Privacy Notice Guidance

# Introduction

When completing the Privacy Notice which forms part of the Research Participant Information Sheet, you will be required to declare:

1. a lawful basis for processing the personal data;
2. an additional condition if you are processing any special category data;
3. an additional condition if you are processing criminal conviction/offences data.

This guidance document will help you select your lawful basis and any additional conditions required.

# 1: Lawful Basis for Processing Personal Data

* You must have a valid lawful basis in order to process personal data and it must be documented in your privacy notice before you begin processing. **You can add the relevant wording in the GDPR Wording columns below to your Privacy Notice.**
* There are six available lawful bases for processing. 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 should not swap to a different lawful basis at a later date without good reason.
* 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. See Section 2 of this document.
* 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. See Section 3 of this document.

## The Six Lawful Bases (UK GDPR, Article 6)

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| **Lawful Basis** | **GDPR Wording** |
| **Consent** | UK GDPR Article 6 (a) - the data subject has given consent to the processing of his or her personal data for one or more specific purposes. |
| **Contract** | UK GDPR Article 6 (b) - processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract. |
| **Legal Obligation** | UK GDPR Article 6 (c) - processing is necessary for compliance with a legal obligation to which the controller is subject. |
| **Vital Interests** | UK GDPR Article 6 (d) - processing is necessary in order to protect the vital interests of the data subject or of another natural person. |
| **Public Task** | UK GDPR Article 6 (e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. |
| **Legitimate Interest** | UK GDPR Article 6 (f) - processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. |

# 2: Additional Conditions for Processing Special Category Data

* 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 UK GDPR (see Section 1 of this document) 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 UK 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 UK GDPR, and you should document it.
* 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.

Processing of personal data revealing **racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation** shall be prohibited unless you can identify an additional condition from the list below. **You can add the relevant wording in the GDPR Wording columns below to your Privacy Notice.**

## The Ten Additional Conditions (UK GDPR, Article 9)

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| **Lawful Basis** | **GDPR Wording** |
| **Explicit consent** | UK GDPR Article 9 (a) - the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject |
| **Employment, social security and social protection (if authorised by law)** | UK GDPR Article 9 (b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject |
| **Vital interests** | UK GDPR Article 9 (c) - processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent |
| **Not-for-profit bodies** | UK GDPR Article 9 (d) - processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects |
| **Made public by the data subject** | UK GDPR Article 9 (e) - processing relates to personal data which are manifestly made public by the data subject |
| **Legal claims or judicial acts** | UK GDPR Article 9 (f) - processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity |
| **Reasons of substantial public interest (with a basis in law)** | UK GDPR Article 9 (g) - processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject; |
| **Health or social care (with a basis in law)** | UK GDPR Article 9 (h) - processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3 |
| **Public health (with a basis in law)** | UK GDPR Article 9 (i) - processing is necessary for reasons of public interest in the area of public health, such as 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, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy |
| **Archiving, research and statistics (with a basis in law)** | UK GDPR Article 9 (j) - processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject |

Please note that conditions in **red** require you to meet the associated condition in UK law, set out in Part 1 of [Schedule 1 of the DPA 2018](https://www.legislation.gov.uk/ukpga/2018/12/schedule/1/enacted).

If you are relying on the “Reasons of substantial public interest” condition 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](https://www.legislation.gov.uk/ukpga/2018/12/schedule/1/enacted).

# 3: Additional Conditions for Processing Criminal Conviction/Offences Data

* If you have official authority, you can process personal data about criminal convictions and offences, because you are processing the data in an official capacity.
* If you do not have official authority, you can only process criminal offence data if you can identify a specific condition for processing in [Schedule 1 of the DPA 2018](https://www.legislation.gov.uk/ukpga/2018/12/schedule/1/enacted).
* You cannot keep a comprehensive register of criminal convictions, unless you do so in an official capacity.
* You must determine your condition for processing criminal offence data, or identify your official authority for the processing, before you begin the processing, and you should document this.
* You must still have a lawful basis for your processing under Article 6 (see Section 1 of this document).
* 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. Please contact York St John’s Governance and Compliance team at gov.compliance@yorksj.ac.uk for further support and to obtain an Appropriate Policy Document template.
* 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 criminal offence data. Please contact York St John’s Governance and Compliance team at gov.compliance@yorksj.ac.uk for further support and to obtain a DPIA template.