Data protection

Guide to the General Data Protection Regulation (GDPR)

ico.
Information Commissioner's Office

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About the Guide to the GDPR

The Guide to the GDPR is part of our Guide to Data Protection. It is for DPOs and others who have day-to-day responsibility for data protection.

It explains the general data protection regime that applies to most UK businesses and organisations. It covers the General Data Protection Regulation (GDPR) as it applies in the UK, tailored by the Data Protection Act 2018.

It explains each of the data protection principles, rights and obligations. It summarises the key points you need to know, answers frequently asked questions, and contains practical checklists to help you comply.

Where relevant, this guide also links to more detailed guidance and other resources, including ICO guidance, statutory ICO codes of practice, and European guidance published by the European Data Protection Board (EDPB).

You may also find other sections of the Guide to Data Protection useful:

- Introduction to data protection – for more on how the DPA 2018 works
- Guide to law enforcement processing – for more on the separate regime for law enforcement
- Guide to intelligence services processing – for more on the separate regime for the intelligence services
- Key data protection themes – for specific guidance on key themes and topics, including children's data

Other resources

Making data protection your business - resources for sole traders
For organisations

Data protection self assessment toolkit
For organisations

What's new

We will update this page monthly to highlight and link to what's new in our Guide to the GDPR.

May 2019

We have updated the page in the lawful basis section on contract.

The European Data Protection Board (EDPB) has published Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects for consultation. Comments should be sent to EDPB@edpb.europa.eu.

December 2018

We have expanded our guidance on contracts, published guidance on controllers and processors and published detailed guidance on controllers and processors and contracts and liabilities.

November 2018

We have published detailed guidance on encryption.

September 2018

We have expanded our guidance on Exemptions.

August 2018

We have expanded our guidance on International transfers.

May 2018

The European Data Protection Board (EDPB) has published draft guidelines on certification and identifying certification criteria in accordance with Articles 42 and 43 of the Regulation 2016/679 for consultation. The consultation will end on 12 July.

We have published detailed guidance on children and the GDPR.

We have published detailed guidance on determining what is personal data.

We have expanded our guidance on data protection by design and default, and published detailed guidance on automated decision-making and profiling.

We have published a new page on codes of conduct, and a new page on certification.

We have published detailed guidance on the right to be informed.

We have published detailed guidance on Data Protection Impact Assessments (DPIAs).

We have expanded the pages on the right of access and the right to object.

We have published detailed guidance on consent.

We have expanded the page on the right to data portability.

April 2018

We have expanded the page on Accountability and governance.

We have expanded the page on Security.

We have updated all of the lawful basis pages to include a link to the lawful basis interactive guidance tool.

March 2018

We have published detailed guidance on DPIAs for consultation. The consultation will end on 13 April 2018. We have also updated the guide page on DPIAs to include the guide level content from the detailed guidance.

We have published detailed guidance on legitimate interests.

We have expanded the pages on:

- Data protection impact assessments
- Data protection officers
- The right to be informed
- The right to erasure
- The right to rectification
- The right to restrict processing

February 2018

The consultation period for the Article 29 Working party guidelines on consent has now ended and comments are being reviewed. The latest timetable is for the guidelines to be finalised for adoption on 10-11 April.

The consultation period for the Article 29 Working Party guidelines on transparency has now ended.

Following the consultation period, the Article 29 Working Party has adopted final guidelines on Automated individual decision-making and Profiling and personal data breach notification. These have been added to the Guide.

We have published our Guide to the data protection fee.

We have updated the page on Children to include the guide level content from the detailed guidance on Children and the GDPR which is out for public consultation.

January 2018

We have published more detailed guidance on documentation.

We have expanded the page on personal data breaches.

We have also added four new pages in the lawful basis section, covering contract, legal obligation, vital interests and public task.

December 2017

We have published detailed guidance on Children and the GDPR for public consultation. The consultation closes on 28 February 2018.

The sections on Lawful basis for processing and Rights related to automated individual decision making including profiling contain new expanded guidance. We have updated the section on Documentation with additional guidance and documentation templates. We have also added new sections on legitimate interests, special category data and criminal offence data, and updated the section on consent.

The Article 29 Working Party has published the following guidance, which is now included in the Guide.

- Consent
- Transparency

It is inviting comments on these guidelines until 23 January 2018.

The consultation for the Article 29 Working Party guidelines on breach notification and automated decision-making and profiling ended on 28 November. We are reviewing the comments received together with other members of the Article 29 Working Party and expect the guidelines to be finalised in early 2018.

November 2017

The Article 29 Working Party has published guidelines on imposing administrative fines.

We have replaced the Overview of the GDPR with the Guide to the GDPR. The Guide currently contains similar content to the Overview, but we have expanded the sections on Consent and Contracts and Liabilities on the basis of the guidance on these topics which we have previously published for consultation.

The Guide to the GDPR is not yet a finished product; it is a framework on which we will build upcoming GDPR guidance and it reflects how future GDPR guidance will be presented. We will be publishing more detailed guidance on some topics and we will link to these from the Guide. We will do the same for guidelines from the Article 29 Working Party.

October 2017

The Article 29 Working Party has published the following guidance, which is now included in our overview.

- Breach notification
- Automated individual decision-making and Profiling

The Article 29 Working Party has also adopted guidelines on administrative fines and these are expected to be published soon.

In the Rights related to automated decision making and profiling we have updated the next steps for the ICO.

In the Key areas to consider we have updated the next steps in regard to the ICO's consent guidance.

The deadline for responses to our draft GDPR guidance on contracts and liabilities for controllers and processors has now passed. We are analysing the feedback and this will feed into the final version.

September 2017

We have put out for consultation our draft GDPR guidance on contracts and liabilities for controllers and

processors.

July 2017

In the Key areas to consider we have updated the next steps in regard to the ICO's consent guidance and the Article 29 Working Party's Europe-wide consent guidelines.

June 2017

The Article 29 Working Party's consultation on their guidelines on high risk processing and data protection impact assessments closed on 23 May. We await the adoption of the final version.

May 2017

We have updated our GDPR 12 steps to take now document.

We have added a Getting ready for GDPR checklist to our self-assessment toolkit.

April 2017

We have published our profiling discussion paper for feedback.

March 2017

We have published our draft consent guidance for public consultation.

January 2017

Article 29 have published the following guidance, which is now included in our overview:

- Data portability
- Lead supervisory authorities
- Data protection officers

Key definitions

Who does the GDPR apply to?

- The GDPR applies to 'controllers' **and** 'processors'.
- A controller determines the purposes and means of processing personal data.
- A processor is responsible for processing personal data on behalf of a controller.
- If you are a processor, the GDPR places specific legal obligations on you; for example, you are required to maintain records of personal data and processing activities. You will have legal liability if you are responsible for a breach.
- However, if you are a controller, you are not relieved of your obligations where a processor is involved – the GDPR places further obligations on you to ensure your contracts with processors comply with the GDPR.
- The GDPR applies to processing carried out by organisations operating within the EU. It also applies to organisations outside the EU that offer goods or services to individuals in the EU.
- The GDPR does not apply to certain activities including processing covered by the Law Enforcement Directive, processing for national security purposes and processing carried out by individuals purely for personal/household activities.

Further Reading

Relevant provisions in the GDPR - See Articles 3, 28-31 and Recitals 22-25, 81-82
External link

What is personal data?

At a glance

- Understanding whether you are processing personal data is critical to understanding whether the GDPR applies to your activities.
- Personal data is information that relates to an identified or identifiable individual.
- What identifies an individual could be as simple as a name or a number or could include other identifiers such as an IP address or a cookie identifier, or other factors.
- If it is possible to identify an individual directly from the information you are processing, then that information may be personal data.
- If you cannot directly identify an individual from that information, then you need to consider whether the individual is still identifiable. You should take into account the information you are processing together with all the means reasonably likely to be used by either you or any other person to identify that individual.
- Even if an individual is identified or identifiable, directly or indirectly, from the data you are processing, it is not personal data unless it 'relates to' the individual.
- When considering whether information 'relates to' an individual, you need to take into account a range of factors, including the content of the information, the purpose or purposes for which you are processing it and the likely impact or effect of that processing on the individual.
- It is possible that the same information is personal data for one controller's purposes but is not personal data for the purposes of another controller.
- Information which has had identifiers removed or replaced in order to pseudonymise the data is still personal data for the purposes of GDPR.
- Information which is truly anonymous is not covered by the GDPR.
- If information that seems to relate to a particular individual is inaccurate (ie it is factually incorrect or is about a different individual), the information is still personal data, as it relates to that individual.

In brief

- What is personal data?
- What are identifiers and related factors?
- Can we identify an individual directly from the information we have?
- Can we identify an individual indirectly from the information we have (together with other available information)?
- What is the meaning of 'relates to'?
- What happens when different organisations process the same data for different purposes?
- In more detail

What is personal data?

- The GDPR applies to the processing of personal data that is:
  - wholly or partly by automated means; or
  - the processing other than by automated means of personal data which forms part of, or is intended to form part of, a filing system.
- Personal data only includes information relating to natural persons who:
  - can be identified or who are identifiable, directly from the information in question; or
  - who can be indirectly identified from that information in combination with other information.
- Personal data may also include special categories of personal data or criminal conviction and offences data. These are considered to be more sensitive and you may only process them in more limited circumstances.
- Pseudonymised data can help reduce privacy risks by making it more difficult to identify individuals, but it is still personal data.
- If personal data can be truly anonymised then the anonymised data is not subject to the GDPR. It is important to understand what personal data is in order to understand if the data has been anonymised.
- Information about a deceased person does not constitute personal data and therefore is not subject to the GDPR.
- Information about companies or public authorities is not personal data.
- However, information about individuals acting as sole traders, employees, partners and company directors where they are individually identifiable and the information relates to them as an individual may constitute personal data.

What are identifiers and related factors?

- An individual is 'identified' or 'identifiable' if you can distinguish them from other individuals.
- A name is perhaps the most common means of identifying someone. However whether any potential identifier actually identifies an individual depends on the context.
- A combination of identifiers may be needed to identify an individual.
- The GDPR provides a non-exhaustive list of identifiers, including:
  - name;
  - identification number;
  - location data; and
  - an online identifier.
- 'Online identifiers' includes IP addresses and cookie identifiers which may be personal data.
- Other factors can identify an individual.

Can we identify an individual directly from the information we have?

- If, by looking solely at the information you are processing you can distinguish an individual from other individuals, that individual will be identified (or identifiable).
- You don't have to know someone's name for them to be directly identifiable, a combination of other

identifiers may be sufficient to identify the individual.

- If an individual is directly identifiable from the information, this may constitute personal data.

Can we identify an individual indirectly from the information we have (together with other available information)?

- It is important to be aware that information you hold may indirectly identify an individual and therefore could constitute personal data.
- Even if you may need additional information to be able to identify someone, they may still be identifiable.
- That additional information may be information you already hold, or it may be information that you need to obtain from another source.
- In some circumstances there may be a slight hypothetical possibility that someone might be able to reconstruct the data in such a way that identifies the individual. However, this is not necessarily sufficient to make the individual identifiable in terms of GDPR. You must consider all the factors at stake.
- When considering whether individuals can be identified, you may have to assess the means that could be used by an interested and sufficiently determined person.
- You have a continuing obligation to consider whether the likelihood of identification has changed over time (for example as a result of technological developments).

What is the meaning of ‘relates to’?

- Information must ‘relate to’ the identifiable individual to be personal data.
- This means that it does more than simply identifying them – it must concern the individual in some way.
- To decide whether or not data relates to an individual, you may need to consider:
  - the content of the data – is it directly about the individual or their activities?;
  - the purpose you will process the data for; and
  - the results of or effects on the individual from processing the data.
- Data can reference an identifiable individual and not be personal data about that individual, as the information does not relate to them.
- There will be circumstances where it may be difficult to determine whether data is personal data. If this is the case, as a matter of good practice, you should treat the information with care, ensure that you have a clear reason for processing the data and, in particular, ensure you hold and dispose of it securely.
- Inaccurate information may still be personal data if it relates to an identifiable individual.

What happens when different organisations process the same data for different purposes?

- It is possible that although data does not relate to an identifiable individual for one controller, in the hands of another controller it does.
- This is particularly the case where, for the purposes of one controller, the identity of the individuals is irrelevant and the data therefore does not relate to them.

- However, when used for a different purpose, or in conjunction with additional information available to another controller, the data does relate to the identifiable individual.
- It is therefore necessary to consider carefully the purpose for which the controller is using the data in order to decide whether it relates to an individual.
- You should take care when you make an analysis of this nature.

Further Reading

Relevant provisions in the GDPR - See Articles 2, 4, 9, 10 and Recitals 1, 2, 26, 51
External link

In more detail – ICO guidance

We have published detailed guidance on determining what is personal data.

Controllers and processors

At a glance

- Understanding your role in relation to the personal data you are processing is crucial in ensuring compliance with the GDPR and the fair treatment of individuals.
- Your obligations under the GDPR will vary depending on whether you are a controller, joint controller or processor.
- The ICO has the power to take action against controllers and processors under the GDPR.
- Individuals can bring claims for compensation and damages against both controllers and processors.
- You should take the time to assess, and document, the status of each organisation you work with in respect of all the personal data and processing activities you carry out.
- Whether you are a controller or processor depends on a number of issues. The key question is – who determines the purposes for which the data are processed and the means of processing?
- Organisations that determine the purposes and means of processing will be controllers regardless of how they are described in any contract about processing services.

Checklists

The following checklists set out indicators as to whether you are a controller, a processor or a joint controller. The more boxes you tick, the more likely you are to fall within the relevant category.

Are we a controller?

☐ We decided to collect or process the personal data.

☐ We decided what the purpose or outcome of the processing was to be.

☐ We decided what personal data should be collected.

☐ We decided which individuals to collect personal data about.

☐ We obtain a commercial gain or other benefit from the processing, except for any payment for services from another controller.

☐ We are processing the personal data as a result of a contract between us and the data subject.

☐ The data subjects are our employees.

☐ We make decisions about the individuals concerned as part of or as a result of the processing.

☐ We exercise professional judgement in the processing of the personal data.

☐ We have a direct relationship with the data subjects.

☐ We have complete autonomy as to how the personal data is processed.

☐ We have appointed the processors to process the personal data on our behalf.

Are we a joint controller?

☐ We have a common objective with others regarding the processing.

☐ We are processing the personal data for the same purpose as another controller.

☐ We are using the same set of personal data (eg one database) for this processing as another controller.

☐ We have designed this process with another controller.

☐ We have common information management rules with another controller.

Are we a processor?

☐ We are following instructions from someone else regarding the processing of personal data.

☐ We were given the personal data by a customer or similar third party, or told what data to collect.

☐ We do not decide to collect personal data from individuals.

☐ We do not decide what personal data should be collected from individuals.

☐ We do not decide the lawful basis for the use of that data.

☐ We do not decide what purpose or purposes the data will be used for.

☐ We do not decide whether to disclose the data, or to whom.

☐ We do not decide how long to retain the data.

☐ We may make some decisions on how data is processed, but implement these decisions under a contract with someone else.

☐ We are not interested in the end result of the processing.

In brief

- What's new under the GDPR?
- What are 'controllers' and 'processors'?
- How do you determine whether you are a controller or processor?
- What does it mean if you are a controller?
- What does it mean if you are a processor?
- What does it mean if you are joint controllers?
- In more detail

What's new under the GDPR?

Controllers have new data protection obligations under the GDPR. Also, in a change from previous legislation, processors now have statutory obligations in their own right under the GDPR.

Individuals and supervisory authorities (such as the ICO) can hold both controllers and processors to account if they fail to comply with their responsibilities under the GDPR.

The GDPR includes explicit requirements directed at joint controllers.

What are 'controllers' and 'processors'?

Controllers are the main decision-makers – they exercise overall control over the purposes and means of the processing of personal data.

If two or more controllers jointly determine the purposes and means of the processing of the same personal data, they are joint controllers. However, they are not joint controllers if they are processing the same data for different purposes.

Processors act on behalf of, and only on the instructions of, the relevant controller.

How do you determine whether you are a controller or processor?

You should be able to differentiate between controllers, joint controllers and processors so you understand which GDPR obligations apply to which organisation.

To determine whether you are a controller or processor, you will need to consider your role and responsibilities in relation to your data processing activities.

If you exercise overall control of the purpose and means of the processing of personal data – ie, you decide what data to process and why – you are a controller.

If you don't have any purpose of your own for processing the data and you only act on a client's instructions, you are likely to be a processor – even if you make some technical decisions about how you process the data.

What does it mean if you are a controller?

Controllers shoulder the highest level of compliance responsibility – you must comply with, and demonstrate compliance with, all the data protection principles as well as the other GDPR requirements. You are also responsible for the compliance of your processor(s).

Supervisory authorities (such as the ICO) and individuals may take action against a controller regarding a breach of its obligations.

Controllers in the UK must pay the data protection fee, unless they are exempt.

What does it mean if you are a processor?

Processors do not have the same obligations as controllers under the GDPR and do not have to pay a data protection fee. However, if you are a processor, you do have a number of direct obligations of your own under the GDPR.

Both supervisory authorities (such as the ICO) and individuals may take action against a processor regarding a breach of those obligations.

What does it mean if you are joint controllers?

Joint controllers must arrange between themselves who will take primary responsibility for complying with GDPR obligations, and in particular transparency obligations and individuals' rights. They should make this information available to individuals.

However, all joint controllers remain responsible for compliance with the controller obligations under the GDPR. Both supervisory authorities and individuals may take action against any controller regarding a breach of those obligations.

Further Reading

Relevant provisions in the GDPR - See Articles 4(7), 4(8), 5(1), 5(2), 26, 28 – 36 and Recitals 28, 79, 81 – 83
External link

Further reading – ICO guidance

Contracts and liabilities between controllers and processors

In more detail – ICO guidance

We have produced more detailed guidance on controllers and processors

Principles

At a glance

- The GDPR sets out seven key principles:
  - Lawfulness, fairness and transparency
  - Purpose limitation
  - Data minimisation
  - Accuracy
  - Storage limitation
  - Integrity and confidentiality (security)
  - Accountability
- These principles should lie at the heart of your approach to processing personal data.

In brief

- What's new under the GDPR?
- What are the principles?
- Why are the principles important?

What's new under the GDPR?

The principles are broadly similar to the principles in the Data Protection Act 1998 (the 1998 Act).

1998 Act:	**GDPR:**
Principle 1 – fair and lawful	Principle (a) – lawfulness, fairness and transparency
Principle 2 – purposes	Principle (b) – purpose limitation
Principle 3 – adequacy	Principle (c) – data minimisation
Principle 4 – accuracy	Principle (d) – accuracy
Principle 5 - retention	Principle (e) – storage limitation
Principle 6 – rights	No principle – separate provisions in Chapter III
Principle 7 – security	Principle (f) – integrity and confidentiality
Principle 8 – international transfers	No principle – separate provisions in Chapter V

(no equivalent)	Accountability principle

However there are a few key changes. Most obviously:

- there is no principle for individuals' rights. This is now dealt with separately in Chapter III of the GDPR;
- there is no principle for international transfers of personal data. This is now dealt with separately in Chapter V of the GDPR; and
- there is a new accountability principle. This specifically requires you to take responsibility for complying with the principles, and to have appropriate processes and records in place to demonstrate that you comply.

What are the principles?

Article 5 of the GDPR sets out seven key principles which lie at the heart of the general data protection regime.

Article 5(1) requires that personal data shall be:

> "(a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency');
>
> (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes ('purpose limitation');
>
> (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
>
> (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
>
> (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals ('storage limitation');
>
> (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')."

Article 5(2) adds that:

> “The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 (‘accountability’).”

For more detail on each principle, please read the relevant page of this guide.

Why are the principles important?

The principles lie at the heart of the GDPR. They are set out right at the start of the legislation, and inform everything that follows. They don’t give hard and fast rules, but rather embody the spirit of the general data protection regime - and as such there are very limited exceptions.

Compliance with the spirit of these key principles is therefore a fundamental building block for good data protection practice. It is also key to your compliance with the detailed provisions of the GDPR.

Failure to comply with the principles may leave you open to substantial fines. Article 83(5)(a) states that infringements of the basic principles for processing personal data are subject to the highest tier of administrative fines. This could mean a fine of up to €20 million, or 4% of your total worldwide annual turnover, whichever is higher.

Further Reading

Relevant provisions in the GDPR - See Article 5 and Recital 39, and Chapter III (rights), Chapter V (international transfers) and Article 82 (fines)

External link

In more detail – ICO guidance

Read our individual rights and international transfers guidance.

Lawfulness, fairness and transparency

At a glance

- You must identify valid grounds under the GDPR (known as a 'lawful basis') for collecting and using personal data.
- You must ensure that you do not do anything with the data in breach of any other laws.
- You must use personal data in a way that is fair. This means you must not process the data in a way that is unduly detrimental, unexpected or misleading to the individuals concerned.
- You must be clear, open and honest with people from the start about how you will use their personal data.

Checklist

Lawfulness

☐ We have identified an appropriate lawful basis (or bases) for our processing.

☐ If we are processing special category data or criminal offence data, we have identified a condition for processing this type of data.

☐ We don't do anything generally unlawful with personal data.

Fairness

☐ We have considered how the processing may affect the individuals concerned and can justify any adverse impact.

☐ We only handle people's data in ways they would reasonably expect, or we can explain why any unexpected processing is justified.

☐ We do not deceive or mislead people when we collect their personal data.

Transparency

☐ We are open and honest, and comply with the transparency obligations of the right to be informed.

In brief

- What's new under the GDPR?
- What is the lawfulness, fairness and transparency principle?
- What is lawfulness?

- What is fairness?
- What is transparency?

What's new under the GDPR?

The lawfulness, fairness and transparency principle is broadly similar to the first principle of the 1998 Act. Fairness is still fundamental. You still need to process personal data fairly and lawfully, but the requirement to be transparent about what you do with people's data is now more clearly signposted.

As with the 1998 Act, you still need to identify valid grounds to process people's data. This is now known as a 'lawful basis' rather than a 'condition for processing', but the principle is the same. Identifying a lawful basis is essential for you to comply with the 'lawfulness' aspect of this principle.

The concept of 'fair processing information' is no longer incorporated into the concept of fairness. Although transparency is still a fundamental part of this overarching principle, the detail of transparency obligations is now set out in separate provisions on a new 'right to be informed'.

What is the lawfulness, fairness and transparency principle?

Article 5(1) of the GDPR says:

> "1. Personal data shall be:
>
> (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness, transparency')"

There are more detailed provisions on lawfulness and having a 'lawful basis for processing' set out in Articles 6 to 10.

There are more detailed transparency obligations set out in Articles 13 and 14, as part of the 'right to be informed'.

The three elements of lawfulness, fairness and transparency overlap, but you must make sure you satisfy all three. It's not enough to show your processing is lawful if it is fundamentally unfair to or hidden from the individuals concerned.

What is lawfulness?

For processing of personal data to be lawful, you need to identify specific grounds for the processing. This is called a 'lawful basis' for processing, and there are six options which depend on your purpose and your relationship with the individual. There are also specific additional conditions for processing some especially sensitive types of data. For more information, see the lawful basis section of this guide.

If no lawful basis applies then your processing will be unlawful and in breach of this principle.

Lawfulness also means that you don’t do anything with the personal data which is unlawful in a more general sense. This includes statute and common law obligations, whether criminal or civil. If processing involves committing a criminal offence, it will obviously be unlawful. However, processing may also be unlawful if it results in:

- a breach of a duty of confidence;
- your organisation exceeding its legal powers or exercising those powers improperly;
- an infringement of copyright;
- a breach of an enforceable contractual agreement;
- a breach of industry-specific legislation or regulations; or
- a breach of the Human Rights Act 1998.

These are just examples, and this list is not exhaustive. You may need to take your own legal advice on other relevant legal requirements.

Although processing personal data in breach of copyright or industry regulations (for example) will involve unlawful processing in breach of this principle, this does not mean that the ICO can pursue allegations which are primarily about breaches of copyright, financial regulations or other laws outside our remit and expertise as data protection regulator. In this situation there are likely to be other legal or regulatory routes of redress where the issues can be considered in a more appropriate forum.

If you have processed personal data unlawfully, the GDPR gives individuals the right to erase that data or restrict your processing of it.

What is fairness?

Processing of personal data must always be fair as well as lawful. If any aspect of your processing is unfair you will be in breach of this principle – even if you can show that you have a lawful basis for the processing.

In general, fairness means that you should only handle personal data in ways that people would reasonably expect and not use it in ways that have unjustified adverse effects on them. You need to stop and think not just about how you can use personal data, but also about whether you should.

Assessing whether you are processing information fairly depends partly on how you obtain it. In particular, if anyone is deceived or misled when the personal data is obtained, then this is unlikely to be fair.

In order to assess whether or not you are processing personal data fairly, you must consider more generally how it affects the interests of the people concerned – as a group and individually. If you have obtained and used the information fairly in relation to most of the people it relates to but unfairly in relation to one individual, there will still be a breach of this principle.

Personal data may sometimes be used in a way that negatively affects an individual without this necessarily being unfair. What matters is whether or not such detriment is justified.

Example

Where personal data is collected to assess tax liability or to impose a fine for breaking the speed limit, the information is being used in a way that may cause detriment to the individuals concerned, but the proper use of personal data for these purposes will not be unfair.

You should also ensure that you treat individuals fairly when they seek to exercise their rights over their data. This ties in with your obligation to facilitate the exercise of individuals' rights. Read our guidance on rights for more information.

What is transparency?

Transparency is fundamentally linked to fairness. Transparent processing is about being clear, open and honest with people from the start about who you are, and how and why you use their personal data.

Transparency is always important, but especially in situations where individuals have a choice about whether they wish to enter into a relationship with you. If individuals know at the outset what you will use their information for, they will be able to make an informed decision about whether to enter into a relationship, or perhaps to try to renegotiate the terms of that relationship.

Transparency is important even when you have no direct relationship with the individual and collect their personal data from another source. In some cases, it can be even more important - as individuals may have no idea that you are collecting and using their personal data, and this affects their ability to assert their rights over their data. This is sometimes known as 'invisible processing'.

You must ensure that you tell individuals about your processing in a way that is easily accessible and easy to understand. You must use clear and plain language.

For more detail on your transparency obligations and the privacy information you must provide to individuals, see our guidance on the right to be informed.

Further Reading

Relevant provisions in the GDPR - See Article 5(1)(a) and Recital 39 (principles), and Article 6 (lawful bases), Article 9 (special category data), Article 10 (criminal offences data) and Articles 13 and 14 (the right to be informed), Article 17(1)(d) (the right to erasure)

External link

Further reading

Read our guidance on:

Lawful basis for processing

The right to be informed

Individuals' rights

Purpose limitation

At a glance

- You must be clear about what your purposes for processing are from the start.
- You need to record your purposes as part of your documentation obligations and specify them in your privacy information for individuals.
- You can only use the personal data for a new purpose if either this is compatible with your original purpose, you get consent, or you have a clear obligation or function set out in law.

Checklist

☐ We have clearly identified our purpose or purposes for processing.

☐ We have documented those purposes.

☐ We include details of our purposes in our privacy information for individuals.

☐ We regularly review our processing and, where necessary, update our documentation and our privacy information for individuals.

☐ If we plan to use personal data for a new purpose other than a legal obligation or function set out in law, we check that this is compatible with our original purpose or we get specific consent for the new purpose.

In brief

- What's new under the GDPR?
- What is the purpose limitation principle?
- Why do we need to specify our purposes?
- How do we specify our purposes?
- Once we collect data for a specified purpose, can we use it for other purposes?
- What is a 'compatible' purpose?

What's new under the GDPR?

The purpose limitation principle is very similar to the second principle of the 1998 Act, with a few small differences.

As with the 1998 Act, you still need to specify your purpose or purposes for processing at the outset. However, under the GDPR you do this by complying with your documentation and transparency

obligations, rather than through registration with the ICO.

The purpose limitation principle still prevents you from using personal data for new purposes if they are 'incompatible' with your original purpose for collecting the data, but the GDPR contains more detail on assessing compatibility.

Instead of an exemption for research purposes, the GDPR purpose limitation principle specifically says that it does not prevent further processing for:

- archiving purposes in the public interest;
- scientific or historical research purposes; or
- statistical purposes.

What is the purpose limitation principle?

Article 5(1)(b) says:

> "1. Personal data shall be:
>
> (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes."

In practice, this means that you must:

- be clear from the outset why you are collecting personal data and what you intend to do with it;
- comply with your documentation obligations to specify your purposes;
- comply with your transparency obligations to inform individuals about your purposes; and
- ensure that if you plan to use or disclose personal data for any purpose that is additional to or different from the originally specified purpose, the new use is fair, lawful and transparent.

Why do we need to specify our purposes?

This requirement aims to ensure that you are clear and open about your reasons for obtaining personal data, and that what you do with the data is in line with the reasonable expectations of the individuals concerned.

Specifying your purposes from the outset helps you to be accountable for your processing, and helps you avoid 'function creep'. It also helps individuals understand how you use their data, make decisions about whether they are happy to share their details, and assert their rights over data where appropriate. It is fundamental to building public trust in how you use personal data.

There are clear links with other principles – in particular, the fairness, lawfulness and transparency

principle. Being clear about why you are processing personal data will help you to ensure your processing is fair, lawful and transparent. And if you use data for unfair, unlawful or 'invisible' reasons, it's likely to be a breach of both principles.

Specifying your purposes is necessary to comply with your accountability obligations.

How do we specify our purposes?

If you comply with your documentation and transparency obligations, you are likely to comply with the requirement to specify your purposes without doing anything more:

- You need to specify your purpose or purposes for processing personal data within the documentation you are required to keep as part of your records of processing (documentation) obligations under Article 30.
- You also need to specify your purposes in your privacy information for individuals.

However, you should also remember that whatever you document, and whatever you tell people, this cannot make fundamentally unfair processing fair and lawful.

If you are a small organisation and you are exempt from some documentation requirements, you may not need to formally document all of your purposes to comply with the purpose limitation principle. Listing your purposes in the privacy information you provide to individuals will be enough. However, it is still good practice to document all of your purposes. For more information, read our documentation guidance.

If you have not provided privacy information because you are only using personal data for an obvious purpose that individuals already know about, the "specified purpose" should be taken to be the obvious purpose.

You should regularly review your processing, documentation and privacy information to check that your purposes have not evolved over time beyond those you originally specified ('function creep').

Once we collect personal data for a specified purpose, can we use it for other purposes?

The GDPR does not ban this altogether, but there are restrictions. In essence, if your purposes change over time or you want to use data for a new purpose which you did not originally anticipate, you can only go ahead if:

- the new purpose is compatible with the original purpose;
- you get the individual's specific consent for the new purpose; or
- you can point to a clear legal provision requiring or allowing the new processing in the public interest – for example, a new function for a public authority.

If your new purpose is compatible, you don't need a new lawful basis for the further processing. However, you should remember that if you originally collected the data on the basis of consent, you usually need to get fresh consent to ensure your new processing is fair and lawful. See our lawful basis guidance for more information.

You also need to make sure that you update your privacy information to ensure that your processing is still transparent.

What is a 'compatible' purpose?

The GDPR specifically says that the following purposes should be considered to be compatible purposes:

- archiving purposes in the public interest;
- scientific or historical research purposes; and
- statistical purposes.

Otherwise, the GDPR says that to decide whether a new purpose is compatible (or as the GDPR says, "not incompatible") with your original purpose you should take into account:

- any link between your original purpose and the new purpose;
- the context in which you originally collected the personal data – in particular, your relationship with the individual and what they would reasonably expect;
- the nature of the personal data – eg is it particularly sensitive;
- the possible consequences for individuals of the new processing; and
- whether there are appropriate safeguards - eg encryption or pseudonymisation.

As a general rule, if the new purpose is either very different from the original purpose, would be unexpected, or would have an unjustified impact on the individual, it is likely to be incompatible with your original purpose. In practice, you are likely to need to ask for specific consent to use or disclose data for this type of purpose.

Example

A GP discloses his patient list to his wife, who runs a travel agency, so that she can offer special holiday deals to patients needing recuperation. Disclosing the information for this purpose would be incompatible with the purposes for which it was obtained.

There are clear links here with the lawfulness, fairness and transparency principle. In practice, if your intended processing is fair, you are unlikely to breach the purpose limitation principle on the basis of incompatibility.

Further Reading

Relevant provisions in the GDPR - See Article 5(1)(b), Recital 39 (principles), Article 6(4) and Recital 50 (compatibility) and Article 30 (documentation)
External link

Further reading

Read our guidance on:

Documentation

The right to be informed

Lawful basis for processing

Data minimisation

At a glance

You must ensure the personal data you are processing is:

- adequate – sufficient to properly fulfil your stated purpose;
- relevant – has a rational link to that purpose; and
- limited to what is necessary – you do not hold more than you need for that purpose.

Checklist

☐ We only collect personal data we actually need for our specified purposes.

☐ We have sufficient personal data to properly fulfil those purposes.

☐ We periodically review the data we hold, and delete anything we don't need.

In brief

- What's new under the GDPR?
- What is the data minimisation principle?
- How do we decide what is adequate, relevant and limited?
- When could we be processing too much personal data?
- When could we be processing inadequate personal data?
- What about the adequacy and relevance of opinions?

What's new under the GDPR?

Very little. The data minimisation principle is almost identical to the third principle (adequacy) of the 1998 Act.

The main difference in practice is that you must be prepared to demonstrate you have appropriate data minimisation practices in line with new accountability obligations, and there are links to the new rights of erasure and rectification.

What is the data minimisation principle?

Article 5(1)(c) says:

> “1. Personal data shall be:
>
> (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimisation)”

So you should identify the minimum amount of personal data you need to fulfil your purpose. You should hold that much information, but no more.

This is the first of three principles about data standards, along with accuracy and storage limitation.

The accountability principle means that you need to be able to demonstrate that you have appropriate processes to ensure that you only collect and hold the personal data you need.

Also bear in mind that the GDPR says individuals have the right to complete any incomplete data which is inadequate for your purpose, under the right to rectification. They also have right to get you to delete any data that is not necessary for your purpose, under the right to erasure (right to be forgotten).

How do we decide what is adequate, relevant and limited?

The GDPR does not define these terms. Clearly, though, this will depend on your specified purpose for collecting and using the personal data. It may also differ from one individual to another.

So, to assess whether you are holding the right amount of personal data, you must first be clear about why you need it.

For special category data or criminal offence data, it is particularly important to make sure you collect and retain only the minimum amount of information.

You may need to consider this separately for each individual, or for each group of individuals sharing relevant characteristics. You should in particular consider any specific factors that an individual brings to your attention – for example, as part of an objection, request for rectification of incomplete data, or request for erasure of unnecessary data.

You should periodically review your processing to check that the personal data you hold is still relevant and adequate for your purposes, and delete anything you no longer need. This is closely linked with the storage limitation principle.

When could we be processing too much personal data?

You should not have more personal data than you need to achieve your purpose. Nor should the data include irrelevant details.

Example

A debt collection agency is engaged to find a particular debtor. It collects information on several people with a similar name to the debtor. During the enquiry some of these people are discounted. The agency should delete most of their personal data, keeping only the minimum data needed to form a basic record of a person they have removed from their search. It is appropriate to keep this small amount of information so that these people are not contacted again about debts which do not belong to them.

If you need to process particular information about certain individuals only, you should collect it just for those individuals – the information is likely to be excessive and irrelevant in relation to other people.

Example

A recruitment agency places workers in a variety of jobs. It sends applicants a general questionnaire, which includes specific questions about health conditions that are only relevant to particular manual occupations. It would be irrelevant and excessive to obtain such information from an individual who was applying for an office job.

You must not collect personal data on the off-chance that it might be useful in the future. However, you may be able to hold information for a foreseeable event that may never occur if you can justify it.

Example

An employer holds details of the blood groups of some of its employees. These employees do hazardous work and the information is needed in case of accident. The employer has in place safety procedures to help prevent accidents so it may be that this data is never needed, but it still needs to hold this information in case of emergency.

If the employer holds the blood groups of the rest of the workforce, though, such information is likely to be irrelevant and excessive as they do not engage in the same hazardous work.

If you are holding more data than is actually necessary for your purpose, this is likely to be unlawful (as most of the lawful bases have a necessity element) as well as a breach of the data minimisation principle. Individuals will also have the right to erasure.

When could we be processing inadequate personal data?

If the processing you carry out is not helping you to achieve your purpose then the personal data you have is probably inadequate. You should not process personal data if it is insufficient for its intended purpose.

In some circumstances you may need to collect more personal data than you had originally anticipated using, so that you have enough information for the purpose in question.

Example

A group of individuals set up a club. At the outset the club has only a handful of members, who all know each other, and the club's activities are administered using only basic information about the members' names and email addresses. The club proves to be very popular and its membership grows rapidly. It becomes necessary to collect additional information about members so that the club can identify them properly, and so that it can keep track of their membership status, subscription payments etc.

Data may also be inadequate if you are making decisions about someone based on an incomplete understanding of the facts. In particular, if an individual asks you to supplement incomplete data under their right to rectification, this could indicate that the data might be inadequate for your purpose.

Obviously it makes no business sense to have inadequate personal data – but you must be careful not to go too far the other way and collect more than you need.

What about the adequacy and relevance of opinions?

A record of an opinion is not necessarily inadequate or irrelevant personal data just because the individual disagrees with it or thinks it has not taken account of information they think is important.

However, in order to be adequate, your records should make clear that it is opinion rather than fact. The record of the opinion (or of the context it is held in) should also contain enough information to enable a reader to interpret it correctly. For example, it should state the date and the author's name and position.

If an opinion is likely to be controversial or very sensitive, or if it will have a significant impact when used or disclosed, it is even more important to state the circumstances or the evidence it is based on. If a record contains an opinion that summarises more detailed records held elsewhere, you should make this clear.

Example

A GP's record may hold only a letter from a consultant and it will be the hospital file that contains greater detail. In this case, the record of the consultant's opinion should contain enough information to enable detailed records to be traced.

For more information about the accuracy of opinions, see our guidance on the accuracy principle.

Further Reading

Relevant provisions in the GDPR - See Article 5(1)(c) and Recital 39, and Article 16 (right to rectification) and Article 17 (right to erasure)

External link

Further reading

Read our guidance on:

The storage limitation principle

The accountability principle

The right to rectification

The right to erasure

Accuracy

At a glance

- You should take all reasonable steps to ensure the personal data you hold is not incorrect or misleading as to any matter of fact.
- You may need to keep the personal data updated, although this will depend on what you are using it for.
- If you discover that personal data is incorrect or misleading, you must take reasonable steps to correct or erase it as soon as possible.
- You must carefully consider any challenges to the accuracy of personal data.

Checklist

☐ We ensure the accuracy of any personal data we create.

☐ We have appropriate processes in place to check the accuracy of the data we collect, and we record the source of that data.

☐ We have a process in place to identify when we need to keep the data updated to properly fulfil our purpose, and we update it as necessary.

☐ If we need to keep a record of a mistake, we clearly identify it as a mistake.

☐ Our records clearly identify any matters of opinion, and where appropriate whose opinion it is and any relevant changes to the underlying facts.

☐ We comply with the individual's right to rectification and carefully consider any challenges to the accuracy of the personal data.

☐ As a matter of good practice, we keep a note of any challenges to the accuracy of the personal data.

In brief

- What's new under the GDPR?
- What is the accuracy principle?
- When is personal data 'accurate' or 'inaccurate'?
- What about records of mistakes?
- What about accuracy of opinions?

- Does personal data always have to be up to date?
- What steps do we need to take to ensure accuracy?
- What should we do if an individual challenges the accuracy of their personal data?

What's new under the GDPR?

The accuracy principle is very similar to the fourth principle of the 1998 Act, with a couple of differences:

- The GDPR principle includes a clearer proactive obligation to take reasonable steps to delete or correct inaccurate personal data.
- The GDPR does not explicitly distinguish between personal data that you create and personal data that someone else provides.

However, the ICO does not consider that this requires a major change in approach. The main difference in practice is that individuals have a stronger right to have inaccurate personal data corrected under the right to rectification.

What is the accuracy principle?

Article 5(1)(d) says:

> "1. Personal data shall be:
>
> (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy')"

This is the second of three principles about data standards, along with data minimisation and storage limitation.

There are clear links here to the right to rectification, which gives individuals the right to have inaccurate personal data corrected.

In practice, this means that you must:

- take reasonable steps to ensure the accuracy of any personal data;
- ensure that the source and status of personal data is clear;
- carefully consider any challenges to the accuracy of information; and
- consider whether it is necessary to periodically update the information.

When is personal data 'accurate' or 'inaccurate'?

The GDPR does not define the word ‘accurate’. However, the Data Protection Act 2018 does say that ‘inaccurate’ means “incorrect or misleading as to any matter of fact”. It will usually be obvious whether personal data is accurate.

You must always be clear about what you intend the record of the personal data to show. What you use it for may affect whether it is accurate or not. For example, just because personal data has changed doesn’t mean that a historical record is inaccurate – but you must be clear that it is a historical record.

Example

If an individual moves house from London to Manchester a record saying that they currently live in London will obviously be inaccurate. However a record saying that the individual once lived in London remains accurate, even though they no longer live there.

Example

The Postcode Address File (PAF) contains UK property postal addresses. It is structured to reflect the way the Royal Mail delivers post. So it is common for someone to have a postal address linked to a town in one county (eg Stoke-on-Trent in Staffordshire) even if they actually live in another county (eg Cheshire) and pay council tax to that council. The PAF file is not intended to accurately reflect county boundaries.

What about records of mistakes?

There is often confusion about whether it is appropriate to keep records of things that happened which should not have happened. Individuals understandably do not want their records to be tarnished by, for example, a penalty or other charge that was later cancelled or refunded.

However, you may legitimately need your records to accurately reflect the order of events – in this example, that a charge was imposed, but later cancelled or refunded. Keeping a record of the mistake and its correction might also be in the individual’s best interests.

Example

A misdiagnosis of a medical condition continues to be held as part of a patient’s medical records even after the diagnosis is corrected, because it is relevant for the purpose of explaining treatment given to the patient, or for other health problems.

It is acceptable to keep records of mistakes, provided those records are not misleading about the facts.

You may need to add a note to make clear that a mistake was made.

Example

An individual finds that, because of an error, their account with their existing energy supplier has been closed and an account opened with a new supplier. Understandably aggrieved, they believe the original account should be reinstated and no record kept of the unauthorised transfer. Although this reaction is understandable, if their existing supplier did close their account, and another supplier opened a new account, then records reflecting what actually happened will be accurate. In such cases it makes sense to ensure that the record clearly shows that an error occurred.

Example

An individual is dismissed for alleged misconduct. An Employment Tribunal finds that the dismissal was unfair and the individual is reinstated. The individual demands that the employer deletes all references to misconduct. However, the record of the dismissal is accurate. The Tribunal's decision was that the employee should not have been dismissed on those grounds. The employer should ensure its records reflect this.

What about accuracy of opinions?

A record of an opinion is not necessarily inaccurate personal data just because the individual disagrees with it, or it is later proved to be wrong. Opinions are, by their very nature, subjective and not intended to record matters of fact.

However, in order to be accurate, your records must make clear that it is an opinion, and, where appropriate, whose opinion it is. If it becomes clear that an opinion was based on inaccurate data, you should also record this fact in order to ensure your records are not misleading.

Example

An area of particular sensitivity is medical opinion, where doctors routinely record their opinions about possible diagnoses. It is often impossible to conclude with certainty, perhaps until time has passed or tests have been done, whether a patient is suffering from a particular condition. An initial diagnosis (which is an informed opinion) may prove to be incorrect after more extensive examination or further tests. However, if the patient's records reflect the doctor's diagnosis at the time, the records are not inaccurate, because they accurately reflect that doctor's opinion at a particular time. Moreover, the record of the doctor's initial diagnosis may help those treating the patient later, and in data protection terms is required in order to comply with the 'adequacy' element of the data minimisation principle.

If an individual challenges the accuracy of an opinion, it is good practice to add a note recording the challenge and the reasons behind it.

How much weight is actually placed on an opinion is likely to depend on the experience and reliability of the person whose opinion it is, and what they base their opinion on. An opinion formed during a brief meeting will probably be given less weight than one derived from considerable dealings with the individual. However, this is not really an issue of accuracy. Instead, you need to consider whether the personal data is "adequate" for your purposes, in line with the data minimisation principle.

Note that some records that may appear to be opinions do not contain an opinion at all. For example, many financial institutions use credit scores to help them decide whether to provide credit. A credit score is a number that summarises the historical credit information on a credit report and provides a numerical predictor of the risk involved in granting an individual credit. Credit scores are based on a statistical analysis of individuals' personal data, rather than on a subjective opinion about their creditworthiness. However, you must ensure the accuracy (and adequacy) of the underlying data.

Does personal data always have to be up to date?

This depends on what you use the information for. If you use the information for a purpose that relies on it remaining current, you should keep it up to date. For example, you should update your employee payroll records when there is a pay rise. Similarly, you should update your records for customers' changes of address so that goods are delivered to the correct location.

In other cases, it will be equally obvious that you do not need to update information.

Example

An individual places a one-off order with an organisation. The organisation will probably have good reason to retain a record of the order for a certain period for accounting reasons and because of possible complaints. However, this does not mean that it has to regularly check that the customer is still living at the same address.

You do not need to update personal data if this would defeat the purpose of the processing. For example, if you hold personal data only for statistical, historical or other research reasons, updating the data might defeat that purpose.

In some cases it is reasonable to rely on the individual to tell you when their personal data has changed, such as when they change address or other contact details. It may be sensible to periodically ask individuals to update their own details, but you do not need to take extreme measures to ensure your records are up to date, unless there is a corresponding privacy risk which justifies this.

Example

An organisation keeps addresses and contact details of previous customers for marketing purposes. It does not have to use data matching or tracing services to ensure its records are up to date – and it may actually be difficult to show that the processing involved in data matching or tracing for these purposes is fair, lawful and transparent.

However, if an individual informs the organisation of a new address, it should update its records. And if a mailing is returned with the message 'not at this address' marked on the envelope – or any other information comes to light which suggests the address is no longer accurate – the organisation should update its records to indicate that the address is no longer current.

What steps do we need to take to ensure accuracy?

Where you use your own resources to compile personal data about an individual, then you must make sure the information is correct. You should take particular care if the information could have serious implications for the individual. If, for example, you give an employee a pay increase on the basis of an annual increment and a performance bonus, then there is no excuse for getting the new salary figure wrong in your payroll records.

We recognise that it may be impractical to check the accuracy of personal data someone else provides. In order to ensure that your records are not inaccurate or misleading in this case, you must:

- accurately record the information provided;
- accurately record the source of the information;
- take reasonable steps in the circumstances to ensure the accuracy of the information; and
- carefully consider any challenges to the accuracy of the information.

What is a 'reasonable step' will depend on the circumstances and, in particular, the nature of the personal data and what you will use it for. The more important it is that the personal data is accurate, the greater the effort you should put into ensuring its accuracy. So if you are using the data to make decisions that may significantly affect the individual concerned or others, you need to put more effort into ensuring accuracy. This may mean you have to get independent confirmation that the data is accurate. For example, employers may need to check the precise details of job applicants' education, qualifications and work experience if it is essential for that particular role, when they would need to obtain authoritative verification.

Example

An organisation recruiting a driver will want proof that the individuals they interview are entitled to drive the type of vehicle involved. The fact that an applicant states in his work history that he worked as a Father Christmas in a department store 20 years ago does not need to be checked for this particular job.

If your information source is someone you know to be reliable, or is a well-known organisation, it is usually reasonable to assume that they have given you accurate information. However, in some circumstances you need to double-check – for example if inaccurate information could have serious consequences, or if common sense suggests there may be a mistake.

Example

A business that is closing down recommends a member of staff to another organisation. Assuming the two employers know each other, it may be reasonable for the organisation to which the recommendation is made to accept assurances about the individual's work experience at face value. However, if a particular skill or qualification is needed for the new job role, the organisation needs to make appropriate checks.

Example

An individual sends an email to her mobile phone company requesting that it changes its records about her willingness to receive marketing material. The company amends its records accordingly without making any checks. However, when the customer emails again asking the company to send her bills to a new address, they carry out additional security checks before making the requested change.

Even if you originally took all reasonable steps to ensure the accuracy of the data, if you later get any new information which suggests it may be wrong or misleading, you should reconsider whether it is accurate and take steps to erase, update or correct it in light of that new information as soon as possible.

What should we do if an individual challenges the accuracy of their personal data?

If this happens, you should consider whether the information is accurate and, if it is not, you should delete or correct it.

Remember that individuals have the absolute right to have incorrect personal data rectified – see the

right to rectification for more information.

Individuals don't have the right to erasure just because data is inaccurate. However, the accuracy principle requires you to take all reasonable steps to erase or rectify inaccurate data without delay, and it may be reasonable to erase the data in some cases. If an individual asks you to delete inaccurate data it is therefore good practice to consider this request.

Further Reading

Relevant provisions in the GDPR - See Article 5(1)(c) and Article 16 (the right to rectification) and Article 17 (the right to erasure)

External link

Further reading

Read our guidance on:

The right to rectification

The right to erasure

Storage limitation

At a glance

- You must not keep personal data for longer than you need it.
- You need to think about – and be able to justify – how long you keep personal data. This will depend on your purposes for holding the data.
- You need a policy setting standard retention periods wherever possible, to comply with documentation requirements.
- You should also periodically review the data you hold, and erase or anonymise it when you no longer need it.
- You must carefully consider any challenges to your retention of data. Individuals have a right to erasure if you no longer need the data.
- You can keep personal data for longer if you are only keeping it for public interest archiving, scientific or historical research, or statistical purposes.

Checklist

☐ We know what personal data we hold and why we need it.

☐ We carefully consider and can justify how long we keep personal data.

☐ We have a policy with standard retention periods where possible, in line with documentation obligations.

☐ We regularly review our information and erase or anonymise personal data when we no longer need it.

☐ We have appropriate processes in place to comply with individuals' requests for erasure under 'the right to be forgotten'.

☐ We clearly identify any personal data that we need to keep for public interest archiving, scientific or historical research, or statistical purposes.

Other resources

For more detailed checklists and practice advice on retention, please use the ICO's self-assessment toolkit - records management checklist

In brief

- What's new under the GDPR?
- What is the storage limitation principle?
- Why is storage limitation important?
- Do we need a retention policy?
- How should we set retention periods?
- When should we review our retention?
- What should we do with personal data that we no longer need?
- How long can we keep personal data for archiving, research or statistical purposes?
- How does this apply to data sharing?

What's new under the GDPR?

The storage limitation principle is broadly similar to the fifth principle (retention) of the 1998 Act. The key point remains that you must not keep data for longer than you need it.

Although there is no underlying change, the GDPR principle does highlight that you can keep anonymised data for as long as you want. In other words, you can either delete or anonymise the personal data once you no longer need it.

Instead of an exemption for research purposes, the GDPR principle specifically says that you can keep personal data for longer if you are only keeping it for public interest archiving, scientific or historical research, or statistical purposes (and you have appropriate safeguards).

New documentation provisions mean that you must now have a policy setting standard retention periods where possible.

There are also clear links to the new right to erasure (right to be forgotten). In practice, this means you must now review whether you still need to keep personal data if an individual asks you to delete it.

What is the storage limitation principle?

Article 5(1)(e) says:

> "1. Personal data shall be:
>
> (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation')"

So, even if you collect and use personal data fairly and lawfully, you cannot keep it for longer than you actually need it.

There are close links here with the data minimisation and accuracy principles.

The GDPR does not set specific time limits for different types of data. This is up to you, and will depend on how long you need the data for your specified purposes.

