

General Data Protection Regulation (GDPR) Fact sheet number 2

Legal Basis for processing personal data

As part of the new requirements of the GDPR, we are required to make clear in the information we provide to individuals what our legal basis is for processing their personal and special category data (a definition of these terms can be found at <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/key-definitions>).

There are six legal bases that can be used when processing *personal data* and it is necessary to decide which is the most appropriate. Note that in many of the bases listed below, the processing must be 'necessary', in other words, there is no other way of accomplishing what needs to be done without processing the data. The legal bases are that:

- the data subject (the individual) has given **consent** to the processing (further details on the requirements to obtaining consent in Fact Sheet 3)
- the 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 e.g. a contract of employment
- the processing is necessary for **compliance with a legal obligation to which the controller is subject** e.g. providing student information to HEFCE
- the processing is necessary in order **to protect the vital interests** of the data subject or another individual e.g. where it is believed that the processing is essential to protect the life of the individual or other individual
- the 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 (in this case, the University). For the University, this would involve the exercise of a function conferred on it by an enactment, specifically the Education Reform Act 1988 and subsequent Higher Education legislation.
- The 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 of the data subjects (individuals) e.g. it may be appropriate to use this legal basis when carrying out direct marketing (see the Fact Sheet 5 on Direct Marketing / Mailing lists).

It will not always be appropriate that the processing is carried out under consent, so it may be more sensible to consider using one of the other legal bases. However, if consent is the best or only legal basis that fits the situations, then it should be used even if it will require more work to implement properly.

If we are processing *Special Category data*, as well as having one of the legal bases listed above, we also need to have a separate condition of processing from the following list:

- The individual has given their **explicit consent** to the processing
- The processing is necessary for the purposes of carrying out obligations **under employment, social security or social protection law**
- The processing is necessary to protect the **vital interests** of the data subject or another individual, **where those individuals are physically or legally incapable of giving their own consent**
- the processing is carried out by **a foundation, association or similar charity** so long as the processing only relates to members of that charity
- the data has already been **made public** by the individual
- the processing is necessary for the establishment, exercise of defence **of legal claims**
- the processing is necessary for reasons of **substantial public interest**
- the processing is necessary for the purposes of **preventive or occupational medicine, the assessment of the working capacity of the employee,**
- the processing is necessary for reasons of public interest in the area of **public health** e.g. in the case of a medical epidemic
- the processing is necessary for **archiving purposes, for scientific or historical or statistical purposes.**

In all cases where special category data is processed, even if there is a legal basis as described above, there must still always be appropriate safeguards implemented to protect the data being processed.

For further information on the correct legal basis to use, please contact the University's Data Protection Officer, Samantha Hill on ext 3642 or information-matters@port.ac.uk .