fulfilled from using the system. Liaise with NWSSP System Administrator</p>	<p>Annual GP Practice Census Monthly Vacancy figures Managed Practice TUPE planning Workforce and Service Delivery Planning - Ad-hoc reporting</p>



Should you wish to seek further clarity please contact us:
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PLEASE SEE ATTACHED EXCEL FILE