Why is storage limitation important?

Ensuring that you erase or anonymise personal data when you no longer need it will reduce the risk that it becomes irrelevant, excessive, inaccurate or out of date. Apart from helping you to comply with the data minimisation and accuracy principles, this also reduces the risk that you will use such data in error – to the detriment of all concerned.

Personal data held for too long will, by definition, be unnecessary. You are unlikely to have a lawful basis for retention.

From a more practical perspective, it is inefficient to hold more personal data than you need, and there may be unnecessary costs associated with storage and security.

Remember that you must also respond to subject access requests for any personal data you hold. This may be more difficult if you are holding old data for longer than you need.

Good practice around storage limitation - with clear policies on retention periods and erasure - is also likely to reduce the burden of dealing with queries about retention and individual requests for erasure.

Do we need a retention policy?

Retention policies or retention schedules list the types of record or information you hold, what you use it for, and how long you intend to keep it. They help you establish and document standard retention periods for different categories of personal data.

A retention schedule may form part of a broader 'information asset register' (IAR), or your general processing documentation.

To comply with documentation requirements, you need to establish and document standard retention periods for different categories of information you hold wherever possible. It is also advisable to have a system for ensuring that your organisation keeps to these retention periods in practice, and for reviewing retention at appropriate intervals. Your policy must also be flexible enough to allow for early deletion if appropriate. For example, if you are not actually using a record, you should reconsider whether you need to retain it.

If you are a small organisation undertaking occasional low-risk processing, you may not need a documented retention policy.

However, if you don't have a retention policy (or if it doesn't cover all of the personal data you hold), you must still regularly review the data you hold, and delete or anonymise anything you no longer need.

Further reading – records management and retention schedules

The National Archives (TNA) publishes practical guidance for public authorities on a range of

records management topics, including retention and disposal. This guidance can help you comply with the storage limitation principle (even if you are not a public authority):

Disposing of records

FOI Records Management Code – Guide 8: Disposal of records

The Keeper of the Records of Scotland also publishes guidance on Scottish public authorities' records management obligations, including specific guidance on retention schedules.

How should we set retention periods?

The GDPR does not dictate how long you should keep personal data. It is up to you to justify this, based on your purposes for processing. You are in the best position to judge how long you need it.

You must also be able to justify why you need to keep personal data in a form that permits identification of individuals. If you do not need to identify individuals, you should anonymise the data so that identification is no longer possible.

For example:

- You should consider your stated purposes for processing the personal data. You can keep it as long as one of those purposes still applies, but you should not keep data indefinitely 'just in case', or if there is only a small possibility that you will use it.

Example

A bank holds personal data about its customers. This includes details of each customer's address, date of birth and mother's maiden name. The bank uses this information as part of its security procedures. It is appropriate for the bank to retain this data for as long as the customer has an account with the bank. Even after the account has been closed, the bank may need to continue holding some of this information for legal or operational reasons for a further set time.

Example

A bank may need to retain images from a CCTV system installed to prevent fraud at an ATM machine for several weeks, since a suspicious transaction may not come to light until the victim gets their bank statement. In contrast, a pub may only need to retain images from their CCTV system for a short period because incidents will come to light very quickly. However, if a crime is reported to the police, the pub will need to retain images until the police have time to collect them.

Example

A tracing agency holds personal data about a debtor so that it can find that individual on behalf of a creditor. Once it has found the individual and reported to the creditor, there may be no need to retain the information about the debtor – the agency should remove it from their systems unless there are good reasons for keeping it. Such reasons could include if the agency has also been asked to collect the debt, or because the agency is authorised to use the information to trace debtors on behalf of other creditors.

- You should consider whether you need to keep a record of a relationship with the individual once that relationship ends. You may not need to delete all personal data when the relationship ends. You may need to keep some information so that you can confirm that the relationship existed – and that it has ended – as well as some of its details.

Example

A business may need to keep some personal data about a previous customer so that they can deal with any complaints the customer might make about the services they provided.

Example

An employer should review the personal data it holds about an employee when they leave the organisation's employment. It will need to retain enough data to enable the organisation to deal with, for example, providing references or pension arrangements. However, it should delete personal data that it is unlikely to need again from its records – such as the employee's emergency contact details, previous addresses, or death-in-service beneficiary details.

Example

A business receives a notice from a former customer requiring it to stop processing the customer's personal data for direct marketing. It is appropriate for the business to retain enough information about the former customer for it to stop including that person in future direct marketing activities.

- You should consider whether you need to keep information to defend possible future legal claims. However, you could still delete information that could not possibly be relevant to such a claim. Unless

there is some other reason for keeping it, personal data should be deleted when such a claim could no longer arise.

Example

An employer receives several applications for a job vacancy. Unless there is a clear business reason for doing so, the employer should not keep recruitment records for unsuccessful applicants beyond the statutory period in which a claim arising from the recruitment process may be brought.

- You should consider any legal or regulatory requirements. There are various legal requirements and professional guidelines about keeping certain kinds of records – such as information needed for income tax and audit purposes, or information on aspects of health and safety. If you keep personal data to comply with a requirement like this, you will not be considered to have kept the information for longer than necessary.
- You should consider any relevant industry standards or guidelines. For example, we have agreed that credit reference agencies are permitted to keep consumer credit data for six years. Industry guidelines are a good starting point for standard retention periods and are likely to take a considered approach. However, they do not guarantee compliance. You must still be able to explain why those periods are justified, and keep them under review.

You must remember to take a proportionate approach, balancing your needs with the impact of retention on individuals' privacy. Don't forget that your retention of the data must also always be fair and lawful.

When should we review our retention?

You should review whether you still need personal data at the end of any standard retention period, and erase or anonymise it unless there is a clear justification for keeping it for longer. Automated systems can flag records for review, or delete information after a pre-determined period. This is particularly useful if you hold many records of the same type.

It is also good practice to review your retention of personal data at regular intervals before this, especially if the standard retention period is lengthy or there is potential for a significant impact on individuals.

If you don't have a set retention period for the personal data, you must regularly review whether you still need it.

However, there is no firm rule about how regular these reviews must be. Your resources may be a relevant factor here, along with the privacy risk to individuals. The important thing to remember is that you must be able to justify your retention and how often you review it.

You must also review whether you still need personal data if the individual asks you to. Individuals have the absolute right to erasure of personal data that you no longer need for your specified purposes.

What should we do with personal data that we no longer need?

You can either erase (delete) it, or anonymise it.

You need to remember that there is a significant difference between permanently deleting personal data, and taking it offline. If personal data is stored offline, this should reduce its availability and the risk of misuse or mistake. However, you are still processing personal data. You should only store it offline (rather than delete it) if you can still justify holding it. You must be prepared to respond to subject access requests for personal data stored offline, and you must still comply with all the other principles and rights.

The word 'deletion' can mean different things in relation to electronic data, and we recognise it is not always possible to delete or erase all traces of the data. The key issue is to ensure you put the data beyond use. If it is appropriate to delete personal data from a live system, you should also delete it from any back-up of the information on that system.

Further reading

We produced detailed guidance on the issues surrounding deletion under the 1998 Act. This will be updated for the GDPR in due course, but in the meantime still offers useful guidance on the practical issues surrounding deletion:

Deleting personal data

Alternatively, you can anonymise the data so that it is no longer "in a form which permits identification of data subjects".

Personal data that has been pseudonymised – eg key-coded – will usually still permit identification. Pseudonymisation can be a useful tool for compliance with other principles such as data minimisation and security, but the storage limitation principle still applies.

How long can we keep personal data for archiving, research or statistical purposes?

You can keep personal data indefinitely if you are holding it only for:

- archiving purposes in the public interest;
- scientific or historical research purposes; or
- statistical purposes.

Although the general rule is that you cannot hold personal data indefinitely 'just in case' it might be useful in future, there is an inbuilt exception if you are keeping it for these archiving, research or statistical purposes.

You must have appropriate safeguards in place to protect individuals. For example, pseudonymisation may be appropriate in some cases.

This must be your only purpose. If you justify indefinite retention on this basis, you cannot later use that data for another purpose - in particular for any decisions affecting particular individuals. This does not prevent other organisations from accessing public archives, but they must ensure their own collection and use of the personal data complies with the principles.

How does this apply to data sharing?

If you share personal data with other organisations, you should agree between you what happens once you no longer need to share the data. In some cases, it may be best to return the shared data to the organisation that supplied it without keeping a copy. In other cases, all of the organisations involved should delete their copies of the personal data.

Example

Personal data about the customers of Company A is shared with Company B, which is negotiating to buy Company A's business. The companies arrange for Company B to keep the information confidential, and use it only in connection with the proposed transaction. The sale does not go ahead and Company B returns the customer information to Company A without keeping a copy.

The organisations involved in an information-sharing initiative may each need to set their own retention periods, because some may have good reasons to retain personal data for longer than others. However, if you all only hold the data for the purposes of the data-sharing initiative and it is no longer needed for that initiative, then all organisations with copies of the information should delete it.

Further Reading

Relevant provisions in the GDPR - See Articles 5(1)(e), 17(1)(a), 30(1)(f) and 89, and Recital 39
External link

Further reading – ICO guidance

Read our guidance on documentation and the right to erasure

Integrity and confidentiality (security)

You must ensure that you have appropriate security measures in place to protect the personal data you hold.

This is the ‘integrity and confidentiality’ principle of the GDPR – also known as the security principle.

For more information, see the security section of this guide.

Accountability principle

The accountability principle requires you to take responsibility for what you do with personal data and how you comply with the other principles.

You must have appropriate measures and records in place to be able to demonstrate your compliance.

For more information, see the accountability and governance section of this guide.

Lawful basis for processing

At a glance

- You must have a valid lawful basis in order to process personal data.
- There are six available lawful bases for processing. No single basis is 'better' or more important than the others – which basis is most appropriate to use will depend on your purpose and relationship with the individual.
- Most lawful bases require that processing is 'necessary' for a specific purpose. If you can reasonably achieve the same purpose without the processing, you won't have a lawful basis.
- You must determine your lawful basis before you begin processing, and you should document it. We have an interactive tool to help you.
- Take care to get it right first time - you should not swap to a different lawful basis at a later date without good reason. In particular, you cannot usually swap from consent to a different basis.
- Your privacy notice should include your lawful basis for processing as well as the purposes of the processing.
- If your purposes change, you may be able to continue processing under the original lawful basis if your new purpose is compatible with your initial purpose (unless your original lawful basis was consent).
- If you are processing special category data you need to identify both a lawful basis for general processing and an additional condition for processing this type of data.
- If you are processing criminal conviction data or data about offences you need to identify both a lawful basis for general processing and an additional condition for processing this type of data.

Checklist

☐ We have reviewed the purposes of our processing activities, and selected the most appropriate lawful basis (or bases) for each activity.

☐ We have checked that the processing is necessary for the relevant purpose, and are satisfied that there is no other reasonable and less-intrusive way to achieve that purpose.

☐ We have documented our decision on which lawful basis applies to help us demonstrate compliance.

☐ We have included information about both the purposes of the processing and the lawful basis for the processing in our privacy notice.

☐ Where we process special category data, we have also identified a condition for processing special category data, and have documented this.

☐ Where we process criminal offence data, we have also identified a condition for processing this data, and have documented this.

In brief

- What are the lawful bases for processing?
- When is processing 'necessary'?
- Why is the lawful basis for processing important?
- How do we decide which lawful basis applies?
- Is this different for public authorities?
- Can we change our lawful basis?
- What happens if we have a new purpose?
- How should we document our lawful basis?
- What do we need to tell people?
- What about special category data?
- What about criminal offence data?

What are the lawful bases for processing?

The lawful bases for processing are set out in Article 6 of the GDPR. At least one of these must apply whenever you process personal data:

(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.)

For more detail on each lawful basis, read the specific page of this guide.

Further Reading

Relevant provisions in the GDPR - See Article 6(1), Article 6(2) and Recital 40
External link

When is processing 'necessary'?

Many of the lawful bases for processing depend on the processing being "necessary". This does not mean that processing has to be absolutely essential. However, it must be more than just useful, and more than just standard practice. It must be a targeted and proportionate way of achieving a specific purpose. The lawful basis will not apply if you can reasonably achieve the purpose by some other less intrusive means, or by processing less data.
It is not enough to argue that processing is necessary because you have chosen to operate your business in a particular way. The question is whether the processing is objectively necessary for the stated purpose, not whether it is a necessary part of your chosen methods.

Why is the lawful basis for processing important?

The first principle requires that you process all personal data lawfully, fairly and in a transparent manner. If no lawful basis applies to your processing, your processing will be unlawful and in breach of the first principle.
Individuals also have the right to erase personal data which has been processed unlawfully.
The individual's right to be informed under Article 13 and 14 requires you to provide people with information about your lawful basis for processing. This means you need to include these details in your privacy notice.
The lawful basis for your processing can also affect which rights are available to individuals. For example, some rights will not apply:

	Right to erasure	Right to portability	Right to object
Consent			✘ but right to withdraw consent
Contract			✘
Legal obligation	✘	✘	✘
Vital interests		✘	✘
Public task	✘	✘	
Legitimate interests		✘	

However, an individual always has the right to object to processing for the purposes of direct marketing, whatever lawful basis applies.
The remaining rights are not always absolute, and there are other rights which may be affected in other ways. For example, your lawful basis may affect how provisions relating to automated decisions and profiling apply, and if you are relying on legitimate interests you need more detail in your privacy notice. Please read the section of this Guide on individuals' rights for full details.

Further Reading

Relevant provisions in the GDPR - See Article 6 and Recitals 39, 40, and Chapter III (Rights of the data subject)
External link

How do we decide which lawful basis applies?

This depends on your specific purposes and the context of the processing. You should think about why you want to process the data, and consider which lawful basis best fits the circumstances. You can use our interactive guidance tool to help you.

You might consider that more than one basis applies, in which case you should identify and document all of them from the start.

You must not adopt a one-size-fits-all approach. No one basis should be seen as always better, safer or more important than the others, and there is no hierarchy in the order of the list in the GDPR.

Several of the lawful bases relate to a particular specified purpose – a legal obligation, performing a contract with the individual, protecting someone's vital interests, or performing your public tasks. If you are processing for these purposes then the appropriate lawful basis may well be obvious, so it is helpful

to consider these first.

In other cases you are likely to have a choice between using legitimate interests or consent. You need to give some thought to the wider context, including:

- Who does the processing benefit?
- Would individuals expect this processing to take place?
- What is your relationship with the individual?
- Are you in a position of power over them?
- What is the impact of the processing on the individual?
- Are they vulnerable?
- Are some of the individuals concerned likely to object?
- Are you able to stop the processing at any time on request?

You may prefer to consider legitimate interests as your lawful basis if you wish to keep control over the processing and take responsibility for demonstrating that it is in line with people's reasonable expectations and wouldn't have an unwarranted impact on them. On the other hand, if you prefer to give individuals full control over and responsibility for their data (including the ability to change their mind as to whether it can continue to be processed), you may want to consider relying on individuals' consent.

In more detail

We have produced the lawful basis interactive guidance tool, to give more tailored guidance on which lawful basis is likely to be most appropriate for your processing activities.

Is this different for public authorities?

The basic approach is the same. You should think about your purposes, and choose whichever basis fits best. You can still use our lawful basis tool to help you.

The public task basis is more likely to be relevant to much of what you do. If you are a public authority and can demonstrate that the processing is to perform your tasks as set down in UK law, then you are able to use the public task basis. But if it is for another purpose, you can still consider another basis.

In particular, you may still be able to consider consent or legitimate interests in some cases, depending on the nature of the processing and your relationship with the individual. There is no absolute ban on public authorities using consent or legitimate interests as their lawful basis, although there are some limitations. For more information, see the specific guidance page on each lawful basis.

The Data Protection Act 2018 says that 'public authority' here means a public authority under the Freedom of Information Act or Freedom of Information (Scotland) Act – with the exception of parish and community councils.

Example

A university that wants to process personal data may consider a variety of lawful bases depending on what it wants to do with the data.

Universities are classified as public authorities, so the public task basis is likely to apply to much of their processing, depending on the detail of their constitutions and legal powers. If the processing is separate from their tasks as a public authority, then the university may instead wish to consider whether consent or legitimate interests are appropriate in the particular circumstances. For example, a University might rely on public task for processing personal data for teaching and research purposes; but a mixture of legitimate interests and consent for alumni relations and fundraising purposes.

The university however needs to consider its basis carefully – it is the controller's responsibility to be able to demonstrate which lawful basis applies to the particular processing purpose.

Further Reading

Key provisions in the Data Protection Act 2018 - See section 7 (Meaning of 'public authority' and 'public body')

External link

Can we change our lawful basis?

You must determine your lawful basis before starting to process personal data. It's important to get this right first time. If you find at a later date that your chosen basis was actually inappropriate, it will be difficult to simply swap to a different one. Even if a different basis could have applied from the start, retrospectively switching lawful basis is likely to be inherently unfair to the individual and lead to breaches of accountability and transparency requirements.

Example

A company decided to process on the basis of consent, and obtained consent from individuals. An individual subsequently decided to withdraw their consent to the processing of their data, as is their right. However, the company wanted to keep processing the data so decided to continue the processing on the basis of legitimate interests.

Even if it could have originally relied on legitimate interests, the company cannot do so at a later date – it cannot switch basis when it realised that the original chosen basis was inappropriate (in this case, because it did not want to offer the individual genuine ongoing control). It should have made clear to the individual from the start that it was processing on the basis of legitimate interests. Leading the individual to believe they had a choice is inherently unfair if that choice will be irrelevant. The company must therefore stop processing when the individual withdraws consent.

It is therefore important to thoroughly assess upfront which basis is appropriate and document this. It may be possible that more than one basis applies to the processing because you have more than one purpose, and if this is the case then you should make this clear from the start.

If there is a genuine change in circumstances or you have a new and unanticipated purpose which means there is a good reason to review your lawful basis and make a change, you need to inform the individual and document the change.

Further Reading

Relevant provisions in the GDPR - See Article 6(1) and Recitals 39 and 40
External link

What happens if we have a new purpose?

If your purposes change over time or you have a new purpose which you did not originally anticipate, you may not need a new lawful basis as long as your new purpose is compatible with the original purpose.

However, the GDPR specifically says this does not apply to processing based on consent. Consent must always be specific and informed. You need to either get fresh consent which specifically covers the new purpose, or find a different basis for the new purpose. If you do get specific consent for the new purpose, you do not need to show it is compatible.

In other cases, in order to assess whether the new purpose is compatible with the original purpose you should take into account:

- any link between your initial purpose and the 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 – eg is it special category data or criminal offence data;
- the possible consequences for individuals of the new processing; and
- whether there are appropriate safeguards - eg encryption or pseudonymisation.

This list is not exhaustive and what you need to look at depends on the particular circumstances.

As a general rule, if the new purpose is very different from the original purpose, would be unexpected, or would have an unjustified impact on the individual, it is unlikely to be compatible with your original purpose for collecting the data. You need to identify and document a new lawful basis to process the data for that new purpose.

The GDPR specifically says that further processing for the following purposes should be considered to be compatible lawful processing operations:

- archiving purposes in the public interest;
- scientific research purposes; and
- statistical purposes.

There is a link here to the 'purpose limitation' principle in Article 5, which states that "personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes".

Even if the processing for a new purpose is lawful, you will also need to consider whether it is fair and

transparent, and give individuals information about the new purpose.

Further Reading

> Relevant provisions in the GDPR - See Article 6(4), Article 5(1)(b) and Recital 50, Recital 61
> External link

How should we document our lawful basis?

The principle of accountability requires you to be able to demonstrate that you are complying with the GDPR, and have appropriate policies and processes. This means that you need to be able to show that you have properly considered which lawful basis applies to each processing purpose and can justify your decision.

You need therefore to keep a record of which basis you are relying on for each processing purpose, and a justification for why you believe it applies. There is no standard form for this, as long as you ensure that what you record is sufficient to demonstrate that a lawful basis applies. This will help you comply with accountability obligations, and will also help you when writing your privacy notices.

It is your responsibility to ensure that you can demonstrate which lawful basis applies to the particular processing purpose.

Read the accountability section of this guide for more on this topic. There is also further guidance on documenting consent or legitimate interests assessments in the relevant pages of the guide.

Further Reading

> Relevant provisions in the GDPR - See Articles 5(2) and 24
> External link

What do we need to tell people?

You need to include information about your lawful basis (or bases, if more than one applies) in your privacy notice. Under the transparency provisions of the GDPR, the information you need to give people includes:

- your intended purposes for processing the personal data; and
- the lawful basis for the processing.

This applies whether you collect the personal data directly from the individual or you collect their data from another source.

Read the 'right to be informed' section of this guide for more on the transparency requirements of the GDPR.

Further Reading

> Relevant provisions in the GDPR - See Article 13(1)(c), Article 14(1)(c) and Recital 39 (external

> link)
> External link

What about special category data?

If you are processing special category data, you need to identify both a lawful basis for processing and a special category condition for processing in compliance with Article 9. You should document both your lawful basis for processing and your special category condition so that you can demonstrate compliance and accountability.

Further guidance can be found in the section on special category data.

What about criminal offence data?

If you are processing data about criminal convictions, criminal offences or related security measures, you need both a lawful basis for processing, and either 'official authority' or a separate condition for processing this data in compliance with Article 10. You should document both your lawful basis for processing and your criminal offence data condition so that you can demonstrate compliance and accountability.

Further guidance can be found in the section on criminal offence data.

Consent

At a glance

- The GDPR sets a high standard for consent. But you often won't need consent. If consent is difficult, look for a different lawful basis.
- Consent means offering individuals real choice and control. Genuine consent should put individuals in charge, build trust and engagement, and enhance your reputation.
- Check your consent practices and your existing consents. Refresh your consents if they don't meet the GDPR standard.
- Consent requires a positive opt-in. Don't use pre-ticked boxes or any other method of default consent.
- Explicit consent requires a very clear and specific statement of consent.
- Keep your consent requests separate from other terms and conditions.
- Be specific and 'granular' so that you get separate consent for separate things. Vague or blanket consent is not enough.
- Be clear and concise.
- Name any third party controllers who will rely on the consent.
- Make it easy for people to withdraw consent and tell them how.
- Keep evidence of consent – who, when, how, and what you told people.
- Keep consent under review, and refresh it if anything changes.
- Avoid making consent to processing a precondition of a service.
- Public authorities and employers will need to take extra care to show that consent is freely given, and should avoid over-reliance on consent.

Checklists

Asking for consent

☐ We have checked that consent is the most appropriate lawful basis for processing.

☐ We have made the request for consent prominent and separate from our terms and conditions.

☐ We ask people to positively opt in.

☐ We don't use pre-ticked boxes or any other type of default consent.

☐ We use clear, plain language that is easy to understand.

☐ We specify why we want the data and what we're going to do with it.

☐ We give separate distinct ('granular') options to consent separately to different purposes and

types of processing.

☐ We name our organisation and any third party controllers who will be relying on the consent.

☐ We tell individuals they can withdraw their consent.

☐ We ensure that individuals can refuse to consent without detriment.

☐ We avoid making consent a precondition of a service.

☐ If we offer online services directly to children, we only seek consent if we have age-verification measures (and parental-consent measures for younger children) in place.

Recording consent

☐ We keep a record of when and how we got consent from the individual.

☐ We keep a record of exactly what they were told at the time.

Managing consent

☐ We regularly review consents to check that the relationship, the processing and the purposes have not changed.

☐ We have processes in place to refresh consent at appropriate intervals, including any parental consents.

☐ We consider using privacy dashboards or other preference-management tools as a matter of good practice.

☐ We make it easy for individuals to withdraw their consent at any time, and publicise how to do so.

☐ We act on withdrawals of consent as soon as we can.

☐ We don’t penalise individuals who wish to withdraw consent.

In brief

- What's new?
- Why is consent important?
- When is consent appropriate?

- What is valid consent?
- How should we obtain, record and manage consent?
- In detail

What's new?

The GDPR sets a high standard for consent, but the biggest change is what this means in practice for your consent mechanisms.

The GDPR is clearer that an indication of consent must be unambiguous and involve a clear affirmative action (an opt-in). It specifically bans pre-ticked opt-in boxes. It also requires distinct ('granular') consent options for distinct processing operations. Consent should be separate from other terms and conditions and should not generally be a precondition of signing up to a service.

You must keep clear records to demonstrate consent.

The GDPR gives a specific right to withdraw consent. You need to tell people about their right to withdraw, and offer them easy ways to withdraw consent at any time.

Public authorities, employers and other organisations in a position of power may find it more difficult to show valid freely given consent.

You need to review existing consents and your consent mechanisms to check they meet the GDPR standard. If they do, there is no need to obtain fresh consent.

Why is consent important?

Consent is one lawful basis for processing, and explicit consent can also legitimise use of special category data. Consent may also be relevant where the individual has exercised their right to restriction, and explicit consent can legitimise automated decision-making and overseas transfers of data.

Genuine consent should put individuals in control, build trust and engagement, and enhance your reputation.

Relying on inappropriate or invalid consent could destroy trust and harm your reputation – and may leave you open to large fines.

When is consent appropriate?

Consent is one lawful basis for processing, but there are alternatives. Consent is not inherently better or more important than these alternatives. If consent is difficult, you should consider using an alternative.

Consent is appropriate if you can offer people real choice and control over how you use their data, and want to build their trust and engagement. But if you cannot offer a genuine choice, consent is not appropriate. If you would still process the personal data without consent, asking for consent is misleading and inherently unfair.

If you make consent a precondition of a service, it is unlikely to be the most appropriate lawful basis.

Public authorities, employers and other organisations in a position of power over individuals should

avoid relying on consent unless they are confident they can demonstrate it is freely given.

What is valid consent?

Consent must be freely given; this means giving people genuine ongoing choice and control over how you use their data.

Consent should be obvious and require a positive action to opt in. Consent requests must be prominent, unbundled from other terms and conditions, concise and easy to understand, and user-friendly.

Consent must specifically cover the controller's name, the purposes of the processing and the types of processing activity.

Explicit consent must be expressly confirmed in words, rather than by any other positive action.

There is no set time limit for consent. How long it lasts will depend on the context. You should review and refresh consent as appropriate.

How should we obtain, record and manage consent?

Make your consent request prominent, concise, separate from other terms and conditions, and easy to understand. Include:

- the name of your organisation;
- the name of any third party controllers who will rely on the consent;
- why you want the data;
- what you will do with it; and
- that individuals can withdraw consent at any time.

You must ask people to actively opt in. Don't use pre-ticked boxes, opt-out boxes or other default settings. Wherever possible, give separate ('granular') options to consent to different purposes and different types of processing.

Keep records to evidence consent – who consented, when, how, and what they were told.

Make it easy for people to withdraw consent at any time they choose. Consider using preference-management tools.

Keep consents under review and refresh them if anything changes. Build regular consent reviews into your business processes.

Further Reading

Relevant provisions in the GDPR - See Articles 4(11), 6(1)(a) 7, 8, 9(2)(a) and Recitals 32, 38, 40, 42, 43, 171
External link

In more detail - ICO guidance

We have produced more detailed guidance on consent.

We have produced an interactive guidance tool to give tailored guidance on which lawful basis is likely to be most appropriate for your processing activities.

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 adopted Guidelines on consent, which have been endorsed by the EDPB.

Contract

At a glance

- You can rely on this lawful basis if you need to process someone's personal data:
  - to deliver a contractual service to them; or
  - because they have asked you to do something before entering into a contract (eg provide a quote).
- The processing must be necessary. If you could reasonably do what they want by processing less data, or using their data in a less intrusive way, this basis will not apply.
- You should document your decision to rely on this lawful basis and ensure that you can justify your reasoning.

In brief

- What does the GDPR say?
- When is the lawful basis for contracts likely to apply?
- When is processing 'necessary' for a contract?
- What else should we consider?

What does the GDPR say?

Article 6(1)(b) gives you a lawful basis for processing where:

> "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"

When is the lawful basis for contracts likely to apply?

You have a lawful basis for processing if:

- you have a contract with the individual and you need to process their personal data to comply with your obligations under the contract.
- you have a contract with the individual and you need to process their personal data so that they can comply with specific counter-obligations under the contract (eg you are processing payment details).
- you haven't yet got a contract with the individual, but they have asked you to do something as a first step (eg provide a quote) and you need to process their personal data to do what they ask. This applies even if they don't actually go on to enter into a contract with you, as long as the processing was in the context of a potential contract with that individual.

Example

An individual shopping around for car insurance requests a quotation. The insurer needs to process certain data in order to prepare the quotation, such as the make and age of the car.

It does not apply if you need to process one person's details but the contract is with someone else.

It does not apply if you collect and reuse your customer's data for your own business purposes, even if this is permitted under your standard contractual terms and is part of your funding model.

It does not apply if you take pre-contractual steps on your own initiative, to meet other obligations, or at the request of a third party.

Note that, in this context, a contract does not have to be a formal signed document, or even written down, as long as there is an agreement which meets the requirements of contract law. Broadly speaking, this means that the terms have been offered and accepted, you both intend them to be legally binding, and there is an element of exchange (usually an exchange of goods or services for money, but this can be anything of value). However, this is not a full explanation of contract law, and if in doubt you should seek your own legal advice.

When is processing 'necessary' for a contract?

'Necessary' does not mean that the processing must be absolutely essential or 'the only way' to perform the contract or take relevant pre-contractual steps. However, it must be more than just useful, and more than just part of your standard terms. It must be a targeted and proportionate step which is integral to delivering the contractual service or taking the requested action. This lawful basis does not apply if there are other reasonable and less intrusive ways to deliver the contractual service or take the steps requested.

The processing must be necessary to perform the contract with this particular person. If the processing is instead necessary to maintain your business model more generally, or is included in your terms for other business purposes beyond delivering the contractual service, this lawful basis will not apply and you should consider another lawful basis, such as legitimate interests.

Example

When a data subject makes an online purchase, a controller processes the address of the individual in order to deliver the goods. This is necessary in order to perform the contract.

However, the profiling of an individual's interests and preferences based on items purchased is not necessary for the performance of the contract and the controller cannot rely on Article 6(1)(b) as the lawful basis for this processing. Even if this type of targeted advertising is a useful part of your customer relationship and is a necessary part of your business model, it is not necessary to perform the contract itself.

This does not mean that processing which is not necessary for the contract is automatically unlawful, but rather that you need to look for a different lawful basis (and other safeguards such as the right to object may come into play).

What else should we consider?

If the processing is necessary for a contract with the individual, processing is lawful on this basis and you do not need to get separate consent.

If processing of special category data is necessary for the contract, you also need to identify a separate condition for processing this data. Read our guidance on special category data for more information.

If the contract is with a child under 18, you need to consider whether they have the necessary competence to enter into a contract. If you have doubts about their competence, you may wish to consider an alternative basis such as legitimate interests, which can help you to demonstrate that the child's rights and interests are properly considered and protected. Read our guidance on children and the GDPR for more information.

If the processing is not necessary for the contract, you need to consider another lawful basis such as legitimate interests or consent. Note that if you want to rely on consent you will not generally be able to make the processing a condition of the contract. Read our guidance on consent for more information.

If you are processing on the basis of contract, the individual's right to object and right not to be subject to a decision based solely on automated processing will not apply. However, the individual will have a right to data portability. Read our guidance on individual rights for more information.

Remember to document your decision that processing is necessary for the contract, and include information about your purposes and lawful basis in your privacy notice.

Further reading

Relevant provisions in the GDPR - See Article 6(1)(b) and Recital 44
External link

In more detail – European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

The EDPB has adopted draft guidelines for public consultation on processing under Article 6(1)(b) in the context of online services.

Legal obligation

At a glance

- You can rely on this lawful basis if you need to process the personal data to comply with a common law or statutory obligation.
- This does not apply to contractual obligations.
- The processing must be necessary. If you can reasonably comply without processing the personal data, this basis does not apply.
- You should document your decision to rely on this lawful basis and ensure that you can justify your reasoning.
- You should be able to either identify the specific legal provision or an appropriate source of advice or guidance that clearly sets out your obligation.

In brief

- What's new?
- What does the GDPR say?
- When is the lawful basis for legal obligations likely to apply?
- When is processing 'necessary' for compliance?
- What else should we consider?

What's new?

Very little. The lawful basis for processing necessary for compliance with a legal obligation is almost identical to the old condition for processing in paragraph 3 of Schedule 2 of the 1998 Act.

You need to review your existing processing so that you can document where you rely on this basis and inform individuals. But in practice, if you are confident that your existing approach complied with the 1998 Act, you are unlikely to need to change your existing basis for processing.

What does the GDPR say?

Article 6(1)(c) provides a lawful basis for processing where:

> "processing is necessary for compliance with a legal obligation to which the controller is subject."

When is the lawful basis for legal obligations likely to apply?

In short, when you are obliged to process the personal data to comply with the law.

Article 6(3) requires that the legal obligation must be laid down by UK or EU law. Recital 41 confirms that this does not have to be an explicit statutory obligation, as long as the application of the law is foreseeable to those individuals subject to it. So it includes clear common law obligations.

This does not mean that there must be a legal obligation specifically requiring the specific processing activity. The point is that your overall purpose must be to comply with a legal obligation which has a sufficiently clear basis in either common law or statute.

You should be able to identify the obligation in question, either by reference to the specific legal provision or else by pointing to an appropriate source of advice or guidance that sets it out clearly. For example, you can refer to a government website or to industry guidance that explains generally applicable legal obligations.

Example

An employer needs to process personal data to comply with its legal obligation to disclose employee salary details to HMRC.

The employer can point to the HMRC website where the requirements are set out to demonstrate this obligation. In this situation it is not necessary to cite each specific piece of legislation.

Example

A financial institution relies on the legal obligation imposed by the Part 7 of Proceeds of Crime Act 2002 to process personal data in order submit a Suspicious Activity Report to the National Crime Agency when it knows or suspects that a person is engaged in, or attempting, money laundering.

Example

A court order may require you to process personal data for a particular purpose and this also qualifies as a legal obligation.

Regulatory requirements also qualify as a legal obligation for these purposes where there is a statutory basis underpinning the regulatory regime and which requires regulated organisations to comply.

Example

The Competition and Markets Authority (CMA) has powers under The Enterprise Act 2002 to make orders to remedy adverse effects on competition, some of which may require the processing of personal data.

A retail energy supplier passes customer data to the Gas and Electricity Markets Authority to comply with the CMA's Energy Market Investigation (Database) Order 2016. The supplier may rely on legal obligation as the lawful basis for this processing.

A contractual obligation does not comprise a legal obligation in this context. You cannot contract out of the requirement for a lawful basis. However, you can look for a different lawful basis. If the contract is with the individual you can consider the lawful basis for contracts. For contracts with other parties, you may want to consider legitimate interests.

When is processing 'necessary' for compliance?

Although the processing need not be essential for you to comply with the legal obligation, it must be a reasonable and proportionate way of achieving compliance. You cannot rely on this lawful basis if you have discretion over whether to process the personal data, or if there is another reasonable way to comply.

It is likely to be clear from the law in question whether the processing is actually necessary for compliance.

What else should we consider?

If you are processing on the basis of legal obligation, the individual has no right to erasure, right to data portability, or right to object. Read our guidance on individual rights for more information.

Remember to:

- document your decision that processing is necessary for compliance with a legal obligation;
- identify an appropriate source for the obligation in question; and
- include information about your purposes and lawful basis in your privacy notice.

Further Reading

Relevant provisions in the GDPR - See Article 6(1)(c), Recitals 41, 45
External link

In more detail - ICO guidance

We have produced the lawful basis interactive guidance tool, to give tailored guidance on which lawful basis is likely to be most appropriate for your processing activities.

Vital interests

At a glance

- You are likely to be able to rely on vital interests as your lawful basis if you need to process the personal data to protect someone's life.
- The processing must be necessary. If you can reasonably protect the person's vital interests in another less intrusive way, this basis will not apply.
- You cannot rely on vital interests for health data or other special category data if the individual is capable of giving consent, even if they refuse their consent.
- You should consider whether you are likely to rely on this basis, and if so document the circumstances where it will be relevant and ensure you can justify your reasoning.

In brief

- What's new?
- What does the GDPR say?
- What are 'vital interests'?
- When is the vital interests basis likely to apply?
- What else should we consider?

What's new?

The lawful basis for vital interests is very similar to the old condition for processing in paragraph 4 of Schedule 2 of the 1998 Act. One key difference is that anyone's vital interests can now provide a basis for processing, not just those of the data subject themselves.

You need to review your existing processing to identify if you have any ongoing processing for this reason, or are likely to need to process for this reason in future. You should then document where you rely on this basis and inform individuals if relevant.

What does the GDPR say?

Article 6(1)(d) provides a lawful basis for processing where:

> "processing is necessary in order to protect the vital interests of the data subject or of another natural person".

Recital 46 provides some further guidance:

> “The processing of personal data should also be regarded as lawful where it is necessary to protect an interest which is essential for the life of the data subject or that of another natural person. Processing of personal data based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis…”

What are ‘vital interests’?

It’s clear from Recital 46 that vital interests are intended to cover only interests that are essential for someone’s life. So this lawful basis is very limited in its scope, and generally only applies to matters of life and death.

When is the vital interests basis likely to apply?

It is likely to be particularly relevant for emergency medical care, when you need to process personal data for medical purposes but the individual is incapable of giving consent to the processing.

Example

An individual is admitted to the A & E department of a hospital with life-threatening injuries following a serious road accident. The disclosure to the hospital of the individual’s medical history is necessary in order to protect his/her vital interests.

It is less likely to be appropriate for medical care that is planned in advance. Another lawful basis such as public task or legitimate interests is likely to be more appropriate in this case.

Processing of one individual’s personal data to protect the vital interests of others is likely to happen more rarely. It may be relevant, for example, if it is necessary to process a parent’s personal data to protect the vital interests of a child.

Vital interests is also less likely to be the appropriate basis for processing on a larger scale. Recital 46 does suggest that vital interests might apply where you are processing on humanitarian grounds such as monitoring epidemics, or where there is a natural or man-made disaster causing a humanitarian emergency.

However, if you are processing one person’s personal data to protect someone else’s life, Recital 46 also indicates that you should generally try to use an alternative lawful basis, unless none is obviously available. For example, in many cases you could consider legitimate interests, which will give you a framework to balance the rights and interests of the data subject(s) with the vital interests of the person or people you are trying to protect.

What else should we consider?

In most cases the protection of vital interests is likely to arise in the context of health data. This is one of the special categories of data, which means you will also need to identify a condition for processing special category data under Article 9.

There is a specific condition at Article 9(2)(c) for processing special category data where necessary to protect someone's vital interests. However, this only applies if the data subject is physically or legally incapable of giving consent. This means explicit consent is more appropriate in many cases, and you cannot in practice rely on vital interests for special category data (including health data) if the data subject refuses consent, unless they are not competent to do so.

Further Reading

Relevant provisions in the GDPR - See Article 6(1)(d), Article 9(2)(c), Recital 46
External link

In more detail - ICO guidance

We have produced the lawful basis interactive guidance tool, to give tailored guidance on which lawful basis is likely to be most appropriate for your processing activities.

Public task

At a glance

- You can rely on this lawful basis if you need to process personal data:
  - 'in the exercise of official authority'. This covers public functions and powers that are set out in law; or
  - to perform a specific task in the public interest that is set out in law.
- It is most relevant to public authorities, but it can apply to any organisation that exercises official authority or carries out tasks in the public interest.
- You do not need a specific statutory power to process personal data, but your underlying task, function or power must have a clear basis in law.
- The processing must be necessary. If you could reasonably perform your tasks or exercise your powers in a less intrusive way, this lawful basis does not apply.
- Document your decision to rely on this basis to help you demonstrate compliance if required. You should be able to specify the relevant task, function or power, and identify its statutory or common law basis.

In brief

- What's new under the GDPR?
- What is the 'public task' basis?
- What does 'laid down by law' mean?
- Who can rely on this basis?
- When can we rely on this basis?
- What else should we consider?

What's new under the GDPR?

The public task basis in Article 6(1)(e) may appear new, but it is similar to the old condition for processing for functions of a public nature in Schedule 2 of the Data Protection Act 1998.

One key difference is that the GDPR says that the relevant task or function must have a clear basis in law.

The GDPR is also clear that public authorities can no longer rely on legitimate interests for processing carried out in performance of their tasks. In the past, some of this type of processing may have been done on the basis of legitimate interests. If you are a public authority, this means you may now need to consider the public task basis for more of your processing.

The GDPR also brings in new accountability requirements. You should document your lawful basis so that you can demonstrate that it applies. In particular, you should be able to identify a clear basis in either statute or common law for the relevant task, function or power for which you are using the personal

data.

You must also update your privacy notice to include your lawful basis, and communicate this to individuals.

What is the 'public task' basis?

Article 6(1)(e) gives you a lawful basis for processing where:

> "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"

This can apply if you are either:

- carrying out a specific task in the public interest which is laid down by law; or
- exercising official authority (for example, a public body's tasks, functions, duties or powers) which is laid down by law.

If you can show you are exercising official authority, including use of discretionary powers, there is no additional public interest test. However, you must be able to demonstrate that the processing is 'necessary' for that purpose.

'Necessary' means that the processing must be a targeted and proportionate way of achieving your purpose. You do not have a lawful basis for processing if there is another reasonable and less intrusive way to achieve the same result.

In this guide we use the term 'public task' to help describe and label this lawful basis. However, this is not a term used in the GDPR itself. Your focus should be on demonstrating either that you are carrying out a task in the public interest, or that you are exercising official authority.

In particular, there is no direct link to the concept of 'public task' in the Re-use of Public Sector Information Regulations 2015 (RPSI). There is some overlap, as a public sector body's core role and functions for RPSI purposes may be a useful starting point in demonstrating official authority for these purposes. However, you shouldn't assume that it is an identical test. See our Guide to RPSI for more on public task in the context of RPSI.

What does 'laid down by law' mean?

Article 6(3) requires that the relevant task or authority must be laid down by domestic or EU law. This will most often be a statutory function. However, Recital 41 clarifies that this does not have to be an explicit statutory provision, as long as the application of the law is clear and foreseeable. This means that it includes clear common law tasks, functions or powers as well as those set out in statute or statutory guidance.

You do not need specific legal authority for the particular processing activity. The point is that your overall purpose must be to perform a public interest task or exercise official authority, and that overall

task or authority has a sufficiently clear basis in law.

Who can rely on this basis?

Any organisation who is exercising official authority or carrying out a specific task in the public interest. The focus is on the nature of the function, not the nature of the organisation.

Example

Private water companies are likely to be able to rely on the public task basis even if they do not fall within the definition of a public authority in the Data Protection Act 2018. This is because they are considered to be carrying out functions of public administration and they exercise special legal powers to carry out utility services in the public interest. See our guidance on Public authorities under the EIR for more details.

However, if you are a private sector organisation you are likely to be able to consider the legitimate interests basis as an alternative.

See the main lawful basis page of this guide for more on how to choose the most appropriate basis.

When can we rely on this basis?

Section 8 of the Data Protection Act 2018 (DPA 2018) says that the public task basis will cover processing necessary for:

- the administration of justice;
- parliamentary functions;
- statutory functions;
- governmental functions; or
- activities that support or promote democratic engagement.

However, this is not intended as an exhaustive list. If you have other official non-statutory functions or public interest tasks you can still rely on the public task basis, as long as the underlying legal basis for that function or task is clear and foreseeable.

For accountability purposes, you should be able to specify the relevant task, function or power, and identify its basis in common law or statute. You should also ensure that you can demonstrate there is no other reasonable and less intrusive means to achieve your purpose.

What else should we consider?

Individuals' rights to erasure and data portability do not apply if you are processing on the basis of public task. However, individuals do have a right to object. See our guidance on individual rights for

more information.

You should consider an alternative lawful basis if you are not confident that processing is necessary for a relevant task, function or power which is clearly set out in law.

If you are a public authority (as defined in the Data Protection Act 2018), your ability to rely on consent or legitimate interests as an alternative basis is more limited, but they may be available in some circumstances. In particular, legitimate interests is still available for processing which falls outside your tasks as a public authority. Other lawful bases may also be relevant. See our guidance on the other lawful bases for more information.

Remember that the GDPR specifically says that further processing for certain purposes should be considered to be compatible with your original purpose. This means that if you originally processed the personal data for a relevant task or function, you do not need a separate lawful basis for any further processing for:

- archiving purposes in the public interest;
- scientific research purposes; or
- statistical purposes.

If you are processing special category data, you also need to identify an additional condition for processing this type of data. The Data Protection Act 2018 includes specific conditions for parliamentary, statutory or governmental functions in the substantial public interest. Read the special category data page of this guide for our latest guidance on these provisions.

To help you meet your accountability and transparency obligations, remember to:

- document your decision that the processing is necessary for you to perform a task in the public interest or exercise your official authority;
- identify the relevant task or authority and its basis in common law or statute; and
- include basic information about your purposes and lawful basis in your privacy notice.

Further reading

Relevant provisions in the GDPR - See Article 6(1)(e) and 6(3), and Recitals 41, 45 and 50
External link

Relevant provisions in the Data Protection Act 2018 - See sections 7 and 8, and Schedule 1 paras 6 and 7
External link

In more detail – ICO guidance

We are planning to develop more detailed guidance on this topic.

We have produced the lawful basis interactive guidance tool, to give tailored guidance on which lawful basis is likely to be most appropriate for your processing activities.

Legitimate interests

At a glance

- Legitimate interests is the most flexible lawful basis for processing, but you cannot assume it will always be the most appropriate.
- It is likely to be most appropriate where you use people's data in ways they would reasonably expect and which have a minimal privacy impact, or where there is a compelling justification for the processing.
- If you choose to rely on legitimate interests, you are taking on extra responsibility for considering and protecting people's rights and interests.
- Public authorities can only rely on legitimate interests if they are processing for a legitimate reason other than performing their tasks as a public authority.
- There are three elements to the legitimate interests basis. It helps to think of this as a three-part test. You need to:
  - identify a legitimate interest;
  - show that the processing is necessary to achieve it; and
  - balance it against the individual's interests, rights and freedoms.
- The legitimate interests can be your own interests or the interests of third parties. They can include commercial interests, individual interests or broader societal benefits.
- The processing must be necessary. If you can reasonably achieve the same result in another less intrusive way, legitimate interests will not apply.
- You must balance your interests against the individual's. If they would not reasonably expect the processing, or if it would cause unjustified harm, their interests are likely to override your legitimate interests.
- Keep a record of your legitimate interests assessment (LIA) to help you demonstrate compliance if required.
- You must include details of your legitimate interests in your privacy information.

Checklists

☐ We have checked that legitimate interests is the most appropriate basis.

☐ We understand our responsibility to protect the individual's interests.

☐ We have conducted a legitimate interests assessment (LIA) and kept a record of it, to ensure that we can justify our decision.

☐ We have identified the relevant legitimate interests.

☐ We have checked that the processing is necessary and there is no less intrusive way to achieve the same result.

☐ We have done a balancing test, and are confident that the individual's interests do not override those legitimate interests.

☐ We only use individuals' data in ways they would reasonably expect, unless we have a very good reason.

☐ We are not using people's data in ways they would find intrusive or which could cause them harm, unless we have a very good reason.

☐ If we process children's data, we take extra care to make sure we protect their interests.

☐ We have considered safeguards to reduce the impact where possible.

☐ We have considered whether we can offer an opt out.

☐ If our LIA identifies a significant privacy impact, we have considered whether we also need to conduct a DPIA.

☐ We keep our LIA under review, and repeat it if circumstances change.

☐ We include information about our legitimate interests in our privacy information.

In brief

- What's new under the GDPR?
- What is the 'legitimate interests' basis?
- When can we rely on legitimate interests?
- How can we apply legitimate interests in practice?
- What else do we need to consider?
- In detail

What's new under the GDPR?

The concept of legitimate interests as a lawful basis for processing is essentially the same as the equivalent Schedule 2 condition in the 1998 Act, with some changes in detail.

You can now consider the legitimate interests of any third party, including wider benefits to society. And when weighing against the individual's interests, the focus is wider than the emphasis on 'unwarranted prejudice' to the individual in the 1998 Act. For example, unexpected processing is likely to affect whether the individual's interests override your legitimate interests, even without specific harm.

The GDPR is clearer that you must give particular weight to protecting children's data.

Public authorities are more limited in their ability to rely on legitimate interests, and should consider the 'public task' basis instead for any processing they do to perform their tasks as a public authority. Legitimate interests may still be available for other legitimate processing outside of those tasks.

The biggest change is that you need to document your decisions on legitimate interests so that you can

demonstrate compliance under the new GDPR accountability principle. You must also include more information in your privacy information.

In the run up to 25 May 2018, you need to review your existing processing to identify your lawful basis and document where you rely on legitimate interests, update your privacy information, and communicate it to individuals.

What is the 'legitimate interests' basis?

Article 6(1)(f) gives you a lawful basis for processing where:

> "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."

This can be broken down into a three-part test:

1. **Purpose test:** are you pursuing a legitimate interest?
2. **Necessity test:** is the processing necessary for that purpose?
3. **Balancing test:** do the individual's interests override the legitimate interest?

A wide range of interests may be legitimate interests. They can be your own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

The GDPR specifically mentions use of client or employee data, marketing, fraud prevention, intra-group transfers, or IT security as potential legitimate interests, but this is not an exhaustive list. It also says that you have a legitimate interest in disclosing information about possible criminal acts or security threats to the authorities.

'Necessary' means that the processing must be a targeted and proportionate way of achieving your purpose. You cannot rely on legitimate interests if there is another reasonable and less intrusive way to achieve the same result.

You must balance your interests against the individual's interests. In particular, if they would not reasonably expect you to use data in that way, or it would cause them unwarranted harm, their interests are likely to override yours. However, your interests do not always have to align with the individual's interests. If there is a conflict, your interests can still prevail as long as there is a clear justification for the impact on the individual.

When can we rely on legitimate interests?

Legitimate interests is the most flexible lawful basis, but you cannot assume it will always be appropriate for all of your processing.

If you choose to rely on legitimate interests, you take on extra responsibility for ensuring people's rights

and interests are fully considered and protected.

Legitimate interests is most likely to be an appropriate basis where you use data in ways that people would reasonably expect and that have a minimal privacy impact. Where there is an impact on individuals, it may still apply if you can show there is an even more compelling benefit to the processing and the impact is justified.

You can rely on legitimate interests for marketing activities if you can show that how you use people's data is proportionate, has a minimal privacy impact, and people would not be surprised or likely to object – but only if you don't need consent under PECR. See our Guide to PECR for more on when you need consent for electronic marketing.

You can consider legitimate interests for processing children's data, but you must take extra care to make sure their interests are protected. See our detailed guidance on children and the GDPR.

You may be able to rely on legitimate interests in order to lawfully disclose personal data to a third party. You should consider why they want the information, whether they actually need it, and what they will do with it. You need to demonstrate that the disclosure is justified, but it will be their responsibility to determine their lawful basis for their own processing.

You should avoid using legitimate interests if you are using personal data in ways people do not understand and would not reasonably expect, or if you think some people would object if you explained it to them. You should also avoid this basis for processing that could cause harm, unless you are confident there is nevertheless a compelling reason to go ahead which justifies the impact.

If you are a public authority, you cannot rely on legitimate interests for any processing you do to perform your tasks as a public authority. However, if you have other legitimate purposes outside the scope of your tasks as a public authority, you can consider legitimate interests where appropriate. This will be particularly relevant for public authorities with commercial interests.

See our guidance page on the lawful basis for more information on the alternatives to legitimate interests, and how to decide which basis to choose.

How can we apply legitimate interests in practice?

