



# GDPR update

## Consent

### **Background**

The General Data Protection Regulation (GDPR) will come into effect on 25 May 2018.

The GDPR will replace the Data Protection Act 1998 (DPA) and is considered to advance the protection of personal data and respect for privacy. Many of the GDPR's concepts and principles are similar to those in the DPA, however there are new elements and significant enhancements. For example, there is a greater emphasis on the documentation that data controllers must keep to demonstrate their accountability and the ability for the ICO to issue fines of up to 20m Euros or 4% of an organisation's global turnover (whichever is higher) in the event of a breach.

For the processing of personal data to be lawful under the GDPR, a lawful basis for processing needs to be identified and documented. There are 6 lawful bases listed in Art 6(1) of the GDPR – this fact sheet details **consent** and should be read in conjunction with other fact sheets available in the series.

### **What is consent?**

The GDPR defines consent as:

“any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her”.

### ***Freely given***

An individual must have genuine choice in order for consent to be freely given and valid. They should be able to refuse consent without detriment and withdraw consent easily.

### ***Specific and informed***

Individuals must be informed of the identity of the data controller and any third parties who will be relying on consent, the purposes of the processing, the particular processing activities (where possible granular consent options should be provided) and the right to withdraw consent at any time.

### ***Unambiguous indication...by a clear affirmative action***

An individual must take a deliberate action to “opt in” such as by ticking a consent box, signing a consent statement, responding to an email asking for consent or answering “yes” to a clear oral request for consent. Inactivity, silence or pre-ticked boxes will not constitute valid consent. Consent should be verifiable and therefore consideration should be given as to how this audit trail will be kept



### **The right to withdraw consent**

The GDPR provides individuals with the right to withdraw their consent and therefore where consent is relied upon, proper withdrawal measures need to be in place. An individual should be able to opt out at any time and it must be as easy to withdraw consent as it was to give it.

### **When might consent be an appropriate lawful basis for processing?**

Consent may not always be the most appropriate lawful basis for processing personal data.

Consent will be required when no other lawful basis for processing applies, for example when you want to use data in a way that is incompatible with your original purpose or when you want to use data in a way that could be perceived as intrusive. Consent provides individuals with choice and control about how their data is used.

### **When is consent inappropriate?**

Consent should not be used if you are unable to provide an individual with a genuine choice about how their personal data will be used, for example if you would still process the data using a different lawful basis if consent was not provided or was withdrawn or if the “consent” is a condition of service.

### **Other factsheets available in this series include:**

*What is personal data?*

*Identifying a lawful basis for processing*

*Privacy Notices*

*Data sharing*

For more information please contact the Governance and Information Compliance Team:

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