



# LAWFUL BASIS OF PROCESSING



Guidance for Organisations

This document is purely for guidance and does not constitute legal advice or legal analysis. It is intended as a starting point only, and organisations may need to seek independent legal advice when renewing, enhancing or developing their own processes and procedures or for specific legal issues and/or questions.



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## Lawful Basis Checklist

You must have a valid lawful basis in order to process **personal data**.

There are defined 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;
- 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** (including that about criminal offences) you need to identify both a lawful basis for general processing and an additional condition for processing this type of data.

## What are the lawful bases for processing?

The lawful bases for processing non-special category data are set out in Schedule 2(Part 1) of the DPJL.

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) **Vital interests:** the processing is necessary to protect someone's life;
- (d) **Public functions:** 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;
- (e) **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.)

Where you are processing special category data you can only do so using at least one of the twenty bases identified in Schedule 2 (Part 2) of the DPJL.

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.



## 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 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.