If you want to rely on legitimate interests, you can use the three-part test to assess whether it applies. We refer to this as a legitimate interests assessment (LIA) and you should do it before you start the processing.

An LIA is a type of light-touch risk assessment based on the specific context and circumstances. It will help you ensure that your processing is lawful. Recording your LIA will also help you demonstrate compliance in line with your accountability obligations under Articles 5(2) and 24. In some cases an LIA will be quite short, but in others there will be more to consider.

First, identify the legitimate interest(s). Consider:

- Why do you want to process the data – what are you trying to achieve?
- Who benefits from the processing? In what way?
- Are there any wider public benefits to the processing?
- How important are those benefits?
- What would the impact be if you couldn't go ahead?

- Would your use of the data be unethical or unlawful in any way?

Second, apply the necessity test. Consider:

- Does this processing actually help to further that interest?
- Is it a reasonable way to go about it?
- Is there another less intrusive way to achieve the same result?

Third, do a balancing test. Consider the impact of your processing and whether this overrides the interest you have identified. You might find it helpful to think about the following:

- What is the nature of your relationship with the individual?
- Is any of the data particularly sensitive or private?
- Would people expect you to use their data in this way?
- Are you happy to explain it to them?
- Are some people likely to object or find it intrusive?
- What is the possible impact on the individual?
- How big an impact might it have on them?
- Are you processing children's data?
- Are any of the individuals vulnerable in any other way?
- Can you adopt any safeguards to minimise the impact?
- Can you offer an opt-out?

You then need to make a decision about whether you still think legitimate interests is an appropriate basis. There's no foolproof formula for the outcome of the balancing test – but you must be confident that your legitimate interests are not overridden by the risks you have identified.

Keep a record of your LIA and the outcome. There is no standard format for this, but it's important to record your thinking to help show you have proper decision-making processes in place and to justify the outcome.

Keep your LIA under review and refresh it if there is a significant change in the purpose, nature or context of the processing.

If you are not sure about the outcome of the balancing test, it may be safer to look for another lawful basis. Legitimate interests will not often be the most appropriate basis for processing which is unexpected or high risk.

If your LIA identifies significant risks, consider whether you need to do a DPIA to assess the risk and potential mitigation in more detail. See our guidance on DPIAs for more on this.

What else do we need to consider?

You must tell people in your privacy information that you are relying on legitimate interests, and explain what these interests are.

If you want to process the personal data for a new purpose, you may be able to continue processing under legitimate interests as long as your new purpose is compatible with your original purpose. We

would still recommend that you conduct a new LIA, as this will help you demonstrate compatibility.

If you rely on legitimate interests, the right to data portability does not apply.

If you are relying on legitimate interests for direct marketing, the right to object is absolute and you must stop processing when someone objects. For other purposes, you must stop unless you can show that your legitimate interests are compelling enough to override the individual's rights. See our guidance on individual rights for more on this.

Further Reading

Relevant provisions in the GDPR - See Article 6(1)(f) and Recitals 47 - 49
External link

In more detail – ICO guidance

We have produced more detailed guidance on legitimate interests

We have produced the lawful basis interactive guidance tool, to give tailored guidance on which lawful basis is likely to be most appropriate for your processing activities.

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

There are no immediate plans for EDPB guidance on legitimate interests under the GDPR, but WP29 Opinion 06/2014 (9 April 2014) gives detailed guidance on the key elements of the similar legitimate interests provisions under the previous Data Protection Directive 95/46/EC.

Special category data

At a glance

- Special category data is personal data that needs more protection because it is sensitive.
- In order to lawfully process special category data, you must identify both a lawful basis under Article 6 of the GDPR and a separate condition for processing under Article 9. These do not have to be linked.
- There are 10 conditions for processing special category data in Article 9 of the GDPR.
- Five of these require you to meet additional conditions and safeguards set out in UK law, in Schedule 1 of the DPA 2018.
- You must determine your condition for processing special category data before you begin this processing under the GDPR, and you should document it.
- In many cases you also need an 'appropriate policy document' in place in order to meet a UK Schedule 1 condition for processing in the DPA 2018.
- You need to complete a data protection impact assessment (DPIA) for any type of processing which is likely to be high risk. You must therefore be aware of the risks of processing the special category data.

Checklist

☐ We have checked the processing of the special category data is necessary for the purpose we have identified and are satisfied there is no other reasonable and less intrusive way to achieve that purpose.

☐ We have identified an Article 6 lawful basis for processing the special category data.

☐ We have identified an appropriate Article 9 condition for processing the special category data.

☐ Where required, we have also identified an appropriate DPA 2018 Schedule 1 condition.

☐ We have documented which special categories of data we are processing.

☐ Where required, we have an appropriate policy document in place.

☐ We have considered whether we need to do a DPIA.

☐ We include specific information about our processing of special category data in our privacy information for individuals.

☐ If we use special category data for automated decision making (including profiling), we have checked we comply with Article 22.

☐ We have considered whether the risks associated with our use of special category data affect

our other obligations around data minimisation, security, and appointing Data Protection Officers (DPOs) and representatives.

In brief

- What is special category data?
- What are the rules for special category data?
- What are the conditions for processing special category data?
- What are the substantial public interest conditions?
- In more detail

What is special category data?

The GDPR defines special category data as:

- 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**; and
- data concerning a person's **sexual orientation**.

This does not include personal data about criminal allegations, proceedings or convictions, as separate rules apply. For further information, please see our separate guidance on criminal offence data.

Special category data includes personal data **revealing or concerning** the above types of data. Therefore, if you have inferred or guessed details about someone which fall into one of the above categories, this data may count as special category data. It depends on how certain that inference is, and whether you are deliberately drawing that inference.

What are the rules for special category data?

You must always ensure that your processing is generally lawful, fair and transparent and complies with all the other principles and requirements of the GDPR. To ensure that your processing is lawful, you need to identify an Article 6 basis for processing.

In addition, you can only process special category data if you can meet one of the specific conditions in Article 9 of the GDPR. You need to consider the purposes of your processing and identify which of these conditions are relevant.

Five of the conditions for processing are provided solely in Article 9 of the GDPR. The other five require authorisation or a basis in UK law, which means you need to meet additional conditions set out in the DPA 2018.

You must also identify whether you need an 'appropriate policy document' under the DPA 2018. Our template appropriate policy document shows the kind of information this should contain.

You must do a DPIA for any type of processing that is likely to be high risk. This means that you are more likely to need to do a DPIA for processing special category data. For further information, please see our guidance on DPIAs.

If you process special category data you must keep records, including documenting the categories of data. You may also need to consider how the risks associated with special category data affect your other obligations – in particular, obligations around data minimisation, security, transparency, DPOs and rights related to automated decision-making.

What are the conditions for processing special category data?

Article 9 lists the conditions for processing special category data:

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

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

If you are relying on the substantial public interest condition in Article 9(2)(g), you also need to meet one of 23 specific substantial public interest conditions set out in Part 2 of Schedule 1 of the DPA 2018.

What are the substantial public interest conditions?

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

6. Statutory and government purposes
7. Administration of justice and parliamentary purposes
8. Equality of opportunity or treatment
9. Racial and ethnic diversity at senior levels
10. Preventing or detecting unlawful acts
11. Protecting the public
12. Regulatory requirements
13. Journalism, academia, art and literature
14. Preventing fraud
15. Suspicion of terrorist financing or money laundering
16. Support for individuals with a particular disability or medical condition
17. Counselling
18. Safeguarding of children and individuals at risk

19. Safeguarding of economic well-being of certain individuals
20. Insurance
21. Occupational pensions
22. Political parties
23. Elected representatives responding to requests
24. Disclosure to elected representatives
25. Informing elected representatives about prisoners
26. Publication of legal judgments
27. Anti-doping in sport
28. Standards of behaviour in sport

You should identify which of these conditions appears to most closely reflect your purpose. Our detailed guidance gives you some further advice on how the conditions generally work, but you always need to refer to the detailed provisions of each condition in the legislation itself to make sure you can demonstrate it applies.

For some of these conditions, the substantial public interest element is built in. For others, you need to be able to demonstrate that your specific processing is "necessary for reasons of substantial public interest", on a case-by-case basis.

The public interest covers a wide range of values and principles relating to the public good, or what is in the best interests of society. It needs to be real and of substance. Given the inherent risks of special category data, it is not enough to make a vague or generic public interest argument. You should be able to make specific arguments about the concrete wider benefits of your processing.

For some of the conditions, you also need to justify why you cannot give individuals a choice and get explicit consent for your processing. In most cases, you must have an 'appropriate policy document' in place.

Further Reading

Relevant provisions in the GDPR - See Articles 4(1), 4(13)-(15) and Recitals 34 and 35, see also Articles 6 and 9, and Recitals 51 and 54, and Articles 22(4), 27(2), 30(5), 35(3), 37(1)
External link

Key provisions in the DPA 2018 - See sections 10 and 11, and schedule 1
External link

In more detail – ICO guidance

We have produced more detailed guidance on special category data.

Criminal offence data

At a glance

- To process personal data about criminal convictions or offences, you must have both a lawful basis under Article 6 and either legal authority or official authority for the processing under Article 10.
- The Data Protection Act 2018 deals with this type of data in a similar way to special category data, and sets out specific conditions providing lawful authority for processing it.
- You can also process this type of data if you have official authority to do so because you are processing the data in an official capacity.
- You cannot keep a comprehensive register of criminal convictions unless you do so in an official capacity.
- You must determine your condition for lawful processing of offence data (or identify your official authority for the processing) before you begin the processing, and you should document this.

In brief

- What's new?
- What is criminal offence data?
- What's different about criminal offence data?
- What does Article 10 say?

What's new?

The GDPR rules for sensitive (special category) data do not apply to information about criminal allegations, proceedings or convictions. Instead, there are separate safeguards for personal data relating to criminal convictions and offences, or related security measures, set out in Article 10.

Article 10 also specifies that you can only keep a comprehensive register of criminal convictions if you are doing so under the control of official authority.

What is criminal offence data?

Article 10 applies to personal data relating to criminal convictions and offences, or related security measures. In this guidance, we refer to this as criminal offence data.

This concept of criminal offence data includes the type of data about criminal allegations, proceedings or convictions that would have been sensitive personal data under the 1998 Act. However, it is potentially broader than this. In particular, Article 10 specifically extends to personal data linked to related security measures.

What's different about criminal offence data?

You must still have a lawful basis for your processing under Article 6, in exactly the same way as for any other personal data. The difference is that if you are processing personal criminal offence data, you will

also need to comply with Article 10.

What does Article 10 say?

Article 10 says:

> "Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority."

This means you must either:

- process the data in an official capacity; or
- meet a specific condition in Schedule 1 of the Data Protection Act 2018, and comply with the additional safeguards set out in that Act. Now that the detail of these provisions has been finalised, we are working on more detailed guidance in this area.

Even if you have a condition for processing offence data, you can only keep a comprehensive register of criminal convictions if you are doing so in an official capacity.

Further Reading

Relevant provisions in the GDPR - see Article 10
External link

Relevant provisions in the Data Protection Act 2018 - See sections 10 and 11, and Schedule 1
External link

Individual rights

The GDPR provides the following rights for individuals:

1. The right to be informed
2. The right of access
3. The right to rectification
4. The right to erasure
5. The right to restrict processing
6. The right to data portability
7. The right to object
8. Rights in relation to automated decision making and profiling.

This part of the guide explains these rights.

Right to be informed

At a glance

- Individuals have the right to be informed about the collection and use of their personal data. This is a key transparency requirement under the GDPR.
- You must provide individuals with information including: your purposes for processing their personal data, your retention periods for that personal data, and who it will be shared with. We call this 'privacy information'.
- You must provide privacy information to individuals at the time you collect their personal data from them.
- If you obtain personal data from other sources, you must provide individuals with privacy information within a reasonable period of obtaining the data and no later than one month.
- There are a few circumstances when you do not need to provide people with privacy information, such as if an individual already has the information or if it would involve a disproportionate effort to provide it to them.
- The information you provide to people must be concise, transparent, intelligible, easily accessible, and it must use clear and plain language.
- It is often most effective to provide privacy information to people using a combination of different techniques including layering, dashboards, and just-in-time notices.
- User testing is a good way to get feedback on how effective the delivery of your privacy information is.
- You must regularly review, and where necessary, update your privacy information. You must bring any new uses of an individual's personal data to their attention before you start the processing.
- Getting the right to be informed correct can help you to comply with other aspects of the GDPR and build trust with people, but getting it wrong can leave you open to fines and lead to reputational damage.

Checklists

What to provide

We provide individuals with all the following privacy information:

☐ The name and contact details of our organisation.

☐ The name and contact details of our representative (if applicable).

☐ The contact details of our data protection officer (if applicable).

☐ The purposes of the processing.

☐ The lawful basis for the processing.

☐ The legitimate interests for the processing (if applicable).

☐ The categories of personal data obtained (if the personal data is not obtained from the individual it relates to).

☐ The recipients or categories of recipients of the personal data.

☐ The details of transfers of the personal data to any third countries or international organisations (if applicable).

☐ The retention periods for the personal data.

☐ The rights available to individuals in respect of the processing.

☐ The right to withdraw consent (if applicable).

☐ The right to lodge a complaint with a supervisory authority.

☐ The source of the personal data (if the personal data is not obtained from the individual it relates to).

☐ The details of whether individuals are under a statutory or contractual obligation to provide the personal data (if applicable, and if the personal data is collected from the individual it relates to).

☐ The details of the existence of automated decision-making, including profiling (if applicable).

When to provide it

☐ We provide individuals with privacy information at the time we collect their personal data from them.

If we obtain personal data from a source other than the individual it relates to, we provide them with privacy information:

- ☐ within a reasonable of period of obtaining the personal data and no later than one month;
- ☐ if we plan to communicate with the individual, at the latest, when the first communication takes place; or
- ☐ if we plan to disclose the data to someone else, at the latest, when the data is disclosed.

How to provide it

We provide the information in a way that is:

- ☐ concise;
- ☐ transparent;
- ☐ intelligible;
- ☐ easily accessible; and

☐ uses clear and plain language.

Changes to the information

☐ We regularly review and, where necessary, update our privacy information.

☐ If we plan to use personal data for a new purpose, we update our privacy information and communicate the changes to individuals before starting any new processing.

Best practice – drafting the information

☐ We undertake an information audit to find out what personal data we hold and what we do with it.

☐ We put ourselves in the position of the people we're collecting information about.

☐ We carry out user testing to evaluate how effective our privacy information is.

Best practice – delivering the information

When providing our privacy information to individuals, we use a combination of appropriate techniques, such as:

☐ a layered approach;

☐ dashboards;

☐ just-in-time notices;

☐ icons; and

☐ mobile and smart device functionalities.

In brief

- What is the right to be informed and why is it important?
- What privacy information should we provide?
- When should we provide privacy information?
- Are there any exceptions?
- How should we draft our privacy information?
- What methods can we use to provide privacy information?
- What common issues might come up in practice?
- The right to be informed in more detail

What is the right to be informed and why is it important?

The right to be informed covers some of the key transparency requirements of the GDPR. It is about providing individuals with clear and concise information about what you do with their personal data.

Articles 13 and 14 of the GDPR specify what individuals have the right to be informed about. We call this 'privacy information'.

Using an effective approach can help you to comply with other aspects of the GDPR, foster trust with individuals and obtain more useful information from them.

Getting this wrong can leave you open to fines and lead to reputational damage.

What privacy information should we provide?

The table below summarises the information that you must provide. What you need to tell people differs slightly depending on whether you collect personal data from the individual it relates to or obtain it from another source.

What information do we need to provide?	Personal data collected from individuals	Personal data obtained from other sources
The name and contact details of your organisation	✓	✓
The name and contact details of your representative	✓	✓
The contact details of your data protection officer	✓	✓
The purposes of the processing	✓	✓
The lawful basis for the processing	✓	✓
The legitimate interests for the processing	✓	✓
The categories of personal data obtained		✓
The recipients or categories of recipients of the personal data	✓	✓
The details of transfers of the personal data to any third countries or international organisations	✓	✓
The retention periods for the personal data	✓	✓
The rights available to individuals in respect of the processing	✓	✓
The right to withdraw consent	✓	✓
The right to lodge a complaint with a supervisory authority	✓	✓

The source of the personal data		✓
The details of whether individuals are under a statutory or contractual obligation to provide the personal data	✓	
The details of the existence of automated decision-making, including profiling	✓	✓

When should we provide privacy information?

When you collect personal data from the individual it relates to, you must provide them with privacy information at the time you obtain their data.

When you obtain personal data from a source other than the individual it relates to, you need to provide the individual with privacy information:

- within a reasonable period of obtaining the personal data and no later than one month;
- if you use the data to communicate with the individual, at the latest, when the first communication takes place; or
- if you envisage disclosure to someone else, at the latest, when you disclose the data.

You must actively provide privacy information to individuals. You can meet this requirement by putting the information on your website, but you must make individuals aware of it and give them an easy way to access it.

Are there any exceptions?

When collecting personal data from individuals, you do not need to provide them with any information that they already have.

When obtaining personal data from other sources, you do not need to provide individuals with privacy information if:

- the individual already has the information;
- providing the information to the individual would be impossible;
- providing the information to the individual would involve a disproportionate effort;
- providing the information to the individual would render impossible or seriously impair the achievement of the objectives of the processing;
- you are required by law to obtain or disclose the personal data; or
- you are subject to an obligation of professional secrecy regulated by law that covers the personal data.

How should we draft our privacy information?

An information audit or data mapping exercise can help you find out what personal data you hold and what you do with it.

You should think about the intended audience for your privacy information and put yourself in their

position.

If you collect or obtain children's personal data, you must take particular care to ensure that the information you provide them with is appropriately written, using clear and plain language.

For all audiences, you must provide information to them in a way that is:

- concise;
- transparent;
- intelligible;
- easily accessible; and
- uses clear and plain language.

It is good practice to carry out user testing on your draft privacy information to get feedback on how easy it is to access and understand.

After it is finalised, undertake regular reviews to check it remains accurate and up to date.

If you plan to use personal data for any new purposes, you must update your privacy information and proactively bring any changes to people's attention.

What methods can we use to provide privacy information?

There are a number of techniques you can use to provide people with privacy information. You can use:

- **A layered approach** – short notices containing key privacy information that have additional layers of more detailed information.
- **Dashboards** – preference management tools that inform people how you use their data and allow them to manage what happens with it.
- **Just-in-time notices** – relevant and focused privacy information delivered at the time you collect individual pieces of information about people.
- **Icons** – small, meaningful, symbols that indicate the existence of a particular type of data processing.
- **Mobile and smart device functionalities** – including pop-ups, voice alerts and mobile device gestures.

Consider the context in which you are collecting personal data. It is good practice to use the same medium you use to collect personal data to deliver privacy information.

Taking a blended approach, using more than one of these techniques, is often the most effective way to provide privacy information.

What common issues might come up in practice?

If you **share** personal data to (or **sell** it with) other organisations:

- As part of the privacy information you provide, you must tell people who you are giving their information to, unless you are relying on an exception or an exemption.
- You can tell people the names of the organisations or the categories that they fall within; choose the

option that is most meaningful.

- It is good practice to use a dashboard to let people manage who their data is sold to, or shared with, where they have a choice.

If you **buy** personal data from other organisations:

- You must provide people with your own privacy information, unless you are relying on an exception or an exemption.
- If you think that it is impossible to provide privacy information to individuals, or it would involve a disproportionate effort, you must carry out a DPIA to find ways to mitigate the risks of the processing.
- If your purpose for using the personal data is different to that for which it was originally obtained, you must tell people about this, as well as what your lawful basis is for the processing.
- Provide people with your privacy information within a reasonable period of buying the data, and no later than one month.

If you obtain personal data from **publicly accessible sources**:

- You still have to provide people with privacy information, unless you are relying on an exception or an exemption.
- If you think that it is impossible to provide privacy information to individuals, or it would involve a disproportionate effort, you must carry out a DPIA to find ways to mitigate the risks of the processing.
- Be very clear with individuals about any unexpected or intrusive uses of personal data, such as combining information about them from a number of different sources.
- Provide people with privacy information within a reasonable period of obtaining the data, and no later than one month.

If you apply **Artificial Intelligence (AI)** to personal data:

- Be upfront about it and explain your purposes for using AI.
- If the purposes for processing are unclear at the outset, give people an indication of what you are going to do with their data. As your processing purposes become clearer, update your privacy information and actively communicate this to people.
- Inform people about any new uses of personal data before you actually start the processing.
- If you use AI to make solely automated decisions about people with legal or similarly significant effects, tell them what information you use, why it is relevant and what the likely impact is going to be.
- Consider using just-in-time notices and dashboards which can help to keep people informed and let them control further uses of their personal data.

Further Reading

Relevant provisions in the GDPR – See Articles 12-14, and Recitals 58 and 60-62
External link

In more detail – ICO guidance

We have published detailed guidance on the right to be informed.

In more detail – European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 adopted guidelines on Transparency, which have been endorsed by the EDPB.

Right of access

At a glance

- Individuals have the right to access their personal data.
- This is commonly referred to as subject access.
- Individuals can make a subject access request verbally or in writing.
- You have one month to respond to a request.
- You cannot charge a fee to deal with a request in most circumstances.

Checklists

Preparing for subject access requests

☐ We know how to recognise a subject access request and we understand when the right of access applies.

☐ We have a policy for how to record requests we receive verbally.

☐ We understand when we can refuse a request and are aware of the information we need to provide to individuals when we do so.

☐ We understand the nature of the supplementary information we need to provide in response to a subject access request.

Complying with subject access requests

☐ We have processes in place to ensure that we respond to a subject access request without undue delay and within one month of receipt.

☐ We are aware of the circumstances when we can extend the time limit to respond to a request.

☐ We understand that there is a particular emphasis on using clear and plain language if we are disclosing information to a child.

☐ We understand what we need to consider if a request includes information about others.

In brief

- What is the right of access?
- What is an individual entitled to?
- Personal data of the individual

- Other information
- How do we recognise a request?
- Should we provide a specially designed form for individuals to make a subject access request?
- How should we provide the data to individuals?
- Do we have to explain the contents of the information we send to the individual?
- Can we charge a fee?
- How long do we have to comply?
- Can we extend the time for a response?
- Can we ask an individual for ID?
- Can we clarify the request?
- What about requests made on behalf of others?
- What about requests for information about children?
- What about data held by credit reference agencies?
- What should we do if the data includes information about other people?
- If we use a processor, does this mean they would have to deal with any subject access requests we receive?
- Can we refuse to comply with a request?
- What does manifestly unfounded mean?
- What does excessive mean?
- What should we do if we refuse to comply with a request?
- Can I require an individual to make a subject access request?

What is the right of access?

The right of access, commonly referred to as subject access, gives individuals the right to obtain a copy of their personal data as well as other supplementary information. It helps individuals to understand how and why you are using their data, and check you are doing it lawfully.

What is an individual entitled to?

Individuals have the right to obtain the following from you:

- confirmation that you are processing their personal data;
- a copy of their personal data; and
- other supplementary information – this largely corresponds to the information that you should provide in a privacy notice (see 'Other information' below).

Personal data of the individual

An individual is only entitled to their own personal data, and not to information relating to other people (unless the information is also about them or they are acting on behalf of someone). Therefore, it is important that you establish whether the information requested falls within the definition of personal

data. For further information about the definition of personal data please see our guidance on what is personal data.

Other information

In addition to a copy of their personal data, you also have to provide individuals with the following information:

- the purposes of your processing;
- the categories of personal data concerned;
- the recipients or categories of recipient you disclose the personal data to;
- your retention period for storing the personal data or, where this is not possible, your criteria for determining how long you will store it;
- the existence of their right to request rectification, erasure or restriction or to object to such processing;
- the right to lodge a complaint with the ICO or another supervisory authority;
- information about the source of the data, where it was not obtained directly from the individual;
- the existence of automated decision-making (including profiling); and
- the safeguards you provide if you transfer personal data to a third country or international organisation.

You may be providing much of this information already in your privacy notice.

How do we recognise a request?

The GDPR does not specify how to make a valid request. Therefore, an individual can make a subject access request to you verbally or in writing. It can also be made to any part of your organisation (including by social media) and does not have to be to a specific person or contact point.

A request does not have to include the phrase 'subject access request' or Article 15 of the GDPR, as long as it is clear that the individual is asking for their own personal data.

This presents a challenge as any of your employees could receive a valid request. However, you have a legal responsibility to identify that an individual has made a request to you and handle it accordingly. Therefore you may need to consider which of your staff who regularly interact with individuals may need specific training to identify a request.

Additionally, it is good practice to have a policy for recording details of the requests you receive, particularly those made by telephone or in person. You may wish to check with the requester that you have understood their request, as this can help avoid later disputes about how you have interpreted the request. We also recommend that you keep a log of verbal requests.

Should we provide a specially designed form for individuals to make a subject access request?

Standard forms can make it easier both for you to recognise a subject access request and for the individual to include all the details you might need to locate the information they want.

Recital 59 of the GDPR recommends that organisations 'provide means for requests to be made

electronically, especially where personal data are processed by electronic means'. You should therefore consider designing a subject access form that individuals can complete and submit to you electronically.

However, even if you have a form, you should note that a subject access request is valid if it is submitted by any means, so you will still need to comply with any requests you receive in a letter, a standard email or verbally.

Therefore, although you may invite individuals to use a form, you must make it clear that it is not compulsory and do not try to use this as a way of extending the one month time limit for responding.

How should we provide the data to individuals?

If an individual makes a request electronically, you should provide the information in a commonly used electronic format, unless the individual requests otherwise.

The GDPR includes a best practice recommendation that, where possible, organisations should be able to provide remote access to a secure self-service system which would provide the individual with direct access to his or her information (Recital 63). This will not be appropriate for all organisations, but there are some sectors where this may work well.

However, providing remote access should not adversely affect the rights and freedoms of others – including trade secrets or intellectual property.

We have received a request but need to amend the data before sending out the response. Should we send out the "old" version?

It is our view that a subject access request relates to the data held at the time the request was received. However, in many cases, routine use of the data may result in it being amended or even deleted while you are dealing with the request. So it would be reasonable for you to supply information you hold when you send out a response, even if this is different to that held when you received the request.

However, it is not acceptable to amend or delete the data if you would not otherwise have done so. Under the Data Protection Act 2018 (DPA 2018), it is an offence to make any amendment with the intention of preventing its disclosure.

Do we have to explain the contents of the information we send to the individual?

The GDPR requires that the information you provide to an individual is in a concise, transparent, intelligible and easily accessible form, using clear and plain language. This will be particularly important where the information is addressed to a child.

At its most basic, this means that the additional information you provide in response to a request (see the 'Other information' section above) should be capable of being understood by the average person (or child). However, you are not required to ensure that that the information is provided in a form that can be understood by the particular individual making the request.

For further information about requests made by a child please see the 'What about requests for information about children?' section below.

Example

An individual makes a request for their personal data. When preparing the response, you notice that a lot of it is in coded form. For example, attendance at a particular training session is logged as "A", while non-attendance at a similar event is logged as "M". Also, some of the information is in the form of handwritten notes that are difficult to read. Without access to your key or index to explain this information, it would be impossible for anyone outside your organisation to understand. In this case, you are required to explain the meaning of the coded information. However, although it is good practice to do so, you are not required to decipher the poorly written notes, as the GDPR does not require you to make information legible.

Example

You receive a subject access request from someone whose English comprehension skills are quite poor. You send a response and they ask you to translate the information you sent them. You are not required to do this even if the person who receives it cannot understand all of it because it can be understood by the average person. However, it is good practice for you to help individuals understand the information you hold about them.

Can we charge a fee?

In most cases you cannot charge a fee to comply with a subject access request.

However, you can charge a "reasonable fee" for the administrative costs of complying with the request if:

- it is manifestly unfounded or excessive; or
- an individual requests further copies of their data following a request.

You should base the reasonable fee on the administrative costs of complying with the request.

If you decide to charge a fee you should contact the individual promptly and inform them. You do not need to comply with the request until you have received the fee.

Alternatively, you can refuse to comply with a manifestly unfounded or excessive request.

How long do we have to comply?

You must comply with a request without undue delay and at the latest within one month of receipt of the request or (if later) within one month of receipt of:

- any requested information to clarify the request (see Can we clarify the request?);

- any information requested to confirm the requester's identity (see Can we ask for ID?); or
- a fee (only in certain circumstances – see Can we charge a fee?)

You should calculate the time limit from the day you receive the request (whether it is a working day or not) until the corresponding calendar date in the next month.

Example

An organisation receives a request on 3 September. The time limit will start from the same day. This gives the organisation until 3 October to comply with the request.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

Example

An organisation receives a request on 31 March. The time limit starts from the same day. As there is no equivalent date in April, the organisation has until 30 April to comply with the request.

If 30 April falls on a weekend, or is a public holiday, the organisation has until the end of the next working day to comply.

For practical purposes, if a consistent number of days is required (eg for operational or system purposes), it may be helpful to adopt a 28-day period to ensure compliance is always within a calendar month.

Can we extend the time for a response?

You can extend the time to respond by a further two months if the request is complex or you have received a number of requests from the individual. You must let the individual know within one month of receiving their request and explain why the extension is necessary.

Can we ask an individual for ID?

If you have doubts about the identity of the person making the request you can ask for more information. However, it is important that you only request information that is necessary to confirm who they are. The key to this is proportionality.

You need to let the individual know as soon as possible that you need more information from them to confirm their identity before responding to their request. The period for responding to the request begins when you receive the additional information.

Can we clarify the request?

If you process a large amount of information about an individual you can ask them for more information to clarify their request. You should only ask for information that you reasonably need to find the personal data covered by the request.

You need to let the individual know as soon as possible that you need more information from them before responding to their request. The period for responding to the request begins when you receive the additional information. However, if an individual refuses to provide any additional information, you must still endeavour to comply with their request ie by making reasonable searches for the information covered by the request.

What about requests made on behalf of others?

The GDPR does not prevent an individual making a subject access request via a third party. Often, this will be a solicitor acting on behalf of a client, but it could simply be that an individual feels comfortable allowing someone else to act for them. In these cases, you need to be satisfied that the third party making the request is entitled to act on behalf of the individual, but it is the third party's responsibility to provide evidence of this entitlement. This might be a written authority to make the request or it might be a more general power of attorney.

Example

A building society has an elderly customer who visits a particular branch to make weekly withdrawals from one of her accounts. Over the past few years, she has always been accompanied by her daughter who is also a customer of the branch. The daughter makes a subject access request on behalf of her mother and explains that her mother does not feel up to making the request herself as she does not understand the ins and outs of data protection. As the information held by the building society is mostly financial, it is rightly cautious about giving customer information to a third party. If the daughter had a general power of attorney, the society would be happy to comply. They ask the daughter whether she has such a power, but she does not.

Bearing in mind that the branch staff know the daughter and have some knowledge of the relationship she has with her mother, they might consider complying with the request by making a voluntary disclosure. However, the building society is not obliged to do so, and it would not be unreasonable to require more formal authority.

If you think an individual may not understand what information would be disclosed to a third party who has made a subject access request on their behalf, you may send the response directly to the individual rather than to the third party. The individual may then choose to share the information with the third party after having had a chance to review it.

There are cases where an individual does not have the mental capacity to manage their own affairs.

Although there are no specific provisions in the GDPR, the Mental Capacity Act 2005 or in the Adults with Incapacity (Scotland) Act 2000 enabling a third party to exercise subject access rights on behalf of such an individual, it is reasonable to assume that an attorney with authority to manage the property and affairs of an individual will have the appropriate authority. The same applies to a person appointed to make decisions about such matters:

- in England and Wales, by the Court of Protection;
- in Scotland, by the Sheriff Court; and
- in Northern Ireland, by the High Court (Office of Care and Protection).

What about requests for information about children?

Even if a child is too young to understand the implications of subject access rights, it is still the right of the child rather than of anyone else such as a parent or guardian. So it is the child who has a right of access to the information held about them, even though in the case of young children these rights are likely to be exercised by those with parental responsibility for them.

Before responding to a subject access request for information held about a child, you should consider whether the child is mature enough to understand their rights. If you are confident that the child can understand their rights, then you should usually respond directly to the child. You may, however, allow the parent to exercise the child's rights on their behalf if the child authorises this, or if it is evident that this is in the best interests of the child.

What matters is that the child is able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive as a result of doing so. When considering borderline cases, you should take into account, among other things:

- the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;
- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;
- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information; and
- any views the child or young person has on whether their parents should have access to information about them.

In Scotland, a person aged 12 years or over is presumed to be of sufficient age and maturity to be able to exercise their right of access, unless the contrary is shown. This presumption does not apply in England and Wales or in Northern Ireland, where competence is assessed depending upon the level of understanding of the child, but it does indicate an approach that will be reasonable in many cases.

For further information on situations where the request has been made by a child, see our guidance on children and the GDPR.

What about data held by credit reference agencies?

In the DPA 2018 there are special provisions about the access to personal data held by credit reference agencies. Unless otherwise specified, a subject access request to a credit reference agency only applies to information relating to the individual's financial standing. Credit reference agencies must also inform individuals of their rights under s.159 of the Consumer Credit Act.

What should we do if the data includes information about other people?

Responding to a subject access request may involve providing information that relates both to the individual making the request and to another individual.

The DPA 2018 says that you do not have to comply with the request if it would mean disclosing information about another individual who can be identified from that information, except if:

- the other individual has consented to the disclosure; or
- it is reasonable to comply with the request without that individual's consent.

In determining whether it is reasonable to disclose the information, you must take into account all of the relevant circumstances, including:

- the type of information that you would disclose;
- any duty of confidentiality you owe to the other individual;
- any steps you have taken to seek consent from the other individual;
- whether the other individual is capable of giving consent; and
- any express refusal of consent by the other individual.

So, although you may sometimes be able to disclose information relating to a third party, you need to decide whether it is appropriate to do so in each case. This decision will involve balancing the data subject's right of access against the other individual's rights. If the other person consents to you disclosing the information about them, then it would be unreasonable not to do so. However, if there is no such consent, you must decide whether to disclose the information anyway.

For the avoidance of doubt, you cannot refuse to provide access to personal data about an individual simply because you obtained that data from a third party. The rules about third party data apply only to personal data which includes both information about the individual who is the subject of the request and information about someone else.

For further information see our FOI guidance Personal data of both the requester and others and Access to information held in complaint files.

If we use a processor, does this mean they would have to deal with any subject access requests we receive?

Responsibility for complying with a subject access request lies with you as the controller. You need to ensure that you have contractual arrangements in place to guarantee that subject access requests are dealt with properly, irrespective of whether they are sent to you or to the processor. More information about contracts and liabilities between controllers and processors can be found here.

You are not able to extend the one month time limit on the basis that you have to rely on a processor to provide the information that you need to respond. As mentioned above, you can only extend the time limit by two months if the request is complex or you have received a number of requests from the

individual.

Can we refuse to comply with a request?

If an exemption applies, you can refuse to comply with a subject access request (wholly or partly). Not all of the exemptions apply in the same way, and you should look at each exemption carefully to see how it applies to a particular request. For more information, please see our guidance on Exemptions.

You can also refuse to comply with a subject access request if it is:

• manifestly unfounded; or

• excessive.

In order to decide if a request is manifestly unfounded or excessive you must consider each request on a case-by-case basis. You should not have a blanket policy.

You must be able to demonstrate to the individual why you consider the request is manifestly unfounded or excessive and, if asked, explain your reasons to the Information Commissioner.

What does manifestly unfounded mean?

A request may be manifestly unfounded if:

- the individual clearly has no intention to exercise their right of access. For example an individual makes a request, but then offers to withdraw it in return for some form of benefit from the organisation; or
- the request is malicious in intent and is being used to harass an organisation with no real purposes other than to cause disruption. For example:
  - the individual has explicitly stated, in the request itself or in other communications, that they intend to cause disruption;
  - the request makes unsubstantiated accusations against you or specific employees;
  - the individual is targeting a particular employee against whom they have some personal grudge; or
  - the individual systematically sends different requests to you as part of a campaign, eg once a week, with the intention of causing disruption.

This is not a simple tick list exercise that automatically means a request is manifestly unfounded. You must consider a request in the context in which it is made, and you are responsible for demonstrating that it is manifestly unfounded.

Also, you should not presume that a request is manifestly unfounded because the individual has previously submitted requests which have been manifestly unfounded or excessive or if it includes aggressive or abusive language.

The inclusion of the word "manifestly" means there must be an obvious or clear quality to it being unfounded. You should consider the specific situation and whether the individual genuinely wants to exercise their rights. If this is the case, it is unlikely that the request will be manifestly unfounded.

Example

An individual believes that information held about them is inaccurate. They repeatedly request its correction but you have previously investigated and told them you regard it as accurate.

The individual continues to make requests along with unsubstantiated claims against you as the controller.

You refuse the most recent request because it is manifestly unfounded and you notify the individual of this.

What does excessive mean?

A request may be excessive if:

- it repeats the substance of previous requests and a reasonable interval has not elapsed; or
- it overlaps with other requests.

However, it depends on the particular circumstances. It will **not necessarily** be excessive just because the individual:

- requested a large amount of information, even if you might find the request burdensome. Instead you should consider asking them for more information to help you locate what they want to receive, please see 'Can we clarify the request?';
- wanted to receive a further copy of information they have requested previously. In this situation a controller can charge a reasonable fee for the administrative costs of providing this information again and it is unlikely that this would be an excessive request;
- made an overlapping request relating to a completely separate set of information; or
- previously submitted requests which have been manifestly unfounded or excessive.

When deciding whether a reasonable interval has elapsed you should consider:

- the nature of the data – this could include whether it is particularly sensitive;
- the purposes of the processing – these could include whether the processing is likely to cause detriment (harm) to the requester if disclosed; and
- how often the data is altered – if information is unlikely to have changed between requests, you may decide you do not need to respond to the same request twice. However, if you have deleted information since the last request you should inform the individual of this.

What should we do if we refuse to comply with a request?

You must inform the individual without undue delay and within one month of receipt of the request.

You should inform the individual about:

- the reasons you are not taking action;

- their right to make a complaint to the ICO or another supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.

You should also provide this information if you request a reasonable fee or need additional information to identify the individual.

Can I require an individual to make a subject access request?

In the DPA 2018 it is a criminal offence, in certain circumstances and in relation to certain information, to require an individual to make a subject access request. We will provide further guidance on this offence in due course.

Further Reading

Relevant provisions in the GDPR - See Articles 12, 15 and Recitals 63, 64
External link

Right to rectification

At a glance

- The GDPR includes a right for individuals to have inaccurate personal data rectified, or completed if it is incomplete.
- An individual can make a request for rectification verbally or in writing.
- You have one calendar month to respond to a request.
- In certain circumstances you can refuse a request for rectification.
- This right is closely linked to the controller's obligations under the accuracy principle of the GDPR (Article (5)(1)(d)).

Checklists

Preparing for requests for rectification

☐ We know how to recognise a request for rectification and we understand when this right applies.

☐ We have a policy for how to record requests we receive verbally.

☐ We understand when we can refuse a request and are aware of the information we need to provide to individuals when we do so.

Complying with requests for rectification

☐ We have processes in place to ensure that we respond to a request for rectification without undue delay and within one month of receipt.

☐ We are aware of the circumstances when we can extend the time limit to respond to a request.

☐ We have appropriate systems to rectify or complete information, or provide a supplementary statement.

☐ We have procedures in place to inform any recipients if we rectify any data we have shared with them.

In brief

- What is the right to rectification?
- What do we need to do?

- When is data inaccurate?
- What should we do about data that records a mistake?
- What should we do about data that records a disputed opinion?
- What should we do while we are considering the accuracy?
- What should we do if we are satisfied that the data is accurate?
- Can we refuse to comply with the request for rectification for other reasons?
- What does manifestly unfounded mean?
- What does excessive mean?
- What should we do if we refuse to comply with a request for rectification?
- How can we recognise a request?
- Can we charge a fee?
- How long do we have to comply?
- Can we extend the time for a response?
- Can we ask an individual for ID?
- Do we have to tell other organisations if we rectify personal data?

What is the right to rectification?

Under Article 16 of the GDPR individuals have the right to have inaccurate personal data rectified. An individual may also be able to have incomplete personal data completed – although this will depend on the purposes for the processing. This may involve providing a supplementary statement to the incomplete data.

This right has close links to the accuracy principle of the GDPR (Article 5(1)(d)). However, although you may have already taken steps to ensure that the personal data was accurate when you obtained it, this right imposes a specific obligation to reconsider the accuracy upon request.

What do we need to do?

If you receive a request for rectification you should take reasonable steps to satisfy yourself that the data is accurate and to rectify the data if necessary. You should take into account the arguments and evidence provided by the data subject.

What steps are reasonable will depend, in particular, on the nature of the personal data and what it will be used for. The more important it is that the personal data is accurate, the greater the effort you should put into checking its accuracy and, if necessary, taking steps to rectify it. For example, you should make a greater effort to rectify inaccurate personal data if it is used to make significant decisions that will affect an individual or others, rather than trivial ones.

You may also take into account any steps you have already taken to verify the accuracy of the data prior to the challenge by the data subject.

When is data inaccurate?

The GDPR does not give a definition of the term accuracy. However, the Data Protection Act 2018 (DPA

2018) states that personal data is inaccurate if it is incorrect or misleading as to any matter of fact.

What should we do about data that records a mistake?

Determining whether personal data is inaccurate can be more complex if the data refers to a mistake that has subsequently been resolved. It may be possible to argue that the record of the mistake is, in itself, accurate and should be kept. In such circumstances the fact that a mistake was made and the correct information should also be included in the individuals data.

Example

If a patient is diagnosed by a GP as suffering from a particular illness or condition, but it is later proved that this is not the case, it is likely that their medical records should record both the initial diagnosis (even though it was later proved to be incorrect) and the final findings. Whilst the medical record shows a misdiagnosis, it is an accurate record of the patient's medical treatment. As long as the medical record contains the up-to-date findings, and this is made clear in the record, it would be difficult to argue that the record is inaccurate and should be rectified.

What should we do about data that records a disputed opinion?

It is also complex if the data in question records an opinion. Opinions are, by their very nature, subjective, and it can be difficult to conclude that the record of an opinion is inaccurate. As long as the record shows clearly that the information is an opinion and, where appropriate, whose opinion it is, it may be difficult to say that it is inaccurate and needs to be rectified.

What should we do while we are considering the accuracy?

Under Article 18 an individual has the right to request restriction of the processing of their personal data where they contest its accuracy and you are checking it. As a matter of good practice, you should restrict the processing of the personal data in question whilst you are verifying its accuracy, whether or not the individual has exercised their right to restriction. For more information, see our guidance on the right to restriction.

What should we do if we are satisfied that the data is accurate?

You should let the individual know if you are satisfied that the personal data is accurate, and tell them that you will not be amending the data. You should explain your decision, and inform them of their right to make a complaint to the ICO or another supervisory authority; and their ability to seek to enforce their rights through a judicial remedy.

It is also good practice to place a note on your system indicating that the individual challenges the accuracy of the data and their reasons for doing so.

Can we refuse to comply with the request for rectification for other reasons?

If an exemption applies, you can refuse to comply with an objection (wholly or partly). Not all of the exemptions apply in the same way, and you should look at each exemption carefully to see how it applies to a particular request. For more information, please see our guidance on Exemptions.

You can also refuse to comply with a request if it is:

- manifestly unfounded; or
- excessive.

In order to decide if a request is manifestly unfounded or excessive you must consider each request on a case-by-case basis. You should not have a blanket policy.

You must be able to demonstrate to the individual why you consider the request is manifestly unfounded or excessive and, if asked, explain your reasons to the Information Commissioner.

What does manifestly unfounded mean?

A request may be manifestly unfounded if:

- the individual clearly has no intention to exercise their right to rectification. For example an individual makes a request, but then offers to withdraw it in return for some form of benefit from the organisation; or
- the request is malicious in intent and is being used to harass an organisation with no real purposes other than to cause disruption. For example:
  - the individual has explicitly stated, in the request itself or in other communications, that they intend to cause disruption;
  - the request makes unsubstantiated accusations against you or specific employees;
  - the individual is targeting a particular employee against whom they have some personal grudge; or
  - the individual systematically sends different requests to you as part of a campaign, eg once a week, with the intention of causing disruption.

This is not a simple tick list exercise that automatically means a request is manifestly unfounded. You must consider a request in the context in which it is made, and you are responsible for demonstrating that it is manifestly unfounded.

Also, you should not presume that a request is manifestly unfounded because the individual has previously submitted requests which have been manifestly unfounded or excessive or if it includes aggressive or abusive language.

The inclusion of the word "manifestly" means there must be an obvious or clear quality to it being unfounded. You should consider the specific situation and whether the individual genuinely wants to exercise their rights. If this is the case, it is unlikely that the request will be manifestly unfounded.

Example

An individual believes that information held about them is inaccurate. They repeatedly request its correction but you have previously investigated and told them you regard it as accurate.

The individual continues to make requests along with unsubstantiated claims against you as the controller.

You refuse the most recent request because it is manifestly unfounded and you notify the individual of this.

What does excessive mean?

A request may be excessive if:

- it repeats the substance of previous requests; or
- it overlaps with other requests.

However, it depends on the particular circumstances. It will not necessarily be excessive just because the individual:

- makes a request about the same issue. An individual may have legitimate reasons for making requests that repeat the content of previous requests. For example, if the controller has not handled previous requests properly;
- makes an overlapping request, if it relates to a completely separate set of information; or
- previously submitted requests which have been manifestly unfounded or excessive.

What should we do if we refuse to comply with a request for rectification?

If an exemption applies, you can refuse to comply with a request for rectification (wholly or partly). Not all of the exemptions apply in the same way, and you should look at each exemption carefully to see how it applies to a particular request. For more information, please see our guidance on Exemptions.

You can also refuse to comply with a request if it is:

- manifestly unfounded; or
- excessive.

In order to decide if a request is manifestly unfounded or excessive you must consider each request on a case-by-case basis. You should not have a blanket policy.

You must be able to demonstrate to the individual why you consider the request is manifestly unfounded or excessive and, if asked, explain your reasons to the Information Commissioner.

How can we recognise a request?

The GDPR does not specify how to make a valid request. Therefore, an individual can make a request for rectification verbally or in writing. It can also be made to any part of your organisation and does not have to be to a specific person or contact point.

A request to rectify personal data does not need to mention the phrase 'request for rectification' or Article 16 of the GDPR to be a valid request. As long as the individual has challenged the accuracy of their data and has asked you to correct it, or has asked that you take steps to complete data held about them that is incomplete, this will be a valid request under Article 16.

This presents a challenge as any of your employees could receive a valid verbal request. However, you have a legal responsibility to identify that an individual has made a request to you and handle it accordingly. Therefore you may need to consider which of your staff who regularly interact with individuals may need specific training to identify a request.

Additionally, it is good practice to have a policy for recording details of the requests you receive, particularly those made by telephone or in person. You may wish to check with the requester that you have understood their request, as this can help avoid later disputes about how you have interpreted the request. We also recommend that you keep a log of verbal requests.

Can we charge a fee?

In most cases you cannot charge a fee to comply with a request for rectification.

However, you can charge a "reasonable fee" for the administrative costs of complying with the request if it is manifestly unfounded or excessive. You should base the reasonable fee on the administrative costs of complying with the request.

If you decide to charge a fee you should contact the individual promptly and inform them. You do not need to comply with the request until you have received the fee.

Alternatively, you can refuse to comply with a manifestly unfounded or excessive request.

How long do we have to comply?

You must comply with a request for rectification without undue delay and at the latest within one month of receipt of the request or (if later) within one month of receipt of:

• any information requested to confirm the requester's identity (see Can we ask an individual for ID?); or

• a fee (only in certain circumstances – see Can we charge a fee?)

You should calculate the time limit from the day you receive the request (whether it is a working day or not) until the corresponding calendar date in the next month.

Example

An organisation receives a request on 3 September. The time limit will start from the same day. This gives the organisation until 3 October to comply with the request.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

Example

An organisation receives a request on 31 March. The time limit starts from the same day. As there is no equivalent date in April, the organisation has until 30 April to comply with the request.

If 30 April falls on a weekend, or is a public holiday, the organisation has until the end of the next working day to comply.

For practical purposes, if a consistent number of days is required (eg for operational or system purposes), it may be helpful to adopt a 28-day period to ensure compliance is always within a calendar month.

Can we extend the time for a response?

You can extend the time to respond by a further two months if the request is complex or you have received a number of requests from the individual. You must let the individual know within one month of receiving their request and explain why the extension is necessary.

Can we ask an individual for ID?

If you have doubts about the identity of the person making the request you can ask for more information. However, it is important that you only request information that is necessary to confirm who they are. The key to this is proportionality. You should take into account what data you hold, the nature of the data, and what you are using it for.

You must let the individual know without undue delay and within one month that you need more information from them to confirm their identity. You do not need to comply with the request until you have received the additional information.

Do we have to tell other organisations if we rectify personal data?

If you have disclosed the personal data to others, you must contact each recipient and inform them of the rectification or completion of the personal data - unless this proves impossible or involves disproportionate effort. If asked to, you must also inform the individual about these recipients.

The GDPR defines a recipient as a natural or legal person, public authority, agency or other body to which the personal data are disclosed. The definition includes controllers, processors and persons who, under the direct authority of the controller or processor, are authorised to process personal data.

Further Reading

Relevant provisions in the GDPR - See Articles 5, 12, 16 and 19
External link

Right to erasure

At a glance

- The GDPR introduces a right for individuals to have personal data erased.
- The right to erasure is also known as 'the right to be forgotten'.
- Individuals can make a request for erasure verbally or in writing.
- You have one month to respond to a request.
- The right is not absolute and only applies in certain circumstances.
- This right is not the only way in which the GDPR places an obligation on you to consider whether to delete personal data.

Checklists

Preparing for requests for erasure

☐ We know how to recognise a request for erasure and we understand when the right applies.

☐ We have a policy for how to record requests we receive verbally.

☐ We understand when we can refuse a request and are aware of the information we need to provide to individuals when we do so.

Complying with requests for erasure

☐ We have processes in place to ensure that we respond to a request for erasure without undue delay and within one month of receipt.

☐ We are aware of the circumstances when we can extend the time limit to respond to a request.

☐ We understand that there is a particular emphasis on the right to erasure if the request relates to data collected from children.

☐ We have procedures in place to inform any recipients if we erase any data we have shared with them.

☐ We have appropriate methods in place to erase information.

In brief

- What is the right to erasure?
- When does the right to erasure apply?

- How does the right to erasure apply to data collected from children?
- Do we have to tell other organisations about the erasure of personal data?
- Do we have to erase personal data from backup systems?
- When does the right to erasure not apply?
- Can we refuse to comply with a request for other reasons?
- What does manifestly unfounded mean?
- What does excessive mean?
- What should we do if we refuse to comply with a request for erasure?
- How do we recognise a request?
- Can we charge a fee?
- How long do we have to comply?
- Can we extend the time for a response?
- Can we ask an individual for ID?

What is the right to erasure?

Under Article 17 of the GDPR individuals have the right to have personal data erased. This is also known as the 'right to be forgotten'. The right is not absolute and only applies in certain circumstances.

When does the right to erasure apply?

Individuals have the right to have their personal data erased if:

- the personal data is no longer necessary for the purpose which you originally collected or processed it for;
- you are relying on consent as your lawful basis for holding the data, and the individual withdraws their consent;
- you are relying on legitimate interests as your basis for processing, the individual objects to the processing of their data, and there is no overriding legitimate interest to continue this processing;
- you are processing the personal data for direct marketing purposes and the individual objects to that processing;
- you have processed the personal data unlawfully (ie in breach of the lawfulness requirement of the 1st principle);
- you have to do it to comply with a legal obligation; or
- you have processed the personal data to offer information society services to a child.

