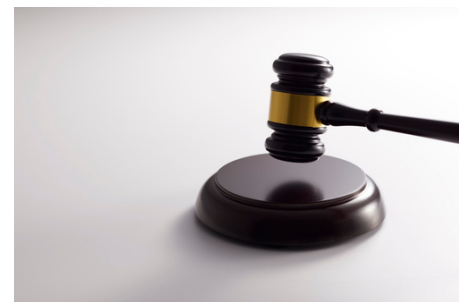


INTRODUCTION TO LEGAL BASIS FOR PROCESSING DATA - OVERVIEW

WHAT ARE THE LAWFUL BASIS FOR PROCESSING DATA?

When acting as a data controller or data processing, you **MUST** have a legal basis for processing any data. These are clearly outlined within the GDPR Regulation Article 2, and are listed below.

- a)** The data subject has given consent to the processing of his or her personal data for one or more specific purposes
- b)** Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract
- c)** Processing is necessary for compliance with a legal obligation to which the controller is subject
- d)** Processing is necessary in order to protect the vital interests of the data subject or of another natural person
- e)** Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
- f)** Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.



Legal Basis



Consent



Contract



Legal obligation



Vital interests



Public task



Legitimate interests

Many of the legal bases that we rely on use the term ‘necessary’. In short, if you can achieve the same results without the processing, then it cannot be deemed necessary. It also does not mean that it has to be absolutely essential, but it must be a ‘targeted and proportionate way to achieving a specific purpose’, according to the ICO. The ICO also provides an interactive tool to help establish which legal basis applies.

Because the GDPR Regulation explicitly focuses on accountability, an organisation must be able to show that they are compliant, and that there is a lawful basis for any processing being undertaken. There is no set way to demonstrate this compliance, but there must be a record kept of which basis are used for each type of processing. One way of doing this is in a Data Asset Register.

LEGAL BASIS FOR PROCESSING DATA

Organisations must include information about the lawful bases used within their privacy notice, and you must inform data subjects about your intended purpose for processing.

If your purposes change, then you must evaluate whether your new purpose is compatible with your initial purpose. If so, then you may be able to continue processing under the original lawful basis.

This does not apply if the processing is based on consent. Consent must always be 'informed, specific, and freely given', and therefore you must get consent for the new purpose.

The ICO gives a non-exhaustive list of things to take into account when assessing if the new purpose is compatible with original purpose:

- Any link between your initial and new purpose
- The context in which you collected the data, in particular your relationship with the individual and what they would reasonably expect
- The nature of the personal data – is it special category data or criminal offence data?
- The possible consequences for individuals of the new processing
- Whether there are appropriate safeguards

Processing Special Category Data

In regards to special category data, it is required that in addition to a lawful basis for processing, you must also rely on a condition from Article 9 of the GDPR Regulation, which are as follows:

- | | |
|---|--|
| a) Explicit consent | g) Reasons of substantial public interest (with a basis in law) |
| b) Employment, social security, and social protection (if authorised by law) | h) Health or social care (with a basis in law) |
| c) Vital interests | i) Public health (with a basis in law) |
| d) Not-for-profit bodies | j) Archiving, research and statistics (with a basis in law) |
| e) Made public by the data subject | |
| f) Legal claims or judicial acts | |

If you are relying on conditions (b), (h), (i) or (j), you also need to meet the associated condition in UK law that is explained in Part 1 of Schedule 1 of the DPA 2018.

If you are relying on condition (g), then you must also meet one of the 23 specific substantial public interest conditions that are explained in Part 2 of Schedule 1 of the DPA 2018, and are listed below.

Conditions for processing special category data

- | | |
|--|---|
| <ul style="list-style-type: none">• Explicit consent• Employment, social security and social protection (if authorised by law)• Vital interest• Not-for-profit bodies• Made public by the data subject | <ul style="list-style-type: none">• Legal claims or judicial acts• Reasons of substantial public interest (with a basis in law)• Health or social care (with a basis in law)• Public health (with a basis in law)• Archiving, research and statistics (with a basis in law) |
|--|---|

The 23 substantial public interest conditions are set out in paragraphs 6 to 28 of Schedule 1 of the DPA 2018:

- Statutory and government purposes
- Administration of justice and parliamentary purposes
- Equality of opportunity or treatment
- Racial and ethnic diversity at senior levels
- Preventing or detecting unlawful acts
- Protecting the public
- Regulatory requirements
- Journalism, academia, art and literature
- Preventing fraud
- Suspicion of terrorist financing or money laundering
- Support for individuals with a particular disability or medical condition
- Counselling
- Counselling
- Safeguarding of children and individuals at risk
- Safeguarding of economic well-being of certain individuals
- Insurance
- Occupational pensions
- Political parties
- Elected representatives responding to requests
- Disclosure to elected representatives
- Informing elected representatives about prisoners
- Publication of legal judgments
- Anti-doping in sport
- Standards of behaviour in sport

You should identify which of these conditions appears to most closely reflect your purpose.

Reminder

What are the special categories of data?

- Personal data revealing racial or ethnic origin
- Personal data revealing political opinions
- Personal data revealing religious or philosophical beliefs
- Personal data revealing trade union membership
- Genetic data
- Biometric data (where used for identification purposes)
- Data concerning health
- Data concerning a person's sex life
- Data concerning a person's sexual orientation

- Review the purposes of our processing activities and selected the most appropriate lawful basis/bases for each activity
- Check the processing is necessary for the relevant purpose and are satisfied that there is no other reasonable or less intrusive way to achieve that purpose
- Document the decision on which lawful basis applies to help demonstrate compliance
- Include information about both the purposes and the lawful basis for the processing in the privacy notice
- For special category data, a condition for processing special category data has been identified and documented
- For criminal offence data, a condition for processing this data has been identified and documented