How does the right to erasure apply to data collected from children?

There is an emphasis on the right to have personal data erased if the request relates to data collected from children. This reflects the enhanced protection of children's information, especially in online environments, under the GDPR.

Therefore, if you process data collected from children, you should give particular weight to any request

for erasure if the processing of the data is based upon consent given by a child – especially any processing of their personal data on the internet. This is still the case when the data subject is no longer a child, because a child may not have been fully aware of the risks involved in the processing at the time of consent.

For further details about the right to erasure and children's personal data please read our guidance on children's privacy.

Do we have to tell other organisations about the erasure of personal data?

The GDPR specifies two circumstances where you should tell other organisations about the erasure of personal data:

- the personal data has been disclosed to others; or
- the personal data has been made public in an online environment (for example on social networks, forums or websites).

If you have disclosed the personal data to others, you must contact each recipient and inform them of the erasure, unless this proves impossible or involves disproportionate effort. If asked to, you must also inform the individuals about these recipients.

The GDPR defines a recipient as a natural or legal person, public authority, agency or other body to which the personal data are disclosed. The definition includes controllers, processors and persons who, under the direct authority of the controller or processor, are authorised to process personal data.

Where personal data has been made public in an online environment reasonable steps should be taken to inform other controllers who are processing the personal data to erase links to, copies or replication of that data. When deciding what steps are reasonable you should take into account available technology and the cost of implementation.

Do we have to erase personal data from backup systems?

If a valid erasure request is received and no exemption applies then you will have to take steps to ensure erasure from backup systems as well as live systems. Those steps will depend on your particular circumstances, your retention schedule (particularly in the context of its backups), and the technical mechanisms that are available to you.

You must be absolutely clear with individuals as to what will happen to their data when their erasure request is fulfilled, including in respect of backup systems.

It may be that the erasure request can be instantly fulfilled in respect of live systems, but that the data will remain within the backup environment for a certain period of time until it is overwritten.

The key issue is to put the backup data 'beyond use', even if it cannot be immediately overwritten. You must ensure that you do not use the data within the backup for any other purpose, ie that the backup is simply held on your systems until it is replaced in line with an established schedule. Provided this is the case it may be unlikely that the retention of personal data within the backup would pose a significant risk, although this will be context specific. For more information on what we mean by 'putting data beyond use' see our old guidance under the 1998 Act on deleting personal data (this will be updated in due course).

When does the right to erasure not apply?

The right to erasure does not apply if processing is necessary for one of the following reasons:

- to exercise the right of freedom of expression and information;
- to comply with a legal obligation;
- for the performance of a task carried out in the public interest or in the exercise of official authority;
- for archiving purposes in the public interest, scientific research historical research or statistical purposes where erasure is likely to render impossible or seriously impair the achievement of that processing; or
- for the establishment, exercise or defence of legal claims.

The GDPR also specifies two circumstances where the right to erasure will not apply to special category data:

- if the processing is necessary for public health purposes in the public interest (eg protecting against serious cross-border threats to health, or ensuring high standards of quality and safety of health care and of medicinal products or medical devices); or
- if the processing is necessary for the purposes of preventative or occupational medicine (eg where the processing is necessary for the working capacity of an employee; for medical diagnosis; for the provision of health or social care; or for the management of health or social care systems or services). This only applies where the data is being processed by or under the responsibility of a professional subject to a legal obligation of professional secrecy (eg a health professional).

For more information about special categories of data please see our Guide to the GDPR.

Can we refuse to comply with a request for other reasons?

If an exemption applies, you can refuse to comply with a request for erasure (wholly or partly). Not all of the exemptions apply in the same way, and you should look at each exemption carefully to see how it applies to a particular request. For more information, please see our guidance on Exemptions.

You can also refuse to comply with a request if it is:

- manifestly unfounded; or
- excessive.

In order to decide if a request is manifestly unfounded or excessive you must consider each request on a case-by-case basis. You should not have a blanket policy.

You must be able to demonstrate to the individual why you consider the request is manifestly unfounded or excessive and, if asked, explain your reasons to the Information Commissioner.

What does manifestly unfounded mean?

A request may be manifestly unfounded if:

- the individual clearly has no intention to exercise their right to erasure. For example an individual makes a request, but then offers to withdraw it in return for some form of benefit from the organisation; or

- the request is malicious in intent and is being used to harass an organisation with no real purposes other than to cause disruption. For example:
  - the individual has explicitly stated, in the request itself or in other communications, that they intend to cause disruption;
  - the request makes unsubstantiated accusations against you or specific employees;
  - the individual is targeting a particular employee against whom they have some personal grudge; or
  - the individual systematically sends different requests to you as part of a campaign, eg once a week, with the intention of causing disruption.

This is not a simple tick list exercise that automatically means a request is manifestly unfounded. You must consider a request in the context in which it is made, and you are responsible for demonstrating that it is manifestly unfounded.

Also, you should not presume that a request is manifestly unfounded because the individual has previously submitted requests which have been manifestly unfounded or excessive or if it includes aggressive or abusive language.

The inclusion of the word "manifestly" means there must be an obvious or clear quality to it being unfounded. You should consider the specific situation and whether the individual genuinely wants to exercise their rights. If this is the case, it is unlikely that the request will be manifestly unfounded.

Example

An individual believes that information held about them is inaccurate. They repeatedly request its correction but you have previously investigated and told them you regard it as accurate.

The individual continues to make requests along with unsubstantiated claims against you as the controller.

You refuse the most recent request because it is manifestly unfounded and you notify the individual of this.

What does excessive mean?

A request may be excessive if:

- it repeats the substance of previous requests; or
- it overlaps with other requests.

However, it depends on the particular circumstances. It will **not necessarily** be excessive just because the individual:

- makes a request about the same issue. An individual may have legitimate reasons for making requests that repeat the content of previous requests. For example, if the controller has not handled previous requests properly;

- makes an overlapping request, if it relates to a completely separate set of information; or
- previously submitted requests which have been manifestly unfounded or excessive.

What should we do if we refuse to comply with a request for erasure?

You must inform the individual without undue delay and within one month of receipt of the request.

You should inform the individual about:

- the reasons you are not taking action;
- their right to make a complaint to the ICO or another supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.

You should also provide this information if you request a reasonable fee or need additional information to identify the individual.

How do we recognise a request?

The GDPR does not specify how to make a valid request. Therefore, an individual can make a request for erasure verbally or in writing. It can also be made to any part of your organisation and does not have to be to a specific person or contact point.

A request does not have to include the phrase 'request for erasure' or Article 17 of the GDPR, as long as one of the conditions listed above apply.

This presents a challenge as any of your employees could receive a valid verbal request. However, you have a legal responsibility to identify that an individual has made a request to you and handle it accordingly. Therefore you may need to consider which of your staff who regularly interact with individuals may need specific training to identify a request.

Additionally, it is good practice to have a policy for recording details of the requests you receive, particularly those made by telephone or in person. You may wish to check with the requester that you have understood their request, as this can help avoid later disputes about how you have interpreted the request. We also recommend that you keep a log of verbal requests.

Can we charge a fee?

In most cases you cannot charge a fee to comply with a request for erasure.

However, you can charge a “reasonable fee” for the administrative costs of complying with the request if it is manifestly unfounded or excessive. You should base the reasonable fee on the administrative costs of complying with the request.

If you decide to charge a fee you should contact the individual promptly and inform them. You do not need to comply with the request until you have received the fee.

Alternatively, you can refuse to comply with a manifestly unfounded or excessive request.

How long do we have to comply?

You must comply with a request for erasure without undue delay and at the latest within one month of

receipt of the request or (if later) within one month of receipt of:

- any information requested to confirm the requester's identity (see Can we ask an individual for ID?); or
- a fee (only in certain circumstances – see Can we charge a fee?)

You should calculate the time limit from the day you receive the request (whether it is a working day or not) until the corresponding calendar date in the next month.

Example

An organisation receives a request on 3 September. The time limit will start from the same day. This gives the organisation until 3 October to comply with the request.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

Example

An organisation receives a request on 31 March. The time limit starts from the same day. As there is no equivalent date in April, the organisation has until 30 April to comply with the request.

If 30 April falls on a weekend, or is a public holiday, the organisation has until the end of the next working day to comply.

For practical purposes, if a consistent number of days is required (eg for operational or system purposes), it may be helpful to adopt a 28-day period to ensure compliance is always within a calendar month.

Can we extend the time for a response?

You can extend the time to respond by a further two months if the request is complex or you have received a number of requests from the individual. You must let the individual know within one month of receiving their request and explain why the extension is necessary.

Can we ask an individual for ID?

If you have doubts about the identity of the person making the request you can ask for more

information. However, it is important that you only request information that is necessary to confirm who they are. The key to this is proportionality. You should take into account what data you hold, the nature of the data, and what you are using it for.

You must let the individual know without undue delay and within one month that you need more information from them to confirm their identity. You do not need to comply with the request until you have received the additional information.

Further Reading

Relevant provisions in the GDPR - See Articles 6, 9, 12, 17 and Recitals 65, 66
External link

Right to restrict processing

At a glance

- Individuals have the right to request the restriction or suppression of their personal data.
- This is not an absolute right and only applies in certain circumstances.
- When processing is restricted, you are permitted to store the personal data, but not use it.
- An individual can make a request for restriction verbally or in writing.
- You have one calendar month to respond to a request.
- This right has close links to the right to rectification (Article 16) and the right to object (Article 21).

Checklists

Preparing for requests for restriction

☐ We know how to recognise a request for restriction and we understand when the right applies.

☐ We have a policy in place for how to record requests we receive verbally.

☐ We understand when we can refuse a request and are aware of the information we need to provide to individuals when we do so.

Complying with requests for restriction

☐ We have processes in place to ensure that we respond to a request for restriction without undue delay and within one month of receipt.

☐ We are aware of the circumstances when we can extend the time limit to respond to a request.

☐ We have appropriate methods in place to restrict the processing of personal data on our systems.

☐ We have appropriate methods in place to indicate on our systems that further processing has been restricted.

☐ We understand the circumstances when we can process personal data that has been restricted.

☐ We have procedures in place to inform any recipients if we restrict any data we have shared with them.

☐ We understand that we need to tell individuals before we lift a restriction on processing.

In brief

- What is the right to restrict processing?
- When does the right to restrict processing apply?
- How do we restrict processing?
- Can we do anything with restricted data?
- Do we have to tell other organisations about the restriction of personal data?
- When can we lift the restriction?
- Can we refuse to comply with a request for restriction?
- What does manifestly unfounded mean?
- What does excessive mean?
- What should we do if we refuse to comply with a request for restriction?
- How do we recognise a request?
- Can we charge a fee?
- How long do we have to comply?
- Can we extend the time for a response?
- Can we ask an individual for ID?

What is the right to restrict processing?

Article 18 of the GDPR gives individuals the right to restrict the processing of their personal data in certain circumstances. This means that an individual can limit the way that an organisation uses their data. This is an alternative to requesting the erasure of their data.

Individuals have the right to restrict the processing of their personal data where they have a particular reason for wanting the restriction. This may be because they have issues with the content of the information you hold or how you have processed their data. In most cases you will not be required to restrict an individual's personal data indefinitely, but will need to have the restriction in place for a certain period of time.

When does the right to restrict processing apply?

Individuals have the right to request you restrict the processing of their personal data in the following circumstances:

- the individual contests the accuracy of their personal data and you are verifying the accuracy of the data;
- the data has been unlawfully processed (ie in breach of the lawfulness requirement of the first principle of the GDPR) and the individual opposes erasure and requests restriction instead;
- you no longer need the personal data but the individual needs you to keep it in order to establish, exercise or defend a legal claim; or
- the individual has objected to you processing their data under Article 21(1), and you are considering whether your legitimate grounds override those of the individual.

Although this is distinct from the right to rectification and the right to object, there are close links between those rights and the right to restrict processing:

- if an individual has challenged the accuracy of their data and asked for you to rectify it (Article 16), they also have a right to request you restrict processing while you consider their rectification request; or
- if an individual exercises their right to object under Article 21(1), they also have a right to request you restrict processing while you consider their objection request.

Therefore, as a matter of good practice you should automatically restrict the processing whilst you are considering its accuracy or the legitimate grounds for processing the personal data in question.

How do we restrict processing?

You need to have processes in place that enable you to restrict personal data if required. It is important to note that the definition of processing includes a broad range of operations including collection, structuring, dissemination and erasure of data. Therefore, you should use methods of restriction that are appropriate for the type of processing you are carrying out.

The GDPR suggests a number of different methods that could be used to restrict data, such as:

- temporarily moving the data to another processing system;
- making the data unavailable to users; or
- temporarily removing published data from a website.

It is particularly important that you consider how you store personal data that you no longer need to process but the individual has requested you restrict (effectively requesting that you do not erase the data).

If you are using an automated filing system, you need to use technical measures to ensure that any further processing cannot take place and that the data cannot be changed whilst the restriction is in place. You should also note on your system that the processing of this data has been restricted.

Can we do anything with restricted data?

You must not process the restricted data in any way **except to store it** unless:

- you have the individual's consent;
- it is for the establishment, exercise or defence of legal claims;
- it is for the protection of the rights of another person (natural or legal); or
- it is for reasons of important public interest.

Do we have to tell other organisations about the restriction of personal data?

Yes. If you have disclosed the personal data in question to others, you must contact each recipient and inform them of the restriction of the personal data - unless this proves impossible or involves disproportionate effort. If asked to, you must also inform the individual about these recipients.

The GDPR defines a recipient as a natural or legal person, public authority, agency or other body to

which the personal data are disclosed. The definition includes controllers, processors and persons who, under the direct authority of the controller or processor, are authorised to process personal data.

When can we lift the restriction?

In many cases the restriction of processing is only temporary, specifically when the restriction is on the grounds that:

- the individual has disputed the accuracy of the personal data and you are investigating this; or
- the individual has objected to you processing their data on the basis that it is necessary for the performance of a task carried out in the public interest or the purposes of your legitimate interests, and you are considering whether your legitimate grounds override those of the individual.

Once you have made a decision on the accuracy of the data, or whether your legitimate grounds override those of the individual, you may decide to lift the restriction.

If you do this, you must inform the individual **before** you lift the restriction.

As noted above, these two conditions are linked to the right to rectification (Article 16) and the right to object (Article 21). This means that if you are informing the individual that you are lifting the restriction (on the grounds that you are satisfied that the data is accurate, or that your legitimate grounds override theirs) you should also inform them of the reasons for your refusal to act upon their rights under Articles 16 or 21. You will also need to inform them of their right to make a complaint to the ICO or another supervisory authority; and their ability to seek a judicial remedy.

Can we refuse to comply with a request for restriction?

If an exemption applies, you can refuse to comply with a request for restriction (wholly or partly). Not all of the exemptions apply in the same way, and you should look at each exemption carefully to see how it applies to a particular request. For more information, please see our guidance on Exemptions.

You can also refuse to comply with a request if it is:

- manifestly unfounded; or
- excessive.

In order to decide if a request is manifestly unfounded or excessive you must consider each request on a case-by-case basis. You should not have a blanket policy.

You must be able to demonstrate to the individual why you consider the request is manifestly unfounded or excessive and, if asked, explain your reasons to the Information Commissioner.

What does manifestly unfounded mean?

A request may be manifestly unfounded if:

- the individual clearly has no intention to exercise their right to restriction. For example an individual makes a request, but then offers to withdraw it in return for some form of benefit from the organisation; or
- the request is malicious in intent and is being used to harass an organisation with no real purposes

other than to cause disruption. For example:

- the individual has explicitly stated, in the request itself or in other communications, that they intend to cause disruption;
- the request makes unsubstantiated accusations against you or specific employees;
- the individual is targeting a particular employee against whom they have some personal grudge; or
- the individual systematically sends different requests to you as part of a campaign, eg once a week, with the intention of causing disruption.

This is not a simple tick list exercise that automatically means a request is manifestly unfounded. You must consider a request in the context in which it is made, and you are responsible for demonstrating that it is manifestly unfounded.

Also, you should not presume that a request is manifestly unfounded because the individual has previously submitted requests which have been manifestly unfounded or excessive or if it includes aggressive or abusive language.

The inclusion of the word "manifestly" means there must be an obvious or clear quality to it being unfounded. You should consider the specific situation and whether the individual genuinely wants to exercise their rights. If this is the case, it is unlikely that the request will be manifestly unfounded.

Example

An individual believes that information held about them is inaccurate. They repeatedly request its correction but you have previously investigated and told them you regard it as accurate.

The individual continues to make requests along with unsubstantiated claims against you as the controller.

You refuse the most recent request because it is manifestly unfounded and you notify the individual of this.

What does excessive mean?

A request may be excessive if:

- it repeats the substance of previous requests; or
- it overlaps with other requests.

However, it depends on the particular circumstances. It will **not necessarily** be excessive just because the individual:

- makes a request about the same issue. An individual may have legitimate reasons for making requests that repeat the content of previous requests. For example, if the controller has not handled previous requests properly;
- makes an overlapping request, if it relates to a completely separate set of information; or

- previously submitted requests which have been manifestly unfounded or excessive.

What should we do if we refuse to comply with a request for restriction?

You must inform the individual without undue delay and within one month of receipt of the request.

You should inform the individual about:

- the reasons you are not taking action;
- their right to make a complaint to the ICO or another supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.

You should also provide this information if you request a reasonable fee or need additional information to identify the individual.

How do we recognise a request?

The GDPR does not specify how to make a valid request. Therefore, an individual can make a request for restriction verbally or in writing. It can also be made to any part of your organisation and does not have to be to a specific person or contact point.

A request does not have to include the phrase 'request for restriction' or Article 18 of the GDPR, as long as one of the conditions listed above apply.

This presents a challenge as any of your employees could receive a valid verbal request. However, you have a legal responsibility to identify that an individual has made a request to you and handle it accordingly. Therefore you may need to consider which of your staff who regularly interact with individuals may need specific training to identify a request.

Additionally, it is good practice to have a policy for recording details of the requests you receive, particularly those made by telephone or in person. You may wish to check with the requester that you have understood their request, as this can help avoid later disputes about how you have interpreted the request. We also recommend that you keep a log of verbal requests.

Can we charge a fee?

In most cases you cannot charge a fee to comply with a request for restriction.

However, you can charge a “reasonable fee” for the administrative costs of complying with the request if it is manifestly unfounded or excessive. You should base the reasonable fee on the administrative costs of complying with the request.

If you decide to charge a fee you should contact the individual promptly and inform them. You do not need to comply with the request until you have received the fee.

Alternatively, you can refuse to comply with a manifestly unfounded or excessive request.

How long do we have to comply?

You must comply with a request for restriction without undue delay and at the latest within one month of

receipt of the request or (if later) within one month of receipt of:

- any information requested to confirm the requester's identity (see Can we ask an individual for ID?); or
- a fee (only in certain circumstances – see Can we charge a fee?)

You should calculate the time limit from the day you receive the request (whether it is a working day or not) until the corresponding calendar date in the next month.

Example

An organisation receives a request on 3 September. The time limit will start from the same day. This gives the organisation until 3 October to comply with the request.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

Example

An organisation receives a request on 31 March. The time limit starts from the same day. As there is no equivalent date in April, the organisation has until 30 April to comply with the request.

For practical purposes, if a consistent number of days is required (eg for operational or system purposes), it may be helpful to adopt a 28-day period to ensure compliance is always within a calendar month.

Can we extend the time for a response?

You can extend the time to respond by a further two months if the request is complex or you have received a number of requests from the individual. You must let the individual know within one month of receiving their request and explain why the extension is necessary.

Can we ask an individual for ID?

If you have doubts about the identity of the person making the request you can ask for more information. However, it is important that you only request information that is necessary to confirm who they are. The key to this is proportionality. You should take into account what data you hold, the nature

of the data, and what you are using it for.

You must let the individual know without undue delay and within one month that you need more information from them to confirm their identity. You do not need to comply with the request until you have received the additional information.

Further Reading

Relevant provisions in the GDPR - See Articles 18, 19 and Recital 67
External link

Right to data portability

At a glance

- The right to data portability allows individuals to obtain and reuse their personal data for their own purposes across different services.
- It allows them to move, copy or transfer personal data easily from one IT environment to another in a safe and secure way, without affecting its usability.
- Doing this enables individuals to take advantage of applications and services that can use this data to find them a better deal or help them understand their spending habits.
- The right only applies to information an individual has provided to a controller.
- Some organisations in the UK already offer data portability through midata and similar initiatives which allow individuals to view, access and use their personal consumption and transaction data in a way that is portable and safe.

Checklists

Preparing for requests for data portability

☐ We know how to recognise a request for data portability and we understand when the right applies.

☐ We have a policy for how to record requests we receive verbally.

☐ We understand when we can refuse a request and are aware of the information we need to provide to individuals when we do so.

Complying with requests for data portability

☐ We can transmit personal data in structured, commonly used and machine readable formats.

☐ We use secure methods to transmit personal data.

☐ We have processes in place to ensure that we respond to a request for data portability without undue delay and within one month of receipt.

☐ We are aware of the circumstances when we can extend the time limit to respond to a request.

In brief

- What is the right to data portability?
- When does the right apply?

- What does the right apply to?
- What does 'provided to a controller' mean?
- Does the right apply to anonymous or pseudonymous data?
- What happens if the personal data includes information about others?
- What is an individual entitled to?
- What are the limits when transmitting personal data to another controller?
- Do we have responsibility for the personal data we transmit to others?
- How should we provide the data?
- What does 'structured' mean?
- What does 'commonly used' mean?
- What does 'machine-readable' mean?
- Should we use an 'interoperable' format?
- What formats can we use?
- What is CSV?
- What is XML?
- What is JSON?
- Are these the only formats we can use?
- What responsibilities do we have when we receive personal data because of a data portability request?
- When can we refuse to comply with a request for data portability?
- What does manifestly unfounded mean?
- What does excessive mean?
- What should we do if we refuse to comply with a request for data portability?
- How do we recognise a request?
- Can we charge a fee?
- How long do we have to comply?
- Can we extend the time for a response?
- Can we ask an individual for ID?

What is the right to data portability?

The right to data portability gives individuals the right to receive personal data they have provided to a controller in a structured, commonly used and machine readable format. It also gives them the right to request that a controller transmits this data directly to another controller.

When does the right apply?

The right to data portability only applies when:

- your lawful basis for processing this information is consent **or** for the performance of a contract; and

- you are carrying out the processing by automated means (ie excluding paper files).

What does the right apply to?

Information is only within the scope of the right to data portability if it is personal data of the individual that they have provided to you.

What does ‘provided to a controller’ mean?

Sometimes the personal data an individual has provided to you will be easy to identify (eg their mailing address, username, age). However, the meaning of data ‘provided to’ you is not limited to this. It is also personal data resulting from observation of an individual’s activities (eg where using a device or service).

This may include:

- history of website usage or search activities;
- traffic and location data; or
- ‘raw’ data processed by connected objects such as smart meters and wearable devices.

It does not include any additional data that you have created based on the data an individual has provided to you. For example, if you use the data they have provided to create a user profile then this data would not be in scope of data portability.

You should however note that if this ‘inferred’ or ‘derived’ data is personal data, you still need to provide it to an individual if they make a subject access request. Bearing this in mind, if it is clear that the individual is seeking access to the inferred/derived data, as part of a wider portability request, it would be good practice to include this data in your response.

Does the right apply to anonymous or pseudonymous data?

The right to data portability only applies to personal data. This means that it does not apply to genuinely anonymous data. However, pseudonymous data that can be clearly linked back to an individual (eg where that individual provides the respective identifier) is within scope of the right.

What happens if the personal data includes information about others?

If the requested information includes information about others (eg third party data) you need to consider whether transmitting that data would adversely affect the rights and freedoms of those third parties.

Generally speaking, providing third party data to the individual making the portability request should not be a problem, assuming that the requestor provided this data to you within their information in the first place. However, you should always consider whether there will be an adverse effect on the rights and freedoms of third parties, in particular when you are transmitting data directly to another controller.

If the requested data has been provided to you by multiple data subjects (eg a joint bank account) you need to be satisfied that all parties agree to the portability request. This means that you may have to seek agreement from all the parties involved.

What is an individual entitled to?

The right to data portability entitles an individual to:

- receive a copy of their personal data; and/or
- have their personal data transmitted from one controller to another controller.

Individuals have the right to receive their personal data and store it for further personal use. This allows the individual to manage and reuse their personal data. For example, an individual wants to retrieve their contact list from a webmail application to build a wedding list or to store their data in a personal data store.

You can achieve this by either:

- directly transmitting the requested data to the individual; or
- providing access to an automated tool that allows the individual to extract the requested data themselves.

This does not create an obligation for you to allow individuals more general and routine access to your systems – only for the extraction of their data following a portability request.

You may have a preferred method of providing the information requested depending on the amount and complexity of the data requested. In either case, you need to ensure that the method is secure.

What are the limits when transmitting personal data to another controller?

Individuals have the right to ask you to transmit their personal data directly to another controller without hindrance. If it is technically feasible, you should do this.

You should consider the **technical feasibility** of a transmission on a request by request basis. The right to data portability does not create an obligation for you to adopt or maintain processing systems which are technically compatible with those of other organisations (GDPR Recital 68). However, you should take a reasonable approach, and this should not generally create a barrier to transmission.

Without hindrance means that you should not put in place any legal, technical or financial obstacles which slow down or prevent the transmission of the personal data to the individual, or to another organisation.

However, there may be legitimate reasons why you cannot undertake the transmission. For example, if the transmission would adversely affect the rights and freedoms of others. It is however your responsibility to justify why these reasons are legitimate and why they are not a 'hindrance' to the transmission.

Do we have responsibility for the personal data we transmit to others?

If you provide information directly to an individual or to another organisation in response to a data portability request, you are not responsible for any subsequent processing carried out by the individual or the other organisation. However, you are responsible for the transmission of the data and need to take appropriate measures to ensure that it is transmitted securely and to the right destination.

If you provide data to an individual, it is possible that they will store the information in a system with less security than your own. Therefore, you should make individuals aware of this so that they can take

steps to protect the information they have received.

You also need to ensure that you comply with the other provisions in the GDPR. For example, whilst there is no specific obligation under the right to data portability to check and verify the quality of the data you transmit, you should already have taken reasonable steps to ensure the accuracy of this data in order to comply with the requirements of the accuracy principle of the GDPR.

How should we provide the data?

You should provide the personal data in a format that is:

- structured;
- commonly used; and
- machine-readable.

Although these terms are not defined in the GDPR these three characteristics can help you decide whether the format you intend to use is appropriate.

You can also find relevant information in the 'Open Data Handbook', published by Open Knowledge International. The handbook is a guide to 'open data', information that is free to access and can be re-used for any purpose – particularly information held by the public sector. The handbook contains a number of definitions that are relevant to the right to data portability, and this guidance includes some of these below.

What does 'structured' mean?

Structured data allows for easier transfer and increased usability.

The Open Data Handbook defines 'structured data' as:

> 'data where the structural relation between elements is explicit in the way the data is stored on a computer disk.'

This means that software must be able to extract specific elements of the data. An example of a structured format is a spreadsheet, where the data is organised into rows and columns, ie it is 'structured'. In practice, some of the personal data you process will already be in structured form.

In many cases, if a format is structured it is also machine-readable.

What does 'commonly used' mean?

This simply means that the format you choose must be widely-used and well-established.

However, just because a format is 'commonly used' does not mean it is appropriate for data portability. You have to consider whether it is 'structured', and 'machine-readable' as well. Although you may be using common software applications, which save data in commonly-used formats, these may not be sufficient to meet the requirements of data portability.

What does ‘machine-readable’ mean?

The Open Data Handbook states that ‘machine readable’ data is:

> ‘Data in a data format that can be automatically read and processed by a computer.’

Furthermore, Regulation 2 of the Re-use of Public Sector Information Regulations 2015 defines ‘machine-readable format’ as:

> ‘A file format structured so that software applications can easily identify, recognise and extract specific data, including individual statements of fact, and their internal structure.’

Machine-readable data can be made directly available to applications that request that data over the web. This is undertaken by means of an application programming interface (“API”).

If you are able to implement such a system then you can facilitate data exchanges with individuals and respond to data portability requests in an easy manner.

Should we use an ‘interoperable’ format?

Although you are not required to use an interoperable format, this is encouraged by the GDPR, which seeks to promote the concept of interoperability. Recital 68 says:

> ‘Data controllers should be encouraged to develop interoperable formats that enable data portability.’

Interoperability allows different systems to share information and resources. An ‘interoperable format’ is a type of format that allows data to be exchanged between different systems and be understandable to both.

At the same time, you are not expected to maintain systems that are technically compatible with those of other organisations. Data portability is intended to produce interoperable systems, not compatible ones.

What formats can we use?

You may already be using an appropriate format within your networks and systems, and/or you may be required to use a particular format due to the particular industry or sector you are part of. Provided it meets the requirements of being structured, commonly-used and machine readable then it could be

appropriate for a data portability request.

The GDPR does not require you to use open formats internally. Your processing systems may indeed use proprietary formats which individuals may not be able to access if you provide data to them in these formats. In these cases you need to perform some additional processing on the personal data in order to put it into the type of format required by the GDPR.

Where no specific format is in common use within your industry or sector, you should provide personal data using open formats such as CSV, XML and JSON. You may also find that these formats are the easiest for you to use when answering data portability requests.

For further information on CSV, XML and JSON, please see below.

What is CSV?

CSV stands for 'Comma Separated Values'. It is defined by the Open Data Handbook as:

> 'a standard format for spreadsheet data. Data is represented in a plain text file, with each data row on a new line and commas separating the values on each row. As a very simple open format it is easy to consume and is widely used for publishing open data.'

CSV is used to exchange data and is widely supported by software applications. Although CSV is not standardised it is nevertheless structured, commonly used and machine-readable and is therefore an appropriate format for you to use when responding to a data portability request.

What is XML?

XML stands for 'Extensible Markup Language'. It is defined by the Open Data Handbook as:

> 'a simple and powerful standard for representing structured data.'

It is a file format that is intended to be both human readable and machine-readable. Unlike CSV, XML is defined by a set of open standards maintained by the World Wide Web Consortium ("W3C"). It is widely used for documents, but can also be used to represent data structures such as those used in web services.

This means XML can be processed by APIs, facilitating data exchange. For example, you may develop or implement an API to exchange personal data in XML format with another organisation. In the context of data portability, this can allow you to transmit personal data to an individual's personal data store, or to another organisation if the individual has asked you to do so.

What is JSON?

JSON stands for ‘JavaScript Object Notation’. The Open Data Handbook defines JSON as:

> ‘a simple but powerful format for data. It can describe complex data structures, is highly machine-readable as well as reasonably human-readable, and is independent of platform and programming language, and is therefore a popular format for data interchange between programs and systems.’

It is a file format based on the JavaScript language that many web sites use and is used as a data interchange format. As with XML, it can be read by humans or machines. It is also a standardised open format maintained by the W3C.

Are these the only formats we can use?

CSV, XML and JSON are three examples of structured, commonly used and machine-readable formats that are appropriate for data portability. However, this does not mean you are obliged to use them. Other formats exist that also meet the requirements of data portability.

Example

The RDF or ‘Resource Description Framework’ format is also a structured, commonly-used, machine-readable format. It is an open standard published by the W3C and is intended to provide interoperability between applications exchanging information.

You should however consider the nature of the portability request. If the individual cannot make use of the format, even if it is structured, commonly-used and machine-readable then the data will be of no use to them.

Further reading

The Open Data Handbook is published by Open Knowledge International and is a guide to 'open data'. The Handbook is updated regularly and you can read it here:

http://opendatahandbook.org

W3C candidate recommendation for XML is available here:

http://www.w3.org/TR/2008/REC-xml-20081126/

W3C's specification of the JSON data interchange format is available here:

https://tools.ietf.org/html/rfc7159

W3C's list of specifications for RDF is available here:

http://www.w3.org/standards/techs/rdf#w3c_all

What responsibilities do we have when we receive personal data because of a data portability request?

When you receive personal data that has been transmitted as part of a data portability request, you need to process this data in line with data protection requirements.

In deciding whether to accept and retain personal data, you should consider whether the data is relevant and not excessive in relation to the purposes for which you will process it. You also need to consider whether the data contains any third party information.

As a new controller, you need to ensure that you have an appropriate lawful basis for processing any third party data and that this processing does not adversely affect the rights and freedoms of those third parties. If you have received personal data which you have no reason to keep, you should delete it as soon as possible. When you accept and retain data, it becomes your responsibility to ensure that you comply with the requirements of the GDPR.

In particular, if you receive third party data you should not use this for your own purposes. You should keep the third party data under the sole control of the individual who has made the portability request, and only used for their own purposes.

Example

An individual enters into a contract with a controller for the provision of a service. The controller relies on Article 6(1)(b) to process the individual's personal data. The controller receives information from a data portability request that includes information about third parties. The controller has a legitimate interest to process the third party data under Article 6(1)(f) so that it can provide this service to the individual. However, it should not then use this data to send direct marketing to the third parties.

When can we refuse to comply with a request for data portability?

If an exemption applies, you can refuse to comply with a request for data portability (wholly or partly). Not all of the exemptions apply in the same way, and you should look at each exemption carefully to see how it applies to a particular request. For more information, please see our guidance on Exemptions.

You can also refuse to comply with a request if it is:

- manifestly unfounded; or
- excessive.

In order to decide if a request is manifestly unfounded or excessive you must consider each request on a case-by-case basis. You should not have a blanket policy.

You must be able to demonstrate to the individual why you consider the request is manifestly unfounded or excessive and, if asked, explain your reasons to the Information Commissioner.

What does manifestly unfounded mean?

A request may be manifestly unfounded if:

- the individual clearly has no intention to exercise their right to data portability. For example an individual makes a request, but then offers to withdraw it in return for some form of benefit from the organisation; or
- the request is malicious in intent and is being used to harass an organisation with no real purposes other than to cause disruption. For example:
  - the individual has explicitly stated, in the request itself or in other communications, that they intend to cause disruption;
  - the request makes unsubstantiated accusations against you or specific employees;
  - the individual is targeting a particular employee against whom they have some personal grudge; or
  - the individual systematically sends different requests to you as part of a campaign, eg once a week, with the intention of causing disruption.

This is not a simple tick list exercise that automatically means a request is manifestly unfounded. You must consider a request in the context in which it is made, and you are responsible for demonstrating that it is manifestly unfounded.

Also, you should not presume that a request is manifestly unfounded because the individual has previously submitted requests which have been manifestly unfounded or excessive or if it includes aggressive or abusive language.

The inclusion of the word "manifestly" means there must be an obvious or clear quality to it being unfounded. You should consider the specific situation and whether the individual genuinely wants to exercise their rights. If this is the case, it is unlikely that the request will be manifestly unfounded.

Example

An individual believes that information held about them is inaccurate. They repeatedly request its correction but you have previously investigated and told them you regard it as accurate.

The individual continues to make requests along with unsubstantiated claims against you as the controller.

You refuse the most recent request because it is manifestly unfounded and you notify the individual of this.

What does excessive mean?

A request may be excessive if:

- it repeats the substance of previous requests; or
- it overlaps with other requests.

However, it depends on the particular circumstances. It will **not necessarily** be excessive just because the individual:

- makes a request about the same issue. An individual may have legitimate reasons for making requests that repeat the content of previous requests. For example, if the controller has not handled previous requests properly;
- makes an overlapping request, if it relates to a completely separate set of information; or
- previously submitted requests which have been manifestly unfounded or excessive.

What should we do if we refuse to comply with a request for data portability?

You must inform the individual without undue delay and within one month of receipt of the request.

You should inform the individual about:

- the reasons you are not taking action;
- their right to make a complaint to the ICO or another supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.

You should also provide this information if you request a reasonable fee or need additional information to identify the individual.

How do we recognise a request?

The GDPR does not specify how individuals should make data portability requests. Therefore, requests could be made verbally or in writing. They can also be made to any part of your organisation and do not have to be to a specific person or contact point.

A request does not have to include the phrase 'request for data portability' or a reference to ‘Article 20 of the GDPR’, as long as one of the conditions listed above apply.

This presents a challenge as any of your employees could receive a valid request. However, you have a

legal responsibility to identify that an individual has made a request to you and handle it accordingly. Therefore you may need to consider which of your staff who regularly interact with individuals may need specific training to identify a request.

Additionally, it is good practice to have a policy for recording details of the requests you receive, particularly those made by telephone or in person. You may wish to check with the requester that you have understood their request, as this can help avoid later disputes about how you have interpreted the request. We also recommend that you keep a log of verbal requests.

In practice, you may already have processes in place to enable your staff to recognise subject access requests, such as training or established procedures. You could consider adapting them to ensure your staff also recognise data portability requests.

Can we charge a fee?

In most cases you cannot charge a fee to comply with a request for data portability.

However, you can charge a "reasonable fee" for the administrative costs of complying with the request if it is manifestly unfounded or excessive. You should base the reasonable fee on the administrative costs of complying with the request.

If you decide to charge a fee you should contact the individual promptly and inform them. You do not need to comply with the request until you have received the fee.

Alternatively, you can refuse to comply with a manifestly unfounded or excessive request.

How long do we have to comply?

You must comply with a request for data portability without undue delay and at the latest within one month of receipt of the request or (if later) within one month of receipt of:

- any information requested to confirm the requester's identity (see Can we ask an individual for ID?); or
- a fee (only in certain circumstances – see Can we charge a fee?)

You should calculate the time limit from the day you receive the request (whether it is a working day or not) until the corresponding calendar date in the next month

Example

An organisation receives a request on 3 September. The time limit will start from the same day. This gives the organisation until 3 October to comply with the request.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

Example

An organisation receives a request on 31 March. The time limit starts from the same day. As there is no equivalent date in April, the organisation has until 30 April to comply with the request.

If 30 April falls on a weekend, or is a public holiday, the organisation has until the end of the next working day to comply.

For practical purposes, if a consistent number of days is required (eg for operational or system purposes), it may be helpful to adopt a 28-day period to ensure compliance is always within a calendar month.

Can we extend the time for a response?

You can extend the time to respond by a further two months if the request is complex or you have received a number of requests from the individual. You must let the individual know within one month of receiving their request and explain why the extension is necessary.

Can we ask an individual for ID?

If you have doubts about the identity of the person making the request you can ask for more information. However, it is important that you only request information that is necessary to confirm who they are. The key to this is proportionality. You should take into account what data you hold, the nature of the data, and what you are using it for.

You need to let the individual know as soon as possible that you need more information from them to confirm their identity before responding to their request. The period for responding to the request begins when you receive the additional information.

Further Reading

Relevant provisions in the GDPR - See Articles 13, 20 and Recital 68
External link

In more detail – European Data Protection Protection Board

The European Data Protection Protection Board (EDPB) includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

The EDPB has published guidelines and FAQs on data portability for organisations.

Right to object

At a glance

- The GDPR gives individuals the right to object to the processing of their personal data in certain circumstances.
- Individuals have an absolute right to stop their data being used for direct marketing.
- In other cases where the right to object applies you may be able to continue processing if you can show that you have a compelling reason for doing so.
- You must tell individuals about their right to object.
- An individual can make an objection verbally or in writing.
- You have one calendar month to respond to an objection.

Checklists

Preparing for objections to processing

☐ We know how to recognise an objection and we understand when the right applies.

☐ We have a policy in place for how to record objections we receive verbally.

☐ We understand when we can refuse an objection and are aware of the information we need to provide to individuals when we do so.

☐ We have clear information in our privacy notice about individuals' right to object, which is presented separately from other information on their rights.

☐ We understand when we need to inform individuals of their right to object in addition to including it in our privacy notice.

Complying with requests which object to processing

☐ We have processes in place to ensure that we respond to an objection without undue delay and within one month of receipt.

☐ We are aware of the circumstances when we can extend the time limit to respond to an objection.

☐ We have appropriate methods in place to erase, suppress or otherwise cease processing personal data.

In brief

- What is the right to object?
- When does the right to object apply?
- Direct marketing
- Processing based upon public task or legitimate interests
- Do we need to tell individuals about the right to object?
- Do we always need to erase personal data to comply with an objection?
- Can we refuse to comply with an objection for other reasons?
- What does manifestly unfounded mean?
- What does excessive mean?
- What should we do if we refuse to comply with an objection?
- How do we recognise an objection?
- Can we charge a fee?
- How long do we have to comply?
- Can we extend the time for a response?
- Can we ask an individual for ID?

What is the right to object?

Article 21 of the GDPR gives individuals the right to object to the processing of their personal data at any time. This effectively allows individuals to stop or prevent you from processing their personal data.

An objection may be in relation to all of the personal data you hold about an individual or only to certain information. It may also only relate to a particular purpose you are processing the data for.

When does the right to object apply?

The right to object only applies in certain circumstances. Whether it applies depends on your purposes for processing and your lawful basis for processing.

Individuals have the absolute right to object to the processing of their personal data if it is for direct marketing purposes.

Individuals can also object if the processing is for:

- a task carried out in the public interest;
- the exercise of official authority vested in you; or
- your legitimate interests (or those of a third party).

In these circumstances the right to object is not absolute.

If you are processing data for scientific or historical research, or statistical purposes, the right to object is more limited.

These various grounds are discussed further below.

Direct marketing

An individual can object to the processing of their personal data for direct marketing at any time. This includes any profiling of data that is related to direct marketing.

This is an absolute right and there are no exemptions or grounds for you to refuse. Therefore, when you receive an objection to processing for direct marketing, you must not process the individual's data for this purpose.

However, this does not automatically mean that you need to erase the individual's personal data, and in most cases it will be preferable to suppress their details. Suppression involves retaining just enough information about them to ensure that their preference not to receive direct marketing is respected in future.

Processing based upon public task or legitimate interests

An individual can also object where you are relying on one of the following lawful bases:

- 'public task' (for the performance of a task carried out in the public interest),
- 'public task' (for the exercise of official authority vested in you), or
- legitimate interests.

An individual must give specific reasons why they are objecting to the processing of their data. These reasons should be based upon their particular situation.

In these circumstances this is not an absolute right, and you can refuse to comply if:

- you can demonstrate compelling legitimate grounds for the processing, which override the interests, rights and freedoms of the individual; or
- the processing is for the establishment, exercise or defence of legal claims.

If you are deciding whether you have compelling legitimate grounds which override the interests of an individual, you should consider the reasons why they have objected to the processing of their data. In particular, if an individual objects on the grounds that the processing is causing them substantial damage or distress (eg the processing is causing them financial loss), the grounds for their objection will have more weight. In making a decision on this, you need to balance the individual's interests, rights and freedoms with your own legitimate grounds. During this process you should remember that the responsibility is for you to be able to demonstrate that your legitimate grounds override those of the individual.

If you are satisfied that you do not need to comply with the request you should let the individual know. You should explain your decision, and inform them of their right to make a complaint to the ICO or another supervisory authority; and their ability to seek to enforce their rights through a judicial remedy.

Research purposes

Where you are processing personal data for scientific or historical research, or statistical purposes, the right to object is more restricted.

Article 21(4) states:

> ‘Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to Article 89(1), the data subject, on grounds relating to his or her personal situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.’

Effectively this means that if you are processing data for these purposes and have appropriate safeguards in place (eg data minimisation and pseudonymisation where possible) the individual only has a right to object if your lawful basis for processing is:

- public task (on the basis that it is necessary for the exercise of official authority vested in you), or
- legitimate interests.

The individual does not have a right to object if your lawful basis for processing is public task because it is necessary for the performance of a task carried out in the public interest.

Article 21(4) therefore differentiates between the two parts of the public task lawful basis (performance of a task carried out in the public interest **or** in the exercise of official authority vested in you).

This may cause difficulties if you are relying on the public task lawful basis for processing. It may not always be clear whether you are carrying out the processing solely as a task in the public interest, or in the exercise of official authority. Indeed, it may be difficult to differentiate between the two.

As such, it is good practice that if you are relying upon the public task lawful basis and receive an objection, you should consider the objection on its own merits and go on to consider the steps outlined in the next paragraph, rather than refusing it outright. If you do intend to refuse an objection on the basis that you are carrying out research or statistical work solely for the performance of a public task carried out in the public interest you should be clear in your privacy notice that you are only carrying out this processing on this basis.

If you do receive an objection you may be able to continue processing, if you can demonstrate that you have a compelling legitimate reason or the processing is necessary for legal claims. You need to go through the steps outlined in the previous section to demonstrate this.

As noted above, if you are satisfied that you do not need to comply with the request you should let the individual know. You should provide an explanation for your decision, and inform them of their right to make a complaint to the ICO or another supervisory authority, as well as their ability to seek to enforce their rights through a judicial remedy.

Do we need to tell individuals about the right to object?

The GDPR is clear that you must inform individuals of their right to object at the latest at the time of your first communication with them where:

- you process personal data for direct marketing purposes, or
- your lawful basis for processing is:
- public task (for the performance of a task carried out in the public interest),
- public task (for the exercise of official authority vested in you), or

- legitimate interests.

If one of these conditions applies, you should explicitly bring the right to object to the individual's attention. You should present this information clearly and separately from any other information.

If you are processing personal data for research or statistical purposes you should include information about the right to object (along with information about the other rights of the individual) in your privacy notice.

Do we always need to erase personal data to comply with an objection?

Where you have received an objection to the processing of personal data and you have no grounds to refuse, you need to stop or not begin processing the data.

This may mean that you need to erase personal data as the definition of processing under the GDPR is broad, and includes storing data. However, as noted above, this will not always be the most appropriate action to take.

Erasure may not be appropriate if you process the data for other purposes as you need to retain the data for those purposes. For example, when an individual objects to the processing of their data for direct marketing, you can place their details onto a suppression list to ensure that you continue to comply with their objection. However, you need to ensure that the data is clearly marked so that it is not processed for purposes the individual has objected to.

Can we refuse to comply with an objection for other reasons?

If an exemption applies, you can refuse to comply with an objection (wholly or partly). Not all of the exemptions apply in the same way, and you should look at each exemption carefully to see how it applies to a particular request. For more information, please see our guidance on Exemptions.

You can also refuse to comply with a request if it is:

- manifestly unfounded; or
- excessive.

In order to decide if a request is manifestly unfounded or excessive you must consider each request on a case-by-case basis. You should not have a blanket policy.

You must be able to demonstrate to the individual why you consider the request is manifestly unfounded or excessive and, if asked, explain your reasons to the Information Commissioner.

What does manifestly unfounded mean?

A request may be manifestly unfounded if:

- the individual clearly has no intention to exercise their right to object. For example an individual makes a request, but then offers to withdraw it in return for some form of benefit from the organisation; or
- the request is malicious in intent and is being used to harass an organisation with no real purposes other than to cause disruption. For example:
  - the individual has explicitly stated, in the request itself or in other communications, that they

intend to cause disruption;

- the request makes unsubstantiated accusations against you or specific employees;
- the individual is targeting a particular employee against whom they have some personal grudge; or
- the individual systematically sends different requests to you as part of a campaign, eg once a week, with the intention of causing disruption.

This is not a simple tick list exercise that automatically means a request is manifestly unfounded. You must consider a request in the context in which it is made, and you are responsible for demonstrating that it is manifestly unfounded.

Also, you should not presume that a request is manifestly unfounded because the individual has previously submitted requests which have been manifestly unfounded or excessive or if it includes aggressive or abusive language.

The inclusion of the word "manifestly" means there must be an obvious or clear quality to it being unfounded. You should consider the specific situation and whether the individual genuinely wants to exercise their rights. If this is the case, it is unlikely that the request will be manifestly unfounded.

Example

An individual believes that information held about them is inaccurate. They repeatedly request its correction but you have previously investigated and told them you regard it as accurate.

The individual continues to make requests along with unsubstantiated claims against you as the controller.

You refuse the most recent request because it is manifestly unfounded and you notify the individual of this.

What does excessive mean?

A request may be excessive if:

- it repeats the substance of previous requests; or
- it overlaps with other requests.

However, it depends on the particular circumstances. It will **not necessarily** be excessive just because the individual:

- makes a request about the same issue. An individual may have legitimate reasons for making requests that repeat the content of previous requests. For example, if the controller has not handled previous requests properly;
- makes an overlapping request, if it relates to a completely separate set of information; or
- previously submitted requests which have been manifestly unfounded or excessive.

What should we do if we refuse to comply with an objection?

You must inform the individual without undue delay and within one month of receipt of the request.

You should inform the individual about:

- the reasons you are not taking action;
- their right to make a complaint to the ICO or another supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.

You should also provide this information if you request a reasonable fee or need additional information to identify the individual.

How do we recognise an objection?

The GDPR does not specify how to make a valid objection. Therefore, an objection to processing can be made verbally or in writing. It can also be made to any part of your organisation and does not have to be to a specific person or contact point.

A request does not have to include the phrase 'objection to processing' or Article 21 of the GDPR - as long as one of the conditions listed above apply.

This presents a challenge as any of your employees could receive a valid verbal objection. However, you have a legal responsibility to identify that an individual has made an objection to you and to handle it accordingly. Therefore you may need to consider which of your staff who regularly interact with individuals may need specific training to identify an objection.

Additionally, it is good practice to have a policy for recording details of the objections you receive, particularly those made by telephone or in person. You may wish to check with the requester that you have understood their request, as this can help avoid later disputes about how you have interpreted the objection. We also recommend that you keep a log of verbal objections.

Can we charge a fee?

In most cases you cannot charge a fee to comply with an objection.

However, you can charge a “reasonable fee” for the administrative costs of complying with the request if it is manifestly unfounded or excessive. You should base the reasonable fee on the administrative costs of complying with the request.

If you decide to charge a fee you should contact the individual promptly and inform them. You do not need to comply with the request until you have received the fee.

Alternatively, you can refuse to comply with a manifestly unfounded or excessive request.

How long do we have to comply?

You must comply with an objection without undue delay and at the latest within one month of receipt of the request or (if later) within one month of receipt of:

- any information requested to confirm the requester’s identity (see Can we ask an individual for ID?); or

- a fee (only in certain circumstances – see Can we charge a fee?)

You should calculate the time limit from the day you receive the request (whether it is a working day or not) until the corresponding calendar date in the next month.

Example

An organisation receives a request on 3 September. The time limit will start from the same day. This gives the organisation until 3 October to comply with the request.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

Example

An organisation receives a request on 31 March. The time limit starts from the same day. As there is no equivalent date in April, the organisation has until 30 April to comply with the request.

If 30 April falls on a weekend, or is a public holiday, the organisation has until the end of the next working day to comply.

For practical purposes, if a consistent number of days is required (eg for operational or system purposes), it may be helpful to adopt a 28-day period to ensure compliance is always within a calendar month.

Can we extend the time for a response?

You can extend the time to respond by a further two months if the request is complex or you have received a number of requests from the individual. You must let the individual know within one month of receiving their request and explain why the extension is necessary.

Can we ask an individual for ID?

If you have doubts about the identity of the person making the objection you can ask for more information. However, it is important that you only request information that is necessary to confirm who they are. The key to this is proportionality. You should take into account what data you hold, the nature of the data, and what you are using it for.

You need to let the individual know as soon as possible that you need more information from them to confirm their identity before responding to their objection. The period for responding to the objection begins when you receive the additional information.

Further Reading

Relevant provisions in the GDPR - See Articles 6, 12, 21, 89 and Recitals 69 and 70
External link

Rights related to automated decision making including profiling

At a glance

- The GDPR has provisions on:
  - automated individual decision-making (making a decision solely by automated means without any human involvement); and
  - profiling (automated processing of personal data to evaluate certain things about an individual). Profiling can be part of an automated decision-making process.
- The GDPR applies to all automated individual decision-making and profiling.
- Article 22 of the GDPR has additional rules to protect individuals if you are carrying out solely automated decision-making that has legal or similarly significant effects on them.
- You can only carry out this type of decision-making where the decision is:
  - necessary for the entry into or performance of a contract; or
  - authorised by Union or Member state law applicable to the controller; or
  - based on the individual's explicit consent.
- You must identify whether any of your processing falls under Article 22 and, if so, make sure that you:
  - give individuals information about the processing;
  - introduce simple ways for them to request human intervention or challenge a decision;
  - carry out regular checks to make sure that your systems are working as intended.

Checklists

All automated individual decision-making and profiling

To comply with the GDPR...

☐ We have a lawful basis to carry out profiling and/or automated decision-making and document this in our data protection policy.

☐ We send individuals a link to our privacy statement when we have obtained their personal data indirectly.

☐ We explain how people can access details of the information we used to create their profile.

☐ We tell people who provide us with their personal data how they can object to profiling, including profiling for marketing purposes.

☐ We have procedures for customers to access the personal data input into the profiles so they

can review and edit for any accuracy issues.

☐ We have additional checks in place for our profiling/automated decision-making systems to protect any vulnerable groups (including children).

☐ We only collect the minimum amount of data needed and have a clear retention policy for the profiles we create.

As a model of best practice...

☐ We carry out a DPIA to consider and address the risks before we start any new automated decision-making or profiling.

☐ We tell our customers about the profiling and automated decision-making we carry out, what information we use to create the profiles and where we get this information from.

☐ We use anonymised data in our profiling activities.

Solely automated individual decision-making, including profiling with legal or similarly significant effects (Article 22)

To comply with the GDPR...

☐ We carry out a DPIA to identify the risks to individuals, show how we are going to deal with them and what measures we have in place to meet GDPR requirements.

☐ We carry out processing under Article 22(1) for contractual purposes and we can demonstrate why it's necessary.

OR

☐ We carry out processing under Article 22(1) because we have the individual's explicit consent recorded. We can show when and how we obtained consent. We tell individuals how they can withdraw consent and have a simple way for them to do this.

OR

☐ We carry out processing under Article 22(1) because we are authorised or required to do so. This is the most appropriate way to achieve our aims.

☐ We don't use special category data in our automated decision-making systems unless we have a lawful basis to do so, and we can demonstrate what that basis is. We delete any special category data accidentally created.

☐ We explain that we use automated decision-making processes, including profiling. We explain what information we use, why we use it and what the effects might be.

☐ We have a simple way for people to ask us to reconsider an automated decision.

☐ We have identified staff in our organisation who are authorised to carry out reviews and change decisions.

☐ We regularly check our systems for accuracy and bias and feed any changes back into the design process.

As a model of best practice...

☐ We use visuals to explain what information we collect/use and why this is relevant to the process.

☐ We have signed up to [standard] a set of ethical principles to build trust with our customers. This is available on our website and on paper.

In brief

- What's new under the GDPR?
- What is automated individual decision-making and profiling?
- What does the GDPR say about automated individual decision-making and profiling?
- When can we carry out this type of processing?
- What else do we need to consider?
- What if Article 22 doesn't apply to our processing?
- In detail

What's new under the GDPR?

- Profiling is now specifically defined in the GDPR.
- Solely automated individual decision-making, including profiling with legal or similarly significant effects is restricted.
- There are three grounds for this type of processing that lift the restriction.
- Where one of these grounds applies, you must introduce additional safeguards to protect data subjects. These work in a similar way to existing rights under the 1998 Data Protection Act.
- The GDPR requires you to give individuals specific information about automated individual decision-making, including profiling.
- There are additional restrictions on using special category and children's personal data.

What is automated individual decision-making and profiling?

Automated individual decision-making is a decision made by automated means without any human involvement.

Examples of this include:

- an online decision to award a loan; and
- a recruitment aptitude test which uses pre-programmed algorithms and criteria.

Automated individual decision-making does not have to involve profiling, although it often will do.

The GDPR says that profiling is:

> "Any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements."
>
> [Article 4(4)]

Organisations obtain personal information about individuals from a variety of different sources. Internet searches, buying habits, lifestyle and behaviour data gathered from mobile phones, social networks, video surveillance systems and the Internet of Things are examples of the types of data organisations might collect.

Information is analysed to classify people into different groups or sectors, using algorithms and machine-learning. This analysis identifies links between different behaviours and characteristics to create profiles for individuals. There is more information about algorithms and machine-learning in our paper on big data, artificial intelligence, machine learning and data protection.

Based on the traits of others who appear similar, organisations use profiling to:

- find something out about individuals' preferences;
- predict their behaviour; and/or
- make decisions about them.

This can be very useful for organisations and individuals in many sectors, including healthcare, education, financial services and marketing.

Automated individual decision-making and profiling can lead to quicker and more consistent decisions. But if they are used irresponsibly there are significant risks for individuals. The GDPR provisions are designed to address these risks.

What does the GDPR say about automated individual decision-making and profiling?

The GDPR restricts you from making solely automated decisions, including those based on profiling, that have a legal or similarly significant effect on individuals.

> "The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her."
>
> [Article 22(1)]

For something to be solely automated there must be no human involvement in the decision-making

process.

The restriction only covers solely automated individual decision-making that produces legal or similarly significant effects. These types of effect are not defined in the GDPR, but the decision must have a serious negative impact on an individual to be caught by this provision.

A legal effect is something that adversely affects someone's legal rights. Similarly significant effects are more difficult to define but would include, for example, automatic refusal of an online credit application, and e-recruiting practices without human intervention.

When can we carry out this type of processing?

Solely automated individual decision-making - including profiling - with legal or similarly significant effects is restricted, although this restriction can be lifted in certain circumstances.

You can **only** carry out solely automated decision-making with legal or similarly significant effects if the decision is:

- necessary for entering into or performance of a contract between an organisation and the individual;
- authorised by law (for example, for the purposes of fraud or tax evasion); or
- based on the individual's explicit consent.

If you're using special category personal data you can **only** carry out processing described in Article 22(1) if:

- you have the individual's explicit consent; **or**
- the processing is necessary for reasons of substantial public interest.

What else do we need to consider?

Because this type of processing is considered to be high-risk the GDPR requires you to carry out a Data Protection Impact Assessment (DPIA) to show that you have identified and assessed what those risks are and how you will address them.

As well as restricting the circumstances in which you can carry out solely automated individual decision-making (as described in Article 22(1)) the GDPR also:

- requires you to give individuals specific information about the processing;
- obliges you to take steps to prevent errors, bias and discrimination; and
- gives individuals rights to challenge and request a review of the decision.

These provisions are designed to increase individuals' understanding of how you might be using their personal data.

You must:

- provide meaningful information about the logic involved in the decision-making process, as well as the significance and the envisaged consequences for the individual;
- use appropriate mathematical or statistical procedures;
- ensure that individuals can:

    - obtain human intervention;
    - express their point of view; and
    - obtain an explanation of the decision and challenge it;
- put appropriate technical and organisational measures in place, so that you can correct inaccuracies and minimise the risk of errors;
- secure personal data in a way that is proportionate to the risk to the interests and rights of the individual, and that prevents discriminatory effects.

What if Article 22 doesn't apply to our processing?

Article 22 applies to solely automated individual decision-making, including profiling, with legal or similarly significant effects.

If your processing does not match this definition then you can continue to carry out profiling and automated decision-making.

But you must still comply with the GDPR principles.

You must identify and record your lawful basis for the processing.

You need to have processes in place so people can exercise their rights.

Individuals have a right to object to profiling in certain circumstances. You must bring details of this right specifically to their attention.

Further Reading

Relevant provisions in the GDPR - Article 4(4), 9, 12, 13, 14, 15, 21, 22, 35(1)and (3)
External link

In more detail – ICO guidance

We have published detailed guidance on automated decision-making and profiling.

Privacy notices transparency and control

Big data, artificial intelligence, machine learning and data protection

In more detail – European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 has adopted guidelines on Automated individual decision-making and Profiling, which have been endorsed by the EDPB.

Other relevant guidelines published by WP29 and endorsed by the EDPB include:

WP29 guidelines on Data Protection Impact Assessment

Accountability and governance

At a glance

- Accountability is one of the data protection principles - it makes you responsible for complying with the GDPR and says that you must be able to demonstrate your compliance.
- You need to put in place appropriate technical and organisational measures to meet the requirements of accountability.
- There are a number of measures that you can, and in some cases must, take including:
  - adopting and implementing data protection policies;
  - taking a 'data protection by design and default' approach;
  - putting written contracts in place with organisations that process personal data on your behalf;
  - maintaining documentation of your processing activities;
  - implementing appropriate security measures;
  - recording and, where necessary, reporting personal data breaches;
  - carrying out data protection impact assessments for uses of personal data that are likely to result in high risk to individuals' interests;
  - appointing a data protection officer; and
  - adhering to relevant codes of conduct and signing up to certification schemes.
- Accountability obligations are ongoing. You must review and, where necessary, update the measures you put in place.
- If you implement a privacy management framework this can help you embed your accountability measures and create a culture of privacy across your organisation.
- Being accountable can help you to build trust with individuals and may help you mitigate enforcement action.

Checklist

☐ We take responsibility for complying with the GDPR, at the highest management level and throughout our organisation.

☐ We keep evidence of the steps we take to comply with the GDPR.

We put in place appropriate technical and organisational measures, such as:

☐ adopting and implementing data protection policies (where proportionate);

☐ taking a 'data protection by design and default' approach - putting appropriate data protection measures in place throughout the entire lifecycle of our processing operations;

☐ putting written contracts in place with organisations that process personal data on our behalf;

- ☐ maintaining documentation of our processing activities;
- ☐ implementing appropriate security measures;
- ☐ recording and, where necessary, reporting personal data breaches;
- ☐ carrying out data protection impact assessments for uses of personal data that are likely to result in high risk to individuals' interests;
- ☐ appointing a data protection officer (where necessary); and
- ☐ adhering to relevant codes of conduct and signing up to certification schemes (where possible).

☐ We review and update our accountability measures at appropriate intervals.

In brief

- What's new under the GDPR?
- What is accountability?
- Why is accountability important?
- What do we need to do?
- Should we implement data protection policies?
- Should we adopt a 'data protection by design and default' approach?
- Do we need to use contracts?
- What documentation should we maintain?
- What security measures should we put in place?
- How do we record and report personal data breaches?
- Should we carry out data protection impact assessments (DPIAs)?
- Should we assign a data protection officer (DPO)?
- Should we adhere to codes of conduct and certification schemes?
- What else should we consider?

What's new under the GDPR?

One of the biggest changes introduced by the GDPR is around accountability – a new data protection principle that says organisations are responsible for, and must be able to demonstrate, compliance with the other principles. Although these obligations were implicit in the Data Protection Act 1998 (1998 Act), the GDPR makes them explicit.

You now need to be proactive about data protection, and evidence the steps you take to meet your obligations and protect people's rights. Good practice tools that the ICO has championed for a long time, such as privacy impact assessments and privacy by design, are now formally recognised and legally required in some circumstances.

Organisations that already adopt a best practice approach to compliance with the 1998 Act should not find it too difficult to adapt to the new requirements. But you should review the measures you take to comply with the 1998 Act, update them for the GDPR if necessary, and stand ready to demonstrate your compliance under the GDPR.

Further Reading

Relevant provisions in the GDPR - See Articles 5 and 24, and Recitals 39 and 74
External link

What is accountability?

There are two key elements. First, the accountability principle makes it clear that you are **responsible** for complying with the GDPR. Second, you must be able to **demonstrate** your compliance.

Article 5(2) of the GDPR says:

> "The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 [the other data protection principles]"

Further Reading

Relevant provisions in the GDPR - See Article 5 and Recitals 39 and 74
External link

Further reading – ICO guidance

Principles

Why is accountability important?

Taking responsibility for what you do with personal data, and demonstrating the steps you have taken to protect people's rights not only results in better legal compliance, it also offers you a competitive edge. Accountability is a real opportunity for you to show, and prove, how you respect people's privacy. This can help you to develop and sustain people's trust.

Furthermore, if something does go wrong, then being able to show that you actively considered the risks and put in place measures and safeguards can help you provide mitigation against any potential enforcement action. On the other hand, if you can't show good data protection practices, it may leave you open to fines and reputational damage.

Further Reading

Relevant provisions in the GDPR - See Article 83
External link

What do we need to do?

Accountability is not a box-ticking exercise. Being **responsible** for compliance with the GDPR means that you need to be proactive and organised about your approach to data protection, while **demonstrating** your compliance means that you must be able to evidence the steps you take to comply.

To achieve this, if you are a larger organisation you may choose to put in place a privacy management framework. This can help you create a culture of commitment to data protection, by embedding systematic and demonstrable compliance across your organisation. Amongst other things, your framework should include:

- robust program controls informed by the requirements of the GDPR;
- appropriate reporting structures; and
- assessment and evaluation procedures.

If you are a smaller organisation you will most likely benefit from a smaller scale approach to accountability. Amongst other things you should:

- ensure a good level of understanding and awareness of data protection amongst your staff;
- implement comprehensive but proportionate policies and procedures for handling personal data; and
- keep records of what you do and why.

Article 24(1) of the GDPR says that:

- you must implement technical and organisational measures to ensure, and demonstrate, compliance with the GDPR;
- the measures should be risk-based and proportionate; and
- you need to review and update the measures as necessary.

While the GDPR does not specify an exhaustive list of things you need to do to be accountable, it does set out several different measures you can take that will help you get there. These are summarised under the headings below, with links to the relevant parts of the guide. Some measures you are obliged to take and some are voluntary. It will differ depending on what personal data you have and what you do with it. These measures can form the basis of your programme controls if you opt to put in place a privacy management framework across your organisation.

Should we implement data protection policies?

For many organisations, putting in place relevant policies is a fundamental part of their approach to data protection compliance. The GDPR explicitly says that, where proportionate, implementing data protection policies is one of the measures you can take to ensure, and demonstrate, compliance.

What you have policies for, and their level of detail, depends on what you do with personal data. If, for

instance, you handle large volumes of personal data, or particularly sensitive information such as special category data, then you should take greater care to ensure that your policies are robust and comprehensive.

As well as drafting data protection policies, you should also be able to show that you have implemented and adhered to them. This could include awareness raising, training, monitoring and audits – all tasks that your data protection officer can undertake (see below for more on data protection officers).

Further Reading

Relevant provisions in the GDPR - See Articles 24(2) and Recital 78
External link

Should we adopt a 'data protection by design and default' approach?

Privacy by design has long been seen as a good practice approach when designing new products, processes and systems that use personal data. Under the heading 'data protection by design and by default', the GDPR legally requires you to take this approach.

Data protection by design and default is an integral element of being accountable. It is about embedding data protection into everything you do, throughout all your processing operations. The GDPR suggests measures that may be appropriate such as minimising the data you collect, applying pseudonymisation techniques, and improving security features.

Integrating data protection considerations into your operations helps you to comply with your obligations, while documenting the decisions you take (often in data protection impact assessments – see below) demonstrates this.

Further Reading

Relevant provisions in the GDPR - See Article 25 and Recital 78
External link

Further reading – ICO guidance

Data protection by design and default

Anonymisation code of practice

Do we need to use contracts?

Whenever a controller uses a processor to handle personal data on their behalf, it needs to put in place a written contract that sets out each party's responsibilities and liabilities.

Contracts must include certain specific terms as a minimum, such as requiring the processor to take appropriate measures to ensure the security of processing and obliging it to assist the controller in allowing individuals to exercise their rights under the GDPR.

Using clear and comprehensive contracts with your processors helps to ensure that everyone understands their data protection obligations and is a good way to demonstrate this formally.

Further Reading

Relevant provisions in the GDPR - See Article 28 and Recital 81
External link

Further reading – ICO guidance

Contracts

What documentation should we maintain?

Under Article 30 of the GDPR, most organisations are required to maintain a record of their processing activities, covering areas such as processing purposes, data sharing and retention.

Documenting this information is a great way to take stock of what you do with personal data. Knowing what information you have, where it is and what you do with it makes it much easier for you to comply with other aspects of the GDPR such as making sure that the information you hold about people is accurate and secure.

As well as your record of processing activities under Article 30, you also need to document other things to show your compliance with the GDPR. For instance, you need to keep records of consent and any personal data breaches.

Further Reading

Relevant provisions in the GDPR - See Articles 7(1), 30 and 33(5), and Recitals 42 and 82
External link

Further reading – ICO guidance

Documentation

Consent

Personal data breaches

What security measures should we put in place?

The GDPR repeats the requirement to implement technical and organisational measures to comply with the GDPR in the context of security. It says that these measures should ensure a level of security appropriate to the risk.

You need to implement security measures if you are handling any type of personal data, but what you put in place depends on your particular circumstances. You need to ensure the confidentiality, integrity and availability of the systems and services you use to process personal data.

Amongst other things, this may include information security policies, access controls, security monitoring, and recovery plans.

Further Reading

Relevant provisions in the GDPR - See Articles 5(f) and 32, and Recitals 39 and 83
External link

Further reading – ICO guidance

Security

How do we record and report personal data breaches?

You must report certain types of personal data breach to the relevant supervisory authority (for the UK, this is the ICO), and in some circumstances, to the affected individuals as well.

Additionally, the GDPR says that you must keep a record of any personal data breaches, regardless of whether you need to report them or not.

You need to be able to detect, investigate, report (both internally and externally) and document any breaches. Having robust policies, procedures and reporting structures helps you do this.

Further Reading

Relevant provisions in the GDPR - See Articles 33-34 and Recitals 85-88
External link

Further reading – ICO guidance

Personal data breaches

Further reading – European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 adopted guidelines on Personal data breach notification, which have been adopted by the EDPB.

Should we carry out data protection impact assessments (DPIAs)?

A DPIA is an essential accountability tool and a key part of taking a data protection by design approach to what you do. It helps you to identify and minimise the data protection risks of any new projects you undertake.

A DPIA is a legal requirement before carrying out processing likely to result in high risk to individuals' interests.

When done properly, a DPIA helps you assess how to comply with the requirements of the GDPR, while also acting as documented evidence of your decision-making and the steps you took.

Further Reading

Relevant provisions in the GDPR - See Articles 35-36, and Recitals 84 and 89-95
External link

Further reading – ICO guidance

Data protection impact assessments

Further reading – European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 adopted guidelines on data protection impact assessments, which have been endorsed by the EDPB.

Should we assign a data protection officer (DPO)?

Some organisations are required to appoint a DPO. A DPO's tasks include advising you about the GDPR, monitoring compliance and training staff.

Your DPO must report to your highest level of management, operate independently, and have adequate resources to carry out their tasks.

Even if you're not obliged to appoint a DPO, it is very important that you have sufficient staff, skills, and appropriate reporting structures in place to meet your obligations under the GDPR.

Further Reading

Relevant provisions in the GDPR - See Articles 37-39, and Recital 97
External link

Further reading – ICO guidance

Data protection officers

Further reading – European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 adopted guidelines on data protection officers, which have been endorsed by the EDPB.

Should we adhere to codes of conduct and certification schemes?

Under the GDPR, trade associations and representative bodies may draw up codes of conduct covering topics such as fair and transparent processing, pseudonymisation, and the exercise of people's rights.

In addition, supervisory authorities or accredited certification bodies can issue certification of the data protection compliance of products and services.

Both codes of conduct and certification are voluntary, but they are an excellent way of verifying and demonstrating that you comply with the GDPR.

Further Reading

Relevant provisions in the GDPR - See Articles 40-43, and Recitals 98 and 100
External link

Further reading – ICO guidance

Codes of conduct and certification

What else should we consider?

The above measures can help to support an accountable approach to data protection, but it is not limited to these. You need to be able to prove what steps you have taken to comply. In practice this means keeping records of what you do and justifying your decisions.

Example

A company wants to use the personal data it holds for a new purpose. It carries out an assessment in line with Article 6(4) of the GDPR, and determines that the new purpose is compatible with the original purpose for which it collected the personal data. Although this provision of the GDPR does not specify that the company must document its compatibility assessment, it knows that to be accountable, it needs to be able to prove that their handling of personal data is compliant with the GDPR. The company therefore keeps a record of the compatibility assessment, including its rationale for the decision and the appropriate safeguards it put in place.

Accountability is not just about being answerable to the regulator; you must also demonstrate your compliance to individuals. Amongst other things, individuals have the right to be informed about what personal data you collect, why you use it and who you share it with. Additionally, if you use techniques such as artificial intelligence and machine learning to make decisions about people, in certain cases individuals have the right to hold you to account by requesting explanations of those decisions and contesting them. You therefore need to find effective ways to provide information to people about what you do with their personal data, and explain and review automated decisions.

The obligations that accountability places on you are ongoing – you cannot simply sign off a particular processing operation as 'accountable' and move on. You must review the measures you implement at appropriate intervals to ensure that they remain effective. You should update measures that are no longer fit for purpose. If you regularly change what you do with personal data, or the types of information that you collect, you should review and update your measures frequently, remembering to document what you do and why.

Further Reading

Relevant provisions in the GDPR - See Articles 12-14, 22 and 24(1), and Recitals 39, 58-61 and 71

External link

Further reading – ICO guidance

Right to be informed

Rights related to automated decision making including profiling

Data protection self assessment

Contracts

At a glance

- Whenever a controller uses a processor, there must be a written contract (or other legal act) in place.
- The contract is important so that both parties understand their responsibilities and liabilities.
- The GDPR sets out what needs to be included in the contract.
- If a processor uses another organisation (ie a sub-processor) to assist in its processing of personal data for a controller, it needs to have a written contract in place with that sub-processor.

Checklists

What to include in the contract

The contract (or other legal act) sets out details of the processing including:

☐ the subject matter of the processing;

☐ the duration of the processing;

☐ the nature and purpose of the processing;

☐ the type of personal data involved;

☐ the categories of data subject;

☐ the controller's obligations and rights.

The contract or other legal act includes terms or clauses stating that:

☐ the processor must only act on the controller's documented instructions, unless required by law to act without such instructions;

☐ the processor must ensure that people processing the data are subject to a duty of confidence;

☐ the processor must take appropriate measures to ensure the security of processing;

☐ the processor must only engage a sub-processor with the controller's prior authorisation and under a written contract;

☐ the processor must take appropriate measures to help the controller respond to requests from individuals to exercise their rights;

☐ taking into account the nature of processing and the information available, the processor must

assist the controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;

☐ the processor must delete or return all personal data to the controller (at the controller's choice) at the end of the contract, and the processor must also delete existing personal data unless the law requires its storage; and

☐ the processor must submit to audits and inspections. The processor must also give the controller whatever information it needs to ensure they are both meeting their Article 28 obligations.

In brief

- What's new under the GDPR?
- When is a contract needed and why is it important?
- What needs to be included in the contract?
- What responsibilities and liabilities do controllers have when using a processor?
- What responsibilities and liabilities do processors have in their own right?
- In more detail

What's new under the GDPR?

The GDPR makes written contracts between controllers and processors a requirement, rather than just a way of demonstrating compliance with the seventh data protection principle (appropriate security measures) under the Data Protection Act 1998.

These contracts must now include specific minimum terms. These terms are designed to ensure that processing carried out by a processor meets all the GDPR requirements, not just those related to keeping personal data secure.

When is a contract needed and why is it important?

Whenever a controller uses a processor to process personal data on their behalf, a written contract needs to be in place between the parties.

Similarly, if a processor uses another organisation (ie a sub-processor) to help it process personal data for a controller, it needs to have a written contract in place with that sub-processor.

Contracts between controllers and processors ensure they both understand their obligations, responsibilities and liabilities. Contracts also help them comply with the GDPR, and assist controllers in demonstrating to individuals and regulators their compliance as required by the accountability principle.

What needs to be included in the contract?

Contracts must set out:

- the subject matter and duration of the processing;
- the nature and purpose of the processing;
- the type of personal data and categories of data subject; and
- the controller's obligations and rights.

Contracts must also include specific terms or clauses regarding:

- processing only on the controller's documented instructions;
- the duty of confidence;
- appropriate security measures;
- using sub-processors;
- data subjects' rights;
- assisting the controller;
- end-of-contract provisions; and
- audits and inspections.

What responsibilities and liabilities do controllers have when using a processor?

Controllers must only use processors that can give sufficient guarantees they will implement appropriate technical and organisational measures to ensure their processing will meet GDPR requirements and protect data subjects' rights.

Controllers are primarily responsible for overall compliance with the GDPR, and for demonstrating that compliance. If this isn't achieved, they may be liable to pay damages in legal proceedings or be subject to fines or other penalties or corrective measures.

What responsibilities and liabilities do processors have in their own right?

In addition to its contractual obligations to the controller, a processor has some direct responsibilities under the GDPR. If a processor fails to meet its obligations, or acts outside or against the controller's instructions, it may be liable to pay damages in legal proceedings or be subject to fines or other penalties or corrective measures.

A processor may not engage a sub-processor's services without the controller's prior specific or general written authorisation. If authorisation is given, the processor must put in place a contract with the sub-processor. The terms of the contract that relate to Article 28(3) must offer an equivalent level of protection for the personal data as those in the contract between the controller and processor. Processors remain liable to the controller for the compliance of any sub-processors they engage.

Further Reading

Relevant provisions in the GDPR - See Articles 28, 29, 30, 31, 32, 33, 34, 35 and 36 and Recitals 81, 82 and 83

External link

In more detail – ICO guidance

We have produced more detailed guidance on contracts and liabilities between controllers and processors.

Documentation

At a glance

- The GDPR contains explicit provisions about documenting your processing activities.
- You must maintain records on several things such as processing purposes, data sharing and retention.
- You may be required to make the records available to the ICO on request.
- Documentation can help you comply with other aspects of the GDPR and improve your data governance.
- Controllers and processors both have documentation obligations.
- For small and medium-sized organisations, documentation requirements are limited to certain types of processing activities.
- Information audits or data-mapping exercises can feed into the documentation of your processing activities.
- Records must be kept in writing.
- Most organisations will benefit from maintaining their records electronically.
- Records must be kept up to date and reflect your current processing activities.
- We have produced some basic templates to help you document your processing activities.

Checklists

Documentation of processing activities – requirements

☐ If we are a controller for the personal data we process, we document all the applicable information under Article 30(1) of the GDPR.

☐ If we are a processor for the personal data we process, we document all the applicable information under Article 30(2) of the GDPR.

If we process special category or criminal conviction and offence data, we document:

☐ the condition for processing we rely on in the Data Protection Act 2018 (DPA 2018);

☐ the lawful basis for our processing; and

☐ whether we retain and erase the personal data in accordance with our policy document.

where required in schedule 1 of the DPA 2018.

☐ We document our processing activities in writing.

☐ We document our processing activities in a granular way with meaningful links between the different pieces of information.

☐ We conduct regular reviews of the personal data we process and update our documentation accordingly.

Documentation of processing activities – best practice

When preparing to document our processing activities we:

☐ do information audits to find out what personal data our organisation holds;

☐ distribute questionnaires and talk to staff across the organisation to get a more complete picture of our processing activities; and

☐ review our policies, procedures, contracts and agreements to address areas such as retention, security and data sharing.

As part of our record of processing activities we document, or link to documentation, on:

☐ information required for privacy notices;

☐ records of consent;

☐ controller-processor contracts;

☐ the location of personal data;

☐ Data Protection Impact Assessment reports; and

☐ records of personal data breaches.

☐ We document our processing activities in electronic form so we can add, remove and amend information easily.

In brief

- What's new under the GDPR?
- What is documentation?
- Who needs to document their processing activities?
- What do we need to document under Article 30 of the GDPR?
- Should we document anything else?
- How do we document our processing activities?
- In detail

What's new under the GDPR?

- The documentation of processing activities is a new requirement under the GDPR.
- There are some similarities between documentation under the GDPR and the information you provided to the ICO as part of registration under the Data Protection Act 1998.

- You need to make sure that you have in place a record of your processing activities by 25 May 2018.

What is documentation?

- Most organisations are required to maintain a record of their processing activities, covering areas such as processing purposes, data sharing and retention; we call this **documentation**.
- Documenting your processing activities is important, not only because it is itself a legal requirement, but also because it can support good data governance and help you demonstrate your compliance with other aspects of the GDPR.

Who needs to document their processing activities?

- Controllers and processors each have their own documentation obligations.
- If you have 250 or more employees, you must document all your processing activities.
- There is a limited exemption for small and medium-sized organisations. If you have fewer than 250 employees, you only need to document processing activities that:
  - are not occasional; or
  - could result in a risk to the rights and freedoms of individuals; or
  - involve the processing of special categories of data or criminal conviction and offence data.

What do we need to document under Article 30 of the GDPR?

You must document the following information:

- The name and contact details of your organisation (and where applicable, of other controllers, your representative and your data protection officer).
- The purposes of your processing.
- A description of the categories of individuals and categories of personal data.
- The categories of recipients of personal data.
- Details of your transfers to third countries including documenting the transfer mechanism safeguards in place.
- Retention schedules.
- A description of your technical and organisational security measures.

Should we document anything else?

As part of your record of processing activities, it can be useful to document (or link to documentation of) other aspects of your compliance with the GDPR and the UK's Data Protection Act 2018. Such documentation may include:

- information required for privacy notices, such as:
  - the lawful basis for the processing
  - the legitimate interests for the processing
  - individuals' rights

  - the existence of automated decision-making, including profiling
  - the source of the personal data;
- records of consent;
- controller-processor contracts;
- the location of personal data;
- Data Protection Impact Assessment reports;
- records of personal data breaches;
- information required for processing special category data or criminal conviction and offence data under the Data Protection Act 2018, covering:
  - the condition for processing in the Data Protection Act;
  - the lawful basis for the processing in the GDPR; and
  - your retention and erasure policy document.

How do we document our processing activities?

- Doing an information audit or data-mapping exercise can help you find out what personal data your organisation holds and where it is.
- You can find out why personal data is used, who it is shared with and how long it is kept by distributing questionnaires to relevant areas of your organisation, meeting directly with key business functions, and reviewing policies, procedures, contracts and agreements.
- When documenting your findings, the records you keep must be in writing. The information must be documented in a granular and meaningful way.

We have developed basic templates to help you document your processing activities.

Further Reading

Documentation template for controllers
For organisations
File (31.22K)

Documentation template for processors
For organisations
File (19.48K)

Further Reading

Relevant provisions in the GDPR – See Article 30 and Recital 82
External link

Relevant provisions in the Data Protection Act 2018 – See Schedule 1
External link

In more detail – ICO guidance

We have produced more detailed guidance on documentation.

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 published a position paper on Article 30(5) (the exemption for small and medium-sized organisations), which has been endorsed by the EDPB.

Data protection by design and default

At a glance

- The GDPR requires you to put in place appropriate technical and organisational measures to implement the data protection principles and safeguard individual rights. This is 'data protection by design and by default'.
- In essence, this means you have to integrate or 'bake in' data protection into your processing activities and business practices, from the design stage right through the lifecycle.
- This concept is not new. Previously known as 'privacy by design', it has always been part of data protection law. The key change with the GDPR is that it is now a legal requirement.
- Data protection by design is about considering data protection and privacy issues upfront in everything you do. It can help you ensure that you comply with the GDPR's fundamental principles and requirements, and forms part of the focus on accountability.

Checklists

☐ We consider data protection issues as part of the design and implementation of systems, services, products and business practices.

☐ We make data protection an essential component of the core functionality of our processing systems and services.

☐ We anticipate risks and privacy-invasive events before they occur, and take steps to prevent harm to individuals.

☐ We only process the personal data that we need for our purposes(s), and that we only use the data for those purposes.

☐ We ensure that personal data is automatically protected in any IT system, service, product, and/or business practice, so that individuals should not have to take any specific action to protect their privacy.

☐ We provide the identity and contact information of those responsible for data protection both within our organisation and to individuals.

☐ We adopt a 'plain language' policy for any public documents so that individuals easily understand what we are doing with their personal data.

☐ We provide individuals with tools so they can determine how we are using their personal data, and whether our policies are being properly enforced.

☐ We offer strong privacy defaults, user-friendly options and controls, and respect user preferences.

☐ We only use data processors that provide sufficient guarantees of their technical and organisational measures for data protection by design.

☐ When we use other systems, services or products in our processing activities, we make sure that we only use those whose designers and manufacturers take data protection issues into account.

☐ We use privacy-enhancing technologies (PETs) to assist us in complying with our data protection by design obligations.

In brief

- What's new in the GDPR?
- What does the GDPR say about data protection by design and by default?
- What is data protection by design?
- What is data protection by default?
- Who is responsible for complying with data protection by design and by default?
- What are we required to do?
- When should we do this?
- What are the underlying concepts of data protection by design and by default?
- How do we do this in practice?
- How do data protection by design and by default link to data protection impact assessments (DPIAs)?
- What is the role of privacy-enhancing technologies (PETs)?
- What about international transfers?
- What is the role of certification?
- What additional guidance is available?

What's new in the GDPR?

The GDPR introduces new obligations that require you to integrate data protection concerns into every aspect of your processing activities. This approach is 'data protection by design and by default'. These are key elements of the GDPR's risk-based approach and its focus on accountability, ie you are able to demonstrate how you are complying with its requirements.

However, data protection by design and by default is not new. It is essentially the GDPR's version of 'privacy by design', an approach that the ICO has championed for many years. Although privacy by design and data protection by design are not precisely the same, there are well-established privacy by design principles and practices that can apply in this context.

Some organisations already adopt a 'privacy by design approach' as a matter of good practice. If this is the case for you, then you are well-placed to meet the requirements of data protection by design and by default. Although you may still need to review your processes and procedures to ensure that you are meeting your obligations.

The biggest change is that whilst privacy by design was good practice under the Data Protection Act 1998 (the 1998 Act), data protection by design and by default are legal requirements under the GDPR.

What does the GDPR say about data protection by design and by default?

Articles 25(1) and 25(2) of the GDPR outline your obligations concerning data protection by design and by default.

Article 25(1) specifies the requirements for data protection by design:

> ‘Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.’

Article 25(2) specifies the requirements for data protection by default:

> ‘The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.’

Article 25(3) states that if you adhere to an approved certification under Article 42, you can use this as one way of demonstrating your compliance with these requirements.

Further Reading

> Relevant provisions in the GDPR - Article 25 and Recital 78
> External link

What is data protection by design?

Data protection by design is ultimately an approach that ensures you consider privacy and data protection issues at the design phase of any system, service, product or process and then throughout the lifecycle.

As expressed by the GDPR, it requires you to:

- put in place appropriate technical and organisational measures designed to implement the data

protection principles; and

- integrate safeguards into your processing so that you meet the GDPR's requirements and protect the individual rights.

In essence this means you have to integrate or 'bake in' data protection into your processing activities and business practices.

Data protection by design has broad application. Examples include:

- developing new IT systems, services, products and processes that involve processing personal data;
- developing organisational policies, processes, business practices and/or strategies that have privacy implications;
- physical design;
- embarking on data sharing initiatives; or
- using personal data for new purposes.

The underlying concepts of data protection by design are not new. Under the name 'privacy by design' they have existed for many years. Data protection by design essentially inserts the privacy by design approach into data protection law.

Under the 1998 Act, the ICO supported this approach as it helped you to comply with your data protection obligations. It is now a legal requirement.

What is data protection by default?

Data protection by default requires you to ensure that you only process the data that is necessary to achieve your specific purpose. It links to the fundamental data protection principles of data minimisation and purpose limitation.

You have to process some personal data to achieve your purpose(s). Data protection by default means you need to specify this data before the processing starts, appropriately inform individuals and only process the data you need for your purpose. It does **not** require you to adopt a 'default to off' solution. What you need to do depends on the circumstances of your processing and the risks posed to individuals.

Nevertheless, you must consider things like:

- adopting a 'privacy-first' approach with any default settings of systems and applications;
- ensuring you do not provide an illusory choice to individuals relating to the data you will process;
- not processing additional data unless the individual decides you can;
- ensuring that personal data is not automatically made publicly available to others unless the individual decides to make it so; and
- providing individuals with sufficient controls and options to exercise their rights.

Who is responsible for complying with data protection by design and by default?

Article 25 specifies that, as the controller, you have responsibility for complying with data protection by design and by default. Depending on your circumstances, you may have different requirements for different areas within your organisation. For example:

- your senior management, eg developing a culture of 'privacy awareness' and ensuring you develop policies and procedures with data protection in mind;
- your software engineers, system architects and application developers, –eg those who design systems, products and services should take account of data protection requirements and assist you in complying with your obligations; and
- your business practices, eg you should ensure that you embed data protection by design in all your internal processes and procedures.

This may not apply to all organisations, of course. However, data protection by design is about adopting an organisation-wide approach to data protection, and 'baking in' privacy considerations into any processing activity you undertake. It doesn't apply only if you are the type of organisation that has your own software developers and systems architects.

In considering whether to impose a penalty, the ICO will take into account the technical and organisational measures you have put in place in respect of data protection by design. Additionally, under the Data Protection Act 2018 (DPA 2018) we can issue an Enforcement Notice against you for any failings in respect of Article 25.

What about data processors?

If you use another organisation to process personal data on your behalf, then that organisation is a data processor under the GDPR.

Article 25 does not mention data processors specifically. However, Article 28 specifies the considerations you must take whenever you are selecting a processor. For example, you must only use processors that provide:

> 'sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject'

This requirement covers both data protection by design in Article 25 as well as your security obligations under Article 32. Your processor cannot necessarily assist you with your data protection by design obligations (unlike with security measures), however you must only use processors that provide sufficient guarantees to meet the GDPR's requirements.

What about other parties?

Data protection by design and by default can also impact organisations other than controllers and processors. Depending on your processing activity, other parties may be involved, even if this is just where you purchase a product or service that you then use in your processing. Examples include manufacturers, product developers, application developers and service providers.

Recital 78 extends the concepts of data protection by design to other organisations, although it does not place a requirement on them to comply – that remains with you as the controller. It says:

> ‘When developing, designing, selecting and using applications, services and products that are based on the processing of personal data or process personal data to fulfil their task, producers of the products, services and applications should be encouraged to take into account the right to data protection when developing and designing such products, services and applications and, with regard to the state of the art, to make sure that controllers and processors are able to fulfil their data protection obligations.’

Therefore, when considering what products and services you need for your processing, you should look to choose those where the designers and developers have taken data protection into account. This can help to ensure that your processing adheres to the data protection by design requirements.

If you are a developer or designer of products, services and applications, the GDPR places no specific obligations on you about how you design and build these products. (You may have specific obligations as a controller in your own right, eg for any employee data.) However, you should note that controllers are required to consider data protection by design when selecting services and products for use in their data processing activities – therefore if you design these products with data protection in mind, you may be in a better position.

Further Reading

Relevant provisions in the GDPR - Articles 25 and 28, and Recitals 78, 79, 81 and 82
External link

What are we required to do?

You must put in place appropriate technical and organisational measures designed to implement the data protection principles and safeguard individual rights.

There is no ‘one size fits all’ method to do this, and no one set of measures that you should put in place. It depends on your circumstances.

The key is that you consider data protection issues from the start of any processing activity, and adopt appropriate policies and measures that meet the requirements of data protection by design and by default.

Some examples of how you can do this include:

- minimising the processing of personal data;
- pseudonymising personal data as soon as possible;
- ensuring transparency in respect of the functions and processing of personal data;
- enabling individuals to monitor the processing; and
- creating (and improving) security features.

This is not an exhaustive list. Complying with data protection by design and by default may require you to do much more than the above.

However, we cannot provide a complete guide to all aspects of data protection by design and by default in all circumstances. This guidance identifies the main points for you to consider. Depending on the processing you are doing, you may need to obtain specialist advice that goes beyond the scope of this guidance.

Further Reading

Relevant provisions in the GDPR - Recital 78
External link

When should we do this?

You should begin data protection by design at the initial phase of any system, service, product, or process. You should start by considering your intended processing activities, the risks that these may pose to individuals, and the possible measures available to ensure that you comply with the data protection principles and protect individual rights. These considerations must cover:

- the state of the art and costs of implementation of any measures;
- the nature, scope, context and purposes of your processing; and
- the risks that your processing poses to the rights and freedoms of individuals.

This is similar to the information risk assessment you should do when considering your security measures.

These considerations lead into the second step, where you put in place actual technical and organisational measures to implement the data protection principles and integrate safeguards into your processing.

This is why there is no single solution or process that applies to every organisation or every processing activity, although there are a number of commonalities that may apply to your specific circumstances as described below.

The GDPR requires you to take these actions:

- 'at the time of the determination of the means of the processing' – in other words, when you are at the design phase of any processing activity; and
- 'at the time of the processing itself' – ie during the lifecycle of your processing activity.

What are the underlying concepts of data protection by design and by default?

The underlying concepts are essentially expressed in the seven 'foundational principles' of privacy by design, as developed by the Information and Privacy Commissioner of Ontario.

Although privacy by design is not necessarily equivalent to data protection by design, these foundational principles can nevertheless underpin any approach you take.

'Proactive not reactive; preventative not remedial'

You should take a proactive approach to data protection and anticipate privacy issues and risks before they happen, instead of waiting until after the fact. This doesn't just apply in the context of systems

design – it involves developing a culture of 'privacy awareness' across your organisation.

'Privacy as the default setting'

You should design any system, service, product, and/or business practice to protect personal data automatically. With privacy built into the system, the individual does not have to take any steps to protect their data – their privacy remains intact without them having to do anything.

'Privacy embedded into design'

Embed data protection into the design of any systems, services, products and business practices. You should ensure data protection forms part of the core functions of any system or service – essentially, it becomes integral to these systems and services.

'Full functionality – positive sum, not zero sum'

Also referred to as 'win-win', this principle is essentially about avoiding trade-offs, such the belief that in any system or service it is only possible to have privacy **or** security, not privacy **and** security. Instead, you should look to incorporate all legitimate objectives whilst ensuring you comply with your obligations.

'End-to-end security – full lifecycle protection'

Put in place strong security measures from the beginning, and extend this security throughout the 'data lifecycle' – ie process the data securely and then destroy it securely when you no longer need it.

'Visibility and transparency – keep it open'

Ensure that whatever business practice or technology you use operates according to its premises and objectives, and is independently verifiable. It is also about ensuring visibility and transparency to individuals, such as making sure they know what data you process and for what purpose(s) you process it.

'Respect for user privacy – keep it user-centric'

Keep the interest of individuals paramount in the design and implementation of any system or service, eg by offering strong privacy defaults, providing individuals with controls, and ensuring appropriate notice is given.

How do we do this in practice?

One means of putting these concepts into practice is to develop a set of practical, actionable guidelines that you can use in your organisation, framed by your assessment of the risks posed and the measures available to you. You could base these upon the seven foundational principles.

However, how you go about doing this depends on your circumstances – who you are, what you are doing, the resources you have available, and the nature of the data you process. You may not need to have a set of documents and organisational controls in place, although in some situations you will be required to have certain documents available concerning your processing.

The key is to take an organisational approach that achieves certain outcomes, such as ensuring that:

- you consider data protection issues as part of the design and implementation of systems, services,

products and business practices;

- you make data protection an essential component of the core functionality of your processing systems and services;
- you only process the personal data that you need in relation to your purposes(s), and that you only use the data for those purposes;
- personal data is automatically protected in any IT system, service, product, and/or business practice, so that individuals should not have to take any specific action to protect their privacy;
- the identity and contact information of those responsible for data protection are available both within your organisation and to individuals;
- you adopt a 'plain language' policy for any public documents so that individuals easily understand what you are doing with their personal data;
- you provide individuals with tools so they can determine how you are using their personal data, and whether you are properly enforcing your policies; and
- you offer offering strong privacy defaults, user-friendly options and controls, and respect user preferences.

Many of these relate to other obligations in the GDPR, such as transparency requirements, documentation, Data Protection Officers and DPIAs. This shows the broad nature of data protection by design and how it applies to all aspects of your processing. Our guidance on these topics will help you when you consider the measures you need to put in place for data protection by design and by default.

In more detail – ICO guidance

Read our sections on the data protection principles, individual rights, accountability and governance, documentation, data protection impact assessments, data protection officers and security in the Guide to the GDPR.

In more detail – European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 has produced guidelines on transparency, data protection officers, and data protection impact assessments, which have been endorsed by the EDPB.

Further reading

We will produce further guidance on how you can implement data protection by design soon. However, the Information and Privacy Commissioner of Ontario has published guidance on how organisations can 'operationalise' privacy by design, which may assist you.

How do data protection by design and by default link to data protection impact assessments (DPIAs)?

A DPIA is a tool that you can use to identify and reduce the data protection risks of your processing activities. They can also help you to design more efficient and effective processes for handling personal data.

DPIAs are an integral part of data protection by design and by default. For example, they can determine the type of technical and organisational measures you need in order to ensure your processing complies with the data protection principles.

However, a DPIA is only required in certain circumstances, such as where the processing is likely to result in a risk to rights and freedoms, though it is good practice to undertake a DPIA anyway. In contrast, data protection by design is a broader concept, as it applies organisationally and requires you to take certain considerations even before you decide whether your processing is likely to result in a high risk or not.

In more detail – ICO guidance

Read our guidance on DPIAs in the Guide to the GDPR.

We have also produced more detailed guidance on DPIAs, including a template that you can use and a list of processing operations that we consider require DPIAs to be undertaken.

In more detail – European Data Protection Board

WP29 produced guidelines on data protection impact assessments, which have been endorsed by the EDPB.

What is the role of privacy-enhancing technologies (PETs)?

Privacy-enhancing technologies or PETs are technologies that embody fundamental data protection principles by minimising personal data use, maximising data security, and empowering individuals. A useful definition from the European Union Agency for Network and Information Security (ENISA) refers to PETs as:

> ‘software and hardware solutions, ie systems encompassing technical processes, methods or knowledge to achieve specific privacy or data protection functionality or to protect against risks of privacy of an individual or a group of natural persons.’

PETs link closely to the concept of privacy by design, and therefore apply to the technical measures you can put in place. They can assist you in complying with the data protection principles and are a means of implementing data protection by design within your organisation on a technical level.

Further reading

We will provide further guidance on PETs in the near future. ENISA has also published research reports on PETs that may assist you.

What about international transfers?

Data protection by design also applies in the context of international transfers in cases where you intend to transfer personal data overseas to a third country that does not have an adequacy decision.

You need to ensure that, whatever mechanism you use, appropriate safeguards are in place for these transfers. As detailed in Recital 108, these safeguards need to include compliance with data protection by design and by default.

Further Reading

Relevant provisions in the GDPR - Article 47 and Recital 108
External link

In more detail – ICO guidance

Read our guidance on international transfers.

What is the role of certification?

Article 25(3) says that:

> 'An approved certification mechanism pursuant to Article 42 may be used as an element to demonstrate compliance with the requirements set out in paragraphs 1 and 2 of this Article.'

This means that an approved certification mechanism, once one is available, can assist you in showing how you are complying with, and implementing, data protection by design and by default.

In more detail – European Data Protection Board

The EDPB published for consultation draft guidelines on certification and identifying certification criteria in accordance with Articles 42 and 43 of the Regulation 2016/679 on 30 May 2018. The consultation closed on 12 July 2018.

What additional guidance is available?

The ICO will publish more detailed guidance about data protection by design and privacy enhancing technologies soon, as well as how these concepts apply in the context of the code of practice on age appropriate design in the DPA 2018 section 123.

In the meantime, there are a number of publications about the privacy by design approach. We have summarised some of these below.

Further reading

The **Information and Privacy Commissioner of Ontario** (IPC) originated the concept of privacy by design in the 1990s. The IPC has a number of relevant publications about the concept and how you can implement it in your organisation, including:

- the original seven foundational principles of privacy by design (external link, PDF); and
- a primer on privacy by design, published in 2013 (external link, PDF); and
- guidance on Operationalizing privacy by design, published in 2012 (external link, PDF)

The **European Union Agency for Network and Information Security** (ENISA) has also published research and guidance on privacy by design, including:

- a research report on privacy and data protection by design (external link);
- a research report on privacy by design and big data (external link); and
- a subsection on privacy-enhancing technologies (external link)

The **Norwegian data protection authority** (Datatilsynet) has produced guidance on how software developers can implement data protection by design and by default.

Data protection impact assessments

Click here for information about consulting the ICO about your data protection impact assessment.

At a glance

- A Data Protection Impact Assessment (DPIA) is a process to help you identify and minimise the data protection risks of a project.
- You must do a DPIA for processing that is **likely to result in a high risk** to individuals. This includes some specified types of processing. You can use our screening checklists to help you decide when to do a DPIA.
- It is also good practice to do a DPIA for any other major project which requires the processing of personal data.
- Your DPIA must:
  - describe the nature, scope, context and purposes of the processing;
  - assess necessity, proportionality and compliance measures;
  - identify and assess risks to individuals; and
  - identify any additional measures to mitigate those risks.
- To assess the level of risk, you must consider both the likelihood and the severity of any impact on individuals. High risk could result from either a high probability of some harm, or a lower possibility of serious harm.
- You should consult your data protection officer (if you have one) and, where appropriate, individuals and relevant experts. Any processors may also need to assist you.
- If you identify a high risk that you cannot mitigate, you must consult the ICO before starting the processing.
- If you are processing for law-enforcement purposes, you should read this alongside the Guide to Law Enforcement Processing.
- The ICO will give written advice within eight weeks, or 14 weeks in complex cases. If appropriate, we may issue a formal warning not to process the data, or ban the processing altogether.

Checklists

DPIA awareness checklist

☐ We provide training so that our staff understand the need to consider a DPIA at the early stages of any plan involving personal data.

☐ Our existing policies, processes and procedures include references to DPIA requirements.

☐ We understand the types of processing that require a DPIA, and use the screening checklist to identify the need for a DPIA, where necessary.

☐ We have created and documented a DPIA process.

☐ We provide training for relevant staff on how to carry out a DPIA.

DPIA screening checklist

☐ We consider carrying out a DPIA in any major project involving the use of personal data.

☐ We consider whether to do a DPIA if we plan to carry out any other:

- ☐ evaluation or scoring;
- ☐ automated decision-making with significant effects;
- ☐ systematic monitoring;
- ☐ processing of sensitive data or data of a highly personal nature;
- ☐ processing on a large scale;
- ☐ processing of data concerning vulnerable data subjects;
- ☐ innovative technological or organisational solutions;
- ☐ processing that involves preventing data subjects from exercising a right or using a service or contract.

☐ We always carry out a DPIA if we plan to:

- ☐ use systematic and extensive profiling or automated decision-making to make significant decisions about people;
- ☐ process special-category data or criminal-offence data on a large scale;
- ☐ systematically monitor a publicly accessible place on a large scale;
- ☐ use innovative technology in combination with any of the criteria in the European guidelines;
- ☐ use profiling, automated decision-making or special category data to help make decisions on someone’s access to a service, opportunity or benefit;
- ☐ carry out profiling on a large scale;
- ☐ process biometric or genetic data in combination with any of the criteria in the European guidelines;
- ☐ combine, compare or match data from multiple sources;
- ☐ process personal data without providing a privacy notice directly to the individual in combination with any of the criteria in the European guidelines;

☐ process personal data in a way that involves tracking individuals' online or offline location or behaviour, in combination with any of the criteria in the European guidelines;

☐ process children's personal data for profiling or automated decision-making or for marketing purposes, or offer online services directly to them;

☐ process personal data that could result in a risk of physical harm in the event of a security breach.

☐ We carry out a new DPIA if there is a change to the nature, scope, context or purposes of our processing.

☐ If we decide not to carry out a DPIA, we document our reasons.

DPIA process checklist

☐ We describe the nature, scope, context and purposes of the processing.

☐ We ask our data processors to help us understand and document their processing activities and identify any associated risks.

☐ We consider how best to consult individuals (or their representatives) and other relevant stakeholders.

☐ We ask for the advice of our data protection officer.

☐ We check that the processing is necessary for and proportionate to our purposes, and describe how we will ensure compliance with data protection principles.

☐ We do an objective assessment of the likelihood and severity of any risks to individuals' rights and interests.

☐ We identify measures we can put in place to eliminate or reduce high risks.

☐ We record our decision-making in the outcome of the DPIA, including any difference of opinion with our DPO or individuals consulted.

☐ We implement the measures we identified, and integrate them into our project plan.

☐ We consult the ICO before processing, if we cannot mitigate high risks.

☐ We keep our DPIAs under review and revisit them when necessary.

Have we written a good DPIA?

A good DPIA helps you to evidence that:

- you have considered the risks related to your intended processing; and

- you have met your broader data protection obligations.

This checklist will help ensure you have written a good DPIA.

We have:

☐ confirmed whether the DPIA is a review of pre-GDPR processing or covers intended processing, including timelines in either case;

☐ explained why we needed a DPIA, detailing the types of intended processing that made it a requirement;

☐ structured the document clearly, systematically and logically;

☐ written the DPIA in plain English, with a non-specialist audience in mind, explaining any technical terms and acronyms we have used;

☐ set out clearly the relationships between controllers, processors, data subjects and systems, using both text and data-flow diagrams where appropriate;

☐ ensured that the specifics of any flows of personal data between people, systems, organisations and countries have been clearly explained and presented;

☐ explicitly stated how we are complying with each of the Data Protection Principles under GDPR and clearly explained our lawful basis for processing (and special category conditions if relevant);

☐ explained how we plan to support the relevant information rights of our data subjects;

☐ identified all relevant risks to individuals' rights and freedoms, assessed their likelihood and severity, and detailed all relevant mitigations;

☐ explained sufficiently how any proposed mitigation reduces the identified risk in question;

☐ evidenced our consideration of any less risky alternatives to achieving the same purposes of the processing, and why we didn't choose them;

☐ given details of stakeholder consultation (e.g. data subjects, representative bodies) and included summaries of findings;

☐ attached any relevant additional documents we reference in our DPIA, e.g. Privacy Notices, consent documents;

☐ recorded the advice and recommendations of our DPO (where relevant) and ensured the DPIA is signed off by the appropriate people;

☐ agreed and documented a schedule for reviewing the DPIA regularly or when we change the nature, scope, context or purposes of the processing;

☐ consulted the ICO if there are residual high risks we cannot mitigate.

In brief

- What's new under the GDPR?
- What is a DPIA?
- When do we need a DPIA?
- How do we carry out a DPIA?
- Do we need to consult the ICO?
- In more detail

What's new under the GDPR?

The GDPR introduces a new obligation to do a DPIA before carrying out types of processing likely to result in high risk to individuals' rights and freedoms. If your DPIA identifies a high risk you cannot mitigate, you must consult us.

This is a key part of the new focus on accountability and data protection by design.

Some organisations already do privacy impact assessments (PIAs) as a matter of good practice. If so, the concept will be familiar, but you still need to review your processes to make sure they comply with GDPR requirements. DPIAs are now mandatory in some cases, and there are specific legal requirements for content and process.

If you do not already have a PIA process, you need to design a new DPIA process and embed it into your policies and procedures.

You also need to review your existing processing operations and decide whether you need to do a DPIA, or review your PIA, for anything that is likely to be high risk. You do not need to do a DPIA if you have already considered the relevant risks and safeguards in another way, unless there has been a significant change to the nature, scope, context or purposes of the processing since that previous assessment.

What is a DPIA?

A DPIA is a way for you to systematically and comprehensively analyse your processing and help you identify and minimise data protection risks.

DPIAs should consider compliance risks, but also broader risks to the rights and freedoms of individuals, including the potential for any significant social or economic disadvantage. The focus is on the potential for harm – to individuals or to society at large, whether it is physical, material or non-material.

To assess the level of risk, a DPIA must consider both the likelihood and the severity of any impact on individuals.

A DPIA does not have to indicate that all risks have been eradicated. But it should help you document them and assess whether or not any remaining risks are justified.

DPIAs are a legal requirement for processing that is likely to be high risk. But an effective DPIA can also bring broader compliance, financial and reputational benefits, helping you demonstrate accountability and building trust and engagement with individuals.

A DPIA may cover a single processing operation or a group of similar processing operations. A group of

controllers can do a joint DPIA.

It's important to embed DPIAs into your organisational processes and ensure the outcome can influence your plans. A DPIA is not a one-off exercise. You should see it as an ongoing process that is subject to regular review.

When do we need a DPIA?

You must do a DPIA before you begin any type of processing that is "likely to result in a high risk". This means that although you have not yet assessed the actual level of risk, you need to screen for factors that point to the potential for a widespread or serious impact on individuals.

In particular, the GDPR says you must do a DPIA if you plan to:

- use systematic and extensive profiling with significant effects;
- process special category or criminal offence data on a large scale; or
- systematically monitor publicly accessible places on a large scale.

When considering if your processing is likely to result in high risk, you should consider the relevant European guidelines. These define nine criteria of processing operations likely to result in high risk. While the guidelines suggest that, in most cases, any processing operation involving two or more of these criteria requires a DPIA, you may consider in your case that just meeting one criterion could require a DPIA.

The ICO also requires you to do a DPIA if you plan to:

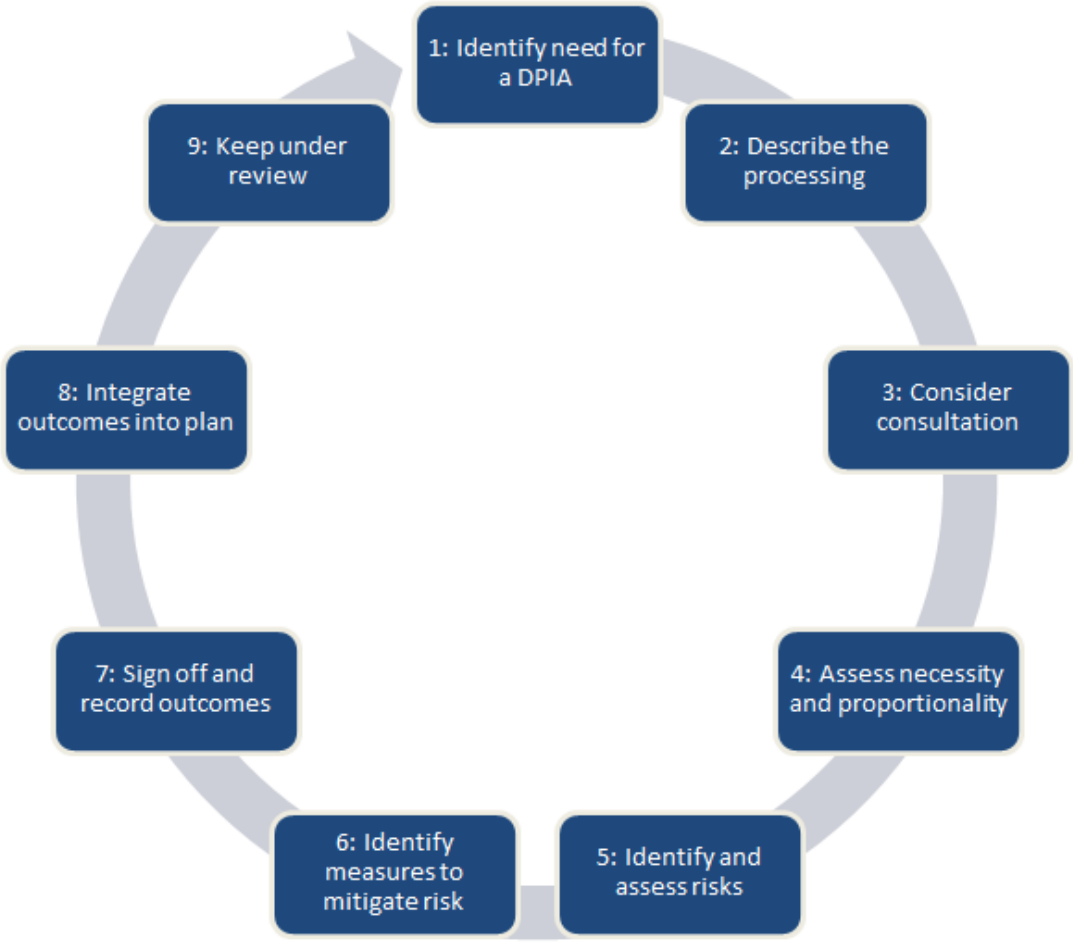
- use innovative technology (in combination with any of the criteria from the European guidelines);
- use profiling or special category data to decide on access to services;
- profile individuals on a large scale;
- process biometric data (in combination with any of the criteria from the European guidelines);
- process genetic data (in combination with any of the criteria from the European guidelines);
- match data or combine datasets from different sources;
- collect personal data from a source other than the individual without providing them with a privacy notice ('invisible processing') (in combination with any of the criteria from the European guidelines);
- track individuals' location or behaviour (in combination with any of the criteria from the European guidelines);
- profile children or target marketing or online services at them; or
- process data that might endanger the individual's physical health or safety in the event of a security breach.

You should also think carefully about doing a DPIA for any other processing that is large scale, involves profiling or monitoring, decides on access to services or opportunities, or involves sensitive data or vulnerable individuals.

Even if there is no specific indication of likely high risk, it is good practice to do a DPIA for any major new project involving the use of personal data. You can use or adapt the checklists to help you carry out this screening exercise.

How do we carry out a DPIA?

A DPIA should begin early in the life of a project, before you start your processing, and run alongside the planning and development process. It should include these steps:



You must seek the advice of your data protection officer (if you have one). You should also consult with individuals and other stakeholders throughout this process.

The process is designed to be flexible and scalable. You can use or adapt our sample DPIA template, or create your own. If you want to create your own, you may want to refer to the European guidelines which set out Criteria for an acceptable DPIA.

Although publishing a DPIA is not a requirement of GDPR, you should actively consider the benefits of publication. As well as demonstrating compliance, publication can help engender trust and confidence. We would therefore recommend that you publish your DPIAs, where possible, removing sensitive details if necessary.

Do we need to consult the ICO?

You don't need to send every DPIA to the ICO and we expect the percentage sent to us to be small. But you must consult the ICO if your DPIA identifies a high risk and you cannot take measures to reduce that risk. You cannot begin the processing until you have consulted us.

If you want your project to proceed effectively then investing time in producing a comprehensive DPIA may prevent any delays later, if you have to consult with the ICO.

You need to send us a copy of your DPIA.

Once we have the information we need, we will generally respond within eight weeks (although we can extend this by a further six weeks in complex cases).

We will provide you with a written response advising you whether the risks are acceptable, or whether you need to take further action. In some cases we may advise you not to carry out the processing because we consider it would be in breach of the GDPR. In appropriate cases we may issue a formal warning or take action to ban the processing altogether.

Further Reading

Relevant provisions in the GDPR - See Articles 35 and 36 and Recitals 74-77, 84, 89-92, 94 and 95

External link

In more detail – ICO guidance

We have published more detailed guidance on DPIAs.

In more detail – European Data Protection Board

WP29 produced guidelines on data protection impact assessments, which have been endorsed by the EDPB.

Other relevant guidelines include:

Guidelines on Data Protection Officers ('DPOs') (WP243)

Guidelines on automated individual decision-making and profiling for the purposes of Regulation 2016/679 (WP251)

Data protection officers

At a glance

- The GDPR introduces a duty for you to appoint a data protection officer (DPO) if you are a public authority or body, or if you carry out certain types of processing activities.
- DPOs assist you to monitor internal compliance, inform and advise on your data protection obligations, provide advice regarding Data Protection Impact Assessments (DPIAs) and act as a contact point for data subjects and the supervisory authority.
- The DPO must be independent, an expert in data protection, adequately resourced, and report to the highest management level.
- A DPO can be an existing employee or externally appointed.
- In some cases several organisations can appoint a single DPO between them.
- DPOs can help you demonstrate compliance and are part of the enhanced focus on accountability.

Checklists

Appointing a DPO

☐ We are a public authority or body and have appointed a DPO (except if we are a court acting in our judicial capacity).

☐ We are not a public authority or body, but we know whether the nature of our processing activities requires the appointment of a DPO.

☐ We have appointed a DPO based on their professional qualities and expert knowledge of data protection law and practices.

☐ We aren't required to appoint a DPO under the GDPR but we have decided to do so voluntarily. We understand that the same duties and responsibilities apply had we been required to appoint a DPO. We support our DPO to the same standards.

Position of the DPO

☐ Our DPO reports directly to our highest level of management and is given the required independence to perform their tasks.

☐ We involve our DPO, in a timely manner, in all issues relating to the protection of personal data.

☐ Our DPO is sufficiently well resourced to be able to perform their tasks.

☐ We do not penalise the DPO for performing their duties.

☐ We ensure that any other tasks or duties we assign our DPO do not result in a conflict of interests with their role as a DPO.

Tasks of the DPO

☐ Our DPO is tasked with monitoring compliance with the GDPR and other data protection laws, our data protection policies, awareness-raising, training, and audits.

☐ We will take account of our DPO's advice and the information they provide on our data protection obligations.

☐ When carrying out a DPIA, we seek the advice of our DPO who also monitors the process.

☐ Our DPO acts as a contact point for the ICO. They co-operate with the ICO, including during prior consultations under Article 36, and will consult on any other matter.

☐ When performing their tasks, our DPO has due regard to the risk associated with processing operations, and takes into account the nature, scope, context and purposes of processing.

Accessibility of the DPO

☐ Our DPO is easily accessible as a point of contact for our employees, individuals and the ICO.

☐ We have published the contact details of the DPO and communicated them to the ICO.

In brief

- Do we need to appoint a Data Protection Officer?
- What is the definition of a public authority?
- What are 'core activities'?
- What does 'regular and systematic monitoring of data subjects on a large scale' mean?
- What does processing special category data and personal data relating to criminal convictions and offences on a large scale mean?
- What professional qualities should the DPO have?
- What are the tasks of the DPO?
- Can we assign other tasks to the DPO?
- Can the DPO be an existing employee?
- Can we contract out the role of the DPO?
- Can we share a DPO with other organisations?
- Can we have more than one DPO?
- What do we have to do to support the DPO?
- What details do we have to publish about the DPO?
- Is the DPO responsible for compliance?

Do we need to appoint a Data Protection Officer?

Under the GDPR, you **must** appoint a DPO if:

- you are a public authority or body (except for courts acting in their judicial capacity);
- your core activities require large scale, regular and systematic monitoring of individuals (for example, online behaviour tracking); or
- your core activities consist of large scale processing of special categories of data or data relating to criminal convictions and offences.

This applies to both controllers and processors. You can appoint a DPO if you wish, even if you aren't required to. If you decide to voluntarily appoint a DPO you should be aware that the same requirements of the position and tasks apply had the appointment been mandatory.

Regardless of whether the GDPR obliges you to appoint a DPO, you must ensure that your organisation has sufficient staff and resources to discharge your obligations under the GDPR. However, a DPO can help you operate within the law by advising and helping to monitor compliance. In this way, a DPO can be seen to play a key role in your organisation's data protection governance structure and to help improve accountability.

If you decide that you don't need to appoint a DPO, either voluntarily or because you don't meet the above criteria, it's a good idea to record this decision to help demonstrate compliance with the accountability principle.

Further Reading

Does my organisation need a data protection officer (DPO)?
For organisations

What is the definition of a public authority?

Section 7 of the Data Protection Act 2018 defines what a 'public authority' and a 'public body' are for the purposes of the GDPR.

What are 'core activities'?

The other two conditions that require you to appoint a DPO only apply when:

- your core activities consist of processing activities, which, by virtue of their nature, scope and / or their purposes, require the regular and systematic monitoring of individuals on a large scale; or
- your core activities consist of processing on a large scale of special category data, or data relating to criminal convictions and offences.

Your core activities are the primary business activities of your organisation. So, if you need to process personal data to achieve your key objectives, this is a core activity. This is different to processing personal data for other secondary purposes, which may be something you do all the time (eg payroll or HR information), but which is not part of carrying out your primary objectives.

Example

For most organisations, processing personal data for HR purposes will be a secondary function to their main business activities and so will not be part of their core activities.

However, a HR service provider necessarily processes personal data as part of its core activities to provide HR functions for its client organisations. At the same time, it will also process HR information for its own employees, which will be regarded as an ancillary function and not part of its core activities.

What does 'regular and systematic monitoring of data subjects on a large scale' mean?

There are two key elements to this condition requiring you to appoint a DPO. Although the GDPR does not define 'regular and systematic monitoring' or 'large scale', the Article 29 Working Party (WP29) provided some guidance on these terms in its guidelines on DPOs. WP29 has been replaced by the European Data Protection Board (EDPB) which has endorsed these guidelines.

'Regular and systematic' monitoring of data subjects includes all forms of tracking and profiling, both online and offline. An example of this is for the purposes of behavioural advertising.

When determining if processing is on a large scale, the guidelines say you should take the following factors into consideration:

- the numbers of data subjects concerned;
- the volume of personal data being processed;
- the range of different data items being processed;
- the geographical extent of the activity; and
- the duration or permanence of the processing activity.

Example

A large retail website uses algorithms to monitor the searches and purchases of its users and, based on this information, it offers recommendations to them. As this takes place continuously and according to predefined criteria, it can be considered as regular and systematic monitoring of data subjects on a large scale.

What does processing special category data and personal data relating to criminal convictions and offences on a large scale mean?

Processing special category data or criminal conviction or offences data carries more risk than other personal data. So when you process this type of data on a large scale you are required to appoint a DPO, who can provide more oversight. Again, the factors relevant to large-scale processing can include:

- the numbers of data subjects;
- the volume of personal data being processed;

- the range of different data items being processed;
- the geographical extent of the activity; and
- the duration or permanence of the activity.

Example

A health insurance company processes a wide range of personal data about a large number of individuals, including medical conditions and other health information. This can be considered as processing special category data on a large scale.

What professional qualities should the DPO have?

- The GDPR says that you should appoint a DPO on the basis of their professional qualities, and in particular, experience and expert knowledge of data protection law.
- It doesn't specify the precise credentials they are expected to have, but it does say that this should be proportionate to the type of processing you carry out, taking into consideration the level of protection the personal data requires.
- So, where the processing of personal data is particularly complex or risky, the knowledge and abilities of the DPO should be correspondingly advanced enough to provide effective oversight.
- It would be an advantage for your DPO to also have a good knowledge of your industry or sector, as well as your data protection needs and processing activities.

What are the tasks of the DPO?

The DPO's tasks are defined in Article 39 as:

- to inform and advise you and your employees about your obligations to comply with the GDPR and other data protection laws;
- to monitor compliance with the GDPR and other data protection laws, and with your data protection polices, including managing internal data protection activities; raising awareness of data protection issues, training staff and conducting internal audits;
- to advise on, and to monitor, data protection impact assessments;
- to cooperate with the supervisory authority; and
- to be the first point of contact for supervisory authorities and for individuals whose data is processed (employees, customers etc).

It's important to remember that the DPO's tasks cover all personal data processing activities, not just those that require their appointment under Article 37(1).

- When carrying out their tasks the DPO is required to take into account the risk associated with the processing you are undertaking. They must have regard to the nature, scope, context and purposes of the processing.
- The DPO should prioritise and focus on the more risky activities, for example where special category

data is being processed, or where the potential impact on individuals could be damaging. Therefore, DPOs should provide risk-based advice to your organisation.

- If you decide not to follow the advice given by your DPO, you should document your reasons to help demonstrate your accountability.

Can we assign other tasks to the DPO?

The GDPR says that you can assign further tasks and duties, so long as they don't result in a conflict of interests with the DPO's primary tasks.

Example

As an example of assigning other tasks, Article 30 requires that organisations must maintain records of processing operations. There is nothing preventing this task being allocated to the DPO.

Basically this means the DPO cannot hold a position within your organisation that leads him or her to determine the purposes and the means of the processing of personal data. At the same time, the DPO shouldn't be expected to manage competing objectives that could result in data protection taking a secondary role to business interests.

Examples

A company's head of marketing plans an advertising campaign, including which of the company's customers to target, what method of communication and the personal details to use. This person cannot also be the company's DPO, as the decision-making is likely to lead to a conflict of interests between the campaign's aims and the company's data protection obligations.

On the other hand, a public authority could appoint its existing FOI officer / records manager as its DPO. There is no conflict of interests here as these roles are about ensuring information rights compliance, rather than making decisions about the purposes of processing.

Can the DPO be an existing employee?

Yes. As long as the professional duties of the employee are compatible with the duties of the DPO and do not lead to a conflict of interests, you can appoint an existing employee as your DPO, rather than you having to create a new post.

Can we contract out the role of the DPO?

You can contract out the role of DPO externally, based on a service contract with an individual or an organisation. It's important to be aware that an externally-appointed DPO should have the same position, tasks and duties as an internally-appointed one.

Can we share a DPO with other organisations?

- You may appoint a single DPO to act for a group of companies or public authorities.
- If your DPO covers several organisations, they must still be able to perform their tasks effectively, taking into account the structure and size of those organisations. This means you should consider if one DPO can realistically cover a large or complex collection of organisations. You need to ensure they have the necessary resources to carry out their role and be supported with a team, if this is appropriate.
- Your DPO must be easily accessible, so their contact details should be readily available to your employees, to the ICO, and people whose personal data you process.

Can we have more than one DPO?

- The GDPR clearly provides that an organisation must appoint a single DPO to carry out the tasks required in Article 39, but this doesn't prevent it appointing other data protection specialists as part of a team to help support the DPO.
- You need to determine the best way to set up your organisation's DPO function and whether this necessitates a data protection team. However, there must be an individual designated as the DPO for the purposes of the GDPR who meets the requirements set out in Articles 37-39.
- If you have a team, you should clearly set out the roles and responsibilities of its members and how it relates to the DPO.
- If you hire data protection specialists other than a DPO, it's important that they are not referred to as your DPO, which is a specific role with particular requirements under the GDPR.

What do we have to do to support the DPO?

You must ensure that:

- the DPO is involved, closely and in a timely manner, in all data protection matters;
- the DPO reports to the highest management level of your organisation, ie board level;
- the DPO operates independently and is not dismissed or penalised for performing their tasks;
- you provide adequate resources (sufficient time, financial, infrastructure, and, where appropriate, staff) to enable the DPO to meet their GDPR obligations, and to maintain their expert level of knowledge;
- you give the DPO appropriate access to personal data and processing activities;
- you give the DPO appropriate access to other services within your organisation so that they can receive essential support, input or information;
- you seek the advice of your DPO when carrying out a DPIA; and
- you record the details of your DPO as part of your records of processing activities.

This shows the importance of the DPO to your organisation and that you must provide sufficient support so they can carry out their role independently. Part of this is the requirement for your DPO to report to the highest level of management. This doesn't mean the DPO has to be line managed at this level but they must have direct access to give advice to senior managers who are making decisions about personal data processing.

What details do we have to publish about the DPO?

The GDPR requires you to:

- publish the contact details of your DPO; and
- provide them to the ICO.

This is to enable individuals, your employees and the ICO to contact the DPO as needed. You aren't required to include the name of the DPO when publishing their contact details but you can choose to provide this if you think it's necessary or helpful.

You're also required to provide your DPO's contact details in the following circumstances:

- when consulting the ICO under Article 36 about a DPIA; and
- when providing privacy information to individuals under Articles 13 and 14.

However, remember you do have to provide your DPO's name if you report a personal data breach to the ICO and to those individuals affected by it.

Is the DPO responsible for compliance?

The DPO isn't personally liable for data protection compliance. As the controller or processor it remains your responsibility to comply with the GDPR. Nevertheless, the DPO clearly plays a crucial role in helping you to fulfil your organisation's data protection obligations.

Further Reading

Relevant provisions in the GDPR - See Articles 35-36, 37-39, 83 and Recital 97
External link

In more detail - ICO guidance

See the following section of the Guide to GDPR: Accountability and governance

See our Guide to freedom of information

In more detail – European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 published guidelines on DPOs and DPO FAQs, which have been endorsed by the EDPB.

Codes of conduct

Under the GDPR, trade associations and representative bodies may draw up codes of conduct that cover topics that are important to their members, such as fair and transparent processing, pseudonymisation or the exercise of people's rights. They are a good way of developing sector-specific guidelines to help with compliance with the GDPR. There is a real benefit to developing a code of conduct as it can help to build public trust and confidence in your sector's ability to comply with data protection laws.

The ICO submission process for Code of Conduct approval will open once we finalise and publish our monitoring body accreditation requirements for codes of conduct. However, in the meantime we are welcoming enquiries from representative organisations who are considering developing codes of conduct. Please contact us codesofconduct@ico.org.uk.

At a glance

- Codes of conduct enable a sector to own and resolve key data protection challenges. The ICO see these as a way of demonstrating accountability and encourage sectors through trade associations and representative bodies to create codes of conduct.
- Using ICO approved code of conduct give assurance that the code and its monitoring is appropriate and will help you to apply the GDPR effectively.
- Codes of conduct should reflect the requirements of different processing sectors and takes account of the specific needs of small and medium sized enterprises.
- Trade associations or bodies representing a sector can create, amend or extend codes of conduct to help their sector comply with the GDPR in a practical, transparent and cost-effective way.
- Signing up to a code of conduct is voluntary. However, if there is an approved code of conduct, relevant to your processing, you should consider signing up.
- A code of conduct can help you to reflect on your processing activities and ensure you follow rules designed for your sector to achieve best practice.
- A draft code of conduct must be submitted to us for approval and will be assessed against specific criteria to ensure that it meets the expected standard.
- A code of conduct will describe appropriate monitoring mechanisms and bodies which will be approved as part of the code approval process.

In brief

Codes of conduct help you to apply the GDPR effectively and allow you to demonstrate your compliance.

- What are codes of conduct?
- Why sign up to a code of conduct?
- What should a code of conduct address?
- Who is responsible for codes of conduct?
- How will the ICO approve a code of conduct?
- How will compliance with the code be monitored?

- How to become a monitoring body
- What are the practical implications for our organisation?
- Timelines and next steps
- Frequently asked questions
- Contact us

What are codes of conduct?

Codes of conduct are voluntary accountability tools, enabling sectors to own and resolve key data protection challenges in their sector with assurance from ICO that the code, and its monitoring, is appropriate. They can help you to reflect on your processing activities and ensure you follow rules designed for your sector to achieve good practice. They are written by an organisation or association representing a sector in language that the sector understands and enable sectors to solve these challenges.

By signing up to a code of conduct, controllers and processors can ensure they apply the GDPR effectively and in doing so establish operational norms in compliance that ultimately should assist in bringing down levels of non-compliance. Codes of conduct require a monitoring method, and for private or non-public authorities, a monitoring body to deliver them.

Why sign up to a code of conduct?

Adhering to a code of conduct shows that you:

- follow GDPR requirements for data protection that have been agreed as good practice within your sector; and
- are appropriately addressing the type of processing you are doing and the related level of risk. An example is a code may contain more demanding requirements when it relates to processing of sensitive special category personal data.

Adhering to a code of conduct could help you to:

- be more transparent and accountable;
- take into account the specific requirements of processing carried out in a sector and improve standards by following best practice in a cost effective way;
- promote confidence and in a sector by creating effective safeguards to mitigate the risk around processing activities;
- earn the trust and confidence of data subjects and promote the rights and freedoms of individuals;
- help with specific data protection areas, such as breach notification and privacy by design;
- demonstrate that you have appropriate safeguards to transfer data to countries outside the EU; and
- improve the trust and confidence in your organisation’s compliance with GDPR and of the general public about what happens to their personal data.

What should a code of conduct address?

Codes of conduct should help you to comply with the GDPR, and may cover topics such as fair and

transparent processing, legitimate interests, pseudonymisation or alternative, appropriate data protection processing issues.

Codes of conduct should reflect the specific needs of controllers and processors in small and medium enterprises and help them to work together to apply GDPR requirements to specific issues that they face.

Codes should provide added value for their sector, as they will tailor the GDPR requirements to the sector or area of data processing. They could be a cost effective means to enable compliance with GDPR for a sector and its members.

Who is responsible for codes of conduct?

Trade associations or other bodies representing controllers or processors can create a code of conduct in consultation with relevant stakeholders, including the public where feasible. They can amend or extend existing codes to comply with GDPR requirements. They have to submit the draft code to us for approval.

We encourage the creation of codes of conduct by actively engaging with sectors to encourage development and uptake of codes of conduct where the sector would benefit. We will also support organisations who approach the ICO with a proposal for a code of conduct. In doing so we will provide advice to sectors and support in understanding codes of conduct.

We will:

- check that codes meet the code criteria set out below;
- set out monitoring body accreditation criteria;
- accredit monitoring bodies;
- approve and publish codes; and
- maintain a public register of all approved UK codes.

How will the ICO approve a code of conduct?

All codes of conduct received will be assessed against the following criteria to ensure that the code submission addresses the following:

- The code owner's ability to represent controllers or processors covered by the code.
- Contains a concise statement explaining the purpose and scope of the code and how it effectively applies the GDPR.
- Identifies processing operations that the code covers and the categories of controllers or processors that it applies to as well as what the data protection issues are that it intends to address.
- Specifies whether it is a national or transnational code and provide details in relation to the code's geographical scope.
- Transnational codes must identify an appropriate Competent Supervisory Authority.
- Identifies suitable monitoring mechanisms to assess compliance with the code.
- Identifies the monitoring body and its legal status (as required for codes covering non-public authorities).

- That it outlines the stakeholder consultation.
- That it complies with relevant national legislation.

How will compliance with the code be monitored?

All codes of conduct must contain mechanisms to allow for effective monitoring of code compliance.

A monitoring body or bodies must be identified as part of the code to fulfil the code monitoring requirements, except for codes covering public authorities. These bodies have to be accredited by the ICO.

How to become a monitoring body

There are a number of requirements that should be met in order for a monitoring body to gain ICO accreditation. Code owners will need to demonstrate as a minimum how their proposed monitoring body:

- Is independent from code owners.
- Can act free from sanctions or external influence to ensure that no conflict of interest arises.
- Has the required knowledge and expertise.
- Has established procedures, structures and resources for the monitoring of compliance with the code.
- Has an open and transparent complaints handling process.
- Will communicate to the ICO code member infringements that lead to suspensions or exclusions.
- Will review the code to ensure that the code remains relevant and up to date.
- Has appropriate legal status.

The ICO may add additional requirements in due course and these will be updated on the ICO's website once the requirements are finalised and published.

What are the practical implications for our organisation?

- You can sign up to a code of conduct relevant to your data processing activities or sector. This could be an extension or an amendment to a current code, or a brand new code.
- Your customers will be able to view your code membership via the code's webpage, the ICO's public register of UK approved codes of conduct and the EDPB's public register for all codes of conduct in the EU.
- Once you are assessed as adhering to the code, your compliance with the code will be monitored on a regular basis. This monitoring provides assurance that the code can be trusted. Your membership can be withdrawn if you no longer meet the requirements of the code, and the monitoring body will notify us of this.
- When contracting work to third parties, you may wish to consider whether they have signed up to a code of conduct, as part of meeting your due diligence requirements under the GDPR.

Timelines and next steps

The European Data Protection Board have adopted 'Guidelines 1/2019 on Codes of Conduct and

Monitoring Bodies under Regulation 2016/679'.

Autumn 2019

- Submission of our monitoring body accreditation requirements to the EDPB for their opinion.
- We finalise and publish our monitoring body accreditation requirements for codes of conduct.
- ICO can formally accept codes of conduct.

In the meantime we are welcoming enquiries from representative organisations who are considering developing codes of conduct. You can find our contact details below. Please note this is dependent on EDPB timelines, which are subject to change.

Frequently asked questions

We have published answers to frequently asked questions relating to codes of conduct.

Contact us

If you still have queries after reading our frequently asked questions, we can offer support and guidance. Please contact us codesofconduct@ico.org.uk.

Further Reading

Relevant provisions in the GDPR - See Articles 40-4 and 83 and Recitals 77, 98, 99 and 168
External link

EDPB 'Guidelines 1/2019 on Codes of Conduct and Monitoring Bodies under Regulation 2016/679'
External link

Certification

Certification is a way for an organisation to demonstrate compliance with GDPR. The certification scheme criteria will be approved by the ICO and can cover a specific issue or be more general. Once an accredited certification body has assessed and approved an organisation, it will issue the data protection certificate, seal or mark relevant to that scheme.

The submission process for certification schemes will open once we finalise and publish our accreditation requirements for certification bodies. In the meantime, we welcome enquiries from organisations who are in the process of developing or have developed GDPR certification schemes. You can find our contact details here: certification@ico.org.uk.

At a glance

- Certification schemes will be a way to demonstrate your compliance with the GDPR and enhance transparency.
- Certification schemes should reflect the needs of small and medium sized enterprises.
- Certification scheme criteria will be approved by the ICO and delivered by accredited certification bodies.
- Certification will be issued to data controllers and data processors in relation to specific processing activities.
- Signing up to a certification scheme is voluntary. However, if there is an approved certification scheme that covers your processing activity, you may wish to consider working towards it as it can help you demonstrate compliance to the regulator, the public and in your business to business relationships.

In brief

- What is the purpose of certification?
- Who is responsible for certification?
- What can be certified?
- What must certification scheme criteria contain?
- Why should we apply for certification of our processing?
- What are the practical implications for us?
- What happens next?
- Expected timeline for certification
- Frequently asked questions
- Contact us

What is the purpose of certification?

Certification is a way of demonstrating that your processing of personal data complies with the GDPR

requirements, in line with the accountability principle. Certification can help demonstrate data protection in a practical way to businesses, individuals and regulators. Your customers can use certification as a means to quickly assess the level of data protection of your particular product or service, which provides transparency both for data subjects and in business to business relationships.

The GDPR says that certification is also a means to:

- demonstrate compliance with the provisions on data protection by design and by default (Article 25(3));
- demonstrate that you have appropriate technical and organisational measures to ensure data security (Article 32(3)); and
- to support transfers of personal data to third countries or international organisations (Article 46(2)(f)).

Who is responsible for certification?

Member states, supervisory authorities (such as the ICO), the European Data Protection Board (EDPB) and the Commission will encourage the use of data protection certification mechanisms as a means to enhance transparency and compliance with the GDPR.

In the UK the certification framework will involve:

- us publishing accreditation requirements for certification bodies to meet;
- the UK's national accreditation body, UKAS, accrediting certification bodies and maintaining a public register;
- us approving and publishing certification scheme criteria;
- accredited certification bodies issuing certification against those criteria; and
- controllers and processors applying for certification and using it to demonstrate compliance.

Across EU member states, the EDPB will collate all EU certification schemes in a public register. There is also scope for a European Data Protection Seal where scheme criteria are approved by EDPB for use in all member states.

What can be certified?

The scope of a certification scheme could be quite general or it could be specific, for example, secure storage and protection of personal data contained within a digital vault.

Certification will relate to a specific personal data processing operation or set of operations. Those processing operations will be assessed against the certification scheme criteria by the accredited Certification Body.

Certification can only be issued to data controllers and data processors and cannot therefore be used to certify individuals, for example data protection officers.

Article 42(2) also allows for the use of certification schemes for the purpose of demonstrating the existence of appropriate safeguards provided by controllers or processors that are not subject to GDPR for international transfers of personal data.

What must certification scheme criteria contain?

Certification scheme criteria must be:

- derived from GDPR principles and rules, as required by the certification scheme, ie:
  - lawfulness of processing (Art 6)
  - principles of data processing (Art 5)
  - data subjects' rights (Art 12-23)
  - obligation to notify data breaches (Art 33)
  - obligation of DP by design and default (Art 25)
  - whether a DPIA has been completed where required (Art35(7)(d)
  - technical and organisational measures put in place (Art 32);
- formulated in such a way that they are clear and allow practical application;
- auditable (ie specify objectives and how they can be achieved so as to demonstrate compliance);
- relevant to the target audience;
- inter-operable with other standards, for example ISO standards; and
- scalable for application to different size or type of organisations.

These conditions are outlined in more detail in EDPB 'Guidelines 1/2018 on certification and identifying certification criteria in accordance with Articles 42 and 43 of the Regulation'.

Once your organisation has been successfully assessed by the accredited certification body, you will be issued with a data protection certificate, seal or mark relevant to that scheme.

Why should we apply for certification of our processing?

Applying for certification is voluntary. However, if there is an approved certification scheme that covers your processing activity, you may wish to consider working towards it as a way of demonstrating that you comply with the GDPR.

Certification provides a framework for you to follow, thereby helping ensure compliance and offering assurance that specific standards are being adhered to, for example in a processor to controller relationship.

Obtaining certification for your processing can also help you to:

- be more transparent and accountable - enabling businesses or individuals to distinguish which processing activities, operations and services meet GDPR data protection requirements and they can trust with their personal data;
- have a competitive advantage;
- create effective safeguards to mitigate the risk around data processing and the rights and freedoms of individuals;
- improve standards by establishing best practice;
- help with international transfers; and
- mitigate against enforcement action.

What are the practical implications for us?

- As a controller or processor, you could obtain certification for your processing operations, and services. Certification bodies will use independent assessors, giving an independent expert view on whether you meet the scheme criteria. You will need to provide them with all the necessary information and access to your processing activities to enable them to conduct the certification procedure.
- Certification is valid for a maximum of three years, subject to periodic reviews. These independent reviews provide assurance that the certification can be trusted. However, certifications can be withdrawn if you no longer meet the certification criteria, and the certification body will notify us of this.
- Your customers can view your certification in a public register of certificates issued by certification bodies.
- Certification can help you demonstrate compliance, but does not reduce your data protection responsibilities. Whilst certification will be considered as a mitigating factor when we are considering imposing a fine, non-compliance with a certification scheme could also be a reason for issuing a fine.
- When contracting work to third parties, you may wish to consider whether they hold a GDPR certificate for their processing operations, as part of meeting your due diligence requirements under the GDPR.

What happens next?

At this time, there are no approved certification schemes or accredited certification bodies for issuing GDPR certificates. Once the certification bodies have been accredited to issue GDPR certificates, you will find this information on the ICO's and UKAS's websites.

We are in the process of drafting our additional accreditation requirements for submission to the EDPB in the Autumn. Once finalised this will allow UKAS to accredit certificiation bodies to deliver ICO-approved GDPR schemes.

We are also developing our submission process for the formal approval of GDPR certification scheme criteria. In the meantime, we are welcoming enquiries from organisations who are in the process of developing or have developed GDPR certification schemes. You can find our contact details below.

Expected timeline for certification

Summer 2019

- Final publication of certification and accreditation guidelines and annexes.
- Additional accreditation requirements drafted and submitted to EDPB for their opinion.
- Following final approval of the certification annex, we can start accepting certification schemes for approval.

Autumn 2019

- Additional accreditation requirements finalised and published.

Please note these timelines are dependent on EDPB timelines which are subject to change.

Frequently asked questions

We have published answers to frequently asked questions relating to certification schemes.

Contact us

If you still have queries after reading our frequently asked questions, email us at certification@ico.org.uk.

Further Reading

Relevant provisions in the GDPR - See Articles 42-43 and 83 and Recitals 81 and 100
External link

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

Certification Guidelines and Annex

The EDPB has published adopted 'Guidelines 1/2018 on certification and identifying certification criteria in accordance with Articles 42 and 43 of the Regulation' on 4 June 2019.

Accreditation Guidelines and Annex

EDPB has published adopted Guidelines on the accreditation of certification bodies under Article 43 of the GDPR (2016/679) on 4 June 2019.

Data protection fee

On 25 May 2018, the Data Protection (Charges and Information) Regulations 2018 (the 2018 Regulations) came into force, changing the way we fund our data protection work.

Under the 2018 Regulations, organisations that determine the purpose for which personal data is processed (controllers) must pay a data protection fee unless they are exempt.

The new data protection fee replaces the requirement to 'notify' (or register), which was in the Data Protection Act 1998 (the 1998 Act).

Although the 2018 Regulations come into effect on 25 May 2018, this doesn't mean everyone now has to pay the new fee. Controllers who have a current registration (or notification) under the 1998 Act do not have to pay the new fee until that registration has expired.

From 1 April 2019, the Data Protection (Charges and Information) (Amendment) Regulations 2019 exempted the processing of personal data by members of the House of Lords, elected representatives and prospective representatives.

'Elected representatives' is defined by the Data Protection Act 2018 and includes, but is not limited to, MPs, MSPs, AMs in Wales, MEPs, elected councillors in county councils, district councils, London boroughs, parish councils, elected mayors and police and crime commissioners.

'Prospective representative' refers to anyone seeking to become an elected representative as defined above.

Find out more about paying the data protection fee here.

Further Reading

Data Protection fee
For organisations

Security

At a glance

- A key principle of the GDPR is that you process personal data securely by means of 'appropriate technical and organisational measures' – this is the 'security principle'.
- Doing this requires you to consider things like risk analysis, organisational policies, and physical and technical measures.
- You also have to take into account additional requirements about the security of your processing – and these also apply to data processors.
- You can consider the state of the art and costs of implementation when deciding what measures to take – but they must be appropriate both to your circumstances and the risk your processing poses.
- Where appropriate, you should look to use measures such as pseudonymisation and encryption.
- Your measures must ensure the 'confidentiality, integrity and availability' of your systems and services and the personal data you process within them.
- The measures must also enable you to restore access and availability to personal data in a timely manner in the event of a physical or technical incident.
- You also need to ensure that you have appropriate processes in place to test the effectiveness of your measures, and undertake any required improvements.

Checklists

☐ We undertake an analysis of the risks presented by our processing, and use this to assess the appropriate level of security we need to put in place.

☐ When deciding what measures to implement, we take account of the state of the art and costs of implementation.

☐ We have an information security policy (or equivalent) and take steps to make sure the policy is implemented.

☐ Where necessary, we have additional policies and ensure that controls are in place to enforce them.

☐ We make sure that we regularly review our information security policies and measures and, where necessary, improve them.

☐ We have put in place basic technical controls such as those specified by established frameworks like Cyber Essentials.

☐ We understand that we may also need to put other technical measures in place depending on our circumstances and the type of personal data we process.

☐ We use encryption and/or pseudonymisation where it is appropriate to do so.

☐ We understand the requirements of confidentiality, integrity and availability for the personal

data we process.

☐ We make sure that we can restore access to personal data in the event of any incidents, such as by establishing an appropriate backup process.

☐ We conduct regular testing and reviews of our measures to ensure they remain effective, and act on the results of those tests where they highlight areas for improvement.

☐ Where appropriate, we implement measures that adhere to an approved code of conduct or certification mechanism.

☐ We ensure that any data processor we use also implements appropriate technical and organisational measures.

In brief

- What's new?
- What does the GDPR say about security?
- Why should we worry about information security?
- What do we need to protect with our security measures?
- What level of security is required?
- What organisational measures do we need to consider?
- What technical measures do we need to consider?
- What if we operate in a sector that has its own security requirements?
- What do we do when a data processor is involved?
- Should we use pseudonymisation and encryption?
- What are 'confidentiality, integrity, availability' and 'resilience'?
- What are the requirements for restoring availability and access to personal data?
- Are we required to ensure our security measures are effective?
- What about codes of conduct and certification?
- What about our staff?

What's new?

The GDPR requires you to process personal data securely. This is not a new data protection obligation. It replaces and mirrors the previous requirement to have 'appropriate technical and organisational measures' under the Data Protection Act 1998 (the 1998 Act).

However, the GDPR provides more specifics about what you have to do about the security of your processing and how you should assess your information risk and put appropriate security measures in place. Whilst these are broadly equivalent to what was considered good and best practice under the 1998 Act, they are now a legal requirement.

What does the GDPR say about security?

Article 5(1)(f) of the GDPR concerns the 'integrity and confidentiality' of personal data. It says that personal data shall be:

> 'Processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures'

You can refer to this as the GDPR's 'security principle'. It concerns the broad concept of **information security**.

This means that you must have appropriate security to prevent the personal data you hold being accidentally or deliberately compromised. You should remember that while information security is sometimes considered as cybersecurity (the protection of your networks and information systems from attack), it also covers other things like physical and organisational security measures.

You need to consider the security principle alongside Article 32 of the GDPR, which provides more specifics on the security of your processing. Article 32(1) states:

> 'Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk'

Further Reading

Relevant provisions in the GDPR - See Articles 5(1)(f) and 32, and Recitals 39 and 83
External link

Why should we worry about information security?

Poor information security leaves your systems and services at risk and may cause real harm and distress to individuals – lives may even be endangered in some extreme cases.

Some examples of the harm caused by the loss or abuse of personal data include:

- identity fraud;
- fake credit card transactions;
- targeting of individuals by fraudsters, potentially made more convincing by compromised personal data;

- witnesses put at risk of physical harm or intimidation;
- offenders at risk from vigilantes;
- exposure of the addresses of service personnel, police and prison officers, and those at risk of domestic violence;
- fake applications for tax credits; and
- mortgage fraud.

Although these consequences do not always happen, you should recognise that individuals are still entitled to be protected from less serious kinds of harm, for example embarrassment or inconvenience.

Information security is important, not only because it is itself a legal requirement, but also because it can support good data governance and help you demonstrate your compliance with other aspects of the GDPR.

The ICO is also required to consider the technical and organisational measures you had in place when considering an administrative fine.

What do our security measures need to protect?

The security principle goes beyond the way you store or transmit information. Every aspect of your processing of personal data is covered, not just cybersecurity. This means the security measures you put in place should seek to ensure that:

- the data can be accessed, altered, disclosed or deleted only by those you have authorised to do so (and that those people only act within the scope of the authority you give them);
- the data you hold is accurate and complete in relation to why you are processing it; and
- the data remains accessible and usable, ie, if personal data is accidentally lost, altered or destroyed, you should be able to recover it and therefore prevent any damage or distress to the individuals concerned.

These are known as ‘confidentiality, integrity and availability’ and under the GDPR, they form part of your obligations.

What level of security is required?

The GDPR does not define the security measures that you should have in place. It requires you to have a level of security that is ‘appropriate’ to the risks presented by your processing. You need to consider this in relation to the state of the art and costs of implementation, as well as the nature, scope, context and purpose of your processing.

This reflects both the GDPR’s risk-based approach, and that there is no ‘one size fits all’ solution to information security. It means that what’s ‘appropriate’ for you will depend on your own circumstances, the processing you’re doing, and the risks it presents to your organisation.

So, before deciding what measures are appropriate, you need to assess your information risk. You should review the personal data you hold and the way you use it in order to assess how valuable, sensitive or confidential it is – as well as the damage or distress that may be caused if the data was compromised. You should also take account of factors such as:

- the nature and extent of your organisation’s premises and computer systems;

- the number of staff you have and the extent of their access to personal data; and
- any personal data held or used by a data processor acting on your behalf.

Further Reading

Relevant provisions in the GDPR - See See Article 32(2) and Recital 83
External link

We cannot provide a complete guide to all aspects of security in all circumstances for all organisations, but this guidance is intended to identify the main points for you to consider.

What organisational measures do we need to consider?

Carrying out an information risk assessment is one example of an organisational measure, but you will need to take other measures as well. You should aim to build a culture of security awareness within your organisation. You should identify a person with day-to-day responsibility for information security within your organisation and make sure this person has the appropriate resources and authority to do their job effectively.

Example

The Chief Executive of a medium-sized organisation asks the Director of Resources to ensure that appropriate security measures are in place, and that regular reports are made to the board.

The Resources Department takes responsibility for designing and implementing the organisation's security policy, writing procedures for staff to follow, organising staff training, checking whether security measures are actually being adhered to and investigating security incidents.

Clear accountability for security will ensure that you do not overlook these issues, and that your overall security posture does not become flawed or out of date.

Although an information security policy is an example of an appropriate organisational measure, you may not need a 'formal' policy document or an associated set of policies in specific areas. It depends on your size and the amount and nature of the personal data you process, and the way you use that data. However, having a policy does enable you to demonstrate how you are taking steps to comply with the security principle.

Whether or not you have such a policy, you still need to consider security and other related matters such as:

- co-ordination between key people in your organisation (eg the security manager will need to know about commissioning and disposing of any IT equipment);
- access to premises or equipment given to anyone outside your organisation (eg for computer maintenance) and the additional security considerations this will generate;
- business continuity arrangements that identify how you will protect and recover any personal data

you hold; and

- periodic checks to ensure that your security measures remain appropriate and up to date.

What technical measures do we need to consider?

Technical measures are sometimes thought of as the protection of personal data held in computers and networks. Whilst these are of obvious importance, many security incidents can be due to the theft or loss of equipment, the abandonment of old computers or hard-copy records being lost, stolen or incorrectly disposed of. Technical measures therefore include both physical and computer or IT security.

When considering physical security, you should look at factors such as:

- the quality of doors and locks, and the protection of your premises by such means as alarms, security lighting or CCTV;
- how you control access to your premises, and how visitors are supervised;
- how you dispose of any paper and electronic waste; and
- how you keep IT equipment, particularly mobile devices, secure.

In the IT context, technical measures may sometimes be referred to as 'cybersecurity'. This is a complex technical area that is constantly evolving, with new threats and vulnerabilities always emerging. It may therefore be sensible to assume that your systems are vulnerable and take steps to protect them.

When considering cybersecurity, you should look at factors such as:

- system security – the security of your network and information systems, including those which process personal data;
- data security – the security of the data you hold within your systems, eg ensuring appropriate access controls are in place and that data is held securely;
- online security – eg the security of your website and any other online service or application that you use; and
- device security – including policies on Bring-your-own-Device (BYOD) if you offer it.

Depending on the sophistication of your systems, your usage requirements and the technical expertise of your staff, you may need to obtain specialist information security advice that goes beyond the scope of this guidance. However, it's also the case that you may not need a great deal of time and resources to secure your systems and the personal data they process.

Whatever you do, you should remember the following:

- your cybersecurity measures need to be appropriate to the size and use of your network and information systems;
- you should take into account the state of technological development, but you are also able to consider the costs of implementation;
- your security must be appropriate to your business practices. For example, if you offer staff the ability to work from home, you need to put measures in place to ensure that this does not compromise your security; and
- your measures must be appropriate to the nature of the personal data you hold and the harm that might result from any compromise.

A good starting point is to make sure that you're in line with the requirements of Cyber Essentials – a government scheme that includes a set of basic technical controls you can put in place relatively easily.

You should however be aware that you may have to go beyond these requirements, depending on your processing activities. Cyber Essentials is only intended to provide a 'base' set of controls, and won't address the circumstances of every organisation or the risks posed by every processing operation.

A list of helpful sources of information about cybersecurity is provided below.

Other resources

The Cyber Essentials scheme

In more detail – ICO guidance

Under the 1998 Act, the ICO published a number of more detailed guidance pieces on different aspects of IT security. We will be updating each of these to reflect the GDPR's requirements in due course. However, until that time they may still provide you with assistance or things to consider.

- IT security top tips – for further general information on IT security;
- IT asset disposal for organisations (pdf) – guidance to help organisations securely dispose of old computers and other IT equipment;
- A practical guide to IT security – ideal for the small business (pdf);
- Protecting personal data in online services – learning from the mistakes of others (pdf) – detailed technical guidance on common technical errors the ICO has seen in its casework
- Bring your own device (BYOD) (pdf) – guidance for organisations who want to allow staff to use personal devices to process personal data;
- Cloud computing (pdf) – guidance covering how security requirements apply to personal data processed in the cloud; and
- Encryption – advice on the use of encryption to protect personal data.

What if we operate in a sector that has its own security requirements?

Some industries have specific security requirements or require you to adhere to certain frameworks or standards. These may be set collectively, for example by industry bodies or trade associations, or could be set by other regulators. If you operate in these sectors, you need to be aware of their requirements, particularly if specific technical measures are specified.

Although following these requirements will not necessarily equate to compliance with the GDPR's security principle, the ICO will nevertheless consider these carefully in any considerations of regulatory action. It can be the case that they specify certain measures that you should have, and that those measures contribute to your overall security posture.

Example

If you are processing payment card data, you are obliged to comply with the Payment Card Industry Data Security Standard. The PCI-DSS outlines a number of specific technical and organisational measures that the payment card industry considers applicable whenever such data is being processed.

Although compliance with the PCI-DSS is not necessarily equivalent to compliance with the GDPR's security principle, if you process card data and suffer a personal data breach, the ICO will consider the extent to which you have put in place measures that PCI-DSS requires particularly if the breach related to a lack of a particular control or process mandated by the standard.

What do we do when a data processor is involved?

If one or more organisations process personal data on your behalf, then these are data processors under the GDPR. This can have the potential to cause security problems – as a data controller you are responsible for ensuring compliance with the GDPR and this includes what the processor does with the data. However, in addition to this, the GDPR's security requirements also apply to any processor you use.

This means that:

- you must choose a data processor that provides sufficient guarantees about its security measures;
- your written contract must stipulate that the processor takes all measures required under Article 32 – basically, the contract has to require the processor to undertake the same security measures that you would have to take if you were doing the processing yourself; and
- you should ensure that your contract includes a requirement that the processor makes available all information necessary to demonstrate compliance. This may include allowing for you to audit and inspect the processor, either yourself or an authorised third party.

At the same time, your processor can assist you in ensuring compliance with your security obligations. For example, if you lack the resource or technical expertise to implement certain measures, engaging a processor that has these resources can assist you in making sure personal data is processed securely, provided that your contractual arrangements are appropriate.

Further Reading

Relevant provisions in the GDPR - See Articles 28 and 32, and Recitals 81 and 83
External link

Should we use pseudonymisation and encryption?

Pseudonymisation and encryption are specified in the GDPR as two examples of measures that may be appropriate for you to implement. This does not mean that you are obliged to use these measures. It depends on the nature, scope, context and purposes of your processing, and the risks posed to

individuals.

However, there are a wide range of solutions that allow you to implement both without great cost or difficulty. For example, for a number of years the ICO has considered encryption to be an appropriate technical measure given its widespread availability and relatively low cost of implementation. This position has not altered due to the GDPR — if you are storing personal data, or transmitting it over the internet, we recommend that you use encryption and have a suitable policy in place, taking account of the residual risks involved.

When considering what to put in place, you should undertake a risk analysis and document your findings.

Further Reading

Relevant provisions in the GDPR - See Article 32(1)(a) and Recital 83
External link

In more detail – ICO guidance

We have published detailed guidance on encryption under the 1998 Act. Much of this guidance still applies, however we are also working to update it to reflect the GDPR.

What are 'confidentiality, integrity, availability' and 'resilience'?

Collectively known as the 'CIA triad', confidentiality, integrity and availability are the three key elements of information security. If any of the three elements is compromised, then there can be serious consequences, both for you as a data controller, and for the individuals whose data you process.

The information security measures you implement should seek to guarantee all three both for the systems themselves and any data they process.

The CIA triad has existed for a number of years and its concepts are well-known to security professionals.

You are also required to have the ability to ensure the 'resilience' of your processing systems and services. Resilience refers to:

- whether your systems can continue operating under adverse conditions, such as those that may result from a physical or technical incident; and
- your ability to restore them to an effective state.

This refers to things like business continuity plans, disaster recovery, and cyber resilience. Again, there is a wide range of solutions available here, and what is appropriate for you depends on your circumstances.

Further Reading

Relevant provisions in the GDPR - See Article 32(1)(b) and Recital 83

External link

What are the requirements for restoring availability and access to personal data?

You must have the ability to restore the availability and access to personal data in the event of a physical or technical incident in a 'timely manner'.

The GDPR does not define what a 'timely manner' should be. This therefore depends on:

- who you are;
- what systems you have; and
- the risk that may be posed to individuals if the personal data you process is unavailable for a period of time.

The key point is that you have taken this into account during your information risk assessment and selection of security measures. For example, by ensuring that you have an appropriate backup process in place you will have some level of assurance that if your systems do suffer a physical or technical incident you can restore them, and therefore the personal data they hold, as soon as reasonably possible.

Example

An organisation takes regular backups of its systems and the personal data held within them. It follows the well-known '3-2-1' backup strategy: three copies, with two stored on different devices and one stored off-site.

The organisation is targeted by a ransomware attack that results in the data being encrypted. This means that it is no longer able to access the personal data it holds.

Depending on the nature of the organisation and the data it processes, this lack of availability can have significant consequences on individuals – and would therefore be a personal data breach under the GDPR.

The ransomware has spread throughout the organisation's systems, meaning that two of the backups are also unavailable. However, the third backup, being stored off-site, allows the organisation to restore its systems in a timely manner. There may still be a loss of personal data depending on when the off-site backup was taken, but having the ability to restore the systems means that whilst there will be some disruption to the service, the organisation are nevertheless able to comply with this requirement of the GDPR.

Further Reading

Relevant provisions in the GDPR - See Article 32(1)(c) and Recital 83
External link

Are we required to ensure our security measures are effective?

Yes, the GDPR specifically requires you to have a process for regularly testing, assessing and evaluating the effectiveness of any measures you put in place. What these tests look like, and how regularly you do them, will depend on your own circumstances. However, it's important to note that the requirement in the GDPR concerns your measures in their entirety, therefore whatever 'scope' you choose for this testing should be appropriate to what you are doing, how you are doing it, and the data that you are processing.

Technically, you can undertake this through a number of techniques, such as vulnerability scanning and penetration testing. These are essentially 'stress tests' of your network and information systems, which are designed to reveal areas of potential risk and things that you can improve.

In some industries, you are required to undertake tests of security measures on a regular basis. The GDPR now makes this an obligation for all organisations. Importantly, it does not specify the type of testing, nor how regularly you should undertake it. It depends on your organisation and the personal data you are processing.

You can undertake testing internally or externally. In some cases it is recommended that both take place.

Whatever form of testing you undertake, you should document the results and make sure that you act upon any recommendations, or have a valid reason for not doing so, and implement appropriate safeguards. This is particularly important if your testing reveals potential critical flaws that could result in a personal data breach.

Further Reading

Relevant provisions in the GDPR - See Article 32(1)(d) and Recital 83
External link

What about codes of conduct and certification?

If your security measures include a product or service that adheres to a GDPR code of conduct (once any have been approved) or certification (once any have been issued), you may be able to use this as an element to demonstrate your compliance with the security principle. It is important that you check carefully that the code or certification is appropriately issued in accordance with the GDPR.

Further Reading

Relevant provisions in the GDPR - See Article 32(3) and Recital 83
External link

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It

adopts guidelines for complying with the requirements of the GDPR.

The EDPB will be producing specific guidance on certification in the coming months.

The EDPB published for consultation draft guidelines on certification and identifying certification criteria in accordance with Articles 42 and 43 of the Regulation 2016/679 on 30 May 2018. The consultation closed on 12 July 2018.

The EDPB are also drafting guidelines on certification as an appropriate safeguard for international transfers of personal data (Article 46(2)(f).

What about our staff?

The GDPR requires you to ensure that anyone acting under your authority with access to personal data does not process that data unless you have instructed them to do so. It is therefore vital that your staff understand the importance of protecting personal data, are familiar with your security policy and put its procedures into practice.

You should provide appropriate initial and refresher training, including:

- your responsibilities as a data controller under the GDPR;
- staff responsibilities for protecting personal data – including the possibility that they may commit criminal offences if they deliberately try to access or disclose these data without authority;
- the proper procedures to identify callers;
- the dangers of people trying to obtain personal data by deception (eg by pretending to be the individual whom the data concerns, or enabling staff to recognise 'phishing' attacks), or by persuading your staff to alter information when they should not do so; and
- any restrictions you place on the personal use of your systems by staff (eg to avoid virus infection or spam).

Your staff training will only be effective if the individuals delivering it are themselves reliable and knowledgeable.

Further Reading

Relevant provisions in the GDPR - See Article 32(4) and Recital 83
External link

Other resources

The NCSC has detailed technical guidance in a number of areas that will be relevant to you whenever you process personal data. Some examples include:

- 10 Steps to Cyber Security – The 10 Steps define and communicate an Information Risk Management Regime which can provide protection against cyber-attacks.
- The Cyber Essentials scheme – this provides a set of basic technical controls that you can implement to guard against common cyber threats.

- Risk management collection – a collection of guidance on how to assess cyber risk.

The government has produced relevant guidance on cybersecurity:

- CyberAware – a cross-government awareness campaign developed by the Home Office, the Department for Digital, Culture, Media and Sport ('DCMS') and the NCSC.
- 'Cybersecurity – what small businesses need to know' – produced by DCMS and the department for Business, Enterprise, Innovation and Skills ('BEIS').

Technical guidance produced by the European Union Agency for Network and Information Security (ENISA) may also assist you:

- Data protection section at ENISA's website

In more detail – ICO guidance

The ICO and NCSC have jointly produced guidance on security outcomes.

Encryption

At a glance

- The GDPR requires you to implement appropriate technical and organisational measures to ensure you process personal data securely.
- Article 32 of the GDPR includes encryption as an example of an appropriate technical measure, depending on the nature and risks of your processing activities.
- Encryption is a widely-available measure with relatively low costs of implementation. There is a large variety of solutions available.
- You should have an encryption policy in place that governs how and when you implement encryption, and you should also train your staff in the use and importance of encryption.
- When storing or transmitting personal data, you should use encryption and ensure that your encryption solution meets current standards.
  You should be aware of the residual risks of encryption, and have steps in place to address these.

Checklists

☐ We understand that encryption can be an appropriate technical measure to ensure that we process personal data securely.

☐ We have an appropriate policy in place governing our use of encryption.

☐ We ensure that we educate our staff on the use and importance of encryption.

☐ We have assessed the nature and scope of our processing activities and have implemented encryption solution(s) to protect the personal data we store and/or transmit.

☐ We understand the residual risks that remain, even after we have implemented our encryption solution(s).

☐ Our encryption solution(s) meet current standards such as FIPS 140-2 and FIPS 197.

☐ We ensure that we keep our encryption solution(s) under review in the light of technological developments.

☐ We have considered the types of processing we undertake, and whether encryption can be used in this processing.

In brief

- What's new?
- What is encryption?

- Encryption and data storage
- Encryption and data transfer
- What types of encryption are there?
- How should we implement encryption?
- In detail

What's new

- The GDPR's security principle requires to you put in place appropriate technical and organisational measures to ensure you process personal data securely.
- Article 32 of the GDPR provides further considerations for the security of your processing. This includes specifying encryption as an example of an appropriate technical measure, depending on the risks involved and the specific circumstances of your processing. The ICO has seen numerous incidents of personal data being subject to unauthorised or unlawful processing, loss, damage or destruction. In many cases, the damage and distress caused by these incidents may have been reduced or even avoided had the personal data been encrypted.
- It is also the case that encryption solutions are widely available and can be deployed at relatively low cost.
- It is possible that, where data is lost or destroyed and it was not encrypted, regulatory action may be pursued (depending on the context of each incident).

What is encryption?

- Encryption is a mathematical function that encodes data in such a way that only authorised users can access it.
- It is a way of safeguarding against unauthorised or unlawful processing of personal data, and is one way in which you can demonstrate compliance with the security principle.
- Encryption protects information stored on mobile and static devices and in transmission, and there are a number of different encryption options available.
- You should consider encryption alongside other technical and organisational measures, taking into account the benefits and risks it can offer.
- You should have a policy in place governing the use of encryption, including appropriate staff education.
- You should also be aware of any sector-specific guidance that applies to you, as this may require you to use encryption.

Encryption and data storage

- Encrypting data whilst it is being stored provides effective protection against unauthorised or unlawful processing.
- Most modern operating systems have full-disk encryption built-in.
- You can also encrypt individual files or create encrypted containers.
- Some applications and databases can be configured to store data in encrypted form.
- Storing encrypted data still poses residual risks. You will need to address these depending on the

context, such as by means of an organisational policy and staff training

Encryption and data transfer

- Encrypting personal data whilst it is being transferred provides effective protection against interception by a third party.
  You should use encrypted communications channels when transmitting any personal data over an untrusted network.
- You can encrypt data prior to transmission over an insecure channel and ensure it is still protected. However, a secure channel provides assurance that the content cannot be understood if it is intercepted. Without additional encryption methods, such as encrypting the data itself prior to transmission, the data will only be encrypted whilst in transit.
- Encrypted data transfer still poses residual risks. You will need to address these depending on the context, such as by means of an organisational policy and staff training.

What types of encryption are there?

- The two types of encryption in widespread use today are symmetric and asymmetric encryption.
- With symmetric encryption, the same key is used for encryption and decryption. Conversely, with asymmetric encryption, different keys are used for encryption and decryption.
- When using symmetric encryption, it is critical to ensure that the key is transferred securely.
- The technique of cryptographic hashing is sometimes equated to encryption, but it is important to understand that encryption and hashing are not identical concepts, and are used for different purposes.

How should we implement encryption?

- When implementing encryption it is important to consider four things: choosing the right algorithm, choosing the right key size, choosing the right software, and keeping the key secure.
- Over time, vulnerabilities may be discovered in encryption algorithms that can eventually make them insecure. You should regularly assess whether your encryption method remains appropriate.
- It is important to ensure that the key size is sufficiently large to protect against an attack over the lifetime of the data. You should therefore assess whether your key sizes remain appropriate.
- The encryption software you use is also crucial. You should ensure that any solution you implement meets current standards such as FIPS 140-2 and FIPS 197.
- Advice on appropriate encryption solutions is available from a number of organisations, including the National Cyber Security Centre (NCSC).
- You should also ensure that you keep your keys secure, and have processes in place to generate new keys when necessary to do so.

Further reading

We have published detailed guidance on encryption.

Passwords in online services

At a glance

- Although the GDPR does not say anything specific about passwords, you are required to process personal data securely by means of appropriate technical and organisational measures.
- Passwords are a commonly-used means of protecting access to systems that process personal data. Therefore, any password setup that you implement must be appropriate to the particular circumstances of this processing.
- You should consider whether there are any better alternatives to using passwords.
- Any password system you deploy must protect against theft of stored passwords and 'brute-force' or guessing attacks.
- There are a number of additional considerations you will need to take account of when designing your password system, such as the use of an appropriate hashing algorithm to store your passwords, protecting the means by which users enter their passwords, defending against common attacks and the use of two-factor authentication.

In brief

- What is required under the GDPR?
- Choosing the right authentication scheme
- What should I consider when implementing a password system?

What is required under the GDPR?

The GDPR does not say anything specific about passwords. However, Article 5(1)(f) states that personal data shall be:

> 'Processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.'

This is the GDPR's 'integrity and confidentiality' principle, or, more simply, the 'security' principle. So, although there are no provisions on passwords, the security principle requires you to take appropriate technical and organisational measures to prevent unauthorised processing of personal data you hold.

This means that when you are considering a password setup to protect access to a system that processes personal data, that setup must be 'appropriate'.

What are the other considerations?

Although the GDPR does not define what is 'appropriate', it does provide further considerations in Article 32, 'security of processing':

> 'Taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.'

This means that when considering any measures, you can consider the state of technological development and the cost of implementation – but the measures themselves must ensure a level of security appropriate to the nature of the data being protected and the harm that could be caused by unauthorised access.

This means that you cannot simply set up a password system and then forget about it – there must be a periodic review process.

You must also ensure that you are aware of the state of technological development in this area and must ensure that your processes and technologies are robust against evolving threats. For example, advances in processing power can reduce the effectiveness of cryptography, particular design choices can become outdated, and so on.

You must also consider whether there might be better alternatives to passwords that can be used to secure a system.

Article 25 of the GDPR also requires you to adopt a data protection by design approach. This means that whenever you develop systems and services that are involved in your processing, you should ensure that you take account of data protection considerations at the initial design stage and throughout the lifecycle. This applies to any password system you intend to use.

At the same time, provided you properly implement a password system, it can be an element that can be used to demonstrate compliance with your obligations under data protection by design.

Further Reading

Relevant provisions in the GDPR - See Articles 5(1)(f), 25, 32 and Recitals 39, 78 and 83
External link

In more detail – ICO guidance

Read our sections on security and data protection by design in the Guide to the GDPR.

Choosing the right authentication scheme

One of the biggest challenges you face when dealing with personal data online is ensuring that such data can be accessed only by those with the correct permissions - in other words, authenticating, and

authorising, the individual who is trying to gain access.

It is commonly accepted that there are three main ways of authenticating people to a system – checking for:

- something the individual has (such as a smart card);
- something the individual is (this is usually a biometric measure, such as a fingerprint); or
- something the individual knows.

Of these, the most commonly used is something the individual knows. In most cases something they know is taken to be a password.

Passwords remain the most popular way that individuals authenticate to online services. The reason for this is that a password is generally the simplest method to deploy and the most familiar for individuals. Despite this, passwords carry well-known risks. The biggest risk is that people have generally seen passwords as a mathematical problem that can be solved by increasing complexity rules. This fails to take into account natural human behaviour which is to make passwords more easily memorable, regardless of the cost to security.

A rigid focus on password strength rules with no consideration of the usual behaviour of people choosing passwords means that you can make inappropriate choices in setting up and maintaining of your authentication system. This could place the wider security of your systems or your users at risk.

Are passwords the best choice?

The success of using a password to properly authenticate a user of your service relies on the fact that their password remains a shared secret between you and them. When a password is shared amongst users or can be easily guessed by an attacker it can become extremely difficult to tell the difference between an authorised user and an imposter with stolen or guessed credentials.

The proliferation of online services requiring individuals to create an account has meant that some have become overwhelmed with access credentials and defaulted to reusing a short and memorable password (often coupled with the same email address as a username) across multiple websites. The risk here is that if one service suffers a personal data breach and access credentials are compromised, these can be tested against other online services to gain access – a technique known as 'credential stuffing'.

Example

In 2012, the social networking site LinkedIn was hacked. It was thought at the time that passwords for around 6.5 million user accounts were stolen by cybercriminals. However, in May 2016, following the advertisement for sale on the dark web of 165 million user accounts and passwords, LinkedIn confirmed that the 2012 attack had actually resulted in the theft of email addresses and hashed passwords of approximately 165 million users.

The vast majority of the passwords were subsequently cracked and posted online less than a day after the further distribution, largely due to the use of SHA1 without a salt as the hashing algorithm. Due to the reuse of passwords across online services, a number of subsequent account takeovers at other services were attributed to the LinkedIn hack.

Before designing and implementing a new password system, you should consider whether it is necessary to do so, or whether there is a better alternative that can provide secure access.

One common alternative to designing and implementing your own solution is to utilise a single sign on (SSO) system. While this has its advantages (not least a reduction in the number of passwords that a user has to remember) you must ensure that you are happy with the level of security that is offered by that system. You must also consider what will happen if the SSO is compromised, as this will most likely also result in your user's accounts being compromised.

What makes a secure and useable password system?

A good password system is one that provides you with sufficient assurance that the individual attempting to log in is the user they claim to be. In practice, this means a good password system should protect against two types of attack:

- firstly, it should be as difficult as possible for attackers to access stored passwords in a useable form; and
- secondly, it should protect against attackers trying to brute force or guess a valid password and username combination.

Your system should also make it as easy as possible for users to create secure and unique passwords that they can remember or store easily. It should not place an undue burden on individuals to make sure that their account is secure. Putting such barriers in place can result in users making less secure password choices.

The advice provided in this guidance is a good starting point for most systems where personal data is being protected. It will be updated as necessary, but you should consider whether you need to apply a higher level of security given your particular circumstances.

You should ensure that you stay up to date with the current capabilities of attackers who might try to compromise password systems. You should also consider advice from other sources, such as the National Cyber Security Centre (NCSC) and GetSafeOnline.

Further reading

Guidance on passwords from the NCSC:

- Passwords: simplifying your approach
- Using passwords to protect your data

Guidance on passwords from GetSafeOnline:

- Password protocol and control

What should I consider when implementing a password system?

- How should we store passwords?
- How should our users enter their passwords?
- What requirements should we set for user passwords?

- What should we do about password expirations and resets?
- What defences can we put in place against attacks?
- What else do we need to consider?

How should we store passwords?

Do not store passwords in plaintext - make sure you use a suitable hashing algorithm, or another mechanism that offers an equivalent level of protection against an attacker deriving the original password.

Well-known hashing algorithms such as MD5 and SHA1 are not suitable for hashing passwords. Both algorithms have known security weaknesses which can be exploited, and you should not use these for password protection in any circumstances. You should also consider avoiding other fast algorithms. Use a hashing algorithm that has been specifically designed for passwords, such as bcrypt, scrypt or PBKDF2, with a salt of appropriate length.

It is important that you review the hashing algorithms you use, as over time they can become outdated. Guidance on algorithms is available from a number of organisations such as the National Institute of Standards in Technology (NIST) and the European Union Agency for Network and Information Security (ENISA). You should also be aware of any sector-specific guidelines that are available and may be applicable to you, eg from the European Payments Council.

You may also need to make sure that you can replace any algorithm that becomes obsolete.

You should also ensure that the architecture around your password system does not allow for any inadvertent leaking of passwords in plaintext.

Example

In 2018, Twitter and GitHub discovered that errors in their logging systems had led to plaintext passwords for users being stored in log files. Although the log files were not exposed to anyone outside of the organisations, both Twitter and GitHub recommended or required that users changed their passwords.

Further reading

Information on the status of a number of hashing functions can be found in NIST Special Publication 800-131A Revision 1 – Transitions: Recommendations for transitioning the use of cryptographic algorithms and key lengths (2015)

ENISA's 2014 'Algorithms, key size and parameters' report provides further information on the status of cryptographic hash functions. You should note that although SHA1 is listed as acceptable for legacy use, this was only until the SHA3 hashing function was finalised, which took place in 2015. SHA1 is now regarded as unsuitable for use.

The European Payments Council's guidance on the use of cryptographic algorithms provides additional information if your organisation is part of this sector.

How should our users enter their passwords?

You should ensure that your login pages are protected with HTTPS, or some other equivalent level of protection. Failure to do so will mean that anyone who is in a position to intercept network traffic can obtain passwords and may be able to carry out replay attacks. You should also consider that many browsers now mark pages that require secure input (such as login pages) as insecure if they are delivered over HTTP.

Further reading – ICO guidance

Read our guidance on encryption for more information about secure data transfer and HTTPS.

Make sure that password hashing is carried out server-side, rather than client-side. Hashing client-side will remove the protection afforded by hashing in the first place, unless other mitigations are put in place. This is a complicated area with a number of factors to consider. At the most basic level, if you are hashing client-side and an attacker obtains your password database, then those hashes can be presented directly to the server for a successful login.

Also, you should not prevent users from pasting passwords into the password field. Preventing pasting is often seen as a security measure, but at the same time doing so can impede people from using password managers effectively. The NCSC's position on password pasting is the same, as expressed in a blog post discussing this issue in much more detail. Any attacks that are facilitated by allowing pasting can be defended against with proper rate limiting (see below for more details on rate limiting).

Further reading

Read the NCSC's 'Let them paste passwords' blog post for more information on why you should allow your users to paste passwords into password fields.

What requirements should we set for user passwords?

There are three general requirements for any password system that you will need to consider:

- password length—you should set a suitable minimum password length (this should be no less than 10 characters), but not a maximum length. If you are correctly hashing your passwords, then the output should be the same length for every password, and therefore the only limit to password length should be the way your website is coded. If you absolutely must set a maximum length due to the limitations of your website code, then tell users what it is before they try to enter a password;
- special characters—you should allow the use of special characters, but don't mandate it. If you must disallow special characters (or spaces) make sure this is made clear before the user creates their password; and
- password blacklisting—do not allow your users to use a common, weak password. Screen passwords against a 'password blacklist' of the most commonly used passwords, leaked passwords from website breaches and common words or phrases that relate to the service. Update this list on a yearly basis. Explain to users that this is what you are doing, and that this is why a password has been rejected.

Example

A password blacklist could be a feature of the software you use. Other lists are available online, e.g. SecLists and haveibeenpwned's password list.

It is also possible to find easy implementations, such as NIST Bad Passwords, which uses SecLists.

Other than the three requirements listed above, do not set restrictions on how users should create a password. Current research (see 'Further reading' below) indicates that doing so will cause people to reuse passwords across accounts, to create weak passwords with obvious substitutions or to forget their passwords. All this places unnecessary stress on your reset process.

Properly set up and configured password strength meters can be a good way to easily communicate the requirements listed above to your users, and research has shown that good meters can assist users in choosing strong passwords. If you decide to use one, make sure it properly reflects what constitutes a strong or weak password.

Further reading

Microsoft's password guidance contains advice on passwords in the context of several Microsoft platforms. It includes guidance for IT administrators as well as users, and details a number of common password attacks and highlights a number of issues including the risks of placing restrictions on how users create passwords.

Advice from the Federal Trade Commission (FTC) also discusses these issues.

For more information on password strength meters, read this analysis from Sophos as well as the significant amount of research from Carnegie Mellon University.

Finally, remind your users that they should not reuse passwords from other sites. In most circumstances you should not have any idea what your user's passwords are. However, some companies will actively track compromised credentials that are traded on the dark web and will check these credentials against the hashes they hold on their systems to see if there is a match. If you decide that this is something you want to do you need to carefully consider the potential legal implications of obtaining such lists, and you will need to explain very clearly how you use that data to your users (especially where the use of such data has led to a password reset or an account lockout).

What should we do about password expirations and resets?

You should only set password expirations if they are absolutely necessary for your particular circumstances. Regular expiry often causes people to change a single strong password for a series of weak passwords. As a general rule, get your users to create a strong initial password and only change them if there are pressing reasons, such as a personal data breach.

When deploying a password reset process you should ensure that it is secure. Do not send passwords over email, even if they are temporary – use one time links, and ensure that you do not leak the credentials in any referral headers. You should also not be in a position where a member of your staff is able to 'read out' a user's password to them, eg over the phone in a service call—this indicates that you are storing passwords in plaintext, which is, as described above, not appropriate. If you require a password to validate a user over the phone, set a separate phone password for the account.

You should also time limit any password reset credentials. The majority of users will probably reset their password immediately, but set a limit that fits your observed user behaviour.

Further reading

Read the FTC's advice about the potential issues with mandatory password changes.

What defences can we put in place against attacks?

Ensure that you are rate limiting or 'throttling' the number and frequency of incorrect login attempts. The precise number of attempts and the consequence of exceeding these limits will be for you to decide based on the specific circumstances of your organisation, but limiting to a certain number per hour, day and month is a good idea. This will help to deter both bulk attackers and people targeting individual accounts.

Example

NIST guidance recommends that accounts with internet access should be limited to 100 consecutive failed attempts on a single account within a 30 day period, unless otherwise specified in the system being deployed.

There are additional considerations when implementing your rate limits:

- you should be aware that some attackers will deliberately work within your limits to avoid detection, and will still achieve a reasonable success rate, especially with targeted guessing;
- set your limits based on observed behaviour of both attackers and your users;
- be aware that overly-aggressive rate limiting can be used as a denial of service attack; and
- remember that a number of successful or unsuccessful access attempts to a range of different user accounts from the same device or IP address might also be indicative of a bulk attack.

You should also consider whether other methods of preventing attacks might be appropriate. Examples of these methods could include, but are not limited to:

- the use of 'CAPTCHAs';
- whitelisting IP addresses; and
- time limits or time delays after failed authentications.

What else do we need to consider?

You will need to address how your system will respond to an attacker who has legitimate credentials for a user, or for multiple users. There is a distinct possibility that you will encounter this scenario given that both password reuse and website breaches are relatively common occurrences.

Techniques for recognising common user behaviour are becoming more advanced, and you could use these to develop a risk-based approach to verifying an authentication attempt. For example, if a user logs in from a new device or IP address you might consider requesting a second authentication factor and informing the user by another contact method of the login attempt. It is however important to remember that collecting additional data from users in order to defend against authentication attacks could itself constitute processing personal data and should operate in compliance with the GDPR. This does not mean you cannot process this data, but you must ensure that you have considered the data protection implications of doing so.

You should consider providing your users with the facility to review a list of unsuccessful login attempts. This will allow people who might be specifically targeted to check for potential attacks manually. However, this will only be useful if you pay attention to reports from individuals that their accounts are being attacked.

You should also consider implementing two-factor or multifactor authentication wherever it is possible to do so - to take the most common example, a password and a one-time token generator. This will be more important where the personal data that can be accessed is of a sensitive nature, or could cause significant harm if it were compromised.

Other examples of a second factor that could be used include biometrics (fingerprints being the most common and easy to implement), smart cards or U2F keys and devices. You will however need to ensure that any processing of biometric data for the purposes of uniquely identifying an individual is done in accordance with the GDPR's requirements for special category data, and/or an appropriate processing condition in Schedule 1 of the Data Protection Act 2018.

In more detail – ICO guidance

Read Protecting personal data in online services: learning from the mistakes of others (PDF) for more information.

For more information on special category data, read the section on key definitions in the Guide to the GDPR.

Further reading

Additional guidance on digital identities, hashing functions and algorithms and passwords in general includes:

- NIST's Special Publication 800-63 on digital identity guidelines;
- NIST's policy on hashing functions;
- ENISA's 2014 report into 'Algorithms, key size and parameters';
- The International Working Group on Data Protection in Telecommunications (the 'Berlin Group') published a Working Paper on biometrics in online authentication in 2016 (PDF);
- Guidance on cryptographic algorithms from the European Payments Council;
- OWASP cheat sheet on password storage;
- The NCSC's password guidance;
- Additional NCSC guidance on the use of multi-factor authentication in online services. Although primarily aimed at large organisations, this guidance summarises the considerations involved in implementing an 'extra factor' for authentication, including the options for those factors; and
- Cynosure Prime's analysis of 320 million leaked passwords from the HaveIBeenPwned website.

Personal data breaches

At a glance

- The GDPR introduces a duty on all organisations to report certain types of personal data breach to the relevant supervisory authority. You must do this within 72 hours of becoming aware of the breach, where feasible.
- If the breach is likely to result in a high risk of adversely affecting individuals' rights and freedoms, you must also inform those individuals without undue delay.
- You should ensure you have robust breach detection, investigation and internal reporting procedures in place. This will facilitate decision-making about whether or not you need to notify the relevant supervisory authority and the affected individuals.
- You must also keep a record of any personal data breaches, regardless of whether you are required to notify.

Checklists

Preparing for a personal data breach

☐ We know how to recognise a personal data breach.

☐ We understand that a personal data breach isn't only about loss or theft of personal data.

☐ We have prepared a response plan for addressing any personal data breaches that occur.

☐ We have allocated responsibility for managing breaches to a dedicated person or team.

☐ Our staff know how to escalate a security incident to the appropriate person or team in our organisation to determine whether a breach has occurred.

Responding to a personal data breach

☐ We have in place a process to assess the likely risk to individuals as a result of a breach.

☐ We know who is the relevant supervisory authority for our processing activities.

☐ We have a process to notify the ICO of a breach within 72 hours of becoming aware of it, even if we do not have all the details yet.

☐ We know what information we must give the ICO about a breach.

☐ We have a process to inform affected individuals about a breach when it is likely to result in a

high risk to their rights and freedoms.

☐ We know we must inform affected individuals without undue delay.

☐ We know what information about a breach we must provide to individuals, and that we should provide advice to help them protect themselves from its effects.

☐ We document all breaches, even if they don't all need to be reported.

In brief

- What is a personal data breach?
- What breaches do we need to notify the ICO about?
- What role do processors have?
- How much time do we have to report a breach?
- What information must a breach notification to the supervisory authority contain?
- What if we don't have all the required information available yet?
- How do we notify a breach to the ICO?
- When do we need to tell individuals about a breach?
- What information must we provide to individuals when telling them about a breach?
- Does the GDPR require us to take any other steps in response to a breach?
- What else should we take into account?
- What happens if we fail to notify?

What is a personal data breach?

A personal data breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This includes breaches that are the result of both accidental and deliberate causes. It also means that a breach is more than just about losing personal data.

Example

Personal data breaches can include:

- access by an unauthorised third party;
- deliberate or accidental action (or inaction) by a controller or processor;
- sending personal data to an incorrect recipient;
- computing devices containing personal data being lost or stolen;
- alteration of personal data without permission; and

- loss of availability of personal data.

A personal data breach can be broadly defined as a security incident that has affected the confidentiality, integrity or availability of personal data. In short, there will be a personal data breach whenever any personal data is lost, destroyed, corrupted or disclosed; if someone accesses the data or passes it on without proper authorisation; or if the data is made unavailable, for example, when it has been encrypted by ransomware, or accidentally lost or destroyed.

Recital 87 of the GDPR makes clear that when a security incident takes place, you should quickly establish whether a personal data breach has occurred and, if so, promptly take steps to address it, including telling the ICO if required.

What breaches do we need to notify the ICO about?

When a personal data breach has occurred, you need to establish the likelihood and severity of the resulting risk to people's rights and freedoms. If it's likely that there will be a risk then you must notify the ICO; if it's unlikely then you don't have to report it. However, if you decide you don't need to report the breach, you need to be able to justify this decision, so you should document it.

In assessing risk to rights and freedoms, it's important to focus on the potential negative consequences for individuals. Recital 85 of the GDPR explains that:

> "A personal data breach may, if not addressed in an appropriate and timely manner, result in physical, material or non-material damage to natural persons such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality of personal data protected by professional secrecy or any other significant economic or social disadvantage to the natural person concerned."

This means that a breach can have a range of adverse effects on individuals, which include emotional distress, and physical and material damage. Some personal data breaches will not lead to risks beyond possible inconvenience to those who need the data to do their job. Other breaches can significantly affect individuals whose personal data has been compromised. You need to assess this case by case, looking at all relevant factors.

Example

The theft of a customer database, the data of which may be used to commit identity fraud, would need to be notified, given the impact this is likely to have on those individuals who could suffer financial loss or other consequences. On the other hand, you would not normally need to notify the ICO, for example, about the loss or inappropriate alteration of a staff telephone list.

So, on becoming aware of a breach, you should try to contain it and assess the potential adverse consequences for individuals, based on how serious or substantial these are, and how likely they are to happen.

For more details about assessing risk, please see section IV of the Article 29 Working Party (WP29) guidelines on personal data breach notification. WP29 has been replaced by the European Data Protection Board (EDPB) which has endorsed these guidelines.

What role do processors have?

If your organisation uses a data processor, and this processor suffers a breach, then under Article 33(2) it must inform you without undue delay as soon as it becomes aware.

Example

Your organisation (the controller) contracts an IT services firm (the processor) to archive and store customer records. The IT firm detects an attack on its network that results in personal data about its clients being unlawfully accessed. As this is a personal data breach, the IT firm promptly notifies you that the breach has taken place. You in turn notify the ICO.

This requirement allows you to take steps to address the breach and meet your breach-reporting obligations under the GDPR.

If you use a processor, the requirements on breach reporting should be detailed in the contract between you and your processor, as required under Article 28. For more details about contracts, please see our guidance on contracts and liabilities between controllers and processors.

How much time do we have to report a breach?

You must report a notifiable breach to the ICO without undue delay, but not later than 72 hours after becoming aware of it. If you take longer than this, you must give reasons for the delay.

Section II of the WP29 Guidelines on personal data breach notification gives more details of when a controller can be considered to have "become aware" of a breach.

What information must a breach notification to the supervisory authority contain?

When reporting a breach, the GDPR says you must provide:

- a description of the nature of the personal data breach including, where possible:
  - the categories and approximate number of individuals concerned; and
  - the categories and approximate number of personal data records concerned;
- the name and contact details of the data protection officer (if your organisation has one) or other contact point where more information can be obtained;
- a description of the likely consequences of the personal data breach; and

- a description of the measures taken, or proposed to be taken, to deal with the personal data breach, including, where appropriate, the measures taken to mitigate any possible adverse effects.

What if we don't have all the required information available yet?

The GDPR recognises that it will not always be possible to investigate a breach fully within 72 hours to understand exactly what has happened and what needs to be done to mitigate it. So Article 33(4) allows you to provide the required information in phases, as long as this is done without undue further delay.

However, we expect controllers to prioritise the investigation, give it adequate resources, and expedite it urgently. You must still notify us of the breach when you become aware of it, and submit further information as soon as possible. If you know you won't be able to provide full details within 72 hours, it is a good idea to explain the delay to us and tell us when you expect to submit more information.

Example

You detect an intrusion into your network and become aware that files containing personal data have been accessed, but you don't know how the attacker gained entry, to what extent that data was accessed, or whether the attacker also copied the data from your system.

You notify the ICO within 72 hours of becoming aware of the breach, explaining that you don't yet have all the relevant details, but that you expect to have the results of your investigation within a few days. Once your investigation uncovers details about the incident, you give the ICO more information about the breach without delay.

How do we notify a breach to the ICO?

To notify the ICO of a personal data breach, please see our pages on reporting a breach.

Remember, in the case of a breach affecting individuals in different EU countries, the ICO may not be the lead supervisory authority. This means that as part of your breach response plan, you should establish which European data protection agency would be your lead supervisory authority for the processing activities that have been subject to the breach. For more guidance on determining who your lead authority is, please see the WP29 guidance on identifying your lead authority, which has been endorsed by the EDPB.

When do we need to tell individuals about a breach?

If a breach is likely to result in a high risk to the rights and freedoms of individuals, the GDPR says you must inform those concerned directly and without undue delay. In other words, this should take place as soon as possible.

A 'high risk' means the threshold for informing individuals is higher than for notifying the ICO. Again, you will need to assess both the severity of the potential or actual impact on individuals as a result of a breach and the likelihood of this occurring. If the impact of the breach is more severe, the risk is higher; if the likelihood of the consequences is greater, then again the risk is higher. In such cases, you will need to promptly inform those affected, particularly if there is a need to mitigate an immediate risk of

damage to them. One of the main reasons for informing individuals is to help them take steps to protect themselves from the effects of a breach.

Example

A hospital suffers a breach that results in an accidental disclosure of patient records. There is likely to be a significant impact on the affected individuals because of the sensitivity of the data and their confidential medical details becoming known to others. This is likely to result in a high risk to their rights and freedoms, so they would need to be informed about the breach.

A university experiences a breach when a member of staff accidentally deletes a record of alumni contact details. The details are later re-created from a backup. This is unlikely to result in a high risk to the rights and freedoms of those individuals. They don't need to be informed about the breach.

If you decide not to notify individuals, you will still need to notify the ICO unless you can demonstrate that the breach is unlikely to result in a risk to rights and freedoms. You should also remember that the ICO has the power to compel you to inform affected individuals if we consider there is a high risk. In any event, you should document your decision-making process in line with the requirements of the accountability principle.

What information must we provide to individuals when telling them about a breach?

You need to describe, in clear and plain language, the nature of the personal data breach and, at least:

- the name and contact details of your data protection officer (if your organisation has one) or other contact point where more information can be obtained;
- a description of the likely consequences of the personal data breach; and
- a description of the measures taken, or proposed to be taken, to deal with the personal data breach and including, where appropriate, of the measures taken to mitigate any possible adverse effects.

Does the GDPR require us to take any other steps in response to a breach?

You should ensure that you record all breaches, regardless of whether or not they need to be reported to the ICO.

Article 33(5) requires you to document the facts relating to the breach, its effects and the remedial action taken. This is part of your overall obligation to comply with the accountability principle, and allows us to verify your organisation's compliance with its notification duties under the GDPR.

As with any security incident, you should investigate whether or not the breach was a result of human error or a systemic issue and see how a recurrence can be prevented – whether this is through better processes, further training or other corrective steps.

What else should we take into account?

The following aren't specific GDPR requirements, but you may need to take them into account when

you've experienced a breach.

It is important to be aware that you may have additional notification obligations under other laws if you experience a personal data breach. For example:

- If you are a communications service provider, you must notify the ICO of any personal data breach within 24 hours under the Privacy and Electronic Communications Regulations (PECR). You should use our PECR breach notification form, rather than the GDPR process. Please see our pages on PECR for more details.
- If you are a UK trust service provider, you must notify the ICO of a security breach, which may include a personal data breach, within 24 hours under the Electronic Identification and Trust Services (eIDAS) Regulation. Where this includes a personal data breach you can use our eIDAS breach notification form or the GDPR breach-reporting process. However, if you report it to us under the GDPR, this still must be done within 24 hours. Please read our Guide to eIDAS for more information.
- If your organisation is an operator of essential services or a digital service provider, you will have incident-reporting obligations under the NIS Directive. These are separate from personal data breach notification under the GDPR. If you suffer an incident that's also a personal data breach, you will still need to report it to the ICO separately, and you should use the GDPR process for doing so.

You may also need to consider notifying third parties such as the police, insurers, professional bodies, or bank or credit card companies who can help reduce the risk of financial loss to individuals.

The EDPR, which has replaced WP29, may issue guidelines, recommendations and best practice advice that may include further guidance on personal data breaches. You should look out for any such future guidance. Likewise, you should be aware of any recommendations issued under relevant codes of conduct or sector-specific requirements that your organisation may be subject to.

What happens if we fail to notify?

Failing to notify a breach when required to do so can result in a significant fine up to 10 million euros or 2 per cent of your global turnover. The fine can be combined the ICO's other corrective powers under Article 58. So it's important to make sure you have a robust breach-reporting process in place to ensure you detect and can notify a breach, on time; and to provide the necessary details.

Further Reading

Relevant provisions in the GDPR - See Articles 33, 34, 58, 83 and Recitals 75, 85-88
External link

In more detail - ICO guidance

- Security
- Accountability and governance
- Draft GDPR guidance on contracts and liabilities between controllers and processors
- Guide to PECR
- Notification of PECR security breaches
- Guide to eIDAS

We are also working to update existing Data Protection Act 1998 guidance to reflect GDPR provisions. In the meantime, our existing guidance on encryption and A practical guide to IT security: ideal for the small business are good starting points.

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 published the following guidelines which have been endorsed by the EDPB:

- Guidelines on personal data breach notification
- Guidelines on lead supervisory authorities
- Lead supervisory authority FAQs

Other resources

Report a security breach
For organisations

International transfers

At a glance

- The GDPR primarily applies to controllers and processors located in the European Economic Area (the EEA) with some exceptions.
- Individuals risk losing the protection of the GDPR if their personal data is transferred outside of the EEA.
- On that basis, the GDPR restricts transfers of personal data outside the EEA, or the protection of the GDPR, unless the rights of the individuals in respect of their personal data is protected in another way, or one of a limited number of exceptions applies.
- A transfer of personal data outside the protection of the GDPR (which we refer to as a 'restricted transfer'), most often involves a transfer from inside the EEA to a country outside the EEA.

Checklist

1. Are we planning to make a restricted transfer of personal data outside of the EEA?

If no, you can make the transfer. If yes go to Q2

2. Do we need to make a restricted transfer of personal data in order to meet our purposes?

If no, you can make the transfer without any personal data. If yes go to Q3

3. Has the EU made an 'adequacy decision' in relation to the country or territory where the receiver is located or a sector which covers the receiver?

If yes, you can make the transfer. If no go to Q4

4. Have we put in place one of the 'appropriate safeguards' referred to in the GDPR?

If yes, you can make the transfer. If no go to Q5

5. Does an exception provided for in the GDPR apply?

If yes, you can make the transfer. If no you cannot make the transfer in accordance with the GDPR

If you reach the end without finding a provision which permits the restricted transfer, you will be unable to make that restricted transfer in accordance with the GDPR.

In brief

- What are the restrictions on international transfers?
- Are we making a transfer of personal data outside the EEA?
- Do we need to make a restricted transfer?
- How do we make a restricted transfer in accordance with the GDPR?
- Is the restricted transfer covered by an 'adequacy decision'?
- Is the restricted transfer covered by appropriate safeguards?
- Is the restricted transfer covered by an exception?
- How will this change if we leave the EU without a deal?

What are the restrictions on international transfers?

The GDPR restricts the transfer of personal data to countries outside the EEA, or international

organisations. These restrictions apply to all transfers, no matter the size of transfer or how often you carry them out.

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state and each EEA state. It adopts guidelines for complying with the requirements of the GDPR.

The EDPB is currently working on its guidance in relation to International Transfers, and we will update our guide as this is published.

Further Reading

Relevant provisions in the GDPR – see Article 44 and Recitals 101-102
External link

Are we making a transfer of personal data outside the EEA?

1) Are we making a restricted transfer?

You are making a restricted transfer if:

- the GDPR applies to your processing of the personal data you are transferring. The scope of the GDPR is set out in Article 2 (what is processing of personal data) and Article 3 (where the GDPR applies). Please see the section of the guide What is personal data. We will be providing guidance on where the GDPR applies later this year. In general, the GDPR applies if you are processing personal data in the EEA, and may apply in specific circumstances if you are outside the EEA and processing personal data about individuals in the EEA;
- you are sending personal data, or making it accessible, to a receiver to which the GDPR does not apply. Usually because they are located in a country outside the EEA; and
- the receiver is a separate organisation or individual. This includes transfers to another company within the same corporate group. However, if you are sending personal data to someone employed by you or by your company, this is not a restricted transfer. The transfer restrictions only apply if you are sending personal data outside your organisation.

Example

A UK company uses a centralised human resources service in the United States provided by its parent company. The UK company passes information about its employees to its parent company in connection with the HR service. This is a restricted transfer.

Example

A UK company sells holidays in Australia. It sends the personal data of customers who have bought the holidays to the hotels they have chosen in Australia in order to secure their bookings. This is a restricted transfer.

Transfer does not mean the same as transit. If personal data is just electronically routed through a non-EEA country but the transfer is actually from one EEA country to another EEA country, then it is not a restricted transfer.

Example

Personal data is transferred from a controller in France to a controller in Ireland (both countries in the EEA) via a server in Australia. There is no intention that the personal data will be accessed or manipulated while it is in Australia. Therefore the transfer is only to Ireland.

You are making a restricted transfer if you collect information about individuals on paper, which is not ordered or structured in any way, and you send this to a service company located outside of the EEA, to:

- put into digital form; or
- add to a highly structured manual filing system relating to individuals.

Example

A UK insurance broker sends a set of notes about individual customers to a company in a non-EEA country. These notes are handwritten and are not stored on computer or in any particular order. The non-EEA company adds the notes to a computer customer management system. This is a restricted transfer.

Putting personal data on to a website will often result in a restricted transfer. The restricted transfer takes place when someone outside the EEA accesses that personal data via the website.

If you load personal data onto a UK server which is then available through a website, and you plan or anticipate that the website may be accessed from outside the EEA, you should treat this as a restricted transfer.

2) Is it to a country outside the EEA?

The EEA countries consist of the EU member states and the EFTA States.

The EU member states are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

The **EEA** states are Iceland, Norway and Liechtenstein. The EEA Joint Committee has made a decision that the GDPR applies to those countries and transfers to those countries are not restricted.

Further Reading

Relevant provisions in the legislation - see GDPR Article 44 and Recital 101
External link

Do we need to make a restricted transfer?

Before making a restricted transfer you should consider whether you can achieve your aims without actually sending personal data.

If you make the data anonymous so that it is never possible to identify individuals (even when combined with other information which is available to receiver), it is not personal data. This means that the restrictions do not apply and you are free to transfer the anonymised data outside the EEA.

Further Reading

Relevant provisions in the legislation – see GDPR Article 44 and Recital 26
External link

How do we make a restricted transfer in accordance with the GDPR?

You must work through the following questions, in order.

If by the last question, you are still unable to make the restricted transfer, then it will be in breach of the GDPR.

Is the restricted transfer covered by an 'adequacy decision'?

If you are making a restricted transfer then you need to know whether it is covered by an EU Commission "adequacy decision".

This decision is a finding by the Commission that the legal framework in place in that country, territory, sector or international organisation provides 'adequate' protection for individuals' rights and freedoms for their personal data.

Adequacy decisions made prior to GDPR remain in force unless there is a further Commission decision which decides otherwise. The Commission plans to review these decisions at least once every four years.

If it is covered by an adequacy decision, you may go ahead with the restricted transfer. Of course, you must still comply with the rest of the GDPR.

All EU Commission adequacy decisions to date also cover restricted transfers made from EEA states. The EEA Joint Committee will need to make a formal decision to adopt any future EU Commission adequacy decisions, for them to cover restricted transfers from EEA states.

1) What 'adequacy decisions' have there been?

As at February 2019 the Commission has made a full finding of adequacy about the following countries and territories:

Andorra, Argentina, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay.

The Commission has made partial findings of adequacy about Japan, Canada and the USA.

- The adequacy finding for Japan only covers private sector organisations.
- The adequacy finding for Canada only covers data that is subject to Canada's Personal Information Protection and Electronic Documents Act (PIPEDA). Not all data is subject to PIPEDA. For more details please see the Commission's FAQs on the adequacy finding on the Canadian PIPEDA.
- The adequacy finding for the USA is only for personal data transfers covered by the EU-US Privacy Shield framework.

The Privacy Shield places requirements on US companies certified by the scheme to protect personal data and provides for redress mechanisms for individuals. US Government departments such as the Department of Commerce oversee certification under the scheme.

If you want to transfer personal data to a US organisation under the Privacy Shield, you need to:

- check on the Privacy Shield list to see whether the organisation has a current certification; and
- make sure the certification covers the type of data you want to transfer.

You can view an up to date list of the countries which have an adequacy finding on the European Commission's data protection website. You should check back regularly for any changes.

2) What if there is no adequacy decision?

You should move on to the next section Is the transfer covered by appropriate safeguards?

Further Reading

Relevant provisions in the legislation – see GDPR Article 45 and Recitals 103-107 and 169
External link

In more detail - ICO guidance

Using the privacy shield to transfer data to the US

Other resources

See the Privacy Shield website for more information.

Is the restricted transfer covered by appropriate safeguards?

If there is no 'adequacy decision' about the country, territory or sector for your restricted transfer, you should then find out whether you can make the transfer subject to 'appropriate safeguards', which are listed in the GDPR.

These appropriate safeguards ensure that both you and the receiver of the transfer are legally required to protect individuals' rights and freedoms for their personal data.

If it is covered by an appropriate safeguards, you may go ahead with the restricted transfer. Of course, you must still comply with the rest of the GDPR.

Each appropriate safeguard is set out below:

1. A legally binding and enforceable instrument between public authorities or bodies

You can make a restricted transfer using a legal instrument between two public authorities or bodies provided that the legal instrument provides 'appropriate safeguards' for the rights of the individuals whose personal data is being transferred and it is legally binding and enforceable. The 'appropriate safeguards' must include enforceable rights and effective remedies for the individuals whose personal data is transferred.

If you are a public authority or body which does not have the power to enter into legally binding and enforceable instruments, you may consider an administrative arrangement which includes enforceable and effective individual rights.

Further Reading

Relevant provisions in the legislation – see GDPR Article 46 and Recitals 108-109 and 114
External link

2. Binding corporate rules

You can make a restricted transfer if both you and the receiver have signed up to a group document called binding corporate rules (BCRs).

BCRs are an internal code of conduct operating within a multinational group, which applies to restricted transfers of personal data from the group's EEA entities to non-EEA group entities.

This may be a corporate group or a group of undertakings or enterprises engaged in a joint economic activity, such as franchises or joint ventures.

You must submit BCRs for approval to an EEA supervisory authority in an EEA country where one of the companies is based. Usually this is where the EEA head office is located, but it does not need to be. The criteria for choosing the lead authority for BCRs is laid down in the "Working Document Setting Forth a Co-Operation Procedure for the approval of "Binding Corporate Rules" for controllers and processors under the GDPR" (see "In more detail" below).

One or two other supervisory authorities will be involved in the review and approval of BCRs (depending

on how many EEA countries you are making restricted transfers from). These will be supervisory authorities where other companies signing up to those BCRs are located.

The concept of using BCRs to provide adequate safeguards for making restricted transfers was developed by the Article 29 Working Party in a series of working documents. These form a 'toolkit' for organisations. The documents, including application forms and guidance have all been revised and updated in line with GDPR (see "In more detail" below).

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state and each EEA state. It adopts guidelines for complying with the requirements of the GDPR.

WP29 adopted the following guidelines, which have been endorsed by the EDPB:

Table of elements and principles for controller BCRs (WP256)

Table of elements and principles for processor BCRs (WP257)

Co-Operation Procedure for the approval of "Binding Corporate Rules (WP263.01)

Application Form BCR -C (WP264)

Application Form BCR – P (WP265)

Further Reading

Relevant provisions in the legislation – see GDPR Articles 46-47 and Recitals 108-110 and 114
External link

3. Standard data protection clauses adopted by the Commission

You can make a restricted transfer if you and the receiver have entered into a contract incorporating standard data protection clauses adopted by the Commission.

These are known as the 'standard contractual clauses' (sometimes as 'model clauses'). There are four sets which the Commission adopted under the Directive. They must be entered into by the data exporter (based in the EEA) and the data importer (outside the EEA).

The clauses contain contractual obligations on the data exporter and the data importer, and rights for the individuals whose personal data is transferred. Individuals can directly enforce those rights against the data importer and the data exporter.

There are two sets of standard contractual clauses for restricted transfers between a controller and controller, and two sets between a controller and processor. The earlier set of clauses between a controller and processor can no longer be used for new contracts, and are only valid for contracts entered into prior to 2010.

The Commission plans to update the existing standard contractual clauses for the GDPR. Until then, you can still enter into contracts which include the Directive-based standard contractual clauses. Please keep

checking the websites of the ICO and the Commission for further information.

Existing contracts incorporating standard contractual clauses can continue to be used for restricted transfers (even once the Commission has adopted GDPR standard contractual clauses).

If you are entering into a new contract, you must use the standard contractual clauses **in their entirety and without amendment**. You can include additional clauses on business related issues, provided that they do not contradict the standard contractual clauses. You can also add parties (i.e. additional data importers or exporters) provided they are also bound by the standard contractual clauses.

If you are making a restricted transfer from a controller to another controller, you can choose which set of clauses to use, depending on which best suits your business arrangements.

Example

A family books a holiday in Australia with a UK travel company. The UK travel company sends details of the booking to the Australian hotel.

Each company is a separate controller, as it is processing the personal data for its own purposes and making its own decisions.

The contract between the UK travel company and the hotel should use controller to controller standard contractual clauses.

If you are making a restricted transfer from a controller to a processor, you also need to comply with the GDPR requirements about using processors.

In more detail

The Commission published the following standard contractual clauses:

2001 controller to controller

2004 controller to controller

2010 controller to processor

The ICO has produced template contracts you can use, which include more explanatory notes and guidance:

- Controller to controller
- Controller to processor

Further Reading

Relevant provisions in the legislation – see GDPR Article 46 and Recitals 108-109 and 114

External link

4. Standard data protection clauses adopted by a supervisory authority and approved by the Commission.

You can make a restricted transfer from the UK if you enter into a contract incorporating standard data protection clauses adopted by the ICO.

However, neither the ICO nor any other EEA supervisory authority has yet adopted any standard data protection clauses.

They are likely to be similar to those adopted by the Commission (above), but will be first adopted by the supervisory authority and then approved by the Commission.

We will add more details about using this option in due course.

Further Reading

Relevant provisions in the legislation – see GDPR Article 46 and Recitals 108-109 and 114
External link

5. An approved code of conduct together with binding and enforceable commitments of the receiver outside the EEA

You can make a restricted transfer if the receiver has signed up to a code of conduct, which has been approved by a supervisory authority. The code of conduct must include appropriate safeguards to protect the rights of individuals whose personal data transferred, and which can be directly enforced.

The GDPR endorses the use of approved codes of conduct to demonstrate compliance with its requirements.

This option is newly introduced by the GDPR and no approved codes of conduct are yet in use. We will add more details about this option in due course.

Further Reading

Relevant provisions in the legislation – see GDPR Article 46 and Recitals 108-109 and 114
External link

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state and each EEA state. It adopts guidelines for complying with the requirements of the GDPR.

The EDPB is producing guidance on codes of conduct, in general and in relation to restricted transfers, which will be published in due course.

6. Certification under an approved certification mechanism together with binding and enforceable commitments of the receiver **outside the EEA**

You can make a restricted transfer if the receiver has a certification, under a scheme approved by a supervisory authority. The certification scheme must include appropriate safeguards to protect the rights of individuals whose personal data transferred, and which can be directly enforced.

The GDPR also endorses the use of approved certification mechanisms to demonstrate compliance with its requirements.

This option is newly introduced by the GDPR and no approved certification schemes are yet in use. We will add more details about this option in due course.

Further Reading

Relevant provisions in the legislation – see GDPR Article 46 and Recitals 108-109 and 114
External link

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state and each EEA state. It adopts guidelines for complying with the requirements of the GDPR.

The EDPB is producing guidance on certification schemes, in general and in relation to restricted transfers, which will be published in due course.

7. Contractual clauses authorised by a supervisory authority

You can make a restricted transfer if you and the receiver have entered into a bespoke contract governing a specific restricted transfer which has been individually authorised by the supervisory authority of the country from which the personal data is being exported. If you are making a restricted transfer from the UK, the ICO will have had to have approved the contract.

At present the ICO is not authorising any such bespoke contracts, until guidance has been produced by the EDPB.

8. Administrative arrangements between public authorities or bodies which include enforceable and effective rights for the individuals whose personal data is transferred, and which have been authorised by a supervisory authority.

You can make a restricted transfer using:

- An administrative arrangement (usually a document, such as a memorandum of understanding) between two public authorities or bodies where at least one of those public authorities or bodies does not have the power to enter into a binding contract.
- The administrative arrangement must set out 'appropriate safeguards' for the rights of the individuals whose personal data is to be transferred. The 'appropriate safeguards' must include effective and enforceable rights for the individuals whose personal data is transferred.

- The administrative arrangement must be individually authorised by the supervisory authority in the country (or countries) from which you are making the restricted transfer. If the restricted transfer is to be made from the UK, the ICO must approve it. If the restricted transfer is to be made from several countries, this approval may only be given once the European Data Protection Board has issued its opinion, approving the administrative arrangement.

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state and each EEA state. It adopts guidelines for complying with the requirements of the GDPR.

The EDPB is producing guidance on administrative arrangements, which will be published in due course.

Further Reading

Relevant provisions in the legislation – see GDPR Article 46 and Recitals 108-109 and 114
External link

What if the restricted transfer is not covered by appropriate safeguards?

If the restricted transfer is not covered by appropriate safeguards, then you need to consider the next question: Is the restricted transfer covered by an exception?

Is the restricted transfer covered by an exception?

If you are making a restricted transfer that is not covered by an adequacy decision, nor an appropriate safeguard, then you can only make that transfer if it is covered by one of the 'exceptions' set out in Article 49 of the GDPR.

You should only use these as true 'exceptions' from the general rule that you should not make a restricted transfer unless it is covered by an adequacy decision or there are appropriate safeguards in place.

If it is covered by an exception, you may go ahead with the restricted transfer. Of course, you must still comply with the rest of the GDPR.

Each exception is set out below:

Exception 1. Has the individual given his or her explicit consent to the restricted transfer?

Please see the section on consent as to what is required for a valid explicit consent under the GDPR.

As a valid consent must be both specific and informed, you must provide the individual with precise details about the restricted transfer. You cannot obtain a valid consent for restricted transfers in general.

You should tell the individual:

- the identity of the receiver, or the categories of receiver;
- the country or countries to which the data is to be transferred;
- why you need to make a restricted transfer;
- the type of data;
- the individual's right to withdraw consent; and
- the possible risks involved in making a transfer to a country which does not provide adequate protection for personal data and without any other appropriate safeguards in place. For example, you might explain that there will be no local supervisory authority, and no (or only limited) individual data protection or privacy rights.

Given the high threshold for a valid consent, and that the consent must be capable of being withdrawn, this may mean that using consent is not a feasible solution.

Exception 2. Do you have a contract with the individual? Is the restricted transfer necessary for you to perform that contract?

Are you about to enter into a contract with the individual? Is the restricted transfer necessary for you to take steps requested by the individual in order to enter into that contract?

This exception explicitly states that it can only be used for **occasional** restricted transfers. This means that the restricted transfer may happen more than once but not regularly. If you are regularly making restricted transfers, you should be putting in place an appropriate safeguard.

The transfer must also be **necessary**, which means that you cannot perform the core purpose of the contract or the core purpose of the steps needed to enter into the contract, without making the restricted transfer. It does not cover a transfer for you to use a cloud based IT system.

Example

A UK travel company offering bespoke travel arrangements may rely on this exception to send personal data to a hotel in Peru, provided that it does not regularly arrange for its customers to stay at that hotel. If it did, it should consider using an appropriate safeguard, such as the the standard contractual clauses.

It is only necessary to send limited personal data for this purpose, such as the name of the guest, the room required and the length of stay.

Example of necessary steps being taken at the individual's request in order to enter into a contract: Before the package is confirmed (and the contract entered into), the individual wishes to reserve a room in the Peruvian hotel. The UK travel company has to send the Peruvian hotel the name of the customer in order to hold the room.

Public authorities cannot rely on this exception when exercising their public powers.

Exception 3. Do you have (or are you entering into) a contract with an individual which benefits another individual whose data is being transferred? Is that transfer necessary for you to either enter into that contract or perform that contract?

As set out in Exception 2, you may only use this exception for occasional transfers, and the transfer must be necessary for you to perform the core purposes of the contract or to enter into that contract.

You may rely on both Exceptions 2 and 3: Exception 2 for the individual entering into the contract and Exception 3 for other people benefiting from that contract, often family members.

Exceptions 2 and 3 are not identical. You cannot rely on Exception 3 for any restricted transfers needed for steps taken prior to entering in to the contract.

Public authorities cannot rely on this exception when exercising their public powers.

Example

Following the Exception 2 example, Exception 3 may apply if the customer is buying the travel package for themselves and their family. Once the customer has bought the package with the UK travel company, it may be necessary to send the names of the family members to Peruvian hotel in order to book the rooms.

Exception 4: You need to make the restricted transfer for important reasons of public interest.

There must be an EU or UK law which states or implies that this type of transfer is allowed for important reasons of public interest, which may be in the spirit of reciprocity for international co-operation. For example an international agreement or convention (which the UK or EU has signed) that recognises certain objectives and provides for international co-operation (such as the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism).

This can be relied upon by both public and private entities.

If a request is made by a non-EEA authority, requesting a restrictive transfer under this exception, and there is an international agreement such as a mutual assistance treaty (MLAT), you should consider referring the request to the existing MLAT or agreement.

You should not rely on this exception for systematic transfers. Instead, you should consider one of the appropriate safeguards. You should only use it in specific situations, and each time you should satisfy yourself that the transfer is necessary for an important reason of public interest.

Exception 5: You need to make the restricted transfer to establish if you have a legal claim, to make a legal claim or to defend a legal claim.

This exception explicitly states that you can only use it for **occasional** transfers. This means that the transfer may happen more than once but not regularly. If you are regularly transferring personal data, you should put in place an appropriate safeguard.

The transfer must be necessary, so there must be a close connection between the need for the transfer and the relevant legal claim.

The claim must have a basis in law, and a formal legally defined process, but it is not just judicial or administrative procedures. This means that you can interpret what is a legal claim quite widely, to cover, for example:

- all judicial legal claims, in civil law (including contract law) and criminal law. The court procedure does not need to have been started, and it covers out-of-court procedures. It covers formal pre-trial discovery procedures.
- administrative or regulatory procedures, such as to defend an investigation (or potential investigation) in anti-trust law or financial services regulation, or to seek approval for a merger.

You cannot rely on this exception if there is only the mere possibility that a legal claim or other formal proceedings may be brought in the future.

Public authorities can rely on this exception, in relation to the exercise of their powers.

Exception 6: You need to make the restricted transfer to protect the vital interests of an individual. He or she must be physically or legally incapable of giving consent.

This applies in a medical emergency where the transfer is needed in order to give the medical care required. The imminent risk of serious harm to the individual must outweigh any data protection concerns.

You cannot rely on this exception to carry out general medical research.

If the individual is physically and legally capable of giving consent, then you cannot rely on this exception.

For detail as to what is considered a 'vital interest' under the GDPR, please see the section on vital interests as a condition of processing special category data.

For detail as to what is 'consent' under the GDPR please see the section on consent.

Exception 7: You are making the restricted transfer from a public register.

The register must be created under UK or EU law and must be open to either:

- the public in general; or
- any person who can demonstrate a legitimate interest.

For example, registers of companies, associations, criminal convictions, land registers or public vehicle registers. The whole of the register cannot be transferred, nor whole categories of personal data.

The transfer must comply with any general laws which apply to disclosures from the public register. If the register has been established at law and access is only given to those with a legitimate interest, part of that assessment must take into account the data protection rights of the individuals whose personal data is to be transferred. This may include consideration of the risk to that personal data by transferring it to a country with less protection.

This does not cover registers run by private companies, such as credit reference databases.

Exception 8: you are making a one-off restricted transfer and it is in your compelling legitimate interests.

If you cannot rely on any of the other exceptions, there is one final exception to consider. This exception

should not be relied on lightly and never routinely as it is only for truly exceptional circumstances.

For this exception to apply to your restricted transfer:

1. there must be no adequacy decision which applies.
2. you are unable to use any of the other appropriate safeguards. You must give serious consideration to this, even if it would involve significant investment from you.
3. none of the other exceptions apply. Again, you must give serious consideration to the other exceptions. It may be that you can obtain explicit consent with some effort or investment.
4. your transfer must not be repetitive – that is it may happen more than once but not regularly.
5. the personal data must only relate to a limited number of individuals. There is no absolute threshold for this. The number of individuals involved should be part of the balancing exercise you must undertake in para (g) below.
6. The transfer must be necessary for your compelling legitimate interests. Please see the section of the guide on legitimate interests as a lawful basis for processing, but bearing mind that this exception requires a higher standard, as it must be a compelling legitimate interest. An example is a transfer of personal data to protect a company's IT systems from serious immediate harm.
7. On balance, your compelling legitimate interests outweigh the rights and freedoms of the individuals.
8. You have made a full assessment of the circumstances surrounding the transfer and provided suitable safeguards to protect the personal data. Suitable safeguards might be strict confidentiality agreements, a requirement for data to be deleted soon after transfer, technical controls to prevent the use of the data for other purposes, or sending pseudonymised or encrypted data. This must be recorded in full in your documentation of your processing activities.
9. You have informed the ICO of the transfer. We will ask to see full details of all the steps you have taken as set out above.
0. You have informed the individual of the transfer and explained your compelling legitimate interest to them.

Further Reading

Relevant provisions in the legislation – see GDPR Article 49 and Recitals 111-112
External link

In more detail - European Data Protection Board

The European Data Protection Board (EDPB), which has replaced the Article 29 Working Party (WP29), includes representatives from the data protection authorities of each EU member state and each EEA state. It adopts guidelines for complying with the requirements of the GDPR.

The EDPB adopted Guidelines 2/2018 on derogations of Article 49 under Regulation 2016/679

How will this change if we leave the EU without a deal?

Restricted transfers from the UK to countries outside the UK, including to the EEA, will be subject to

transfer rules under the UK regime. These UK transfer rules will mirror the current GDPR rules.

The UK government has confirmed that, when the UK exits the EU, transfers from the UK to the EEA will not be restricted. There will be transitional provisions for a UK adequacy decision to cover these transfers.

Rules on transfers to countries outside the EEA will remain similar to current GDPR rules. Although the UK will make its own adequacy decisions after exit, the UK government has confirmed that it intends to recognise existing EU adequacy decisions, approved EU SCCs and BCRs wherever possible.

Transfers from the EEA to the UK will need to comply with GDPR transfer restrictions.

Further reading - ICO guidance

See our page on Data protection and Brexit, which has links to all of our latest guidance and resources.

For organisations

Exemptions

At a glance

- The GDPR and the Data Protection Act 2018 set out exemptions from some of the rights and obligations in some circumstances.
- Whether or not you can rely on an exemption often depends on why you process personal data.
- You should not routinely rely on exemptions; you should consider them on a case-by-case basis.
- You should justify and document your reasons for relying on an exemption.
- If no exemption covers what you do with personal data, you need to comply with the GDPR as normal.

Checklists

Exemptions

☐ We consider whether we can rely on an exemption on a case-by-case basis.

☐ Where appropriate, we carefully consider the extent to which the relevant GDPR requirements would be likely to prevent, seriously impair, or prejudice the achievement of our processing purposes.

☐ We justify and document our reasons for relying on an exemption.

☐ When an exemption does not apply (or no longer applies) to our processing of personal data, we comply with the GDPR's requirements as normal.

In brief

- What's new under the GDPR and the Data Protection Act 2018?
- What are exemptions?
- How do exemptions work?
- What exemptions are available?

What's new under the GDPR and the Data Protection Act 2018?

Not much has changed. Most of the exemptions in the Data Protection Act 1998 (the 1998 Act) are included as exceptions built in to certain GDPR provisions or exemptions in the Data Protection Act 2018 (the DPA 2018).

The ‘domestic purposes’ exemption in the 1998 Act is not replicated. This is because the GDPR does not apply to personal data processed in the course of a purely personal or household activity, with no connection to a professional or commercial activity.

If you used to rely on certain exemptions under the 1998 Act, the things you are exempt from may have changed slightly under the GDPR and the DPA 2018. You should check what is covered by the exemptions in the DPA 2018 and ensure that your use of any of the exemptions is appropriate and compliant.

What are exemptions?

In some circumstances, the DPA 2018 provides an exemption from particular GDPR provisions. If an exemption applies, you may not have to comply with all the usual rights and obligations.

There are several different exemptions; these are detailed in Schedules 2-4 of the DPA 2018. They add to and complement a number of exceptions already built in to certain GDPR provisions.

This part of the Guide focuses on the exemptions in Schedules 2-4 of the DPA 2018. We give guidance on the exceptions built in to the GDPR in the parts of the Guide that relate to the relevant provisions.

The exemptions in the DPA 2018 can relieve you of some of your obligations for things such as:

- the right to be informed;
- the right of access;
- dealing with other individual rights;
- reporting personal data breaches; and
- complying with the principles.

Some exemptions apply to only one of the above, but others can exempt you from several things.

Some things are not exemptions. This is simply because they are not covered by the GDPR. Here are some examples:

- **Domestic purposes** – personal data processed in the course of a purely personal or household activity, with no connection to a professional or commercial activity, is outside the GDPR’s scope. This means that if you only use personal data for such things as writing to friends and family or taking pictures for your own enjoyment, you are not subject to the GDPR.
- **Law enforcement** – the processing of personal data by competent authorities for law enforcement purposes is outside the GDPR’s scope (e.g. the Police investigating a crime). Instead, this type of processing is subject to the rules in Part 3 of the DPA 2018. See our Guide to Law Enforcement Processing for further information.
- **National security** – personal data processed for the purposes of safeguarding national security or defence is outside the GDPR’s scope. However, it is covered by Part 2, Chapter 3 of the DPA 2018 (the ‘applied GDPR’), which contains an exemption for national security and defence.

How do exemptions work?

Whether or not you can rely on an exemption generally depends on your purposes for processing

personal data.

Some exemptions apply simply because you have a particular purpose. But others only apply to the extent that complying with the GDPR would:

- be likely to *prejudice* your purpose (e.g. have a damaging or detrimental effect on what you are doing); or
- *prevent* or *seriously impair* you from processing personal data in a way that is *required* or *necessary* for your purpose.

Exemptions should not routinely be relied upon or applied in a blanket fashion. You must consider each exemption on a case-by-case basis.

If an exemption does apply, sometimes you will be obliged to rely on it (for instance, if complying with GDPR would break another law), but sometimes you can choose whether or not to rely on it.

In line with the accountability principle, you should justify and document your reasons for relying on an exemption so you can demonstrate your compliance.

If you cannot identify an exemption that covers what you are doing with personal data, you must comply with the GDPR as normal.

What exemptions are available?

Crime, law and public protection

- Crime and taxation: general
- Crime and taxation: risk assessment
- Information required to be disclosed by law or in connection with legal proceedings
- Legal professional privilege
- Self incrimination
- Disclosure prohibited or restricted by an enactment
- Immigration
- Functions designed to protect the public
- Audit functions
- Bank of England functions

Regulation, parliament and the judiciary

- Regulatory functions relating to legal services, the health service and children's services
- Other regulatory functions
- Parliamentary privilege
- Judicial appointments, independence and proceedings
- Crown honours, dignities and appointments

Journalism, research and archiving

- Journalism, academia, art and literature
- Research and statistics
- Archiving in the public interest

Health, social work, education and child abuse

- Health data – processed by a court
- Health data – an individual's expectations and wishes
- Health data – serious harm
- Health data – restriction of the right of access
- Social work data – processed by a court
- Social work data – an individual's expectations and wishes
- Social work data – serious harm
- Social work data – restriction of the right of access
- Education data – processed by a court
- Education data – serious harm
- Education data – restriction of the right of access
- Child abuse data

Finance, management and negotiations

- Corporate finance
- Management forecasts
- Negotiations

References and exams

- Confidential references
- Exam scripts and exam marks

Subject access requests – information about other people

- Protection of the rights of others

Crime and taxation: general

There are two parts to this exemption. The first part can apply if you process personal data for the purposes of:

- the prevention and detection of crime;

- the apprehension or prosecution of offenders; or
- the assessment or collection of a tax or duty or an imposition of a similar nature.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling;
- notifying individuals of personal data breaches;
- the lawfulness, fairness and transparency principle, except the requirement for processing to be lawful;
- the purpose limitation principle; and
- all the other principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with these provisions would be likely to *prejudice* your purposes of processing. If this is not so, you must comply with the GDPR as normal.

Example

A bank conducts an investigation into suspected financial fraud. The bank wants to pass its investigation file, including the personal data of several customers, to the National Crime Agency (NCA) for further investigation. The bank's investigation and proposed disclosure to the NCA are for the purposes of the prevention and detection of crime. The bank decides that, were it to inform the individuals in question about this processing of their personal data, this would be likely to prejudice the investigation because they might abscond or destroy evidence. So the bank relies on the crime and taxation exemption and, in this case, does not comply with the right to be informed.

The second part of this exemption applies when another controller obtains personal data processed for any of the purposes mentioned above for the purposes of discharging statutory functions. The controller that obtains the personal data is exempt from the GDPR provisions below to the same extent that the original controller was exempt:

- The right to be informed.
- The right of access.
- All the principles, but only so far as they relate to the right to be informed and the right of access.

Note that if you are a competent authority processing personal data for law enforcement purposes (e.g. the Police conducting a criminal investigation), your processing is subject to the rules of Part 3 of the DPA 2018. See our Guide to Law Enforcement Processing for information on how individual rights may be restricted when personal data is processed for law enforcement purposes by competent authorities.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 1,

Paragraph 2
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1) and (2), 18(1), 19, 20(1) and (2), 21(1), and 34(1) and (4)
External link

Crime and taxation: risk assessment

This exemption can apply to personal data in a classification applied to an individual as part of a risk assessment system.

The risk assessment system must be operated by a government department, local authority, or another authority administering housing benefit, for the purposes of:

- the assessment or collection of a tax or duty; or
- the prevention or detection of crime or the apprehension or prosecution of offenders, where the offence involves the unlawful use of public money or an unlawful claim for payment out of public money.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access;
- all the principles, but only so far as they relate to the right to be informed and the right of access.

But the exemption only applies to the extent that complying with these provisions would *prevent* the risk assessment system from operating *effectively*. If this is not so, you must comply with these provisions as normal.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 1, Paragraph 3
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), and 15(1)-(3)
External link

Information required to be disclosed by law or in connection with legal proceedings

This exemption has three parts. The first part can apply if you are *required* by law to make personal data available to the public.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling;
- the lawfulness, fairness and transparency principle, except the requirement for processing to be lawful;
- the purpose limitation principle; and
- all the other principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with these provisions would *prevent* you meeting your legal obligation to make personal data publicly available.

Example

The Registrar of Companies is legally obliged to maintain a public register of certain information about companies, including the names and (subject to certain restrictions) addresses of company directors. A director asks to exercise his right to erasure by having his name and address removed from the register. The request does not need to be complied with as it would prevent the Registrar meeting his legal obligation to make that information publicly available.

The second part of this exemption can apply if you are *required* by law, or court order, to disclose personal data to a third party. It exempts you from the same provisions as above, but only to the extent that complying with those provisions would *prevent* you disclosing the personal data.

Example

An employer receives a court order to hand over the personnel file of one of its employees to an insurance company for the assessment of a claim. Normally, the employer would not be able to disclose this information because doing so would be incompatible with the original purposes for collecting the data (contravening the purpose limitation principle). However, on this occasion the employer is exempt from the purpose limitation principle's requirements because it would prevent the employer disclosing personal data that it must do by court order.

The third part of this exemption can apply if it is *necessary* for you to disclose personal data for the purposes of, or in connection with:

- legal proceedings, including prospective legal proceedings;
- obtaining legal advice; or
- establishing, exercising or defending legal rights.

It exempts you from the same provisions as above, but only to the extent that complying with them would *prevent* you disclosing the personal data. If complying with these provisions would not prevent

the disclosure, you cannot rely on the exemption.

Further Reading

> Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 1, Paragraph 5
> External link

> Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), and 21(1)
> External link

Legal professional privilege

This exemption applies if you process personal data:

- to which a claim to legal professional privilege (or confidentiality of communications in Scotland) could be maintained in legal proceedings; or
- in respect of which a duty of confidentiality is owed by a professional legal adviser to his client.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access; and
- all the principles, but only so far as they relate to the right to be informed and the right of access.

Further Reading

> Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 4, Paragraph 19
> External link

> Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), and 15(1)-(3)
> External link

Self incrimination

This exemption can apply if complying with the GDPR provisions below would reveal evidence that you have committed an offence.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access; and
- all the principles, but only so far as they relate to the right to be informed and the right of access.

But the exemption only applies to the extent that complying with these provisions would expose you to proceedings for the offence.

This exemption does not apply to an offence under the DPA 2018 or an offence regarding false statements made otherwise than on oath.

But any information you do provide to an individual in response to a subject access request is not admissible against you in proceedings for an offence under the DPA 2018.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 4, Paragraph 20
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), and 15(1)-(3)
External link

Disclosure prohibited or restricted by an enactment

Five separate exemptions apply to personal data that is prohibited or restricted from disclosure by an enactment.

Each of them exempts you from the GDPR's provisions on:

- the right of access; and
- all the principles, but only so far as they relate to the right of access.

But the exemptions only apply to personal data restricted or prohibited from disclosure by certain specific provisions of enactments covering:

- human fertilisation and embryology;
- adoption;
- special educational needs;
- parental orders; and
- children's hearings.

If you think any of these exemptions might apply to your processing of personal data, see Schedule 4 of the DPA 2018 for full details of the enactments that are covered.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemptions) - Schedule 4
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5 and 15(1)-(3)
External link

Immigration

There are two parts to this exemption. The first part can apply if you process personal data for the purposes of maintaining effective immigration control, including investigatory/detection work (the immigration purposes).

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access;
- the right to erasure;
- the right to restrict processing;
- the right to object;
- all the principles, but only so far as they relate to the rights to be informed, of access, to erasure, to restrict processing and to object.

But the exemption only applies to the extent that applying these provisions would be likely to *prejudice* processing for the immigration purposes. If not, the exemption does not apply.

The second part of this exemption applies when personal data processed by any controller is obtained and processed by another controller for the immigration purposes. The controller that discloses the personal data is exempt from the GDPR's provisions on:

- the right to be informed;
- the right of access;
- all the principles, but only so far as they relate to the right to be informed and the right of access.

The exemption only applies to the same extent that the second controller is exempt from these provisions.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 1, Paragraph 4
External link

Relevant provisions in the GDPR (the exempt provisions) – Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1) and 21(1)
External link

Functions designed to protect the public

This exemption can apply if you process personal data for the purposes of discharging one of six functions designed to protect the public.

The first four functions must: be conferred on a person by enactment; be a function of the Crown, a Minister of the Crown or a government department; or be of a public nature and exercised in the public interest. These functions are:

1. to protect the public against financial loss due to the seriously improper conduct (or unfitness, or incompetence) of financial services providers, or in the management of bodies corporate, or due to the conduct of bankrupts;
2. to protect the public against seriously improper conduct (or unfitness, or incompetence);
3. to protect charities or community interest companies against misconduct or mismanagement in their administration, to protect the property of charities or community interest companies from loss or misapplication, or to recover the property of charities or community interest companies; or
4. to secure workers' health, safety and welfare or to protect others against health and safety risks in connection with (or arising from) someone at work.

The fifth function must be conferred by enactment on: the Parliamentary Commissioner for Administration; the Commissioner for Local Administration in England; the Health Service Commissioner for England; the Public Services Ombudsman for Wales; the Northern Ireland Public Services Ombudsman; the Prison Ombudsman for Northern Ireland; or the Scottish Public Services Ombudsman. This function is:

5. to protect the public from maladministration, or a failure in services provided by a public body, or from the failure to provide a service that it is a function of a public body to provide.

The sixth function must be conferred by enactment on the Competition and Markets Authority. This function is:

6. to protect members of the public from business conduct adversely affecting them, to regulate conduct (or agreements) preventing, restricting or distorting commercial competition, or to regulate undertakings abusing a dominant market position.

If you process personal data for any of the above functions, you are exempt from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with these provisions would be likely to *prejudice* the proper discharge of your functions. If you can comply with these provisions and discharge your functions as normal, you must do so.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 1, Paragraph 7
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), and 21(1)
External link

Audit functions

This exemption can apply if you process personal data for the purposes of discharging a function conferred by enactment on:

- the Comptroller and Auditor General;
- the Auditor General for Scotland;
- the Auditor General for Wales; or
- the Comptroller and Auditor General for Northern Ireland.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with these provisions would be likely to *prejudice* the proper discharge of your functions. If it does not, you must comply with the GDPR as normal.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 1, Paragraph 8

External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), and 21(1)

External link

Bank of England functions

This exemption can apply if you process personal data for the purposes of discharging a function of the Bank of England:

- in its capacity as a monetary authority;
- that is a public function (within the meaning of Section 349 of the Financial Services and Markets Act 2000); or
- that is conferred on the Prudential Regulation Authority by enactment.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and

- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with these provisions would be likely to *prejudice* the proper discharge of your functions. If this is not so, the exemption does not apply.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 1, Paragraph 9
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), and 21(1)
External link

Regulatory functions relating to legal services, the health service and children's services

This exemption can apply if you process personal data for the purposes of discharging a function of:

- the Legal Services Board;
- considering a complaint under:
  - Part 6 of the Legal Services Act 2007,
  - Section 14 of the NHS Redress Act 2006,
  - Section 113(1) or (2), or Section 114(1) or (3) of the Health and Social Care (Community Health and Standards) Act 2003,
  - Section 24D or 26 of the Children's Act 1989, or
  - Part 2A of the Public Services Ombudsman (Wales) Act 2005; or
- considering a complaint or representations under Chapter 1, Part 10 of the Social Services and Well-being (Wales) Act 2014.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with these provisions would be likely to *prejudice* the proper discharge of your functions. If you can comply with these provisions and discharge your functions as normal, you cannot rely on the exemption.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 2, Paragraph 10
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), and 21(1)
External link

Other regulatory functions

This exemption can apply if you process personal data for the purpose of discharging a regulatory function conferred under specific, listed legislation on any one of 14 bodies and persons. These are:

- the Information Commissioner;
- the Scottish Information Commissioner;
- the Pensions Ombudsman;
- the Board of the Pension Protection Fund;
- the Ombudsman for the Board of the Pension Protection Fund;
- the Pensions Regulator;
- the Financial Conduct Authority;
- the Financial Ombudsman;
- the investigator of complaints against the financial regulators;
- a consumer protection enforcer (other than the Competition and Markets Authority);
- the monitoring officer of a relevant authority;
- the monitoring officer of a relevant Welsh authority;
- the Public Services Ombudsman for Wales; or
- the Charity Commission.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with these provisions would be likely to *prejudice* the proper discharge of your function. If this is not so, you must comply with these provisions as you normally would.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 2, Paragraphs 11-12

External link

Relevant provisions in the GDPR (the exempt provisions) – Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), 21(1) and 34(1) and (4)
External link

Parliamentary privilege

This exemption can apply if it is *required* to avoid the privileges of either House of Parliament being infringed.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling;
- the communication of personal data breaches to individuals; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But if you can comply with these provisions without infringing parliamentary privilege, you must do so.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 2, Paragraph 13
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), 21(1), and 34(1) and (4)
External link

Judicial appointments, independence and proceedings

This exemption applies if you process personal data:

- for the purposes of assessing a person's suitability for judicial office or the office of Queen's Counsel;
- as an individual acting in a judicial capacity; or
- as a court or tribunal acting in its judicial capacity.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

Additionally, even if you do not process personal data for the reasons above, you are also exempt from the same provisions of the GDPR to the extent that complying with them would be likely to *prejudice* judicial independence or judicial proceedings.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 2, Paragraph 14
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), and 21(1)
External link

Crown honours, dignities and appointments

This exemption applies if you process personal data for the purposes of:

- conferring any honour or dignity by the Crown; or
- assessing a person's suitability for any of the following offices:
  - archbishops and diocesan and suffragan bishops in the Church of England,
  - deans of cathedrals of the Church of England,
  - deans and canons of the two Royal Peculiars,
  - the First and Second Church Estates Commissioners,
  - lord-lieutenants,
  - Masters of Trinity College and Churchill College, Cambridge,
  - the Provost of Eton,
  - the Poet Laureate, or
  - the Astronomer Royal.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 2, Paragraph 15
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 19, 20(1)-(2), and 21(1)
External link

Journalism, academia, art and literature

This exemption can apply if you process personal data for:

- journalistic purposes;
- academic purposes;
- artistic purposes; or
- literary purposes.

Together, these are known as the 'special purposes'.

The exemption relieves you from your obligations regarding the GDPR's provisions on:

- all the principles, except the security and accountability principles;
- the lawful bases;
- the conditions for consent;
- children's consent;
- the conditions for processing special categories of personal data and data about criminal convictions and offences;
- processing not requiring identification;
- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling;
- the communication of personal data breaches to individuals;
- consultation with the ICO for high risk processing;
- international transfers of personal data; and
- cooperation and consistency between supervisory authorities.

But the exemption only applies to the extent that:

- as controller for the processing of personal data, you reasonably believe that compliance with these provisions would be incompatible with the special purposes (this must be more than just an inconvenience);
- the processing is being carried out with a view to the publication of some journalistic, academic, artistic or literary material; and
- you reasonably believe that the publication of the material would be in the public interest, taking into account the special importance of the general public interest in freedom of expression, any specific public interest in the particular subject, and the potential to harm individuals.

When deciding whether it is reasonable to believe that publication would be in the public interest, you must (if relevant) have regard to:

- the BBC Editorial Guidelines;
- the Ofcom Broadcasting Code; and
- the Editors' Code of Practice.

We expect you to be able to explain why the exemption is required in each case, and how and by whom this was considered at the time. The ICO does not have to agree with your view – but we must be satisfied that you had a reasonable belief.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 5, Paragraph 26
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5(1)(a)-(e), 6, 7, 8(1)-(2), 9, 10, 11(2), 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1)(a)-(b) and (d), 19, 20(1)-(2), 21(1), 34(1) and (4), 36, 44, and 60-67
External link

Research and statistics

This exemption can apply if you process personal data for:

- scientific or historical research purposes; or
- statistical purposes.

It does not apply to the processing of personal data for commercial research purposes such as market research or customer satisfaction surveys.

It exempts you from the GDPR's provisions on:

- the right of access;
- the right to rectification;
- the right to restrict processing; and
- the right to object.

The GDPR also provides exceptions from its provisions on the right to be informed (for indirectly collected data) and the right to erasure.

But the exemption and the exceptions only apply:

- to the extent that complying with the provisions above would *prevent* or *seriously impair* the achievement of the purposes for processing;
- if the processing is subject to appropriate safeguards for individuals' rights and freedoms (see Article 89(1) of the GDPR – among other things, you must implement data minimisation measures);
- if the processing is not likely to cause substantial damage or substantial distress to an individual;
- if the processing is not used for measures or decisions about particular individuals, except for approved medical research; and

- as regards the right of access, the research results are not made available in a way that identifies individuals.

Additionally, the GDPR contains specific provisions that adapt the application of the purpose limitation and storage limitation principles when you process personal data for scientific or historical research purposes, or statistical purposes. See the Guide pages on these principles for more detail.

Further Reading

> Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 6, Paragraph 27
> External link

> Relevant provisions in the GDPR (the exempt provisions) - Articles 5(1)(b) and (e), 14(1)-(4), 15(1)-(3), 16, 18(1) and 21(1)
> External link

Archiving in the public interest

This exemption can apply if you process personal data for archiving purposes in the public interest.

It exempts you from the GDPR's provisions on:

- the right of access;
- the right to rectification;
- the right to restrict processing;
- the obligation to notify others regarding rectification, erasure or restriction;
- the right to data portability; and
- the right to object.

The GDPR also provides exceptions from its provisions on the right to be informed (for indirectly collected data) and the right to erasure.

But the exemption and the exceptions only apply:

- to the extent that complying with the provisions above would prevent or seriously impair the achievement of the purposes for processing;
- if the processing is subject to appropriate safeguards for individuals' rights and freedoms (see Article 89(1) of the GDPR – among other things, you must implement data minimisation measures);
- if the processing is not likely to cause substantial damage or substantial distress to an individual; and
- if the processing is not used for measures or decisions about particular individuals, except for approved medical research.

Additionally, the GDPR contains specific provisions that adapt the application of the purpose limitation and storage limitation principles when you process personal data for archiving purposes in the public interest. See the Guide pages on these principles for more detail.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 6, Paragraph 28
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5(1)(b) and (e), 14(1)-(4), 15(1)-(3), 16, 18(1), 19, 20(1) and 21(1)
External link

Relevant provisions in the GDPR (the appropriate safeguards) - Article 89(1) and Recital 156
External link

Relevant provisions in the Data Protection Act 2018 (safeguards) - Section 19
External link

Further reading – The National Archives

The National Archives is the official archive and publisher for the UK Government and for England and Wales. It has published a detailed guide to archiving personal data.

Health data – processed by a court

This exemption can apply to health data (personal data concerning health) that is processed by a court.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies if the health data is:

- supplied in a report or evidence given to the court in the course of proceedings; and
- those proceedings are subject to certain specific statutory rules that allow the data to be withheld from the individual it relates to.

If you think this exemption might apply to your processing of personal data, see paragraph 3(2) of Schedule 3, Part 2 of the DPA 2018 for full details of the statutory rules.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 2, Paragraph 3

External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 20(1)-(2), and 21(1)
External link

Health data – an individual's expectations and wishes

This exemption can apply if you receive a request (in exercise of a power conferred by an enactment or rule of law) for health data from:

- someone with parental responsibility for an individual aged under 18 (or 16 in Scotland); or
- someone appointed by the court to manage the affairs of an individual who is incapable of managing their own affairs.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with the request would disclose information that:

- the individual provided in the expectation that it would not be disclosed to the requestor, unless the individual has since expressly indicated that they no longer have that expectation;
- was obtained as part of an examination or investigation to which the individual consented in the expectation that the information would not be disclosed in this way, unless the individual has since expressly indicated that they no longer have that expectation; or
- the individual has expressly indicated should not be disclosed in this way.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 2, Paragraph 4
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 20(1)-(2), and 21(1)
External link

Health data – serious harm

This exemption can apply if you receive a subject access request for health data.

It exempts you from the GDPR's provisions on the right of access regarding your processing of health

data.

But the exemption only applies to the extent that compliance with the right of access would be likely to cause *serious harm* to the *physical* or *mental health* of any individual. This is known as the 'serious harm test' for health data.

You can only rely on this exemption if:

- you are a health professional; or
- within the last six months you have obtained an opinion from an appropriate health professional that the serious harm test for health data is met. Even if you have done this, you still cannot rely on the exemption if it would be reasonable in all the circumstances to re-consult the appropriate health professional.

If you think this exemption might apply to a subject access request you have received, see paragraph 2(1) of Schedule 3, Part 2 of the DPA 2018 for full details of who is considered an appropriate health professional.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 2, Paragraph 5
External link

Relevant provisions in the GDPR (the exempt provisions) - Article 15(1)-(3)
External link

Health data – restriction of the right of access

This is a restriction rather than an exemption. It applies if you receive a subject access request for health data.

It restricts you from disclosing health data in response to a subject access request, unless:

- you are a health professional; or
- within the last six months you have obtained an opinion from an appropriate health professional that the serious harm test for health data is *not* met. Even if you have done this, you must re-consult the appropriate health professional if it would be reasonable in all the circumstances.

This restriction does not apply if you are satisfied that the health data has already been seen by, or is known by, the individual it is about.

If you think this restriction could apply to a subject access request you have received, see paragraph 2(1) of Schedule 3, Part 2 of the DPA 2018 for full details of who is considered an appropriate health professional.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 2, Paragraph 6

External link

Relevant provisions in the GDPR (the restricted provisions) - Article 15(1)-(3)
External link

Social work data – processed by a court

This exemption can apply to social work data (personal data that isn't health or education data) processed by a court. If you are unsure whether the data you process is social work data, see paragraphs 7(1) and 8 of Schedule 3, Part 3 of the DPA 2018 for full details of what this is.

The exemption relieves you from your obligations regarding the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies if the social work data is:

- supplied in a report or evidence given to the court in the course of proceedings; and
- those proceedings are subject to certain specific statutory rules that allow the social work data to be withheld from the individual it relates to.

If you think this exemption might apply to your processing of personal data, see paragraph 9(2) of Schedule 3, Part 3 of the DPA 2018 for full details of the statutory rules.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 3, Paragraph 9
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 20(1)-(2), and 21(1)
External link

Social work data – an individual's expectations and wishes

This exemption can apply if you receive a request (in exercise of a power conferred by an enactment or rule of law) for social work data concerning an individual from:

- someone with parental responsibility for an individual aged under 18 (or 16 in Scotland); or
- someone appointed by court to manage the affairs of an individual who is incapable of managing their own affairs.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies to the extent that complying with the request would disclose information that:

- the individual provided in the expectation that it would not be disclosed to the requestor, unless the individual has since expressly indicated that they no longer have that expectation;
- was obtained as part of an examination or investigation to which the individual consented in the expectation that the information would not be disclosed in this way, unless the individual has since expressly indicated that they no longer have that expectation; or
- the individual has expressly indicated should not be disclosed in this way.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 3, Paragraph 10
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 20(1)-(2), and 21(1)
External link

Social work data – serious harm

This exemption can apply if you receive a subject access request for social work data.

It exempts you from the GDPR's provisions on the right of access regarding your processing of social work data.

But the exemption only applies to the extent that complying with the right of access would be likely to *prejudice* carrying out social work because it would be likely to cause *serious harm* to the *physical* or *mental health* of any individual. This is known as the 'serious harm test' for social work data.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 3, Paragraph 11
External link

Relevant provisions in the GDPR (the exempt provisions) - Article 15(1)-(3)
External link

Social work data – restriction of the right of access

This is a restriction rather than an exemption. It applies if you process social work data as a local authority in Scotland (as defined by the Social Work (Scotland) Act 1968), and you receive a subject access request for that data.

It restricts you from disclosing social work data in response to a subject access request if:

- the data came from the Principal Reporter (as defined by the Children's Hearings (Scotland) Act 2011) in the course of his statutory duties; and
- the individual whom the data is about is not entitled to receive it from the Principal Reporter.

If there is a question as to whether you need to comply with a subject access request in this situation, you must inform the Principal Reporter within 14 days of the question arising.

You must not disclose the social work data in response to the subject access request unless the Principal Reporter has told you they think the serious harm test for social work data is not met.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 3, Paragraph 12
External link

Relevant provisions in the GDPR (the restricted provisions) - Article 15(1)-(3)
External link

Education data – processed by a court

This exemption can apply to education data (personal data in an educational record) processed by a court. If you are unsure whether the data you process is 'education data', see paragraphs 13-17 of Schedule 3, Part 4 of the DPA 2018 for full details of what this is.

The exemption relieves you from your obligations regarding the GDPR's provisions on:

- the right to be informed;
- all the other individual rights, except rights related to automated individual decision-making including profiling; and
- all the principles, but only so far as they relate to the right to be informed and the other individual rights.

But the exemption only applies if the education data is:

- supplied in a report or evidence given to the court in the course of proceedings; and
- those proceedings are subject to certain specific statutory rules that allow the education data to be withheld from the individual it relates to.

If you think this exemption might apply to your processing of personal data, see paragraph 18(2) of Schedule 3, Part 4 of the DPA 2018 for full details of the statutory rules.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 4, Paragraph 18
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), 15(1)-(3), 16, 17(1)-(2), 18(1), 20(1)-(2), and 21(1)
External link

Education data – serious harm

This exemption can apply if you receive a subject access request for education data.

It exempts you from the GDPR's provisions on the right of access regarding your processing of education data.

But the exemption only applies to the extent that complying with the right of access would be likely to cause *serious harm* to the *physical* or *mental health* of any individual. This is known as the 'serious harm test' for education data.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 4, Paragraph 19
External link

Relevant provisions in the GDPR (the exempt provisions) - Article 15(1)-(3)
External link

Education data – restriction of the right of access

This is a restriction rather than an exemption. It applies if you process education data as an education authority in Scotland (as defined by the Education (Scotland) Act 1980), and you receive a subject access request for that data.

It restricts you from disclosing education data in response to a subject access request if:

- you believe that the data came from the Principal Reporter (as defined by the Children's Hearings (Scotland) Act 2011) in the course of his statutory duties; and
- the individual whom the data is about is not entitled to receive it from the Principal Reporter.

If there is a question as to whether you need to comply with a subject access request in this situation, you must inform the Principal Reporter within 14 days of the question arising.

You must not disclose the education data in response to the subject access request unless the Principal Reporter has told you they think the serious harm test for education data is not met.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 4, Paragraph 20
External link

Relevant provisions in the GDPR (the restricted provisions) - Article 15(1)-(3)
External link

Child abuse data

This exemption can apply if you receive a request (in exercise of a power conferred by an enactment or rule of law) for child abuse data. If you are unsure whether the data you process is 'child abuse data', see paragraph 21(3) of Schedule 3, Part 5 of the DPA 2018 for a definition.

The exemption applies if the request is from:

- someone with parental responsibility for an individual aged under 18; or
- someone appointed by court to manage the affairs of an individual who is incapable of managing their own affairs.

It exempts you from the GDPR's provisions on the right of access.

But the exemption only applies to the extent that complying with the request would not be in the best interests of the individual who the child abuse data is about.

This exemption can only apply in England, Wales and Northern Ireland. It cannot apply in Scotland.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 3, Part 5
External link

Relevant provisions in the GDPR (the exempt provisions) - Article 15(1)-(3)
External link

Corporate finance

This exemption can apply if you process personal data in connection with a corporate finance service (e.g. if you underwrite financial instruments or give corporate finance advice to undertakings) that you are permitted to provide (as set out in the Financial Services and Markets Act 2000).

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access; and
- all the principles, but only so far as they relate to the right to be informed and the right of access.

But the exemption only applies to the extent that complying with the provisions above would:

- be likely to affect the price of an instrument; or

- have a prejudicial effect on the orderly functioning of financial markets (or the efficient allocation of capital within the economy), and you reasonably believe that complying with the provisions above could affect someone's decision whether to:
  - deal in, subscribe for or issue a financial instrument, or
  - act in a way likely to have an effect on a business activity (e.g. an effect on an undertaking's capital structure, the legal or beneficial ownership of a business or asset or a person's industrial strategy

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 4, Paragraph 21
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), and 15(1)-(3)
External link

Management forecasts

This exemption can apply if you process personal data for the purposes of management forecasting or management planning in relation to a business or other activity.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access; and
- all the principles, but only so far as they relate to the right to be informed and the right of access.

But the exemption only applies to the extent that compliance with the above provisions would be likely to *prejudice* the conduct of the business or activity.

Example

The senior management of an organisation is planning a re-organisation. This is likely to involve making certain employees redundant, and this possibility is included in management plans. Before the plans are revealed to the workforce, an employee makes a subject access request. In responding to that request, the organisation does not have to reveal its plans to make him redundant if doing so would be likely to prejudice the conduct of the business (perhaps by causing staff unrest before the management's plans are announced).

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 4,

Paragraph 22
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), and 15(1)-(3)
External link

Negotiations

This exemption can apply to personal data in records of your intentions relating to any negotiations with an individual.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access; and
- all the principles, but only so far as they relate to the right to be informed and the right of access.

But it only applies to the extent that complying with the above provisions would be likely to *prejudice* negotiations with that individual.

Example

An individual makes a claim to his insurance company. The claim is for compensation for personal injuries he sustained in an accident. The insurance company disputes the seriousness of the injuries and the amount of compensation it should pay. An internal paper sets out the company's position on these matters including the maximum sum it would be willing to pay to avoid the claim going to court. If the individual makes a subject access request to the insurance company, it would not have to send him the internal paper – because doing so would be likely to prejudice the negotiations to settle the claim.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 4, Paragraph 23
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), and 15(1)-(3)
External link

Confidential references

This exemption applies if you give or receive a confidential reference for the purposes of prospective or

actual:

- education, training or employment of an individual;
- placement of an individual as a volunteer;
- appointment of an individual to office; or
- provision by an individual of any service.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access; and
- all the principles, but only so far as they relate to the right to be informed and the right of access.

Example

Company A provides an employment reference in confidence for one of its employees to company B. If the employee makes a subject access request to company A or company B, the reference will be exempt from disclosure. This is because the exemption applies to the reference regardless of whether it is in the hands of the company that gives it or receives it.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 4, Paragraph 24
External link

Relevant provisions in the GDPR (the exempt provisions) - Articles 5, 13(1)-(3), 14(1)-(4), and 15(1)-(3)
External link

Exam scripts and exam marks

This exemption can apply to personal data in exam scripts.

It exempts you from the GDPR's provisions on:

- the right to be informed;
- the right of access; and
- all the principles, but only so far as they relate to the right to be informed and the right of access.

But it only applies to the information recorded by candidates. This means candidates do not have the right to copies of their answers to the exam questions.

However, the information recorded by the person marking the exam is not exempt from the above

provisions. If an individual makes a subject access request for this information before the results are announced, special rules apply to how long you have to comply with the request. You must provide the information:

- within five months of receiving the request; or
- within 40 days of announcing the exam results, if this is earlier.

Further Reading

Relevant provisions in the Data Protection Act 2018 (the exemption) - Schedule 2, Part 4, Paragraph 25
External link

Relevant provisions in the GDPR (the exempt provisions) – Articles 5, 13(1)-(3), 14(1)-(4), and 15(1)-(3)
External link

Protection of the rights of others

Paragraphs 16 and 17 of Schedule 2, Part 3 of the DPA 2018 provide an exemption that can apply if you receive a subject access request for information containing the personal data of more than one individual.

See our Guide page on the right of access for guidance on what to do if you receive a request for information that includes the personal data of other people.